

**SUPREME COURT OF NIGERIA**  
FRIDAY 9TH DECEMBER, 2016. SC. 187/2016  
**CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD,**  
**C. B. OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC**

OKOCHA SAMUEL OSI ..... APPELLANT  
AND  
1. ACCORD PARTY  
2. NWAOBI EMEKA EMMANUEL  
3 PEOPLES DEMOCRATIC PARTY ..... RESPONDENTS  
4. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

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APPEALS - Brief - Preliminary objection - Arguing brief inside preliminary objection is an irregularity - Which did not cause miscarriage of justice to appellant (H1)

ELECTION PETITIONS - Legislative House election - Judgment - Decision of CA in the matter is final - And it is immaterial whether same is right or wrong - As it is a valid and subsisting decision (H2)

APPEALS - Jurisdiction - Election petition - By virtue of 1999 Constitution s. 246(3) - Decision of CA is final in State House of Assembly election - And SC has no jurisdiction to entertain appeal on the same matter (H3)

***FACTS***

This election petition matter arose from the decision of the House of Assembly Election Petition Tribunal sitting in Asaba Delta State on membership to the State House of Assembly for the Aniocha South Constituency. Appellant was declared the winner of the election to the House of Assembly for the aforementioned constituency. 2<sup>nd</sup> and 3<sup>rd</sup> respondents being dissatisfied filed a petition at the Tribunal challenging the election. The Tribunal dismissed the petition.

Hence, 2<sup>nd</sup> and 3<sup>rd</sup> respondents appealed to the Court of Appeal Benin Division seeking to set aside the decision of the Tribunal. The Court in its judgment upturned the decision of the Tribunal

and declared 2<sup>nd</sup> respondent as the winner of the election. Aggrieved, appellant appealed to the Supreme Court. 2<sup>nd</sup> and 3<sup>rd</sup> respondents brought notice of preliminary objection challenging the jurisdiction of the Court to entertain the appeal by virtue of section 246(3) of the Constitution of the Federal Republic of Nigeria 1999.

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

*APPEALS - Brief - Preliminary objection*

**1. In the first place, the learned counsel queried the approach adopted by the learned counsel of the 2nd and 3rd Respondent by arguing his brief inside a preliminary objection stating that by so doing, the respondents' counsel put the cart before the horse. He, for that reason urged this Court to discountenance the preliminary objection. With due reference to the learned counsel for the appellant, it is true that the procedure so adopted by the learned counsel for the 2nd and 3rd respondents was really irregular. However, the interest of justice would not be saved if the Preliminary Objection is discountenanced as it merely amounts to irregularity which in my view, did not cause any miscarriage of justice to the appellant, after all, the appellant's counsel did not show that any miscarriage of Justice was occasioned to him. Also by adopting such irregular procedure no rule of fair hearing was breached or infringed since when the counsel for the 2nd and 3rd Respondents was served him with the processes, the appellant's learned counsel had adequately replied to both the arguments of the respondents on both issue for determination and the preliminary objection. More importantly, the preliminary objection raised by the respondents relate to the issue of Jurisdiction of this Court to entertain and determine this appeal which in my humble view, is crucial to the appeal. Issue of jurisdiction is very fundamental and is life wire of every matter requiring adjudication which when raised, the Court MUST ensure that it deals with it one way or the other.**

**This is because any proceedings or appeal made or**

**heard without Jurisdiction, no matter how well conducted is invalid, null, void and of no substance as it touches the competence of the Court. I will therefore decline to discountenance the Preliminary Objection simply owing to the wrong procedure it was argued on the process it was argued or filed by the 2nd and 3rd respondents. I will therefore proceed now consider the preliminary objection on the merit. (p. 4776 C)**

*ELECTION PETITIONS - Legislative House election - Judgment*

**2. The appellant herein is approaching this Court to set aside the Judgment of the lower Court which as I said supra, was delivered in an election petition appeal. As I said above, the lower Court by its Judgment had given a decision which has flair of finality in that it had finally decided on the winner of the election and had returned the appellant Nwaobi Emeka Emmanuel of Peoples Democratic Party the 2nd Petitioner, as the WINNER of the said election because he scored the majority of Lawful votes cast at the election in his constituency.**

**Therefore, whether the decision of the lower Court was right or wrong is another matter but the important thing is that it is a valid and subsisting decision of the Court. I said “final” in the context that the right of the parties in that appeal had been finally decided as opposed to interlocutory decision.**

**Finally, in view of the fact that this appeal stems out from the decision of the election Tribunal which embarked on a journey to the Court of Appeal, to the lower Court which had determined it vide its Judgment delivered on 17th of December 2015 in appeal No CA/B/EPT/35/2015 which was also an election petition appeal, I hold the view that the decision of the lower Court is final and can not be appealed against in whatever guise. It is immaterial whether the Judgment of the lower Court was right or wrong. The short and long answer is that this Court lacks Jurisdiction to entertain, hear and determine the purported appeal. I therefore adjudge the appeal as incompetent. This Court Lacks Jurisdiction to adjudicate on**

