

**SUPREME COURT OF NIGERIA**  
FRIDAY 9TH DECEMBER, 2016. SC. 120/2016  
**CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD, C. B.**  
**OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC**

1. HON. BARAMBU UMARU KAWAWU  
2. ALL PROGRESSIVE PARTY (APC) ..... APPELLANTS  
AND  
1. PEOPLES DEMOCRATIC PARTY (PDP)  
2. HON. ISMAILA MUAZU HASSAN ..... RESPONDENTS  
3. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION (INEC)
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JURISDICTION - Sources of - Jurisdiction is conferred by Constitution or statute - And once Court has not been conferred with jurisdiction - Any judgment it delivers is a nullity (H1)

ELECTION PETITIONS - Legislative houses election - Final Court - By Constitution s. 246(3) - Decision of Court of Appeal is final - In respect of National and State Houses of Assembly election petitions (H2)

***FACTS***

Petitioners/1<sup>st</sup> and 2<sup>nd</sup> respondents filed petition before the National and State Assemblies Election Petition Tribunal of Gombe State, challenging the declaration of 1<sup>st</sup> appellant as the winner of the election conducted to elect a representative for Akko Federal Constituency of the State. 1<sup>st</sup> appellant and 2<sup>nd</sup> respondent were candidates of their respective parties, who contested in the election to elect a representative for the Akko Federal Constituency of Gombe State. At the end of the exercise, 3<sup>rd</sup> respondent (INEC) declared 1<sup>st</sup> appellant the winner of the election. The Tribunal at the end of hearing in the petition affirmed the election of 1<sup>st</sup> respondent.

Dissatisfied, 1<sup>st</sup> and 2<sup>nd</sup> respondents appealed to the Court of Appeal. The Court reversed the decision of the trial Tribunal and declared that 1<sup>st</sup> appellant was not qualified to contest the election. In the circumstance, the Court ordered for a fresh election. Aggrieved,

appellants brought an application before the Court, seeking that it set aside its judgment on the grounds that the judgment is a nullity. The Court dismissed the application. Aggrieved further, appellants appealed to the Supreme Court. 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a Notice of preliminary objection on the ground that the decision of Court of Appeal is final in the matter. Hence, the Supreme Court lacks jurisdiction to hear the matter.

**HELD** (Unanimously striking out the appeal per **SANUSI JSC**)

*JURISDICTION - Sources of*

**1. The pith of this appeal is therefore whether this court has jurisdiction to hear and determine the appeal which is against the decision of the lower court on election matters relating to National Assembly election. It is undisputable, that courts' jurisdiction to entertain a suit is always conferred by either the constitution and/or statute which expressly confers such jurisdiction to the courts to entertain a given matter. Once a court has not been conferred with such jurisdiction by either the constitution or any statute, any decision it delivers is a nullity as well as the entire proceedings. In other words, courts competence to adjudicate in a matter depends on among other conditions, whether the subject matter of the suit/case/appeal is within its jurisdiction and also if there is no any feature in the case which prevents it from exercising its jurisdiction.**

(p. 4247 H)

*ELECTION PETITIONS - Legislative houses election - Final Court*

**2. The question now is 'Does this court (i.e. the apex court) have power or jurisdiction to entertain and determine this appeal'. This therefore brings to fore, the provisions of Section 246(3) of the 1999 Constitution as amended. Section 246(3) of the 1999 Constitution reads thus:-**

***"The decisions of the Court of Appeal in respect of appeals arising from the National and States Houses of Assembly Election Petitions shall be final."***

***From the wordings of the above provisions, it is clear and unequivocal, that the decision of the Court of Appeal is final in election matters arising from or relating to national and states assemblie elections. It is trite law, that where the constitution or statute did not create or confer jurisdiction to a court, then that jurisdiction does not exist and the court can not give itself such jurisdiction in whatever guise.***

***From the wordings of Section 246(3) of the 1999 Constitution as amended, one can safely say, that there is no any equivocality in the wordings of the provisions under reference. The words are plain, clear and unambiguous and must therefore be given their ordinary or natural meaning in keeping with the canon of interpretation and the only meaning that must be given to the provisions is that the decision of the Court of Appeal is final and is not capable to being appealed against.***

