

SUPREME COURT OF NIGERIA
FRIDAY 18TH NOVEMBER, 2016. SC. 845/2016
CORAM:- I. T. MUHAMMAD, O. ARIWOOLA,
C. B. OGUNBIYI, K. B. AKA'AH, K. M. O. KEKERE-EKUN,
C. C. NWEZE, A. SANUSI, JJSC

PEOPLE DEMOCRATIC PARTY (PDP) APPELLANT
AND

1. CHIEF TIMIPRE MARTIN SYLVA
2. ALL PROGRESSIVES CONGRESS (APC) RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
4. HON. HENRY SERIAKE DICKSON

APPEALS - Right of - Appropriate party - Right of appeal as enshrined in the Constitution - Is exercisable only by party aggrieved with judgment of Court (H1)

APPEALS - Basis - Appeal being a challenge against decision of Court - Is never predicated on what Court did not decide in its judgment (H2)

APPEALS - Concept of - Appeal is continuation of original case commenced at trial Court - Hence it cannot be a new cause of action (H3)

APPEALS - Record of - Respondent's contention that record of appeal is incomplete - For not having appellant's reply to the petition is a misconception - As the said reply is part of the record (H4)

FACTS

Before the Bayelsa State Governorship Election Petition Tribunal sitting in Yenogoa, petitioners/1st and 2nd respondents brought this action, challenging the election and declaration of 4th respondent as the Governor of Bayelsa State and the cancellation of the elections of the 6th of December, 2015 in Southern Ijaw Local Government Area. Appellant who was 3rd respondent in the petition, had in

its reply to the petition prayed the Tribunal to dismiss the petition. At the end of the hearing in the matter, the petition was dismissed and the return of 4th respondent was upheld. Notwithstanding the fact that the election of its candidate i.e. (4th respondent) was upheld and no order whatsoever was made against it, appellant was dissatisfied with part of the Tribunal's decision and filed a Notice of Appeal before the Abuja Division of the Court of Appeal.

Appellant complained that the Tribunal failed to pronounce on and resolve what it considered to be a certain fundamental and jurisdictional issues which it (appellant) raised in respect of some of 1st and 2nd respondents' reliefs and pleadings and also that it (Tribunal) failed to pronounce on the admissibility of one of the exhibits tendered, Exhibit P42B (a video recording) tendered by 1st and 2nd respondents, which in its (appellant's) view was inadmissible. In reaction, 1st and 2nd respondents filed a preliminary objection challenging the competence of the appeal on the ground, inter alia, that appellant could not appeal against a judgment that was in its favour. The Court agreed with them and held that appellant did not have a right of appeal against a decision which does not wrongly deprive him of an entitlement. The Court therefore upheld the preliminary objection and held that the appeal was incompetent and liable to be struck out. However, not being the final court on the issue, it proceeded to consider the merits of the appeal and dismissed same on the merit. Still aggrieved, appellant appealed to the Supreme Court.

HELD (Unanimously striking out the appeal per

ARIWOOLA JSC)

APPEALS - Right of - Appropriate party

1. There is no doubt that any aggrieved party can appeal to this court against the decision of the Court of Appeal. That is a right guaranteed by the Constitution. Indeed, any right of appeal to the Supreme Court from the decision of the court below conferred by the Constitution shall be exercisable in the case of civil proceedings at the instance of a party thereto. See Section 233 (5) of the 1999 Constitution of the Federal Republic of Nigeria as amended. However, that provision has

been held to be understood to apply to only an aggrieved party or person. In other words, because an appeal is ordinarily lodged against a grievance arising from a judgment, only a party who is aggrieved can appeal against it.

Generally, to be aggrieved, a person must have some legal rights that are adversely affected, or having been harmed by an infringement.

There is no doubt that the appellant is not quarrelling with the dismissal of the Petition of the 1st and 2nd respondents. That was exactly what it had prayed for, but may be the appellant may have wanted more than merely dismissal of the petition. In other words, I cannot see how the order of dismissal of the petition and affirmation of same by the lower court has adversely affected the appellant to grant it right of appeal. I agree with the lower court, that there was no order made against the appellant by the trial tribunal which, in the face of the ultimate dismissal of all the reliefs sought by the petitioners, is appealable in the decision of the lower court. In my view this appeal leaves much to be desired.

In this appeal the case commenced by the respondents had been dismissed with all the reliefs sought. In which case there was nothing left with the petitioners whose petition was totally dismissed for the appellant to have been adversely affected. This point is resolved in favour of the appellant rendering the appeal incompetent. (pp. 4803 F/4804 A/H)

APPEALS - Basis

2. Now, looking at the grounds of objection raised by the respondents, to the effect that the appellant did not appeal against a crucial part of the decision of the lower court, I am unable to see how the appellant can competently appeal against a decision in its favour. This, to say the least, actually renders the said appeal incompetent. An appeal is said to be a challenge against the decision or judgment of a trial court but it is never predicated on what a court did not decide in its judgment or ruling. (p. 4804 E)

APPEALS - Concept of

3. It is trite law that an appeal is a continuation of the original case commenced at the trial court of first instance. It is not and cannot be a new cause of action. (p. 4804 G)

^B *APPEALS - Record of*

4. On the second ground of objection, I am unable to agree with the learned senior counsel for the respondents that the record of appeal is incomplete, for not having the appellant's reply to the petition. This, to say the least, is a misconception.

^C **The appellant's reply to the petition is part of the record of appeal on pages 4447-4476 of the record. This objection therefore lacks substance and is accordingly discountenanced.** (p. 4805 A)

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NOTABLE POINT OF INTEREST

KEKERE-EKUN JSC

1. Ratio decidendi – Meaning of

^E The law is settled that the ratio decidendi of a case is the principle of law upon which the case was decided. It is this principle that is binding on the parties and capable of being the subject of an appeal. The ratio decidendi constitutes the authority on which the case stands. It is also trite that a ratio decidendi is not decided in vacuo but on the

^F facts of the case. In other words, it is necessary to consider the facts of the case presented before the court to determine the basis on which it was decided. It is therefore necessary to take a holistic view of the judgment of the court below to determine what the real ratio was.