**it. The preliminary objection filed and argued by the 2nd and 3rd respondents is sustained and allowed. The appeal being incompetent is hereby struck out.** (p. 4779 D/4784 C)

B *Jurisdiction - Election petition*

**3. Coming back again, to the earlier question posed by me “Does this Court have Jurisdiction to accede to the appellant’s request in the view of the fact that the substance of the appeal is an election conducted by the 4th respondent into Delta State House of Assembly or Aniocha North Constituency of Delta State?**

A cursory look at the above quoted constitutional provisions shows that the decisions of Court of Appeal in respect of appeals from the National and State House of Assembly Election petition Tribunal shall be final. There is no doubt that the application the appellant filed before the lower Court as stems from the decision the election petition which went on appeal to the lower Court. The lower Court determined that appeal and gave its final judgment defaming finally the right of the parties on that appeal. By the provisions of Section 246 (3) of the 1999 Constitution as amended that decision has flair of finality. The decision of the Court below has therefore no stair case for climbing to this Court for rededication in whatever geese because this Court is bereft of jurisdiction to hear any such appeal from the lower Court on that subject matter. The Court of Appeal is a Court of final resort and it had already heard and determined the matter hence the matter was conclusively spent by virtue of the provisions of Section 246(3) of the 1999 Constitution as amended. (p. 4781 C/4782 B)

H **NOTABLE POINT OF INTEREST**  
**SANUSI JSC**

**1. Jurisdiction – Fundamental nature of**

My noble Lords, permit me to, at this stage, emphasize the importance of jurisdiction of Court in any matter/appeal. Jurisdiction is said

to be a threshold issue which is of paramount importance and therefore when raised at any stage, the Court before which it was raised MUST mandatorily look at it at the earliest stage or opportunity and determine whether it has jurisdiction or not. This is moreso because any proceeding conducted without jurisdiction, no matter how well or admirably conducted, is a nullity. B

Before a Court can assume Jurisdiction on a matter or appeal it must be satisfied that the following conditions are met or satisfied, namely:

(i) That it is properly constituted regarding the number and qualification of its member as the case may be. C

(ii) That the subject matter of the action or appeal is within its Jurisdiction as governed or donated to it by Law.

(iii) That the action or appeal is initiated by due process of Law; and, D

(iv) Any condition precedent to the exercise of its Jurisdiction must be fulfilled or met.

It needs to be stressed here however, that Jurisdiction is generally a creature of Statutes, Constitution or otherwise jurisdiction to conduct cases/appeals are donated or conferred by Statutes or the Constitution. Failure to comply with any statutory or constitution provisions or the requirement prescribed by the relevant law order which an appeal may be competent and properly brought before the Court, will deprive such appellate Court of Jurisdiction to adjudicate on the appeal. F

It goes without saying therefore, that no Court has the power to confer or donate Jurisdiction to itself. It must act within the pre-view or confines of the law. Similarly, jurisdiction can not be conferred on the Court by the parties or by consent of the parties. Jurisdiction of the Court is conferred, and can not be circumvented. It is always governed by the Constitution or Statute creating it. (p. 4779 H)

## **REPRESENTATION**

I. Ezechukwu, SAN with G. C. Igbokwe, A. T. Udechukwu, I. Eze and I. Ezechukwu, Jnr., for the Appellant  
S. I. Dumbili, for 1st Respondent

E. R. Emukpoero, for 2nd & 3rd Respondents  
A. A. Umar with A. Ismail, for 4th Respondent

**CASES REFERRED TO**

- Opara v. Amadi (2013) 12 NWLR (pt. 1369) 512
- B Madumere v. Okwara (2013) 12 NWLR (pt 1368) 303
- Ugwa v. Lekwawa (2010) 19 NWLR (pt. 1226) 26
- Esewe v. Necsongbe (1988) 5 (pt. 93) 134
- Awuse v. Odili (2003) 18 NWLR (pt. 857) 116
- C Dagana v. Usman (2013) 6 NWLR (pt. 1349) 50
- PDP v. Onwe (2011) 4 NWLR (pt. 1236) 165
- Udenwa v. Uzodima (2012) 12 SC (MVII) 1
- Adegoke Motors Ltd. v. Adesanya (1989) NWLR (pt. 109) 250
- Salik v. Idris (2014) SC (pt. II) 45
- D Emordi v. Igbeke (2011) 4 SC (pt. II) 107
- Eluabe v. Omokri (2004) 11-12 SC 60
- NURTW v. RTEAN (2012) 1 SC (pt. I) 119
- Tiza v. Begha (2006) 6 SC (pt. 11) 1
- Galadima v. Tambai (2000) 6 SC (pt. 1) 196
- E

