

**SUPREME COURT OF NIGERIA**  
FRIDAY 9TH DECEMBER, 2016. SC. 67/2016  
**CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD,**  
**C. B. OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC**

- |                                   |                   |
|-----------------------------------|-------------------|
| 1. SENATOR UMARU DAHIRU           |                   |
| 2. BARR. ABUBAKAR SANYINNA        | ..... APPELLANTS  |
| AND                               |                   |
| 1. ALL PROGRESSIVE CONGRESS (APC) |                   |
| 2. INDEPENDENT NATIONAL ELECTORAL |                   |
| COMMISSION (INEC)                 | ..... RESPONDENTS |
| 3. HON. AMINU WAZIRI TAMBUWAL     |                   |

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APPEALS - Respondent - Duty of - Role of respondent is to urge the correctness of judgment being appealed against - As he cannot urge any point against such judgment (H1)

JUDICIAL PRECEDENTS - Stare decisis - Binding nature of - As the doctrine promotes certainty in decisions of Court - Refusal of Court of Appeal to be bound by authority of SC - Is inimical to judiciary's role as an arbiter (H2)

**FACTS**

At the Federal High Court Holden at Abuja, plaintiffs/appellants by way of an originating summons filed against defendants/respondents, are challenging the primary election that led to the nomination and sponsorship of 3<sup>rd</sup> respondent by 1<sup>st</sup> respondent to contest the Sokoto State Gubernatorial election held on the 11<sup>th</sup> of April 2015. By way of preliminary objection, respondents challenged the jurisdiction of the Court to entertain the suit. The ground of the objection is primarily because 2<sup>nd</sup> respondent's conduct of the Sokoto State Gubernatorial election and return of 3<sup>rd</sup> respondent as the winner thereof had rendered appellants' action academic and worthless.

The Court heard submissions and counter submissions on the preliminary objection. In its judgment, the Court overruled the preliminary objection and concluded that it has jurisdiction to hear

and determine appellants' cause of action. Aggrieved with the stance of the Court, respondents appealed to the Court of Appeal Abuja Division. The Court in its judgment, found merit in the appeal and allowed same. Aggrieved further, appellants appealed to the Supreme Court challenging the decision of the Court of Appeal.

## **HELD** (Unanimously allowing the appeal per **MUHAMMAD JSC**)

*APPEALS - Respondent - Duty of*

**1. The role of a respondent in the appeal process, it must be restated, is to urge the correctness of the judgment being appealed against. Unless by virtue of a respondent's notice or a cross appeal, the respondent cannot urge any point against the judgment appealed against. This must be so because, being a respondent, he is confined in his formulation of issues for the determination of the appeal to the grounds of appeal contained in appellant's notice of appeal. In the case at hand, therefore, 2<sup>nd</sup> respondent's ambivalent brief and oral submissions must and are hereby accordingly discountenanced. Having filed no brief in the appeal, the 3<sup>rd</sup> respondent is equally in no position to urge any contrary point to those held by the court below on this Court. (p. 4094 B)**

*JUDICIAL PRECEDENTS - Stare decisis - Binding nature of*

**2. Aboki JCA wrote the lead judgment in Adeogun V. Fashogbon & Ors (supra) which this Court affirmed. In the instant matter, it is intriguing, to say the least, to see the same Aboki JCA, now a presiding judge in the panel which decision is appealed against, contrary to his earlier decision as affirmed by this Court, to be in a manifest somersault. With such a visibly unpardonable refusal to be bound by the decision of this Court on a similar issue that called for the application of same or similar legislation, the negative perception the public has of the judicial process cannot be said to be without basis. The public is entitled, in the face of this brazen disobedience to the authority of the apex court, to conclude that the judiciary**

**is compromised.**

***Parties who subsequently agitate same or similar issues before the courts must fetch same or similar verdicts as did parties who earlier agitated the very same or similar issues. Certainty in decisions of courts remains what the laudable doctrine of precedent or stare-decisis is all about. Ignoring the application of the doctrine is inimical to the judiciary's role as an arbiter. We must sit up!!!***

***To allow the lower court's perverse decision is to en-throne judicial impertinence. Accordingly, I find merit in the appeal and set aside the lower court's judgment. The matter is hereby remitted to the trial court for same to be heard and determined expeditiously.*** (p. 4101 A)

## NOTABLE POINTS OF INTEREST

### **RHODES-VIVOUR JSC**

#### ***1. Courts determines live issues***

Once a suit no longer has live issues for determination such a suit can be said to be academic. Courts should on no account spend judicial time, or engage in academic exercise. Courts are to determine only live issues. (p. 4105 D)

#### ***2. Pre election matters – Subsistence of jurisdiction***

A suit does not become academic simply because what gave rise to the action is concluded. A pre-election matter that was instituted prior to the conduct of an election subsists and the court in which it is/was instituted continues to have jurisdiction to hear and determine the said pre-election matter even after the conduct of the election. (p. 4105 E)

