

SUPREME COURT OF NIGERIA
FRIDAY 9TH DECEMBER, 2016. SC. 120/2013
CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD, C. B.
OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC

GOVERNOR, EKITI STATE AND ORS APPELLANTS
AND
PRINCE SANMI OLUBUNMO RESPONDENTS
(EXECUTIVE CHAIRMAN, IDO-OSI LGA
& CHAIRMAN, ASSOCIATION OF LOCAL
GOVERNMENTS OF NIGERIA (ALGON),
EKITI STATE CHAPTER & 13 ORS)

APPEALS - Issues - Clarity of - Verbosity does not enhance quality of issues - As issues must be precise and devoid of ambiguity - For easy comprehension of matters for adjudication (H1)

APPEALS - Issues - Reformulation of - Court can reformulate issues in order to bring out real questions for determination - And it can even adopt sole issue where it is determinative of the appeal (H2)

CONSTITUTIONAL LAW - Constitution - Supremacy of - The Ekiti State House of Assembly must act within Constitutional limit - As any of its laws which are inconsistent with Constitution are bound to be nullified (H3)

GOVERNMENT - Local Government Council - Security of tenure - Election of LG officials are clothed with constitutional force - Hence they cannot be abridged without breaching the Constitution (H4)

GOVERNMENT - Local Government Council - Dissolution of - Governor can dissolve LG council on the basis of overriding public interest - In a period of emergency (H5)

COURTS - Court of Appeal - Power to make consequential orders, s.15 CA Act - Can be exercised by it as it deems fit - In order to avoid multiplicity of legal proceedings - To give effect and meaning to its

FACTS

Plaintiffs/respondents before the High Court of Ekiti State brought originating summons, challenging the dissolution of the sixteen (16) democratically elected Local Government Councils in the State by defendants/appellants. They assert that having been democratically elected to serve for three years tenure from the 20th of December 2008, when they subscribed to the oath of office to 19th December 2011, it is their case that the dissolution of their councils by appellant on the 29th October 2010 was unconstitutional, null and void. Dispute arose between both parties in the appeal when appellants had pursuant to section 23B of the Ekiti State Local Government Administration (Amendments) Law 2001 purportedly dissolved all the sixteen democratically elected Local Government Councils in the State and appointed unelected caretaker committees in their place.

Respondents felt that their Constitutional rights to their offices have been violated by appellants. Hence, they commenced the action in the Court. Upon the receipt of the originating summons, appellants challenged, by way of preliminary objection, the competence of respondents' originating summons. The Court heard argument in the objection and in its ruling, upheld appellant's preliminary objection and declined jurisdiction. Dissatisfied, respondents appealed to the Court of Appeal, Ekiti Division. The Court allowed the appeal and invoked section 15 of its Act and upon considering the respondents' claim granted them the reliefs sought. Aggrieved, appellants have approached the Supreme Court on appeal.

ISSUES FOR DETERMINATION

1. Whether the provisions of Sections 23 B (i) and (ii) of the Ekiti State Local Government Administration (Amendment) Law, 2011 are inconsistent with Section 7 (1) of the Constitution and, if so, whether the lower court, rightly, nullified them?

2. Whether, in the circumstance, the lower court, rightly, invoked its Section 15 powers in awarding consequential reliefs in favour of the respondents?

HELD (Unanimously dismissing the appeal per **NWEZE JSC**)

APPEALS - Issues - Clarity of

1. In several decisions, this court has emphasized that verbosity does not enhance the quality of issues put forward for the determination of an appeal. On the contrary, clarity and concinnity ought to be the most invaluable desiderata.

In other words, issues must be precise and devoid of ambiguity for easy comprehension of matters for adjudication. As such, they must be tailored to the crucial questions in controversy. (p. 4421 C)

APPEALS - Issues - Reformulation of

2. It is against this background that courts are permitted to reformulate issues in order to accentuate the principal questions that call for the court's decision. In so doing, it could even adopt a sole issue where it is determinative of the appeal. (p. 4421 F)

Constitution - Supremacy of

3. Even as a simple logical postulate, since all other laws owe their source to the Constitution, it (the Constitution) would not brook any sort of competition with them. As such, in the event of any conflict, it operates *proprio vigore* to invalidate them to the extent of their inconsistency, Section 1 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (*supra*).

The net effect of it all is that I find considerable merit in the contention of the counsel for the respondents in this regard. As shown above, he had argued that in exercising its law-making authority, the House must act within the ambits and limits of the Constitution. To that extent, therefore, the laws of the House of Assembly which are inconsistent with constitutional provisions are bound to be nullified. (pp. 4431 D/4434 F)

GOVERNMENT - Local Government Council - Security of tenure

4. The system of local government by democratically-elected local government council is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such council. (italics supplied for emphasis)

Having thus guaranteed the system of local government by democratically-elected Local Government Councils, the Constitution confers a toga of sacra-sanctity on the elections of such officials whose electoral mandates derive from the will of the people freely-exercised through the democratic process. Put differently, the intendment of the Constitution is to vouchsafe the” inviolability of the “sacred mandate which the electorate, at that level, democratically-donated to them.

Simply put, therefore, the election of such officials into their offices and their tenure are clothed with constitutional force. They cannot, therefore, be abridged without breaching the Constitution from which they derive their force. (pp. 4431 G/4432 E)

GOVERNMENT - Local Government Council - Dissolution of

5. The only permissible exception, where a State Governor could truncate the lifespan of a Local Government Council which evolved through the democratic process of elections, is “for over-riding public interest” in a period of emergency.

In effect, where such is the situation, as even nature itself abhors any vacuum, the Governor would be entitled to empanel a Caretaker Committee. Anything outside that is an unwarranted affront to the Constitution, Eze and Ors v Governor, Abia State and Ors. (supra).

I, therefore, hold that, having been elected for a tenure of three years under the Ekiti State Local Government Administration Law Cap L11, the respondents could only “be removed from office if found to be in breach of the rules governing the office...” or by proof that it was in the overriding public interest.

That was not shown in this case. (pp. 4432 F/4433 A/4535 B)

Court of Appeal - Powers of

6. My Lords, I cannot find any rational justification for disturbing the above unanswerable conclusions of the lower court. In the first place, it is now, firmly, established that the lower court, by virtue of its power under section 15 of the Court of Appeal Act, can make such consequential orders as it deems fit in order to avoid multiplicity of legal proceedings concerning any of those matters which any of the parties may appear to be entitled to.

Even then, as it is well-known, a consequential order, such as that which lower court made in favour of the respondents herein, is an order that gives effect to the judgment; that is, that gives meaning to the judgment else it would amount to pyrrhic judicial victory.

Thus, the said consequential order of the lower court was designed to give meaning to its judgment. In particular, it found that, having been removed from their elected positions through the purported dissolution of their Councils and their brazen substitution with Caretaker Committees “when they still had up to 19th December, 2011, to run out the term of three years for which they were elected,” the respondents “cannot go without the remedy.”

Surely, a contrary conclusion would have rendered the judgment of the said lower court a hollow exercise in highfalutin judicial rhetoric: a juridical charade, amounting to nothing. (pp. 4437 F/4438 F)

NOTABLE POINT OF INTEREST

RHODES-VIVOUR JSC

1. Consequential order – Meaning of

A consequential order is an order that gives effect to a judgment. It gives meaning to the judgment. It must be incidental and flow directly and naturally from reliefs claimed. It gives effect to the judgment already given. Once again the facts of this case cry out for a consequential order that the respondents emoluments be paid and

the Court of Appeal was right as the order gives effect to the judgment. (p. 4441 F)

REPRESENTATION

Owoseni Ajaji, HAG, Ekiti State, for the appellants; with L. B. Ojo, Solicitor General and S. B. J. Bamise, Director, MOJ, Ekiti State; Obafemi Adewale for the respondents; with E. Agunbiade; O. Olugbade; A. Adewunmi and Stephen Ademugun