**STATUTES REFERRED TO**

- Constitution of Federal Republic of Nigeria 1999, ss. 233, 246(3), 285(7)
- F Electoral Act 2010 (as amended), s. 85(1)

**LEAD JUDGMENT BY SANUSI JSC**

- This appeal emanated from the Judgment of the Court of Appeal (now the lower Court), Benin Division Delivered on 17th
- G December, 2015 which overturned the Judgment of the National Assembly and State House of Assembly Election Petition Tribunal (“the Tribunal” for short) and upheld the election of the appellant.

- Being dissatisfied with the Judgment of the lower Court delivered on 17th December, 2015 the 1st respondent /Cross appellant
- H filed notice of cross appeal on 7th January, 2016, upon being served with the Notice of appeal, the Appellant/1st Respondent notice of Cross appeal.

Sequel to that the 2nd and 3rd Respondents/Respondents

filed Notice of Preliminary Objection dated 16/9/2016, challenging the competence of the Cross appeal. Now since the preliminary Objection poses a challenge on the Jurisdiction of this Court to entertain this appeal in the first place, I think it is only fair to consider the Preliminary Objection first, before I later consider the main appeal if the need arises. The Notice of Preliminary Objection filed by the 2nd and 3rd respondents in this appeal is dated 16/9/2015 and filed on 20/9/2016 The six grounds upon which the Objection was anchored are as follows;-

1. That the appellate Jurisdiction of the Supreme Court does not extend to the hearing and determination of appeals from the decision of the Court of Appeal in respect of election to membership of a State House of Assembly.

2. By virtue of Section 246(3) of the 1999 Constitution, as amended, the decision of the Court of Appeal in respect of appeals arising from the National and State House of Assembly Election petition Tribunal is final.

3. The subject matter of this appeal is the Judgment of the Court of Appeal delivered on 17th day of December 2015 in respect of the election to the membership of the Delta State House of Assembly for Anocha North Constituency which took place on 11th April 2015.

4. By virtue of the provisions of the 1999 Constitution (as amended), the aforesaid judgment of the Court of Appeal is final and the appellant and Cross appellant are not vested with any right of appeal against that Judgment to this Court.

5. By virtue of Section 285 (7) of the 1999 Constitution (as amended), the time prescribed for the hearing and determination of any appeal arising from any (sic) decision of the Tribunal has since elapsed and the issues on the appellants' appeal have become hypothetically academic and statute barred, and

6. That this present appeal constituted abuse of Court process as this Court in numerous decisions has declared and affirmed the sanctity and infallibility of the decisions of the Court of Appeal on appeals from the National and State House of Assembly Election Tribunal.

The learned counsel for the 2nd and 3rd Respondents ob-

jection annexed a Written Address dated 16th September, 2016 to his notice of Preliminary Objection which he also adopted at the hearing of the appeal on 29/9/2016.

The learned counsel for the 2nd and 3rd Respondents now  
 B Objectionors raised a lone issue for the determination of this Preliminary Objection which is simple whether the appellant's appeal is not incompetent, an abuse of judicial process and vests no jurisdiction in the Supreme Court.

Advancing arguments on the said issue, the learned counsel  
 C submitted that this appeal stems from the Judgment of the Court below on election membership to the Delta State House of Assembly for Anocha North State constituency held on 11/4/2015. At the said election, the appellant and 1<sup>st</sup> respondent were declared winners. The 2nd and 3rd respondents being disenchanted with the declared,  
 D filed an election petition before the Tribunal challenging the said declaration and return of the appellant and 1st respondent and the Tribunal dismissed their petition hence, they appealed to the lower Court vide appeal No CA/B/EPT/335/2015 which upturned the decision of the Tribunal by declaring that the declaration and return of the Appellant and 1st Respondent was invalid and null and void and instead it declared the 2nd respondent winner of the election and as member of the Delta State Constituency.  
 E

The lower Court Judgment in question was delivered on 17/  
 F 12/2015. The appellant herein appealed to this Court filing a Notice of appeal on 7th January, 2016 seeking as one of his reliefs, as follows;-

*"An order and the Court of Appeal judgment of the 17th day of December and in place (sic) an order dismissing the 2nd and  
 G 3rd Respondents appeal."*

The learned counsel For 2nd and 3rd Respondents highlighted that the Judgment of the Court below which the appellant approached this Court to set aside, was the judgment which declared the 2nd respondent as winner of the 11th April, 2015 election and declared and returned him the winner of the election held on 11th April, 2015.  
 H

Learned counsel for the 2nd and 3rd Respondents submitted that this appeal lacks right of appeal to this Court against the



Judgment of the lower Court in State House of Assembly election petition and that this Court lacks Jurisdiction to entertain this appeal by virtue of the provisions of Section 246 (3) of the 1999 Constitution, as amended.