^G (p. 4810 B)

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REPRESENTATION

Olaborode Olanipekun, Esq. with Bolarinwa Awujoola Esq., Vanessa Onyenauwa (Miss), Adebayo Majkoiagbe, Esq. for the appellant.

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S. T. Hon, SAN with D.W. Wuku Esq., G. D. Otioio Esq., Chief (Dr) D. K. Derri, F. T. Okorotie Esq., Chief Dennis Otioio, N. Uja (Miss) E. S. Njoka Esq., T. Azoom Esq., G. T. Iorver Esq., Chief S. T. Yenge, E. N. Agon (Mrs), J. J. Dabo Esq., F. I. Jacob Esq., O. Sorgwe Esq.,

D.A. Ane Esq. and T. M. Ageba Esq. for 1st and 2nd respondents.

Dr. Onyechi Ikpeazu , SAN, with Alex Ejiesieme Esq., Nwachukwu Ibegbu, Obinna Onya Esq.; Jude Daniel Odi Esq., Julius Mba Esq., and Nwanaka Ofoegbu (Miss), for the 3rd respondent.

B

Tayo Oyetibo, SAN, Emeka Etiaba, SAN with F. N. Nwosu Esq., Wilson Ajuwa Esq., Mrs. Joy Etiaba, B. C. Nwosu Esq., B. A. Azebi Esq., Olubukola T. Ojuri (Mrs), Sanusi Musa Esq., M. J. Numa Esq., Mofesomo Tayo-Oyetibo Esq., Mesuabari Mene-Josiah Esq., I. J. Akpolu Esq., Goodness J. Odoi Esq., T. Iboroma Esq., I. Okoye (Miss), K. Azie (Mrs.), Nancy Shikaan, Obinna Okonkwo, Miss Nancy Okoli, Henry Leonard and Maxwell Ezumezu for the 4th respondent.

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CASES REFERRED TO

D

Shettima v. Goni (2012) All FWLR (pt. 609) 1007

Fointrades Ltd v. Universal Association Co. (2002) 8 NWLR (pt. 770) 699

BMNL v. Ola Ilemobola Ltd (2007) All FWLR (pt. 379) 1340

Jim-Jaja v. Commissioner of Police Rivers State (2013) 6 NWLR (pt. E 1350) 225

Okotie-Eboh v. Manager (2004) 18 NWLR (pt. 904) 242

Nwakwo v. Yar'adua (2010) 12 NWLR (pt. 1209) 518

Odon v. Bariga-Amange (No.2) (2010) 12 NWLR (pt. 1207) 13

Mobil Producing Nig. Unltd. v. Monokpo (2003) 12 SCM 145

Oloruntoba-Oju v. Abdul-Raheem (2009) 7 SCM 118

Oredoyin v. Arowojo (1989) 4 NWLR (pt. 114) 171

Adegoke Motors v. Adesanya (1989) 3 NWLR (pt. 109) 250

NAB Ltd. v. B. Eng. (Nig.) Ltd. (1995) 8 NWLR (pt. 413) 257

Abacha v. Fawehinmi (2000) 6 NWLR (pt. 660) 228

Odugbo v. Abu (2001) 14 NWLR (pt. 732) 45

Idoniboye-Obu v. N.N.P.C. (2003) 2 NWLR (pt. 805) 589

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STATUTES & RULES REFERRED TO

H

Constitution of the Federal Republic of Nigeria 1999, s. 318(1)

Court of Appeal Rules 2011, O. 9 r. 2

BOOKS REFERRED TO

Black Law Dictionary, Ninth Edition

Cobuild Learner's Dictionary Concise Edition, p. 47

LEAD JUDGMENT BY ARIWOOLA JSC

B This appeal was argued on the 8th day of November, 2016
but due to the peculiarity of the case, the court stood down the ap-
peal and delivered its judgment thereafter on the same day whereby
the appeal was struck out on the preliminary objection raised by the
1st and 2nd respondents which was sustained. We then reserved to
C give reason for our decision today the 18th day of November, 2016.
Here goes the reason for our judgment.

This is an appeal against the judgment of the Court of Ap-
peal, Abuja division (hereinafter referred to as the lower court) deliv-
D ered on 22nd September, 2016 which dismissed the appeal filed by
the appellant.

The gist of the matter that culminated into this appeal goes
thus: The 1st and 2nd respondents herein, as Petitioners had filed a
petition No.EPT/BY/Gov/002/2016 on the 30th of January, 2016, In
E the said petition, they had challenged the election and declaration of
the 4th respondent as the Governor of Bayelsa State and the cancel-
lation of the elections of the 6th of December, 2015 in Southern Ijaw
Local Government Area. Respondents to the petition filed their re-
spective replies. In particular the 3rd respondent now the appellant in
F its reply to the petition prayed the tribunal to dismiss the petition. In
its words, paragraph 52 of the reply reads thus:

*"52. Whereof the respondent urges this Honourable Court
to dismiss this petition in its entirety as being unmeritorious, frivolous
G incompetent, vague and generic."*

After hearing parties and considered addresses of counsel,
the tribunal in its judgment, Inter alia, held as follows:

*"In all, the petitioners have failed woefully to prove entitle-
ment to any of the reliefs sought in this petition. Relief 4 had earlier
H been jettisoned. For clarity sake all other reliefs sought by the peti-
tioners in paragraph 77 of the petition are dismissed as lacking in
merit"*

The 3rd respondent then being dissatisfied filed a Notice of

Appeal to the lower court on 15th August, 2016 challenging the decision of the trial Tribunal on seven (7) Grounds of Appeal.

In its judgment, the lower court on page 11,689 of the record, found as follows:-

“What the 3^d respondent now appellant seeks before the court as contained on page 32 of its brief reads: B

‘On the strength of these submissions, your Lordships are urged to allow this appeal and grant all the reliefs of the appellant as contained in its notice of appeal and accordingly dismiss the petition.’