***It must be stressed here, that the subject matter of this appeal revolves on the decision of the court below. By the provisions of Section 246(3) of the 1999 Constitution, the decision of the court below is final. To put it in another way, the Court of Appeal is the final destination or bus stop in election matters relating to national or state assembly election like this instant appeal, in multiplicity of decisions of this court, emphasis had been made on the finality of the decision of Court of Appeal on election matters/appeal in relation to state or national assembly election to the effect that this court lacks jurisdiction to entertain or hear such appeals.*** (pp. 4248 D/4249 C/G)

### **REPRESENTATION**

D.G. Laah Esq. with A. Aminu Esq., for the Appellant  
Chijioke Kanu Esq. with Victor Chinwuba for 1<sup>st</sup> and 2<sup>nd</sup> Respondent  
Alhassan A. Umar Esq. with Gani Ismail Esq. for the 3<sup>rd</sup> Respondent

### **CASES REFERRED TO**

Onuaguluchi v. Ndu (2001)7 NWLR (pt. 712) 309  
Madukolu v. Nkemdilim(1962) 2 SC NLR 341  
Rabiu v. State (1980) 2 NCR 117  
Salik v. Idris (2014) 15 NWLR (pt. 1429) 36

- Jegede v. Akande (2014) 16 NWLR (pt. 1432) 43  
 Okadigbo v. Emeka (2012) LPELR 7839  
 Opara v. Amadi (2013) 6-7 SC (pt. 2) 49  
 Madumere v. Okwara (2013) 6-7 SC (pt. 2) 95  
 Salik v. Idris (2014) 5 SC (pt. 2) 45  
 B Orubu v. National Electoral Commission (1988) 5 NWLR (pt. 94) 323  
 Asanya v. State (1991) LPELR -544 (SC)  
 Eco Consult Ltd v. Pamcho Villa Ltd (1999) 1 NWLR (pt. 588) 507  
 C Salim v. Idris (2014) 15 NWLR (pt. 1429) 36  
 Jegede v. Akande (2014) 16 NWLR (pt. 1432) 43  
 Dangana v. Usman (2012) LPELR - 7827 (SC)

### **STATUTE & RULES REFERRED TO**

- D Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 6(6)(a), 246(3), 318  
 Supreme Court Rules 2004, O. 2 r. 9(1)

### **LEAD JUDGMENT BY SANUSI JSC**

- E This is an appeal against the Ruling of the Court of Appeal, Yola Division (the lower court] delivered on 5th February 2016, in which the application of the appellants was dismissed. The background facts which gave rise to this instant appeal are simple and straightforward. The first appellant was sponsored by his party the 2nd Appellant and he contested election for membership of House of Representatives in Akko Federal Constituency in Gombe State held on 28th March 2015 and won the said election. He contested the said election against the 2nd respondent who was sponsored by the 1st respondent, the Peoples Democratic Party (PDP). Not satisfied with the declaration and return of the two appellants as winners of the said election by the 3rd Respondent (INEC), the 1st and 2nd Respondents filed petition before the National and State Assemblies Election Petition Tribunal of Gombe State (the tribunal' for short). The grounds upon which they petitioned to the tribunal include, inter alia, (i) that the 1st Appellant did not resign his membership of the PDP (1<sup>st</sup> respondent] before he joined the All Progressive Congress (APC) the 2nd appellant, herein. The tribunal after hearing the parties dismissed

the petition filed by the 1st and 2nd Respondents.

Aggrieved by the decision of the trial tribunal, the 1st and 2nd respondents appealed to the lower court which set aside the judgment of the tribunal and nullified the election of the appellants on the ground that the 1st appellant did not really resign from his former party, the PDP (1<sup>st</sup> Respondent] before joining the APC (the 2nd Appellant) before he contested and won the said election. The court below ordered that fresh election should be held in the said constituency within 90 days from the date of its judgment.

The two appellants herein, later filed a motion before the lower court praying it to set aside its judgment on the ground that the said judgment was a nullity because it was given without jurisdiction as the ground upon which their election was annulled was not one of the grounds provided for disqualification under the Constitution of the Federal Republic of Nigeria 1999 (as amended). The lower court after taking arguments of parties counsel on the motion, delivered its Ruling on 5/2/2016 and dismissed the application. Aggrieved by the Ruling of the lower court, the appellants appealed to this court. Parties filed and exchanged their respective briefs of argument.