CASES REFERRED TO

- C Anaeze v. Anyaso (1993) LPELR-480 (SC) 36 D-G
- Ugo v. Obiekwe (1989) 1 NWLR (pt. 99) 566
- A-G Bendel State v. Aideyan (1989) 4 NWLR (pt. 118) 646
- Guda v. Kitfa (1991) 12 NWLR (pt. 629) 21
- D Ibrahim v. Ojomo (2004) All FWLR (pt. 199) 1285
- Onifade v. Olayiwola (1990) 7 NWLR (pt. 161) 130
- Okoye v. NCFC Co. Ltd. (1991) 6 NWLR (pt. 199) 501
- 7UP Bott. Co. v. Abiola & Sons Ltd. (2001) 13 NWLR (pt. 730) 493
- Onochie v. Odogwu (2006) 6 NWLR (pt. 975) 65
- E Ikegwuoha v. Ohawuchi (1996) 3 NWLR (pt. 435) 146
- Aduku v. Adejoh (1994) 5 NWLR (pt. 346) 582
- Tanko v. State (2009) 4 NWLR (pt. 1131) 430
- A-G Abia State v. A-G Federation (2006) 16 NWLR (pt. 1005) 265
- Plateau State v. Goyol (2007) 16 NWLR (pt. 1059) 94
- F Eze v. Governor of Abia State (2010) 15 NWLR (pt. 1216) 324

STATUTES REFERRED TO

- Local Government Administration (Amdt.) Law 2001, s. 23 B(i)(ii)
- G Constitution of the Federal Republic of Nigeria 1999, s. 7(1)
- Court of Appeal Act 2015, s. 15

LEAD JUDGMENT BY NWEZE JSC

H On October 25, 2010, the respondents in this appeal (as plaintiffs) took out their Originating Summons against the appellants herein (as defendants). They entreated the trial court for the subjoined reliefs:

1. A Declaration that Section 23 B (i) and (ii) of the Local

Government Administration (Amendment) Law 2001 is in conflict with Section 7 (1) of the 1999 Constitution and thus is null and void and of no effect whatsoever to the extent that it empowers the Executive Governor of Ekiti State to dissolve the democratically-elected Local Government Councils and replace same with un-elected Caretaker Committees solely appointed by the Governor; B

2. A Declaration that by virtue of the combined effect of Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria and the provisions of Section 5 of the Ekiti State Local Government Administration (Amendment) 2001 Law/ the defendants have no power to dissolve the democratically-elected Governments of Ekiti State of which the plaintiffs are the democratically-elected Chairmen and/or replace the plaintiffs with appointed Caretaker Committees in breach of the aforesaid constitutional and statutory provisions; C

3. A Declaration that the tenure of the plaintiffs is statutorily set at three years with effect from the date of their election and specifically from 20/12/08 to 19/12/2011; D

4. An Order of perpetual injunction restraining the defendants/ servants/ agents or privies however called from dissolving, suspending, terminating and/or interfering in any manner whatsoever with the existence, tenure and/or operations of the plaintiffs except in accordance with the provisions of the Section 7 (i) of the 1999 Constitution of the Federal Republic of Nigeria and other relevant laws; E

5. An Order of perpetual injunction restraining the defendants, servants, agents or privies however called from freezing the bank accounts of the Sixteen Local Government Councils in Ekiti State under the Chairmanship of the plaintiffs in all or any of their respective banking and/or financial institutions or interfering in any way or manner with the financial operations and or affairs of the said Sixteen Local Governments in Ekiti State under the plaintiffs otherwise than in accordance with relevant constitutional and statutory provisions. F G

In addition, they sought judicial responses to the twin posers, namely: H

i. Whether the provisions of Ekiti State Local Government Administration Law 1999 (as amended) by Section 23B (i) and (ii) of the Ekiti State Local Government Administration (Amend-

ment) Law 2011, which empowers the Executive Governor of Ekiti State to dissolve democratically-elected Local Government Councils and replace them with un-elected Caretaker Committees appointed solely by the Governor are in breach of Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria and are therefore null, void and of no effect whatsoever?

ii. Whether in view of the combined effect of Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria and the provisions of Sections 5 and 2 B (i) and (ii) of Ekiti State Local Government Administration Law 1999 as amended by the Local Government Administration (Amendment) Law 2001, the defendants have powers to dissolve the democratically-elected Councils of the Sixteen Local Governments in Ekiti State of which the plaintiffs are democratically-elected Chairmen otherwise than in accordance with relevant constitutional and statutory provisions?

Without abiding the judicial determination of these issues, the first appellant, the Governor of Ekiti State, by a Radio announcement on October 29, 2010, dissolved the Local Government Councils and removed the respondents, who were elected to the said Councils. In their place, Caretaker Committees were enthroned to oversee the affairs of the said Councils.

This development prompted the respondents' application of April 1, 2011, for the amendment of the tenor of the reliefs in their Originating Summons. In particular, they craved for three additional reliefs framed thus:

1. A Declaration that the unilateral dissolution of the democratically-elected Governments in the Sixteen Local Governments of Ekiti State through Radio announcement on 29th October, 2010 by the first respondent is a violent breach of Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria and therefore is illegal, unconstitutional, undemocratic, null and void and of no effect whatsoever;

2. A Declaration that the composition, constitution, inauguration and/or setting up of Caretaker Committees in the Sixteen Local Governments of Ekiti State in place of the democratically-elected Governments by the first defendant is illegal, unconstitutional, undemocratic, null and void;

3. A Declaration that the tenure of the plaintiffs is statutorily-set at three years with effect from the date of their election and specifically from December 12, 2008 to December 19 2011 and the plaintiffs therefore remain the elected Chairmen of their respective Local Government Councils.

The appellants greeted the said Summons with a Preliminary Objection. Upon hearing arguments on the said Objection, the trial court declined jurisdiction. It, accordingly, struck out the respondents' case. Dissatisfied with the outcome of the proceedings, they [the respondents in this appeal] approached the Court of Appeal, Ekiti Division (hereinafter/simply, referred to as "the lower court". In a unanimous judgment of January 23, 2013, the lower court upturned the trial court's ruling; invoked Section 15 of its constitutive Act namely, the Court of Appeal Act, 2015 and resolved the issues in favour of the respondents.

Sequel to this development, the forensic hostilities between the parties shifted to this court. The appellants before this court formulated five issues from their Notice and Grounds of Appeal. They sought this court's determination of the following issues:

1. Whether the lower court was right by entertaining the appeal of the respondents when the sole issue placed before (it) was not competent and cannot translate into any advantage to the respondents. More so, when the appeal has become an academic exercise as a result of the expiration of tenure of the respondents and the nature of the reliefs sought?

2. Whether the lower court was not wrong by its findings that there was an appeal against the finding of the trial court on the issue that the respondents filed a Counter Affidavit to the Affidavit of the appellants when there was no specific ground of appeal that challenged the findings of the trial court to that effect, more so when there was no Counter Affidavit filed against the Affidavit in support of the fourth appellant's Preliminary Objection?

3. Whether the lower court was not wrong by invoking Section 15 of the Court of Appeal to assume jurisdiction and decided the substantive matter, and consequently granted the reliefs sought in the Amended Originating Summons/ when the motion for amendment was not moved and the substantive matter has not been heard

and determined on the merit by the trial court?

4. Whether the Justices of the lower court were not wrong when their Lordships held that the provision of Section 23B of the Ekiti State Local Government Administration (Amendment) Law, 2011 is inconsistent with the provisions of Section 7 of the 1999 Constitution and thereby set aside the dissolution of the Sixteen Local Government Councils in Ekiti State and the subsequent appointments of the Caretaker Committees by the appellants/ having regard to the fact that the dissolution of the Local Government Councils and the appointment of Caretaker Committees were effected pursuant to a law validly made by the Ekiti State House of Assembly, more so, when the affidavit evidence before the trial court shows that the respondents were not democratically-elected?

5. Whether the lower court was right when their (sic) Lordships ordered the payment of salaries, allowances and emoluments to the respondents, when the respondents did not include any monetary claim in their Originating Summons and having regard to the fact that the trial court as at the time the appeal was heard in the lower court, the trial court had ceased to have jurisdiction on any matter relating to payment of salaries, allowances or emoluments of public officer holders as the jurisdiction on the matters had been vested in the National Industrial Court?

On their part, the respondents wove only four issues out of the appellants' complaints in the Notice and Grounds of Appeal. They were framed thus:

1. Whether the lower court was not right in invoking Section 15 of the Court of Appeal Act in assuming jurisdiction and thereby deciding the case of the respondents on the merit?

2. Whether the lower court was not right in holding the case of the respondents, being a matter of constitutional and statutory interpretation, cannot be an academic question?

3. Whether the lower court was not right in nullifying the provisions of Section 23B (i) and (ii) of the Ekiti State Local Government Administration (Amendment) Law, 2011 which empowers the Governor of Ekiti State to dissolve and remove democratically-elected Local Government Councils and replace them with appointed/ unelected Caretaker Committee in breach of Section 7 (1) of the

1999 Constitution of the Federal Republic of Nigeria as amended?

4. Whether the lower court erred in making a consequential order that the respondents be paid their full remuneration and allowances covering their expired tenure?