It seems clear from the above that what the appellant seeks in this appeal is dismissal of the petition which is exactly what the lower tribunal did. In other words, the judgment was in the 3^d respondent/appellant’s favour.” C

Upon hearing the preliminary objection of the 1st and 2nd respondents to the appeal, on the ground, inter alia, that since the tribunal had dismissed the petition as prayed by the appellant, it had no right of appeal again, the lower court then sustained the objection of the 1st and 2nd respondents and struck out the appeal, but being an intermediate appellate court proceeded to consider the appeal on merit, which was later dismissed having been found to be unmeritorious. D E

Dissatisfied again with the decision of the lower court led the appellant to the instant appeal predicated on the Notice of Appeal of eight grounds of appeal filed on 4th October, 2016. F

Upon the appeal being properly entered, parties filed their respective briefs of argument and exchanged same.

Appellant’s brief of argument was filed on 19th October, 2016 while the 1st and 2nd respondents’ brief of argument was filed on 24th October, 2016. The 3rd and 4th respondents did not file any brief of argument. The appellant filed its reply brief of argument to the 1st and 2nd respondents’ brief on 26th October, 2016. The appeal was later heard on the 8th day of November, 2016 on the briefs of argument of the appellant and 1st and 2nd respondents alone. G

In its brief of argument, the appellant formulated the following three issues for determination of the appeal:- H

1. Having regard to the entire facts and circumstances of this case, vis-a-vis the settled position of the law, whether the lower court

was not wrong when it struck out the appellant's appeal before it for being incompetent. (Grounds 1, 2 and 3)

2. Juxtaposing the peculiar facts of this case with applicable case law and statutes, whether the lower court was not wrong in its failure to determine the merits of and uphold the fundamental, constitutional and jurisdictional objections raised to the petition and the reliefs sought thereat (Grounds 4,5,6 and 8)

3. Whether the lower court was not wrong when it failed to expunge Exhibit P42B from the evidence as inadmissible- (Ground 7)

In response, the 1st and 2nd respondents in their brief of argument adopted the issues distilled by the appellant from its grounds of appeal.

However, on the same 24/10/2016, the day the 1st and 2nd respondents (hereinafter referred to as the respondents) had filed their brief of argument, they also filed a Motion on Notice to be heard by way of preliminary objection praying the court for the following relief:

"An order striking out this appeal for want of competence."

The respondents gave four (4) grounds upon which they based their objection and supported it with an affidavit of three main paragraphs.

To oppose the application, the appellant filed a counter affidavit of seven paragraphs.

In their brief of argument earlier referred, the respondents gave a Notice of Preliminary Objection and argued same in the said brief of argument.

At the hearing of the appeal, the attention of the court was properly drawn by the respondents to the preliminary objection before the appeal was argued and it was accordingly deemed argued, pursuant to the provisions of the Rules of this court.

In the respondents' brief of argument the learned senior counsel for the respondents referred to the first ground of their preliminary objection, which is that the appellant has not appealed against the following very vital finding made by the lower court:

"Who is an appellant? An appellant is a party to a proceeding who is aggrieved by the decision of the lower court and had conse-

quently appealed in respect thereof. A party cannot appeal against a decision 'which does not wrongfully deprive him of an entitlement or something which he has a right to demand'

Learned senior counsel contended that before the lower court made the above finding, it had prepared the ground as follows:

"From the above judgment, it is clear there was no order made against the 3^d respondent. Neither was any relief claimed by the 3^d respondent dismissed. What the 3^d respondent now appellant seeks before this court as contained on page 32 of its brief read... It seems clear from the above that what the appellant seeks in this appeal is dismissal of the petition which is exactly what the lower tribunal did. In other words, the judgment was in 3^d respondent/appellant's favour. The contention of the respondents in this preliminary objection was that the 3^d respondent could not appeal against the judgment that was in his favour."

Learned senior counsel contended further that with the above, the lower court was seen to be laying foundation for what it later found on who an appellant is. He submitted that the appellant's appeal is against the foundation rather than the ratio *decidendi* of the decision of the lower court.

He referred to an unchallenged finding of the lower court and contended that it meant the following;

- (a) That an appellant is a person aggrieved; hence the appellant who was not aggrieved had no right of appeal, and;
- (b) That the Supreme Court had, in two previous decisions, - Mobil Vs. Monokpo, (supra) and Akinbiyi Vs Adelabu (supra) held that a person against which no decision has been made has no right of appeal.

Learned senior counsel referred to Section 318(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, read together with Section 6(2) (e) (iv) of the 2nd Alteration Act to the Constitution, and contended that a right of appeal exists only against a decision or finding but not against a foundation or preparation to make such decision or finding. Put in other words, all right of appeal exists against a ratio *decidendi* but not against preparation or foundation to pronounce a ratio *decidendi*.

The respondents contended that since the finding of the lower

court goes to the very foundation, namely, the appellant's right of appeal; and since the appellant has not appealed against it, appellant has completely lost the right of appeal on any ground to this Honourable court. He submitted that, the appellant's instant appeal being incompetent should be struck out. He urged the court to do so
B on this ground alone.

On the second ground of objection, learned senior counsel contended that there is no competent Record of Appeal before the court. He submitted that when there is incomplete or incompetent
C record of appeal, the appeal is incompetent.

He referred to the Record of Appeal and contended that it completely omitted the appellant's Reply to the petition, And that it also contained an extraneous matter - that is, the Notice of Appeal in a different appeal. He submitted that this appeal is incompetent.