The appellants jointly filed their brief of argument on 1st of March 2016, they also jointly filed Appellants' Reply Brief on 21/4/2016 in response to the 1st and 2<sup>nd</sup> Respondents' joint brief of argument. In addition they on 21/4/2016 jointly filed Reply to the Written Address in support of the Notice of Preliminary Objection.

On their part, the 1st and 2nd Respondents filed joint brief of argument on 21/3/2016. They also filed a Notice of Preliminary objection. However, in their joint brief of argument, they argued their preliminary objection which as I said earlier, was responded to by the appellants in their Reply to the written address on the preliminary objection.

In any case, with regard to this appeal, the appellants in their joint brief of argument raised three issues for the determination of the appeal which read thus:-

(1) Whether the application seeking for (sic) the court to set aside its judgment on the ground that same was in contravention of the provisions of the constitution is an abuse of court process.

(2) Whether the court of appeal is vested with the jurisdic-

tion to disqualify a candidate for election on grounds other than those provided for in the constitution.

(3) Whether the issue of nomination of candidate is not a pre-election matter which robs the court of trial and the appeal court of jurisdiction same (sic),

B The first and second respondents in their joint brief of argument on the other part, distilled three issues for the determination of this appeal, as follows:-

(a) Whether the appellants' application in motion No.CA/YL/04/2016 seeking to set aside the judgment of the court of appeal in appeal

No. CA/YL/EPT/GMB/HR/76/2015 is not an abuse of court process and the subsequent dismissal of the application by the court proper.

(b) Whether the court of appeal is not vested with jurisdiction to disqualify a candidate on ground that such candidate did not satisfy any of the conditions in Section 65(2) of the 1999 Constitution (as amended)

(c) Whether by the provisions of Section 138(1) (b) of the Electoral Act 2010 (as amended) the qualification of a candidate to contest in an election is not a ground for election petition over which the court of appeal has jurisdiction.

As I remarked above, the 1st and 2nd respondents have on 24/3/2016 filed a Notice of Preliminary Objection, pursuant to Order 2 Rule 9(1) of Supreme Court Rules 2004. They extensively argued the Preliminary Objection in their brief of argument. The 1st and 2nd appellants also responded to the objectioners' arguments in their Reply to the written Address in support of the Notice of Preliminary Objection filed by the two respondents. The Appellants also filed Reply to the Preliminary Objection. As is the practice, I will deal with the Preliminary Objection first, before considering the main appeal if the need arises. This will be more appropriate especially, in view of the fact that the gravamen of the Objection and indeed the appeal also revolves on jurisdiction of this court. I will therefore hereinbelow proceed to consider the Preliminary objection.

The Preliminary objection jointly filed by the two respondents was anchored on the following grounds:-

(i) *The 2nd Appellant has appropriated the benefits of the*

*judgment sought to be set aside*

(ii) *The appellants' /respondents' appeal is an abuse of court process*

(iii) *The court has no jurisdiction to entertain the appeal.*

The relief sought by the two respondents, is simply the dismissal of the appeal summarily. The respondents annexed to their Notice of Preliminary Objection, affidavit in support of the said Preliminary objection, the judgment sought to be set aside, judgment of the trial court in a suit instituted by the 2nd appellant and both processes were marked as Exhibits A & B respectively. Also annexed to the Notice is a copy of the petition filed at the trial tribunal which was marked Exhibit C.

It is pertinent at this stage, to reiterate that in response to the issues raised by the respondents for the determination of the Preliminary Objection, the appellants in their 'Reply to the Preliminary Objection' also formulated three issues for the determination of the Preliminary Objection which said issues are set out hereunder:-

(I) Whether by the provisions of Section 246(3) of the 1999 Constitution of Nigeria (as amended) the appellants can appeal against the ruling of the Court of Appeal in Motion No.CA/YL/04/2016 on any ground whatsoever, the motion having been heard and determined by the Court of Appeal.

(II) Whether the 2nd Appellant/Respondent has not exercised its right from judgment sought to be set aside by this appeal and by which reason it has lost the right to complain against the judgment with it the 1st Appellant/Respondent

(III) Whether the Supreme Court has jurisdiction to hear this appeal by virtue of the provisions of Section 246(3) of the 1999 Constitution (as amended).