#### ***3. Parties – Fair hearing***

Anyone with a right has a remedy. Anyone who has a cause of action would always be heard by our courts and on no account would such a person be denied a hearing. (p. 4106 A)

### **REPRESENTATION**

Ikoru N.A. Ikoru with him, C. I. Obidike Esq., W. B. Musa (Miss) and

Dorris Nwachukwu for the Appellants

John A. Mathew Esq., with him, Ocholi O. Okutepa Esq., Oluwaseyi A. Arowosebe Esq., Blessing E. Ameh (Miss), O. Ozuzu (Miss) for the 1<sup>st</sup> Respondent

B

Tunde Babalola with him, A. A. Usman, Henry Nwalcpa and Kayode Olojo for the 2<sup>nd</sup> Respondent

C

S. I. AMEH, SAN with him, U. O. Sule Esq., R. O. Adakole Esq., D. M. Idoko Esq., H. I. IHEME Esq., A. O. Nwankwere (Miss), A. Saidu (Miss) and N. Okorie (Mrs.) for the 3<sup>rd</sup> Respondent

**CASES REFERRED TO**

D Ajomole v. Yarduat (No 2) (1991) 5 NWLR (pt. 191) 266

Adefulu v. Oyesile (1989) 5 NWLR (pt. 122) 37

Atanda v. Ajani (1989) 3 NWLR (pt. 111) 511

Abubakar v. Yar’adua (2008) 4 NWLR (pt. 1078) 435

JEV v. Iyortom (2015) LPELR 24420 (SC)

E

Odedo v. INEC (2007) ALL FWLR (pt. 392) 1907

Amaechi v. INEC (2008) 1 SC (pt. 1) 1

Action Congress v. INEC (2007) 18 NWLR (pt. 1065) 50

MV Arabella v. N.A.I.C (2008) 11 NWLR (pt. 1097) 182

F

Ikenya v. PDP (2012) NWLR (pt. 1315) 50

AG Federation v. ANPP (2003) 12 SC (pt. 11) 146

Mamman v. Safaudeen (2005) 18 NWLR (pt. 958) 478

Gwede v. INEC (2004) 18 NWLR (pt. 1438) 56

Erneka v. Okadigbo (2012) LPELR - 8338 (SC)

G Adeogun v. Fashogbon (2008) 6 SC (pt. 1) 23

**STATUTES REFERRED TO**

Electoral Act 2010, ss. 32, 33, 87(9)

Supreme Court Act, s. 22

H

**LEAD JUDGMENT BY MUHAMMAD JSC**

The appellants, as plaintiffs at the Federal High Court sitting at Abuja, hereinafter referred to as the trial court, took out an origi-

nating summons against the defendants, the respondents herein, challenging the primary election that led to the nomination and sponsorship of the 3<sup>rd</sup> respondent by the 1<sup>st</sup> respondent to contest the Sokoto State Gubernatorial election held on the 11<sup>th</sup> April 2015.

The respondents challenged the jurisdiction of the trial court to proceed primarily because the 2<sup>nd</sup> respondent's conduct of the Sokoto State Gubernatorial election and return of the 3<sup>rd</sup> respondent as the winner thereof had rendered appellants' action academic and worthless. B

In a well considered decision dated 26<sup>th</sup> May 2015, the trial court overruled the preliminary objections severally raised by the respondents and concluded that it has jurisdiction to hear and determine appellants' cause of action. C

Dissatisfied with the ruling, the respondents appealed to the Court of Appeal, Abuja Division, hereinafter referred to as the lower court. In its judgment delivered on the 21<sup>st</sup> December 2015, the court found merit in the appeal and allowed same. D

Aggrieved, the plaintiffs at the trial court have appealed against the lower court's judgment to this Court.

At the hearing of the appeal, learned counsel having identified their parties' respective briefs adopted same as their arguments for or against the appeal. E

In the appellant's brief, the following two issues have been distilled from their four grounds of appeal as having arisen for the determination of the appeal:- F

*"(a) Whether the court below was right to hold that based on the reliefs sought at the trial court, the instant suit had become academic (Distilled from grounds (a) and*

*(b) Whether the appeal at the court below was not premature having regards to the nature and circumstances of the proceedings which led to the appeal (Distilled from Grounds c and d)* G

1<sup>st</sup> respondent's lone issue for the determination of the appeal at page 2 of its brief reads:-

*"Was the Court of Appeal right to hold as it did academic having regards to the reliefs sought before the trial court and whether this Honourable Court can exercise its powers under Section 22 of the Supreme Court Act to hear and determine the suit on the merit."* H

The 2<sup>nd</sup> respondent though adopting at page 4 of its brief the two issues distilled by the appellants for the determination of the appeal, it appears ambivalent in its submissions thereon. It is not bothered which way the appeal goes.

