

**PICTURE**



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**ABUBAKAR SADIQ MOHAMMED**

**AND**

- 1. HON. ABULLAHI MOHAMMED WAMMAKO**
- 2. ALL PROGRESSIVE CONGRESS (APC)**
- 3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

**SC.788/2016**

**IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA**

**WEDNESDAY, 12<sup>TH</sup> JULY, 2017**

**BEFORE THEIR LORDSHIPS**

<b>WALTER SAMUEL NKANU ONNOGHEN</b>	<b>CHIEF JUSTICE OF NIGERIA</b>
<b>CLARA BATA OGUNBIYI</b>	<b>JUSTICE, SUPREME COURT</b>
<b>KUMAI BAYANG AKAAHS</b>	<b>JUSTICE, SUPREME COURT</b>
<b>KUDIRAT M. O. KEKERE-EKUN</b>	<b>JUSTICE, SUPREME COURT</b>
<b>CHIMA CENTUS NWERE</b>	<b>JUSTICE, SUPREME COURT</b>

*ACTION: Declaratory action – Failure of defendant to file a counter affidavit thereto – Whether it does not affect the standard of proof placed on the plaintiff to succeed on the strength of his case.*

*ACTION: Declaratory action – Standard of proof thereof – Whether a plaintiff who sues for declaratory reliefs must succeed on the strength of his case and not on the weakness of the defence – Rationale thereof*

*ACTION: Declaratory relief – Onus on plaintiff thereof – Whether not granted even on the admission of the defendant – Principle in **Emenike Vs. P.D.P. (2012) 50 NSCQR 94***

*APPEAL: Concurrent findings – Perversity thereof – Failure of appellant to discharge proof – Implication*

*ELECTION PETITION: Action for false declaration – S.31(5) of Electoral Act, 2010 (as amended) – Standard of proof – Whether plaintiff must prove the falsity of the information beyond reasonable doubt.*

*EVIDENCE: Proof – Forgery – Nature of proof thereof – Whether must be beyond reasonable doubt*

*PRACTICE AND PROCEDURE: Allegation of crime in civil proceedings – Standard of proof thereof – Whether must be proof beyond reasonable doubt.*

*PRACTICE AND PROCEDURE: Counter-affidavit – Necessity thereof – Where the affidavit in support of a process does not contain cogent and strong evidence to prove facts alleged – Whether it is not necessary to file a counter affidavit.*

*STATUTE: Evidence Act – S. 135(1) thereof – Whether standard of proof in criminal cases is beyond reasonable doubt*

### **Issues for Determination**

- (1) Whether the learned Justices of the Court of Appeal were right and justified in law in striking out issue number three as framed by the appellant along with Ground three of the notice of appeal on the premise that the said issue did not flow from the said ground of appeal?**
- (2) Whether the learned Justices of the Court of Appeal were right and correct in their judgment that the trial court's decision to the effect that the appellant's action did not disclose reasonable cause of action subsists since there is no ground of appeal attacking same?**

- (3) Whether the learned Justices of the Court of Appeal were right and correct in their findings and conclusions that the appellant failed to prove beyond reasonable doubt the allegations of false information and certificate forgery levied against the first respondent which conclusion among other reasons led to dismissal of the appellant's case?**

### **Facts of the Matter**

The appellant and the first respondent, members of the second respondent, APC, are of the same Kware/Wammako Federal Constituency, Sokoto. The first respondent contested and won election to represent the said Constituency at the House of Representatives, between 2011 2015.

At the court of trial, the appellant entreated it by Originating Summons for declaratory and injunctive reliefs. In sum, his complaint was woven around false declaration as to the acquisition of certificates. Upon a preliminary objection on jurisdiction, the trial court upheld the objection and struck out the suit for the non-disclosure of reasonable cause of action and for being an abuse of the process of the court.

The appellant appealed to the Court of Appeal. He, however, did not challenge the *rationes decidendi* on the question of the absence of reasonable cause of action and the issue of the abuse of the process of the court. In its judgment, the lower court upheld the ruling of the trial court; hence this further appeal to this court.

**Held:** *(Unanimously dismissing the appeal)*

1. *The onus of proof on a plaintiff in a declaratory action*

**With respect, I, entirely, endorse the submission of the learned senior counsel for the first and second respondents that, since the appellant sought for declaratory reliefs, he had an obligation to advance evidence in proof thereof. The reason is not far-fetched. Courts have the discretion either to grant or refuse declaratory reliefs.**

**Indeed, their success, largely, depends on the strength of the plaintiff's case. It does not depend on the defendant's defence, Maja Vs. Samouris (2002) 7 NWLR (Pt.765) 78; CPC Vs. INEC (2012) 1 NWLR (Pt.1280) 106,131. This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy, Bello Vs. Eweka (1981) 12 SC 48; Okedare Vs. Adebara (1994) 6 NWLR (Pt.349) 157; Dumez Nig Ltd Vs. Nwakhoba (2008) 18 NWLR (Pt.1119) 361, 374. (P 19 Paras D – G)**

2. *Criminal allegations must be proved beyond reasonable doubt*  
**What is, even, worse in the instant case is the fact that the plaintiff made a host of criminal allegations against the first respondent. He, thus, had a duty to prove those allegations beyond reasonable doubt, Noma-Egba Vs. ACB Plc (2005) 7 SC (Pt.111) 27; APC Vs. PDP (2015) 15 NWLR (Pt.1481), 1, 66-67. (P 19 Paras G – H)**

3. *Failure to prove perversity of concurrent findings*  
**Even then, the appellant failed to prove the perversity of the concurrent judgments of the lower courts. As such, he cannot, rightly, entreat this court to interfere with them, Ometa Vs. Numa (1935) 11 NLR 18; Okonkwo Vs. Okagbue (1994) 9 NWLR (Pt.368) 301; Princent Vs. The State (2002) 12 Sc (Pt.1) 137; Ojo Vs. Anibire (2004) All FWLR (Pt.214) 178; Nasamu Vs. State (1979) 6 9 SC 153; Sobakin Vs. State (1981) 3 4 SC 31; Enang Vs. Adu (1981) 11- 12 Sc 25; Akande Vs. Adisa (2012) 15 NWLR (Pt.1324) 538, 572 – 573.**

**Indeed, the appellant just took so much for granted in his case. Regrettably, such matters are not provable as a matter of routine, Akaninwo and Ors Vs. Nsirim and Ors (2008) 2 SCNJ 100, 113 – 114; Metzger Vs. Department of Health and Social Security (1977) 3 All E.R. 444, 451; Wallensteiner Vs. Moir (1974) 3 All E.R. 217; Bello Vs. Eweka (1981) 12 S.C. 48; Motunwase Vs. Sorungbe (1988) 4 NWLR (Pt.92) 90; Okedare Vs. Adebara (1994) 6 NWLR (Pt.349) 157, 185; Quo Vadis Hotels and Restaurants Limited Vs. Commissioner of Lands Midwestern State and Others (1973) 6 SC**

**71, 96; Agbaje Vs. Agboluaje (1970) 1 All NLR 21, 26; Fabunmi Vs. Agbe (1985) 1 NWLR (Pt.2) 299, 318; Akande Vs. Adisa and Anor (2012) 8 SCM 56,80 C – D; Congress for Progressive Change (CPC) Vs. INEC and Ors (2011) 12 (Pt.2) SCM 149, 174; G – H.**

**Against this background, I entirely agree with the learned senior counsel for the first and second respondents that this appeal, being unmeritorious, should be dismissed. (Pp 19–20 Paras H– E)**

4. *The Standard of proof required under S. 31(5) of the Electoral Act is proof beyond reasonable doubt*

**I must say that though the decision in the above cited cases remain good law, they do not apply to the facts of this case, particularly having regard to the declaratory reliefs claimed in the originating summons earlier reproduced in this Judgment. It has to be pointed out that the action was grounded on the provisions of section 31(5) of the Electoral Act, 2010, as amended, which provides that a person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false, may approach the High Court for redress. An action commenced under that section places the burden of proving the falsification of the information or document on the plaintiff or the law remains that he who alleges must prove. It was, therefore, the duty of appellant to prove that the 1<sup>st</sup> respondent gave false information or submitted any false document to the 3<sup>rd</sup> respondent, which the lower courts have, rightly in my view, concurrently found not to have been proved.**

**It should also be pointed out that the standard of proof required in an action on section 31(5) of the Electoral Act, 2010, as amended, is proof beyond reasonable doubt. In the circumstances of this case, it is my considered view that the non filing of a counter affidavit by 1<sup>st</sup> respondent without more cannot ground a grant of the declaratory reliefs without more. Secondly, the allegations being criminal in nature, the standard of proof is that required under section 135(1) and (2) of the Evidence Act, 2011 and as decided**

**by this court in a long line of cases including Nwobodo Vs. Onoh (1984) 15 SCNLRI. Kakih Vs. PDP (2014) 15 NWLW (Pt.1430) 374. (Pp 23 – 24 Paras D – B)**

*Per Ogunbiyi (JSC)*

**“It is pertinent to state that the appellant's case was centred around criminal allegation where by the law is trite and well established that the onus lies squarely on him who asserts to prove. S. 135(1) and (2) of the Evidence Act Laws of the Federation of Nigeria 2004 relates to Burden of Proof and it states thus:**

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”*

**By nature, the reliefs sought by the appellant per his originating summons are declaratory. The suit was supported by affidavit and a written address. It is on record also that the respondents did not file any counter affidavit but a written address in opposition to the originating summons. The respondents also filed a notice of preliminary objection and challenging the jurisdiction of the trial court. It was their contention also that the case of the appellant did not disclose any reasonable cause of action.**

**In is submission, the appellant's counsel anchored that the failure by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to file a counter affidavit against the motion in support of the originating summons, was an indication of an admission of all the weighty allegations levied against the 1<sup>st</sup> respondent. The learned counsel argued further that the contents of**

**the affidavit in support of the originating summons are sufficient proof of the allegations of false declaration and certificate forgery.**

**In his response, the respondents' counsel argues the foregoing contention as wrong and also does not represent the correct position of the law.**

**As rightly submitted by the learned counsel for the respondents, it is not in all circumstances that failure to file a counter affidavit amounts to an admission of the facts in the affidavit in support of a process. The law is also well entrenched that where evidence as contained in an affidavit is not cogent and strong enough to prove the case, there will be no need to file a counter affidavit. In other words, the filing of a counter affidavit should not be a matter of course. It need not be filed if it would not either serve any useful purpose of affect the outcome. See the decision in the case of *Ogojeifo Vs. Ogojeifo (2006) All FWLR (Pt.301) 1992 at 1903 1804.*" (Pp 24 – 25 paras F – G)**

*Per Ogunbiyi (JSC)*

**“The law is settled also that where such averments are taken together and are not sufficient to sustain the reliefs sought, a counter affidavit in challenging same is manifestly unnecessary. As rightly argued by the learned counsel for the respondents, the facts and exhibits in the appellant's affidavit in support of his originating summons were not sufficient to sustain the appellant's case.**

**Furthermore and as earlier stated supra, the appellant sought for declaratory reliefs before the trial court and also in addition levied against the 1<sup>st</sup> respondent allegation of false information and forgery of certificate.**

**Therefore the crux of the appellant's allegation was that the 1<sup>st</sup> respondent submitted false information to the 3<sup>rd</sup> respondent in INEC Form CF001 filed for 2011 general election as to his qualification. The said false information, counsel argued as omitted or concealed in the declaration made by the 1<sup>st</sup> respondent in 2015.**

**The nature of the allegation puts a burden upon the appellant to establish that the omission of the 2011 information in 2015 is ipso facto conclusive that the information was either false or that the certificate was forged. The allegation being clearly criminal in nature must be proved beyond reasonable doubts.”**

*(Pp 25 – 26 paras G – D)*

5. *Declaratory relief is not granted even on the admission on the defendant*  
**It is further settled and well established that declaratory reliefs are not granted even on admission. The plaintiff who sought for such relief must prove and succeed on the strength of his case and not rely on the weakness of the defence. See the case of Emenike Vs. P.D.P. (2012) 50 NSCQR 94 at 130 per Fabiyi, JSC where it was held that:**

*“the burden of proof on the plaintiff in establishing declaratory relief to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence.”*

The same principle was emphasized also in the case of **C.P.C. Vs. INEC (2012) 1 NWLR (Pt.1280) 106 at 131** where this court held and said:

*“The court does not make declarations of right either on admission as in default of defence without having evidence and being satisfied by such evidence to the plaintiff’s entitlement to such a right. The requirement of oral evidence arises from the fact that the court has discretion to grant or refuse a declaratory relief and its success depends entirely on the strength of the plaintiff’s own case and not on the defence.”*

*Per Ogunbiyi (JSC)*

**“It follows from the foregoing authorities that the declaration sought by the appellant in reliefs (i) (iv) on pages 16 17 of the record of appeal against the 1<sup>st</sup> and 2<sup>nd</sup> respondents cannot be made on admission or in default of counter affidavit.**

**The appellant, on the totality had failed to show and prove from evidence on record that information in Exhibit P7 were false and also that the certificate, Exhibit P5 presented on 2011 by 1<sup>st</sup> respondent were forged. The best evidence to prove a false certificate was a report from the school, which was not presented before the court.**

**Forgery being a criminal offence, the proof must be beyond reasonable doubt. See APC Vs. PDP (2015) 15 NWLR (Pt.1481) 1 at 66-67. As rightly submitted by the counsel for the respondents, the learned justices of the court below were right when they dismissed the appellant's case because the allegation levied against the 1<sup>st</sup> respondent, which the basis of their case, was not proved.**

**The fact that the documents listed in Exhibit 7 which was submitted in 2015 omitted some documents listed in Exhibit 5 submitted in 2011 was not a conclusive evidence of giving false information. The appellant's case was rightly speculative and the court below was right to have dismissed it as it lacked merit. In other words, the concurrent decisions of the learned trial judge and the court below in favour of the respondents were apt and unassailable.” (Pp 26–27 paras D–G)**

6. *Standard of proof in criminal cases is proof beyond reasonable doubt*  
**The main contention is that the 1<sup>st</sup> respondent failed to file a counter-affidavit to controvert the averments he made in the affidavit in support of the originating summons seeking declaratory reliefs against him (1<sup>st</sup> respondent) and in consequence is deemed to have admitted the facts contained in the affidavit in support. Declaratory judgments are not granted on admission in default of**

**defence. See: Okoya Vs. Santalli (1990) 2 NWLR (Pt.131) 172; Ntuks Vs. Nigerian Ports Authority (2007) 13 NWLR (Pt.1050) 392; Addah Vs. Ubandawaki (2015) 7 NWLR (Pt.1458) 325. It is provided in section 135(1) Evidence Act that:**

***“If the commission of a crime by a party to any proceeding is directly in issue in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”***

**The burden lay with the appellant to prove his allegation against the respondent beyond reasonable doubt despite the fact that the 1<sup>st</sup> respondent did not file a counter-affidavit to deny the allegation.**

**The lower court was right to dismiss the appeal by the appellant and this court sees no reason to interfere with the concurrent findings of the lower courts. (P 28 Paras A–F)**

*Kekere-Ekun (JSC)*

**“The law is well settled that in a claim for declaratory reliefs (as in the instant case), the plaintiff must prove his entitlement to such declaratory reliefs by cogent and credible evidence. He must rely on the strength of his own case and not on the weakness of the defence (if any). Indeed a declaratory relief will not be granted on the basis of admission by the adverse party. See Dumez Nig. Ltd. Vs. Nwakhoba (2008) 18 NWLR (Pt.1119) 361; Wallersteiner Vs. Moir (1974) 3 ALL ER 217 @ 251; Bello Vs. Eweka (1981) 12 SC (Reprint) 48; Emenike Vs. P.D.P. (2012) LPELR – 7802 (SC); Matanmi Vs. Dada (2013) LPELR – 19929 (SC). It follows therefore that the failure of the 1<sup>st</sup> respondent to file a counter affidavit cannot enure in the appellant's favour.**

**Furthermore, the allegation of forgery is criminal in nature. The standard of proof is beyond reasonable doubt. Evidence that would establish the allegation in this case beyond reasonable doubt would include:**

- (a) Exhibiting both the document from which the alleged forgery was made and the forged document;
- (b) Evidence that it was the 1<sup>st</sup> respondent who forged the document(s);
- (c) Communication from the Polytechnic of Sokoto State disputing the 1<sup>st</sup> respondent's claim to have studied there.

**See A.P.C. Vs. P.D.P. & Ors (2015) LPELR – 24587 (SC); Ndoma-Egba Vs. A.C.N. Plc. (2005) 14 NWLR (Pt.944) 79.**

**None of his evidence was supplied before the trial court. The court below was therefore correct in affirming the finding of the trial court that the appellant's action did not disclose a reasonable cause of action and that in the absence of a ground of appeal attacking that finding, it subsists.**

**The appellant has failed to satisfy me that the decisions of the two lower courts are perverse or that there is any special circumstance to warrant interference by this court.”**

*(Pp 29 – 30 paras D – C)*

#### **Nigerian cases cited in this Judgment**

*A.P.C. Vs. P.D.P. & Ors (2015) LPELR 24587 (SC);*

*Addah Vs. Ubandawaki (2015) 7 NWLR (Pt.1458) 325;*

*Agbaje Vs. Agboluaje (1970) 1 All NLR 21, 26;*

*Agbakoba Vs. INEC (2009) All FWLR (Pt.462) 1037, 1082;*

*Agbakoba Vs. INEC (2009) FWLR (Pt.462) 1037;*

*Ajakaiye Vs. Idehai (1994) 8 NWLR (Pt.354) 504;*

*Ajayi Vs. Total (Nigeria) Plc (2013) 15 NWLR (Pt.1378) 423, 436 437;*

*Akande Vs. Adisa (2012) 15 NWLR (Pt.1324) 538, 572 573;*

*Akande Vs. Adisa and Anor (2012) 8 SCM 56, 80 C D;*

*Akaninwo and Ors Vs. Nsirim and Ors (2008) 2 SCNJ 100, 113 114;*

*APC Vs. PDP (2015) 15 NWLR (Pt.1481) 1;*

*Bello Vs. Eweka (1981) 12 S.C. 48;*

*C.P.C. Vs. INEC (2012) 1 NWLR (Pt.1280) 106;*

*Congress for Progressive Change (CPC) Vs. INEC and Ors (2011) 12 (Pt.2) SCM149, 174; G H;*  
*Dumez Nig Ltd Vs. Nwakhoba (2008) 18 NWLR (Pt.1119) 361, 374;*  
*Ekeagbara Vs. Ikpeazu (2016) All FWLR (Pt.844) 1973, 1997;*  
*Emenike Vs. P.D.P. (2012) 50 NSCQR 94;*  
*Emenike Vs. P.D.P. (2012) LPELR 7802 (SC);*  
*Enang Vs. Adu (1981) 11- 12 Sc 25;*  
*Ezenduka Vs. Nigerian Spanish Engineering Co. (2003) FWLR (Pt.150) 1666, 1678;*  
*Fabunmi Vs. Agbe (1985) 1 NWLR (Pt.2) 299, 318;*  
*Inakoju Vs. Adeleke (2007) 4 NWLR (Pt.1025) 427, 684 685;*  
*Kakih Vs. PDP (2014) 15 NWLW (Pt.1430) 374;*  
*Maja Vs. Samouris (2002) 7 NWLR (Pt.765) 78;*  
*Matanmi Vs. Dada (2013) LPELR 19929 (SC);*  
*Metzger Vs. Department of Health and Social Security (1977) 3 All E.R. 444, 451;*  
*Military Administrator of Lagos State Vs. Adeyida (2012) 5 NWLR (Pt.1293) 291, 331 332;*  
*Motunwase Vs. Sorungbe (1988) 4 NWLR (Pt.92) 90;*  
*Nasamu Vs. State (1979) 6 9 SC 153;*  
*NBC Plc Vs. Ubani (2014) 4 NWLR (Pt.1398) 421, 467;*  
*Ndoma-Egba Vs. A.C.N. Plc. (2005) 14 NWLR (Pt.944) 79;*  
*Noma-Egba Vs. ACB Plc (2005) 7 SC (Pt.111) 27;*  
*Ntuks Vs. Nigerian Ports Authority (2007) 13 NWLR (Pt.1050) 392;*  
*Nwobodo Vs. Onoh (1984) 15 SCNLRI;*  
*Ogojeofò Vs. Ogojeofò (2006) All FWLR (Pt.301) 1992;*  
*Ojo Vs. Anibire (2004) All FWLR (Pt.214) 178;*  
*Okedare Vs. Adebara (1994) 6 NWLR (Pt.349) 157;*  
*Okonkwo Vs. Okagbue (1994) 9 NWLR (Pt.368) 301;*  
*Okoya Vs. Santalli (1990) 2 NWLR (Pt.131) 172;*  
*Okwaraononi Vs. Mbadugha (2014) All FWLR (Pt.728) 914, 932;*  
*Ometa Vs. Numa (1935) 11 NLR 18;*  
*Onuekwusi Vs. RTCMZC (2001) All FWLR (Pt.573) 1927, 1938 1941;*  
*Princent Vs. The State (2002) 12 Sc (Pt.1) 137;*

- A** *Purification Technique (Nig) Ltd. Vs. Jubril (2012 18 NWLR (Pt.1331) 109, 128;*  
*Quo Vadis Hotels and Restaurants Limited Vs. Commissioner of Lands*  
*Midwestern State and Others (1973) 6 SC 71, 96;*
- B** *Shettima Vs. Goni (2011) 18 NWLR (Pt.1279) 413,440;*  
*Sobakin Vs. State (1981) 3 4 SC 31;*  
*Wallensteiner Vs. Moir (1974) 3 All E.R. 217;*  
*Wallersteiner Vs. Moir (1974) 3 ALL ER 217.*
- C**  
**Nigerian statutes cited in this Judgment**  
 Evidence Act Section 123;  
*Section 135(1) and (2) of the Evidence Act, 2011; and*
- D** *Section 31(5) of the Electoral Act, 2010.*

### **Representation**

- A.U. Mustapha, (Esq.), (SAN),** for the appellant/applicant with him are
- E** **Mustapha B. Tafarki, (Esq.); Ossy Ehikio, (Esq.); C. C. Igbokwe, (Esq.); M. Mohammed, (Esq.); M. I. Ezeani, (Esq.); Sulaman Saleh (Esq.); and J.A. Atanawhenera.**
- J.S. Okutepa Esq., (SAN);** for 1<sup>st</sup> and 2<sup>nd</sup> respondents/applicants with him
- F** are **Elizabeth O. Ifedayo, (Esq.)and O. S. Apeh, (Esq.)CHIMA CENTUS**

- NWEZE, JSC(Delivering the Lead Judgment):** The appellant and the
- G** first respondent, members of the second respondent, APC, are of the same Kware/Wammako Federal Constituency, Sokoto. The first respondent contested and won election to represent the said Constituency at the House of Representatives, between 2011 – 2015.
- H** At the court of trial, the appellant entreated it by Originating Summons for declaratory and injunctive reliefs. In sum, his complaint was woven around false declaration as to the acquisition of certificates. Upon a preliminary objection on jurisdiction, the trial court upheld the objection
- I** and struck out the suit for the non-disclosure of reasonable cause of action and for being an abuse of the process of the court.

A           The appellant appealed to the Court of Appeal. He, however, did not challenge the *rationes decidendi* on the question of the absence of reasonable cause of action and the issue of the abuse of the process of the court. In its judgment, the lower court upheld the ruling of the trial court;  
B           hence this further appeal to this court.

### ISSUES FOR DETERMINATION

C           In this court, the appellant formulated three issues for the determination of his appeal. They were framed thus:

D           **(4) Whether the learned Justices of the Court of Appeal were right and justified in law in striking out issue number three as framed by the appellant along with Ground three of the notice of appeal on the premise that the said issue did not flow from the said ground of appeal?**

E           **(5) Whether the learned Justices of the Court of Appeal were right and correct in their judgment that the trial court's decision to the effect that the appellant's action did not disclose reasonable cause of action subsists since there is no ground of appeal attacking same?**

F           **(6) Whether the learned Justices of the Court of Appeal were right and correct in their findings and conclusions that the appellant failed to prove beyond reasonable doubt the allegations of false information and certificate forgery levied against the first respondent which conclusion among other reasons led to dismissal of the appellant's case?**

G           The first and second respondents, in their reply, filed two issues which were framed thus:  
H           

I

**A (1) Whether the court below was right in striking our Ground three of the notice of appeal and issue three distilled therefrom and was the court below right to hold as it did that the decision of the trial court that the appellant's case discloses no reasonable cause of action subsides since there was no ground of appeal attacking it?**

**C (2) Whether the Court below was right when it came to the conclusion that the appellant failed in law to prove the allegation of false information and dismissed the appellant's appeal?**

**D** Before dealing with the above issues, it would only be neater if the preliminary objection of the first and second respondents is disposed of.

**PRELIMINARY OBJECTION**

**E** J. S. Okutepa, SAN, for the first and second respondents, filed a notice of preliminary objection under Order 2 Rule 9 of the rules of this court, (see, pages 1-16 of the brief filed on April 03, 2017): arguments that elicited the responses of the appellant in his reply brief, filed on April 11, 2017, see, pages 2– 9 of the said reply brief.

**F** My Lords, upon my intimate reading of the arguments in the preliminary objection, I take the view they ought to be overruled for the submissions on the academic nature of the appeal are not sustainable. I thus

**G** overrule the objection and proceed to the main arguments in the main appeal, starting with the first issue.

**ISSUE ONE**

**H APPELLANT'S SUBMISSION**

**I** **Whether the learned Justices of the Court of Appeal were right and justified in law in striking out issue number three as framed by the appellant along with ground three**

**A                    of the notice of appeal on the premise that the said issue did  
                         not flow from the said ground of appeal?**

Learned senior counsel for the appellant, A. U. Mustapha, SAN, first, drew  
**B** attention to Ground three of the notice of appeal and issue three. He  
 contended that the lower court misinterpreted issue three, citing page 379  
 of the record. He submitted that the correct position was settled by **Ajayi  
 Vs. Total (Nigeria) Plc (2013) 15 NWLR (Pt.1378) 423, 436 – 437**. He,  
**C** therefore, urged the court to resolve the issue in his favour.

**FIRST AND SECOND RESPONDENT'S RESPONSE**

Learned senior counsel for the first and second respondents adopted the  
**D** brief filed on April 3, 2017 wherein he concreted two issues for the  
 determination of the appeal.

On the first issue, he contended that the lower court, rightly, struck  
 out ground three and issue three, citing page 246 of the record to the effect  
**E** that the suit did not challenge the finding that the appellant's case failed to  
 challenge the finding of the trial court on the appellant's failure to disclose a  
 reasonable cause of action. He referred to ground three.

He contended that the trial court's finding that the appellant's case  
**F** failed to disclose a reasonable cause of action was not appealed against. In  
 his submission, no issue was distilled from the said ground, **Purification  
 Technique (Nig) Ltd. Vs. Jubril (2012) 18 NWLR (Pt.1331) 109, 128;  
 Agbakoba Vs. INEC (supra); NBC Plc Vs. Ubani (2014) 4 NWLR  
 G (Pt.1398) 421, 467; Shettima Vs. Goni (2011) 18 NWLR (Pt.1279)  
 413,440.**

He, further, submitted that the lower court was right in its conclusion  
 that the appellant's case did not disclose a reasonable cause of action;  
**H** hence, its decision was still subsisting, **Okwaraononi Vs. Mbadugha  
 (2014) All FWLR (Pt.728) 914, 932.**

**I**

## A ISSUE TWO

- B Whether the learned Justices of the Court of Appeal were right and correct in their judgment that the trial court's decision to the effect that the appellant's action did not disclose reasonable cause of action subsists since there is no ground of appeal attacking same?**
- C Counsel pointed out that the lower court was wrong to have concluded that issue three did not flow from ground three. He disagreed with the findings of the trial court on page 239 – 240 of the record of territorial jurisdiction. He faulted the approach of the trial court on pages 241 – 242 of the record.
- D He drew attention to the fact that the trial court decided the two grounds of the preliminary objection, pages 122 – 123 of the record without entertaining arguments in respect of the Originating Summons. He averred that the lower court erred in its conclusion that there was no attack
- E on the trial court's decision to the effect that the appellant's case did not disclose any cause of action or at least any reasonable cause of action.

## RESPONDENT'S RESPONSE

- F On this issue, learned counsel for the first and second respondents submitted that the lower court, rightly, held that the appellant failed to prove the allegation of false information and forgery made against the first respondent and for the dismissing the appeal.
- G He contended that it is not in all circumstances that failure to file a counter affidavit would amount to an admission of the facts. He cited **Ogojeifo Vs. Ogojeifo (2006) All FWLR (Pt.301) 1792 1803 – 1804** as authority for the view that where evidence is not cogent and strong
- H enough to prove the case, a counter affidavit would be unnecessary. He pointed out that, since the appellant's case was woven around criminal allegations, he had an obligation to prove his case beyond reasonable doubt. He equally, drew attention to the fact that declaratory reliefs are not
- I awarded even on admission, citing decisions of this court.

- A** Learned senior counsel, further, contended that the appellant failed to show that a cause of action had accrued, **Onuekwusi Vs. RTCMZC (2001) All FWLR (Pt.573) 1927, 1938 – 1941; Ajakaiye Vs. Idehai (1994) 8 NWLR (Pt.354) 504**. He drew attention to the findings of the trial
- B** court on the plaintiff's failure to prove his case and the lower court's endorsement of those findings, **Akande Vs. Adisa (2012) 15 NWLR (Pt.1324) 538, 572 – 573**. He, finally, disagreed with the appellant's invitation to the court to make the declarations sought in the originating
- C** summons. He urged the court to dismiss the appeal.

### ISSUE THREE

- D** On this issue, the learned senior counsel for the appellant drew attention to page 388 of the record and urged the court to juxtapose the above views with the conclusion at pages 390 – 391 of the record. In response to his question whether the case on the Originating Summons was made out, he cited exhibits in the supporting affidavit, paragraphs 8.6 (i) – (viii). He
- E** further submitted that the allegations against the first respondent in paragraphs 11 – 19 of the affidavit in support, pages 22 – 24 of the record, pages 12 – 14 of the brief.

- F** He narrowed the case down to the absence of counter affidavits, citing **Inakoju Vs. Adeleke (2007) 4 NWLR (Pt.1025) 427, 684 – 685; Agbakoba Vs. INEC (2009) All FWLR (Pt.462) 1037, 1082**. He invited the court to hold that the above paragraphs were admitted, citing paragraphs 18 and 19 and section 123 of the Evidence Act.

- G** He further submitted that with the admissions of the allegations in the affidavit, the appellant proved the allegations, citing **Ezenduka Vs. Nigerian Spanish Engineering Co. (2003) FWLR (Pt.150) 1666, 1678**. He equally, cited **Ekeagbara Vs. Ikpeazu (2016) All FWLR (Pt.844)**
- H** **1973, 1997**.

- I** In his contention, the lower court was wrong to have concluded that the appellant did not prove the criminal allegations beyond reasonable doubt. He invited attention to **Agbakoba Vs. INEC (supra)** and **Military Administrator of Lagos State Vs. Adeyida (2012) 5 NWLR (Pt.1293) 291, 331 – 332**. He invited the court to invoke its Section 22 powers and

A grant all the reliefs, paragraphs 8.27(i) (viii).