Looking closely at the two sets of issues raised by both parties in the Preliminary Objection, one can safely say that issue No.3 in the respondents' brief of Argument on the Preliminary objection tallies with or are similar to the corresponding issue (i.e. issue No.3) in the appellants' Reply to the Preliminary Objection. The two issues are more or less the same even though they slightly differ in the wordings used in couching them. The thrust of the Preliminary Objection is anchored on that issue. Since the said issue relates to or borders on

issue of jurisdiction of the court, I think the appeal can be determined on it. If it is found that this court lacks jurisdiction, then it will be a futile exercise to proceed to consider the merit of the appeal since it is only where this court decides that it has jurisdiction that it can proceed to consider other issues raised in an appeal. Where the court is bereft of jurisdiction that will conclude the matter.

I shall, now consider the third issue in both the appellants' and respondents briefs of argument in relation to jurisdiction and may consider the other issues raised in the main appeal by the parties. But if in the end, I find the Preliminary Objection to be meritless then the appeal will be considered on the merit.

While arguing the Preliminary Objection raised in their joint brief of argument, the first and 2<sup>nd</sup> respondents submitted that by the provisions of Section 246(3) of the 1999 Constitution, as amended, the appellants can not appeal to this court against the ruling of the court below delivered on 5th February 2016 vide motion on Notice No.CA/YL/04/2016 on any ground whatsoever, since that motion had been heard and determined by the court below. Learned counsel for the 1st and 2nd respondents argued that the ruling now being appealed against, is the decision of the lower court in which it refused to set aside its judgment in appeal No.CA/YL/EPT/GMB/HR/76/2015, which, no doubt, is an election matter and it accordingly dismissed the application. It was further contended by the learned counsel for the two respondents, that the Court of Appeal is a court of final resort. He said since the lower court heard and ruled on the application, it had forever settled any right of litigation on the matter and the matter was conclusively spent by virtue of the provisions of Section 246(3) of the 1999 Constitution, as amended. It is also the contention of the learned counsel for the respondents that much as the lower court has power after the hearing an application, to either grant or refuse such application, but once it takes position in its decision, as it did in the instant appellants'/applicants' application to set aside its judgment, that decision thereupon becomes final and is no more subject of any appeal in whatever guise.

It has been further submitted on behalf of the two respondents herein, that the appellants have no right of appeal against the judgment in the appeal by virtue of the provisions of Section 246((3)



of the 1999 Constitution. He added that the absence of right of appeal on the part of the appellants against the judgment in the substantive appeal also applies to any application pursuant to the appeal. On this submission the learned counsel for the two respondents referred to and relied on the authority of REV. HYDE ONUAGULUCHI vs BEN COLLINS NDU & Ors (2001) 7 NWLR B (pt.712) 309.

Learned counsel for the 1st and 2nd respondents finally submitted that this appeal being against the lower court's refusal to set aside its judgment is a decision which is not appealable against and is therefore incompetent and he urged thereupon this court to sustain their preliminary objection and strike out the appeal. C

Reacting to the submissions of the learned counsel of 1st and 2nd respondents on this issue, the learned counsel for the appellants argued that the provisions of Section 6(6)(a) of the 1999 Constitution has vested this court with jurisdiction and powers to entertain this appeal. He urged this court to look at the substance of his application to the lower court which was an invitation to the lower court to simply set aside its judgment which according to him, was a nullity because it contravened the provisions of Section 65 and Section 66 E of the 1999 Constitution as amended. He contended that this court being a court of law and that every citizen has unfettered right to approach it to correct the decision of the court below where the latter court erred, adding that resort to technicality will defect the exercise F of inherent powers of this court.

With regard to the case of Rev. Onuaguluchi vs Ben Collins Ndu (supra) which was relied on by the 1st and 2nd respondents, the learned appellants counsel submitted that the facts and circumstance of that case differ from those of this instant case and he further G stated that they are distinguishable. He urged that the preliminary objection be discountenanced and refused.

It is beyond any dispute, that this instant appeal has its origin from the decision of the Court of Appeal or the lower court when it exercised its jurisdiction on a matter that concerned decision of the H National and State Houses of Assembly Election Petition Tribunal.

***The pith of this appeal is therefore whether this court has jurisdiction to hear and determine the appeal which is***

**against the decision of the lower court on election matters relating to National Assembly election. It is undisputable, that courts' jurisdiction to entertain a suit is always conferred by either the constitution and/or statute which expressly confers such jurisdiction to the courts to entertain a given matter. Once a court has not been conferred with such jurisdiction by either the constitution or any statute, any decision it delivers is a nullity as well as the entire proceedings. In other words, courts competence to adjudicate in a matter depends on among other conditions, whether the subject matter of the suit/case/appeal is within its jurisdiction and also if there is no any feature in the case which prevents it from exercising its jurisdiction.** See *Madukolu & Ors vs Nkemdilum* (1962) 2 SC NLR 341.