My Lords, from the phraseology and tenor of the appellants issues set out above, I entertain no doubt that counsel who formulated them has scant regard for the posture of this court apropos the articulation of issues for determination. At the risk of wearisome iteration, therefore, I am constrained to draw attention to these issues as set out at pages 8 -10 of the appellants' brief.

In several decisions, this court has emphasized that verbosity does not enhance the quality of issues put forward for the determination of an appeal. Anaeze v Anyaso (1993) LPELR -480 (SC) 36, D-G. ***On the contrary, clarity and concinnity ought to be the most invaluable desiderata.*** Anaeze v Anyaso (supra); Ugo v Obiekwe (1989) 1 NWLR (pt 99) 566; AG Bendel State v Aideyan (1989) 4 NWLR (pt 118) 646.

In other words, issues must be precise and devoid of ambiguity for easy comprehension of matters for adjudication. Guda v Kitfa (1991) 12 NWLR (pt 629) 21. ***As such, they must be tailored to the crucial questions in controversy.*** Ibrahim v Ojomo (2004) All FWLR (pt 199) 1285; Onifade v Olayiwola (1990) 7 NWLR (pt 161) 130; -Okoye v NCFC Co Ltd (1991) 6 NWLR (pt 199) 501. Case law has, indeed, re-iterated these requirements ad nauseam!

It is against this background that courts are permitted to reformulate issues in order to accentuate the principal questions that call for the court's decision. In so doing, it could even adopt a sole issue where it is determinative of the appeal. 7UP Bottling Coy Ltd v Abiola and Sons Ltd (2001) 13 NWLR (pt 730) 493, 494; Onochie v Odogwu (2006) 6 NWLR (pt 975) 65, 92; Ikegwuoha v Ohawuchi (1996) 3 NWLR (pt 4350) 146; Aduku v Adejoh (1994) 5 NWLR (pt 346) 582.

Upon my intimate reading of the appellants' main complaints in their Notice and Grounds of Appeal, I have taken the liberty to reformulate and compress the issues that call for determination in this appeal into two, viz:

1. Whether the provisions of Sections 23 B (i) and (ii) of the

Ekiti State Local Government Administration (Amendment) Law, 2011 are inconsistent with Section 7 (1) of the Constitution and, if so, whether the lower court, rightly, nullified them?

2. Whether, in the circumstance, the lower court, rightly, invoked its Section 15 powers in awarding consequential reliefs in favour of the respondents?

In effect, only these two issues are determinative of this appeal. However, before dealing with them, it would only be proper to dispose of what the appellants tagged “Leave to raise new issue not raised in the lower court,” (paragraph 4. 3, page 8 of the brief). Counsel devoted pages 10 -15 of the brief to this so-called new issue.

APPELLANTS’ “LEAVE TO RAISE NEW ISSUE”

In the main, it was contended that the lower court should have declined jurisdiction. In the submission of counsel, the lower court found that the specific finding of the trial court was that the case was an abuse of court process/ citing several authorities on this point. He, thus, sought to fault the lower court’s invocation of Section 15 of the Court of Appeal Act. He maintained that, since the trial court declined jurisdiction, the lower court could not entertain the case which the trial court struck out.

In his response, counsel for the respondents submitted that the lower court was entitled to evaluate the evidence on record. As such, it could reject conclusions of the trial court from facts which did not flow from the evidence or might be regarded as perverse. He canvassed the view that the power enables the lower court to exercise all the powers of a court of first instance.

He maintained that the lower court was so empowered in order to settle, completely and finally, the matters in controversy between the parties to the appeal; to avoid multiplicity of legal proceedings concerning any of those matters and grant all such remedies as any of the parties might appear to be entitled to. He submitted that section 15 (supra) confers wide powers on the said court to enable it make orders which the High Court could have made in any matter.

He pointed out that, since the beginning of the trial at the court of first instance, the appellants did not controvert the status of the respondents as elected Chairmen of their respective Local Government Councils. Even then, they did not confute the averments in

the respondents' affidavit that they [the appellants] abridged the respondents' tenure by the unilateral dissolution of the said Councils.

He drew attention to pages 493 -498 of the record where the lower court held, inter alia, that "the appeal has merit and it is hereby allowed." He observed that the effect of this order allowing the appeal was that the ruling of the trial court on the crucial question of its jurisdiction and on the issue of abuse of court process had been set aside. B

Now, for ease of reference, I shall, with respect, summon the lower court to restate its findings. At pages 493 - 498 of the record, after re-iterating the Trinitarian requirements for determining competence, it proceeded thus; C

None of the conditions stated above is lacking in the trial court. *I am therefore of the view and also hold that the trial court has jurisdiction to entertain the Amended Originating Summons.* The D purpose and the use of the power of the Court of Appeal to invoke the provisions of Section 15 of the Court of Appeal Act is applicable in appropriate circumstances...

Looking at the Amended Originating Summons..., *the lower court has the power to adjudicate in the matter. The real issue raised in the Amended Originating Summons which is the unilateral dissolution of elected Local Government Councils is (sic) in breach of Section 7 (1) of the Constitution of the Federal Republic of Nigeria, 1999* as amended in ground four from which issue two has been distilled F from (sic) in this appeal. *The necessary -materials for the court's consideration are in the record of appeal. I am therefore of the view and also hold that this court can conveniently assume jurisdiction under Section 15 (supra) in the interest of justice...*

(Italics supplied for emphasis) G

It is, therefore, surprising how the appellants' counsel arrived at the conclusion that the lower court did not set aside the trial court's ruling. On the contrary, I shall, in this judgment, set out the lower court's crucial findings, once more for emphasis: Hear this "(I) am therefore of the view *and I also hold that the trial court has jurisdiction to entertain the amended Originating Summons.,,*" (page 493 of the record; italics supplied for emphasis) H

In effect, it was sequel to its order that the trial court was

imbued with the jurisdiction to entertain the Originating Summons (which, in itself, was a finding that nullified the trial court's findings and conclusion to the contrary) that it [the lower court] proceeded to hear the matter since:

B *...The necessary materials for the court's consideration are in the record of appeal. I am therefore of the view and also hold, that this court can conveniently assume jurisdiction under Section 15(supra) In the interest of justice...* (page 498 of the record; italics supplied for emphasis)

C In the respondents brief of argument, this sequence was captured most, admirably, in paragraph 3, page 6 thus:

The lower court set aside the ruling of the trial court on the issue of jurisdiction together with all its elements. Having held that the trial court had jurisdiction, the lower court assumed jurisdiction D and went ahead to decide the main question in the appeal on merit.

From my perusal of the record particularly, pages 493-498, I entirely, endorse this unanswerable summation. The applicants' application to canvass new issue, being entirely without merit, is hereby refused. There is, actually, nothing new in the so called new issue: an E issue which the lower court, articulately, dealt with, consistently with the posture of this court in a host of decisions. I, therefore, decline their entreaty to canvass it.

ARGUMENTS ON THE ISSUES

ISSUE ONE

F Whether the provisions of Sections 23 B (i) and (ii) of the Ekiti State Local Government Administration (Amendment) law, 2011 are inconsistent with Section 7 (1) of the Constitution and, if so, whether the lower court, rightly, nullified them?

G APPELLANTS' CONTENTION

When this appeal came up for hearing on September 26, 2016, Owoseni Ajayi, Hon. Attorney General for Ekiti State for the appellants, adopted the brief of argument filed on June 3, 2013 in urging the court to allow the appeal.

H On this issue, which was the appellants' original fourth issue, it was contended that there is no conflict between the provisions of Section 23B of the Ekiti State Local Government Administration (Amendment) Law, 2001 and Section 7 of the Constitution (supra).

According to counsel, the former derived its validity or legitimacy from the latter, (pages 47-54, app's brief)

Having juxtaposed both provisions (paragraphs 10.04 -10.10, pages 47-50 of the brief), counsel canvassed the view that any law made by the Ekiti State House of Assembly cannot be questioned by the courts as in his view, the Constitution vests wide powers on it to make the said Law by virtue of sections 4 (6) and 7 (1) thereof pursuant to which it enacted the law, the subject of this appeal. He maintained that Section 23B (supra), which empowers the Governor to dissolve the said Councils for over-riding public interest, is an existing law that has not been repealed.