### **APPELLANT'S REPLY BRIEF**

B As indicated earlier, the appellant's learned senior counsel also adopted his reply brief filed on May 23, 2017. He devoted pages 2-9 to the issues which the respondents canvassed in their objection. Arguments on pages 10-11 were directed at responses to the issues in the respondents' brief.

### **C RESOLUTION OF THE ISSUES**

My Lords, it is evident that the lower courts, rightly, concluded that the appellant failed to prove his case. In the main, his contention was that the respondents were deemed to have admitted his averments having not debunked them in a counter affidavit.

D With respect, I, entirely, endorse the submission of the learned senior counsel for the first and second respondents that, since the appellant sought for declaratory reliefs, he had an obligation to advance evidence in proof thereof. The reason is not far-fetched. Courts have the discretion either to grant or refuse declaratory reliefs.

E Indeed, their success, largely, depends on the strength of the plaintiff's case. It does not depend on the defendant's defence, **Maja Vs. Samouris (2002) 7 NWLR (Pt.765) 78; CPC Vs. INEC (2012) 1 NWLR (Pt.1280) 106,131**. This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy, **Bello Vs. Eweka (1981) 12 SC 48; Okedare Vs. Adebara (1994) 6 NWLR (Pt.349) 157; Dumez Nig Ltd Vs. Nwakhoba (2008) 18 NWLR (Pt.1119) 361, 374**.

F What is, even, worse in the instant case is the fact that the plaintiff made a host of criminal allegations against the first respondent. He, thus, had a duty to prove those allegations beyond reasonable doubt, **Noma-Egba Vs. ACB Plc (2005) 7 SC (Pt.111) 27; APC Vs. PDP (2015) 15 NWLR (Pt.1481), 1, 66-67**.

G Even then, the appellant failed to prove the perversity of the concurrent judgments of the lower courts. As such, he cannot, rightly, entreat this court to interfere with them, **Omota Vs. Numa (1935) 11 NLR 18; Okonkwo Vs. Okagbue (1994) 9 NWLR (Pt.368) 301; Princent Vs.**

**A The State (2002) 12 Sc (Pt.1) 137; Ojo Vs. Anibire (2004) All FWLR (Pt.214) 178; Nasamu Vs. State (1979) 6 – 9 SC 153; Sobakin Vs. State (1981) 3 – SC 31; Enang Vs. Adu (1981) 11- 12 Sc 25; Akande Vs. Adisa (2012) 15 NWLR (Pt.1324) 538, 572 – 573.**

**B** Indeed, the appellant just took so much for granted in his case. Regrettably, such matters are not provable as a matter of routine, **Akaninwo and Ors Vs. Nsirim and Ors (2008) 2 SCNJ 100, 113 – 114; Metzger Vs. Department of Health and Social Security (1977) 3 All E.R. 444, 451; Wallensteiner Vs. Moir (1974) 3 All E.R. 217; Bello Vs. Eweka (1981) 15 S.C. 48; Motunwase Vs. Sorungbe (1988) 4 NWLR (Pt.92) 90; Okedare Vs. Adebara (1994) 6 NWLR (Pt.349) 157, 185; Quo Vadis Hotels and Restaurants Limited Vs. Commissioner of Lands Midwestern State and Others (1973) 6 SC 71, 96; Agbaje Vs. Agboluaje (1970) 1 All NLR 21, 26; Fabunmi Vs. Agbe (1985) 1 NWLR (Pt.2) 299, 318; Akande Vs. Adisa and Anor (2012) 8 SCM 56,80 C – D; Congress for Progressive Change (CPC) Vs. INEC and Ors (2011) 12 E (Pt.2) SCM 149, 174; G – H.**

**F** Against this background, I entirely agree with the learned senior counsel for the first and second respondents that this appeal, being unmeritorious, should be dismissed. Accordingly, I hereby enter an order dismissing the appeal.

Appeal dismissed. The appellant is damnified in costs which I assess and fix at N800,000.

**G** **Chima Centus Nweze,  
Justice, Supreme Court**

**H** **NKANU ONNOGHEN, (CJN):** I have had the benefit of reading in draft, the lead judgment of my learned brother **NWEZE JSC** just delivered. I agree with his reasoning and conclusion that the preliminary objection lacks merit and ought to be overruled and the appeal dismissed for lacking in merit.

**I** The facts relevant for the determination of the appeal have been stated in detail in the lead judgment making it unnecessary for me to repeat them herein except as may be needed to emphasize the point being made.

- A** It is not in dispute that on the 20<sup>th</sup> day of February, 2015 appellant, as plaintiff, caused an originating summons to be issued against the respondents, as defendants in which he claimed the following reliefs:
- B** “(i) **A DECLARATION that the 1<sup>st</sup> defendant having submitted a false information to the 3<sup>rd</sup> defendant in the INEC FORM CF001 is disqualified from standing as the candidate of the All Progressive Congress for the 2015 General Elections for Kware/Wammako Federal Constituency.**
- C**
- D** (ii) **A DECLARATION that the 2<sup>nd</sup> defendant cannot lawfully present and sponsor the 1<sup>st</sup> defendant as its candidate for the 2015 General Elections for Kware/Wammako Federal Constituency of Sokoto State the 1<sup>st</sup> defendant having submitted false information and documents to the Independent National Electoral Commission(INEC).**
- E**
- F** (iii) **A DECLARATION that the 1<sup>st</sup> defendant having submitted a false information and documents to the 3<sup>rd</sup> defendant, the 3<sup>rd</sup> defendant is not bound to treat, recognize, deal with or continue to recognize the 1<sup>st</sup> defendant as the candidate of the All Progressives Congress for the Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Election.**
- G**
- H** (iv) **A DECLARATION that in the event that the February, 2015 General Election has been held and concluded before the determination of this suit, the 1<sup>st</sup> defendant having submitted a false information and documents to the 3<sup>rd</sup> defendant, stand as the**
- I**

- A** candidate of the All Progressive Congress for the Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Election.
- B** (v) **AN ORDER OF PERPETUAL INJUNCTION** restraining the 1<sup>st</sup> defendant from parading himself as the candidate of the All Progressives Congress (APC) for Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Elections.
- C**
- D** (vi) **AN ORDER OF PERPETUAL INJUNCTION** restraining the 3<sup>rd</sup> defendant from recognizing or treating the 1<sup>st</sup> defendant as the duly and properly nominated candidate of the 2<sup>nd</sup> defendant for Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Elections.
- E**
- F** (vii) **AN ORDER OF THE HONOURABLE COURT** compelling the 2<sup>nd</sup> defendant to forward with immediate effect the plaintiff's name to the 3<sup>rd</sup> defendant as its nominated candidate for Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Elections the plaintiff being the only valid aspirant of the 2<sup>nd</sup> defendant for the Kware/Wammako Federal Constituency of Sokoto State.
- G**
- H** (viii) **AN ORDER** that in the event that the 2015 General Elections has been held before the determination of this suit, the 1<sup>st</sup> defendant is also initio disqualified from contesting the 2015 General Elections as the candidate of the 2<sup>nd</sup> defendant for Kware/Wammako Federal Constituency of Sokoto State having
- I**

**A submitted forged document and false information  
on oath to the 3<sup>rd</sup> defendant.”**

**B** The Originating Summons was supported by an affidavit of 23 paragraphs to which the respondents filed no counter affidavit.

**C** It has been charged that the failure of 1<sup>st</sup> respondent to file a counter affidavit disputing the facts deposed to in some of the paragraphs of the affidavit in support of the originating summons which directly laid allegations against him, constitutes admission of the truth of the said allegations which the court ought to rely on in holding that the said allegations have been proved as required by law, for which submission learned senior counsel cited and relied on the case of **Inakoju Vs. Adeleke (2007) 4 NWLR (Pt.1025) 427 at 684; Agbakoba Vs. INEC (2009) FWLR (Pt.462) 1037 at 1082 etc.**

**E** I must say that though the decision in the above cited cases remain good law, they do not apply to the facts of this case, particularly having regard to the declaratory reliefs claimed in the originating summons earlier reproduced in this Judgment. It has to be pointed out that the action was grounded on the provisions of section 31(5) of the Electoral Act, 2010, as amended, which provides that a person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false, may approach the High Court for redress. An action commenced under that section places the burden of proving the falsification of the information or document on the plaintiff or the law remains that he who alleges must prove. It was, therefore, the duty of appellant to prove that the 1<sup>st</sup> respondent gave false information or submitted any false document to the 3<sup>rd</sup> respondent, which the lower courts have, rightly in my view, concurrently found not to have been proved.

**I** It should also be pointed out that the standard of proof required in an action on section 31(5) of the Electoral Act, 2010, as amended, is proof beyond reasonable doubt. In the circumstances of this case, it is my considered view that the non filing of a counter affidavit by 1<sup>st</sup> respondent

- A without more cannot ground a grant of the declaratory reliefs without more. Secondly, the allegations being criminal in nature, the standard of proof is that required under section 135(1) and (2) of the Evidence Act, 2011 and as decided by this court in a long line of cases including **Nwobodo Vs. Onoh**  
B **(1984) 1/SCNLR. Kakih Vs. PDP (2014) 15 NWLR (Pt.1430) 374.**

It is for the above reasons and those given in the said lead judgment of my learned brother that I too find no merit in this appeal and consequently dismiss same.

- C I abide by the consequential orders made in the lead judgment including the order as to costs.

Appeal dismissed.

**Walter Samuel Nkanu Onnoghen**  
*Chief Justice Of Nigeria*

D

**BATA OGUNBIYI, (JSC):** I read in draft the lead judgment of my learned brother **Chima Centus Nweze, JSC** just delivered. I endorse same completely that while the preliminary objection raised by the respondents should be overruled and discountenanced, the appeal as it were is devoid of any merit and should be dismissed.

- E  
F My learned brother has done justice to this appeal and I hereby adopt the totality of his judgment as mine. However and just for purpose of emphasis, I wish to add a few words of mine.

- G It is pertinent to state that the appellant's case was centred around criminal allegation where by the law is trite and well established that the onus lies squarely on him who asserts to prove. S. 135(1) and (2) of the Evidence Act Laws of the Federation of Nigeria 2004 relates to Burden of Proof and it states thus:

- H **“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.**  
I **(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”**

- A** By nature, the reliefs sought by the appellant per his originating summons are declaratory. The suit was supported by affidavit and a written address. It is on record also that the respondents did not file any counter affidavit but a written address in opposition to the originating summons. The
- B** respondents also filed a notice of preliminary objection and challenging the jurisdiction of the trial court. It was their contention also that the case of the appellant did not disclose any reasonable cause of action.

- C** In his submission, the appellant's counsel anchored that the failure by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to file a counter affidavit against the motion in support of the originating summons, was an indication of an admission of all the weighty allegations levied against the 1<sup>st</sup> respondent. The learned counsel argued further that the contents of the affidavit in support of the
- D** originating summons are sufficient proof of the allegations of false declaration and certificate forgery.

- E** In his response, the respondents' counsel argues the foregoing contention as wrong and also does not represent the correct position of the law.

- F** As rightly submitted by the learned counsel for the respondents, it is not in all circumstances that failure to file a counter affidavit amounts to an admission of the facts in the affidavit in support of a process. The law is also well entrenched that where evidence as contained in an affidavit is not cogent and strong enough to prove the case, there will be no need to file a counter affidavit. In other words, the filing of a counter affidavit should not be a matter of course. It need not be filed if it would not either serve any
- G** useful purpose of affect the outcome. See the decision in the case of **Ogojeifo Vs. Ogojeifo (2006) All FWLR (Pt.301) 1992 at 1903 – 1804.**

- H** The law is settled also that where such averments are taken together and are not sufficient to sustain the reliefs sought, a counter affidavit in challenging same is manifestly unnecessary. As rightly argued by the learned counsel for the respondents, the facts and exhibits in the appellant's affidavit in support of his originating summons were not sufficient to
- I** sustain the appellant's case.

**A** Furthermore and as earlier stated supra, the appellant sought for declaratory reliefs before the trial court and also in addition levied against the 1<sup>st</sup> respondent allegation of false information and forgery of certificate.

**B** Therefore the crux of the appellant's allegation was that the 1<sup>st</sup> respondent submitted false information to the 3<sup>rd</sup> respondent in INEC Form CF001 filed for 2011 general election as to his qualification. The said false information, counsel argued as omitted or concealed in the declaration made by the 1<sup>st</sup> respondent in 2015.

**C** The nature of the allegation puts a burden upon the appellant to establish that the omission of the 2011 information in 2015 is **ipso facto** conclusive that the information was either false or that the certificate was forged. The allegation being clearly criminal in nature must be proved

**D** beyond reasonable doubts.

**E** It is further settled and well established that declaratory reliefs are not granted even on admission. The plaintiff who sought for such relief must prove and succeed on the strength of his case and not rely on the weakness of the defence. See the case of **Emenike Vs. P.D.P. (2012) 50 NSCQR 94 at 130 per Fabiyi, JSC** where it was held that:

**F** *“the burden of proof on the plaintiff in establishing declaratory relief to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence.”*

**G**

The same principle was emphasized also in the case of **C.P.C. Vs. INEC (2012) 1 NWLR (Pt.1280) 106 at 131** where this court held and said:

**H** *“The court does not make declarations of right either on admission as in default of defence without having evidence and being satisfied by such evidence to the plaintiff's entitlement to such a right. The requirement of oral evidence arises from the fact that the court has discretion to*

**I**

**A** *grant or refuse a declaratory relief and its success depends entirely on the strength of the plaintiff's own case and not on the defence."*

**B** It follows from the foregoing authorities that the declaration sought by the appellant in reliefs (i) (iv) on pages 16 17 of the record of appeal against the 1<sup>st</sup> and 2<sup>nd</sup> respondents cannot be made on admission or in default of counter affidavit.

**C** The appellant, on the totality had failed to show and prove from evidence on record that information in exhibit P7 were false and also that the certificate, exhibit P5 presented on 2011 by 1<sup>st</sup> respondent were forged. The best evidence to prove a false certificate was a report from the school, which was not presented before the court.

**D** Forgery being a criminal offence, the proof must be beyond reasonable doubt. *See APC Vs. PDP (2015) 15 NWLR (Pt.1481) 1 at 66-67.* As rightly submitted by the counsel for the respondents, the learned justices of the court below were right when they dismissed the appellant's case because the allegation levied against the 1<sup>st</sup> respondent, which the basis of their case, was not proved.

**E** The fact that the documents listed in Exhibit 7 which was submitted in 2015 omitted some documents listed in Exhibit 5 submitted in 2011 was not a conclusive evidence of giving false information. The appellant's case was rightly speculative and the court below was right to have dismissed it as it lacked merit. In other words, the concurrent decisions of the learned trial judge and the court below in favour of the respondents were apt and unassailable.

**F** With the few words of mine and particularly relying on the comprehensive reasoning of the lead judgment by my learned brother, I also find no merit in this appeal but dismiss same in terms of his judgment.

**H** Appeal is dismissed by me.

**Clara Bata Ogunbiyi**  
*Justice, Supreme Court*

**I**

**A BAYANG AKAAHS (JSC):** I had a preview of the judgment just delivered by my learned brother, Nweze, JSC. I agree that the appeal lacks merit and should be dismissed.

The main contention is that the 1<sup>st</sup> respondent failed to file a counter-affidavit to controvert the averments he made in the affidavit in support of the originating summons seeking declaratory reliefs against him (1<sup>st</sup> respondent) and in consequence is deemed to have admitted the facts contained in the affidavit in support. Declaratory judgments are not granted on admission in default of defence. *See: Okoya Vs. Santalli (1990) 2 NWLR (Pt.131) 172; Ntuks Vs. Nigerian Ports Authority (2007) 13 NWLR (Pt.1050) 392; Addah Vs. Ubandawaki (2015) 7 NWLR (Pt.1458) 325.* It is provided in section 135(1) Evidence Act that:

**D**

**“If the commission of a crime by a party to any proceeding is directly in issue in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”**

**E**

The burden lay with the appellant to prove his allegation against the respondent beyond reasonable doubt despite the fact that the 1<sup>st</sup> respondent did not file a counter-affidavit to deny the allegation.

**F**

The lower court was right to dismiss the appeal by the appellant and this court sees no reason to interfere with the concurrent findings of the lower courts. The appeal therefore lacks merit and it is accordingly dismissed.

**G**

**K. B. Akaahs**  
*Justice, Supreme Court*

**H KEKERE-EKUN (JSC):** I have had a preview of a draft of the judgment of my learned brother, CHIMA CENTUS NWEZE, JSC just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

The substance of the originating summons before the trial court was the appellant's contention that the 1<sup>st</sup> respondent, a member of the same All Progressives Congress (APC) to which he also belongs, submitted false

**A** information to the 3<sup>rd</sup> respondent in his Form CF001 and was therefore disqualified from standing as the candidate of the party for the 2015 General Election for Kware/Wammako Federal Constituency of Sokoto State. The alleged false information relates to his educational

**B** qualifications at the tertiary level. All that the appellant relied on at the trial court were the Form CF001 submitted by the 1<sup>st</sup> respondent in 2011 when he previously contested and won the same seat and the Form CF001 submitted in respect of the 2015 exercise contending that certificates relied upon in

**C** the 2011 exercise were omitted from the Form submitted for the 2015 exercise because they were forged. The appellant also relied on the fact that the 1<sup>st</sup> respondent did not file a counter affidavit challenging the averments in support of the originating summons.

**D** The law is well settled that in a claim for declaratory reliefs (as in the instant case), the plaintiff must prove his entitlement to such declaratory reliefs by cogent and credible evidence. He must rely on the strength of his own case and not on the weakness of the defence (if any). Indeed a

**E** declaratory relief will not be granted on the basis of admission by the adverse party. *See Dumez Nig. Ltd. Vs. Nwakhoba (2008) 18 NWLR (Pt.1119) 361; Wallersteiner Vs. Moir (1974) 3 ALL ER 217 @ 251; Bello Vs. Eweka (1981) 12 SC (Reprint) 63; Emenike Vs. P.D.P. (2012)*

**F** *LPELR – 7802 (SC); Matanmi Vs. Dada (2013) LPELR – 19929 (SC).* It follows therefore that the failure of the 1<sup>st</sup> respondent to file a counter affidavit cannot enure in the appellant's favour.

**G** Furthermore, the allegation of forgery is criminal in nature. The standard of proof is beyond reasonable doubt. Evidence that would establish the allegation in this case beyond reasonable doubt would include:

- H**
- (d) Exhibiting both the document from which the alleged forgery was made and the forged document;**
  - (e) Evidence that it was the 1<sup>st</sup> respondent who forged the document(s);**
  - (f) Communication from the Polytechnic of Sokoto State disputing the 1<sup>st</sup> respondent's claim to have studied there.**
- I**

**A** *See A.P.C. Vs. P.D.P. & Ors (2015) LPELR 24587 (SC); Ndoma-Egba Vs. A.C.N. Plc. (2005) 14 NWLR (Pt.944) 79.*

None of his evidence was supplied before the trial court. The court below was therefore correct in affirming the finding of the trial court that

**B** the appellant's action did not disclose a reasonable cause of action and that in the absence of a ground of appeal attacking that finding, it subsists.

The appellant has failed to satisfy me that the decisions of the two lower courts are perverse or that there is any special circumstance to

**C** warrant interference by this court.

For these and the more detailed reasons advanced in the lead judgment, I also dismiss this appeal for being devoid of merit.

Appeal dismissed.

**D**

**Kudirat M. O. Kekere-ekum**  
*Justice, Supreme Court*

**E**

**F**

**G**

**H**

**I**

**AKEEM AFOLAHAN  
AND  
THE STATE**

**SC. 447/2012**

**IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA**

**FRIDAY, 15<sup>TH</sup> DECEMBER, 2017**

**BEFORE THEIR LORDSHIPS**

**OLABODE RHODES-VIVOUR  
MARY UKAEGO PETER-ODILI  
CLARA BATA OGBUNBIYI  
AMIRU SANUSI  
SIDIDAUDABAGE**

**JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT**

*APPEAL: Concurrent findings – Attitude of Supreme Court thereto.*

*CRIMINAL LAW AND PROCEDURE: Confessional statement – Inadmissibility thereof – Where conviction of accused is based on inadmissible confessional – Duty on appellate court to expunge therefrom – Effect, where no other evidence can sustain conviction.*

*CRIMINAL LAW AND PROCEDURE: Proof – Proof beyond reasonable doubt – Meaning.*

*CRIMINAL LAW AND PROCEDURE: Proof – Onus on prosecution – Effect of material contradictions thereto – Whether to be resolved in favour of the accused.*

*CRIMINAL LAW AND PROCEDURE: Proof – Onus on prosecution – Where doubt exists in the case of prosecution – Whether such doubt will be*

*resolved in favour of the accused.*

*CRIMINAL LAW AND PROCEDURE: Proof – Onus on prosecution thereto – Sec 135(1) Evidence Act 2011 – Whether to prove case beyond reasonable doubt.*

*EVIDENCE: Confession – Meaning – Sec 28 of the Evidence Act 2011 – Relevant principles.*

### **Issue for Determination**

**Whether the learned trial judge and the court below erred in law in relying on Exhibit “Q” and appellant's presence at the scene of the alleged crime as basis for finding him guilty and consequently convicting him for conspiracy to commit armed robbery and the actual offence of armed robbery.**

### **Facts of the Matter**

This is an appeal that arose from the judgment of the Court of Appeal of Nigeria, Akure Division delivered on 8<sup>th</sup> May, 2012. In its judgment, the court of Appeal upheld the decision of the learned trial judge, Bada J. (as he then was) which had convicted and sentenced the appellant for the charge of armed robbery.

Being dissatisfied with the decision of the Court of Appeal, the appellant filed the instant appeal.

The appellant was arraigned at the High Court of Osun State sitting in Osogbo on a two count charge of conspiracy to commit felony, to wit: **Armed Robbery, Contrary to Section 5(b) of the Robbery and Firearms (Special Offences) Act Cap. 398 Vol. XXII, Laws of the Federation of Nigeria 1999** and the offence of armed robbery contrary to Section 1(2)(a) of the **Robbery and Firearms (Special Offences) Act Cap. 398 Vol. XXII, Laws of the Federation of Nigeria 1999.**

The prosecution called five (5) witnesses to prove its case. The appellant gave evidence in his defence and called another witness. The case for the prosecution was that the appellant with others at large, at about 10:30 pm on the 21<sup>st</sup> day of December, 1999, robbed one Alhaji Sariyu at gun point while armed with guns, and dispossessed their victim of the sum of one hundred and forty thousand naira (N140,000.00) at No. 44 Kola Balogun Street, Osogbo, Osun State.

In his defence, the appellant denied participating in the crime for which he was charged. He said he only took somebody to the scene as a passenger on his commercial motorcycle popularly called “Okada” which he rented from the owner on terms as to the amount of money to pay or 'deliver' to the owner on daily basis. The appellant said he had a disagreement with the passenger as to payment of his fare and that in the course of his disagreement with the passenger he heard a gunshot which caused him to take to his heels. He was later arrested and charged for armed robbery.

The trial court found him guilty on both counts. He was then convicted and sentenced to death by hanging. The verdict was affirmed by the Court of Appeal leading to this appeal.

**Held:** *(Unanimously allowing the appeal)*

1. *Onus on prosecution in criminal cases*

**The offence for which the appellant is charged is a very serious one, and by virtue of Section 135(1) of the Evidence Act, 2011, the offence must be strictly proved by cogent and convincing evidence that leaves no iota or doubts or skepticism in the minds of the parties and members of the public, and I dare say this court. The section provides:**

**“135. Standard of proof where commission of crime in issue: and burden where guilt of crime etc asserted.**

**(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding**

**civil in any proceeding civil or criminal, it must be proved beyond reasonable doubt.**

- (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether then commission of such act is or is not directly in issue in the action.”**

**It is now well settled that in our criminal jurisprudence, in order for the prosecution to succeed whenever the commission of a crime is in issue against an accused person, he is under a duty to establish its case beyond reasonable doubt. It must however be noted that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. I need to emphasis that in criminal proceedings, the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt and this would be achieved by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence. See YONGO vs. COMMISSIONER OF POLICE (1992) LPELR – 3528 (SC), 3 SCNJ 113, OGUNDUJAN vs. THE STATE (1991) LPELR-2333 (SC), (1991) 3 NWLR (Pt. 181) 519; AKIGBE vs. IOG (1959) 4 FSC 203, ONUGOGU vs. THE STATE (1974) 9 SC 1 at 20, BABUGA vs. THE STATE (1996) LPELR-701 (SC), (1996) 7 NWLR (Pt. 460) 279. (Pp 54–55 Paras H–H).**

2. *Meaning of Confession*

**The learned counsel to the applicant planked his submission on section 28 of the Evidence Act, 2011. Sections 28 and 29 of the Evidence Act, 2011, become relevant in the context of this appeal. Section 28 defines confession as: A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.**

**Section 29 states conditions for making confession relevant.**

- “(1) In any proceedings a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.**
- (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:**
- (a) by oppression of the person who made it; or**
  - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.**
- (3) In any proceedings where the prosecution purposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either paragraph (a) or (b) of subsection (2) of this section.**

- (4) In this section “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.” (Pp 56–57 Paras B–D).**

***Per Bage (JSC)***

**What is the essence of the above provisions? There is no ambiguity in the law. Clearly, the law intends that any confessional statement obtained in an oppressive manner is liable to be vitiated for not being voluntary, and is thus inadmissible in law. That was the decision of this court in THE STATE vs. SALAWU (2011) 18 NWLR (pt. 1279) page 580 at 605, Para C-F.**

**The appellant contention seems compelling; to the extent that he did not make the confessional statement (Exhibit Q). This is premised on the ground that, in his evidence at trial-within-trial at page 24 of the record of appeal, the appellant stated in clear words that the policemen knocked his head against the wall and that he was mercilessly beaten and used carpenters' instruments to injure him in his chest and shoulders.**

**I wish to pay particular attention to the position of the lower court on the effect of Exhibit Q, as indicated at pages 152-153 of the record of appeal, where the lower court reasoned thus:**

**“I had earlier determined while resolving issue I that exhibit “Q” is not a confessional statement. The fact that it was not shown to have been made voluntarily did not affect its admissibility. Being just a statement obtained by the prosecution from the accused person, it is admissible as part of the case of the prosecution.”**  
***(Pp 57–58 Paras D–A).***

3. *Exhibit Q is inadmissible and cannot sustain the conviction of the appellant.*

**It is puzzling that the lower court acknowledge the fact that Exhibit Q might not have been voluntary, but nonetheless, I think inadvertently, failed to give attention to the prejudicial effect of placing reliance on it in the arriving at its decision. The lower court had remarked at pages 139-140 of the record, that (quote):**

**“Whether the accused was telling the truth or not, it is wrong in my view to have treated this statement as a confessional statement. The appellant did not therein admit participating in the robbery. Perhaps that was why PW5 Sgt Lucky Uyabieme treated the statement with such laxity. He did not even countersign the statement as the recorder. The learned trial judge was in my view wrong to have admitted Exhibit Q as a confessional statement voluntarily made. Issue 1, is resolved in favour of the appellant.”**

**Resolution of issue one in favour of the appellant was, in my considered view, enough to arrive at a different conclusion by the lower court. The question that follows is whether there was sufficient evidence left on record after excluding exhibit 'Q' which could have sustained the verdict of guilt returned by the trial court. The result is that, when the statement in Exhibit 'Q' is excluded from the evidence, as it should be, the inevitable conclusion is that the guilt of the appellant on the offence of conspiracy and armed robbery was not established. The appellant must therefore be discharged and acquitted. See the case of NSOFOR vs. THE STATE (Supra). (P 58 Paras A–H).**

4. *An accused is presumed innocence until proved guilty.*  
**Another 'cloud' in the decision of the lower court is the inability of the prosecution to provide sufficient justification for failure to either**

**charge or call as witnesses certain “Azeez” and “Seim”. On this, the respondent contended that the prosecution is not under any obligation to call them to resolve whether the appellant is a commercial motorcyclist that carried the suspects to the scene. The respondent also asserted that nothing stopped the appellant from also calling them as witnesses. This is misplaced, in my considered view. This amounts to asking the appellant to prove his innocence. The law is since settled, and requires no citing of legal authority, that the constitutional presumption of innocence under Section 36(5) of the Constitution of the Federal Republic of Nigeria (1999) as amended, which says “Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;” is to the benefit of the accused person, the appellant in this appeal. As firm as the respondent might sound, the above, like Exhibit 'Q' leaves some doubts in the minds of innocent by-standards as to the guilt or innocence of the appellant. (Pp 58 – 59 Paras H – G).**

5. *Vitiating factors in the condition of the appellant*

**The reliance on Exhibit 'Q' despite ruling it out of order as not being a confessional statement; failure to call “a 3<sup>rd</sup> alleged co-conspirator” who had allegedly “vanished into thin air with no explanation whatsoever for his whereabouts and the statement allegedly taken from him is not in evidence”; lack of sufficient justification for failure to either charge or call as witnesses certain “Azeez” and “Seun”; among others as highlighted above are crucial and necessitate revisiting the finding of facts by the two courts below. (P 59 Paras G – I).**

6. *Attitude of Supreme Court to concurrent findings*

**The law is settled that if there are concurrent findings of fact made by the High Court and Court of Appeal, the Supreme Court will not readily set them aside or substitute its own views unless there is no evidence to support the findings. See RE: MOGAJI (1986) 1 NWLR (Pt. 19) 759; SALAMI Vs. STATE (1988) 3 NWLR (Pt. 85) 670;**

**MBENU Vs. STATE (1988) 3 NWLR (Pt. 84) 615, “per AKA’AHS, JSC (P. 18, Paras D-F).**

**However, the instant appeal is one of those rare occasions that this court would revisit, for the purpose of fairness and justice re-assess and re-align the concurrency in the findings of the two courts below us. The law is trite and well established that it is open for an appellate court to interfere with findings of a trial court when such findings have been made on legally inadmissible evidence, or they are perverse or are indeed not based on any evidence before the court. See the cases of SELE vs. THE STATE (1993) 1 NWLR (Pt. 267) P. 276 at 282 and IYARO vs. THE STATE (1998) 1 NWLR (Pt. 69) P. 256. In this appeal, we found facts different from the two courts below.**

**A critical view of this appeal shows that apart from the confessional statement of the appellant (Exhibit 'Q'), which is challenged for not being voluntary, there is no direct or circumstantial evidence by either PW1, Pw2, PW3 or PW4 suggesting that the appellant agreed or conspired with anyone to commit an unlawful purpose. More worrisome, the alleged or supposed “Principal Actor” who was earlier arrested was later released without any charges being brought against him. What is the effect of all these?**

**The above, in effect, casts serious doubts on the guilt of the appellant. And, where there is or are doubts, as in this case, the law is settled that such must be resolved in favour of the suspect, the appellant in this. Doubts, as in this case, must be necessarily be resolved in favour the appellant in line with the tradition of this court. In the case of OFORLETE vs. THE STATE (2000) 7 WRN 86 at 106, (2000) 12 NWLR (Pt. 681) 415 at 436, Achike, JSC, (as he then was) observed that, doubt (referring to doubt as to the possibility of the appellant committing the offence) must be resolved in favour of the appellant where the allegation of his offence has not been proved beyond reasonable doubt. This court per Wali JSC, (as he then was) held in the case of CHUKWU vs. THE STATE (1996) 7 NWLR (Pt.**