On the third ground of objection, the respondents contended that neither the trial tribunal nor the lower court nor this apex court has jurisdiction to entertain the appellant's objection against the 1st respondent's qualification to contest the Bayelsa State Governorship Election. Learned senior counsel submitted that this is constitutional.
D

For the Tribunal, he referred to Section 9(2) of the 2nd Alteration Act to the 1999 Constitution. For the lower court, Section 8(1) (c) (ii) of the 2nd Alteration Act. And for this court, Section 6(2) (c) (iv) of the 2nd Alteration Act. From the above provisions of the statute, learned senior counsel submitted that the intention of the framers of the Constitution is very clear and unequivocal that matters that should be handled by Governorship Election Tribunals and appeals emanating therefrom must be limited to the question whether or not-
E
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"any person has been validly elected to the office of Governor or Deputy Governor under this Constitution."
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Learned senior counsel contended that since the objection of the appellant was filed against the Election Petition filed by the 1st and 2nd respondents challenging the election of the 4th respondent as the Governor of Bayelsa State, neither the trial Tribunal nor the Court
H of Appeal nor indeed this court has jurisdiction to entertain, let alone determine the complaint of the appellant against the qualification of the 1st respondent.

Learned senior counsel contended further that since the vari-

ous jurisdictions of the Tribunal, the Court of Appeal and this court has been circumscribed by the Constitution itself, the objection, now on appeal raised by the appellant against the qualification of the 1st respondent to contest the disputed Bayelsa State Governorship Election is itself a feature that has robbed the courts of the requisite jurisdiction to entertain and determine it. B

Another crucial point or ground of objection is that the appellant did not appeal to the lower court against the following finding of fact made by the Tribunal, namely;

“What is in dispute in this case is not a challenge to the election and return of 1st Petitioner as Governor, but a challenge to the election and return of the 2nd respondent as Governor.” C

The respondents contended that the appellant’s ground 1 which quoted the portion of the judgment which would have accommodated the above named finding, willfully omitted the said finding. They contended further that there was no appeal against the above finding to the lower court by the appellant hence learned senior counsel submitted that that crucial finding of the tribunal stands and is binding on the appellant and even the court. D

Learned senior counsel submitted that this appeal is academic and no court has jurisdiction to entertain an academic suit or appeal. He relied on Shettima Vs Goni (2012) All FWLR (Pt.609) 1007 at 1046. He submitted further that this appeal being incompetent ought to be struck out. He urged the court to strike it out in limine, for want of jurisdiction. E F

As I stated earlier in response to the preliminary objection raised by the respondents by Notice of Motion and in their brief of argument, the appellant filed a Reply brief of argument in opposition of the said objection. G

In the said reply which was settled by learned counsel for the appellant, Olabode Olanipekun, Esq., he referred to the contention of the respondents in their said objection and submitted that, that kind of objection can only be borne out of a complete misapprehension of the purpose and purport of a preliminary objection to the competence of an appeal and therefore that this misapprehension of the respondents alone is enough basis for the court to jettison their objection. H

Learned counsel referred to the substance of the respondents' contention in their brief of argument and submitted that the portion touted by them as a finding cannot under any guise qualify as one. He submitted further that a finding refers to the pronouncement of a court in relation to some specific issues in contest between the parties before it and which pronouncement effectively settles the issues in controversy. He relied on *Fointrades Ltd Vs. Universal Association Co.* (2002) 8 NWLR (Pt.770) 699.

Learned counsel contended that in the portion of the judgment being bandied as the most important finding on pages 11689-11690 of the record, the lower court was merely reviewing the state of the law with the aid of judicial authorities and after this exercise, the lower court then expressed its views qua finding on the issue it was considering. He referred to the court's finding on pages 11691 to 11692 of the record and submitted that the said finding was appealed by the appellant.

On the contention of the respondents that the appellant's appeal is against the foundation but not the substance, learned counsel submitted that indeed the foundation of a thing constitutes its core, nub and nucleus and once the court holds in favour of the appellant in respect of its complaint against the foundation of the decision of the lower court, the entire decision of the said court must necessarily collapse. He submitted further that the foundation of a decision is naturally the reason for the decision and that an appellant can only raise grounds of appeal in the reason for a decision. He relied on *BMNL Vs. Ola Ilemobola Ltd* (2007) All FWLR (Pt.379) 1340 at 1369; *Jim-Jaja Vs. Commissioner of Police, Rivers State* (2013) 6 NWLR (Pt.1350) 225 at 253.

On the second limb of respondents' objection that there was no competent record of appeal, in that the appellant's reply to the petition before the Tribunal is not present in the record of appeal, learned counsel referred to pages 4447-4476 of the record which, he contended contained appellant's reply to the petition of the respondents as petitioners at the trial Tribunal. And as regards the reference to an extraneous material - the Notice of Appeal in a different appeal; he contended that the respondents failed to identify the said Notice of Appeal. He submitted that assuming that there is such No-

tice of Appeal, being extraneous simply meant that such Notice of Appeal is not critical to this appeal and will therefore be discountenanced. He submitted that there is no iota of merit in that contention.

On the third limb of the objection that the appeal does not come within the jurisdiction of this court as well as that of the two lower courts, learned counsel adopted his arguments on Section 246 of the Constitution in the Appellant's brief as a complete answer to the issue under this head. He contended that the provision of Section 246 (1) (c) (iii) of the Constitution - (Section 8 (1) (c) (ii) of the 2nd Alteration Act and Section 233 (2) (e) (iv) of the Constitution (Section (2) (e) (iv) of the 2nd Alteration Act) are exactly the same. He submitted that there is no feature in the appeal of the appellant which divests this court of jurisdiction. He restated that this court is clothed with the vires to determine whether a person has been validly elected to the office of Governor or Deputy Governor of a State. Learned counsel submitted that a Legislation which purports to take away the right of a person or exclude the jurisdiction of a court must do so expressly and same cannot be by way of inferences and conjectures. He relied on *Okotie-Eboh Vs Manager* (2004) 18 NWLR (Pt.904) 242 at 283. He submitted further that there is nothing in the said Section 246 or Section 233 (2) (e) (iv) of the Constitution which expressly or impliedly ousts the jurisdiction of the Court of Appeal and this court to countenance the appeal of the appellant neither do these Sections deprive the appellant of a right of appeal.

Learned counsel contended that this limb of the objection is a backdoor attempt to invite this court to make pronouncement on the merits of the appeal at the interlocutory stage of a preliminary objection, an attempt out rightly proscribed by law. He relied on *Nwakwo Vs. Yar'adua* (2010) 12 NWLR (Pt.1209) 518 at 540 and *Odon Vs. Bariga-Amange* (No.2) (2010) 12 NWLR (Pt.1207) 13 at 28.