It is clear from the surrounding circumstance of this appeal, that the court below had been approached to set aside its judgment which it declined so to do, hence the filing of this appeal by the appellants.

**The question now is 'Does this court (i.e. the apex court) have power or jurisdiction to entertain and determine this appeal'. This therefore brings to fore, the provisions of Section 246(3) of the 1999 Constitution as amended. Section 246(3) of the 1999 Constitution reads thus:-**

***"The decisions of the Court of Appeal in respect of appeals arising from the National and States Houses of Assembly Election Petitions shall be final."***

**From the wordings of the above provisions, it is clear and unequivocal, that the decision of the Court of Appeal is final in election matters arising from or relating to national and states assemblies elections. It is trite law, that where the constitution or statute did not create or confer jurisdiction to a court, then that jurisdiction does not exist and the court can not give itself such jurisdiction in whatever guise.** In fact, this court had course to expatiate the purport of a provision similar to Section 246(3) in the case of *Rev. Hyde Onuaguluchi vs Mr. Ben Collins Ndu* (supra) where this court stated per Uwaiifo JSC as follows:-

*"It must be emphasised that arch finality applies to every inter-locutory decision or decision taken in respect of a matter or on issue concerning or arising from the decision reached in the appeal. No appeal shall lie from it to any other court. The word final in this regard means that the journey of the case is concluded, terminated, completed and is without further appeal. The intention of the said decree is to make the Court of Appeal the court of last resort in matters pertaining to election to the National Assembly. A proper address to the Court of Appeal in such matter to set aside its decision when refused is treated exactly like the decision in the appeal, it is not appealable, it is final".*

**From the wordings of Section 246(3) of the 1999 Constitution as amended, one can safely say, that there is no any equivocality in the wordings of the provisions under reference. The words are plain, clear and unambiguous and must therefore be given their ordinary or natural meaning in keeping with the canon of interpretation and the only meaning that must be given to the provisions is that the decision of the Court of Appeal is final and is not capable to being appealed against.** Moreso, it is not out of place to say that Section 318 of the same constitution has defined the word "Decision" as follows:-

*"Decision" means in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation."*

See *Nafiu Rabi v State* (1980) 2 NCR 117 in which this court defined "Decision" as provided in Section 277 (1) of 1979 Constitution which is in pari materia with Section 318 of the 1999 Constitution as amended.

**It must be stressed here, that the subject matter of this appeal revolves on the decision of the court below. By the provisions of Section 246(3) of the 1999 Constitution, the decision of the court below is final. To put it in another way, the Court of Appeal is the final destination or bus stop in election matters relating to national or state assembly election like this instant appeal, in multiplicity of decisions of this court, emphasis had been made on the finality of the decision of Court of Appeal on election matters/appeal in relation to state or**

***national assembly election to the effect that this court lacks jurisdiction to entertain or hear such appeals.*** See *Salik v Idris* (2014)15 NWLR (pt.1429)36 at 60; *Jegade vs Akande* (2014)16 NWLR (pt.1432)43 at 72; *Okadigbo vs Emeka & Ors* (2012) LPELR 7839 page 17 Para B-D.

B Thus, in spite of these clear and unambiguous pronouncements by the apex court on the subject matter of this appeal, the present appellant still wanted to test the mind of this court by bringing their frivolous and unconvincing argument probably in an effort to seek the favour or indulgence of this court to assume jurisdiction on his matter or to vacate or depart from its earlier stance on its numerous previous decisions and also in spite of the constitutional provisions which are clear and unambiguous, I must say that he has failed in his bid or effort. In fact I see his effort by filing this appeal as D sheer abuse of court process.

In short, I must say that the preliminary objection filed and argued by the respondents has merit and is hereby sustained. This court lacks jurisdiction to hear and determine this appeal. It is accordingly struck out. I make no order on costs.