He further argued that the Court of Appeal is the final Court to entertain and determine appeals from election petition Tribunal on National and State Assembly Election petitions. He referred to the decision of this Court in *OPARA v. AMADI* (2013) 12 NWLR (pt.1369) 512 at 532; *MADUMERE v. OKWARA* (2013) 12 NWLR {pt 1368} 303 at 334/335; *UGWA v. LEKWAWA* (2010) 19 NWLR (pt 1226) 26 at 38/39; *ADOSILE SELEDE ESEWE v. CHIEF NECSONGBE & Ors* (1988) 5 (pt 93) 134 at 136; *AWUSE v. ODILI* (2003) 18 NWLR(pt 857)116 at 159; *DAGANA v. USMAN* (2013) 6 NWLR (PT 1349) 50 at 107. The learned counsel contends that the Judgment of the Court of Appeal is final and can not be appealed against whether it was erroneous in Law or imperfect, right or wrong and it can not be taken to the Supreme Court by way of appeal or review. He added that the matter ends at the Court of Appeal as no right of appeal exists. see the case of *PDP v. ONWE* (2011) 4 NWLR (pt 1236) 165 *DANGANA v. USMAN* (Supra); *UDENWA v. UZODIMA* (2012) 12 SC (M VII) 1; *ADEGOKE MOTOES LTD v. ADESANYA* (1989) NWLR (pt 109) 250.; *SALIK v. IDRIS & ORS* (2014) SC (pt II) 45 at 90; *EMORDI v. IGBEKE* (2011) 4SC (pt II) 107 at 115.

On the second Leg of the Preliminary Objection, the learned counsel for the 2nd and 3rd respondents submitted that by virtue of the provisions of Section 285(7) of the 1999 Constitution as amended, the time provided for the hearing and determination of any appeal arising from any decision of the Tribunal had since elapsed and the issues raised in the appellant's and 1st respondents' appeal had become academic, by effluxion of time and is statute barred. The learned counsel contended that a period of 60 days had been prescribed by the said provisions for the hearing and determination of appeal on State or National Assembly Election from the date the Judgment of the Tribunal was delivered. According to the learned counsel, no appeal to any Court whatsoever exists after the expiry of the 60 days after the delivery of Judgment of the Election Tribunal and in this instant case, the Tribunal delivered its Judgment on 24th of October,

2015 and the Notice of Appeal to this Court was filed on 7th of January, 2016 which is more than sixty days. The learned counsel for the 2nd and 3rd respondents finally urged this Court to allow his Preliminary Objection and to strike out the appellant's appeal and 1st respondent's cross appeal for want of Jurisdiction

B Upon being served with the Preliminary Objection filed by the 2nd and 3rd Respondents, the appellant on 27/9/2016 filed "Appellant's Reply to the Preliminary objection filed by the 2nd and 3rd Respondents: The said brief was adopted at the hearing of the appeal on 29/9/2016. In the said brief, the learned counsel simply raised the under mentioned issues for determination, thus:

C *"From the undisputed facts and circumstances of the appeal, whether this preliminary objection has merit"*

***In the first place, the learned counsel queried the approach adopted by the learned counsel of the 2nd and 3rd Respondent by arguing his brief inside a preliminary objection stating that by so doing, the respondents' counsel put the cart before the horse. He, for that reason urged this Court to dis-***  
D ***countenance the preliminary objection.*** He relied on the case of  
E ***NSIRIM v. AMADI (2016) 4 WRN 68. With due reference to the learned counsel for the appellant, it is true that the procedure so adopted by the learned counsel for the 2nd and 3rd respondents was really irregular. However, the interest of justice would not be saved if the Preliminary Objection is dis-***  
F ***countenanced as it merely amounts to irregularity which in my view, did not cause any miscarriage of justice to the appel-***  
***lant, after all, the appellant's counsel did not show that any miscarriage of Justice was occasioned to him. Also by adopt-***  
G ***ing such irregular procedure no rule of fair hearing was breached or infringed since when the counsel for the 2nd and 3rd Respondents was served him with the processes, the appellant's learned counsel had adequately replied to both the arguments of the respondents on both issue for determi-***  
H ***nation and the preliminary objection. More importantly, the preliminary objection raised by the respondents relate to the issue of Jurisdiction of this Court to entertain and determine this appeal which in my humble view, is crucial to the appeal.***

***Issue of jurisdiction is very fundamental and is life wire of every matter requiring adjudication which when raised, the Court MUST ensure that it deals with it one way or the other.***