Learned counsel referred to the arguments of the respondents contained in their paragraphs 3.32-3.38 of their brief of argument and contended that the said arguments were part of the respondents' objections to appellant's grounds of appeal before the lower court, which objections the lower court found unmeritorious

and discountenanced. He submitted that the respondents having not appealed against the decision of the lower court which found that appellant's grounds of appeal as competent are taken to have accepted the correctness of the lower court's decision and are therefore bound by same. He urged the court to discountenance the submissions of the respondents referred above for lacking in merit. He finally urged the court to dismiss the preliminary objection and refuse the reliefs sought in the Motion on Notice.

There is no doubt and this is very clear from the record of appeal, as stated earlier that the origin of this appeal was from the trial Tribunal where the 1st and 2nd respondents herein were petitioners challenging the election and declaration of the 4th respondent as the Governor of Bayelsa State, and the cancellation of the elections of the 6th December, 2015 in Southern Ijaw Local Government Area. It is also clear that the appellant herein was a respondent, indeed, the 3rd respondent to the petition filed by the 1st and 2nd respondents before the trial Tribunal.

Perhaps it is necessary to state here why the 3rd respondent before the trial Tribunal filed an appeal. This can be gathered from the appellant's brief of argument filed at the lower court. The brief was said to be presented in the appeal against the portion of the judgment of the Bayelsa State Governorship Election Tribunal, whereat it refused to pronounce on what is the appellant considered diverse weighty and constitutional issues properly raised before it by the appellant as well as on the inadmissibility of Exhibit P42, a VCD recording tendered by the 1st and 2nd respondents as petitioners before the Tribunal. The appellant then raised the following two issues for determination by the lower court.

1. Having regards to the entire facts and circumstances of this case, whether the trial tribunal was not in grave error when it refused to pronounce on and resolve the diverse fundamental, jurisdictional and constitutional issues qua objections to the reliefs and pleadings in the petitions properly raised before it and dismissed the petition.

2. Whether the trial tribunal was not in grave error when it refused to pronounce on the inadmissibility of Exhibit P42B and treat same as inadmissible.

In conclusion of the appellant's said brief of argument at the lower court, the appellant states, *inter alia*, as follows:

"...the trial tribunal indeed failed to resolve critical issues which were properly raised before it, the resolution of which would have led to the dismissal of the petition in limine ...Your Lordships are urged to allow this appeal and grant all the reliefs of the appellant as contained in its notice of appeal and accordingly dismiss the petition." (Underlining supplied) B

Upon consideration of the preliminary objection raised to the appeal by the respondents before the lower court, the court opined as follows: C

"The main question to be answered in this preliminary objection is whether or not the appeal of the appellant is competent."

The lower court in its considered judgment went further and referred to and quoted from the judgment of the trial tribunal then appealed against before it, which dismissed the petition having considered all the reliefs sought by the petitioners lacking in merit. D

There is no doubt and it is interesting to note that what the appellant as a respondent to the Petition before the trial tribunal desired was a dismissal of the petition. And what the tribunal did was to dismiss the petition in its entirety. E

One now wonders what the grouse of the appellant again is having had the entire petition dismissed as it desired and prayed the trial tribunal to do.

There is no doubt that any aggrieved party can appeal to this court against the decision of the Court of Appeal. That is a right guaranteed by the Constitution. Indeed, any right of appeal to the Supreme Court from the decision of the court below conferred by the Constitution shall be exercisable in the case of civil proceedings at the instance of a party thereto. See Section 233 (5) of the 1999 Constitution of the Federal Republic of Nigeria as amended. However, that provision has been held to be understood to apply to only an aggrieved party or person. In other words, because an appeal is ordinarily lodged against a grievance arising from a judgment, only a party who is aggrieved can appeal against it. F
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In Mobil Producing Nigeria Unlimited & Anor, Vs. Chief

Simeon Monokpo & Anor (2003) 12 SCM 145, it was held that “a party to proceedings cannot appeal a decision arrived thereat which does not wrongfully deprive him of an entitlement or something which he had a right to demand.”

Generally, to be aggrieved, a person must have some legal rights that are adversely affected, or having been harmed by an infringement. See Black Law Dictionary, Ninth Edition.

There is no doubt that the appellant is not quarrelling with the dismissal of the Petition of the 1st and 2nd respondents. That was exactly what it had prayed for, but may be the appellant may have wanted more than merely dismissal of the petition. In other words, I cannot see how the order of dismissal of the petition and affirmation of same by the lower court has adversely affected the appellant to grant it right of appeal. I agree with the lower court, that there was no order made against the appellant by the trial tribunal which, in the face of the ultimate dismissal of all the reliefs sought by the petitioners, is appealable in the decision of the lower court. In my view this appeal leaves much to be desired.

Now, looking at the grounds of objection raised by the respondents, to the effect that the appellant did not appeal against a crucial part of the decision of the lower court, I am unable to see how the appellant can competently appeal against a decision in its favour. This, to say the least, actually renders the said appeal incompetent. An appeal is said to be a challenge against the decision or judgment of a trial court but it is never predicated on what a court did not decide in its judgment or ruling. See Dr. Oloruntoba-Oju & Ors Vs. Prof. Shuaibu O. Abdul-Raheem & Ors (2009) 7 SCM 118; (2009) 13 NWLR (Pt.1157) 83.

It is trite law that an appeal is a continuation of the original case commenced at the trial court of first instance. It is not and cannot be a new cause of action. See Oredoyin Vs. Arowolo (1989) 4 NWLR (Pt.114) 171 at 211; Adegoke Motors Vs Adesanya (1989) 3 NWLR (Pt.109) 250. **In this appeal the case commenced by the respondents had been dismissed with all the reliefs sought. In which case there was nothing left with**

the petitioners whose petition was totally dismissed for the appellant to have been adversely affected. This point is resolved in favour of the appellant rendering the appeal incompetent.