According to the Honourable Attorney General, the drafts persons of the said Law, meticulously, included provisions for dissolution in the said law to take care of emergency situations in the event of breakdown of law and order or where it becomes practically impossible for the democratically-elected Councils to function.

He invited the court not to construe the said section 23B in isolation but to read it harmoniously with the entire provisions of the Local Government Laws, citing Sections 2-5 and 23B which, he explained, come later in time to modify the tenure of three years provided for under Section 5.

He inveighed against the decision of the lower court which nullified the said law for being inconsistent with the Constitution. In his submission; Sections 7 (supra) and 23 B (supra) are unambiguous and the duty of the court is to interpret their words in their ordinary and literal meaning, AG, Kano v AG, Federation (2007) 3 SC (pt 1) 59, 79.

He maintained that the said Section 7 does not disempowered the Governor from dissolving the Councils in the State in the public interest, citing AG Ondo v AG, Fed [2006] 6 SC (pt 1) 1; (2002) 9 NWLR (pt 772) 222, 418; AG, Fed v. Abubakar (2007] 4 SC (pt 11) 62, 125. In all, he urged the court to hold that there is no inconsistency between Section 23B (supra) and Section 7 (supra), citing Action Congress v INEC (2006) 6 SC (pt 11) 222, 237 H and 266; B. O. Nwabueze, Constitutional Law and Democracy in Africa.

RESPONDENTS' ARGUMENTS

Learned Counsel, for the respondents, Obafemi Adewale, who, as shown above, adopted the brief filed on November 29, 2013, devoted paragraphs 8.32 - 9.17, pages 25 -31 of the brief to this constitutional issue.

B He re-iterated the well-established principle that the Consti-
tution is the supreme law of the land. He pointed out that the said
Constitution, in Section 7 (1), guarantees democratically-elected Lo-
cal Government Councils throughout Nigeria. On the other hand,
Section 23B (supra) provides for an arbitrary removal/dissolution of
C the said elected Councils by the appellants and empowers them to
replace them with appointed Caretaker Committees. He explained
that the respondents deserve to know whether the said law could
supersede the express provisions of the Constitution.

D He canvassed the view that the action was prompted by the
appellants' blatant breach of Section 7 (supra), pointing out that the
first appellant, in particular, purported to act under the powers con-
ferred on him by Section 23 B (i) and (ii) (supra), citing Section 7 (1)
(supra); Section 5 of the Ekiti State Local Government Administra-
tion Law, 1999 and Section 23b (supra).

E He maintained that the above constitutional provision guar-
antees a system of local Government by democratically-elected Lo-
cal Government Councils. Thus, the respondents were under obliga-
tion to ensure their existence, citing Section 1 (1) of the Constitution;
F Tanko State (2009) 4 NWLR (pt 1131) 430, 452; AG, Abia State v
AG Federation (2006) 16 NWLR (pt 1005) 265, 281 - 282. In his
view, the *raison detre* of Section 1 (3) of the Constitution was to stem
the sort of lawlessness which the respondents exhibited.

G He noted that, contrary to the appellants' submission, the
respondents are not challenging the authority of the State House of
Assembly to make laws. On the contrary, their contention is that, in
exercising its law-making authority, the said House must act within
the ambits and limits of the Constitution. To that extent; therefore,
the laws of the House of Assembly which are inconsistent with consti-
H tutional provisions are bound to be nullified.

He observed that the appellants neither deposed to any fact
of any emergency nor to any over-riding public interest that would
have warranted their action, citing page 118 of the record; AG, Pla-

teau State v Goyol (2007) 16 NWLR (pt 1059) 94; AG, Benue State v Umar (2008) 1 NWLR (pt.1068) 311, 354 - 358; Eze v Governor of Abia State (2010)15 NWLR (pt 1216) 324, 350; 361 -363.

Counsel invited the court to view the action of the appellants as tantamount to executive lawlessness, 5, B. N. Plc v CBN (2006) 6 NWLR (pt 1137) 300; AG, Abia State v AG Federation (supra) 373 B -374. Accordingly, he endorsed the position of the lower court that the said Ekiti Law was void, citing page 500 of the record; and that the first respondent's action in setting up Caretaker Committees in the said Councils is unconstitutional and, hence, of no effect, PSHMB C v Goshwe (2013) 2 NWLR (pt 1338) 383, 393. He urged the court to uphold the lower court's decision.

ISSUE TWO

Whether, in the circumstance, the lower court, rightly, invoked its Section 15 powers in awarding consequential reliefs in favour D of the respondents?

The appellants' response to this issue was articulated in paragraphs 11.01 -11.08, pages 55 -57 of the brief. It was pointed out that the respondents did not claim any sum of money in either their Originating Summons or the Amended Originating Summons. Against E this background, counsel argued that the lower court, wrongly, invoked Section 15 of the Court of Appeal Act (supra) in entertaining the substantive matter and in, consequently, ordering the payment of their outstanding allowances and emoluments.

In his submission, since the respondents did not pray for the F said emoluments, the lower court erred in favouring them with the said reliefs, Oduwolev West (2010) 6- 7 MJSC (pt IV) 39- 40; Odunze v Nwosu (2007) 13 NWLR (pt 1050) 1. He contended that, in the instant case, the lower court raised the said issue suo motu and ordered the appellants to pay the respondents the said emoluments. G He urged the court to resolve the issues against the respondents.

On his part, learned counsel for the respondents pointed out that, as at October 2010, the three-year term of the respondents was still subsisting since they had up to December 19, 2011 to serve out H their term of office. Although the lower court found that the first appellant, unlawfully, truncated their said term of office, it could not re-instate them since their term had lapsed by the time of the judg-

ment.

In lieu thereof, the court had to favour them with the consequential order for the payment of their entitlement for the un-expired residue of their tenure, AG Benue State v Umar (supra); Oyekanmi NEPA (2000) 15 NWLR (pt 690) 414, 444; Bello and Ors v AG Oyo State (1986) 5 NWLR (pt 45) 838, 890.

Counsel canvassed the view that it is the main claim of a plaintiff that determines the appropriate forum convenience, Amale v Sokoto Local Government (2012) 5 NWLR (pt 1292) 181, 218. He observed that the main claims of the respondents in the instant case involved the correct interpretation of Section 7 (supra); Sections 5 and 23B (1) and (11) of the Ekiti State Local Government Administration (Amendment) Law (supra).

The said interpretation, he maintained, was in relation to their position and status as democratically-elected Local Government Chairmen as well as the limits of the limits of the legislative powers of the House of Assembly to make laws, conformably, with the Constitution.

In his submission, therefore, the lower court/ rightly, invoked its powers under Section 15 (supra) to assume jurisdiction; granted the main relief and, in the interest of justice, granted the said consequential reliefs. He urged the court to dismiss the appeal and uphold the lower court's decision.

RESOLUTION OF THE ISSUES

As indicated at the outset, the respondents' grouse against the appellants was the unilateral dissolution of the Councils into which they were elected for a period of three years and their brazen substitution with Caretaker Committees. In effect, their complaint turned on the illegality of the appellants' executive action apropos their tenure of office as elected Local Government Chairmen.

Regrettably, the appellants betrayed their misconception of this principal complaint, clear evidence of this misconception could be found in their submissions in paragraphs 10.03-10.23, pages 47-54 of the brief. They devoted considerable, albeit, misplaced energy on the legislative powers of the States of the Federation; the status of a Local Government as a tier of Government that is, whether a Local Government is recognised as a distinct entity in the Federation: ques-

tions that did not arise from the judgment of the lower court.