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### **RHODES-VIVOUR JSC**

I have had the advantage of reading in draft the leading judgment of my learned brother Sanusi, JSC. I agree with his lordships reasoning and conclusions, but in view of the fundamental nature of F jurisdiction, add a few words of my own, Section 246 (3) of the Constitution spates that:

(3) The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final. The facts are these. G

The 1<sup>st</sup> appellant and the 2<sup>nd</sup> respondent candidates of their respective parties, the 2<sup>nd</sup> appellant and the 1<sup>st</sup> respondent contested election for the AKKO Federal Constituency of Gombe State, INEC, the regulatory body that conducts elections in Nigeria declared the 1<sup>st</sup> H appellant the winner of the elections. This was affirmed by the Election Tribunal. On appeal the Court of Appeal reversed the decision of the Election Tribunal and declared that the 1<sup>st</sup> appellant was not qualified to contest the election and ordered fresh election, dissatis-

fied with the judgment the appellants' filed a motion before the Court of Appeal praying that it set aside its judgment on grounds that the judgment is a nullity. The Court of Appeal dismissed the application. Still dissatisfied the appellants' appealed to this court, the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a Notice of Preliminary Objection. The grounds being that this court has no jurisdiction to entertain this appeal, the simple issue for determination is:

Whether this court has jurisdiction to entertain this appeal in view of the provisions of section 246 (3) of the Constitution? The finality of the decisions of the Court of Appeal on elections into National Assembly are absolute by virtue of section 246 (3) of the Constitution. See *Opara & anor v Amadi* (2013) 6-7 SC (Pt.2) p.49. *Madumere & 2 ors v O, Okwara* (2013) 6-7 SC (Pt.2) p. 95 *Salik v Idris* (2014) 5 SC (Pt.2) p.45.

In this appeal the election questioned is the 2015 general elections for the AKKO Federal Constituency of Gombe State. The election is for a seat in the National Assembly (the House of Representatives),

By virtue of section 246 (3) of the Constitution the decision of the Court of Appeal delivered on 29 October 2015 disqualifying the 1<sup>st</sup> appellant and ordering a fresh election for the AKKO Federal Constituency is final. No appeal from the Court of Appeal on House of Representatives elections can be entertained by the Supreme Court, The Supreme Court has no jurisdiction to hear such matters.

For this and the more detailed reasoning in the leading judgment the preliminary Objection is sustained. This court lacks jurisdiction to hear this appeal. It is hereby struck out

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**MUHAMMAD JSC**

My learned brother Amiru Sanusi JSC had obliged me in draft the lead judgment just delivered. I entirely agree with his lordship's reasoning and conclusion therein that the appeal being incompetent stands struck out.

The 1<sup>st</sup> appellant as 2<sup>nd</sup> appellant's candidate successfully contested the House of Representatives seat for the Akko Federal Constituency in Gombe State on the 28<sup>th</sup> March 2015. Aggrieved by 1<sup>st</sup>

appellant's return by the 3<sup>rd</sup> respondent, the 1<sup>st</sup> and 2<sup>nd</sup> respondents petitioned the National and State Assemblies Election Petition Tribunal sitting at Gombe. The petition was dismissed. A further appeal to the Court of Appeal, hereinafter referred to as the lower court, by the 1<sup>st</sup> and 2<sup>nd</sup> respondent, having succeeded, was allowed. The lower court consequently ordered a fresh election within ninety days. An application by the appellants herein at the lower court subsequent to the court's decision allowing 1<sup>st</sup> and 2<sup>nd</sup> respondents' appeal, on being found unmeritorious, was dismissed. This was on 5<sup>th</sup> February 2016. Appellants' dissatisfaction with the lower court's ruling dismissing their motion praying the court to set-aside its judgment allowing the 1<sup>st</sup> and 2<sup>nd</sup> respondents appeal, informs the instant appeal to this Court.

Not surprisingly, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have challenged the competence of the appeal by way of a preliminary objection. They contend, in the main, and rightly too, that by the provision of Section 246(3) of the 1999 Constitution of Nigeria as amended, the lower court's judgment arising from appeal against the decision of the National and State Assemblies Election Petition Tribunal is not, for whatever reason, appealable. The court's decision being final, any appeal to this Court on same, is therefore, incompetent.

Responding, learned appellants' counsel insists that the lower court's decision being a nullity, they are entitled by virtue of Section 6(6) (a) of the 1999 Constitution as amended to have this Court set-aside the decision.