The 3<sup>rd</sup> respondent has not filed any brief of argument.

- B ***The role of a respondent in the appeal process, it must be restated, is to urge the correctness of the judgment being appealed against. Unless by virtue of a respondent's notice or a cross appeal, the respondent cannot urge any point against the judgment appealed against. This must be so because, being a respondent, he is confined in his formulation of issues for the determination of the appeal to the grounds of appeal contained in appellant's notice of appeal. In the case at hand, therefore, 2<sup>nd</sup> respondent's ambivalent brief and oral***
- C ***submissions must and are hereby accordingly discounted. Having filed no brief in the appeal, the 3<sup>rd</sup> respondent is equally in no position to urge any contrary point to those held by the court below on this Court.*** See Ajomole V. Yarduat (No 2) (1991) 5 NWLR (Pt 191) 266 and APGA V. Umeh (2011) 2-3 FVUSC (Pt.1) 96, Adefulu V. Oyesile (1989) 5 NWLR (Pt 122) 37 and Atanda V. Ajani (1989) 3 NWLR (Pt 111) 511.
- E

- F Appellants by their terse submissions urge us to adjudge the lower court's judgment which forecloses them from the reliefs Section 87 of the Electoral Act entitles them to as perverse. The pursuit of such a cause of action, the appellants contend; cannot be said to be academic and untenable. The trial court, notwithstanding the conduct of the election to which appellants cause of action relate, can, at conclusion of hearing, consequentially order the replacement of the
- G 3<sup>rd</sup> respondent who is not the lawful candidate of the 1<sup>st</sup> respondent at the election. Learned appellants' counsel relies inter-alia on Abubakar V. Yar'adua (2008) 4 NWLR (Pt 1078) 435, JEV & anor V. Iyortom and ors (2015) LPELR 24420 (SC), Odedo V. INEC (2007) ALL FWLR (Pt 392) 1907 at 1924, Amaechi V. INEC (2008) 1 SC (Pt 1) 1 at 105 and Action Congress V. INEC (2007) 18 NWLR (Pt 1065) 50 in support of these submissions in urging this Court to allow the appeal.
- H

Responding under its first issue, John. A. Mathew Esq for the

1<sup>st</sup> respondent submits that the lower court's conclusion that Suit No. FCH/ABJ/CS/11/2015 has become academic is unassailable. Though the appellants may secure reliefs (a) - (d) which are declaratory may avail the appellants, reliefs (e) to (g), with the occurrence of the Sokoto State 11<sup>th</sup> April 2015 gubernatorial election and the return of the 3<sup>rd</sup> respondent by the 2<sup>nd</sup> respondent, do not. Appellants' action, for this reason, has become untenable. Courts, including the Supreme Court, it is further contended, lack the jurisdiction of determining hypothetical and academic issues. The combined reading of Sections 32 and 33 of the Electoral Act, it is argued, makes the substitution of the 3<sup>rd</sup> respondent the gubernatorial election having been conducted by the 2<sup>nd</sup> respondent; impossible. Inter-alia, learned counsel cites in support Owners of the MV Arabella V. N.A.I.C (2008) 11 NWLR (Pt 1097) 182, Ikenya V. PDP (2012) NWLR (Pt 1315) 50, AG Federation V. ANPP (2003) 12 SC (Pt 11) 146 at 170 and Mamman V. D Safaudeen (2005) 18 NWLR (Pt 958) 478 at 500 and insists that appellants action is unsustainable.

Concluding, learned counsel submits that the decision in Gwede V. INEC & 3 ors (2004) 18 NWLR (Pt 1438) 56, being on different facts, does not avail the appellants. Commending the decision in Erneka V. Okadigbo (2012) LPELR - 8338 (SC), learned 1<sup>st</sup> respondent counsel urges us to distinguish the facts and circumstances of the instant case from the decisions relied upon by the appellants. The unmeritorious appeal, it is contended; should be dismissed.

Now, by their originating summons filed on 27<sup>th</sup> January 2015, well before the Sokoto State gubernatorial election that held on 11<sup>th</sup> April 2015, the appellants are seeking the trial court to determine the following questions:-

*"a. Whether the procedure for the nomination and/or sponsorship of candidates for elective offices recognized by the Electoral Act 2010 and the Constitution of the Federal Republic of Nigeria 1999, is within in of section 87 of the Electoral Act 2010 (as amended).*

*(b) Whether the conduct of the Governorship Primaries of the 1<sup>st</sup> Defendant conducted on the 4<sup>th</sup> December 2014 was not grossly In non compliance with the provisions of Section 87 of the Electoral Act 2010, the APC 2014 Guidelines for the Nomination of Candi-*

*dates for Public Offices {hereinafter referred to as APC 2014 Guidelines and therefore, unlawful, illegal, null and void.*