***This is because any proceedings or appeal made or heard without Jurisdiction, no matter how well conducted is invalid, null, void and of no substance as it touches the competence of the Court. I will therefore decline to discountenance the Preliminary Objection simply owing to the wrong procedure it was argued on the process it was argued or filed by the 2nd and 3rd respondents. I will therefore proceed now consider the preliminary objection on the merit.***

The learned counsel of Appellant submitted that the sole reason upon which the Court below decided the appeal before it, was based on the provision of Section 85(1) of the Electoral Act 2010, as amended which prescribed 21 days Notice to be given to INEC before conducting primary election to nominate a candidate for election. He argued that such issue is a pre-election matter on nomination of candidates for election through internal machination of a political party which is also an internal affairs of a political party. See SHINKARI v. YARI (2016) 7 NWLR (pt 15) 304 at 369/370; Lado v. CPC (2011) 18 NWLR (pt 1379) 689; ONUOHA v. OKAFOR (1983) 2SC 244; ODEDO v. INEC (2008) 17 NWLR (pt 1117) 854. He emphasized that issue pertaining to pre-election matters and that on nomination are pre-election matters. See PDP v. ONWE (supra); UCHE v. ONWE (2011) 4 NWLR (pt 1237) 166. On the above submission, the learned counsel submitted that the provisions of Section 246 do not apply to this instant appeal and that the Court below is therefore not the trial Court as provided by Section 246 (3) of the 1999 Constitution as amended. He urged as to so hold.

With regard to the provisions of Section 285 (7) of the same Constitution, the learned counsel stated that the 60 days time frame provided in Section 285 (7) of the 1999 Constitution as amended, does not apply to the instant in appeal which the subject matter relates to pre-election.

In a further submission, the learned appellant counsel argued that this Court by the provisions of Section 233 of the 1999 Constitution as amended, has jurisdiction to hear and determine this

appeal which is a challenge to the competence or Jurisdiction of the Court of Appeal to delve into pre-election matter he contended that since the provisions of Section 385 (7) of the Constitution does not apply to the present appeal, then this Court should of necessity fall back to Section 27 (3) of the Supreme Court Act 2004 which provides three months period within which to file an appeal without any time constraint for the disposal of an appeal since this appeal was filed on 7/1/2016 and is against a Judgment delivered on 24/10/2015 as it was filed timeously. In further submission, the learned appellant's counsel argued that an election tribunal or of Court of Appeal hearing appeal from same has no Jurisdiction to inquire into the primary elections of a political party. See SHINKAFI v. YARI (supra); TARZOOR v. ORTOM (2016) 3 WRN 50; ALAFIASON v. ISHAKU (2016) 9 WRN.

It can be gleaned from the record, more particularly from Notice of Appeal, which is the relief sought by the appellant read, thus:

*“An order setting aside the Court of Appeal Judgment delivered on 17th day of December and in its Place an order dismissing the 2nd and 3rd Respondents’ appeal.”*

The question that readily comes to ones mind is “what is the nature of the Judgment that is sought to be set aside by this Court and what does it entail or “What is its subject matter or antecedent. An answer to this question can be seen in the Judgment of the lower Court and I shall below quote an excerpt from that judgment which in fact, is the one sought to be set aside by this Court.

At pages 1673 to 1674 of the Record, the lower Court had this to say:-

(1) The return of the 1st Respondent Okocha Samuel Osi of Accord; the 2nd Respondent as winner of the election to the Membership of the State House of Assembly for Anocha North, State Constituency, Delta State was invalid by reason of non compliance with the provisions of Section 85(1) of the Electoral Act 2010 (as amended)

(2) The 1st appellant Nwaobi Emeka Emmanuel of the Peoples Democratic Party, the 2nd Petitioner, who scored the majority of Lawful votes cast at the election to the membership of the State

House of Assembly for Anocha North State Constituency, Delta State on 11th of April 2015 ought to have been and is hereby returned elected as the member representing Anocha North constituency of the Delta State House of Assembly”

From the contents of the above quoted part of the Judgment of the lower Court, are four issues brought to fore, namely:- B

(a) That the lower Court sat on appeal against the Judgment of an election Petition Tribunal.

(b) That the lower Court was approached by the appellant in an election petition appeal which he lost at the trial Tribunal, C

(c) That the lower Court had delivered its considered judgment/decision in the appeal, upturning the decision of the trial Tribunal.