**463) 686 at 701 G-H as follows:**

**“Where prosecution evidence is found to be contradictory on a material issue, the court should give the benefit of that doubt to an accused person that stems from the non-credibility of such evidence and discharge and acquit him.” (Pp 60–61 Paras A–B).**

7. *Contradictions to be resolved in favour of the accused*

**This court had amplified the cardinal principle in criminal proceedings that the burden of proving a fact which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt. In criminal cases, any doubt, as to the guilt of the accused arising from the contradictions in the prosecution's evidence of vital issues must be resolved to the benefit of the accused. See AHMED vs. THE STATE (1999) 7 NWLR (Pt. 612) Pg 641 at pg 673.**

**The law demands that, irrespective of sentimental and other subjective considerations, we must always step forward, to resolve doubt on the guilt of an accused in favour of the accused, the appellant in this case, as established and re-confirmed in several cases, not the least the cases of KALU vs. STATE (1988) 4 NWLR (Pt. 90) 503; IKERNSON vs. STATE (1989) 3 NWLR (Pt. 110) 455; NNOLIM vs. THE STATE (1993) 3 NWLR (Pt. 283) 569.**

**In concluding this judgment, I wish to reiterate that, as I have pointed above, there are obvious gaps, lacuna and seemingly irreconcilable doubts in the proceedings leading to the trial and conviction of the appellant, both at the trial court and at the court below us. To begin to enumerate them one after the other would be tautological having sufficiently amplified those instances above.**

**In view of the foregoing, this appeal is resolved in favour of the appellant. The appeal is, consequently allowed. The judgment of the court below is set aside. The appellant is hereby discharged and acquitted of the charge of conspiracy to commit armed robbery and**

**the main offence of armed robbery. (P 61 Paras C–I).**

8. *Confessional Statement was not corroborated*

**In this case, the confessional statement of the accused person now appellant, was rejected by the trial court. Also besides the confessional statement Exhibit Q, there had not been any reliable and credible evidence to corroborate with confessional statement as would warrant the conviction and sentence of the accused person, now appellant. The evidence adduced by the respondent in my view, fell short of proof of the beyond reasonable doubt of the offences the appellant was charged with tried and convicted.**

**Thus, I am in agreement with the reasoning and conclusion reached in the leading judgment of my learned brother Bage JSC, that this appeal is meritorious and ought to be allowed. I accordingly allow it and consequently substitute the conviction with order of acquittal and discharge. (P 62 Paras D–G).**

9. *Meaning of proof beyond reasonable doubt*

**A recourse to what is meant by proof beyond reasonable doubt would be helpful and I shall go to the case of Ani vs. State (2009) 16 NWLR (Pt. 1168) 443 per Tobi JSC thus:**

**“The expression beyond reasonable doubt in evidence means fully satisfied, entirely convinced. In criminal cases, the guilt of the accused must be established beyond reasonable doubts which means that the facts proven must, by virtue of their probative force, established guilt. Reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is doubt which a reasonable person might entertain and it is not fanciful doubt, is not imagined doubt. Reasonable doubt is such a doubt as would cause a prudent man to hesitate before acting in matters of importance to him.”**

**The importance of the phrase beyond reasonable doubt cannot be over-emphasised and so a long line of judicial authorities have not let off the opportunity to dwell on it in consonance with the Evidence Act section relating thereto.**

**It is trite that for the prosecution to establish the offences charged, it must prove beyond reasonable doubt that there was a robbery, with offensive weapons and that the accused was involved in the operation.**

**The Supreme Court has no difficulty in restating the above principles in the case of *Ogudo vs. State* (2011) 18 NWLR (Pt. 1278) 1 and held thus:**

**“All the above must be proved beyond reasonable doubt before a conviction can be sustained. Proof beyond reasonable doubt entails the prosecution producing enough evidence to justify the charge. The above ingredients were not proved in this case. In the case the learned trial judge believed the contents of EXHIBIT “1” and disbelieved the testimony of the appellant on oath wherein he gave his own version of events. It amounts to improper evaluation of evidence for a judge to rely on his belief or disbelief. The learned trial judge should ask himself the six questions earlier alluded to in this judgment and this includes looking for some independent evidence to corroborate or show that the confession is true. That was not obtained in this case”.**  
*(Pp 67–68 Paras E–F).*

10. *Case was not prove beyond reasonable doubt*

**The questioning nature from which the purported confessional statement, EXHIBIT Q was obtained and was jettisoned by the Court of Appeal coupled by the material inconsistencies which rear up every now and then in the testimonies of the prosecution witnesses produce a scenario where the court cannot say no**

**reasonable doubt occurred.**

**The situation applies in either the armed robbery charge or that of the conspiracy as the court cannot safely infer conspiracy from a dubious source of evidence. The resultant effect is that the standard of proof beyond reasonable doubt cannot be to have been attained. Indeed this is one of those instances calling for the intervention of an appellate court such as the present one in spite of the concurrent findings of the two courts below. This to avert a miscarriage of justice especially in the case at hand where doubts abound and should be resolved in favour of the appellant. See *Yaro vs. Arewa Construction Limited (2007) 17 NWLR (Pt. 1063) 333b at 373. (Pp 70 – 71 Paras G – B).***

#### **Nigerian cases cited**

*Ahmed vs. The State (1999) 7 NWLR (Pt. 612) Pg 641 at pg 673.*

*Akigbe vs. IOG (1959) 4 FSC 203,*

*Ani vs. State (2009) 16 NWLR (Pt. 1168) 443*

*Babuga vs. The State (1996) LPELR-701 (SC), (1996) 7 NWLR (Pt. 460) 279.*

*Chukwu vs. The State (1996) 7 NWLR (Pt. 463) 686 at 701*

*Ikernson vs. State (1989) 3 NWLR (Pt. 110) 455;*

*Iyaro vs. The State (1998) 1 NWLR (Pt. 69) P. 256.*

*Kalu vs. State (1988) 4 NWLR (Pt. 90) 503;*

*Mbenu vs. State (1988) 3 NWLR (Pt. 84) 615, “per AKA’AHS, JSC*

*Nnolim vs. The State (1993) 3 NWLR (Pt. 283) 569.*

*Oforlete vs. The State (2000) 7 WRN 86 at 106, (2000) 12 NWLR (Pt. 681) 415 at 436.*

*Ogudo vs. State (2011) 18 NWLR (Pt. 1278) 1*

*Ogundujan vs. The State (1991) LPELR-2333 (SC), (1991) 3 NWLR (Pt. 181) 519;*

*Onugogu vs. The State (1974) 9 SC 1 at 20,*

*Salami vs. State (1988) 3 NWLR (Pt. 85) 670;*

*Sele vs. The State (1993) 1 NWLR (Pt. 267) P. 276 at 282*

*The State vs. Salawu (2011) 18 NWLR (pt. 1279) page 580 at 605*

*Yaro vs. Arewa Construction Limited (2007) 17 NWLR (Pt. 1063) 333b at 373.*

**A** *Yongo vs. Commissioner of Police (1992) LPELR 3528 (SC), 3 SCNJ 113,*

**Nigerian statutes**

Section 135(1) of the Evidence Act, 2011

**B** Section 5(b) of the Robbery and Firearms (Special Offences) Act Cap. 398 Vol. XXII, Laws of the Federation of Nigeria 1999  
Sections 28 and 29 of the Evidence Act, 2011,

**C Representation**

A. Olaleru with A.O. Oloriaje, for the appellant.

A. Afolabi with O. Afolabi, for the respondent

**D DAUDA BAGE, (JSC) (Delivering the Lead Judgment):**This is an appeal that arose from the judgment of the Court of Appeal of Nigeria, Akure Division delivered on 8<sup>th</sup> May, 2012, as contained at pages 1218-158 of the record of appeal. In its judgment, the court below upheld the decision of the learned trial judge, Bada J. (as he then was) which had convicted and sentenced the appellant for the charge of armed robbery.

**E** Being dissatisfied with the decision of the lower court, the appellant filed the instant appeal vide a notice of appeal dated 16<sup>th</sup> June, 2014, and filed 18<sup>th</sup> June, 2014, wherein he raised five (5) ground of appeal as contained at pages 162-162 of the record of appeal.

**SUMMARY OF FACTS**

**G** The appellant was arraigned at the High Court of Osun State sitting in Osogbo on a two count charge of conspiracy to commit felony, to wit: **Armed Robbery, Contrary to Section 5(b) of the Robbery and Firearms (Special Offences) Act Cap. 398 Vol. XXII, Laws of the Federation of Nigeria 1999** and the offence of armed robbery contrary to **H** Section 1(2)(a) of the **Robbery and Firearms (Special Offences) Act Cap. 398 Vol. XXII, Laws of the Federation of Nigeria 1999.**

**I** The prosecution called five (5) witnesses to prove its case. The appellant gave evidence in his defence and called another witness. The case for the prosecution was that the appellant with others at large, at about

**A** 10:30 pm on the 21<sup>st</sup> day of December, 1999, robbed one Alhaji Sariyu at gun point while armed with guns, and dispossessed their victim of the sum of one hundred and forty thousand naira (N140,000.00) at No. 44 Kola Balogun Street, Osogbo, Osun State.

**B** In his defence, the appellant denied participating in the crime for which he was charged. He said he only took somebody to the scene as a passenger on his commercial motorcycle popularly called “Okada” which he rented from the owner on terms as to the amount of money to pay or  
**C** 'deliver' to the owner on daily basis. The appellant said he had a disagreement with the passenger as to payment of his fare and that in the course of his disagreement with the passenger he heard a gunshot which caused him to take to his heels. He was later arrested and charged for armed  
**D** robbery.

The trial court found him guilty on both counts. He was then convicted and sentenced to death by hanging. The verdict was affirmed by the lower court leading to this appeal.

**E**

#### **ISSUES FOR DETERMINATION:**

The appellant filed his brief of argument dated 27<sup>th</sup> June, 2014, and formulated three issues for determination before this court. The appellant  
**F** also filed a reply brief dated 16<sup>th</sup> October, 2014. On its part, the respondent filed respondent brief dated 19<sup>th</sup> October, 2014, and formulated two issues for determination.

The issues formulated by the appellant are:

**G**

**1) Whether the court below did not err in law when it held that the trial court was right in admitting Exhibit “Q” in evidence in support of the prosecution/respondent's case (Grounds 1 and 5)**

**H**

**2) Whether the learned trial judge and indeed the justices of the court below were not in error when they appeared to presume that the mere fact that the appellant was caught at the scene of an alleged crime**

**I**

- A** without more, makes him guilty of conspiracy to  
**B** commit armed robbery and proceeded to hold that  
the prosecution proved counts 1 and 2 of Charge No:  
**C** HOS/7C/2000 and Appeal No: CA/I/97/2005 beyond  
reasonable doubt and consequently convicted and  
**D** sentenced the appellant to death by hanging  
thereby” (Grounds 1,2, 3,4 and 5).
- E** 3) Whether there was sufficient evidence led from  
which the tow lower courts could infer a conspiracy  
to commit an unlawful purpose to wit: armed  
robbery by the appellant? and whether the  
**F** appellant who admittedly by evidence of PW1 was  
not one of the people that entered her house to  
commit the alleged act of armed robbery could have  
been convicted of the charge of armed robbery in all  
the surrounding circumstances of this case?  
**G** (Grounds 1, 2, 3, 4, and 5).

On its part, the respondent formulated two issues for determination, thus:

- F** 1) Whether the learned justices of the court below in  
their decision upheld the admission of Exhibit “Q”  
in evidence by the trial court and relied on same to  
**G** affirm the conviction of the appellant.
- 2) Whether by the totality of the evidence adduced the  
respondent proved the charge against the appellant  
beyond reasonable doubt.  
**H**

In determining this appeal, I have formulated one issue for determination.  
This is because, from the briefs filed by the parties, one issue is central,  
which is:  
**I**

- A**            **Whether the learned trial judge and the court below erred**  
**B**            **in law in relying on Exhibit “Q” and appellant's presence**  
**at the scene of the alleged crime as basis for finding him guilty**  
**and consequently convicting him for conspiracy to commit**  
**armed robbery and the actual offence of armed robbery.**

### **CONSIDERATION AND RESOLUTION OF THE ISSUE**

- C**            The appellant's counsel premised his submission on Issue 1, on wrongful  
admission of Exhibit “Q.” The learned counsel for the appellant contended  
that, quoting him, **“the learned trial court and indeed the Court of**  
**D**            **Appeal erred in law when they admitted Exhibit “Q” and relied on its**  
**in finding the appellant guilty of the 2 count charge of conspiracy to**  
**rob and robbery and proceed therein to sentenced him to death by**  
**hanging (sic)”**.

- E**            The learned counsel to the appellant planked his submission on  
section 28 of the Evidence Act, 2011 and the case of **SHELLA vs. THE**  
**STATE** (2007) 18 NWLR (Pt. 1066), page 240 at page 292, paragraph H;  
**SAIBU vs. THE STATE** (1982) 4 SC, Pages 41, at 258 and **IBRAHIM vs.**  
**R 1914** A.C. Page 599, at 609.

- F**            Counsel also placed reliance on the provisions of sections 29(2) and  
(5) of the evidence act (supra) which he quoted verbatim, and submitted  
that by a combined reading of sections 28 and 29 of the evidence act, any  
confessional statement made by accused person as a result of the use of  
threat or the use of actual violence to the body of the accused person is  
**G**            rendered inadmissible. He argued further that any confessional statement  
obtained in an oppressive manner is liable to be vitiated for not being  
voluntary, and is thus inadmissible in law. Counsel cited the Supreme  
Court decision per Ngwuta JSC, in **THE STATE vs. SALAWU** (2011) 18  
**H**            NWLR (pt. 1279) page 580 at 605, para C-F.

- I**            The appellant counsel argued further that his client did not make the  
confessional statement (Exhibit Q). Counsel contended that, the essence of  
his evidence at trial-within-trial at page 24 of the record of appeal, is to the  
effect that the policemen knocked his head against the wall and that he was  
mercilessly beaten and that the policemen used carpenters' instruments to

**A** injure him in his chest and shoulders. Counsel submitted that the evidence of beating, torture, inhuman treatment and oppression of the appellant were not rebutted by the respondent as the appellant was not cross-examined on this issue. Thus, the evidence is admitted.

**B** Counsel stressed that the respondent has been unable to prove beyond reasonable doubt that the confessional statement was voluntarily made by the appellant. Counsel relied on the case of **NAMSOH vs. THE STATE** 1993) 5 NWLR (Pt. 292) at 129 and submitted that where a  
**C** statement is the product of a question and answer session between the police and the defendant, such a statement cannot be regarded as being voluntary. Counsel posits that the involuntariness of the appellant's  
**D** confessional statement coupled with the prosecution's failure to prove beyond reasonable doubt were enough for the trial court not to have relied on the evidence to convict the appellant in this case. Counsel stressed the point that outside the confessional statement, there was no evidence on which to anchor the conviction and sentence of the appellant. the learned  
**E** appellant's counsel concluded on this point by urging this court to set-aside the conviction and death sentence of the appellant, as the case failed the impotent test of voluntariness.

On the manner of taking the statement of the accused person by the  
**F** police, counsel cited the case of **NSOFOR vs. THE STATE** (2004) 18 NWLR (Pt. 905) page 292 at pages 314-315, and submitted that the process of recording such statement does not allow the accused person to be subjected to all sorts of inhuman treatment by the law enforcement officers  
**G** in order to obtain accused's statement. Counsel differed with the position of the court on the effect of Exhibit Q, as indicted at pages 152-153 of the record of appeal, where the lower court reasoned thus:

**H** **I had earlier determined while resolving issue 1 that exhibit “Q” is not a confessional statement. The fact that it was not shown to have been made voluntarily did not affect its admissibility. Being just a statement obtained by the**  
**I** **prosecution from the accused person, it is admissible as part of the case of the prosecution.**

- A** The learned appellant's counsel submitted that the distinction made by the court below on admissibility is strange and not tenable in law. Counsel urged this court to so hold. Counsel argued vehemently, that failure of the prosecution to call Akeem and Azeez whom the appellant testified in his
- B** business was fatal to the case of the prosecution. Counsel buttressed his argument with the provisions of section 167 (d) of the evidence act, 2011 on presumption of evidence or fact not proved. Counsel also cited the case of **THE STATE vs. AZEEZ** (2008) 14 NWLR (Pt. 1108) page 439, at 475,
- C** Para C; 501, page D; **SALAWU's vs. THE STATE** (supra).

- In his submission on Issue 2, the learned counsel for the appellant argued that by virtue of section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) there is a presumption of innocence
- D** in favour of the appellant. The learned counsel also alluded to the standard of proof beyond reasonable doubt, as required under section 135(1) of the Evidence Act, 2011 to ground conviction of an accused person. He cited the case of **ANI vs. THE STATE** (2009) 16 NWLR (Pt. 1168) page 443 at
- E** 457-458, para F-B. The learned counsel relied on the case of **OGUDO vs. THE STATE** (supra) in amplifying what the prosecution must prove to succeeding the offence of armed robbery.

These are that:

- F**
- (i) there was a case of robbery;**
  - (ii) the robbery was carried out with the use of offensive weapons; and**
  - (iii) the accused person participated in the robbery.**
- G**

- The learned counsel submitted that the prosecution in the case at hand failed woefully to satisfy the above requirements, counsel contended
- H** vehemently at page 24 of the appellant's brief that the requirement of a common intention for an unlawful purpose was not satisfied, as the person who was identified as having drawn a gun in the course of the alleged robbery operation has been released without charge and without any explanation. Furthermore, the learned counsel for the appellant strongly
- I** contended that a certain "3<sup>rd</sup> alleged co-conspirator" has vanished into thin

**A** air with no explanation whatsoever for his whereabouts and the statement allegedly taken from him is not in evidence.

The appellant also contended, through his counsel, that the prosecution did not fulfill the legal requirement of the offence of armed robbery. The learned counsel highlighted the perceived contradiction in the decision of the lower court on pages 142-143 of the record of appeal. The learned counsel also drew our attention to the fact that Exhibit P.3, an English translation of Exhibit P.4 is a concocted corroboration, which he described as being “perverse and unfounded” and made by the appellant's adversary, in person of Sergeant Ologunde, the PW3.

Counsel also alluded to the inability of the PW1 to identify the appellant as the person who robbed her at gun-point. This is because, the learned counsel for the appellant stressed, the only person the complaint (the PW1) identified as the one who robbed her at gun-point was not charged with the offence. For this and other reasons highlighted above, the learned counsel to the appellant submitted that the prosecution has not provided sufficient evidence to link the appellant to the alleged offence of armed robbery. This formed the basis of his plea to us to set aside the conviction of the appellant.

On Issue 3, the learned counsel to the appellant contended that the finding of the lower court on page 155 of the record and the conclusion reached thereof is perverse (and/or erroneous) as the evidence did not emanate from the English translation of Exhibit 3. Counsel then submitted that apart from the purported confessional statement of the appellant (which is challenged for not being voluntary), there is no direct or circumstantial evidence by either PW1, PW2, PW3 or PW4 suggesting that the appellant agreed or conspired with anyone to commit an unlawful purpose. Counsel anchored this supposition on the fact that the alleged “Principal Actor” who was arrested was released without any charges being brought against him. Counsel cited the case of **IKWUNNE vs. THE STATE** (2000) 5 NWLR (Pt. 658) page 550 at 561, Para B-C to drive home his point.

**I** In his conclusion, the learned counsel to the appellant amplified his contention that, it is not reasonable that an alleged conspirator who was

- A** said to be the one armed with a gun and whose evidence would have been very useful in proving conspiracy was arrested but was later released without charged and his testimony was not offered in evidence to sustain the charge of conspiracy against the appellant. The learned counsel urged this court to
- B** see reason to disturb the concurrent findings of the two courts below, and, in sum, to allow this appeal and set aside the decision of the courts below.

As I often say, a coin must always have the other side. The flip side of the issue in this appeal is presented in the 32-page respondent's brief of argument dated 9<sup>th</sup> October, 2014. In his respondent's brief, the learned counsel for the respondent submitted that there is a slight misrepresentation on the part of the appellant of the purport and effect of the decision/position of the Court of Appeal on the opinion held by the trial court on the

**C** admissibility of Exhibit Q and the weight attached to it by the trial court and court below. This is because, the learned counsel pointed out, the court below, at pages 139-140 of the record, the pointed out that (quote)):

- E** **Whether the accused was telling the truth or not, it is wrong in my view to have treated this statement as a confessional statement. The appellant did not therein admit participating in the robbery. Perhaps that was why PW5**
- F** **Sgt Lucky Uyabiieme treated the statement with such laxity. He did not even countersign the statement as the recorder. The learned trial judge was in my view wrong to have admitted Exhibit Q as a confessional statement**
- G** **voluntarily made. Issue 1 is resolved in favour of the appellant."**

- I wish to observe, and to also point out that, the rules of English
- H** composition requires that a quoted portion of a statement must be reproduced verbatim, and any errors or language problems indicated as appropriate as having been imported directly in its original version or form. This is not the case in respect of the above quoted portion. The above is
- I** contained at page 140 of the record. However, the respondent, while quoting same, did not copy the exact words of the quoted portion, as counsel

**A** reproduced the passage with modifications, to suit his position, in pages 9-10 of the respondent's brief. Even though skipping are tolerated, appropriate indicators should be inserted to avoid distorting the original words or its meanings.

**B** While relying on the above quoted portion, the learned counsel for the respondent submitted that the lower court did not in any way affirm the decision of the trial court on the basis of admissibility of Exhibit Q as a confessional statement voluntarily made by the appellant in upholding the conviction of the appellant. **C** counsel reiterated that the court below did not rely on Exhibit Q in affirming the conviction of the appellant and further asserted that the court below arrived at a correct decision. The learned counsel buttressed his arguments by citing the cases of **ORRFOYIN vs. AROWOLO** (1989) 4 NWLR (Pt. 1114) 172 and **ATTORNEY-GENERAL OF RIVERS STATE vs. UDE & ORS** (2007) ALL FWLR (Pt. 347) 598 at 610, Paras A-B.

**E** On the need for every statement of an accused person sought to be relied upon by the prosecution to be voluntary, the learned counsel for the respondent also made recourse to the pages 152-153 of the record of appeal on the decision of the lower court particularly on Exhibit Q, and submitted that the contentious Exhibit 'Q' was not a confessional statement. He **F** contended that the case of **NSOFOR vs. THE STATE** and **SALAWU vs. THE STATE** (supra) cited by the learned counsel to the appellant are not applicable. Counsel relied on section 251(1) of the Evidence Act and contended that assuming without conceding that Exhibit Q was wrongly **G** treated as a confessional statement, the appellant has not shown in their submission how the decision if the court below in this regards has occasioned a miscarriage of justice.

**H** The learned counsel for the respondent contended that an appellate court will not quash a conviction or reverse a judgment where it is clear that expunging the admitted inadmissible evidence will not alter the decision of the court appealed against, citing the case of **OKORO vs. THE STATE** 1998) 14 NWLR (Pt. 584) 181; **QUEEN vs. HASKE** (1961) 2 SCNLR 90 and **ARCHIBONG vs. THE STATE** (2006) 14 NWLR (Pt. 1000) 349, **I** where the learned counsel for the respondent quoted extensively from the

**A** decision of the Supreme Court per Musdapha, JSC, (as he then was). The learned counsel then urged this court to resolve issue one in favour of the respondent.

On issue two, the learned counsel relies on the case of **ODUNEYE vs. THE STATE** (2001) 2 NWLR (Pt. 697) at 311 and submitted that the prosecution has proved the alleged offence of conspiracy, since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties. He alluded to the evidence of PW2 and 4 and Exhibit P3 and P4 in justifying his submission. The learned counsel contended that the prosecution has proved its case, as the standard of proof beyond reasonable doubt does not mean “proof to the hilt” or beyond all shadow of doubt. The learned counsel cited the case of **MOSES JUA vs. THE STATE** (2010) 4 NWLR (Pt. 1184) at 217.

Counsel submitted further that there are cogent, direct and positive confession as well as eye witness evidence that positively identified appellant as one of the armed robbers that robbed at the scene of the crime on the day of the incident. The learned counsel contended, at page 21 of the respondent's brief, that the appellant placed himself at the scene by his own extra-judicial statement, which shows that he was not only at the scene by was part of the armed gang that struck at PW1's house.

**F** On the issue of failure of the prosecution to either charge or call as witnesses certain “Azeez” and “Seun”, the respondent contended that the prosecution is not under any obligation to call them to resolve whether the appellant is a commercial motorcyclist that carried the suspects to the scene. Counsel pointed out further, that nothing stopped the appellant from also calling them as witnesses. In his final submission, the learned counsel for the respondent urged his court to resolve issue two in favour of the respondent, and to uphold the appeal and affirm the decision of the lower court which had earlier affirmed the judgment of the trial court.

**H** In his reply brief of argument dated 16<sup>th</sup> October, 2014, the appellant reiterated his earlier position that the lower court relied heavily on Exhibit 'P' and “Q' in convicting the appellant and that those were wrongly admitted and unreliable and cannot be the foundation upon which any judgment or conviction can be based. Counsel also urged us to discountenance the

- A** attempt of the respondent's counsel to distinguish the case of **NSOFOR vs. THE STATE** and **SALAWU vs. THE STATE** (supra). Counsel further contended that there is nothing from the testimony of the witnesses to justify the conviction of the appellant. In sum, the learned appellant's
- B** counsel also urged this court in his reply brief, to allow this appeal and set aside the decision of the lower court.

I have decided to engage in detailed analysis of the submission of counsel in this appeal, for obvious reasons. Put differently, the basis of

**C** detailed evaluation of submissions made by the respective counsel in this appeal will become obvious or clear before or at the end of delivering this judgment. As clearly evinced above, this appeal could be effectively resolved by answering one issue, which is that, as stated above:

**D**

**“Whether the learned trial judge and the court below erred in law in relying on Exhibit “Q” and accused's presence at the scene of the alleged crime as basis for finding him guilty and consequently convicting him for conspiracy to commit armed robbery and the actual offence of armed robbery.”**

**E**

- F** I now return to answer the above question. The point that must be made, and clearly made, is that the appeal before us borders on conspiracy to commit the offence of armed robbery and the actual act of armed robbery. The offence of conspiracy to commit armed robbery is charged pursuant to
- G** Section 5(b) of the **Robbery and Firearms (Special Offences) Act Cap 398 Vol. XXII, Laws of the Federation of Nigeria 1999** and while the actual act of Armed Robbery is charged pursuant to **Section 1(2) (a) of the Robbery and Firearms (Special Offences) Act Cap 398 Vol. XXII,**
- H** **Laws of the Federation of Nigeria 1999.**

The offence for which the appellant is charged is a very serious one, and by virtue of Section 135(1) of the Evidence Act, 2011, the offence must be strictly proved by cogent and convincing evidence that leaves no iota or

**I** doubts or skepticism in the minds of the parties and members of the public, and I dare say this court. The section provides:

**A           “135. Standard of proof where commission of crime in issue: and burden where guilt of crime etc asserted.**

**B           (3)    If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil in any proceeding civil or criminal, it must be proved beyond reasonable doubt.**

**C           (4)    The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether then commission of such act is or is not directly in issue in the action.”**

**E**       It is now well settled that in our criminal jurisprudence, in order for the prosecution to succeed whenever the commission of a crime is in issue against an accused person, he is under a duty to establish its case beyond reasonable doubt. It must however be noted that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. I need to emphasis

**F**       that in criminal proceedings, the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt and this would be achieved by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence. See **YONGO vs. COMMISSIONER OF**

**G**       **POLICE** (1992) LPELR – 3528 (SC), 3 SCNJ 113, **OGUNDUJAN vs. THE STATE** (1991) LPELR-2333 (SC), (1991) 3 NWLR (Pt. 181) 519; **AKIGBE vs. IOG** (1959) 4 FSC 203, **ONUGOGU vs. THE STATE** (1974) 9 SC 1 at 20, **BABUGA vs. THE STATE** (1996) LPELR-701 (SC),

**H**       (1996) 7 NWLR (Pt. 460) 279.

**I**       The next question is, what is or are the quality, mature, context, manner and configuration of the totality of evidence before the trial court on the basis of which the appellant was convicted and sentenced? The appellant's counsel had premised his submission on wrongful admission of Exhibit Q. The learned counsel to the appellant contended that:

**A** “the learned trial court and indeed the Court of Appeal  
erred in law when they admitted Exhibit Q and relied on  
its in finding the appellant guilty of the 2 count charge of  
conspiracy to rob and robbery and proceed therein to  
**B** sentenced him to death by hanging (sic).”

The learned counsel to the applicant planked his submission on section 28 of the Evidence Act, 2011. Sections 28 and 29 of the Evidence Act, 2011,  
**C** become relevant in the context of this appeal. Section 28 defines confession as: A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

**D** Section 29 states conditions for making confession relevant.

**E** “(1) In any proceedings a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

**F** (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:

**G** (a) by oppression of the person who made it; or  
(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any

**H** confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it  
**I**



**A            prosecution from the accused person, it is admissible as part of the case of the prosecution.”**

**B** It is puzzling that the lower court acknowledge the fact that Exhibit Q might not have been voluntary, but nonetheless, I think inadvertently, failed to give attention to the prejudicial effect of placing reliance on it in the arriving at its decision. The lower court had remarked at pages 139-140 of the record, that (quote):

**C                            “Whether the accused was telling the truth or not, it is wrong in my view to have treated this statement as a confessional statement. The appellant did not therein admit participating in the robbery. Perhaps that was why PW5 Sgt Lucky Uyabieme treated the statement with such laxity. He did not even countersign the statement as the recorder. The learned trial judge was in my view wrong to have admitted Exhibit Q as a confessional statement voluntarily made. Issue 1, is resolved in favour of the appellant.”**

**F** Resolution of issue one in favour of the appellant was, in my considered view, enough to arrive at a different conclusion by the lower court. The question that follows is whether there was sufficient evidence left on record after excluding exhibit 'Q' which could have sustained the verdict of guilt returned by the trial court. The result is that, when the statement in Exhibit 'Q' is excluded from the evidence, as it should be, the inevitable conclusion is that the guilt of the appellant on the offence of conspiracy and armed robbery was not established. The appellant must therefore be discharged and acquitted. See the case of **NSOFOR vs. THE STATE (Supra)**.

**I** Another 'cloud' in the decision of the lower court is the inability of the prosecution to provide sufficient justification for failure to either charge or call as witnesses certain “Azeez” and “Seim”. On this, the respondent contended that the prosecution is not under any obligation to call them to resolve whether the appellant is a commercial motorcyclist that carried the

**A** suspects to the scene. The respondent also asserted that nothing stopped the appellant from also calling them as witnesses. This is misplaced, in my considered view. This amounts to asking the appellant to prove his innocence. The law is since settled, and requires no citing of legal authority, that the constitutional presumption of innocence under Section 36(5) of the Constitution of the Federal Republic of Nigeria (1999) as amended, which says **“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;”** is to the benefit of the accused person, the appellant in this appeal. As firm as the respondent might sound, the above, like Exhibit 'Q' leaves some doubts in the minds of innocent by-standards as to the guilt or innocence of the appellant.