(c) *Whether in the circumstances of this case, the Plaintiffs are not entitled to relief having exhausted internal party mechanism to redress the non-compliance with the Electoral Act 2010 (as amended), APC 2014 Guidelines for the Nomination of Public Offices and the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

d. *Whether it is lawful for the 3<sup>rd</sup> Defendant to act on a candidate nominated by the 1<sup>st</sup> Defendant for the purpose of the general elections when such a candidate was elected in violation of the Electoral Act, 2010, and the electoral guidelines established by the 1<sup>st</sup> Defendant.”*

Consequent upon its determination of the foregoing questions, the appellants further seek of the trial court the following reliefs:-

“a. *A Declaration that the procedure for the nomination and/or sponsorship of candidates for elective offices recognized by the Electoral Act 2010 and the Constitution of the Federal Republic of Nigeria 1999, is within the exclusive domain of Section 87 of the Electoral Act 2010 (as amended) and the Guideline of*

b. *A Declaration that the conduct of the Governorship Primaries of the 1<sup>st</sup> Defendant held on the 4<sup>th</sup> of December 2014 was grossly in non-compliance with the provisions of Section 87 of the Electoral Act 2010, the All Progressive Congress 2014 Guidelines for the Nomination of Candidates for Public Offices (hereinafter referred to as APC 2014 Guidelines) and*

c. *A Declaration that in the circumstances of this case, the Plaintiffs are entitled to relief having exhausted internal party APC 2014 Guidelines for the Nomination of Candidates for Public Offices and the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

d. *A Declaration that it is unlawful for the 3<sup>rd</sup> Defendant to act on a candidate nomination by the 1<sup>st</sup> Defendant for the purpose of the general elections when such a candidate was elected in violation of the electoral guidelines established by the 1<sup>st</sup> Defendant.*

e. *An Order of this Honourable Court directing the 1<sup>st</sup> De-*



*defendant to withdraw the nomination and sponsorship of the 2<sup>nd</sup> Defendant as the Gubernatorial Flag bearer of the All Progressive Congress and hold another governorship Primaries in Sokoto State within such reasonable time as may be determined by the Court.*

*f. An Order of this Honourable Court directing the 3<sup>d</sup> Defendant to expunge the name of the 2<sup>nd</sup> Defendant from its register of governorship candidates for the 2015 governorship elections pending the holding or conduct of gubernatorial primaries by the 1<sup>st</sup> Defendant*

*g. An Order of interlocutory injunction restraining the 3<sup>d</sup> Defendant from placing the name of the 2<sup>nd</sup> Defendant on the ballot for the 2015 governorship election pending the holding of gubernatorial primaries by the 1<sup>st</sup> Defendant.*

Section 87 of the Electoral Act 2010 as amended which prescribes the procedure political parties including the 1<sup>st</sup> respondent herein shall uphold in nominating candidates for elections particularly provide in subsection 9 thereof as follows:-

*“(9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.”*

Appellants’ claim as earlier reproduced in this judgment seeks such reliefs that fall squarely within the purview of the foregoing clear and unambiguous provision. The facts which the appellants predicate their action are not in dispute. The two had participated in the primary election that led to the emergence of the 3<sup>rd</sup> respondent as 1<sup>st</sup> respondent’s candidate in the 11<sup>th</sup> April 2015 Sokoto State Gubernatorial Election. The appellants assert that the 1<sup>st</sup> respondent stands in breach of its own constitution and the law in the conduct of the primary election that brought about the candidature of the 3<sup>rd</sup> respondent in the 11<sup>th</sup> April 2015 Sokoto State gubernatorial election. The real issue in controversy between the parties, therefore, is not whether the trial court lacks the jurisdiction to hear and determine appellants cause of action but whether the jurisdiction as conferred under Section 87 (9) of the Electoral Act 2010 as amended

has become academic in other words needless, empty and incapable of being enforced with the conduct of the Sokoto State gubernatorial election on 11<sup>th</sup> April 2015.

The trial court in resolving the very narrow issue, in its well considered decision dated 26<sup>th</sup> May 2015, concluded at page 1113 B of volume 2 of the record of appeal thus:-

*“The issue is simple and straight forward, and that the conduct of election does it extinguish the right of the plaintiff to the action. My obvious answer will be in the negative. So the mere fact that election took place does not extinguish the right of an aggrieved party to the suit. On this my proposition of the law I will place reliance on the case of GWEDE VS INEC & 3 ORS (2014) LPELR 23763 SC.”* (Underlining mine for emphasis). C

The lower court, on the other hand, firstly held at page 1199 D of vol. 2 of the record as follows:-

*“In this case, the 1<sup>st</sup> and 2<sup>nd</sup> respondents by originating summons, are seeking 7 (seven) reliefs. The first four prayers are declaratory in nature while the remaining three are injunctive orders... I completely agree that prayers (e) – (g), which are injunctive reliefs, E sought by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, have been overtaken by events. This is so because the election, in respect of which the injunctive orders are sought, has since been conducted and concluded by the 3<sup>rd</sup> respondent. The law is that injunction, which is an equitable relief or remedy cannot be granted in respect of a completed F act. See *The Attorney-General and Commissioner for Justice, Anambra State & 4 Ors. v. Robert C Okafor & 5 Ors. (1992) 2 NWLR (PL 224) 396...*”*