(d) That the antecedents of the appeal to the lower Court and indeed by extension, to this Court is an appeal having its origin from an election petition decision delivered by an election petition Tribunal. D

***The appellant herein is approaching this Court to set aside the Judgment of the lower Court which as I said supra, was delivered in an election petition appeal. As I said above, the lower Court by its Judgment had given a decision which has flair of finality in that it had finally decided on the winner of the election and had returned the appellant Nwaobi Emeka Emmanuel of Peoples Democratic Party the 2nd Petitioner, as the WINNER of the said election because he scored the majority of Lawful votes cast at the election in his constituency.*** E F

***Therefore, whether the decision of the lower Court was right or wrong is another matter but the important thing is that it is a valid and subsisting decision of the Court. I said “final” in the context that the right of the parties in that appeal had been finally decided as opposed to interlocutory decision.*** G

Now the next issue “Does this Court have the power to set aside that decision in the simonizing circumstance? This is where the issue of jurisdiction comes to play, which is very fundamental. H

My noble Lords, permit me to, at this stage, emphasize the

importance of jurisdiction of Court in any matter/appeal. Jurisdiction is said to be a threshold issue which is of paramount importance and therefore when raised at any stage, the Court before which it was raised MUST mandatorily look at it at the earliest stage or opportunity and determine whether it has jurisdiction or not. This is moreso  
 B because any proceeding conducted without jurisdiction, no matter how well or admirably conducted, is a nullity. See *Eluabe v. Omokri* (2004) 11-12 SC 60.

Before a Court can assume Jurisdiction on a matter or appeal it must be satisfied that the following conditions are met or satisfied, namely:  
 C

- (i) That it is properly constituted regarding the number and qualification of its member as the case may be.
- (ii) That the subject matter of the action or appeal is within its  
 D Jurisdiction as governed or donated to it by Law.
- (iii) That the action or appeal is initiated by due process of Law; and,

(iv) Any condition precedent to the exercise of its Jurisdiction must be fulfilled or met. See *Madukolu v. Nkemdilim* (ALL NLR 687);  
 E *Dagana Anor v. Usman & 4 Ors* (2012) 2 SC (pt III) NURTW & Anor v. RTEAN & Ors (2012) 1 SC (pt I) 119.

It needs to be stressed here however, that Jurisdiction is generally a creature of Statutes, Constitution or otherwise jurisdiction to conduct cases/appeals are donated or conferred by Statutes or the  
 F Constitution. Failure to comply with any statutory or constitution provisions or the requirement prescribed by the relevant law order which an appeal may be competent and properly brought before the Court, will deprive such appellate Court of Jurisdiction to adjudicate on the  
 G appeal. See *AG Lagos State v. AG of Federation* (2014) 9 NWLR (pt 1412) 217-254; *Tiza v. Begha* (2006) 6 SC (pt11) 1 page 1.

It goes without saying therefore, that no Court has the power to confer or donate Jurisdiction to itself. It must act within the pre-view or confines of the law. Similarly, jurisdiction can not be con-  
 H ferred on the Court by the parties or by consent of the parties. Jurisdiction of the Court is conferred, and can not be circumvented. It is always governed by the Constitution or Statute creating it. See *Galadima v. Tambai* (2000) 6 SC (pt 1) 196, (2000) 11 NWLR (pt

677) 1; African Newspapers of Nigeria v. Federal Republic of Nigeria (1985) 2 NWLR (pt 6) 137.

As I posited above, with apology for the repetition, the subject matter of the judgment sought by the appellant's counsel to be set aside by this Court emanated from the decision of National and State House of Assembly Election Petition Tribunal of Delta State which went on appeal to the lower Court. The latter Court upon hearing the appeal determined it and gave its final judgment. By the said judgment and from the excerpt of same which I reproduced supra, the Court of Appeal gave its final decision. The appellant is now approaching this Court to set it aside for reasons best known to him.

***Coming back again, to the earlier question posed by me “Does this Court have Jurisdiction to accede to the appellant’s request in the view of the fact that the substance of the appeal is an election conducted by the 4th respondent into Delta State House of Assembly or Aniocha North Constituency of Delta State?”***

Now let us see below whether this Court has that Jurisdiction to grant the relief sought by the appellant herein, Section 246 of the 1999 Constitution (as amended) provides thus:-

*“Section 246 reads:*

*(1) An appeal to the Court of Appeal shall lie as of right from-*

*(a) decisions of Code of Conduct Tribunals established in the Fifth Schedule to this Constitution;*

*(b) decisions of the National and State House of Assembly Election Tribunals; and*

*(c) decisions of the Governorship Election tribunals, on any question as to whether*

*(i) any person has been validly elected as a member of the National Assembly of a State under this Constitution;*

*(ii) any person has been validly elected to the office of a Governor or Deputy Governor; or*

*(iii) the term of office of any person has ceased or the seat of any such person has become vacant,*

*(2) The National Assembly may confer Jurisdiction upon the*

*Court of Appeal to hear and determine appeals from any decision of any other Court of law or Tribunal established by the National Assembly.*