The learned counsel to the appellant had relied on the above among others in submitting that the prosecution had failed woefully to satisfy the requirements conspiracy to commit the offence of armed and armed robbery. This is because a common intention for an unlawful purpose was not satisfied, as the person who was identified as having drawn a gun in the course of the alleged robbery operation has been released without charge and without any explanation. It is also the contention of the appellant that the 3<sup>rd</sup> alleged co-conspirator has “vanished into thin air with no explanation whatsoever for his whereabouts and the statement allegedly taken from him is not in evidence”.

This is also another weighty submission that deserves attention. Counsel also alluded to the inability of the PW1 to identify the appellant as the person who robbed her at gun-point. This is because the only person the complainant (the PW1) identified as the one who robbed her at gun-point was not charged with the offence.

The reliance on Exhibit 'Q' despite ruling it out of order as not being a confessional statement; failure to call “a 3<sup>rd</sup> alleged co-conspirator” who had allegedly “vanished into thin air with no explanation whatsoever for his whereabouts and the statement allegedly taken from him is not in evidence”; lack of sufficient justification for failure to either charge or call as witnesses certain “Azeez” and “Seun”; among others as highlighted above are crucial and necessitate revisiting the finding of facts by the two courts below.

**A** The law is settled that if there are concurrent findings of fact made by the High Court and Court of Appeal, the Supreme Court will not readily set them aside or substitute its own views unless there is no evidence to support the findings. See **RE: MOGAJI** (1986) 1 NWLR (Pt. 19) 759; **SALAMI vs. STATE** (1988) 3 NWLR (Pt. 85) 670; **MBENU vs. STATE** (1988) 3 NWLR (Pt. 84) 615, “per AKA’AHS, JSC (P. 18, Paras D-F).

**B** However, the instant appeal is one of those rare occasions that this court would revisit, for the purpose of fairness and justice re-assess and re-align the concurrency in the findings of the two courts below us. The law is trite and well established that it is open for an appellate court to interfere with findings of a trial court when such findings have been made on legally inadmissible evidence, or they are perverse or are indeed not based on any evidence before the court. See the cases of **SELE vs. THE STATE** (1993) 1 NWLR (Pt. 267) P. 276 at 282 and **IYARO vs. THE STATE** (1998) 1 NWLR (Pt. 69) P. 256. In this appeal, we found facts different from the two courts below.

**C** A critical view of this appeal shows that apart from the confessional statement of the appellant (Exhibit 'Q'), which is challenged for not being voluntary, there is no direct or circumstantial evidence by either PW1, PW2, PW3 or PW4 suggesting that the appellant agreed or conspired with anyone to commit an unlawful purpose. More worrisome, the alleged or supposed “Principal Actor” who was earlier arrested was later released without any charges being brought against him. What is the effect of all these?

**D** The above, in effect, casts serious doubts on the guilt of the appellant. And, where there is or are doubts, as in this case, the law is settled that such must be resolved in favour of the suspect, the appellant in this. Doubts, as in this case, must be necessarily be resolved in favour the appellant in line with the tradition of this court. In the case of **OFORLETE vs. THE STATE** (2000) 7 WRN 86 at 106, (2000) 12 NWLR (Pt. 681) 415 at 436, Achike, JSC, (as he then was) observed that, doubt (referring to doubt as to the possibility of the appellant committing the offence) must be resolved in favour of the appellant where the allegation of his offence has not been proved beyond reasonable doubt. This court per Wali JSC, (as he

A then was) held in the case of **CHUKWU vs. THE STATE** (1996) 7 NWLR (Pt. 463) 686 at 701 G-H as follows:

B **“Where prosecution evidence is found to be contradictory on a material issue, the court should give the benefit of that doubt to an accused person that stems from the non-credibility of such evidence and discharge and acquit him.”**

C This court had amplified the cardinal principle in criminal proceedings that the burden of proving a fact which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt. In criminal cases, any doubt, as to the guilt of the accused arising from the contradictions in the prosecution's evidence of vital issues must be resolved to the benefit of the accused. See **AHMED vs. THE STATE** (1999) 7 NWLR (Pt. 612) Pg 641 at pg 673.

E The law demands that, irrespective of sentimental and other subjective considerations, we must always step forward, to resolve doubt on the guilt of an accused in favour of the accused, the appellant in this case, as established and re-confirmed in several cases, not the least the cases of **KALU vs. STATE** (1988) 4 NWLR (Pt. 90) 503; **IKERNSON vs. STATE** (1989) 3 NWLR (Pt. 110) 455; **NNOLIM vs. THE STATE** (1993) 3 NWLR (Pt. 283) 569.

F In concluding this judgment, I wish to reiterate that, as I have pointed above, there are obvious gaps, lacuna ad seemingly irreconcilable doubts in the proceedings leading to the trial and conviction of the appellant, both at the trial court and at the court below us. To begin to enumerate them one after the other would be tautological having sufficiently amplified those instances above.

G In view of the foregoing, this appeal is resolved in favour of the appellant. the appeal is, consequently allowed. The judgment of the court below is set aside. The appellant is hereby discharged and acquitted of the charge of conspiracy to commit armed robbery and the main offence of armed robbery.

I

**Sidi Dauda Bage,**

**A** *Justice, Supreme Court*  
**RHODES-VIVOUR, (JSC):** I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Bage JSC. I agree with the reasons he has given for allowing the appeal.

**B** The appellant is acquitted of the charges of conspiracy and armed robbery and discharged from court.

**Olabode Rhoes-vivour**  
*Justice, Supreme Court*

**C**  
**AMIRU SABUSI, (JSC):** I had the opportunity of reading in draft form, the judgment just rendered by my learned brother Bage JSC. While agreeing with him that this appeal is meritorious. I shall also allow it, **D** having adopted the reasoning and conclusion arrived at in the leading judgment.

In this case, the confessional statement of the accused person now appellant, was rejected by the trial court. Also besides the confessional **E** statement Exhibit Q, there had not been any reliable and credible evidence to corroborate with confessional statement as would warrant the conviction and sentence of the accused person, now appellant. The evidence adduced by the respondent in my view, fell short of proof of the beyond reasonable **F** doubt of the offences the appellant was charged with tried and convicted.

Thus, I am in agreement with the reasoning and conclusion reached in the leading judgment of my learned brother Bage JSC, that this appeal is meritorious and ought to be allowed. I accordingly allow it and consequently substitute the **G** conviction with order of acquittal and discharge.

**Amiru Sanusi**  
*Justice, Supreme Court*

**H** **PETER-ODILI, (JSC):** I agree with the judgment just delivered by my learned brother, Sidi Dauda Bage and I shall make some remarks to properly my support.

This appeal arose from the judgment of the Court of Appeal, Akure **I** Division delivered on 8<sup>th</sup> day 2012 which upheld the decision on the trial court per Jimi Bade J (as he then was).

**A**

**FACTS BRIEFLY STATED**

The appellant was arraigned before Jimi Bade J (as he then was) at Osun State High Court, Osogbo on a two count charge of conspiracy to commit

**B** felony to wit: conspiracy to commit armed robbery and armed robbery contrary to Sections 5(b) 1(2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Vol. XXII, Laws of the Federation of Nigeria 1990.

**C** The prosecution called 5 witnesses while the appellant gave evidence in his defence and called another witness.

The case for the prosecution is that on 21<sup>st</sup> December, 1999 while one Alhaja Sariyu Aladorin, a trader (PW1) was praying in her house, she heard

**D** the voice of one Kemi outside the gate knocking and she instructed her daughter to open the gate for her. As soon as the gate was opened some men armed with guns entered the compound and commandeered the woman to her room, beat her mercilessly and robbed her of the sum of N140,000.00.

**E** The men also took her passbooks of Savannah Bank Plc, UBA Plc and First Bank Plc, all in Osogbo. PW4 (the night guard) who had unknown to the assailant scaled the fence after the assailants entered the compound caught the appellant at the gate of the victim. He managed to escape at first but was

**F** re-arrested few minutes later. After his arrest, he said he used Okada (motorcycle) to bring others who had run away but when the scene was checked no motorcycle was found around the area. During the investigation, it was discovered that a vehicle was snatched by the

**G** assailants and when the vehicle was recovered, a Savannah Bank Savings withdrawal book and Identity card of the victim (PW1) were found in the car. When the appellant was interrogated by the police, he volunteered extra-judicial statements Exhibits “P3”, “P4”, and “Q” confessing that he

**H** participated in the crime.

In his defence, the appellant denied any participation in the crime. He said he only took somebody to the scene on his motorcycle as a commercial motorcyclist and that he was arrested at the scene when he had

**I** a misunderstanding with the passengers as to the agreed fare.

A

After the address of counsel the trial court found the accused guilty on both counts and sentenced him to death by hanging.

B The appellant dissatisfied with the said judgment lodged an appeal against it at the Court of Appeal holden at Ibadan. Judgment was delivered by the Court of Appeal on 8<sup>th</sup> May, 2012. The court dismissed the said appeal as lacking in merit and affirmed the judgment of the trial court. This pending appeal is against the judgment of the Court of Appeal Akure affirming the judgment of the trial court.

C A. Olaleru Esq., learned counsel for the appellant on the 5/10/17 date of hearing adopted his brief of argument filed on 11/7/2014 and reply brief filed on 17/10/14. He formulated three issues for determination, the first and third of which he abandoned at the hearing and the surviving one is thus:

D

**crime without more makes him guilty of conspiracy to commit armed robbery and proceeded to hold that the prosecution proved count 1 and 2 of Charge No: HOS/7C/2000 and Appeal No. CA/1/97/2005 beyond reasonable doubt and consequently convicted and sentenced the appellant to death by hanging thereby. (Grounds 1, 2, 3, 4 and 5).**

E

F

Learned counsel for the respondents, Adewale Afolabi who is also the Attorney General of Osun State adopted its brief of argument filed on 13/10/2014 in which were crafted two issues for determination:

G

**ISSUE 1:**

H

**Whether the learned justices of the court below in their decision upheld the admission of Exhibit Q in evidence by the trial court and relied on it in affirming the conviction of the appellant. (Grounds 1 & 3 of the notice of appeal).**

I

**ISSUE II:**

**Whether by the totality of the evidence adduced the**

**A            respondent proved the charge against the appellant beyond reasonable doubt. (Grounds 2 & 5 of the notice of appeal).**

**B** I shall make use of that surviving Issue 2 of the appellant in the determination of this appeal and I shall recast it as sole issue.

**SOLE ISSUE:**

**C            “Whether the learned trial judge and indeed the justices of the court below were not in error when they appeared to presume that the mere fact that the appellant was caught at the scene of an alleged crime without more makes him guilty of conspiracy to commit armed robbery and proceed to hold that the prosecution proved counts 1 and 2 of the charge No: NOS/7C/2000 and Appeal No: CA/1/97/2005 beyond reasonable doubt and consequently convicted and sentenced the appellant to death by hanging thereby?” (Grounds 1, 2, 3, and 5).**

**F** Abiodun Olaleru of counsel for the appellant contended that there is a presumption of innocence of any accused person and the burden of establishing his guilt lies with the prosecution. He cited section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN). That Section 135(1) of the Evidence Act 2011 sets out the standard of proof required of the prosecution in criminal cases. That if the commission of a crime by a party in any proceeding is directly in issue in any proceedings, civil or criminal, it must be proved beyond reasonable doubt.

**G** He referred to **Ani vs. State** (2009) 16 NWLR (Pt. 1168) 443; that  
**H** the respondent as prosecution failed woefully to satisfy the requirement of a common intention to commit an unlawful purpose on the part of the appellant and as such, could not have been said to have succeeded in proving the charge of conspiracy against the appellant especially when one  
**I** considers that the person who was identified as having drawn a gun in the

**A** course of alleged robbery operation had been released without charge and without any explanation and a third alleged co-conspirator had vanished into thin air, also without explanation as to his where about and the statement allegedly taken from him not in evidence. He cited **Onyeiye vs.**

**B The State** (2012) 15 NWLR (pt. 1324) 586 at 617.

For the appellant it was submitted that there was no shred of convincing corroborative evidence to shore up the so-called confessional statement upon which the two lower courts relied heavily in convicting the  
**C** appellant. Also that the third ingredient of robbery there is the need to link the accused person by hard evidence to the commission of the offence.

Mr. Olaleru of counsel submitted further that there are lots of doubts serious enough that would make the court find for the appellant. That the  
**D** respondent failed to provide sufficient evidence linking the appellant to the alleged offence of armed robbery. That the absence of that hard evidence is fatal to the prosecution's case. He referred to **Ani vs. State** (supra) 458.

Learned counsel for the respondent Adewale Afolabi Esq. submitted  
**E** that there is a slight misrepresentation of the purport and effect of the decision/position of the Court of Appeal on the opinion held by the trial court on admissibility of EXHIBIT Q and the weight attached to it by the trial court and the court below. That aside EXHIBIT Q there are other  
**F** cogent and positive evidence upon which the conviction of the appellant can be based. That the appellant has not shown how the alleged moving admission of EXHIBIT Q affected his case.

For the respondent it was further submitted that the offence of  
**G** conspiracy has been inferentially deducted from the acts of the parties towards the commission of the offence by the credible evidence of PW2, PW4 and the admission of the appellant in EXHIBIT P4, the other extra judicial statement it was contended that the respondent proved the charge  
**H** against the appellant beyond reasonable doubt by cogent, positive and reliable evidence as prescribed by law. Also that the respondent was not obligated to call every conceivable witness the appellant thought may be helpful to him for his defence having been able to advance enough  
**I** evidence to prove the charge against him. Again the respondent is not

**A** under any obligation to charge all persons mentioned by appellants as accomplices or cohorts. The following cases were relied on: **Okoh vs. The State** 92014) 6 SCM; **Arogundare vs. The State** (2009) 2 SCM 40 at 46.

**B** In reply on point of law, learned counsel for the appellant raised the fact that there were material inconsistencies between the evidence of PW2 and that of PW4 as to the number of persons involved in the robbery operation.

**C** The contending positions on either side are in the case of the appellant that the prosecution failed to prove the offences for which the appellant was charged beyond reasonable doubt. The reasons being that there was a dearth of evidence from which to draw the inference of these being a conspiracy to commit any unlawful purpose and that overall the evidence led did not point irresistibly to the conclusion that the appellant

**D** was the person that committed the offence of armed robbery.

**E** The respondent holding the contrary view pointed to the confessional statement, EXHIBIT Q which though rejected by the Court of Appeal did not detract from other corroborating evidence, cogent, positive and reliable linking the appellant to the offences charged.

A recourse to what is meant by proof beyond reasonable doubt would be helpful and I shall go to the case of **Ani vs. State** (2009) 16 NWLR (Pt. 1168) 443 per Tobi JSC thus:

**F** **“The expression beyond reasonable doubt in evidence**

**G** **means fully satisfied, entirely convinced. In criminal**

**H** **cases, the guilt of the accused must be established beyond**

**I** **reasonable doubts which means that the facts proven**

**must, by virtue of their probative force, established guilt.**

**Reasonable doubt which will justify acquittal is doubt**

**based on reason and arising from evidence or lack of**

**evidence, and it is doubt which a reasonable person might**

**entertain and it is not fanciful doubt, is not imagined**

**doubt. Reasonable doubt is such a doubt as would cause a**

**prudent man to hesitate before acting in matters of**

**importance to him.”**

A The importance of the phrase beyond reasonable doubt cannot be over-emphasised and so a long line of judicial authorities have not let off the opportunity to dwell on it in consonance with the Evidence Act section relating thereto.

B It is trite that for the prosecution to establish the offences charged, it must prove beyond reasonable doubt that there was a robbery, with offensive weapons and that the accused was involved in the operation.

C The Supreme Court has no difficulty in restating the above principles in the case of **Ogudo vs. State** (2011) 18 NWLR (Pt. 1278) 1 and held thus:

D **“All the above must be proved beyond reasonable doubt before a conviction can be sustained. Proof beyond**  
E **reasonable doubt entails the prosecution producing**  
F **enough evidence to justify the charge. The above**  
G **ingredients were not proved in this case. In the case the**  
H **learned trial judge believed the contents of EXHIBIT “1”**  
I **and disbelieved the testimony of the appellant on oath**  
J **wherein he gave his own version of events. It amounts to**  
K **improper evaluation of evidence for a judge to rely on his**  
L **belief or disbelief. The learned trial judge should ask**  
M **himself the six questions earlier alluded to in this judgment**  
N **and this includes looking for some independent evidence to**  
O **corroborate or show that the confession is true. That was**  
P **not obtained in this case”.**

G I shall go into the evidence of two of the prosecution witnesses so as to see how reliable they were to be taken in proof of the case at hand.

PW2 stated:

H **“The 1<sup>st</sup> PW is a friend to my mother.**  
I **I do not know the accused**  
J **I remember 21/12/99**

I **At about 7pm on that day, my mother sent me to 1<sup>st</sup> PW and**

- A** as I knocked the 1<sup>st</sup> PW directed that the door should be opened for me. As soon as Fatimo opened the door 2 people entered along with me and one of them brought out a gun and asked for 1<sup>st</sup> PW but I replied that I do not know her.
- B** We were directed to lie flat on the floor and face the floor. While we were facing the floor, they went to Alhaja and she took them inside. Later one of them was arrested and the accused said he came with 3 other people. He was shouting
- C** Seun and Akeem.”

PW4 testified as follows:

- D** “on 21/12/99 I resumed duty at about 8pm and it was during the Ramadan Festival the PW1 use to party outside with other people in the house. At about 8:30 I heard a knock on the gate and one of the daughters of PW1 opened the gate, 4 people then rushed inside, 2 of them stood at the gate. One of the two who came used handkerchief to cover his nose and the brought out a gun. I was in the dark, they did not see me. I jumped the fence of the houses of PW1
- E**
- F** into the hospital and turned round to come to the front house. At that time two of the robbers were about to leave, I then held on to the accused who started struggling with me. And he managed to free himself from me but he was rearrested. He said he used Okada to bring the other accused now at large but on getting outside there was no Okada around. He was taken to the police station at Ayetoro. We did not recover anything from the accused.
- G**
- H** Court the statement of Mufutau Jegede made to the police on 22/12/99 is admitted in evidence without objection and is marked as EXHIBIT “P5”.
- I**

**A** The material contradictions occurred between the two testimonies as to the actual number of the participating criminals at the same event and time. The Court of Appeal in its summarization did not hold up a glorification flag to the case put up by the respondent when it held thus:

**B**

**“It is clear that the evidence of PW1 in court mentioning the accused person as one of those that entered and were asking for her is inconsistent with her extrajudicial statement that she could not recognize the people that robbed as she was unconscious ... the issue of the identity of the accused person as one of those who entered and robbed Alhaja is very material to the charge against the accused. I have carefully examined the judgment of the trial judge at pages 32-37 of the record of appeal, although his lordship dismissed the contradictions as immaterial and as not going to the root case, he did not base the conviction of the appellant on that aspect of PW1's testimony.**

**C**

**D**

**E**

**F**

**G**

**He relied mainly on EXHIBITS P (sic P3 and P4) and Q the alleged confessional statements... in the circumstances, in answer to issue 2, in respect of the evidence of PW1, I would say that the contradiction was material but since it did not form the basis of the judgment of the trial judge the question of treating the evidence as unreliable does not arise.”**

**H** The questioning nature from which the purported confessional statement, EXHIBIT Q was obtained and was jettisoned by the Court of Appeal coupled by the material inconsistencies which rear up every now and then in the testimonies of the prosecution witnesses produce a scenario where the court cannot say no reasonable doubt occurred.

**I** The situation applies in either the armed robbery charge or that of the

- A** conspiracy as the court cannot safely infer conspiracy from a dubious source of evidence. The resultant effect is that the standard of proof beyond reasonable doubt cannot be to have been attained. Indeed this is one of those instances calling for the intervention of an appellate court such as the
- B** present one in spite of the concurrent findings of the two courts below. This to avert a miscarriage of justice especially in the case at hand where doubts abound and should be resolved in favour of the appellant. See **Yaro vs. Arewa Construction Limited** (2007) 17 NWLR (Pt. 1063) 333b at 373.
- C** In conclusion and along the better reasoning in the lead judgment, there is merit in this appeal which I allow. I abide by the consequential orders and made.

**Mary Ukaego Peter-odili**  
*Justice, Supreme Court*

**D**

- BATA OGUNBIYI, (JSC):** The respondent herein were jointly charged before the Delta State High Court vide the charge sheet dated 19<sup>th</sup> day of August, 2010 containing ten (10) counts. All the offences were charged under the Independent Corrupt Practices and Other Related Offences Acts, 2000 (pages 2 – 6 of the records contained the charge sheet and the proof of evidence).

- E** The were arraigned on the 14<sup>th</sup> day of October, 2010 before the High Court Sapele Judicial Division.

- F** The plea of each of the accused persons was taken and they were also granted bail on the same day (Pages 137-139 of the records are in reference).

- G** By a motioned dated the 5<sup>th</sup> of November, 2011, the 1<sup>st</sup> and 2<sup>nd</sup> respondents applied to the lower court for the quashing of counts 1, 2, 7, 8, 9 and 10 and the statement of offence in the information on the grounds set out on the motion paper. (The motion on notice/preliminary objection is at pages 82-90 of the records). This application was however withdrawn and struck out during the proceedings of the 29<sup>th</sup> of November, 2011 (see proceedings at pages 140 – 141 of the records).

- H** By another application dated 16<sup>th</sup> day of August, 2011 but filed on the 29<sup>th</sup> day of August, 2011 the 1<sup>st</sup> and 2<sup>nd</sup> respondents applied to the court and prayed as follows:

**I**

- A**            ***“AN ORDER of this honourable court dismissing/striking out this charge or otherwise quashing same on the ground that this honourable court lack the requisite jurisdiction to try the offence as contained in the charge sheet in view of the provisions of SECTIONS 129(1)(A), 132(1)(B) and (C) OF THE DELTA STATE LOCAL GOVERNMENT LAW OF 2004 AND SECTION 64 OF THE CPL.***
- B**
- C**    The said application was predicated on 8 grounds and supported by a 15 paragraphs affidavit deposed to by the 2<sup>nd</sup> respondent and the thrust of which was that the lower court lacked the requisite jurisdiction to sit over the charge, since all the offences alleged in the charge consist of electoral
- D**    offences contained in the Delta State Local Government law of 2004. (The preliminary objection/motion on notice, affidavit and written submission are at pages 105-122 of the records).
- On the 29<sup>th</sup> day of November, 2011, the trial court took argument on
- E**    the said application and delivered a ruling on the 21<sup>st</sup> day of February, 2012 wherein the said application was dismissed. The 1<sup>st</sup> and 2<sup>nd</sup> respondents thereafter approached the lower court vide two notices of appeal on the 5<sup>th</sup> day of March, 2012. Both notices contain only one ground.
- F**            An application by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, to consolidate the two notices of appeal, to amend the notices and argue additional grounds of appeal as well as to raise fresh issues on appeal, was heard and granted in chambers.
- G**            The lower court delivered its judgment on the 11<sup>th</sup> day of December, 2013 and allowed the appeal. This appeal herein therefore is against the said decision of the lower court.
- The notice of appeal was filed at the lower court on the 21<sup>st</sup> day of
- H**    February 2014. It was dated the same day (see pages 313-316 of the record of appeal).
- In accordance with rules of court, briefs of argument were filed by both parties:
- I**    1)    Appellant's brief of argument was settled by one Enosa Omoghibo

- A** Esq. and filed on 16/10/14.
- 2) 1<sup>st</sup> and 2<sup>nd</sup> respondents' brief of argument was settled by one A. M. Kotoye Esq. and filed on 2/7/15.
- 3) Appellant's reply brief of Enosa Omoghibo and filed on 21/3/15.

**B** On the 5<sup>th</sup> October, 2017, at the hearing of the appeal, Mr. E. Omoghibo represented the appellant while A.M. Kotoye Esq. appeared for all the respondents.

**C** The learned counsel on behalf of the respondents applied to withdraw their preliminary objection filed 2/7/15 and same was struck out.

Both counsel representing the parties adopted and relied on their respective briefs of argument. While the appellant's counsel moved the court to allow the appeal, a verdict of dismissal was sought for on behalf of the respondents.

**D** The two issues formulated by the appellant for determination are as follows:

- E** 1) **Whether having regard to the facts and circumstances that councillorship elections did not hold on the 10<sup>th</sup> day of may, 2008 in Uzere ward 06, Isoko South Local Government Council, Delta State**
- F** **the jurisdiction of the Magistrate's Court of Delta State to hear and determine electoral offences as provided under the Local Government Law CAP D27, Laws of Delta State 2004 has been invoked.**
- G** 2) **Whether the accused persons cannot be validly tried under the provisions of the Corrupt Practices & Other Related Offences Act 2000 having regard to**
- H** **the facts and circumstances that councillorship elections did not hold on the 10<sup>th</sup> day of May, 2008 in Uzere ward 06, Isoko South Local Government Council, Delta State and yet someone was issued a certificate of return and sown in.**
- I**

A On behalf of the respondents, the lone issue raised was as following:

**Whether or not the lower court was right, when it set aside the ruling of G.B. Briki-Okolosi delivered on 21/02/12, on the ground that the trial court “is devoid of jurisdiction” to try and determine the charge in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law CAP D27, Laws of Delta State, 2006.**

The issue raised by the respondents is in tandem with the appellant's first issue which relates to question of jurisdiction.

D I seek to state straight away that the fulcrum of the appeal herein centers around the issue of jurisdiction; that is to say, the competence of the lower court to entertain and determine the information (charge) preferred against the respondents. The issue of jurisdiction is well founded and cannot be underrated. It is the foundational life wire of adjudication. No court can function without jurisdiction. It is a constitutional matter. Several judicial authorities are numerous and trite on this point.

F **The main issue therefore is:**

**Whether the lower court had jurisdiction to preside over the charge in view of the fact that the alleged offences took place in the course of an election and in view of the provisions of sections 132 (1)(b)(c) and 129(1) of the Delta State Local Government Law 2004, Cap D27 Laws of Delta State, 2008.**

H It is submitted by the appellant's counsel that the lower court erred in law and thereby occasioned a miscarriage of justice when it held that the Magistrate's Court of Delta State has the exclusive jurisdiction under the Local Government Law Cap D27, 2004 to try and determine the case in question. Counsel against further that the learned justices of the Court of

**A** Appeal totally misconceived the charges brought against the accused persons by the ICPC.

The learned counsel related to Section 132(1) of the Delta State Local Government Law 2004 and submits that the jurisdiction of the said

**B** Electoral Tribunal of adjudicate on electoral matters flows from an actual election dully conducted; in other words, there must be electoral materials distributed to the various polling booths/units, the actual vote cast by the voters, collation of the vote casts and the declaration of a winner. The  
**C** learned counsel contends further that unless and until the actual conduct of elections, the jurisdiction of the Tribunal and the Magistrate Court of Delta State cannot be invoked. While drawing attention to paragraph 132(1)(b), the learned counsel argues that something can only be voided if that thing  
**D** has happened or if it has been, that one cannot void that which is not or has not been; that election was never held in Uzere ward 06 of Isoko South Local Government Area of Delta State on the 10<sup>th</sup> of May, 2008 or at any time before or after. If there was no election, counsel argues, then there will  
**E** be no basis to invoke the jurisdiction of the tribunal or that of the Magistrate Court of Delta State.

The onus is on the prosecution, learned counsel submits, the establish during trial that this position was the state of affairs on the 10<sup>th</sup> day  
**F** of May, 2008 when the materials that would have been used for the conduct of the elections were returned to the Oleh Police Station from where the commission's operatives recovered them; that there was no such conduct of any councillorship election on the 10<sup>th</sup> day of May, 2008 in Uzer ward 06,  
**G** Isoko South Local Government Council, Delta State as the election never held; that all that happened before and until the morning of the 10<sup>th</sup> of May, 2008 in Uzer ward 06, Isoko South Local Government Council, Delta State were mere preparations for councillorship elections which did not hold. In  
**H** other words that the condition precedent for the coming into effect of the said law was never fulfilled. Counsel cites in support the Court of Appeal case of **INEC vs. Action Congress (2009) 2 NWLR (Pt. 1126) P. 524 @ 588 589** on what is an election. Further reference was also made to the  
**I** decision of this court in the case of **Agbakoba vs. INEC & 2 ors (2008) 12**

**A SC (Pt. 111) page 171 @ 205.**

It is the contention of the appellant's counsel that his client's complaint was not contesting the votes cast, but rather that the election never held. Reference was made also to the reasoning held by his lordship

**B Niki Tobi, JSC (of blessed memory) at page 60 of the case of Odedo vs. INEC (2008) 7 SC page 25.**

Counsel submits finally that in the absence of any election held, the jurisdiction of the Elections Petitions Tribunal for that Elections and the Magistrate Courts of Delta State cannot be invoked since a condition precedent for doing so was not fulfilled; the court, counsel argues should resolve the issue in favour of the appellant.

The learned respondents' counsel in response to the foregoing argument by the appellant's counsel, refuted the very foundation thereof in totality. Counsel argues in support that given the totality of all the allegations as contained in the statements, particulars of offence and the proof of evidence in support of the charge sheet, the trial court lacked the jurisdiction to put them to trial. This is because they are all offences allegedly committed during election and which had been appropriately made a ground for petitioning pursuant to section 132(1)(b) and 129(1) of Delta State; that all the allegations against the 1<sup>st</sup> and 2<sup>nd</sup> respondents borders on irregularities as envisaged in section 132(1) supra. Counsel submits further that it is in the nature of “**Corrupt practice/irregularity**” upon which an election may be questioned. Such allegations, he contends, are quasi-criminal in nature and it is the tribunal set up under section 129(1) (supra) that have jurisdiction to adjudicate on the allegations as contained in the charge sheet under reference and not the lower court.

The learned counsel related to a number of decided authorities in terms of **Obi-Odu vs. Duke & 2, 339 ors (2006) 21 WRN Pg. 113 @ 159; Aikulola vs. Akogwu & 2 ors (2006) 41 WRN p 29 @ 82- 83; Obasanjo & 2 ors vs. Yusuf & Anor (2005) 20 WRN p1 @ 49 and Ogboru vs. Ibori (2004) 44 WRN Pg 98 @ 118-119.**

Counsel re-iterates also that it is immaterial that the allegation border on the commission of a crime because none of the facts contained in

**A** the proof of evidence directly linked the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein with any of the allegations. Counsel cites further the case of **Buhari & Anor vs. Obasanjo & Ors (2005) 50 WRN Pg 1 @ 188.**

The learned counsel relates copiously to the criminal procedure in Nigeria, Law and Practice, Chapter 13; that the reliance on section 61(3) of the ICPC Act, 2000 by the learned trial judge in this instance is unhelpful as it is inapplicable. The learned counsel urges us to discountenance all the arguments advanced on behalf of the appellant. This is because whether the facts of the charge are pre-election or post election, it still does not fall under the purview of the ICPC Act.

Counsel contends further that the learned trial judge did not read the depositions of the potential witnesses before dismissing the motion seeking to quash the charge.

It is again submitted by learned counsel that the conduct of the election and the alleged offences of the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein being in respect of the Local Government Election in Delta State are covered by the said Delta State Local Government Law 2004, and not by the ICPC Act.