At pages 1200 - 1201 of vol. 2 of the record, the court continued as follows:- G

*“I agree with the very sound legal argument that declarations constitute complete relief, However, the declarations sought by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, even if granted, without the injunctive orders to back them, will yield no practical benefits to the 1<sup>st</sup> and 2<sup>nd</sup> respondents... H*

*To be brief, their action or suit has become academic. On when an action is academic, see *Government of Plateau State v. Attorney-General of the Federation (2006) 3 NWLR (pt. 967) 346.*”*

And concluded at page 1202 as follows:-

*“The 1<sup>st</sup> and 2<sup>nd</sup> respondents’ suit, that is Suit No. FHC/ABJ/CS/11/2015 filed on 27/01/2015 in the Federal High Court, Abuja Division, having become academic, is hereby struck out.”*

Both courts below cannot be right in their opposing decisions on the issue in controversy in the instant case. B

I agree with the learned counsel for the appellants that this Court has since resolved the issue and that by the doctrine of precedent the two courts are bound by the decisions of this Court on same. More specifically, counsel’s defence of the trial court’s reliance on the decision of this Court in Gwede V. INEC & 3 Ors (supra) is unassailable. The decision in Gwede V. INEC & 3 Ors (supra) drew from this Court’s earlier decisions inter-alia in Ugwu V. Ararume (2007) 6 SC (Pt 1) 88, Adeogun & Ors V. Fashogbon & Ors (2008) 5-6 SC (Pt 1) 23, Amaechi V. INEC (2008) 1 SC (Pt 1) 36 and particularly Odedo v. INEC & Ors 7 SC 25 which facts are on all fours as in the instant case. In the latter case, this Court per Niki JSC of blessed memory at page 59 opined thus:- C  
D

*“In Amaechi, this Court dichotomized between a pre-election matter and an election matter for the purposes of determining whether a suit is merely an academic exercise.....”* E

*I was not in the panel in Amaechi but I entirely agree with my brothers’ decision that a pre-election matter cannot be said to be one of mere academic exercise. On the contrary it is a live issue.*” (Underlining mine for emphasis). F

His lordship dealt further at page 61 of the law report as follows:-

*“Mr. Adekwu submitted that the reliefs sought by the appellant, even If granted... are incapable of enforcement. With respect, I do not agree with him.* G

*The reliefs are not only capable of enforcement but can be enforced, if a court of law comes to the conclusion that the substitution was not in compliance with Section 34, it will declare it a nullity as was done in the case of Ugwu V. Ararumu (2007) 6 SC (Pt 1) 88; (2007) 12 NWLR (Pt 1048) 367”* (Underlining mine for emphasis). H

Oguntade JSC in concurring stated at page 72 of the law report thus:-

*“The position of this court in a situation similar to the one we have in this case was exhaustively discussed in Amaechi V. INEC supra:-*

*‘It is my view that the approach of the respondents to this case was to kill Amaechi’s case in the misconceived notion that once election were held, the court would lose its jurisdiction. It is my firm view that the jurisdiction of the ordinary courts to adjudicate in pre-election matters remains intact and unimpaired...’*”(Underlining mine for emphasis).

In the case at hand, the lower court, contrary to the foregoing decisions of this Court, and indeed its own earlier decisions, proceeded to extinguish the trial court’s jurisdiction in respect of appellants’ pre-election action the two courts persistently held to be extant notwithstanding the fact that the election to which the cause of action relates had been conducted.

In Adeogun & Ors V. Fashogbon & Ors (2008) 6 SC (Pt 1) 23 the appellant; as in the instant matter, instituted a pre-election suit at the Federal High Court challenging his substitution by the 2<sup>nd</sup> defendant with the 1<sup>st</sup> defendant as the former’s candidate in an election that was yet to hold. By his suit, the plaintiff sought of the trial court some declaratory and injunctive reliefs. On the dismissal of his suit by the learned trial judge, the plaintiff appealed to the Court of Appeal The respondents in the appeal, by a motion on notice, urged the court to decline jurisdiction to determine the appeal which, with the conduct of the election, it was argued, had become academic. In dismissing the motion, the court per Aboki JCA relied on Section 34(1) and (2) of the Electoral Act 2006 and held thus:-

*“...The procedure engaged by the political parties and INEC can be challenged in court for the interpretation of the provision of the section. See the unreported (sic) Supreme case of Engr Charles Ugwu V. Senator Ifeanyi Ararume & 2 Ors (2008) 6 SC (Pt 1} 88, In conclusion this Court has jurisdiction to entertain this appeal on substitution of a candidate for an election which is a pre-election matter. This application lacks merit and it is hereby dismissed.”*

In upholding the foregoing decision of the Court of Appeal this Court reasoned that notwithstanding the fact that the election had taken place on the 21/4/07, the propriety or otherwise of the

substitution of the plaintiff with the 1<sup>st</sup> defendant had remained a live issue for determination in the judicial process. Even though the principle on the point in issue in the case at hand is still extant, the lower court, on the same facts, has decided otherwise.