(3) *The decisions of the Court of Appeal in respect of appeals arising from the National and State House of Assembly election petitions shall be final.*”

**A cursory look at the above quoted constitutional provisions shows that the decisions of Court of Appeal in respect of appeals from the National and State House of Assembly Election petition Tribunal shall be final. There is no doubt that the application the appellant filed before the lower Court as stems from the decision the election petition which went on appeal to the lower Court. The lower Court determined that appeal and gave its final judgment defaming finally the right of the parties on that appeal. By the provisions of Section 246 (3) of the 1999 Constitution as amended that decision has flair of finality. The decision of the Court below has therefore no stair case for climbing to this Court for rededication in whatever geese because this Court is bereft of jurisdiction to hear any such appeal from the lower Court on that subject matter. The Court of Appeal is a Court of final resort and it had already heard and determined the matter hence the matter was conclusively spent by virtue of the provisions of Section 246(3) of the 1999 Constitution as amended.**

This Court was opportune to expatiate on a provision similar to Section 246(3) of the 1999 Constitution on the case of REV. HYDE ONWUAGULUCHI v. MR BEN COWNS NDU (2001)7 NWLR(pt. 712)309 where this Court states thus:-

“Where an appeal is actually in respect of National Assembly election or other relevant election as this case, the State House of Assembly Election whatever errors of procedural nature or of procedural vice as to jurisdiction or competency can not be corrected by this Court they can only be corrected by the Court of Appeal itself or since it has no appellate or supervisory Jurisdiction over the Court of Appeal in such circumstances.

*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 terms made the Court of Appeal the final Court. It follows that an appeal in respect of a decision by the Court of Appeal can be taken on appeal to the Supreme Court, but is final for all purposes”*

This Court in the same case also stated as below per Uwais JSC: B

*“It must be emphasized that archfinality applies to every interlocutory decision or decision taken in respect of a matter or on issues concerning or arising from the decision reached in the appeal. No appeal shall lie from it to any other Court. The word ‘trial’ 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.”* C

I must add here that the wordings of the provisions of Section 246 (3) of the 1999 Constitution as amended are plain, clear and unambiguous which also must be given their natural and ordinary meaning. They allow no room of manipulation or circumvention in keeping with the tenets of interpretation of Statutes. The only valid and applicable interpretation to be given to the constitutional provisions is that the Court of Appeal is final bus stop or destination in election matters relating to National or State Assembly election like in this instant appeal. E

This Court in multiplicity of its decided authorities consistently interpreted the provisions of Section 246 (3) of the 1999 Constitution as amended to mean that the Court of Appeal is the final Court to hear and determine appeals in election petitions for membership of National or State Assembly from the relevant Tribunal. For instance, this Court in case of Salim v. Idris (2014) 19 NWLR (pt. 1429) 36; Jegede v. Akande (2012) 16 NWLR (pt. 1482) 43 at 72, Okadigbo v. Emeka & Ors (Supra) had emphasized that this Court lacks jurisdiction to entertain, hear or determine such appeals, see also Opara v. Awadi (2013) 12 NWLR (pt. 1369) 572 at 532. Madumere v. Okwara (2013) 12 NWLR (pt. 1368) 303 at 334/335; Legwa v. F

Lekwawa (2010) 19 NWLR (pt. 1226) 26 at 38/39; Apostle Selede v. Chief Nelson Gbe & Ors (1988) 5 NWLR (pt. 93) 134 at 136; Emordi v. Igbeke (2011) 4 sc (pt. II) 107. Also of recent, in Dangana v. Usman (supra) this Court also had this to say:-

“So long the starting point of the litigation is the Election Tribunal then at the Court of Appeal, once the subject matter is National Assembly or State Assembly seat. It terminates there, a purported appeal can not therefore find its way to this Court because of a feature or anything resembling issues that could be dealt with at the State High Court or Federal High Court could not give it another passport or Visa to this Court.”

**Finally, in view of the fact that this appeal stems out from the decision of the election Tribunal which embarked on a journey to the Court of Appeal, to the lower Court which had determined it vide its Judgment delivered on 17th of December 2015 in appeal No CA/B/EPT/35/2015 which was also an election petition appeal, I hold the view that the decision of the lower Court is final and can not be appealed against in whatever guise. It is immaterial whether the Judgment of the lower Court was right or wrong. The short and long answer is that this Court lacks Jurisdiction to entertain, hear and determine the purported appeal. I therefore adjudge the appeal as incompetent. This Court Lacks Jurisdiction to adjudicate on it. The preliminary objection filed and argued by the 2nd and 3rd respondents is sustained and allowed. The appeal being incompetent is hereby struck out.** I make no order as to costs.

## G RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment of my learned brother, Sanusi, JSC, and I agree with his lordship that this Court lacks jurisdiction to hear appeals from decisions of the Court of Appeal on National and State Houses of Assembly election petitions.