The main plank of the allegations against the respondent, counsel reaffirms, is that there was '**no election**' on the said 10<sup>th</sup> May, 2008 and that none of the potential witnesses mentioned any of the 1<sup>st</sup> and 2<sup>nd</sup> respondents as being part of the process leading to the non holding of the election.

That the appellant's contention is issue 1 has no support and cannot be sustained therefore.

## **G RESOLUTION OF THE ISSUE**

The main plank of the allegation against the respondents is that there was no election on the said 10<sup>th</sup> May, 2008. Consequently, that the lower court erred when it set aside the ruling of the trial court delivered on 21/2/12 on the ground that it is devoid of any jurisdiction to try and determine the charge "**in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law, Cap D27, Laws of Delta State.**"

**I** It is trite and well settled that jurisdiction is at the threshold of the

**A** power of the court to adjudicate over any matter. It is the authority of the court to exercise judicial power, to take cognizance and decide on matters presented before it. It is an essential factor in the determination of an action and therefore indispensable to the capacity of the court to exercise judicial authority. See the following authorities in **Ajomale vs. Yarduat & Anor (No. 1) (2003) FWLR (pt. 1820), 1902 @ 1910 Sc; The Miscellaneous Offences Tribunal and Anor vs. Okoroafor (2001) FWLR (Pt. 81) 1730 @ 1748 SC.**

**C** It is also trite that whereby the rules of court or any other rule whatsoever, the unlimited jurisdiction of the court is curtailed by statute or the constitution as to subject matter or cause of action or as to person who can bring the action, such curtailment renders the court incompetent to adjudicate over a matter which has been taken outside its powers by such statute. Therefore, where a tribunal or special court is set up to adjudicate over specialized matters, the powers of the normal courts created under the constitution will be ousted in respect of such specialized matters.

**E** The courts have held overtime that where there is a tribunal set up as special court under State Law, to adjudicate over special court under State Law, to adjudicate over specialized matters, the power of the State High Court which under the Constitution is vested with jurisdiction to hear and determine any civil and criminal proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation, claim or crime is in issue, is ousted. See the case of **Chief Emmanuel Osita Okereke vs. Alhaji Umaru Musa Yar'Adua (2008) 4 - 5 SC (pt. 1) page 206 @ 238** wherein this court, per **Onnoghen, JSC** (as he then was) held thus:

**H** *“It is settled law that where legislation lays down a procedure for doing a thing there should be no other method of doing it.”*

**I** See also the case of **C.C.B Plc vs. The A-G of Anambra State (1992) 10 SCNJ 137 @ 163, also Buhari vs. Yusuf (2003) 6 SC (Pt. 11) 156.**

A The reproduction of two stronghold sections predicating the determination of this issue are sections 132(1)(b) and (c) also 129(1) of Delta State Local Government Law of 2004, Cap D27, laws of Delta State are as follows:

B

**Section 132(1) says:**

*“An election may be questioned on the following ground:*

- C (b) *that the election was voided by corrupt practices, irregularities or offences against this law; or*
- (c) *that the respondent was not duly elected by a majority of valid or lawful votes cast at the election or”*

D

**Section 129(1):**

*“There shall be established in the state at least six and at most nine election tribunals to be known as Local Government Election Tribunals (in this law referred to individually as an “Election Tribunal”) which shall to the exclusion of any other Tribunal or Court, have original jurisdiction to hear and determine*

E

- F (a) *Election petitions as to whether a person has been validly elected as chairman or councilor of a Local Government Council;” (emphases supplied).*

G As rightly submitted by the learned counsel representing the respondents, it is clear that from the facts of the charge as contained in the statement and particulars of offence as well as the proof of evidence in support thereof, all the allegations against the 1<sup>st</sup> and 2<sup>nd</sup> respondents border on irregularities as envisaged in section 132(1) reproduced (supra). It is all in the nature of

H **“corrupt practice/irregularity”** upon which an election may be questioned. Such allegations are quasi-criminal in nature and it is the tribunal set up under section 129(1) (supra) that have jurisdiction to adjudicate on the allegations as contained in the charge sheet under

I reference. Several authorities were cited in support by the learned counsel

A for the respondents.

The law is trite and well settled that no litigant can confer jurisdiction on any court where the constitution or a statute or any provision of the common law says that the court shall have no jurisdiction. See **Jikantoro**

B **& 6 ors. vs. Dantoro & 5 ors (2004) 5 SC (Pt. 2) page 1 @ 21.**

It is in evidence, clearly on the record that the complains relates to the conduct of elections into the councillorship seat of Uzere ward in Isoko South Local Government of Delta State which held on the 10<sup>th</sup> of May, 2008 in which the 2<sup>nd</sup> respondent was declared the winner.

C

The petition which formed the basis of the investigation and pursuant to which the charge at the trial court was filed is at page 12 of the record and it is dated 19<sup>th</sup> of May, 2008. Reference to the said page is self

D explanatory wherein the petition relates to:

***“A FRADULENT ACT PERPETRATED BY MR. UTOH  
DSIEC OFFICIAL” (SIC)***

E

In summary, the complaint against Mr. Utho alleges that he collected sums of money from **“influential individuals”**; and it borders on electoral issues/irregularities.

F Mr. Bernard Utho the man in the eye of the storm, also made statements at pages 39-46 of the record, and which border on electoral malpractice/irregularity which occurred during the conduct of the said election. With reference made to the case of **Obasanjo & 2 ors vs. Yusuf**

G **& Anor (2005) 20 WRN page 1 @ 86** this court held and said:

***“Complains against the conduct of election can only be found in the Electoral Act, as the Act provides breaches in the conduct of elections. The Electoral Act is a comprehensive Act which deals with the conduct of elections in this country. The courts are bound to look into the Act in cases of breach in the conduct of elections.”***

H

I

A The Delta State Local Government Law Cap D27, 2004 was enacted pursuant to section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, which says:

B           ***“7. The system of Local government by democratically elected Local Government councils is under this Constitution guaranteed; and accordingly, the government of every state shall subject to section of this constitution, ensure their existence under a law which provides for the establishment structure composition, finance and functions of such councils.”***

C

D

What is more, under the second schedule, Part II (the concurrent legislative list) of the 1999 Constitution, it is provided by paragraph 12 thus:

E           ***“Nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not in consistent with any law made by the National Assembly.”***

F

G In the instant case, the Delta State Local Government Law (supra) has by the provision of sections 107-128 thereof, conferred special powers on Magistrate's Court in the state to try (Local Government) electoral offences. Consequently, the High Court lacks the jurisdictional competence to try the offences prescribed under section 107-128 of the law supra.

H           Undoubtedly, the High Court's jurisdiction is as regards appeals from the decisions of the trial Magistrate's Courts in the state. The appellate and supervisory powers of the High Court over and above the Magistrate's Courts are very well taken.

I           The law is well settled that where a particular court or tribunal has been specifically conferred with a special power to adjudicate upon a

**A** matter or action, as in the instant case, it's not the business of any other court or tribunal which lacks such express power to arrogate to itself the power to entertain such a matter or action. See **Enagi vs. Inuwa (1992) 3 NWLR (Pt. 231) 548 @ 565.**

**B** With the criminal allegations arising from the conduct of the Local Government Election in question the provisions of the Local Government Law (supra) pertaining to elections, especially sections 107-128 thereof ought to be strictly applied. See **Njo vs. Yusuf (2005) 20 WRN 1 @ 86.**

**C** Notwithstanding that the information (charge) was filed against the appellant pursuant to the ICPC Act, the Magistrate's Court of Delta State has the exclusive jurisdiction under the Local Government Law Cap D27 2004 (supra) to try and determine the case in question. See **Utoh vs.**

**D Ononyivwe (1991) 1 SC (t. 1) 61; Obi vs. INEC (2007) Sc 268 @ 301.**

**E** For the purpose of exercising jurisdiction thereof, the court has an onerous duty to be properly seized of the matter before it. See **Madukolu vs. Nkemdilim (1962) 1 All NLR 587 @ 594 and Obasanjo vs. Yusuf (2005) 20 WRN (Vol. 2) 1** wherein this court said:

**F** *Jurisdiction is a very hard matter of law which is donated by the constitution and the enabling statute. It is also a very sensitive matter in the judicial process. Considering its very hard and sensitive nature, courts of law must always bow to the provisions of the constitution and the enabling statute. On no account should we remove from a court which has jurisdiction to hear a matter to another court which has no jurisdiction to hear it."*

**G**

Per **Niki Tobi, JSC** (of blessed memory) at page 90.

**H** The High Court is devoid of jurisdiction to try and determine the instant case in view of the express and unequivocal provisions of the Delta State Local Government Law (supra).

**I** Section 129(1) of the Local Government Law (supra) established the Local Government Electoral Tribunal; while section 132(1) states the

- A** ground upon which an election may be questioned. One of the grounds is as contained in S. 132(1)(b) supra. Therefore, complaints against any wrong doings, malpractice or corrupt practice which occurred during the elections held on the 10<sup>th</sup> of May, 2008 in Uzere ward can only be heard at the tribunal
- B** established pursuant to section 129(1) (supra). Again see **Obasanjo & Anor vs. Yusuf & Anor (2004) 5 Sc (pt. 1) pg 27 @ 50**. Any provision in the ICPC Act which tend to confer jurisdiction on the trial court contrary to the provision of the constitution is null and void and of no effect
- C** whatsoever; as rightly submitted by the learned counsel for the respondents.

- The said issue is resolved in the positive and against the appellant herein. In other words, the lower court was right when it set aside the ruling
- D** by G.B. Briki-Okolosi, delivered on 21/2/12 on the ground that “**the trial court is devoid of jurisdiction**” to try and determine the charge in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law, Cap D27, Laws of
- E** Delta State.

The appeal is dismissed on the totality while the judgment of the lower court delivered on the 11<sup>th</sup> day of December, 2013 is affirmed by me.

- F** **Clara Bata Ogunbiyi**  
*Justice, Supreme Court*

- AMIRU SANUSI, (JSC):** I had the opportunity of reading in draft form, the judgment just rendered by my learned brother Bage JSC. While
- G** agreeing with him that this appeal is meritorious, I shall also allow it, having adopted the reasoning and conclusion arrived at the leading judgment.

- In this case, the confessional statement of the accused person now
- H** appellant, was rejected by the trial court. All besides the confessional statement Exhibit Q, there had not been any reliable and credible evidence to corroborate the confessional statement as would warrant the conviction and sentence of the accused person, now appellant. the evidence adduced
- I** by the respondent in my view, fell short of proof of the beyond reasonable doubt of the offences the appellant was charged with, tried and convicted.

**A** Thus, I am in agreement with the reasoning and conclusion reached in the leading judgment of my learned brother Bage JSC, that this appeal is meritorious and ought to be allowed. I accordingly allow it and consequently substitute the conviction with order of acquittal and  
**B** discharge.

**Amiru Sanusi**  
*Justice, Supreme Court*

**C**

**D**

**E**

**F**

**G**

**H**

**I**

**AKINOLA AROBIEKE  
AND  
NATIONAL ELECTRICITY LIABILITY  
MANAGEMENT COMPANY**

**SC. 176/2006**

**IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA**

**FRIDAY, 15<sup>TH</sup> DECEMBER, 2017**

**BEFORE THEIR LORDSHIPS**

**MARY UKAEGO PETER-ODILI  
OLUKAYODE ARIWOOLA  
JOHN INYANG OKORO  
AMINA ADAMU AUGIE  
PAUL ADAMU GALINJE**

**JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT**

*ADMINISTRATIVE LAW: Administrative body – Application of rules of fair hearing – Whether an administrative body is expected to apply rules of fair hearing – Relevant principles thereof.*

*ADMINISTRATIVE LAW: Administrative body – Decision on final or interlocutory matter – Whether bound to observe the principles of natural justice.*

*Administrative Law: Administrative Body – Failure to observe principles of natural justice – Effect.*

*ADMINISTRATIVE LAW: Disciplinary Ad-hoc committee – Draft of charge – Where a Disciplinary ad-hoc committee is set up to investigate a person – Whether there is no need for a formal charge – The principles in Yusuf*

*vs. U.B.N. Plc (1996) 6 NWLR (Pt. 457) 632.*

*ADMINISTRATIVE LAW: Performance of judicial function – Where an administrative body performs a judicial function – Whether to observe the rules of natural justice – The principles in Legal Practitioner Disciplinary Committee vs. Gani Fawehinmi (1985) 2 NWLR (Pt.7) 300.*

*CONSTITUTION LAW: Fair hearing – Nature thereof – When a party cannot complain of breach.*

### **Issue for Determination**

**Whether on a fair, balanced and proper evaluation of the evidence before the trial court, the learned justices of the Court of Appeal were right in holding that the Ad-hoc Disciplinary Committee did not violate the rules of natural justice while considering the appellant's disciplinary case and consequently in proceeding to set aside the decision of the trial court.**

### **Facts of the Matter**

On the 27<sup>th</sup> day of March, 1997 the appellant filed a motion ex-parte seeking the following reliefs:

- 1. An order granting leave to the applicant (appellant) to bring up to this honourable court for the purpose of being quashed the proceedings and findings of the Ad-hoc Disciplinary Committee set up by the respondent and headed by Engr. J. I. Ahamioje and the decision of the appellant terminating the appointment of the applicant (appellant) based on the said findings and recommendations the same being unconstitutional, null and void and being in excess of the powers and jurisdiction of the committee and the appellant and also a violation of the respondents' right to fair hearing.**

2. **An order of injunction to restrain the respondent by itself or through its servant or any other person(s) otherwise howsoever described from enforcing or otherwise acting on the proceedings of the Ad-hoc Disciplinary Committee and on the decision of the management of the respondent terminating the appellants' appointment.**
3. **Such further order or orders as this honourable court may deem fit to make in the circumstances.**

The trial court delivered ruling on the 6<sup>th</sup> of October 1998 and granted the prayers of the appellant declaring the entire trial, proceedings, findings and recommendation of the Ad-hoc Disciplinary Committee upon which the appointment of the appellant was terminated, unconstitutional, illegal, null and void and quashed same. It also issued an order of perpetual injunction restraining the respondent as claimed in the application.

Against that judgment, the respondent appealed to the Court of Appeal by leave of that court granted on 6/7/99. The Court of Appeal, heard the appeal, and on the 23<sup>rd</sup> day of May 2005, delivered unanimously their judgment wherein they upheld the appeal, set aside the decision of the Federal High Court and dismissed the appellant's application before the Federal High Court. It is against the decision of the Court of Appeal that the appellant has filed this appeal.

**Held:** *(Unanimously dismissing the appeal)*

1. *Appellant was duly informed of the nature of invitation to the committee*  
**It is a fact that the main body of the letter of invitation was tersely crafted to proffer that appellant appear at the committee at a specified time, date and place and no more. That cannot be read in isolation to the whole body of the letter as the title left nothing for conjecture or speculation on to what was at foot. That title of the letter stated clearly thus:**

**“AD-HOC DISCIPLINARY COMMITTEE  
PROBING THE ALLEGED CASE OF  
UNAUTHORIZED MAINTENANCE WORK AT  
CALABAR WOOD COMPANY LIMITED,  
CALABAR”**

**Indeed Exhibit KSA-10 did not just fly in without a foundation on it had come after a query by the authority to appellant and an interdiction. (Pp 103 – 104 Paras H – B).**

2. *An administrative body which performs judicial function must observe the rules of natural justice*

**My Lords, having set out the differing conclusions of the trial court as against that of the court below, I need at this stage to restate the position of this court which has been referred to again and again and that is, that what constitutes fair hearing depends on the circumstances of each case, however, in doing that it is the accepted law that the basic procedural and other requirements of the rule of natural justice must be served by every tribunal or authority whose decision will affect the right of another. In this I will seek in aid the case of *Legal Practitioners' Disciplinary Committee vs. Gani Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 at 347-348 per Eso JSC thus:**

**“It is not easy to place a tribunal in the compartment of purely administering predominantly administering or one with judicial or quasi-judicial function. In my view, a pure administrative tribunal may turn judicial once it embarks on judicial or quasi-judicial adventure. The test to mind should be the function the judicial performs at a particular time. During the period of in-course into judicial or quasi-judicial function, an administrative body must be bound in process thereof to observe the principles that govern exercise of judicial function. Even God himself did not pass sentence upon Adam**

**before he was called upon to make his defence. Merely to describe a statutory function as administrative, judicial or quasi-judicial is not by itself sufficient to settle the requirement of natural justice. This certainly leaves it open for the court to go into the substance of the very act of then tribunal rather than form of description”.**

*(Pp 107–108 Paras D–B).*

3. *An Administrative body which decides final or interlocutory right of a party must observe rules of natural justice.*

**In his own contribution Oputa JSC put across the following at page 392 paras. D-G thus:**

**“The debate over what constitutes a judicial tribunal, a quasi-judicial tribunal, a domestic tribunal, a tribunal simpliciter, arbitrament, arbitral proceedings, forum competence etc. will certainly go on as an academic exercise; but once a body of persons by whatever name called are invested with authority to hear and determine particular issues or dispute either by consent of the disputants or by an order of court, or by provisions of a statute, such a body will be required to carry out its function with that fairness and impartiality which the rules of natural justice dictate.**

**I may now deal with Chief Williams' contention that the Disciplinary Committee is not bound by the rules of natural justice because the respondent will have ample opportunity of being heard by the Appeal Committee of the body of benchers “charged with the duty of hearing appeals from any direction given by the Disciplinary Committee.” But the mere concept of an appeal presupposes a judge or court or tribunal a quo from whose decision the case goes on appeal to a judge or**

**court or tribunal ad quem a higher forum with the power to review the decision of the trial court or judge. My learned brother, Aniagolu, JSC has dealt adequately with this issue. I agree with him that the direction of the Disciplinary Committee is a decision which may affect seriously and, may be, adversely the civil rights of the respondent. Whether it is final or not is irrelevant to the observance of the rule of natural justice in reaching the decision. I can see no valid reason why if the principles of natural justice have to be applied to a tribunal entrusted with final decision, the same should not be true of a tribunal which has to decide a preliminary point which may affect the rights of the parties". (Pp 108–109 Paras C–A).**

4. *Where an Administrative body fails to observe the rules of natural justice*  
It is now settled law that an administrative panel such as the Ad-hoc disciplinary committee in the case at hand in its enquiries may not necessarily strictly adhere to such rules of natural justice such as exist in a court as known to our law however it is standard and I dare say basic that the rules of fair hearing-natural justice can neither be compromised nor waived. The reason is that any infraction to that basic rule of fair hearing should automatically bring to naught whatever had been done in the process of the inquiries embarked upon by the panel, judicial or administrative. *See Federal Polytechnic Mubi vs. T.L.M. Yusuf (1991) 1 NWLR (Pt. 165) page 81 at 100; Olaniyan and Ors. vs. University of Lagos & Anor. (1985) 2 NWLR (Pt. 9) 599. (P 109 Paras B–D).*
  
5. *Tribunal Observed the rules of fair hearing*  
Having considered the preliminary angle of whether in the first place, the appellant was given a full opportunity of knowing why he was invited before the panel with attendant advantage of preparing for his defence apart from cross-examining the witnesses which I see as having been done in keeping with the law and in line with fair hearing or natural

justice. The follow up would be, if in the course of the proceedings the facts were well laid out in such a way that the findings and conclusions of the panel would be adjudged meritorious. (*P 110 Paras E–G*).

6. *An Administrative body is not expected to observe legal procedures as a court of law*

From what I can see the appellant seems to be guiding the court on a narrow garden path in the belief that the panel not being legally trained would be hamstrung on the strict legal procedures of a properly constituted court in which case they would be found wanting. Thoroughly, the court below saw through this scheme and despatched it.

**“The caliber or status of the member of the panel who were laymen should also be considered—thus the committee would not be required to observe or to follow the strict procedures similar to that of a court of law and even when it refuses to give the respondent oral hearing at all or the right to cross-examine the witnesses or even where it obtained some of its evidence from other quarters or sources beyond the appellant, it would not be regarded as denying him fair hearing or acting contrary to the rules of natural justice”. Reliance was made on *Queen vs. Director of Audit (1961) NSCC 292; Adedefi vs. Police Service Commission (1967) NSCC 292; Eperokun vs. Unilag (1986) 4 NWLR (Pt. 34) 162 at 173 amongst others. (P 111 Paras B–G)***

7. *Decisions of the trial court was perverse*

**From what is available, the Court of Appeal was in order and went along the enabling law in upturning and setting aside the judgment of the trial court which failed to evaluate the entire evidence before him and rather went into the narrow compass the appellant had led him thereby producing a decision perverse and invalid which I have**

**no difficulty in discerning and intervening to reversal that wrong decision. The conclusion is that there is nothing on which I can justify on interference with what the court below did. Rather the situation is such that I acknowledge that the court below was correct in re-evaluating what the court of first instance did and coming to the proper decision.**

**In light of the foregoing, I have no hesitation in stating that this appeal lacks merit and have no option than to dismiss it. Appeal is hereby dismissed and I affirm what the Court of Appeal did in setting aside the judgment of the trial High Court and for effect, the Disciplinary Committee of the respondent was correct in its findings and conclusions and the termination of the appellant's appointment by the respondent correct and effective. (P 113 Paras A–E).**

8. *Appellant was duly notified of the complaint against him*  
**As was effectively explained in the lead judgment, a combination of Exhibits B and KGA 10-the query which explained the complaint against the appellant and the letter of invitation of the appellant to the Ad-hoc Committee investigation respectively, in my opinion, put the appellant on notice of the case he was expected to defend before the panel. Accordingly, his complaint against the Ad-hoc committee does not fly at all. (P 114 Paras C–D).**

9. *The nature of fair hearing*  
**Fair hearing, in essence, means giving equal opportunity to the parties to be heard in the litigation before a court or Tribunal, an Ad-hoc Tribunal inclusive. Where parties are given opportunity to be heard and the charge or complaint against the party standing trial or being investigated made available to them they cannot complain of breach of fair hearing principles. See Darma vs. Eco bank Nig. Ltd. (2017) LPELR-41663 (SC), Prof. Folarin Slyllon vs. Mrs Judith Asein (1994) LPELR-3071 (SC), (1994) 6 NWLR (Pt. 353) 670.**

**I have carefully considered the judgment of the lower court but have not seen where the principles of natural justice were breached by the Ad-hoc panel. Rather, they were properly complied with. The court below was therefore right to set aside the judgment**

**of the trial court and to uphold the report of the Ad-hoc committee which investigated the appellant. (P 114 Paras E–H).**

10. *A disciplinary Ad-hoc committee does not need to draft a formal charge*  
**I agree entirely with the lower court that the ad-hoc committee that was set up by the respondent was an administrative panel which did not require framing of formal charges against the appellant. Under the Common Law, before an employer can dispense with the services of his employee, he needs to afford the employee an opportunity of being heard before exercising his power of dismissal, even where the allegation for which the employee is being dismissed involves accusation of crime. There is no requirement that there must be a formal charge against the employee. In Yusuf vs. U.B.N. Plc (1996) 6 NWLR (Pt. 457) 632 at 645 para A, this court per Onu JSC held:**

**“To satisfy the rule of natural justice and fair hearing a person likely to be affected directly by disciplinary proceedings must be given adequate notice of the allegation against him to enable him make representation in his own defense. The complaint against him must not necessarily be drafted in the form of a formal charge. It is sufficient if the complaint as formulated conveys to him the nature of the accusation against him”. (P 117 Paras B–F).**

*Per Galinja (JSC)*

**“In the instant case the appellant was duly queried. The query Exhibit B, at page 52 of the printed record of this appeal contains all the allegations against the appellant for which he was required to react. The title of the letter of invitation from the ad-hoc committee clearly informed the appellant that he was invited in respect of the unauthorized maintenance work at Calabar Wood Company Limited. The proceedings conducted by the Ad-hoc Committee clearly shows that witnesses including officers who the appellant**

**used during the unauthorized works, testified before the committee in the presence of the appellant who put questions to them. In my view the lower court was right when it held that the appellant was accorded fair hearing. Fair hearing lies in the procedure followed in the determination of a case and not in the correctness of a decision. It is synonymous with trial and implies that every reasonable and fair minded observer who watches the proceedings should be able to come to conclusion that the court or tribunal has been fair to all the parties. In the instant case, the Ad hoc Committee not only disclosed to the appellant the allegations against him, but took the testimonies of witnesses in his presence and he was allowed to cross examine those witnesses. I am therefore satisfied that the Ad-hoc Committee complied with the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, and so I hold. See *Baba vs. N.C.A.T.C.* (1991)5 NWLR (Pt. 192) 388, *Okafor vs. The A.G. Anambra State* (1991) 6 NWLR (Pt. 200) 659. (Pp 117 – 118 Paras G – C).**

### **Nigerian cases cited**

*Adedefi vs. Police Service Commission* (1967) NSCC 292;  
*Baba vs. N.C.A.T.C.* (1991)5 NWLR (Pt. 192) 388,  
*Darma vs. Eco bank Nig. Ltd.* (2017) LPELR-41663 (SC),  
*Disciplinary Committee vs. Gani Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 at 347-348  
*Ekperokun vs. Unilag* (1986) 4 NWLR (Pt. 34) 162  
*Federal Polytechnic Mubo vs. T.L.M. Yusuf* (1991) 1 NWLR (Pt. 165) page 81;  
*Okafor vs. The A.G. Anambra State* (1991) 6 NWLR (Pt. 200) 659.  
*Olaniyan and Ors. vs. University of Lagos & Anor.* (1985) 2 NWLR (Pt. 80) 25.  
*Prof. Folarin Slyllon vs. Mrs Judith Asein* (1994) LPELR-3071 (SC), (1994) 6 NWLR (Pt. 353) 670.  
*Queen vs. Director of Audit* (1961) NSCC 292;  
*Yusuf vs. U.B.N. Plc* (1996) 6 NWLR (Pt. 457) 632 at 645

### **Representation**

**E.O.E. Ekong** for appellant and with him **I.M. Anana**  
**Imo Inyang** for the respondent and with him is **Mfonobong-Imo Inyang.**

- A PETER-ODILI, (JSC) (Delivering the Lead Judgment):** This is an appeal against the judgment of the Court of Appeal, Calabar Judicial Division (Coram: Dalhatu Adamu, JCA, Christopher M. Chukwuma-Eneh JCA (as he then was) and Jean Omokiri JCA, delivered on Monday, the 23<sup>rd</sup> day of May, 2005 in which it set aside the decision of C.C. Nwaogwugwu J, of the Federal High Court, Calabar.

- B** The Federal High Court, hereinafter referred to as the trial court had on the 6<sup>th</sup> day of October, 1998 made an order of certiorari, quashing the proceedings, findings and recommendations of the respondents Ad-hoc Disciplinary Committee on the basis of which the appellant's appointment was terminated.

**D FACTS BRIEFLY STATED**

- The appellant was an employee of the respondent. At all times material, he was deployed to the Calabar District Office and held the office of Assistant Manager (O & M). His schedule of duties included the supervision of Head of Fitters, Head of Cable, Head of 33KV Line Maintenance, Head of 11KV Line Maintenance, Trainee (IT) Officer 1 (O & M) and he reported to the Manager (Distribution).

**F OMISSION (page 3 of the original)**

- against him, properly formulated, which dully informed him of the penalty, which was dismissal as a possible result for which he was required to respond within 48 hours. He signed for same on 27<sup>th</sup> June, 1996.

- G** The responses received from other workers similarly queried for the illegal and unauthorized maintenance works, were attached to the appellant's query and served on him, (these were responses from Messrs Oyira J. Oyira and E. Akiyemen who colluded with appellant in the works). (See Exhibits KGA 3 & KGA 4 at pages 26-27 of record attached to appellants affidavit).

- H** Appellant responded to the queries:  
Against this background, and being dissatisfied with the appellant's response and that of the other accomplices/partners in the unauthorized works which was considered a grave breach of the authority's regulations

- A** and abuse of office for private benefit, the respondent set up an Ad-hoc Disciplinary Committee to determine the magnitude and culpability of these officers-Mr. A.I.C. Eze, Manager (D); Oyira J. Oyira Officer III (Fitter); A.A. Arobieke-Assistant Manager (O & M); M.E. Akioyemen
- B** Officer; (O & M) in particular and others in Calabar District and amongst other things apportion blame and also recommend appropriate disciplinary actions.

- By a letter dated 10<sup>th</sup> July 1996, the Chairman of the Ad-hoc
- C** Disciplinary Committee, Engr. J.I. Ahamioje invited the appellant to appear before the committee still on the issue of “Alleged case of Unauthorized Maintenance Work at Calabar Wood Company Limited. Noteworthy is the fact that the query earlier served on the appellant also
- D** charged him of “Coordinating and Supervising the Unauthorized Extensive Electrical Maintenance hob at the Calabar Wood Company”.

- The Ad-hoc Disciplinary Committee duly discharged their assignment, the appellant duly appeared before the committee and
- E** answered questions touching and relating to the Unauthorized Maintenance Works aforesaid. Witnesses including officers who the appellant used to execute the works, who were by his schedule of works directly under his control, testified before the committee in the presence of
- F** the appellant. The committee promptly called one witness Mr. B. O. Ukeh, which the appellant mentioned for purposes of supporting his evidence in defence, that Mr. Oyira J. Oyira was not on duty between 12 and 24 September 1995, and he testified before the appellant and contradicted
- G** appellant's testimony.

- The Ad-hoc Disciplinary Committee, took evidence on the issue of the unauthorized works and unlawful use of the authority's workers and equipment for the private works by bringing all the sectional heads
- H** working under the appellant, and other co-accused persons, Mr. Oyira J. Oyira and Mr. Akioyemen to testify before each other and in the presence of each other and the appellant was afforded opportunity to put questions to them which he did.

- I** It was during this season, when all the witnesses (the Head of Sections) who worked directly under the appellant confirmed the

**A** committee before the appellant that he coordinated the unauthorized Works; although he continued to deny that they were satisfied that the accusation against the appellant was made out.

**B** The committee in covering all the areas of their wider terms of reference, in the course of investigation, reached out to other persons and also interviewed others not in the presence of the appellant, that did not diminish the fact that on the primary issue of coordination of the unauthorized works at Calabar Wood Limited fair hearing was completely complied with as the real witnesses (who carried out the physical works) testified unanimously and without any contradiction as to who sent them for such private works. These were workers placed under supervision of the appellant.

**D** The committee in their recommendation observed as follows:

**E** **“He (appellant) also co-ordinated and supervised this job because apart from Mr. Oyira, he delayed Cable Joints and the Authority’s Filtration Machine to enable Mr. Oyira execute the unauthorized job. The panel therefore found Mr. Akinola Arobieke blame worthy”.**

**F** The Ad-hoc Disciplinary Committee's report is Exhibit “AA”. Following the submission of this report, the respondent on or about 19<sup>th</sup> November 1996, terminated the appointment of the appellant. The appellant's appeal against the termination was rejected after a careful consideration by the respondent's management report.