On the second ground of objection, I am unable to agree with the learned senior counsel for the respondents that the record of appeal is incomplete, for not having the appellant's reply to the petition. This, to say the least, is a misconception. The appellant's reply to the petition is part of the record of appeal on pages 4447-4476 of the record. This objection therefore lacks substance and is accordingly dis-

countenanced.

On the third ground of objection, I am of the view that since the trial tribunal never decided and on appeal to the lower court the issue was not decided upon, the main case of the respondents having been totally dismissed, I see no useful reason in dealing with the same again.

In the final analysis, the original Petitioners/respondents' case having been dismissed in favour of the appellant which order of dismissal cannot be said to have wrongfully and adversely affected the appellant, this appeal is for that reason incompetent and was held liable to be struck out. It was accordingly struck out on the 8th November, 2016 when I reserved to give my reason for saying so today. This is my reason for striking out the appeal.

Appeal struck out.

Parties are to bear their respective costs of the appeal.

MUHAMMAD JSC

When this appeal was heard, I sustained the Preliminary Objection in this appeal. Below is my reason.

I was afforded, an opportunity by my learned brother, Ariwoola, JSC, to read in advance, his reasoning for striking out the appeal. I adopt his reasoning as mine. I do not intend to add anything. I, too, strike out the appeal and abide by the orders made in the lead reasoning including order as to costs.

OGUNBIYI JSC

On the 8th November, 2016 when this appeal was argued, judgment was pronounced shortly thereafter on the same day wherein the entire appeal was struck out for incompetence. This was consequent to the preliminary objection raised by the 1st and 2nd respondents. The reason for the judgment was then reserved to the 18th November, 2016 and I hereby give same as follows:-

I read in draft the lead judgment just delivered by my brother Ariwoola, JSC and I agree that the appeal herein should be struck out for incompetence.

The facts giving rise to this appeal had been spelt out by my brother in the lead judgment. Incorporated in their brief of argument filed on 24th October, 2016, the 1st and 2nd respondents argued their preliminary objection which was raised by motion filed on the same day wherein they prayed for:

“An order striking out this appeal for want of competence.”

The grounds predicating the objection are four fold and also an affidavit containing three paragraphs.

In reply, the appellant filed a counter affidavit as well as a response to the arguments on the notice of preliminary objection which was incorporated in the appellant’s reply brief filed on 26th October, 2016.

It is intriguing to state that the appellant before us was a respondent at the trial tribunal, which gave its decision in favour of the appellant wherein its candidate was affirmed the duly elected governor of Bayelsa State.

The Collins Cobuild Learner’s Dictionary Concise Edition at page 47 made it clear that:-

“An appeal is a formal request for a decision to be changed.”

An appellant is also denoted as a person/someone who by reason of dissatisfaction with a judgment of a court, lodges an appeal against such decision. In other words, with the outcome of the petition given in favour of the appellant, it is certainly absurd that the party (PDP) should have filed this appeal at all. This does not stand to sound reason.

The appellant for all intents and purposes has not been wronged and is without any reason to complain. The purported

grounds of appeal before us have no foundation and therefore, the entire appeal was rightly struck out on the 8th November, 2016.

My learned brother Ariwoola, JSC has dealt exhaustively with the appeal and I hereby adopt the reasons and conclusions arrived by him as mine. On the totality and in the same vein, I also affirm my decision given on the 8th November, 2016 and strike out the purported appeal for incompetence. I abide by the order made in the lead judgment as to costs.

AKA'AH'S JSC

On 8th November, 2018 after listening to the arguments of counsel, the appeal was struck out on the preliminary objections raised by the 1st and 2nd respondents which were sustained and we adjourned today to proffer reasons for the judgment.

The appellant sponsored the 4th respondent who contested the Governorship election for Bayelsa State conducted by the 3rd respondent. At the conclusion of the election, the 4th respondent was declared winner and accordingly was returned as the duly elected Governor of Bayelsa State. The 1st and 2nd respondents were dissatisfied with the declaration and return and filed a petition No. FPT/BY/GOV/002/2016. In their reply both the appellant and 4th respondent urged the Tribunal to dismiss the petition which it did despite the outcome of the petition, the appellant appealed and the 1st and 2nd respondents who had lost at the Tribunal filed preliminary objection to the Notice of Appeal which was upheld and the appeal struck out. This prompted a further appeal to this court.

It is crystal clear that the appellant had no justifiable reason to file the appeal since the Tribunal acceded to its request to dismiss the petition. The lower court therefore properly upheld the preliminary objection and struck out the appeal. Consequently the appeal to this court is baseless and it is also struck out for being incompetent. No order on cost is made

KEKERE-EKUN JSC

On 8th November, 2016 when we heard this appeal, I sus-

tained the preliminary objection filed by the 1st and 2nd respondents and struck out the appeal for being incompetent. I promised to give my reasons for so doing today, 18th November 2016. I proceed to do so.

I have had the benefit of reading in draft the leading reasons for judgment just delivered by my learned brother, OLUKAYODE ARIWOOLA, JSC. I agree entirely with the sound reasons advanced. I shall add a few words in support and for emphasis.

An interesting feature of this appeal is that it is filed by one of the parties who emerged victorious at the Bayelsa State Governorship Election Tribunal sitting at Abuja by its judgment delivered on 26th July 2016. The 1st and 2nd respondents herein filed a petition before the said Tribunal challenging the election and return of the 4th respondent, HON. HENRY SERIAKE DICKSON, who contested on the platform of the Peoples Democratic Party (PDP), i.e. the appellant in this appeal, as the duly elected Governor of Bayelsa State in the Governorship Elections conducted on 5th and 6th December 2015 and 7th January 2016. They sought the cancellation of the election conducted in Southern Ijaw Local Government Area of the State on 6th December 2015.