***Aboki JCA wrote the lead judgment in Adeogun V. Fashogbon & Ors (supra) which this Court affirmed. In the instant matter, it is intriguing, to say the least, to see the same Aboki JCA, now a presiding judge in the panel which decision is appealed against, contrary to his earlier decision as affirmed by this Court, to be in a manifest somersault. With such a visibly unpardonable refusal to be bound by the decision of this Court on a similar issue that called for the application of same or similar legislation, the negative perception the public has of the judicial process cannot be said to be without basis. The public is entitled, in the face of this brazen disobedience to the authority of the apex court, to conclude that the judiciary is compromised.***

***Parties who subsequently agitate same or similar issues before the courts must fetch same or similar verdicts as did parties who earlier agitated the very same or similar issues. Certainty in decisions of courts remains what the laudable doctrine of precedent or stare-decisis is all about. Ignoring the application of the doctrine is inimical to the judiciary's role as an arbiter.*** See Dalhatu V. Turaki [2003] 7 SC 1; and Shettima & 3 Ors V. Goni & 6 Ors (2011) 10 SC 92. ***We must sit up!!!***

***To allow the lower court's perverse decision is to en-throne judicial impertinence. Accordingly, I find merit in the appeal and set aside the lower court's judgment. The matter is hereby remitted to the trial court for same to be heard and determined expeditiously.*** Parties should bear their respective costs.

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### RHODES-VIVOUR JSC

I have had the advantage of reading in draft a copy of the leading judgment by my learned brother, Muhammad, JSC. I am in complete agreement with his lordship's reasoning and conclusion.

The appellants' and the 3<sup>rd</sup> Respondent are members of the 1<sup>st</sup> respondent, (the APC). On 4 December, 2014 they participated in their party's gubernatorial elections, for the office of Governor of Sokoto State. The 2<sup>nd</sup> Respondent won. The 1<sup>st</sup> and 2<sup>nd</sup> appellants' were not satisfied with the conduct of the gubernatorial elections that produced the 3<sup>rd</sup> respondent as the APC candidate for the General elections for Governor of Sokoto State. So, on 27 January 2015 the 1<sup>st</sup> and 2<sup>nd</sup> appellants filed an originating summons wherein they asked the following questions:

(a) Whether the procedure for the nomination and/or sponsorship candidates for elective offices recognized by the Electoral Act 2010 and the Constitution, is within the exclusive domain of section 87 of the Electoral Act 2010 (as amended).

(b) Whether the conduct of Governorship Primaries of the 1<sup>st</sup> defendant conducted on 4<sup>th</sup> December 2014 was no grossly it, non-compliance with the provisions of section 87 of the Electoral Act 2010, the APC 2014 Guidelines for the nomination of candidates for Public Offices (hereinafter referred to as APC 2014 Guidelines) and therefore, unlawful, illegal null and void.

(c) Whether in the circumstances of this case, the plaintiffs are not entitled to relief having exhausted internal party mechanism to redress the non-compliance with the Electoral Act 2010 (as amended), APC 2014 Guidelines for the Nomination of Public Offices and the Constitution (as amended).

(d) Whether it is lawful for the 3<sup>rd</sup> defendant to act on a candidate nominated by the 1<sup>st</sup> defendant for the purpose of the general elections when such a candidate was elected in violation of the Electoral Act 2010, and the electoral guidelines established by the 1<sup>st</sup> defendant.

And sought the following reliefs:

(a) A Declaration that the procedure for the nomination and/or sponsorship of candidates for elective offices recognized by the Electoral Act 2010 and the Constitution, is within the exclusive domain of section 87 of the Electoral Act 2010 (as amended). And the Guidelines of Political parties.

(b) A Declaration that the conduct of the Governorship Primaries of the 1<sup>st</sup> defendant held on 4 December 2014 was grossly in

non-compliance with the provisions of section 87 of the Electoral Act 2010, the All Progressive Congress 2014 Guidelines for the nomination of candidates for Public Offices (hereinafter referred to as APC 2014 Guidelines) and therefore, unlawful, illegal null and void.