**G** On the 27<sup>th</sup> day of March, 1997 the appellant filed a motion ex-parte seeking the following reliefs:

**H** **1. An order granting leave to the applicant (appellant) to bring up to this honourable court for the purpose of being quashed the proceedings and findings of the Ad-hoc Disciplinary Committee set up by the respondent and headed by Engr. J. I. Ahamioje and the decision of the appellant terminating the**

**I**

- A** appointment of the applicant (appellant) based on the said findings and recommendations the same being unconstitutional, null and void and being in excess of the powers and jurisdiction of the committee and the appellant and also a violation of the respondents' right to fair
- B** hearing.
- 2. An order of injunction to restrain the respondent by itself or through its servant or any other person(s) otherwise howsoever described from enforcing or otherwise acting on the proceedings of the Ad-hoc Disciplinary Committee and on the decision of the management of the respondent terminating the appellants' appointment.**
- C**
- D**
- 3. Such further order or orders as this honourable court may deem fit to make in the circumstances.**
- E** The trial court delivered ruling on the 6<sup>th</sup> of October 1998 and granted the prayers of the appellant declaring the entire trial, proceedings, findings and recommendation of the Ad-hoc Disciplinary Committee upon which the appointment of the appellant was terminated, unconstitutional, illegal, null and void and quashed same. It also issued an order of perpetual injunction restraining the respondent as claimed in the application.
- F**
- Against that judgment, the respondent appealed to the Court of Appeal by leave of that court granted on 6/7/99. The Court of Appeal, **G** heard the appeal, and on the 23<sup>rd</sup> day of May 2005, delivered unanimously their judgment wherein they upheld the appeal, set aside the decision of the Federal High Court and dismissed the appellant's application before the Federal High Court. It is against the decision of the Court of Appeal that the **H** appellant has filed this appeal.
- On the 25<sup>th</sup> day of September, 2017 date of hearing, learned counsel for the appellant, E.O.E. Ekong Esq. adopted appellant's amended brief of argument filed on 16/3/17 and deemed filed on the 28/3/17 and a reply brief **I** of argument filed on 19/4/17. He distilled a sole issue, viz:

- A**        **Whether, on a proper and balanced evaluation of the evidence before the trial court, and on a fair consideration of the case before them, the learned justices of the Court of Appeal were right in accusing the learned trial judge of being biased against the respondent, and in setting aside the decision of the trial court quashing the proceedings, findings, recommendations and decisions of the respondents' Ad-hoc Disciplinary Committee on grounds of breach of fair hearing.**
- B**
- C**

- For the respondent, Imo Inyang Esq. for counsel adopted its brief of argument filed on 23/3/17 and deemed filed on 28/3/2017. Learned
- D**        counsel crafted a single issue as follows:

- E**        **Whether on a fair, balanced and proper evaluation of the evidence before the trial court, the learned justices of the Court of Appeal were right in holding that the Ad-hoc Disciplinary Committee did not violate the rules of natural justice while considering the appellant's disciplinary case and consequently in proceedings to set aside the decision of the trial court.**
- F**

- The issues as differently formulated on either side are really asking the same question and it does not matter which one is utilized. However, I shall
- G**        use that as drafted by the respondent as it is seems to me simpler and easy to handle in getting at the answer and thereby resolve the dispute in this appeal.

**H**        **SOLE ISSUE**

- I**        **Whether on a fair, balanced and proper evaluation of the evidence before the trial court, the learned justices of the Court of Appeal were right in holding that the Ad-hoc Disciplinary Committee did not violate the rules of**

**A natural justice while considering the appellant's disciplinary case and consequently in proceeding to set aside the decision of the trial court.**

**B** Mr. Ekong of counsel for the appellant contended that the Ad-hoc Disciplinary Committee that investigated the allegation of misconduct against the appellant and made the recommendations for the termination of his appointment was bound to observe the rule of natural justice. He cited **C Yusuf vs. Union Bank of Nigeria Limited (1996) 6 NWLR (Pt. 457) 632 at 644 to 645; Legal Practitioners Disciplinary Committee vs. Chief Gani Fawehinmi (1985) 2 NWLR (Pt. 7) 300.**

**D** Learned counsel for the appellant stated that Exhibit KGA-10, which is the invitation letter sent to the appellant to appear before the Ad-hoc Disciplinary Committee to see whether it contains the accusation of what the appellant was invited to do at the panel. That a perusal of the Exhibit shows that the charge or accusation or an information of any misconduct against the appellant was absent on the face of that letter of invitation, Exhibit KGA 10. That the respondent cannot hand on Exhibit B, an earlier query to the appellant to be adequate to meet the condition of fair hearing and its breach thereof. Mr. Ekong also submitted that the appellant's answer to the said query which response is Exhibit would not settle for what was required for the fair hearing rule. He relied on **E Olatunbosun Vs. NISER (1998) 3 NWLR (Pt. 80) 25.**

**G** Learned counsel for the appellant put forward the argument that the conditions of service of the respondent relating to appellant, Exhibit KGA 8 was breached in this instance as it stated the agreed terms in that contract of employment dealing with conduct of disciplinary proceedings especially as in this instance, an employment with statutory flavor. He relied on **H Ibama Vs. Shell PDC Ltd. (2005) 24 NSCQR 190; Baker Marine Ltd. Vs. Chevron (2006) 26 NSCQR (Pt. 2) 1121 etc.**

**I** It was canvassed for the appellant that there was no basis for the court below interfering with the findings and conclusion of the trial court as those findings were not perverse but came out from the evidence before court as shown in the record. It was cited the cases of **Udonwa Vs. Otu (2001) FWLR (Pt. 51)**

**A 2006 at 2016; Ogunleye Vs. Oni (1990) 2 NWLR (Pt. 135); Union Beverages Ltd. Vs. Pepsi Cola Int. Ltd. (1994) 4 NWLR (Pt. 329) 1 at 12.**

Responding, learned counsel for the respondent, Imo Inyang Esq., contended that the position of the law is that a body such as the Ad-hoc

**B** Disciplinary Committee is not expected to comply with and/or observe strictly the procedure of natural justice as applicable to the courts but only to substantially observe the twin pillars of justice of audi alteram partem and nemo iudex in causa sua by giving the appellant opportunity to know  
**C** the case, against him and to answer it. That in this case the appellant knew the case against him and was given the opportunity to answer it and as the law demands substantial compliance, the committee met the requirement. He relied on the case of **Federal Polytechnic Mubi vs. T.L.M. Yusuf (1991) 1 NWLR (Pt. 165) 81.**

**D** For the respondent, it was submitted that the Court of Appeal exhaustively evaluated the evidence before the trial court and his reasonings and conclusions and found them in grave error and justifying  
**E** the court below interfering by re-evaluating the evidence and coming to the proper conclusion. The cases of **A.G. Ekiti State vs. Daramola (2003) FWLR (Pt. 169) 1121; Awara vs. Alalibo (2003) FWLR (Pt. 144) 415; Sokoto Furniture Fac Ltd. vs. Societe Generale Bank Nig. Ltd. (2003) FWLR (Pt. 186) 693; Polo vs. Ojor (2003) FWLR (Pt. 137) 1085; Fari vs. Federal Mortgage Finance Bank Ltd. (2004) All FWLR (Pt. 235) 27.**

**F** In reply on point of law, learned counsel for the appellant contended that there is no such doctrine or principle of “substantial compliance” with the rules of natural justice in our jurisprudence. That fair hearing is a matter of substance and not form. He cited **Mohammed vs. Kano Native Authority (1968) Pt. 1 ANLR page 424; CBN vs. Kotoye (1989) 1 NWLR (Pt. 98) 419.**

**G** In a nutshell, the stance of the appellant is that the appellant was neither charged nor informed of the case against him at the Ad-hoc Disciplinary Committee Exhibit KGA-10 which invited him to appear before the said committee as it contained no accusation, information nor did it give any notice of any allegation, wrongdoing or misconduct against  
**H** the appellant was being invited to appear before the panel.  
**I**

- A** Disagreeing with that appellant's position, the respondent stood firmly to the view that appellant knew that he was being accused of the offence of unauthorized extensive maintenance work at Calabar Wood contrary to the regulation of the authority. That he was given adequate
- B** opportunity to exculpate himself from those charges before the Ad-hoc Disciplinary Committee which was substantially in compliance with the rules of natural justice and accorded the appellant fair hearing as guaranteed by the 1999 Constitution of Nigeria (as amended).
- C** The decision of the learned trial judge went along the stand taken by the appellant as plaintiff and in finding for him, that court of trial had held thus:
- D** **“Exhibit KGA 10 i.e. the letter inviting the appellant to the panel ought to have mentioned or specified the charge or allegation against the application for which he is invited to answer. There is nothing on the face of Exhibit KGA 10 to**
- E** **suggest the slightest charge against the applicant by any stretch of imagination.**
- F** **The law does not only require that a person appearing before any judicial, quasi-judicial or administrative panel be informed of the charge against him, it also requires that he be informed adequately, timeously and in the language he understands even though the charge may not be exactly**
- G** **like a formal charge before a law court. This view was re-adumbrated by the Supreme Court of Nigeria in the case of Yusuf vs. Union Bank of Nigeria Ltd (1996) 6 NWLR (Pt. 457) 632 at ratio 2 when the court said, 'To satisfy the rule**
- H** **of natural justice and fair hearing, a person likely to be affected directly by disciplinary proceedings must be given adequate notice of the allegation against him to enable him make representation in his own defence. But the**
- I** **complaint need not necessarily be drafted in the form of a formal charge. It is sufficient if the complaint as**



**A           “AD-HOC DISCIPLINARY COMMITTEE PROBING  
THE ALLEGED CASE OF UNAUTHORIZED  
MAINTENANCE WORK AT CALABAR WOOD  
COMPANY LIMITED, CALABAR”**

**B**

Indeed Exhibit KSA-10 did not just fly in without a foundation on it had come after a query by the authority to appellant and an interdiction. For case of reference I shall quote the correspondences between the parties

**C** hereunder, viz:

The query Exhibit B at page 52 of the record reads:

<b>D</b>	<b>“General Manager (D&amp;M) Enugu Zone Ref: 31/4.5/00xi/96/3236</b>	<b>25<sup>th</sup> June 1996 Mr. Akin Arobieke Assistant Manager (O&amp;M) Ufs District Manager</b>
<b>E</b>		

**QUERY**

**F** It has been brought to the knowledge of this management that you coordinated and supervised the unauthorized extensive electrical maintenance job at the Calabar Wood Company Limited, in conspiracy with Mr. O.J. Ojira and others, for monetary benefit from the Wood Company.

**G**

The report received reveals that:

- H**
- 1. You coordinated and supervised the maintenance and service work on 3 Nos. 750/CVA Transformers 1,2 and 3.**
  - 2. You coordinated and supervised the maintenance works in 5 Nos. of 11 KV OCB panels.**

**I**

**A        You action amounts to general misconduct and engagement in trade in competition with the authority, or in conflict with the interest of the authority, both punishable by dismissal from the service of the authority in accordance with Regulation 33.62(5) of the Authority's condition of service-1978 Edition.**

**B        You are to show cause in writing within 48 hours of your receipt of this letter as to why you should not be disciplined in accordance with the above cited regulation.**

**C        You should acknowledge the receipt of this letter by signing on the attached copies.**

**D        Signed  
Engr. J.O. Ogbonna  
E        General Manager (D & M) Enugu Zone**

**F        “ACKNOWLEDGEMENT  
I hereby acknowledge the receipt of your letter mentioned above.**

**Name:                A.Arobieke  
Designation:        A/M (O&M)  
Date:                 22/6/86**

**G        Signed.....  
Time: 11.40am”**

**H        The Court of Appeal faced with the appeal and the materials before it had no hesitation in holding as follows:**

**I        “As I said earlier, if the learned trial judge had given due and equal regard or consideration to the appellants case, he would have clearly seen and held that the respondent has had sufficient notice of the allegation of misconduct**

**A** against him which had been conveyed to him via the letter  
of query (Exhibit “B”) and that of his invitation to attend  
the panels proceedings. It is boldly written in the said letter  
of invitation (Exhibit-KGA 10”) that the respondent was  
**B** invited to appear before the Ad-hoc committee probing the  
alleged case of unauthorized maintenance work at Calabar  
Wood Company. This is also the same allegation on which  
he was accused of in the earlier letter of query (Exhibit “B”). It  
**C** is relevant to reproduce the content of Exhibit “KGA 10”  
(which is in a short form or wording) as follows:

**D** “AD-HOC DISCIPLINARY COMMITTEE probing the  
alleged case of unauthorized Maintenance Work at  
Calabar Wood Company Limited”.

#### **INVITATION TO APPEAR**

**E** You are hereby invited to appear before the above named  
committee between 10<sup>th</sup> to 19<sup>th</sup> July 1996 from 8.30am at  
the District Office Calabar.

**F** Please endeavor to appear.  
Signed:- Engr. J.I. Ahamioje  
Chairman”.

**G** For a fact the court below had tackled the mater of fair hearing or lack of it  
as postured by the appellant in these words:

**H** “Fair hearing and fair trial are said to be synonymous and  
the test for its observance is not based on technicality but  
on the substance of the proceedings and the objective view  
or opinion of a fair minded person who was present  
throughout the proceedings whether in his opinion justice  
has been done to the parties in the case-see Mohammed vs.  
**I** Kano Native Authority (1968) 1 All NWLR 424 and CBN

**A vs. Kotoye (1989) 1 NWLR (Pt. 98) 419”. (See also Bakoshi vs. Chief of Naval Staff (2005) All FWLR (Pt. 248) 1719.**

The court below further stated as follows:

**B “This finding or conclusion is with due respect to the said  
C learned trial judge erroneous and was in total disregard of  
D the plain contents of Exhibit “KGA-10” and the  
circumstances of the case in which the respondent had  
been issued with a query Exhibit “B” which he answered  
(in Exhibit “C”) both on the same allegation of misconduct  
against him and on the same topic of carrying out an  
unauthorized Maintenance Work at Wood Company”.**

My Lords, having set out the differing conclusions of the trial court as  
against that of the court below, I need at this stage to restate the position of  
this court which has been referred to again and again and that is, that what  
constitutes fair hearing depends on the circumstances of each case,  
however, in doing that it is the accepted law that the basic procedural and  
other requirements of the rule of natural justice must be served by every  
tribunal or authority whose decision will affect the right of another. In this I  
will seek in aid the case of Legal Practitioners' Disciplinary Committee vs.  
Gani Fawehinmi (1985) 2 NWLR (Pt. 7) 300 at 347-348 per Eso JSC thus:

**G “It is not easy to place a tribunal in the compartment of  
H purely administering predominantly administering or  
I one with judicial or quasi-judicial function. In my view, a  
pure administrative tribunal may turn judicial once it  
embarks on judicial or quasi-judicial adventure. The test  
to mind should be the function the judicial performs at a  
particular time. During the period of in-course into  
judicial or quasi- judicial function, an administrative  
body must be bound in process thereof to observe the  
principles that govern exercise of judicial function. Even**

- A**        **God himself did not pass sentence upon Adam before he was called upon to make his defence. Merely to describe a statutory function as administrative, judicial or quasi-judicial is not by itself sufficient to settle the requirement of natural justice. This certainly leaves it open for the court to go into the substance of the very act of then tribunal rather than form of description”.**
- B**
- C**    In his own contribution Opara JSC put across the following at page 392 paras. D-G thus:
- D**        **“The debate over what constitutes a judicial tribunal, a quasi- judicial tribunal, a domestic tribunal, a tribunal simpliciter, arbitrament, arbitral proceedings, forum competent etc. will certainly go on as an academic exercise; but once a body of persons by whatever name called are vested with authority to hear and determine particular issues or dispute either by consent of the disputants or by an order of court, or by provisions of a statute, such a body will be required to carry out its functions with that fairness and impartiality which the rules of natural justice dictate.**
- E**
- F**
- G**        **I may now deal with Chief Williams' contention that the Disciplinary Committee is not bound by the rules of natural justice because the respondent will have ample opportunity of being heard by the Appeal Committee. My learned brother, Aniagolu, JSC has dealt adequately with this issue. I agree with him that the decision of the Disciplinary Committee is a decision which may affect and, may be, adversely the civil right of the respondent. Whether it is final or not is irrelevant to the observance of the rule of natural justice in reaching the decision. I can see no valid reason why if the principle of natural justice**
- H**
- I**

- A**            **have to be applied to a tribunal entrusted with final decision, the same should not be true of a tribunal which have to decide a preliminary point which may affect the right of the parties”.**
- B**
- It is now settled law that an administrative panel such as the Ad-hoc disciplinary committee in the case at hand in its enquiries may not necessarily strictly adhere to such rules of natural justice such as exist in a court as known to our law however it is standard and I dare say basic that the
- C**            rules of fair hearing-natural justice can neither be compromised nor waived. The reason is that any infraction to that basic rule of fair hearing should automatically bring to naught whatever had been done in the
- D**            process of the inquiries embarked upon by the panel, judicial or administrative. *See Federal Polytechnic Mubo vs. T.L.M. Yusuf (1991) 1 NWLR (Pt. 165) page 81 at 100; Olaniyan and Ors. vs. University of Lagos & Anor. (1985) 2 NWLR (Pt. 80) 25.*
- E**            Interestingly from what I can see, the principles of natural justice were well pushed up by learned counsel for the appellant and there is no dispute in that regard. The point of divergence starts from whether or not those basic rules were applied to the appellant by the Ad-hoc Committee.
- F**            The appellant posits negatively stating that he was invited without knowing that he was called for. In taking that stand he anchored on just those two lines in Exhibit KGA=10 asking him to appear before the panel. The respondent disagreeing with that stance says the whole body of the letter of
- G**            invitation, the same Exhibit KGA-10 ought to be fully read not picking a part of it and that when fully read, it would clearly be seen that appellant was not left in the dark on what he was being invited to appear for. The court below went along the part trod by the respondent and said so in clear
- H**            terms as follows- per Adamu J.C.A:
- I**            **It is also my view on the point so raised that I have already dealt with the said point in my above consideration and upon my findings that there was no breach by the Ad-hoc Committee of the respondent's (i.e. the appellant herein)**

- A right of fair hearing or any violation of the rules of natural justice on the part of the said committee in its proceedings. It is to be pointed out that although the respondent's employment which was terminated by the appellant is one**
- B with statutory flavours in which was investigative or administrative panel is bound or required to observe the provision of the statute regulating the employment along with the common law principles, all the four conditions stipulated**
- C under Article 34.01 as reproduced in the respondent's brief are based on and are in accord with the doctrine or rules of natural justice and fair hearing as agreed or conceded by the said respondent at page 24 of his brief. Consequently, my above findings that the Ad-hoc Committee in the present case had**
- D complied substantially with the rules of natural justice has overtaken or provided an answer to the respondent's complaint based on the alleged non-compliance with the said rules (on conditions of service) which are themselves based on the**
- E principles and rules of natural justice and fair hearing”.**

- Having considered the preliminary angle of whether in the first place, the appellant was given a full opportunity of knowing why he was invited
- F before the panel with attendant advantage of preparing for his defence apart from cross-examining the witnesses which I see as having been done in keeping with the law and in line with fair hearing or natural justice. The follow up would be, if in the course of the proceedings the facts were well**
- G laid out in such a way that the findings and conclusions of the panel would be adjourned meritorious. The court below had reacted thus:**

- H “The learned trial judge in this judgment also failed to consider other pieces of evidence in the case in favour of the appellant which show that the respondent, apart from having a prior notice of the appellant's allegation against him also appeared before the Ad-hoc Committee when**
- I some of the witnesses gave evidence and he in fact put questions to the said witnesses in cross examination.....**

- A** (see also Exhibit AA (the proceedings of the Ad-hoc Committee page 143 thereof where the respondent asked one of the witness (Mr. Akioyemen) a question in cross-examination. He could not have done so if the evidence was taken behind him as alleged by the learned counsel”.
- B**

From what I can see the appellant seems to be guiding the court on a narrow garden path in the belief that the panel not being legally trained would be hamstrung on the strict legal procedures of a properly constituted court in which case they would be found wanting. Thoroughly, the court below saw through this scheme and despatched it as follows:

- D** “The caliber or status of the member of the panel who were laymen should also be considered-thus the committee would not be required to observe or to follow the strict procedures similar to that of a court of law and even when it refuses to give the respondent oral hearing at all or the right to cross-examine the witnesses or even where it obtained some of its evidence from other quarters or sources beyond the appellant, it would not be regarded as denying him fair hearing or acting contrary to the rules of natural justice”. Reliance was made on Queen vs. Director of Audit (1961) NSCC 292; Adedefi vs. Police Service Commission (1967) NSCC 292; Ekperokun vs. Unilag (1986) 4 NWLR (Pt. 34) 162 at 173 amongst others.
- E**
- F**
- G**

That dealt a mortal blow on what the trial court which rendition of the trial court is thus:

- H** “From the submission, the fundamental issue that calls for determination here is whether or not the Ad-hoc Disciplinary Committee set up by the respondent on whose report and recommendation the respondent acted upon in terminating the applicant's appointment accorded the
- I**

- A** applicant the right to fair hearing in their deliberations before arriving at their findings and decisions. If the answer is yes, this court will uphold the proceedings, findings and recommendation of the committee, but if the
- B** answer is in the negative, the court shall declare same unconstitutional, null and void and will quash it accordingly”.
- C** The court below in setting aside the earlier decisions of the trial court had held thus:
- D** “It is also my view on the point so raised that I have already dealt with the said point in my above consideration and upon my finding that was no breach by the Ad-hoc Committee of the respondent's (i.e. the appellant herein) right of fair hearing or any violation of the rules of natural
- E** justice on the part of the said Committee in its proceedings. It is to be pointed out that although the respondent's employment which was terminated by the appellant is one with statutory flavor in the investigative or administrative
- F** panel is bound or required to observe the provision of the statute regulating the employment along with the common law principle, all the four conditions stipulated under Article 34.01 as reproduced in the respondent's brief are
- G** based on and are accord with the doctrine or rules of natural justice, and fair hearing as agreed or conceded by the said respondent at page 24 of his brief. Consequently, my above finding that the Ad-hoc Committee in the present
- H** case had complied substantially with the rules of natural justice had overtaken or provided an answer to the respondent's complain based on the alleged non-compliance with the said rules (on the condition of service)
- I** which are themselves based on the principles and rules of natural justice and fair hearing”.

- A** From what is available, the Court of Appeal was in order and went along the enabling law in upturning and setting aside the judgment of the trial court which failed to evaluate the entire evidence before him and rather went into the narrow compass the appellant had led him thereby producing a decision
- B** perverse and invalid which I have no difficulty in discerning and intervening to reversal that wrong decision. The conclusion is that there is nothing on which I can justify on interference with what the court below did. Rather the situation is such that I acknowledge that the court below
- C** was correct in re-evaluating what the court of first instance did and coming to the proper decision.

- In light of the foregoing, I have no hesitation in stating that this appeal lacks merit and have no option than to dismiss it. Appeal is hereby
- D** dismissed and I affirm what the Court of Appeal did in setting aside the judgment of the trial High Court and for effect, the Disciplinary Committee of the respondent was correct in its findings and conclusions and the termination of the appellant's appointment by the respondent correct and
- E** effective.

I make no order as to costs.

**Mary Ukaego Peter-odili**  
*Justice, Supreme Court*

- F**
- OLUKAYODE ARIWOOLA, (JSC):** I have had the opportunity of reading in draft, the lead judgment of my learned brother, **Peter-Odili, JSC** just delivered. I am in agreement with the reasoning and conclusion that the
- G** appeal is devoid of any merit. It deserves to be dismissed.

Accordingly, I too dismiss the appeal and affirm the decision of the court below.

I abide by the consequential orders including the order on costs.

- H**
- Olu Ariwoola**  
*Justice, Supreme Court*

- I** **INYANG OKORO, (JSC):** The judgment just delivered by my learned brother, Mary Ukaego Peter-Odili, JSC was made available to me in draft in which I read before now. For the reasons advanced to reach the

**A** conclusion that this appeal is devoid of merit, I agree entirely with the judgment. The facts upon which the appeal is anchored are well encapsulated in the lead judgment. I shall therefore make a few comments in support of the judgment only.

**B** The main complaint of the appellant in this appeal is that the Ad-hoc Disciplinary Committee which investigated him did not observe rules of Natural Justice. That Exhibit KGA 10 which is a letter inviting him to appear before the panel did not disclose the case he was expected to face. It is his contention that the contents of Exhibit B, the query earlier issued to him does not contain adequate information to that effect.

**C** As was effectively explained in the lead judgment, a combination of Exhibits B and KGA 10-the query which explained the complaint against the appellant and the letter of invitation of the appellant to the Ad-hoc Committee investigation respectively, in my opinion, put the appellant on notice of the case he was expected to defend before the panel. Accordingly, his complaint against the Ad-hoc committee does not fly at all. Fair hearing, in essence, means giving equal opportunity to the parties to be heard in the litigation before a court or Tribunal, an Ad-hoc Tribunal inclusive. Where parties are given opportunity to be heard and the charge or complaint against the party standing trial or being investigated made available to them they cannot complain of breach of fair hearing principles. **See Darma vs. Ecobank Nig. Ltd. (2017) LPELR-41663 (SC), Prof. Folarin Slyllon vs. Mrs Judith Asein (1994) LPELR-3071 (SC), (1994) 6 NWLR (Pt. 353) 670.**

**D** I have carefully considered the judgment of the lower court but have not seen where the principles of natural justice were breached by the Ad-hoc panel. Rather, they were properly complied with. The court below was therefore right to set aside the judgment of the trial court and to uphold the report of the Ad-hoc committee which investigated the appellant.

**E** With the little I have said above and the fuller reasons marshaled in the lead judgment, I agree that there is no merit in this appeal. I also dismiss same. I abide by the order as to costs.

**F**

**John Inyang Okoro**  
*Justice, Supreme Court*

**A ADAMU AUGIE, (JSC):** I read in draft the lead judgment just delivered by my learned brother, Peter-Odili, JSC, and I agree with him that this appeal lacks merit.

The appellant, who is an employee of the respondent, allegedly coordinated and supervised unauthorized works at another company. The respondent issued him a query that clearly indicated the offences and breaches leveled against him. Dissatisfied with appellant's reply to the query and that of the other employees, who allegedly carried out the unauthorized works under the direct supervision of the appellant, the respondent set up an Ad-Hoc Disciplinary Committee, and the letter inviting him to appear before the said committee reads

**D Ad-hoc Disciplinary Committee probing the alleged case of Unauthorized Maintenance Work at Calabar Wood Company Limited, Calabar.**

**E INVITATION TO APPEAR**  
**You are invited to appear before the above committee named committee between 16<sup>th</sup> to 19<sup>th</sup> July, 1996 from 8.30am at the District Office, Calabar.**

**F** The appellant contends *inter alia* that he was denied a fair hearing by the committee because it is evident from the face of the invitation letter that the allegation against him is absent, and the Court of Appeal erred in setting aside the trial court's finding that he was denied fair hearing.

**G** The trial court held that the said letter (Exhibit KGA 10) ought to have mentioned or specified the charge or the allegation against him, and that “*there is nothing on the face of Exhibit KGA 10 to suggest the slightest charge against (him) by any stretch of imagination*”

**H** The Court of Appeal, however, held that if the learned trial judge had considered his case properly, he would have seen that the appellant “*had sufficient notice of the allegation of misconduct against him, which had been conveyed to him via the letter of query (Exhibit B) and that of his invitation to attend the panel's proceeding*”, and it is right.

**I**

A The appellant was invited to appear before the Ad-hoc Committee probing the alleged case of unauthorized maintenance work, and the same allegation is set out in the earlier query, to which he responded.

So, the Court of Appeal's conclusion that the trial court's finding was erroneous and in total disregard of the plain contents of the letter of invitation, and the circumstances of this case, in which the appellant had been issued with a query, which he answered, on same allegation, cannot be faulted, and I see no reason to interfere with that decision.

C Thus, I also dismiss this appeal. I also make no order as to costs.

**Amina Adamu Augie**  
***Justice, Supreme Court***

D **ADAMU GALINJE, (JSC):** I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Mary Peter-Odili, JSC and I entirely agree with the reasoning contained therein and the conclusion arrived thereat. My learned brother has, as usual, set out elaborately and comprehensively the facts of this case and the law applicable in reaching his decision. I can therefore only add a few words in support of the lead judgment.

F The appellant's main complaint against the decision of the lower court is that he was not accorded fair hearing because there was no formal charge against him by the Ad-hoc committee and that witnesses called before the committee testified behind him.

G In dealing with this complaint, the lower court before which the same complaint was raised, at pages 297-298 of the printed record of this appeal said:

H **“The law is well settled that what constitutes a fair hearing or its breach depends on the circumstances of each case and in the present case in which the ad hoc panel or committee was merely administrative, investigative or exploratory one, with power only to investigate the complaint against the respondent and to make appropriate recommendation to the management and without any power to decide finally on his right, the said committee was not exercising the role**

- A or function of a court of Law by trying the respondent for any offence of crime. The caliber or stands of the members of the panel who were laymen should also be considered.”**
- B** I agree entirely with the lower court that the ad-hoc committee that was set up by the respondent was an administrative panel which did not require framing of formal charges against the appellant. Under the Common Law, before an employer can dispense with the services of his employee, he
- C** needs to afford the employee an opportunity of being heard before exercising his power of dismissal, even where the allegation for which the employee is being dismissed involves accusation of crime. There is no requirement that there must be a formal charge against the employee. In
- D Yusuf Vs. U.B.A. Plc (1996) 6 NWLR (Pt. 457) 632 at 645 para A, this court per Onu JSC held:**
- E “To satisfy the rule of natural justice and fair hearing a person likely to be affected directly by disciplinary proceedings must be given adequate notice of the allegation against him to enable him make representation in his own defense. The complaint against him must not**
- F necessarily be drafted in the form of a formal charge. It is sufficient if the complaint as formulated conveys to him the nature of the accusation against him”.**
- G** In the instant case the appellant was duly queried. The query Exhibit B, at page 52 of the printed record of this appeal contains all the allegations against the appellant for which he was required to react. The title of the letter of invitation from the ad-hoc committee clearly informed the
- H** appellant that he was invited in respect of the unauthorized maintenance work at Calabar Wood Company Limited. The proceedings conducted by the Ad-hoc Committee clearly shows that witnesses including officers who the appellant used during the unauthorized works, testified before the
- I** committee in the presence of the appellant who put questions to them. In my view the lower court was right when it held that the appellant was

- A** accorded fair hearing. Fair hearing lies in the procedure followed in the determination of a case and not in the correctness of a decision. It is synonymous with trial and implies that every reasonable and fair minded observer who watches the proceedings should be able to come to
- B** conclusion that the court or tribunal has been fair to all the parties. In the instant case, the Ad hoc Committee not only disclosed to the appellant the allegations against him, but took the testimonies of witnesses in his presence and he was allowed to cross examine those witnesses. I am
- C** therefore satisfied that the Ad-hoc Committee complied with the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, and so I hold. *See* **Baba vs. N.C.A.T.C. (1991)5 NWLR (Pt. 192) 388, Okafor vs. The A.G. Anambra State (1991) 6 NWLR (Pt. 200) 659.**
- D** For these few words and the more detailed reasoning in the lead judgment of my learned brother Mary Peter-Odili, this appeal shall be and it is hereby dismissed. I abide by all the consequential orders made in the said judgment including order as to costs.