Section 246(3) of the Constitution states that:

*“246(3)The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly elec-*

*tion petitions shall be final.*”See *Madumere & 2 Ors v. Okwara* (2013) 6-7 SC (pt.2) p.95; *Salik v. Idris* (2014) 5SC (Pt.2) p.45.

The appellant, the 1st respondent’s candidate, and the 2nd respondent, the 3rd respondent’s candidate contested the elections held on 11/3/15 for the Aniocha North Constituency in the Delta State House of Assembly. The appellant won that election and was so declared by the 4th respondent. The 2nd respondent quickly filed a petition at the National and State Houses of Assembly Election Tribunal challenging the appellant’s election. The 2nd respondent lost. His petition was dismissed. B

Dissatisfied with the judgment of the Tribunal the 2nd respondent and his Party, the 3rd Respondent filed an appeal to the Court of Appeal. The Court of Appeal allowed the appeal in its judgment delivered on 17/12/15. A Notice of Appeal and Notice of Cross Appeal were filed in this Court. Thereafter a Notice of Preliminary Objection was filed by the 2nd and 3rd respondent. The ground being that this Court has no jurisdiction to hear the appeals. C

All the appeals filed after the final judgment of the Court of Appeal delivered on 17/12/15 arise out of or concern the Court of Appeal decision. All such appeals are worthless since this Court has no jurisdiction to entertain them in view of Section 246 (3) of the Constitution. E

The judgment of the Court of Appeal delivered on 17/12/15 is a final decision on the Aniocha North Constituency seat in the Delta State House of Assembly. Section 246 (3) of the Constitution fixes a firm seal of finality on decisions of the Court of Appeal on State House of Assembly election petitions. In the circumstances, this Court has no jurisdiction to hear any appeal on such matter. F

For this and the more detailed reasoning in leading judgment, the Appeals are struck out for want of jurisdiction. G

### **MUHAMMAD JSC**

I read in draft the lead judgment of my learned brother Sanusi JSC just delivered. I entirely agree with the reasoning and conclusion therein that the appeal is incompetent and stands discountenanced. H

The purported appeal certainly arises from the judgment of

the Court of Appeal in respect of appeals from the National and State Houses of Assembly Election. By virtue of Section 246(3) of the 1999 Constitution (as amended) the Court of Appeal's decision in such matters are final. See *Emordi v. Igbeke* (2011) 4 SC (Pt. 11) 107 and *Madumere v. Okwara* (2013) 6-7 SC (Pt 2) 95.

B This Court lacks the jurisdiction to hear and determine the appeal. Same is accordingly struck out.

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### **OGUNBIYI JSC**

C I read in draft the lead judgment just delivered by my learned brother Amiru Sanusi JSC. I agree that the appeal herein is incompetent and ought to be struck out.

D For all intents and purposes, the Preliminary Objection raised by the 2nd and 3rd respondents is apt and rightly sustained. The Law is very clear as provided by Sections 246(3) of the Constitution 1999 that the nature of the subject matter at hand has its final determination at the Court of Appeal. The Section states as follows:-

E *“246(3) The decision of the Court of Appeal in respect of appeal arising from the National and State House of Assembly election petitions shall be final.”*

F It is pertinent to re-echo also that this appeal originates from the judgment of the lower Court on the election into the membership of the Delta State House of Assembly for Aniocha North State Constituency which held on the 11th of April, 2015. The petition in respect of same was filed at the National and State House of Assembly Election Petition Tribunal sitting at Asaba and wherein the Petitioners challenged the return of the appellant and the 1st respondent G by the 4th respondent. The Tribunal is a creation of the Statutes as provided by Section 285(1) of the Constitution 1999.

H Therefore, the appellant by filing this appeal before this Court has acted outside the provisions of the Constitution. A breach of the Constitution is so fundamental and which cannot be remedied. It is an abuse of process.

My brother Sanusi, JSC has dealt with the objection raised comprehensively and I adopt his argument as mine.

In the same vein as my learned brother in his lead judgment,

I will also struck out this appeal as lacking in merit.

I abide by the order made as to costs.

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**NWEZE JSC**

My Lord, Sanusi, JSC obliged me with the draft of the leading judgment delivered now. I agree with His Lordship that, being meritorious, the second and third respondent's preliminary objection on the issue of jurisdiction ought to be sustained. B

As demonstrated in the leading judgment, Section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) confers finality on the judgment 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 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). C

It is for these, and the more detailed reasons in the leading judgment that I too, shall enter an order sustaining the Preliminary Objection of the second and third respondents in this appeal. Accordingly, I hold that being wholly incompetent, this appeal ought to, and is hereby, struck out. E

Appeal struck out. F

G

H