The appellant was the 3rd respondent in the petition and naturally urged the trial Tribunal to dismiss same. At the conclusion of the trial, the petition was dismissed and the return of the 4th respondent was upheld. It is noteworthy that notwithstanding the fact that the election of its candidate was upheld and no order whatsoever was made against it, the appellant was dissatisfied with part of the Tribunal's decision and filed a Notice of Appeal before the Abuja Division of the Court of Appeal.

The appellant's complaints against the judgment of the Tribunal, in a nutshell, were that it failed to pronounce on and resolve what it considered to be certain fundamental and jurisdictional issues which it raised in respect of some of the petitioners' reliefs and pleadings and also that it failed to pronounce on the admissibility of one of the exhibits tendered, Exhibit P42B, a video recording tendered by the 1st and 2nd respondents, which in its view was inadmissible. The relief sought in the appeal was the dismissal of the petition, which had already been dismissed.

The 1st and 2nd respondents filed a preliminary objection challenging the competence of the appeal on the ground, *inter alia*, that the appellant could not appeal against a judgment that was in its favour. The court below agreed with them and held that having regard to the Court of Appeal Rules 2011 and the provisions of Section 246 (1) (b) (ii) of the 1999 Constitution, the appellant did not have a right of appeal against a decision which does not wrongly deprive him of an entitlement or something which he has a right to demand. The court held that an appeal that seeks to affirm the decision of the lower court cannot be commenced via a notice of appeal but by a Respondent's Notice of Contention under Order 9 Rule 2 of the Court of Appeal Rules, 2011. The court upheld the preliminary objection and held that the appeal was incompetent and liable to be struck out. However, not being the final court on the issue, it proceeded to consider the merits of the appeal and dismissed it on the merit. The appellant has further appealed to this court.

The various grounds of the preliminary objection have been fully set out in the lead judgment. The first ground, as contained in the motion on notice filed on 24/10/2016 and at paragraph 3.2 of the 1st and 2nd respondents' brief is that the appellant failed to appeal against the following finding of the court below, which was fundamental:

"Who is an appellant? An appellant is a party to a proceeding who is aggrieved by the decision of the lower court and had consequently appealed in respect thereof. A party cannot appeal against a decision "which does not wrongfully deprive him of an entitlement or something which he has a right to demand." See: Mobil Vs Monokpo (2003) 12 SCNJ 206 @ 223; Akinbiyi Vs Adelabu (1956) 5 CNJLR 109."

That it rather chose to appeal against what they described as the 'foundation' of the decision i.e. the observations made preparatory to making a pronouncement. It is contended that in the circumstances; having failed to appeal against the *ratio decidendi* of the decision, the appellant has lost any right of appeal on any ground to this court. The appellant on the other hand contends that the finding of the court below, which it correctly appealed against is as found at pages 11691 to 11692 of the record, to wit:

"In my respectful view, an appeal that seeks to affirm the decision of the lower court cannot be commenced via Notice of Appeal, as an appeal but by Respondents Notice of Contention under Order 9 Rule 2 of the Court of Appeal Rules, For the above reasons I hold that this appeal is incompetent as it runs contrary to the Rules of Court."

B The law is settled that the ratio decidendi of a case is the principle of law upon which the case was decided. It is this principle that is binding on the parties and capable of being the subject of an appeal. The ratio decidendi constitutes the authority on which the case stands. See: NAB Ltd. Vs B.Eng. (Nig.) Ltd. (1995) 8 NWLR (Pt.413) 257 & 289 H; Abacha Vs Fawehinmi (2000) 6 NWLR (Pt.660) 228; Odugbo Vs Abu (2001) 14 NWLR (Pt.732) 45. It is also trite that a ratio decidendi is not decided in vacuo but on the facts of the case. In other words, it is necessary to consider the facts of the case presented D before the court to determine the basis on which it was decided. See: Idoniboye-Obu Vs N.N.P.C. (2003) 2 NWLR (Pt.805) 589 & 645 F - G; 648 A. It is therefore necessary to take a holistic view of the judgment of the court below to determine what the real ratio was.

E As rightly observed by learned senior counsel for the 1st and 2nd respondents, the gravamen of the objection raised before the lower court was whether the appellant could competently file an appeal attacking a judgment that was in its favour and which did not make any orders against it. After the following recap of learned counsel's F submissions at page 11689 of Vol. 12 of the record,: *"the contention of the respondents in this preliminary objection was that the 3^d respondent could not appeal against the judgment that was in its favour"* the lower court proceeded from the last paragraph of page 11689 to the first paragraph at page 11692 to consider the nature of G complaint that would confer a right of appeal on a party. It was in the course of this exercise that the court held thus (repeated below for emphasis):

"Who is an appellant? An appellant is a party to a proceeding who is aggrieved by the decision of the lower court and had conse-
H *quently appealed in respect thereof, A party cannot appeal against a decision "which does not wrongfully deprive him of an entitlement or something which he has a right to demand. "See: Mobil Vs Monokpo (2003) 12 SCNJ 206 @ 223; Akinbiyi Vs Adelabu (1956)*

SCNLR 109.”(Underlining mine)

It then went further to expatiate on why a party in the appellant’s shoes, who had successfully defended the petition challenging the return of its candidate as the duly elected Governor of Bayelsa State, was not competent to approach the court in the manner it had done. The reasons advanced by the court below, including the view that the appellant ought to have filed a Respondent’s Notice of Intention to Contend that the judgment of the Tribunal should be affirmed on other grounds, all stemmed from the fundamental finding that “a party cannot appeal against a decision “which does not wrongfully deprive him of an entitlement or something which he has a right to demand.” I am in complete agreement with learned senior counsel for the 1st and 2nd respondents that this was the *ratio decidendi* of the decision of the court below and that having failed to appeal against it, the foundation of the appeal before us collapses like a pack of cards.

It was for these and the more elaborate reasons advanced in the lead judgment that I sustained the preliminary objection and struck out the appeal.

Appeal struck out. Parties to bear their costs.

NWEZE JSC

When this court heard this appeal on November 3, 2016, it dismissed it for being, wholly, unmeritorious. It, however, deferred its reasons for the said decision: reasons which my Lord, O. Ariwoola, JSC, has just, admirably, advanced now.