**E**

**Paul Adamu Galinje**  
*Justice, Supreme Court*

**F**

**G**

**H**

**I**

**ATTORNEY GENERAL, LAGOS STATE  
AND  
1. EKO HOTELS LIMITED  
2. FEDERAL BOARD OF INLAND REVENUE**

**SC. 321/2007**

**IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA**

**ON FRIDAY THE 8<sup>TH</sup> DAY OF DECEMBER, 2017**

**BEFORE THEIR LORDSHIPS**

**MUSADATTIJO MUHAMMAD  
KUDIRAT M. O. KEKERE-EKUN  
JOHNINYANG OKORO  
AMIRU SANUSI  
EJEMBI EKO**

**JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT  
JUSTICE, SUPREME COURT**

*CASE LAW: The principles in Attorney-General of Ogun State vs. Agberuagba (1985) 2 NWLR (pt. 3) 395.*

*CASE LAW: The principles in Nigeria Soft Drink Ltd vs. Attorney General Lagos State (1987) 2 NWLR (Pt. 57) 444.*

*CONSTITUTIONAL LAW: An existing Law Statutes Constitution of Federal Republic of Nigeria 1999 (as Amended) – S. 315(1) thereof – Purport.*

*CONSTITUTIONAL LAW: Legislative Powers of the National Assembly Constitution of the Federal Republic of Nigeria 1999 (as Amended) – S.4(1) (7) thereof.*

*COURT: Federal High Court – Jurisdiction thereof – How determined –*

*Whether to consider the nature of parties and the subject matter before the court.*

*COURT: Competence thereof – What constitutes – The principles in Madukolum vs. Nkemdilim (1962) 2 SCNLR 341.*

*COURT: Jurisdiction – Absence thereof – Effect.*

*COURT: Jurisdiction thereof – How determined – Whether to consider the originating processes.*

*JUDICIAL PRECEDENT: Stare Decisis – Application thereof – Where a lower court decides a point which has been decided by a superior court – Whether the lower court is bound to follow the decisions of a Higher court.*

*JUDICIAL PRECEDENT: Stare Decisis – Circumstances thereof – The principles in Emeka vs. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 @ 16H; (2012) LPELR-9338 (SC).*

*JUDICIAL PRECEDENT: Stare Decisis – Rationale – The principle in Ardo vs. Nyako (2014) LPELR – 22878 (SC).*

*LEGISLATION: “Covering the field” – Circumstances thereof – Relevant principle.*

*LEGISLATION: “Covering the field” – VAT Act and sales Tax Law of Lagos State – Where the VAT Act and the sales Tax law of Lagos State makes similar provisions – Whether the VAT ACT can be said to have covered the field thereby making the sales Tax Law inapplicable.*

*LEGISLATION: Existing Law – When valid – Whether an existing Law remains valid and subsisting until set aside by decisions of a court of competent jurisdiction.*

*WORDS & PHRASES: “Covering the field” – Meaning & Connotation.*

*WORDS & PHRASES: “Taxable person” – Meaning and connotation – S. 46 of VATACT.*

*WORDS AND PHRASES: Stare Decisis – Meaning connotation.*

### **Issue for Determination**

- 1. Whether the court below was right when it held that the cases of:**
  - i) Attorney General of Ogun State vs. Aberuagba (1985) 1 NWLR (Pt. 3) 395,**
  - ii) Nigerian Soft Drinks Ltd. vs. Attorney General of Lagos State (1987) 2 NWLR (Pt. 57) 444, cited to the trial court as *stare decisis*, is a non issue and that none of those decisions was authority to say that the 1<sup>st</sup> respondent is obliged to remit proceeds of Sales Tax to Lagos State Government.**

**(Ground 1).**
- 2. Whether the lower court was right when it held that the Value Added Tax Act has covered the field of Sales Tax and its provisions prevail over the Sales Tax Law of Lagos State.**

**(Ground 2).**
- 3. Whether the court below was right when it held that imposition of both VAT and Sales Tax will create double taxation.**

**(Ground 3).**
- 4. Whether the court below misapprehended the objection of the appellant on the jurisdiction of the trial**

**court and erred in law when it held that the trial court had jurisdiction to entertain the plaintiff's action as constituted.**

**(Ground 4).**

- 5. Whether the court below misdirected itself on the submission of the appellant that it should invoke its power under S.16 of the Court of Appeal Act to determine the merit of the case.**

**(Ground 5).**

### **Facts of the Matter**

This appeal is against the judgment of the Court of Appeal, Lagos Division delivered on 13<sup>th</sup> July 2007 affirming the judgment of the Federal High Court sitting in Lagos delivered on 20<sup>th</sup> December 2004 ordering the remittance of money collected as tax by the 1<sup>st</sup> respondent on its sales to its consumers to be paid to the 2<sup>nd</sup> respondent, the Federal Board of Inland Revenue.

The suit before the trial court was in the nature interpleader proceedings. By an Originating Summons filed on the 5<sup>th</sup> day of March, 2004 the 1<sup>st</sup> respondent sought a determination by the trial court as to whether remittance of money collected as tax by it from its consumers should be paid to the Federal Board of Inland Revenue (FBIR) or to the Lagos State Government having regard to the provisions of Sections 1, 2, 10, 11, 12, 13, 14, 15 and 16 of the Value Added Tax (VAT) Decree No. 102 of 1993 and Sections 1, 2, 3, 4, 5 and 6 of the Sales Tax Law Cap. 175 and Sales Tax (Schedule Amendment) Order 2000. It sought the following reliefs:

- 1. A declaration that the plaintiff can only be a “taxable person” or remitting agent in respect of the amount due as tax on its sales to its consumers to a single body or agency and not to state and Federal agencies together.**

2. **An order that the plaintiff is not entitled to pay or remit tax on its sales to its consumers to the defendants until the rightful body to collect same is determined.**
3. **An order directing the plaintiff to pay the amount due as tax on its sales to its consumers to a dedicated account until the rightful body to collect same is determined.**

The appellant (as 2<sup>nd</sup> defendant) and 2<sup>nd</sup> respondent (as 1<sup>st</sup> defendant) filed counter affidavits in opposition to the originating summons. In addition, the appellant filed a preliminary objection challenging the jurisdiction of the court to entertain the suit. The preliminary objection was heard along with the substantive suit. On 20/12/2004, in a considered judgment, the learned trial judge dismissed the preliminary objection and held that the Federal High Court had jurisdiction to entertain the suit. He also held that the 1<sup>st</sup> respondent could only be a “taxable person” or remitting agent in respect of the amount due as tax on its sales to its consumers to a single agency, which is the FBIR. Dissatisfied with the decision the appellant appealed to the court below, which in a considered judgment delivered on 13<sup>th</sup> July 2007, dismissed the appeal and affirmed the judgment of the trial court. The appellant is still aggrieved and has therefore instituted this appeal against the decision of the lower court.

**Held:**

1. *The definition of stare of decisis*  
**”Stare decisis” is defined in Black's Law Dictionary, 8<sup>th</sup> edition as follows:**

***“To stand by things decided.” The doctrine of precedent under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation.”***

*“The rule of adherence to judicial precedents finds its expression in the doctrine of stare decisis. The doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudication, unless it be for urgent reasons and in exceptional cases.” William M. Lile et al. Brief Marking and the Use of Law Books 321 (3<sup>rd</sup> ed. 1914).” (Underlining mine for emphasis) (Pp 149 – 150 Paras G – C)*

2. *The Rationale for stare decisis*

**The rationale for the doctrine was stated by His Lordship, Onnoghen, JSC (as he then was) in Ardo vs. Nyako (2014) LPELR-22878 (SC) thus:**

*“... the principle of judicial precedent or state decisis is designed to ensure orderliness, certainty and discipline in the judicial process. The principle holds inferior courts to the Supreme Court of Nigeria bound by the previous decision(s) of the court on similar facts in the consideration and determination of matters before them. ... It is settled that the way open to the courts to avoid the doctrine/principle of judicial precedent/stare decisis is by distinguishing the previous decision(s) from the facts and/or circumstances of the case under consideration.” (P 150 Paras C – F)*

3. *Circumstances when stare Decisis will arise*

**On the circumstances in which the doctrine of stare decisis would arise, His Lordship Rhodes-Vivour, JSC in Emeka vs. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 @ 96 H; (2012) LPELR-9338 (SC) held:**

***“Facts have been in views. A judgment should always be read in light of the facts on which the case was decided. The rules of stare decisis do not allow Courts to apply the ratio of a case across the board and with little regard to the facts of the case before them. See: Albion Construction Ltd. vs. R.A.O. Inv. & Prod. Ltd. (1992) 1 NWLR (Pt. 219) 583.” (Pp 150–151 Paras G–A)***

4. *The issue in Aberuagba's case*

**In Aberuagba's case, the issue in contention, as stated by Mohammed Bello, JSC (as he then was) in his leading judgment, concerned the Federal and State taxing powers having regard to the provisions of the 1979 Constitution of the Federal Republic of Nigeria. What was in issue was the validity of the exercise of its legislation powers by the Ogun State House of Assembly in enacting the Sales Tax Law of 1982, which imposed a tax on the purchase of specified goods and services and made provision for the collection of same. His Lordship, Bello, JSC (as he then was) held as follows:**

***“Accordingly, I hold that in so far as the Law purports to impose sales tax on taxable products brought into the State, it offends the provision of inter-State or international trade and commerce and contravenes Section 4 (3) of the Constitution. I declare the law unconstitutional to that extent. Furthermore, item 61 (e) empowers the Federation to control the prices of goods and commodities. Under the Price Control Act 1977 and the Price Control Commodities Order 22 of 1979, the Federal Government has controlled the prices of petrol, diesel oil and petroleum products. I have earlier shown that the Act and the Order are existing laws. Since the sales tax is intended to be paid by the consumer, it tantamount to an increase in my view in the prices of the taxable products, namely petrol, diesel oil and petroleum***

***the prices of which have been controlled by the Federal Government. That being the case, I hold the sales tax to be inconsistent with the Price Control Act and the Order made thereunder. Consequently, the sales tax on petrol, diesel oil and other petroleum products is unconstitutional, null and void.***

***Having regard to the following, I may summarise that the Federation has implied exclusive power to make sales tax in all matters within the Exclusive and Concurrent Lists while the States have implied or residuary power to enact sales tax law on all matters outside the said Lists.”***

*(Pp 151–152 Paras A–A)*

5. *The case of Aberuagba vs. Attorney General of Ogun State*  
**As the 1<sup>st</sup> respondent did not challenge the validity of the Sales Tax Law of Lagos State, Aberuagba's case cannot constitute stare decisis in respect of the interpleader proceeding before the trial court.**  
*(P 152 Paras B–C)*
  
6. *The principles in Nigeria soft Drink Ltd v. Attorney general Lagos State*  
**In the Nigerian Soft Drinks Ltd. case, the issue was whether, having regard to the decision of this court in Aberuagba's case, the Sales Tax Law of Lagos State is similar to the Ogun State Sales Tax Law and is therefore unconstitutional, being a legislative exercise in respect of Item 61 of the Exclusive Legislative List to the extent that it imposes sales tax on interstate trade and commerce and interferes with taxable goods, the prices of which have been controlled by the Federal Government. The Lagos State Sales Tax was held to be valid because, unlike the Ogun State Law, Section 2 thereof did not impose tax in respect of taxable goods whose prices have been controlled by the Federal Government. The persons liable to pay tax were purchasers or consumers of any taxable commodities listed in the schedule to the law. In other words, under the Lagos State**

**Sales Tax Law, the tax is not upon the goods but upon the consumer whereas under the Ogun State Sales Tax Law the charge was upon goods brought into the State. Again, the appellant did not challenge the validity of the Sales Tax Law. The case has nothing to do with a determination as to which of two contending parties is entitled to tax already collected under the VAT Act. I am of the view and I do hold that the two cases were rightly distinguished by the lower court from the facts of the instant case. (P 152 Paras C – G)**

7. *The meaning of “covering the field”*  
**A.G. Ogun State & Ors. vs. A.G. Federation (1982) NSCC (Vol. 13) 1 @ 35 lines 18 – 30, His Lordship, Kayode Eso, JSC stated thus:**

*“I take the view that when one considers this doctrine, the phrase “covering the field” means precisely what it says. Where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the State is inconsistent with legislation of the Federal Government it is indeed void and of no effect for inconsistency. Where, however, the legislation enacted by the State is the same as the one enacted by the Federal Government, where the two legislations are in pari material I respectfully take the view that the State Legislation is in abeyance and becomes inoperative for the period the Federal Legislation is in force. I will not say it is void. If for any reason the Federal Legislation is repealed, it is my humble view that the State legislation, which is in abeyance, is revived and becomes operative until there is another Federal legislation that covers the field.” (Emphasis mine)*

**This view was endorsed and adopted by this court in the case of AG Abis State vs. AG Federation (2002) 6 NWLR (Pt. 763) 264 @ 435 F, to wit:**

***“The doctrine however renders the paramount legislation predominant and the subordinate legislation remains inoperative so long as the paramount legislation remains operative. Where of course, there is obvious inconsistency, the subordinate legislation is void.”***  
*(Pp 156–157 Paras D–B)*

8. *The circumstances of when covering the field will operate*  
**In INEC vs. MUSA (2003) 3 NWLR (Pt. 806) 72 @ 204 – 205 H – B; (2003) LPELR-1515 (SC) @ 108 C – F, the circumstances in which the doctrine of covering the field might arise was explained thus:**

***“The doctrine of covering the field can arise in two distinct situations. First, where in the purported exercise of the legislative powers of the National Assembly or a State House of Assembly, a law is enacted in which the Constitution has already made provisions covering the subject matter of the Federal Act or the State law. Second, where a State House of Assembly, by the purported exercise of its legislative powers, enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the State law. In both situations, the doctrine of covering the field will apply because of the “Federation might” which relevantly are the Constitution and the Act.***

***In my humble view, a State Law which is not necessarily inconsistent with either the Constitution or an act of the National Assembly but merely covers the legislative field of the National Assembly is not harmful as it is merely a surplusage. In line with the decision of Eso, JSC, in A.G. Ogun State (supra), such a law of a State House of Assemble is in abeyance and inoperative and could be revived and becomes operative if for any reason the Federal legislation is repealed.”***

**See also: Lakanmi vs. AG. Western Region (1970) NSCC 143 @ 144; Osun State Government vs. Estisione H. (Nigeria) Ltd. & Anor. (2012) LPELR-7936 (CA) @ 33 – 34 B – B. (Pp 157 – 158 Paras C – A)**

9. *The purport of S. 4(1) (7) of the 1999 constitution*  
**Section 4 (1) (7) of the 1999 Constitution provides for the legislative powers of the National Assembly and the State Houses of Assembly to make laws. Subsection (5) provides:**

***“4 (5): If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency be void.”***

*(P 158 Paras A – C)*

10. *What was actually in dispute*  
**In the absence of any relief challenging the legitimacy of the VAT Act, I am of the considered view that the only issue the court needed to determine was whether, as the law stood at the time the cause of action arose, the money already collected by the plaintiff under the VAT Act should be remitted to the 2<sup>nd</sup> respondent rather than the appellant. In the instant appeal, there is also no issue seeking the invalidation of the VAT Act. (P 159 Paras B – C)**

11. *The purport of S.315(1) of the 1999 constitution*  
**As rightly observed by learned counsel for the 2<sup>nd</sup> respondent, the Value Added Tax Decree No. 102 of 1993 was promulgated by the Federal Military Government and remained in effect, with necessary amendments, until the coming into effect of the 1999 Constitution. Section 315 (1) of the 1999 Constitution provides as follows:**

***“315 (1) Subject to the provisions of this Constitution, an existing law shall have effect with such modification as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be***

- (a) An Act of the National Assembly to the effect that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and***
- (b) A law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.” (P 159 Paras C–H)***

12. *Law remains valid until nullified by court decision*

**At the time the cause of action arose, the VAT Act was deemed to be an Act of the National Assembly. At the risk of repetition, there was no prayer before the trial court or the lower court seeking to nullify the Act. Until there is a decision of a court of competent jurisdiction invalidating it, it remains valid and subsisting. (Pp 159–160 Paras H–A)**

13. *VAT Act is superior to the sales Tax Law of Lagos State.*

**Section 2 of the Decree (now the VAT Act) provides that the tax to be charged and payable on goods and services is as set out in column A of Schedules 1 and 2 of the Act. Section 1 of the Sales Tax Law of Lagos State makes similar provisions. The goods and services in respect of which tax is chargeable and the applicable rates are set out in Part 1 of the Sales Tax (Schedule Amendment) Order, 2000. As rightly observed by the two lower courts, the goods and services covered by both legislations are the same. It follows that the VAT Act has effectively covered the field in that regard. Section 7 (1) of the Act provides that the tax shall be administered by the 2<sup>nd</sup> respondent. In the circumstances, I am in complete agreement with**

**the court below, which affirmed the finding of the trial court, that the VAT Act having covered the field on the issue of sales tax, its provisions prevail over the provisions of the Sales Tax Law of Lagos State. Thus, even if the Lagos State House of Assembly has the requisite legislative competence to enact the Sales Tax Law, which is not an issue before us, once an existing Federal law or an Act of the National Assembly has covered the field, the Act of the National Assembly or such existing Federal law must prevail. This issue is accordingly resolved against the appellant. (P 160 paras A–E)**

***Per Kekere Ekun (JSC)***

**In resolving this issue, I shall first address the argument of learned counsel for the appellant to the effect that the VAT Act is unconstitutional for not being within the legislative powers of the National Assembly. In the course of resolving Issue 2 earlier, I did hold that the VAT Act is an existing law by virtue of Section 315 (1) of the 1999 Constitution and that the Act has covered the field on the subject of sales tax and therefore prevails over the Lagos State Sales Tax (Schedule Amendment) Order 2000. I am in complete agreement with learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents that not only do both legislations cover the same goods and services, they are also targeted at the same consumer. The tax has already been collected by the 1<sup>st</sup> respondent pursuant to the VAT Act. When a dispute arose as to which of the two claimants the tax collected should be remitted to, it rightly approached the court for direction. There is no doubt in my mind that it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumers under two different legislations. (Pp 162 – 163 Paras E–A)**

14. *Court of Appeal did not misapprehend the appellant contention. I am of the view that the court below did not in any way misapprehend learned counsel's submissions. In the course of his*

**judgment, the learned trial judge made the following observation at page 220 of the record:**

*“The learned counsel for the defendant referred to the case of Stevenson & Sons Ltd. Vs. Brownell 1912 344 in support of his submission that where one of the defendants to an interpleader has already obtained judgment in respect of the subject matter of the proceedings, the question of interpleader would no longer arise. He did not however avail this court with copy of any judgment in respect of the subject matter of this proceeding which is to whom between the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant is the plaintiff to remit the money collected as tax by it on its sales to its consumers.”*  
(P 169 Paras E–I)

15. *Application of the principles of stare decisis*

**Clearly, if indeed there are existing judicial authorities of either the lower court or this court specifically deciding the issue that arose in this case in favour of the Sales Tax Law, the trial court would be bound by the doctrine of *stare decisis* to follow those decisions and decline jurisdiction. The merger and consideration of issues 1 and 2, which gave rise to issue 1 formulated by the court below, was quite in order. There was no misapprehension of the issue. (P170 Paras B–D)**

16. *The dispute is not about the revenue of Lagos State Government.*

**As rightly held by the trial court, the proceedings were in the nature of interpleader proceedings wherein the appellant and the 2<sup>nd</sup> respondent were required to satisfy the court as to which of them was entitled to the remittance of the money collected by the 1<sup>st</sup> respondent. It would also not be correct to say, as learned counsel for the appellant has argued, that the dispute has to do with the revenue of the Lagos State Government. (P171 Paras A–C)**

17. *What makes a court competent*

**For a court to be competent to adjudicate in a cause or matter, the following conditions must be satisfied:**

- a. It must be properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other.**
- b. The subject matter of the case must be within its jurisdiction, and there must be no feature in the case which prevents the court from exercising its jurisdiction; and**
- c. The case must come before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction”.**

**See: Madukolu vs. Nkemdilim (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587 at 594; Skenconsult (Nig.) Ltd. vs. Ukey (1981) 1 S.C. 6 at 62; Inakoju vs. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 588 F. (P 171 Paras C–H)**

18. *Effect where court lacks jurisdiction*

**It is equally trite that where the court lacks jurisdiction to entertain a cause or matter the entire process, no matter how well conducted, is an exercise in futility. The proceedings would amount to a nullity *ab initio* and liable to be set aside. (P 171 Paras H–I)**

19. *How to determine a court jurisdiction*

**In determining whether or not the court has jurisdiction to entertain a cause or matter it is the originating processes filed by the plaintiff that would be considered. See: A.G. Federation vs. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt. 618) 187; (1989) 5 SC (Pt. III) 59; Uwaifo vs. A.G. Bendel State (1982) 7 SC 124; Adeyemi vs. Opeyori (1976) 6 – 10 SC 31; Amaechi vs. INEC (No. 2) (2007) 18 NWLR (Pt. 1065) 98. (Pp 171–172 Paras I–B)**

20. *How to determine the jurisdiction of the Federal High Court*

**In determining whether or not the court has jurisdiction to entertain a cause or matter it is the originating processes filed by the plaintiff that would be considered. See: A.G. Federation vs. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt. 618) 187; (1989) 5 SC (Pt. III) 59; Uwaifo vs. A.G. Bendel State (1982) 7 SC 124; Adeyemi vs. Opeyori (1976) 6 – 10 SC 31; Amaechi vs. INEC (No. 2) (2007) 18 NWLR (Pt. 1065) 98. (Pp 171 – 172 Paras I – B)**

21. Definition of a “taxable person”

**A “taxable person” is defined in Section 46 of the VAT Act as:**

*“a person (other than a public authority acting in that capacity) who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of services (including mining, and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business.”*

*Per Kekere Ekun (JSC)*

**While it is true that the VAT Act regulates the tax payable by consumers on goods and services, I am inclined to the view expressed by the court below at page 426 of the record, to wit:**

*“... the 1<sup>st</sup> respondent is subject to the VAT Act collects and remits VAT) and could be held liable for default (See Section 18 VAT Act). The company is a person subject to Federal taxation and is also known as taxable person under VAT Act (see Section 8 VAT Act).*

*..... A company that fails to collect the VAT from consumer will be made to pay the tax (See Section 19 VAT Act). Furthermore, while a company (collecting*

*agent or taxable person) can be seriously liable under the VAT Act the consumer (who is at large) cannot be liable. (See sections 15, 18, 25 and 26 VAT Act.) Subject matter falls within the subjects listed under Section 251 [of the 1999 Constitution] and the party or one of the parties is the Federal Government or an agent of the Federal Government, then the only court with jurisdiction at first instance is the Federal High Court. The learned trial judge accordingly rightly applied the provisions of Section 251 and the decisions in Oshiomole and NEPA (supra).”*

**I am unable to fault the above finding after my examination of the relevant provisions of the Constitution and the VAT Act. I agree that having regard to the subject matter of the dispute and the fact that one of the parties is an agency of the Federal Government, the Federal High Court, pursuant to Section 251 (1) (b) & (r) of the 1999 Constitution had the requisite jurisdiction to entertain the suit. Learned counsel for the appellant has failed to persuade me that the findings of the two lower courts are perverse. In the circumstances, this issue is resolved against the appellant. (Pp 172–173 Paras F–G)**

*Per John Inyang Okoro JSC*

**There is no doubt that both the Value Added Tax Act and the Sales Tax Law of Lagos State provide for the collection of tax from the customer on consumable items stated in the schedules of two laws. The rates and goods upon which charges are made under both laws are similar. It follows naturally that there is unhealthy competition between the two laws, thus throwing the consumer and collection agents into confusion. This is not the purposes of governance. Be that as it may, the law does not leave us without a remedy. By Section 4 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), if any law enacted by the House of Assembly of a State is**

**inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency, be void. I shall limit myself to the issue before this court. We are neither asked to determine on the validity of Value Added Tax Act nor the Sales Tax laws of Lagos State. The issue for determination is whether the Value Added Tax Act has covered the field such that the Lagos State Tax Law remains significance. (P 175 Paras B – F)**

22. *The meaning of the doctrine of covering the field*

**The doctrine of covering the field is essentially that where the main, principal or superior law has covered a given field or area, any other subsidiary law made in that area or field cannot operate side by side with the main, principal or superior law. If the inferior law is inconsistent with the principal, law, it has to be declared void to the extent of its inconsistency. But where it is consistent with the principal law, it has to be left in abeyance i.e. inoperative pending when the principal law may give way. See *Saraki vs. Federal Republic of Nigeria* (2016) LPELR 40013 (SC), *MPPP vs. INEC & ors* (2015) LPELR – 25706 (SC) *AG Abia State & ors vs. AG of the Federation* (2002) LPELR – 611 (SC), (2002) 6 NWLR (pt. 763) 264. This court, in *Attorney General of Ogun State vs. Attorney General of Federation* (1982) LPELR – 11 (SC), Per Fatayi Williams, JSC (as he then was) held on this issue as follows:**

***“It is of course, settled law, based on the doctrine of covering the field with which I shall deal in more detail later, that if parliament and a Regional Legislature are empowered to make laws, and a Regional legislature enacts an identical law on the same subject matter, the law made by Parliament shall prevail. That made by the Regional legislature shall become irrelevant and therefore impliedly repealed.”*** ( Pp 175 – 176 Paras F – C)

23. *Implementation of the two Laws will amount to double taxation*

**With due respect to the learned counsel for the appellant, the above principal of law, and without much ado places the Sales Tax Law of Lagos State in abeyance. Should the two laws be allowed to operate simultaneously, it will amount to double taxation on the same goods and services. The consumer would have to suffer under the weight of the two laws while two tiers of government smile to the bank. This is unhealthy and must not be allowed to stand.**

**On the whole, I agree with the court below that the Value Added Tax Act has fully covered the field and nothing was left for the Sales Tax Law of Lagos State to glean. I also agree that the imposition of both laws would create double taxation. In consequence thereof, the Federal Board of Inland Revenue, the 2<sup>nd</sup> Respondent herein is entitled to receive the tax in contention from the 1<sup>st</sup> Respondent Eko Hotels Ltd on behalf of the Federation for which the appellant is an integral part. (P 176 Paras C – G)**

24. *The operation of “covering the field”*

**The constitutional doctrine of “covering the field” only applies in a federal set up where legislative powers are shared between the central government and the federating units/state governments. Under the 1999 Constitution the legislative powers of the Federation and the States are shared thus:**

4. (1) *The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.*
- (2) *The National Assembly shall have power to make laws for the peace, order and good governance of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.*

- (3) *The power of the National Assembly to make laws for the peace, order and good governance of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the House of Assembly of States.*
- (4) *In addition and without prejudice to the powers conferred by subsection (2) of this Section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:*
- (a) *any matter in the Concurrent Legislative List set out in the first Column of part II of the Second Schedule to this Constitution to the extent prescribed in the Second Column opposite thereto; and*
  - (b) *any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*
- (5) *If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.*
- (6) *The Legislative powers of state of the Federation shall be vested in the House of Assembly of the State.*
- (7) *The House of Assembly of a state shall have power to make laws for the peace, order and good governance of the State or any part thereof with*

*respect to the following matter, that is to say:*

- (a) any other matter not included in the Exclusive Legislative List set out in part 1 of the Second Schedule to this constitution;*
- (b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the Second column opposite thereto; and*
- (c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*

*(Pp 177–179 Paras E–C)*

25. *The principle in A.G, Abia vs. A.G federation (2002) 6 NWLR (pt. 763) 264 at 435.*

**The decision of this Court in A.G, ABIA vs. A. G, FEDERATION (2002) 6 NWLR (pt. 763) 264 at 435 F puts it succinctly thus**

*The doctrine (of covering the field) however renders the paramount legislation predominant and the subordinate legislation remains inoperative so long as the paramount legislation remains operative. Where, of course, there is obvious inconsistency, the subordinate legislation is void.*

**The dispute in this case is not whether the Value Added Tax Act and the Lagos State Sales Tax Law are inconsistent. I should be careful not to state: as between the two statutes which is more predominant than the other. There is no counter-claim, to the interpleader action instituted by the 1<sup>st</sup> Respondent, Eko Hotels Limited, as the plaintiff which merely sought to be determined that: as between the Appellant and the 2<sup>nd</sup> Respondent to whom shall the 1<sup>st</sup> Respondent pay the tax it collected on services it rendered to its customers?**

**Nigeria cases cited**

*A.G. Federation vs. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt. 618) 187; (1989) 5 SC (Pt. III) 59;*  
*A.G. Ogun State & Ors. vs. A.G. Federation (1982) NSCC (Vol. 13) 1 @ 35 lines 18 30*  
*Adeyemi vs. Opeyori (1976) 6 10 SC 31;*  
*AG Abia State & ors vs. AG of the Federation (2002) LPELR 611 (SC), (2002) 6 NWLR (pt. 763) 264.*  
*AG Abia State vs. AG Federation (2002) 6 NWLR (Pt. 763) 264 @ 435 F*  
*Albion Construction Ltd. vs. R.A.O. Inv. & Prod. Ltd. (1992) 1 NWLR (Pt. 219) 583.”*  
*Amaechi vs. INEC (No. 2) (2007) 18 NWLR (Pt. 1065) 98.*  
*Ardo vs. Nyako (2014) LPELR 22878 (SC).*  
*Attorney General of Ogun State vs. Attorney General of Federation (1982) LPELR 11 (SC),*  
*Attorney-General of Ogun State vs. Agberuagba (1985) 2 NWLR (pt. 3) 395.*  
*Emeka vs. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 @ 16H; (2012) LPELR-9338 (SC).*  
*Inakoju vs. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 588 F.*  
*INEC vs. MUSA (2003) 3 NWLR (Pt. 806) 72 @ 204 205 H B; (2003) LPELR-1515 (SC) @ 108 C F*  
*Lakanmi vs. AG. Western Region (1970) NSCC 143 @ 144;*  
*Madukolu vs. Nkemdilim (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587 at 594;*  
*Madukolum vs. Nkemdilim (1962) 2 SCNLR 341.*  
*MPPP vs. INEC & ors (2015) LPELR 25706 (SC)*  
*Nigeria Soft Drink Ltd vs. Attorney General Lagos State (1987) 2 NWLR (Pt. 57) 444.*  
*Osun State Government vs. Estisione H. (Nigeria) Ltd. & Anor. (2012) LPELR-7936 (CA) @ 33 34 B B.*  
*Saraki vs. Federal Republic of Nigeria (2016) LPELR 40013 (SC),*  
*Skenconsult (Nig.) Ltd. vs. Ukey (1981) 1 S.C. 6 at 62;*  
*Uwaifo vs. A.G. Bendel State (1982) 7 SC 124;*

## **Nigerian statutes**

- A** *Constitution of Federal Republic of Nigeria 1999 (as Amended) S. 315(1)*  
*Constitution of the Federal Republic of Nigeria 1999 (as Amended) S.4(1)*  
*(7).*  
*Constitution of the Federal Republic of Nigeria 1999 S. 315 (1)*
- B** *Constitution of the Federal Republic of Nigeria 1999 S. 4 (1) (7)*  
*Constitution of the Federal Republic of Nigeria 1999 S.251 (1) (b) & (r)*  
*Section 1 of the Sales Tax Law of Lagos State*  
*Section 2 of the Decree (now the VAT Act)*
- C** *Section 46 of the VAT Act*  
*Section 7 (1) of the Act*

**Representation**

- D** **S.A. QUADRI ESQ. (DCL)** for the appellant with E.R. Agu (Mrs.) (CSC)  
Ministry of Justice, Lagos State.