(c) A Declaration that in the circumstances of this case, the plaintiffs are entitled to rely having exhausted internal party mechanism to redress the non-compliance with the Electoral Act, 2010 (as amended), APC 2014 Guidelines for the Nomination of candidates for Public Offices the Constitution (as amended). B

(d) A Declaration that it is unlawful for the 3<sup>rd</sup> defendant to act on a candidate nominated by the 1<sup>st</sup> defendant for the purpose of the general elections when such a candidate was elected in violation of the Electoral Act 2010, of the electoral guidelines established by the 1<sup>st</sup> defendant. C

(e) An Order of this Honourable Court directing the 1<sup>st</sup> defendant to withdraw the nomination and sponsorship of the 2<sup>nd</sup> defendant as the gubernatorial flag bearer of the All Progressive Congress and to hold another governorship primaries in Sokoto State within such reasonable time as may be determined by the court. D

(f) An Order of this Honourable court directing the 3<sup>rd</sup> defendant to expunge the name of the 2<sup>nd</sup> defendant from its register of for the 2015 governorship elections pending the holding or conduct of gubernatorial primaries by the 1<sup>st</sup> defendant. E

(g) An Order of interlocutory injunction restraining the 3<sup>rd</sup> defendant from placing the name of the 2<sup>nd</sup> defendant on the ballot for the 2015 governorship election pending the holding of gubernatorial primaries by the 1<sup>st</sup> defendant. F

The respondents' as defendants' filed a motion wherein they observed that since the 3<sup>rd</sup> respondent's name was submitted to the 2<sup>nd</sup> respondent before this suit was filed on 27/1/15 and election into the office of Governor of Sokoto State was conducted on 11/4/15 and the 3<sup>rd</sup> respondent emerged winner, the reliefs sought by the plaintiffs/appellant's have become academic and the originating summons should be struck out or dismissed. G

After a thorough review of the law on the subject the learned trial judge had this to say" H

*".....let me make it obvious that the issue of the case being*

*academic and hypothetical will be determined in the substantive suit based on facts and evidence produced and canvassed in this court.....”*

The substantive suit was not heard. Rather the All Progressive Congress decided to appeal. That appeal was heard by the Abuja Division of the Court of Appeal and in a Judgment delivered on 21/10/15, agreed with the appellant that the originating summons was academic when it said:

*“..... this appeal is meritorious and it is hereby allowed, The 1<sup>st</sup> and 2<sup>nd</sup> respondents’ suit, that is suit FHC/ABJ/CS/II/2015 filed on 27/1/2015 in the Federal High Court Abuja Division having become academic is hereby struck out.....”*

This appeal is against that judgment and the real issue for determination is:

*“Whether a pre-election matter becomes an academic exercise merely because the election over which the pre-election suit has arisen has been conducted prior to the conclusion of the case.*

The appellants’ and the 3<sup>rd</sup> respondent, members of the APC, participated in the primaries from which the 3<sup>rd</sup> respondent emerged as the APC’s candidate for the 11<sup>th</sup> April 2015 gubernatorial election for Governor of Sokoto State. NOW, an intra-party dispute is a dispute between members of the party interse or between a member or members on the one hand or and the party on the other hand. The appellants’ originating summons was filed because they were not satisfied with the conduct of the APC primaries held on 4/12/2014 wherein the 3<sup>rd</sup> respondent emerged as the APC’s gubernatorial candidate. The appellants’ suit is an intra-party dispute, a pre-election matter. Do the appellants’ have a right to complain? Section 87 (9) of the Electoral Act 2010 (with 2011 amendments) states that:

(9) Notwithstanding the provisions of this Act or Rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party For election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.

The complaint of the appellants’ is that the primaries of the 1<sup>st</sup> defendant held on 4 December 2014 was not done in compliance



with the provisions of section 87 of the Electoral Act 2010 and the APC guidelines. The appellants' not only have a complaint but a good cause of action, the appellants were thus correct to bring their action in the Federal High court as provided by section 87 (9) of the Electoral Act 2010 (with 2011 amendment) see also

Al-Hassan V Ishaku (2016) 10 NWLR (Pt 1520) p.230. PDP v Sylva (2010) 12 NWLR (Pt 1316) p.85. Daniel V INEC (2015) (NWLR (Pt. 1463) p. 113. Ardo v Nyako (2014) 10 NWLR (Pt.1416) p. 591 In Plateau State v Attorney-General of the Federation (2006) 3 NWLR (Pt.967) p.345, this court said that:

*"A suit is academic where it is thereby theoretical, makes empty sound and of no practical utilitarian value to the plaintiffs even if judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity."* See also Odedo V INEC (2008) 17 NWLR (Pt.1117) p.554

Once a suit no longer has live issues for determination such a suit can be said to be academic. Courts should on no account spend judicial time, or engage in academic exercise. Courts are to determine only live issues. See Oyeneye v Odugbesan (1972) 4 SC p.244 Bakare v ACB Ltd (1936) 3 NWLR (Pt.26) P. 37 Okulate V Awosanya (2002) 2 NWLR (Pt. 645) p. 530 Nwocha V Gov of Anambra State (1984) 1 SCNLR P. 634