His Lordship, graciously, obliged me with the draft of his well-considered reasons. I am persuaded by the compelling logic of my Lord’s eloquent reasoning. I agree with the conclusion that, being wholly unmeritorious, this appeal ought to be dismissed. I abide by the consequential orders.

SANUSI JSC

On 8th November 2016 we heard this appeal. After considering the arguments preferred in various briefs of argument filed and exchanged by the parties learned counsel and the oral argument presented by

the counsel for the parties, I sustained the preliminary objection raised and argued in the brief of argument filed by learned counsel of the 1st and 2nd respondents. Having adjudged the said preliminary objection as meritorious, I found the instant appeal to be incompetent and I proceeded to strike same out. On that day I promised to advance my reasons for upholding the said preliminary objection and for striking out the present appeal. The reasons for so doing are presented hereunder:-

This is an appeal by the appellant who was the 3rd Respondent at the Governorship Election petition tribunal, Bayelsa State. The 1st and 2nd respondents petitioned before the Election tribunal challenging the election, declaration and return of the 4th respondent as governor of Bayelsa State and against the cancellation of the elections held on 6th December 2015 in Southern Ijaw local government area. Although the appellant filed a Reply to the petitioner he did not include the Reply Brief in the record of appeal. The 1st and 2nd respondents Reply to the Appellant's Reply to the petition was however contained in the compiled record of appeal (Vol.7). Failure to compile Record alone with the Appellant's Reply to the petition according to the respondents' learned counsel, became very vital and renders the petition incompetent even at the Court of Appeal. With this anomaly the appellant maintained that the 1st and 2nd Respondents petition should be dismissed. The Court of Appeal obliged dismissed the appellant appeal.

The learned appellant's counsel in his Appellant's Reply to 1st and 2nd Respondents brief of argument filed on 26/10/2016 also replied to the submissions of learned counsel to the 1st and 2nd Respondents on the Preliminary Objection filed and argued in their joint brief of argument. The learned counsel for the appellant in reply to the first and 2nd respondents' failure to appeal against a portion of the judgment of the lower court submitted that even if he really failed to appeal on the portion of the lower court's judgment, that could not and should not constitute a reason why this court should decline to hear and determine his appeal especially in respect of the other portion of the said judgment that he complained against. He stated that the said portion of the judgment referred to by the two respondents counsel, did not constitute a finding of the lower court which

ought to be appealed against and was not so appealed against by him. He stated that a finding of a court which ought to have been appealed against must be such finding of a court in relation to some specific issues in contest between the parties before it and which said finding had effectively settled the issue in dispute or controversy. See FOINTRADES LTD VS UNIVERSAL ASSOCIATION CO ^B (2002)8 NWLR(pt.770) 699. He stated that the portion of the judgment that was alleged to have not appealed against, did not qualify as a 'finding'.

On the second leg of the preliminary objection of the 1st and 2nd respondents, to the effect that record of appeal contained some extraneous notice of appeal, on this the learned appellant's counsel did not identify the alleged extraneous notice of appeal. Again on the third limb of the Preliminary Objection by the 1st and 2nd Respondents to the effect that the appellant's appeal was not within the jurisdiction of this court and that the lower court, the learned counsel for the appellant argued that under Section 246(i) (ii), Section 6(2) (e) (iv) and Section 232(e) of the 1999 Constitution (as amended) and also Section 8(5) Alteration Act, this court has jurisdiction to entertain this appeal and that there is not any feature ^E which will serve as an impediment to the hearing of the appeal by this court.

As I posited supra, the 1st and 2nd respondents herein filed a Preliminary Objection in which they jointly attacked or challenged ^F the competence of this appeal principally for reason whether a party who succeeds in a matter in a court has right of appeal as the appellant had purported to do in the present appeal. The decision of the court below which agreed with the submission of the two respondents' learned counsel is that he had no right of appeal in view of the provisions of Section 246(i) (b) (ii) of the 1999 Constitution as amended. In fact, the gravamen or pith of the preliminary objection is centred on the lower court's finding which reads thus:-

"Who is an appellant? An appellant is a party to a proceeding who is aggrieved by the decision of the lower court and had consequently appealed in respect thereof." ^H

A party cannot appeal against a decision "which does not wrongfully deprive him of an entitlement or something which has a right to

demand. "See Mobil vs Mmokpo(2003)12 SCNJ 206@223; Akiniyi vs Adelabu (1956)5 CNJLR 109"

The above finding of the lower court is in my humble view, the ratio decidendi of the case. The law is trite, that an appeal must be against the ratio decidendi of the case. In the instant case, the appellant failed to appeal against the above finding of the lower court which as I stated above, is the ratio decidendi of the case. See *Abacha vs Fawehinmi (2006)6 NWLR (pt.669)228*. The present appellant was successful at the tribunal as decision was given in his favour and all the reliefs he sought were also granted before the petition was dismissed.

To my mind therefore and as rightly held by the lower court, he had no right of appeal. At best what he could have done, was to file Respondents' Notice of intention for the appeal to be affirmed based on the reasons other than those given in the antecedents of this case. The appellant was not denied any of his entitlements or any of the reliefs he had right to demand. He was therefore not an aggrieved party or person, but rather a winner or a successful party in the petition or case. It is in fact worthy of note that the appellant did not challenge the finding of the lower court which I reproduced above which is the ratio decidendi of the case. It is my view therefore that by filing this appeal the appellant had portrayed himself as an idle person who did not know what he really wanted or what he deserved or as someone who has misplaced his priority. This appeal is therefore superfluous and very incompetent and is calculated to waste the precious and important time of the lower as well as of this apex court. With these few remarks, I find the preliminary objection filed by the 1st and 2nd respondents to be well taken. It is accordingly sustained by me.

Apropos of these reasons and the more detailed reasons contained in the lead Reasons for judgment marshalled by my learned brother Olukayode Ariwoola JSC, I hereby sustain the preliminary objection. Having done so, as a corollary, I accordingly strike out this appeal without awarding any costs to any of the parties.