Indeed; it was the above submission that prompted their contention that nothing in Section 7 (supra) could hinder a House of Assembly from enacting a law empowering a State Governor to dissolve the Local Government Councils in the State. It was in this context that counsel maintained that Section 23B (supra) ought to be conflated with Sections 2 to 5 of the said Ekiti State Law. B

In his view there was no inconsistency between Section 23B of the said Ekiti State law and Section 7 of the Constitution (supra). He cited AG, Kano v AG Federation [2007] 3 SC (pt 1) 59, 79; AG, Ondo v AG, Federation [2006] 5 SC (pt 1) 1; AG, Federation v Abubakar (2007) 4 SC (pt 11) 62, 125 on the courts duty relative to the interpretation of constitutional provisions. C

With profound respect to the Honourable Attorney General of Ekiti State, I shall not be swayed into broaching matters that did not constitute the ratio decidendi of the judgment of the lower court, Chami v UBA Plc (2010) 6 NWLR (pt 1191) 474; Military Administrator, Ekiti State v Aladeyelu (2007) All FWLR (pt 369) 1195, 1220; Saude v Abdullahi (1989) 4 NWLR (pt 116) 387; AIC Ltd v NNPC (2005) 1 NWLR (pt 973) 563. D E

Contrariwise, I will, in this judgment, confine myself to the constitutional issue whether the provisions of Sections 23 B (1) and (11) of the Ekiti State Local Government Administration (Amendment) Law, 2011 are inconsistent with Section 7 (1) of the Constitution and, if so, whether the lower court, rightly, nullified them. F

Now, Section 7 (1) (supra) provides thus:

The system of local government *by democratically-elected* local government council *is under this Constitution guaranteed*; and accordingly, the Government of every State shall subject to Section 8 G of this Constitution, *ensure their existence* under a Law which provides for the establishment, structure, composition, finance and functions of such council. (Italics supplied for emphasis)

Unarguably, the Ekiti State House of Assembly derived its powers for enacting its said Local Government Law from the above constitutional provision. Indeed, at page 49 of the brief, counsel for the appellants conceded that the *“Ekiti State House of Assembly pursuant to the provisions of Sections 4 (6) and 7 (1) of the 1999 Con-* H

stitution (as amended) enacted the Local Government Administration Law Cap L.11, Laws of Ekiti State,”

In the said law sundry matters relating to the establishment of Local Government Councils are provided for in Sections 2- 5. In particular, Section 5 consecrates a tenure of three years for the offices therein.

The *cassus belli* in this matter which culminated to this appeal was however, Section 23B of the Ekiti Local Government Administration (Amendment) Law/ 2001 which provided for the Governor’s power of dissolution in these terms:

1. Provided always that the Governor is by this law empowered to dissolve Local Government Councils for over-riding public interest subject to the two-thirds majority approval of members of the House of Assembly;

2. Such dissolution shall not exceed a period of twelve calendar months wherein the Governor shall have power to appoint a seven-member Caretaker Committee out of which a Chairman shall be appointed pending the conduct of election to occupy the office of the Chairman.

Somewhat most curiously, the Honourable Attorney General of Ekiti State for the appellant in what appears to be an unwarranted sacrilege on the canons of constitutional interpretation submitted that:

...if the draftsmen wanted the Local Government to be independent of the States they would have included it under section 2 (2) of the Constitution and the draftsmen would have empowered the House of Assembly to legislate on the existence, structure among others. It will be incongruous if a Court interpret (sic) the provision of Section 23B (supra) viz-a-viz Section 7 of the Constitution and now come (sic) to the conclusion that the *contradicts* or (sic) *inconsistent with the Constitution*. The House of Assembly is *the Alpha and Omega as far as the issue of Local Government is concerned and any law validly made by them to regulate and control the Local Government ought not to be questioned by* (sic) Court because the Constitution donates such wild (sic) powers to the House of Assembly. (paragraph 10. 10, page 50 of the brief; italics supplied for emphasis)

With respect to the Honourable Attorney General, this sub-

mission is an unbridled affront to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It is, indubitably, an elementary proposition that the said Constitution is the supreme law of the land, Section 1 (1) thereof; *N. U. E. E. v B, P. E.* (2010) 7 NWLR (pt 1194) 538; *Nig Army v Yakubu* [2013] 8 NWLR (pt 1355) 1; *Udenwa v Uzodinma* (2013) 5 NWLR (pt 1346) 94; *Amadi v INEC* (2013) 4 NWLR (pt 1345) 595; *AG, Federation v AG, Lagos* (2013) 16 NWLR (pt. 1380) 249. B

From the very ipssissima verba of Section 1, sub-sections (1) and (3) of the Constitution (*supra*), it is evident that it is the fons et origo, that is, the provenance, from which a sub-constitutional norms derive their source and sustenance, *AG, Abia State v AG, Federation* (2007) 1 CCLR 104; *AG, Lagos State v AG Federation* [2003] 12 NWLR (pt 833) 1; *INECv Musa and Ors* (2003) 8 ANLR 322. C

Even as a simple logical postulate, since all other laws owe their source to the Constitution, it (the Constitution) would not brook any sort of competition with them. As such, in the event of any conflict, it operates proprio vigore to invalidate them to the extent of their inconsistency, Section 1 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (supra). D

The authorities on this point are just too numerous to delay us here. All the same, I shall refer to one or two of them, *FRN v Osahon and Ors* (2005) LPELR - 3174 (SC) 27 - 28, E -A; *Kalu v Odili* (1992) 5 NWLR (pt 240) 130; *N. U. E. E. v B. P. E.* (*supra*); *Nig Army v Yakubu* (*supra*); *Udenwa v Uzodinma* (*supra*); *Amadi v IN EC* (*supra*); *AG, Federation v AG, Lagos* (*supra*). F

My Lords, it would seem evident that counsel for the appellants, the Hon Attorney General, underrated the trenchant provisions of Section 7 (*supra*). For our immediate purpose, I will reproduce the relevant provision: G

The system of local government by democratically-elected local government council is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such council. (*italics supplied for emphasis*) H

Having thus guaranteed the system of local government by democratically-elected Local Government Councils, the Constitution confers a toga of sacra-sanctity on the elections of such officials whose electoral mandates derive from the will of the people freely-exercised through the democratic process. Put differently, the intendment of the Constitution is to vouchsafe the” inviolability of the “sacred mandate which the electorate, at that level, democratically-donated to them. Eze and Ors v Governor, Abia State and Ors (2014) 14 IMWLR (pt 1426) 192.

In the apt and eloquent postulation of the Court of Appeal in AG, Benue State v Umar (2008) 1 NWLR (pt 1068) 311, 354 -358, which I, approvingly, adopt in this judgment:

Elections like in any other country should be held sacrosanct. Representatives of the people through an election (at whatever level) cannot just be removed *or their Councils dissolved at the pleasure of other elected office holders. Democracy is growing or should grow in this Country and with it, the attendant pitfalls and hiccups.* However, the courts are poised to chaperon the many contenders through the straight and narrow of democracy...

Simply put, therefore, the election of such officials into their offices and their tenure are clothed with constitutional force. They cannot, therefore, be abridged without breaching the Constitution from which they derive their force. The only permissible exception, where a State Governor could truncate the lifespan of a Local Government Council which evolved through the democratic process of elections, is “for over-riding public interest” in a period of emergency.

As my Lord, Aka’ahs, JCA (as he then was) put it most, admirably, in AG, Plateau States Goyol (2007) 16 NWLR (pt 1059) at page 94 (views I, entirely, agree with):

The Governor swore to preserve, protect and defend the Constitution and not to mutilate it. Although the House of Assembly has power to make laws, (it) has no powers to make any law giving the Governor power to truncate a democratically-elected Local Government Council. The penchant by (sic) State Governors in (sic), dissolving Local Government Councils is clearly undemocratic, It is

only when a state of emergency has been declared that can warrant the suspension of democratic institutions in the polity. See, also, Akinpelu v AG, Oyo State (1982) 2 FNR, 423; Akpan v Umar (2002) 7 NWLR (pt 767) 701, 732, paras G-H.

In effect, where such is the situation, as even nature itself abhors any vacuum, the Governor would be entitled to empanel a Caretaker Committee. Anything outside that is an unwarranted affront to the Constitution, Eze and Ors v Governor, Abia State and Ors. (supra).

Unarguably, the Ekiti State Local Government Administration Law Cap L11, Laws of Ekiti State was enacted in furtherance of the constitutionally-mandated obligation in Section 7 (supra) to “ensure their existence under a Law which provides for the establishment, structure, composition,...” The said Law provided for the establishment of Local Government Councils in Ekiti State and consecrated a tenure of three years for the elected officials.

There can be no doubt, as argued by the appellants’ counsel, that the Ekiti State House of Assembly is empowered to make Laws for Ekiti State. However, the snag here is that, in enacting Section 23B of the Ekiti State Local Government Administration (Amendment) Law, 2001 which empowered the first appellant to abridge the tenure of office of the respondents it overreached itself. In other words, Section 23 B (supra) is violative of, and in conflict with Section 7 (1) of the Constitution (supra). Hence, it is bound to suffer the fate of all Laws which are conflict with the Constitution, Section 1 (3) thereof, Nig Army v Yakubu (supra).

By employing the mandatory auxiliary verb “shall,” the draftsman of Section 7 (1) (supra), surely, intended to impose (and, actually, imposed) an obligation on the States to ensure the continued existence of Local Government Councils which are democratically-elected.