Section 246(3) of the 1999 Constitution the 1<sup>st</sup> and 2<sup>nd</sup> respondents found their objection upon provides:-

*"246(3) The decisions of the Court of Appeal in respect of appeals arising from the National and States Houses of Assembly Election petitions shall be final."*

The foregoing is crystal clear and leaves no room for any misunderstanding. The intent of the framers of the Section lies in the clear and unambiguous words which make the provision. The Court of Appeal remains the final court in respect of the very subject matter the instant appeal purports to raise.

Notwithstanding the fact that this Court is the ultimate court, it respects precedents and deviates from them only when their fur-

ther application amounts to further injustice. See James Orubu V. National Electoral Commission & 13 ors (1988) 5 (NWLR (Pt 94) 323 and Asanya V. State (1991) LPELR -544 (SC).

The respondents have appositely relied on the decision of this Court in Hyde Onuaguluchi V. Ndu & ors (2001) 7 NWLR (Pt 712) 309 per Uwaifo JSC thus:-

*“This Court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the Constitution has in clear and unambiguous language made the Court of Appeal the final court. It follows that an appeal in respect of a decision of the Tribunal in an election petition .....decided by the Court of Appeal cannot be taken on appeal to the Supreme Court but is final for all purposes.....  
No appeal shall lie from it to any other court even if it is patently wrong.”*

See also Esewe v. Gbe (1988) 51MWLR (Pt 93) 134 and Eco Consult Ltd V. Pamcho Villa Ltd (1999) 1 NWLR (Pt 588) 507.

The foregoing decisions remain binding. Because of the principles propounded therein 1<sup>st</sup> and 2<sup>nd</sup> respondents’ objection, being unarguably well taken, are hereby sustained. The appeal is incompetent. For the foregoing and the more detailed reasons contained in the lead judgment, I hereby strike out the incompetent appeal. I too make no order on costs.

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### OGUNBIYI JSC

I read in draft the lead judgment of my learned brother Sanusi, JSC. I agree that the purported notice of appeal should be struck for incompetent.

It is the submission of 1st and 2nd respondents on their Preliminary Objection that the appellants cannot appeal to this court against the ruling of the court below delivered on 5th February, 2016 in view of section 246(3) of the 1999 Constitution.

The lower court in appeal No.CA/YL/EPT/MB/HR/76/2015 refused to set aside its judgment in an election matter. The subject matter is in respect of an election for membership of House of Representatives in Akko Federal Constituency in Gombe State. The governing provision of the entire appeal is section 246(3) of the 1999

Constitution as rightly stated by the 1st and 3rd respondents on their Preliminary Objection. The section is very vocal and clear in stating the finality of the lower court in cases of this nature. In other words that the cases should end at the Court of Appeal as the bus stop. Pronouncements in terms of case laws have been made on this subject by this court, times without number. It will serve no useful purpose to overflog the horse, See references in the case of *Salim v. Idris* (2014) 15 NWLR (Pt.1429) 36 at 60 and *Jegede v. Akande* (2014) 16 NWLR (Pt.1432) 43 at 72.

The Preliminary Objection herein succeeds in terminating the purported appeal which same is incompetent. It is hereby struck out in terms of the lead judgment of my brother Amiru Sanusi, JSC. This court lacks the jurisdiction to entertain this appeal and is struck out; thus terminating the purported appeal.

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**NWEZE JSC**

My Lord, Sanusi, JSC, obliged me with the draft of the leading judgement just delivered now. I agree with His Lordship that, being meritorious, the respondents' preliminary objection on the issue of jurisdiction ought to be sustained.

As demonstrated in the leading judgement Section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) confers finality on the judgements of the Court of Appeal in respect of appeals from the National and State Houses of Assembly Election Tribunals. Case Law has dealt with this question and so, it should not delay us further, *Opara and Anor v Amadi* [2013] 6-7 SC (pt 2) 49; *Madumere v Okwara* [2013] 6-7 SC (pt 2) 95; *Okadigbo v Emeka and Anor* (2012) LPELR -7839 (SC) 17; *Emordi v. Igbeke* [2011] 4 SC (pt 11) 107, 145; *Salik v Idris* [2014] 15 NWLR(pt 1429) 36; *Dangana v. Usman* (2012) LPELR - 7827 (SC).

It is for these, and the more detailed, reasons in the leading judgement that I, too, shall enter an order sustaining the respondents' preliminary objection in this appeal. Accordingly, I hold that, being wholly incompetent, this appeal ought to, and is hereby, struck out. Appeal struck out.