A suit does not become academic simply because what gave rise to the action is concluded. A pre-election matter that was instituted prior to the conduct of an election subsists and the court in which it is/was instituted continues to have jurisdiction to hear and determine the said pre-election matter even after the conduct of the election. See Odedo v INEC & 2 ors (2008) 7 SC p.25 Owede V INEC & 3 ors (2014) LPELR 23763

The primaries were held on 4/12/14. Dissatisfied with the conduct of the primaries the appellants' as plaintiffs filed their originating summons on 27/1/15, while the gubernatorial elections were held on 11/4/15. It is clear that the appellants' action filed on 27/1/15, a pre-election matter was filed three months before the gubernatorial election were held. The suit is not academic, rather the reliefs sought are not only capable of enforcement but can be enforced. The Federal High Court in which this suit was instituted has and will

continue to have jurisdiction to hear and determine the appellants' pre-election suit which has not been heard.

Anyone with a right has a remedy. Anyone who has a cause of action would always be heard by our courts and on no account would such a person be denied a hearing. This appeal is allowed.

B The hearing of the appellants' originating summons shall now proceed with dispatch before the Federal High Court.

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### **OGUNBIYI JSC**

C I have had the privilege of reading in draft the lead judgment of my learned brother Dattijo Muhammad, JSC. I agree that this appeal has merit and it succeeds.-

D The facts and the background events that gave rise to this appeal are all spelt out very clearly in my learned brother's lead judgment. I do not deem it necessary to repeat same. Suffice it to say that for the determination of this appeal, the lone issue raised by the 1<sup>st</sup> respondent's counsel is sufficient to dispose of the appeal. The reproduction of the issue is as follows:-

E Was the Court of Appeal right to hold as it did that the suit of the appellants had become academic having regards to the reliefs sought before the trial court and whether this Honourable Court can exercise its powers under section 22 of the Supreme Court Act to hear and determine the suit on the merit.

F It is obvious from the nature of the questions asked on the originating summons filed by the appellant and also the reliefs (a-g) sought that the subject of contention in the appeal herein relates to a pre-election matter. It is also a fact that the appellants and the 3<sup>rd</sup> G respondent are all members of the same party (APC). The suit was therefore an intra party dispute and which, is governed by section 87(9) of the Electoral Act 2010 (as amended) and same reproduced states thus:-

H *“(9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High*

*Court of a State or FCT, for redress.*”

It is clear from the foregoing provision that, for the section to avail a political party member seeking to institute an action under the section, he must be an aspirant member of the party and who is disenchanted with the conduct of the selection or nomination of a candidate of the same party. B

The primary which is the subject of contention was held on 4/12/14 while the originating summons challenging the conduct of the primaries was filed on 27/1/15. The subsequent substantive elections were held on 11/4/15. The poser question is, can the appellants’ pre-election suit instituted on the 27/1/15 be rated as academic especially in view of the claims and reliefs sought on the originating summons filed? C

The section 87(9) of the Electoral Act serves the useful purpose of providing avenues whereby aggrieved persons could be heard and air their disenchantments. D

The Court as an umpire of justice should seek to encourage and liberalize the use of such avenues for individuals to take advantage thereof in the event of marginalization. When section 31 and 33 of the Act are general in nature, the appellants’ right of action under section 87(9) is special, specific and persists in the face of the rights provided for by sections 31 and 33 which are prior in sequence. See Mr. F. Bamigboye V. Administrator General (1954) WACA 616 at 619, Chika Madurnere & Anor V. Barrister Obinna Okwara & Others (2013) 6 SCNJ 268. E F

By the very nature of the complaint lodged at the Federal High Court, same cannot, by any stretch of imagination be academic as wrongly found by the learned trial judge. The case at hand is on all fours with the decision in the case of Adeogun & Ors V. Fashoghon & Ors. which was well expounded in the lead judgment of my learned brother. In the same vein the propriety of the case in this appeal had remained a live issue which is calling for determination. The appellants have been denied the right of being heard and this has occasioned a fundamental breach of fair hearing. The breach is constitutional. The law has provided for an avenue for a complaint to be lodged through the court. It is only right, fair, proper and just that the complaint be given a hearing therewith. G H

My brother Dattiio Muhammad JSC is very exhaustive in resolving the issues raised in this appeal. I hereby adopt his reasonings and conclusions arrived thereat as mine. In the same vein, I hereby also set aside the judgment of the lower court delivered on 21<sup>st</sup> day of December, 2015. Consequently, the matter is remitted to the trial court for same to be heard and determined expeditiously on its merit, I abide by orders made herein the lead judgment as to costs.

C

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**NWEZE JSC**

My Lord, Dattijo Muhammad, JSC, obliged me with the draft of the leading judgment just delivered now. I agree with His Lordship that, being meritorious, this appeal ought to be allowed, I, accordingly, enter an order allowing it. I abide by the consequential orders in the leading judgment.

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