In my view, the use of the auxiliary verb “shall” in the said section connotes a command; an imperative requirement: a constitutional direction which yields no room for discretion, Tanko v Caleb (1999) 8 NWLR (pt 616) 606; Abimbola v Aderoju (1999) 5 NWLR (pt 801) 100; Adewunmi AG, Ekiti State (2002) 2 NWLR (pt 751) 474; Amadi v NNPC (2000) 10 NWLR (pt 674) 76.

The implication, therefore, is that Section 23B (supra), which was not intended to “*ensure the existence of such democratically-elected Councils, but*” to snap their continued existence by their substitution with Caretaker Councils, was enacted in clear breach of the supreme provisions of Section 7 (1) the Constitution (supra).

B To that extent, it (Section 23B, supra) cannot co-habit with Section 7 (1) of the Constitution (supra) and must, in consequence, be invalidated, Eze and Ors v Governor, Abia State and Ors (supra) and the Court of Appeal decisions in AG, Plateau State v Goyol (Supra); AG Benue State v Umar (supra) which I, approvingly, adopt in this judgment.

As shown above, such is the potency of the constitutional provisions that they operate *proprio vigore* to invalidate inconsistent Laws to the extent of their inconsistency, Section 1(3) of the Constitution (supra); FRN V Osahon and Ors (2005) LPELR -3174 (SC) 27-28, E-A; Kalu v Odili (1992) 5 NWLR (Pt 240) 130; N. U. E. E. v B. P. E. (supra); Nig Army v Yakubu (supra); Udenwa v Uzodinma (supra); Amadi v INEC (supra); AG, Federation v AG, Lagos (supra).

The reason is simple. By his oath of office, the Governor swore to protect, and not to supplant, the Constitution. Hence, any action of this which has the capacity of undermining the self-same Constitution (as in the instant case where the first appellant, purportedly, dissolved the tenure of the respondents and replaced them with Caretaker Committees) is tantamount to executive recklessness which would not be condoned, Eze and Ors v Governor, Abia State and Ors (supra); AG, Plateau State v Goyol (supra).

The net effect of it all is that I find considerable merit in the contention of the counsel for the respondents in this regard. As shown above, he had argued that in exercising its law-making authority, the House must act within the ambits and limits of the Constitution. To that extent, therefore, the laws of the House of Assembly which are inconsistent with constitutional provisions are bound to be nullified.

H Instructively, as counsel for the respondents pointed out, the appellants neither deposed to any fact of any emergency nor to any over-riding public interest that would have warranted their action, citing page 118 of the record. As my Lord, Aka’ahs JCA (as he then

was) held in AG, Plateau State v Goyol (2007) 16 NWLR (pt 1059) 94, the only permissible situation that could have justified the interference with the lifespan of an elected council was absent; Eze v Governor of Abia State (2010) 15 NWLR (pt 1216) 324, 350; 361 -363.

I, therefore, hold that, having been elected for a tenure of three years under the Ekiti State Local Government Administration Law Cap L11, the respondents could only “be removed from office if found to be in breach of the rules governing the office...” Eze v Governor of Abia State (supra) 215 -216 ***or by proof that it was in the overriding public interest. That was not shown in this case.***

Accordingly, I agree with the lower court’s decision nullifying Section 23B (supra) for being inconsistent with the mandatory provisions of Section 7 (1) of the Constitution (supra).

In consequence, I resolve this issue against the appellants and in favour of the respondents, Eze and Ors v Governor, Abia State and Ors (supra); AG, Plateau State v Goyol (supra); AG, Benue State v Umar (supra).

With regard to the second re-formulated issue, the main contention of the appellants was that the lower court, wrongly, invoked Section 15 of the Court of Appeal Act (supra) in entertaining the substantive matter and in, consequently, ordering the payment of their outstanding allowances and emoluments.

In his submission, since the respondents did not pray for the said emoluments, the lower court erred in favouring them with the said reliefs. He contended that, in the instant case, the lower court raised the said issue *suo motu* and ordered the appellants to pay the respondents the said emoluments.

In paragraphs 11.05 -11.07 of the appellants’ brief, it was contended that the respondents ought to proceed to the National Industrial Court (NIC, for short) to claim their outstanding allowances and emoluments, citing Section 245 (C) of the 1999 Constitution (as amended).

The respondents’ reaction to this submission was terse. In the instant case, it was argued, the main claim was, strictly, about constitutional and statutory interpretation: issues, completely, outside the jurisdiction of that Court (NIC). Counsel for the respondents explained that the principal question involved the correct interpreta-

tion of Section 7 (1) of the Constitution (supra), and its effect on Sections 5 and 23B of the Ekiti State Law (supra), in relation to the status of democratically-elected Local Government Councils in Ekiti State.

B As such, the issue of salary and allowances, as ordered by the lower, was, merely, consequential to the said court's determination of that main question.

In effect, Section 245(C) of the 1999 Constitution (supra) was inapplicable.

C With profound respect to the learned Attorney General for the appellants, the above submissions, again, betrayed his misconception of the nature of the weighty constitutional question at stake in this case: questions that have now been resolved in favour of the respondents.

D What is more, from his above submissions, it is obvious that he does not appreciate the *raison detre* for the inclusion Section 15 (supra) in the Rules of the lower court.

Now, in invoking its powers under Section 15, the lower court reasoned thus:

E *"In this appeal under consideration before invoking the powers of the Court of Appeal under Section 15 (supra), certain conditions must exist. The conditions are among others:*

(a) *Availability of the necessary materials to consider and adjudicate in the matter;*

F (b) *The length of the between the disposal of the action at the trial court and the hearing of the appeal; and*

G (c) *The interest of justice by eliminating further delay that would arise in the event of remitting the case back (sic) of the trial court for re-hearing and the hardship such an order would cause on either or both parties to the case...*

H *The question that comes to mind at this point is whether the instant case an appropriate one for this court to exercise its powers under Section 15 (supra)? A careful reading of the appellants' claim before the lower court would reveal that the main issue is in respect of the unilateral dissolution of elected Local Government Councils in Ekiti State in breach of Section 7(1) (supra). It is therefore my view that from the facts of this case, the pre-conditions stated earlier existed and this court can invoke its powers in the interest of justice and*

determine thus case on its merit... (pages 506-507 of the record; italics supplied for emphasis)

In his contribution, Ejembi Eko, JCA (as he then was) had this to say:

“At the time of these purported dissolutions, the appellants, who were the Chairman of the Local Government Councils, still had up to 19th December, 2011, to run out the term of three years for which they were each elected. They cannot now be re-instated to complete that term. But on the basis of ubi jus ibi remedium, the appellants cannot go without a remedy. That was what the Supreme Court did in the case of AG, Benue State v Hon Musa Umar and Ors (unreported No: SC 119/2007 of 15th April, 2008) when it dismissed the appeal of the Attorney-General of Benue State, upon the withdrawal of the same by the appellants... At the time the appeal was dismissed, the term for which the respondents thereto, like the instant appellants, were elected, had elapsed.

The Supreme Court unanimously ordered that the respondents be, each, paid their allowances and salaries covering the balance of the period that he had remaining to be spent in the office... I am therefore encouraged by this order of the Supreme Court to make a similar order against the respondents in this appeal (that is, the appellants before this court) in favour of the appellants herein (the respondents before this court in this present appeal). For the avoidance of doubt, the allowances and salaries of the appellants, to be computed and paid, shall be computed from 29th October, 2010 to 19th December, 2011, both dates inclusive... (pages 514-515 of the record; italics (editor, underlining) supplied for emphasis)”

My Lords, I cannot find any rational justification for disturbing the above unanswerable conclusions of the lower court. In the first place, it is now, firmly, established that the lower court, by virtue of its power under section 15 of the Court of Appeal Act, can make such consequential orders as it deems fit in order to avoid multiplicity of legal proceedings concerning any of those matters which any of the parties may appear to be entitled to, Bunyan v Akingboye (1999) 7 NWLR (Pt. 609) 31; (1999) LPELR –817 (SC) 15, D-F; Okoya and Ors v Santilli and Ors (1990) 2 NWLR (Pt. 131) 172; (1990) ALL NLR

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250, 280-281; Katto v. Central Bank (1991) 9 NWLR (Pt. 214) 126;
(1991) 12 SCNJ 1, 17.

Even then, as it is well-known, a consequential order, such as that which lower court made in favour of the respondents herein, is an order that gives effect to the judgment; that is, that gives meaning to the judgment else it would amount to pyrrhic judicial victory, Obayabona v Obazee (1972) 5 SC 247; Inakoju v Adeleke (2007) 4 NWLR (Pt. 1025) 423; Eze and Ors v Governor of Abia State (supra); Ishola and Anor v Folorunso and Ors (2010) 13 NWLR (Pt. 1210) 169, 192; Odofin v Agu (1992) 3 NWLR (Pt 229) 350; Liman v Mohammed (1999) 9 NWLR (Pt 6170) 116; Akinbobola v Plisson Nig Ltd (1991) 1 NWLR (Pt 167) 270; Ilona v Idakwo and Anor (2003) 11 NWLR (Pt 830) 53.

D As shown above, the lower court found that *“the purported dissolution of the sixteen Local Government Councils of Ekiti State on 29th October was a nullity,”* (page 513 of the record). However:

E *“At the time of these purported dissolutions, the appellants, who were the Chairmen of the Local Government Councils, still had up to 19th December, 2011, to run out the term of three years for which they were each elected. They cannot now be re-instated to complete that term. But on the basis of ubi jus ibi remedium, the appellants cannot go without a remedy.”*
F (page 514-515 of the record; italics supplied for emphasis).

Thus, the said consequential order of the lower court was designed to give meaning to its judgment. In particular, it found that, having been removed from their elected positions through the purported dissolution of their Councils and their brazen substitution with Caretaker Committees “when they still had up to 19th December, 2011, to run out the term of three years for which they were elected,” the respondents “cannot go without the remedy.”

H ***Surely, a contrary conclusion would have rendered the judgment of the said lower court a hollow exercise in highfalutin judicial rhetoric: a juridical charade, amounting to nothing,*** Obayabona v Obazee (supra); Inakoju v Adeleke (supra); Eze and Ors v Governor of Abia State (supra); Ishola and Anor v Folorunso

and Ors (supra); Odofofin v Agu (supra); Liman v Mohammed (supra); Akinbobola v Plisson Nig Ltd (supra); Ilona v Idakwo and Anor (supra).

Unarguably, that would have been an unwarranted slur on the administration of justice! I, therefore, affirm the findings and conclusion of the lower court. B

Having disposed of the principal agitations of the parties in relation to the main constitutional question raised in this appeal, that is, the question of the conflict between the said Ekiti State Law and Section 7 (1) of the Constitution, I have no hesitation in dismissing this appeal as being unmeritorious. Appeal dismissed. I hereby affirm the judgment of the lower court. C

The Attorney General, as the Chief Law Officer of Ekiti State, shall ensure that the orders of the lower Court, affirmed in this judgment, are complied with. That shall be the order of this court! D

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment of my learned brother, Nweze JSC. I agree with his lordships. I too would dismiss the appeal. In view of the sound reasoning of the Court of Appeal and this court that section 23 (B) (i) and (ii) of the Local Government Administration (Amendment) Law 2001 is in conflict with Section 7 (i) of the Constitution, and the need to grant consequential orders when the justice of the case so demands, I add a few words of my own. E F

The respondents were elected into the Local Government Councils in Ekiti State. Their tenure was for three years, i.e. from 20/12/08 to 19/12/11. G

On 29/10/10 the Governor of the state dissolved the democratically elected Local Governments and replaced them with Caretaker Committees.

Now, section 7(i) of the Constitution states that:

7(i) *The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed, and accordingly, the Government of every state shall subject to section 8 of the constitution, ensure their existence under a law which* H

provides for the establishment, structure, composition, finance and functions of such councils. ”

In compliance with the provision of the Constitution and in a bid to ensure the existence of Local Government Councils in Ekiti State, the Ekiti State Government promulgated the Local Government Administrative Law, 1999.

Sections 5 and 23B of the law provides for the tenure of office of the Local Government Political Office Holders and the Governor’s power of dissolution respectively. Section 5 states that:

“5. The Chairman and other elected officers of the Local Government shall hold office for a period of three years.

While section 23B reads:

“(1) Provided always that the Governor is by this law empowered to dissolve Local Government Councils for overriding public interest subject to the two-thirds majority approval of members of the House of Assembly.

(2) Such dissolution shall not exceed a period of twelve calendar months wherein the Governor shall have power to appoint a seven-member caretaker committee out of which a chairman shall be appointed pending the conduct of election to occupy the office of the chairman.”

The issue is:

Whether dissolving democratically elected Local Governments as provided by section 23B of the Ekiti State Local Government Administration (Amendment) Law, 2001 and replacing them with unelected Caretaker Committees is in breach of section 7(i) of the Constitution.

The constitution is the supreme norm and all laws are subject to it. That is to say under the democratic dispensation the sanctity and supremacy of the Constitution is sacrosanct.

Section 7(i) of the Constitution guarantees a system of Local Government by democratically elected Local Government Councils.

Section 23 of the Ekiti State Local Government Administration (Amendment) Law of 2001 does not have such guarantees, rather it allows the Government of the state to remove from office democratically elected Local Government Councils, instead of ensuring their existence. There can be no doubt after reading Section 23B (Supra)

that Local Government Councils are under the absolute control of the Ekiti State Government. This is wrong. Any law on Local Government made by Ekiti State or any other state must make provisions within the limits of the provisions of the Constitution. Provisions of the Constitution must never be exceeded.

Where the provision of State Legislation, in this case the Ekiti State Local Government Administration Law, 1999 as amended in 2001 is inconsistent with provisions of the Constitution, the provision of such law is invalid, and the law itself is to that extent invalid. B

Section 23B of the Ekiti State Local Government Administration (Amendment) Law, 2001 is inconsistent with section 7 of the constitution and is consequently void. C

Consequently the dissolution of democratically elected Local Government Councils on 29 October, 2010 by the Governor of Ekiti State and setting up Caretaker Committees in place of the Local Government Councils is unconstitutional null and void. See Eze & 147 Ors V Gov of Abia State & 2 Ors (2014) 5-7SC (Pt. 1) P171. D

The tenure of members of the dissolved Local Government Councils was from 20 December 2008 to 19 December 2011. They were thrown out of office on 29 October 2010. They cannot now be reinstated to complete their term/tenure in office since the term expired on 19 December, 2011. Should they be sent away just like that? I think not. In these circumstances the Court of Appeal made consequential order that the respondents entitlements are paid. The Court of Appeal was right. See Eze & Ors V Gov of Abia State (Supra) Obayagbona V Obazee (1972) 5SC P. 247 Inakoju V Adeleke (2007) 1SC (Pt. 1) P1. E F

A consequential order is an order that gives effect to a judgment. It gives meaning to the judgment. It must be incidental and flow directly and naturally from reliefs claimed. It gives effect to the judgment already given. Once again the facts of this case cry out for a consequential order that the respondents emoluments be paid and the Court of Appeal was right as the order gives effect to the judgment. G

For this, and the comprehensive reasoning in the leading judgment, I too dismiss this appeal. H

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Nweze JSC just delivered. I agree with his Lordship's reasoning and conclusion that the appeal lacks merit and that it be dismissed. I offer
 B a few words of mine by way of emphasis and support. I adopt the summary of facts that brought about the appeal contained in the lead judgment.

The issues the appeal raises, in the main touch on the hierar-
 C chy of legislation of legislator's as well as the import and extent of the powers of the Court of Appeal, the lower court, under the Section 15 of the Law establishing the court.

The appellants had, pursuant to Section 23B of the Ekiti State
 D Local Government Administration (Amendments) Law 2001 pur-
 portedly dissolved all the sixteen democratically elected Local Gov-
 ernment Councils in the State and appointed unelected caretaker
 committees in their place. By their amended originating summons,
 the respondents challenged the dissolution of the councils at the trial
 court. They assert that having been democratically elected to serve
 E for a three year tenure from the 20th of December 2008, when they
 subscribed to the oath of office to 19th December 2011. It is their case
 that the dissolution of their councils by the Appellant on the 29th
 October 2010 was unconstitutional null and void.

The appellants challenged, by way of preliminary objection,
 F the competence of respondents originating summons. The trial court
 upheld appellant's preliminary objection and declined jurisdiction.
 Dissatisfied, the respondents appealed to the Court of Appeal, the
 lower court, which allowed the appeal and invoked section 15 of the
 G Court of Appeal Act and upon considering the respondents' claim
 granted them the reliefs sought. The instant appeal arises from the
 lower court's decision against the appellants.

Appellants' chief argument is that the lower court is wrong in
 its finding that Section 23B (i) and (ii) of the Ekiti State Local Gov-
 H ernment Administration (Amendment) Law 2001 which duly em-
 powered the State Governor to dissolve the sixteen Local Govern-
 ment Councils stands in conflict with Section 7(1) of the 1999 Con-
 stitution as amended. It is a legislation, it is argued, that is lawfully

passed by the Ekiti State House of Assembly given its powers under Section 4(6) and 7(1) of the very Constitution the lower court held has been breached. Appellants further contend that there is no inconsistency between Section 23B (i) and (ii) of the Ekiti State Local Government Administration (Amendment) Law invoked to remove the respondents in the interest of the public as well as Section 7 of the Constitution the lower court founded its judgment on. Relying inter-alia on Action Congress v. INEC (2006) 6 SC (Pt. 11) 222 and Attorney General of Ondo State v. Attorney General of Federation (2006) 6 SC (Pt. 1) 1 the appellants urge that the appeal be allowed.

The respondents insist that appellants purported dissolution of the sixteen democratically elected Local Government Administration (Amendment) Law that is inconsistent with Section 7(1) of the 1999 Constitution as amended and the lower court is right to have held the dissolution null and void.

The court in the face of the injury suffered by the respondents and the fact of the expiration of their tenure, lawfully invoked its powers under Section 15 of the Court of Appeal Act in addressing their pains. Relying on the decisions in Attorney General Abia State v. Attorney General of Federation (2006) 16 NWLR (pt. 1005) 265 at 281-281 and more particularly Attorney General Plateau State v. Goyol (2007) 16 NWLR (Pt. 1059) 94 and Eze v. Governor of Abia state (2010) 15 NWLR (Pt. 1216) 324, the respondents urge that having failed to establish the over-riding public interest that inform the dissolution of the councils, this court upholds the lower court's decision.

The primary issue in this appeal is whether in the exercise of the powers the appellants assert Section 23B of the Ekiti State Local Government Administration (Amendment) Law 2001 confers on them to dissolve the sixteen democratically elected councils the appellants have acted within the purview of the Constitution and the enabling law. The provisos to the section read:

“23B Governor’s power of dissolution

(1) Provided always that the Governor is by this law empowered to dissolve Local Government Councils for over-riding public interest subject to the two thirds majority approval of members of the House of Assembly.

(2) Such dissolution shall not exceed a period of twelve calendar months wherein the Governor shall have power to appoint a seven-member caretaker committee out of which a chairman shall be appointed pending the conduct of election to occupy the office of the Chairman.”

B Certainly, Section 4(6) of the 1999 Constitution as amended empowers the Ekiti State House of Assembly to enact the foregoing and reads:-

C *“4(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.”*

Section 7(1) of the 1999 Constitution as amended the respondents contend Section 23B of the Ekiti State Local Government Administration (Amendment) Law 2001 offends provides:-

D *“7(1) The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed, and accordingly the Government of every State shall subject to Section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.”*

E A community reading of the foregoing provisions makes one conclusion necessary: that the Ekiti State House of Assembly is empowered to make laws for the function of Local Government Councils in the State provided such laws do not temper with or abrogate the guaranteed existence of the democratically elected councils in the State.

H In the case at hand, I am of the firm and considered view that Section 23B of the Ekiti State Local Government Administration (Amendment) Law which empowers the Governor to dissolve a democratically elected council *“for over-riding public interest subject to the two-thirds majority approval of members of the House of Assembly”* only is not by its very tenor inconsistent with Section 7(1) of the 1999 Constitution that guarantees the existence of the councils. What is unconstitutional is the use to which the Governor invoked his powers as lawfully conferred by the legislation. A lawful resort to the Section presupposes the existence of facts from which the *“over-riding public interest”* behind the dissolution of the council(s) by the Governor may be readily inferred. In the instant case, the appellants have

failed to demonstrate these facts. Where, for example, the peaceful functioning of a Local Government Council, for whatever reason, has become impossible, the House of Assembly may be a resolution of two thirds majority approve the Governor's request to dissolve the council(s). It is unthinkable to imagine that such a situation would engulf the entire sixteen councils at the same time. Even if the sixteen Local Government Councils had been so afflicted, it remains the appellant's burden to so establish. Having failed to discharge this burden, the lower court is right not only in its decision that the trial court had wrongly declined jurisdiction but also in the decision, pursuant to Section 15 of the law establish by the court, that, on the merits, the Governor's dissolution of the sixteen democratically elected councils was unconstitutional and void. The Governor's exercise of his powers under the enabling law is arbitrary and unpardonable.

For the foregoing and the more detailed reasons advance in the lead judgment I also dismiss the unmeritorious appeal. I abide by the consequential orders made in the lead judgment.

OGUNBIYI JSC

I read in draft the lead judgment of my brother Nweze, JSC. I agree that the entire appeal is lacking in merit and I hereby dismiss same in like terms.

The appellants in this case initiated this action through originating summons and challenged the dissolution of the Local Government Councils of Ekiti State. The detailed facts of the case have been spelt out in the lead judgment of my brother and I will not repeat same.

One of the questions which is salient in this appeal is:-

(1) Whether the Governor can unilaterally dissolve an elected Local Government Council and replace them with appointed Care-taker Committes unknown to the Constitution in view of S.7(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)?

The controversy raised by the foregoing question is whether the lower court was not right in nullifying the provisions of section 23(B) (1) & (11) of the Ekiti State Local Government Administration (Amendment) Law 2001 which empowers the Governor of Ekiti State

to dissolve and remove democratically elected Local Government Council Chairman and replace them with appointed/unelected Caretaker Committees as being in breach of Section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended (Grounds 7 & 8).

B The reproduction of Section 7(1) of the Constitution states as follows:-

C *“The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed and accordingly the Government of every state shall subject to section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.”*

D The other two sections 5 and 23B (1) of the Ekiti State Local Government Administration Law 1999 and 2001 respectively are also reproduced hereunder:-
S.5

E *“The Chairman and other elected officers of the Local Government shall hold office for a period of three years.”*
S.23B(1)

F *“Provided always that the Governor is by this law empowered to dissolve Local Government council for over-riding public interests subject to the two third majority approval of members of the House of Assembly.”*

G (11) *“Such dissolution shall not exceed a period of twelve calendar months wherein the Governor shall have power to appoint a seven-member Caretaker Committee out of which a Chairman shall be appointed pending the conduct of election to occupy the office of the Chairman.”*

It is pertinent to restate that section 1(1) of the Constitution, emphasizes the supremacy of the Constitution wherein it states:-

H *“This Constitution is supreme and its provisions SHALL have binding force on all authorities and persons throughout the Federal Republic of Nigeria.”*

See the view expressed by his Lordship Aderemi, JSC in *Tanko V. State* (2009) 4 NWLR (Pt. 1131) 430 at 452. See also *A.G. Abia State v A.G. Fed.* (2006) 16 NWLR (Pt. 1005) 265 at 281-282 per

Niki Tobi, JSC (of blessed memory).

It is obvious from the Constitution that section 7(1) thereof guarantees democratically elected Local Government Councils throughout Nigeria by establishing their existence. To the contrary, section 23(b) of the Local Government Administration (Amendment) Law (supra) provides for an arbitrary removal/dissolution of the Elected Councils by the appellants and thereby replacing them with appointed Caretaker Committees. This is a very dangerous trend and which does not work well for an organized and objectives system of administration. It will not give room for continuity but rather open room from the will of man to rule as against the rule of law.

The Constitution has guaranteed a system of Local Government by democratically elected Local Government Council and it is enjoined on the Government of every state to ensure their existence. Ekiti State is not exempted.

The house of Assembly is to act within the ambits of the Constitution and where they enact laws outside and in conflict, same shall be a breach and declared a nullity. The emergency situation envisaged or the over-riding public interest was not stated by the appellants. Where the power is donated to an authority, it must stay within; it is unfortunate that the case at hand is an exhibition of breach of the Constitution which should not be allowed to stay as rightly held by the lower court. The court also rightly made consequential orders as to the salary and allowances of the respondents.

My brother Nweze, JSC had resolved all the issues adequately and I endorse his judgment as mind and also dismiss the appeal as lacking in merit. The judgment of the lower court is hereby affirmed by me also and I abide by all the orders made in the lead judgment.

SANUSI JSC

I read before now the judgment just delivered by my learned brother Chima Centus Nweze, JSC. His reasoning and conclusions are in tandem with mine. I adopt them as mine. I agree with him entirely, that this appeal lacks merit and is accordingly dismissed by me the. The judgment of the lower court is affirmed by me. I have nothing useful to add.