**M.N.O. OLAPADE ESQ.** for the 1<sup>st</sup> respondent with Ibiye Tyroll  
**E** Thomson.

**B.H. ONIYANGI (MRS.)** for the 2<sup>nd</sup> respondent with Ibrahim Abdullah.

- F** **KEKERE-EKUN, (JSC) (Delivering the Lead Judgment):** This appeal is against the judgment of the Court of Appeal, Lagos Division delivered on 13<sup>th</sup> July 2007 affirming the judgment of the Federal High Court sitting in Lagos delivered on 20<sup>th</sup> December 2004 ordering the remittance of money
- G** collected as tax by the 1<sup>st</sup> respondent on its sales to its consumers to be paid to the 2<sup>nd</sup> respondent, the Federal Board of Inland Revenue.

- The suit before the trial court was in the nature interpleader proceedings. By an Originating Summons filed on the 5<sup>th</sup> day of March,
- H** 2004 the 1<sup>st</sup> respondent sought a determination by the trial court as to whether remittance of money collected as tax by it from its consumers should be paid to the Federal Board of Inland Revenue (FBIR) or to the Lagos State Government having regard to the provisions of Sections 1, 2,
- I** 10, 11, 12, 13, 14, 15 and 16 of the Value Added Tax (VAT) Decree No. 102

A of 1993 and Sections 1, 2, 3, 4, 5 and 6 of the Sales Tax Law Cap. 175 and Sales Tax (Schedule Amendment) Order 2000. It sought the following reliefs:

B 4. **A declaration that the plaintiff can only be a  
C “taxable person” or remitting agent in respect of the  
amount due as tax on its sales to its consumers to a  
single body or agency and not to state and Federal  
agencies together.**

D 5. **An order that the plaintiff is not entitled to pay or  
E remit tax on its sales to its consumers to the  
defendants until the rightful body to collect same is  
determined.**

E 6. **An order directing the plaintiff to pay the amount  
due as tax on its sales to its consumers to a dedicated  
account until the rightful body to collect same is  
determined.**

F The originating summons was supported by a 16-paragraph affidavit  
deposed to by one SAMUEL O. ALABI, Company Secretary/ Legal  
Adviser of the 1<sup>st</sup> respondent. Paragraphs 4 – 12 and 14 thereof illustrate  
the dilemma in which the 1<sup>st</sup> respondent found itself. They are reproduced  
G hereunder:

H 4. *That the applicant has been a “taxable person” or  
collecting agent to the 1<sup>st</sup> defendant [FBIR] since  
1994 and has been remitting tax on its sales to its  
consumers to it [FBIR]. (Now shown to me and  
marked “Exh. SO1 3” are copies of correspondence  
from the 1<sup>st</sup> defendant to the plaintiff).*

I 5. *That sometimes in 2001, the 2<sup>nd</sup> defendant [AG  
LAGOS STATE] agent wrote to the plaintiff and*

- A**                    *demanded remittance of money due as tax on the plaintiff's sales to its consumers to it by virtue of a newly enacted law which is Sales Tax Law Cap. 175 Laws of Lagos State and Sales Tax Amendment Order*
- B**                    *2000. (Now shown to me and marked "Exh.SO4 5" are copies of letters written to the plaintiff by the 2<sup>nd</sup> defendant's agent).*
- C**                    6.    *That the plaintiff has written to both defendants explaining its dilemma but the defendants still insist that the plaintiff must remit money due as tax from its sales to its consumers to the defendants.*
- D**
- E**                    7.    *That the agents of the 1<sup>st</sup> defendant, particularly the VAT office in Lagos has been threatening the plaintiff with litigation for its failure to remit the said money to it. (Now shown to me and marked "Exh. SO6" is a copy of such letter).*
- F**                    8.    *That the agents of the 2<sup>nd</sup> defendant too has (sic) been threatening the plaintiff with sanctions for failure to remit money collected as tax from the plaintiff's sales to its consumers to it. (Now shown to me and marked "Exh. SO7" is a copy of such letter).*
- G**
- H**                    9.    *That I believe that Value Added Tax and Sales Tax are the same and most of our consumers will reject the imposition of one tax as two taxes on them.*
- I**                    10.   *The plaintiff is at a loss as to the rightfully body to remit the tax to.*
11.   *That the 1<sup>st</sup> defendant is relying on Value Added Tax Decree No. 102 of 1993 to demand for the payment of*

- A**                    *the money collected as tax on the sales to its consumers to it while the 2<sup>nd</sup> defendant is also relying on Sales Tax Law Cap. 175 Laws of Lagos State 1995 and Sales Tax Amendment Order 2000 to demand for*
- B**                    *the remittance of the same money due from the plaintiff's sales to its consumers. (Now shown to me and marked "Exh. SO8 S09"@@)*
- C**                    12.    *That the plaintiff company has no interest whatsoever in the money in dispute other than administrative charges and costs.*
- D**                    14.    *That the plaintiff company is willing to pay or transfer the money due as tax on plaintiff's sales to its consumers into a dedicated account until the*
- E**                    *determination of this suit. (Emphasis mine)*

**F**                    The appellant (as 2<sup>nd</sup> defendant) and 2<sup>nd</sup> respondent (as 1<sup>st</sup> defendant) filed counter affidavits in opposition to the originating summons. In addition, the appellant filed a preliminary objection challenging the jurisdiction of the court to entertain the suit. The preliminary objection was heard along with the substantive suit. On 20/12/2004, in a considered judgment, the learned trial judge dismissed the preliminary objection and held that the Federal High Court had jurisdiction to entertain the suit. He also held that

**G**                    the 1<sup>st</sup> respondent could only be a "taxable person" or remitting agent in respect of the amount due as tax on its sales to its consumers to a single agency, which is the FBIR. Dissatisfied with the decision the appellant

**H**                    appealed to the court below, which in a considered judgment delivered on 13<sup>th</sup> July 2007, dismissed the appeal and affirmed the judgment of the trial court. The appellant is still aggrieved and has therefore instituted this appeal against the decision of the lower court.

**I**                    At the hearing of the appeal, S. A. QUADRI ESQ., Director Civil Litigation, Lagos State Ministry of Justice, leading Mrs. E.R. Agu, Chief

**A** State Counsel, adopted and relied on the appellant's brief which was deemed filed on 13/7/2009 in urging the court to allow the appeal. M.N.O. OLOPADE ESQ., leading IBIYE TYROLL THOMPSON ESQ. adopted and relied on the 1<sup>st</sup> respondent's brief deemed filed on 24/2/2010 in urging

**B** the court to dismiss the appeal. Similarly, MRS. B.H. ONIYANGI appearing with IBRAHIMADBULLAH ESQ. adopted and relied on the 2<sup>nd</sup> respondent's brief deemed filed on 7/7/2010 in urging the court to dismiss the appeal.

**C** From the five grounds of appeal filed on 2/4/08, learned counsel for the appellant distilled the following issues for determination:

**D** **6. Whether the court below was right when it held that the cases of:**

**E** **iii) Attorney General of Ogun State Vs. Aberuagba (1985) 1 NWLR (Pt. 3) 395,**

**iv) Nigerian Soft Drinks Ltd. Vs. Attorney General of Lagos State (1987) 2 NWLR (Pt. 57) 444,**

**F** **cited to the trial court as *stare decisis*, is a non issue and that none of those decisions was authority to say that the 1<sup>st</sup> respondent is obliged to remit proceeds of Sales Tax to Lagos State Government. (Ground 1).**

**G** **7. Whether the lower court was right when it held that the Value Added Tax Act has covered the field of Sales Tax and its provisions prevail over the Sales Tax Law of Lagos State. (Ground 2).**

**H** **8. Whether the court below was right when it held that imposition of both VAT and Sales Tax will create double taxation. (Ground 3).**

**I** **9. Whether the court below misapprehended the**

**A objection of the appellant on the jurisdiction of the trial court and erred in law when it held that the trial court had jurisdiction to entertain the plaintiff's action as constituted. (Ground 4).**

**B 10. Whether the court below misdirected itself on the submission of the appellant that it should invoke its power under S.16 of the Court of Appeal Act to determine the merit of the case. (Ground 5).**

**C**

**Both respondents adopted the issues as formulated by the appellant.**

**D**

**Issue I**

*Whether the lower court was right when it held that the cases of:*

- E i) *Attorney General of Ogun State Vs. Aberuagba (1985) 1 NWLR (Pt. 3) 395,***
- F ii) *Nigerian Soft Drinks Ltd. Vs. Attorney General of Lagos State (1987) 2 NWLR (Pt. 57) 444, cited to the trial court as stare decisis, is a non issue and that none of those decisions was authority to say that the 1<sup>st</sup> respondent is obliged to remit proceeds of Sales Tax to Lagos State Government.***

**G**

**H It is the appellant's contention that the cases of **Attorney General of Ogun State vs. Aberuagba (supra)** decided by the Supreme Court and **Nigerian Soft Drinks Ltd. vs. Attorney General of Lagos State (supra)** decided by the Court of Appeal had conclusively determined the sales taxing power of the Lagos State Government and that both the Federal High Court and the Court of Appeal, by virtue of the doctrine of *stare decisis*, ought to have held themselves bound by those decisions, which were cited and relied upon before them.**

**I**

- A** It is contended that the trial court erred in not holding itself so bound and the lower court erred in affirming the decision. Reliance was placed on: **NAB Ltd. vs. Barri Engineering Nigeria Ltd. (1995) 8 NWLR (Pt. 413) 275 @ 289; Dairo vs. UBA (2007) 7 SC (Pt. 2) 97 SC (Pt. II) 183.**
- B** Serious exception was taken to the following view expressed by the lower court at page 424 of the record regarding *Aberuagba's case*:
- C** *“There is no question of sales tax addressed in the above case. If the appellant had obtained judgment in respect of the subject matter of the proceedings, what was the difficult in exhibiting such judgment before the court?”*
- D** Learned counsel for the appellant argued that in holding that no evidence was produced to buttress the assertion that judgment had been obtained in respect of the money in the 1<sup>st</sup> respondent's possession, the court below had confused the doctrine of *stare decisis* with the doctrine of *estoppels*. He
- E** maintained that the appellant's case was that on the basis of the principle of law and *ratio decidendi* in the two cases, the appellant is entitled to the remittance of the money in dispute. He submitted that taxation is governed and regulated by statute. He referred to Section 4 of the 1999 Constitution
- F** which provides for the legislative powers of the Federal Government in respect of matters contained in the Exclusive Legislative List and the Concurrent Legislative List vis a vis the legislative powers of the states. He referred to **A.G. Lagos State vs. A.G. Federation (2003) 6 SC (Pt. 1) 24.**
- G** He argued that the Federal Government derived its power to enact the VAT Act from Item 61 in the Exclusive Legislative List (which is in *pari materia* with Item 62 in the Constitution) and that the provision was considered and interpreted by this court in *Aberuagba's case* wherein the taxing power of
- H** the Federal Government was limit to international and interstate trade and commerce. He submitted that in **Nigerian Soft Drinks Ltd. vs. A.G. Lagos State (supra)** the power of the Lagos State Government to enact the Sales Tax Law, which power was derived from Section 4 of the Constitution
- I** as a residual matter, was affirmed. He therefore urged the court to resolve

A this issue in the appellant's favour.

In reply, learned counsel for the 1<sup>st</sup> respondent argued that the case before the lower court was not about the validity of the Sales Tax Law of Lagos State or the State's taxing power but for a determination of the  
B rightful owner of money collected as tax by it from its customers on sales of goods and services. He argued that *Aberuagba's case* is distinguishable from the instant case. He submitted that it was held in that while every state in Nigeria has power to legislate in respect of matters under the concurrent  
C legislative list within its own state, such legislation must not restrict interstate trade, whereas the matter before the trial court was seeking a determination as to who, as between the appellant and the 2<sup>nd</sup> respondent, should receive remittance of tax already collected by the appellant. In other  
D words, that there were no interpleader proceedings in *Aberuagba's case* to warrant the application of the doctrine of *stare decisis*. Relying on: **NEPA vs. ONOH (1997) 1 NWLR (Pt. 484)680**, he submitted that under the doctrine of *stare decisis*, it is only the major principles decided by the court,  
E which are relevant to both suits, that bind courts of concurrent or lower jurisdiction. He submitted that the lower was right to have distinguished *Aberuagba's case* and the *Nigerian Soft Drinks case* from the facts of this case as neither involved interpleader proceedings nor was VAT an issue  
F therein.

Learned counsel for the 2<sup>nd</sup> respondent submitted with regard to  
*Aberuagba's case* that even though this court held that a State House of  
G Assembly has power to enact a Sales Tax Law, it emphasized that such law must not be inconsistent with any law validly made by the Federal Government nor should a State enact any Sales Tax where the law validly made by the Federation has covered the field. He noted that even though the case was decided before VAT became operative in Nigeria, the court  
H found it necessary to sound that note of warning. He argued that the combined effect of the two cases relied upon by the appellant is that the state law is null and void to the extent of its inconsistency in relation to matters on which the National Assembly has legislated. He argued that  
I although there have been declarations in the two cases regarding the validity of the Sales Tax Laws in question, the declarations cannot be

A stretched to accommodate the circumstances of this case. He submitted that the cases are not on all fours with the present case and urged the court to resolve this issue against the appellant.

In order to address this issue, it is important to take another look at the suit filed before the trial court. As rightly pointed out by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the 1<sup>st</sup> respondent was not challenging the validity of the Sales Tax Law of Lagos State. What was in issue was that from 1994 to 2001, the 1<sup>st</sup> respondent had been collecting tax on sales and services from its consumers and remitting same to the 2<sup>nd</sup> respondent pursuant to the provisions of the VAT Act without let or hindrance. However, in 2001, it received a letter from the appellant demanding that the tax collected be remitted to it rather than to the 2<sup>nd</sup> respondent. It relied on the provisions of the Sales Tax Law Cap 175 Laws of Lagos State and the Sales Tax (Schedule Amendment) Order 2000. The situation the 1<sup>st</sup> respondent was faced with was that it had already collected the money from its consumers. It sought direction from the court as to which of the two contenders was entitled to remittance of the money, as it had received threatening letters from the agencies of both. Now, the question to be determined is whether the authorities of **A.G. Ogun State vs. Aberuagba (supra)** and **Nigerian Soft Drinks Ltd. vs. A.G. Lagos State (supra)** are decisions relating to a similar issue as the one arising in this case so as to make the doctrine of *stare decisis* applicable against the lower courts.

”*Stare decisis*” is defined in Black's Law Dictionary, 8<sup>th</sup> edition as follows:

G *“To stand by things decided.” The doctrine of precedent under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation.”*

H *“The rule of adherence to judicial precedents finds its expression in the doctrine of stare decisis. The doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent*

**A** *court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudication, unless it be*

**B** *for urgent reasons and in exceptional cases.” William M. Lile et al. Brief Marking and the Use of Law Books 321 (3<sup>rd</sup> ed. 1914).”*

*(Underlining mine for emphasis)*

**C** The rationale for the doctrine was stated by His Lordship, Onnoghen, JSC (as he then was) in **Ardo vs. Nyako (2014) LPELR-22878 (SC)** thus:

**D** *“... the principle of judicial precedent or stare decisis is designed to ensure orderliness, certainty and discipline in the judicial process. The principle holds inferior courts to the Supreme Court of Nigeria bound by the previous decision(s) of the court on similar facts in the consideration and determination of matters before them. ... It is settled that the way open to the courts to avoid the doctrine/principle of judicial precedent/stare decisis is by*

**E** *distinguishing the previous decision(s) from the facts*

**F** *and/or circumstances of the case under consideration.”*

**G** On the circumstances in which the doctrine of *stare decisis* would arise, His Lordship Rhodes-Vivour, JSC in **Emeka vs. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 @ 96 H; (2012) LPELR-9338 (SC)** held:

**H** *“Facts have been in views. A judgment should always be read in light of the facts on which the case was decided. The rules of stare decisis do not allow Courts to apply the ratio of a case across the board and with little regard to the facts of the case before them. See: Albion Construction Ltd. Vs. R.A.O. Inv. & Prod. Ltd. (1992) 1 NWLR (Pt. 219) 583.”*

**I**

- A** In **Aberuagba's case**, the issue in contention, as stated by Mohammed Bello, JSC (as he then was) in his leading judgment, concerned the Federal and State taxing powers having regard to the provisions of the 1979 Constitution of the Federal Republic of Nigeria. What was in issue was the
- B** validity of the exercise of its legislation powers by the Ogun State House of Assembly in enacting the Sales Tax Law of 1982, which imposed a tax on the purchase of specified goods and services and made provision for the collection of same. His Lordship, Bello, JSC (as he then was) held as
- C** follows:

**D** *“Accordingly, I hold that in so far as the Law purports to impose sales tax on taxable products brought into the State, it offends the provision of inter-State or international trade and commerce and contravenes Section 4 (3) of the Constitution. I declare the law unconstitutional to that extent. Furthermore, item 61 (e) empowers the Federation to control the prices of goods and commodities. Under the*

**E** *Price Control Act 1977 and the Price Control Commodities Order 22 of 1979, the Federal Government has controlled the prices of petrol, diesel oil and petroleum products. I have*

**F** *earlier shown that the Act and the Order are existing laws. Since the sales tax is intended to be paid by the consumer, it tantamount to an increase in my view in the prices of the*

**G** *taxable products, namely petrol, diesel oil and petroleum the prices of which have been controlled by the Federal Government. That being the case, I hold the sales tax to be*

**H** *inconsistent with the Price Control Act and the Order made thereunder. Consequently, the sales tax on petrol, diesel oil and other petroleum products is unconstitutional, null and void.*

**I** *Having regard to the following, I may summarise that the Federation has implied exclusive power to make sales tax in*

- A** *all matters within the Exclusive and Concurrent Lists while the States have implied or residuary power to enact sales tax law on all matters outside the said Lists.”*
- B** See pages 34G– 35G of the case as reported in (1985) LPELR-3164 (SC).  
As the 1<sup>st</sup> respondent did not challenge the validity of the Sales Tax Law of Lagos State, *Aberuagba'a case* cannot constitute *stare decisis* in respect of the interpleader proceeding before the trial court. In the
- C** *Nigerian Soft Drinks Ltd. case*, the issue was whether, having regard to the decision of this court in *Aberuagba'a case*, the Sales Tax Law of Lagos State is similar to the Ogun State Sales Tax Law and is therefore unconstitutional, being a legislative exercise in respect of Item 61 of the
- D** Exclusive Legislative List to the extent that it imposes sales tax on interstate trade and commerce and interferes with taxable goods, the prices of which have been controlled by the Federal Government. The Lagos State Sales Tax was held to be valid because, unlike the Ogun State Law,
- E** Section 2 thereof did not impose tax in respect of taxable goods whose prices have been controlled by the Federal Government. The persons liable to pay tax were purchasers or consumers of any taxable commodities listed in the schedule to the law. In other words, under the Lagos State Sales Tax
- F** Law, the tax is not upon the goods but upon the consumer whereas under the Ogun State Sales Tax Law the charge was upon goods brought into the State. Again, the appellant did not challenge the validity of the Sales Tax Law. The case has nothing to do with a determination as to which of two
- G** contending parties is entitled to tax already collected under the VAT Act. I am of the view and I do hold that the two cases were rightly distinguished by the lower court from the facts of the instant case. They did not constitute *stare decisis* and were not relevant to the determination of the issue before
- H** them.  
I accordingly resolve this issue against the appellant.

## **Issue 2**

**I**

- A** *Whether the lower court was right when it held that the Value Added Tax Act has covered the field of Sales Tax and its provisions over the Sales Tax Law of Lagos State.*
- B** Under this issue, learned counsel for the appellant takes umbrage at the following finding of the lower court in the course of its judgment at page 436 of the record, to wit:
- C** *“It is my view and this I hold that the Value Added Tax Decree No. 12 [sic: No. 102) of 1993 having imposed tax on the same goods and services imposed in the Sales Tax (Schedule Amendment) Order 2000, the Value Added Tax Decree prevails over the Sales Tax Law of Lagos State as the VAT Decreed is deemed to have covered the field.”*

Referring to the doctrine of “covering the field as explained by this court in **E AG Abia State vs. AG Federation (2002) 3 SC 106** and **INEC vs. Musa (2003) 1 SC (Part 1) 106**, learned counsel argued that it is not in all cases where a statute enacted by a state is in conflict with a statute enacted by the Federal Government on the same subject that the former would be declared **F** invalid or inoperative. He contended that for the doctrine of “covering the field” to apply, the Federal Government must first have the legislative competence to enact the law. He proceeded to examine the provisions of Section 4 (2), (3), (5), (6) and (7) of the 1999 Constitution with particular **G** emphasis on the phrase “*any law validly made by the National Assembly,*” as contained in subsection (5). He also referred to the textbook, Federalism in Nigeria under the Presidential Constitution by Prof. Ben Nwabueze.

Referring to Section 2 of the VAT Act, he argued that what triggers **H** liability under the Act is the “supply of goods and services” and that “supplies” is defined in Section 42 of the Act to mean “*any transaction, whether it is the sale of goods or the performance of a service for a consideration that is for money or money's worth*”. He submitted that VAT **I** has a very broad base compared to other taxes, which exempt certain persons, companies and institutions from liability. He submitted that

- A** where VAT is concerned the location of the supplier and consumer are immaterial. He argued that VAT is imposed on supply of goods and services within a State, inter State, throughout Nigeria and even beyond. He however conceded that by virtue of the Federal Inland Revenue
- B** Services Information Circular No. 9304 of 20<sup>th</sup> August 1993, it was made clear that supplies made outside Nigeria are outside the scope of the VAT Act.

- While conceding that the Federal Government has incidental sales taxing power in respect of trade and commerce, he posited that the power is
- C** incidental only to the exclusive power of the National Assembly over international and inter-State trade and commerce. He contended that the National Assembly has no competence to make any law on intra-State trade and commerce and therefore cannot impose tax on intra-State transactions,
- D** which the VAT Act appears to do. He argued that by imposing VAT on intra-State supply of goods and services, the Act has exceeded the powers of the Federal Government under the Constitution to impose VAT. He referred to the decision of this court in the case of **Fawehinmi vs. Babangida (2003) 3 NWLR (Pt. 808) 604**. He concluded by maintaining that the issue of having identical legislations on the same subject matter does not arise and therefore the doctrine of covering the field is not applicable so as to make the provisions of the Act prevail over the Sales Tax
- E** Law of Lagos State. He contended that the principle of “covering the field” was misapplied by the court below having regard to the lack of legislative power in the National Assembly to enact the Law. He submitted that where the National Assembly lacks legislative competence, it is the legislation
- F** passed by it that would be void and of no effect for inconsistency with the provisions of Section 3 (1) of the Constitution. He referred to **AG Abia State vs. AG Federation (supra)**.
- G**

- In reaction to the above submissions, learned counsel for the 1<sup>st</sup>
- H** respondent argued that learned counsel for the appellant misconstrued the doctrine of “covering the field” when he contended that the National Assembly lacked the power to legislate on VAT and that the absence of such power made the doctrine inapplicable in the circumstances of this case. He
- I** submitted that the constitutionality or validity of the VAT Act was not in issue in the court below. He submitted further that VAT and sales tax are the

- A** same, as the incidence of both taxes is on the consumer and the tax is charged on consumable items as stated in the schedules to both laws. He also contended that the rates and goods upon which charges are made under both laws are the same. He submitted that the lower court was right to have
- B** relied on *Aberuagba's case* in reaching the conclusion that the VAT Act had covered the field on matters dealt with by the Sales Tax Law of Lagos State. He also submitted that the authorities of **AG Abia State vs. AG Federation (supra)** and **Fawehinmi vs. Babangida (supra)** relied upon by learned
- C** counsel for the appellant are inapplicable to the facts of this case, as the issue in the former case was whether the National Assembly had power to increase or otherwise alter the tenure of office of elected officials in local government councils in Nigeria, while the issue in the latter was in relation
- D** to the validity of the Tribunals of Inquiry Act, Cap. 447 LFN 1990.

- Learned counsel for the 2<sup>nd</sup> respondent on his part argued that the Value Added Tax Decree No. 102 of 1993, which was promulgated by the Federal Military Government for the entire nation and remained in force
- E** with amendments until the coming into effect of the 1999 Constitution, is an existing law and deemed to be an Act of the National Assembly by virtue of Section 315 (a) & (b) of the said 1999 Constitution. He submitted that Section 4 of the 1999 Constitution guarantees the power of the National
- F** Assembly to make laws on the items in the Exclusive and Concurrent Legislative Lists as set out in Parts I & II of the 2<sup>nd</sup> Schedule to the Constitution and that by virtue of item 7 Part II thereof, the National Assembly is empowered to make laws on collection of taxed.
- G** He contended that VAT is a tax payable on goods and services all over Nigeria and all tiers of Government, including Lagos State, are beneficiaries. He submitted that the 2<sup>nd</sup> respondent, in compliance with the Act has been sharing the proceeds of tax collection amongst all the States of the
- H** Federation, including Lagos State. He contended that the appellant, whilst still a beneficiary of the Act, cannot approbate and reprobate by complaining about the same law.

- Relying on the provision of Section 4 (5) of the Constitution, learned
- I** counsel submitted that since the VAT Act is a valid law of the National Assembly, the Sales Tax Law of Lagos State is void to the extent of its

A inconsistency therewith. He relied on *Aberuagba's case* and the *Nigerian Soft Drinks case* in support of his contention. He also cited in support: **Lakanmi & Anor. vs. AG Federation (1970) NSCC 143 @ 144 and AG Abia State vs. AG Federation (supra) @ 431 B – E**. In conclusion, he  
 B maintained that the VAT Act, as currently administered by the 2<sup>nd</sup> respondent, has already covered the field sought to be regulated by the Sales Tax Law of Lagos State.

A convenient place to commence the resolution of this issue is to  
 C examine the application of the doctrine of “covering the field” as it relates to the powers of the National Assembly and State House of Assembly to make laws. In **A.G. Ogun State & Ors. vs. A.G. Federation (1982) NSCC (Vol. 13) 1 @ 35 lines 18 – 30**, His Lordship, Kayode Eso, JSC stated thus:

D  
*“I take the view that when one considers this doctrine, the phrase “covering the field” means precisely what it says. Where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the State is inconsistent with legislation of the Federal Government it is indeed void and of no effect for inconsistency. Where, however, the legislation enacted by the State is the same as the one enacted by the Federal Government, where the two legislations are in pari material I respectfully take the view that the State Legislation is in abeyance and becomes inoperative for the period the Federal Legislation is in force. I will not say it is void. If for any reason the Federal Legislation is repealed, it is my humble view that the State legislation, which is in abeyance, is revived and becomes operative until there is another Federal legislation that covers the field.” (Emphasis mine)*

This view was endorsed and adopted by this court in the case of **AG Abis State vs. AG Federation (2002) 6 NWLR (Pt. 763) 264 @ 435 F**, to wit:  
 I

**A**        *“The doctrine however renders the paramount legislation predominant and the subordinate legislation remains inoperative so long as the paramount legislation remains operative. Where of course, there is obvious inconsistency,*  
**B**        *the subordinate legislation is void.”*

**C**        In **INEC vs. MUSA (2003) 3 NWLR (Pt. 806) 72 @ 204 – 205 H – B; (2003) LPELR-1515 (SC) @ 108 C – F**, the circumstances in which the doctrine of covering the field might arise was explained thus:

**D**        *“The doctrine of covering the field can arise in two distinct situations. First, where in the purported exercise of the legislative powers of the National Assembly or a State House of Assembly, a law is enacted in which the Constitution has already made provisions covering the subject matter of the Federal Act or the State law. Second, where a State House of*  
**E**        *Assembly, by the purported exercise of its legislative powers, enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the State law. In both situations, the doctrine of covering the*  
**F**        *field will apply because of the “Federation might” which relevantly are the Constitution and the Act.*

**G**        *In my humble view, a State Law which is not necessarily inconsistent with either the Constitution or an act of the National Assembly but merely covers the legislative field of the National Assembly is not harmful as it is merely a surplusage. In line with the decision of Eso, JSC, in A.G. Ogun State (supra), such a law of a State House of Assemble is*  
**H**        *in abeyance and inoperative and could be revived and becomes operative if for any reason the Federal legislation is repealed.”*

**I**        See also: **Lakanmi vs. AG. Western Region (1970) NSCC 143 @ 144; Osun State Government vs. Estisione H. (Nigeria) Ltd. & Anor. (2012)**

**A LPELR-7936 (CA) @ 33 – 34 B– B.**

Section 4 (1) – (7) of the 1999 Constitution provides for the legislative powers of the National Assembly and the State Houses of Assembly to make laws. Subsection (5) provides:

**B**

***“4 (5): If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency be void.”***

**C**

**D** It is necessary to reiterate here that the issue in dispute in this case is not the constitutionality of the Sales Tax Law of Lagos State nor the validity of the Value Added Tax Act. Indeed, learned counsel for the appellant, as 2<sup>nd</sup> defendant at the trial court, initially filed a counter claim to the originating summons (page 63 of the record) wherein he sought certain declarations

**E** regarding the taxing power of the respective defendants to make laws imposing tax on consumers of goods and services vis a vis item 62 of the Exclusive Legislative List in the 2<sup>nd</sup> Schedule to the 1999 Constitution. However, the counter claim was withdrawn by learned counsel and

**F** accordingly struck out by the court on 16/6/2004 (see page 190 of the record). Thus, the issue upon which the learned trial judge predicated his judgment was the single question raised by the plaintiff in its originating summons, to wit: *“whether remittance of money collected as tax by*

**G** *plaintiff on its sales to its consumers be paid to Federal Board of Inland Revenue [1<sup>st</sup> defendant/2<sup>nd</sup> respondent] or Lagos State Government [2<sup>nd</sup> defendant/appellant] in view of provisions of sections 1, 2, 10, 11, 12, 13, 14, 15 and 16 of Value Added Tax Decree No. 102 of 1993 and sections 1, 2,*

**H** *3, 4, 5 and 6 of the Sales Tax Law Cap. 175 and Sales Tax (Schedule Amendment) Order 2000.” The declarations sought were produced earlier in this judgment. The 2<sup>nd</sup> defendant having raised a preliminary objection to the court's jurisdiction, which was taken along with the originating*

**I** *summons, the issues upon which the trial court predicated its judgment were whether it had jurisdiction to entertain the suit and who, as between*

- A** the two defendants, was entitled to the VAT Act. Significantly, one of the grounds of the preliminary objection (see page 64 of the record) was that the suit did not disclose a reasonable cause of action because the plaintiff was not challenging either the VAT Act or the Sales Tax Law of Lagos State.
- B** In the absence of any relief challenging the legitimacy of the VAT Act, I am of the considered view that the only issue the court needed to determine was whether, as the law stood at the time the cause of action arose, the money already collected by the plaintiff under the VAT Act should be remitted to the 2<sup>nd</sup> respondent rather than the appellant. In the instant appeal, there is also no issue seeking the invalidation of the VAT Act.

- As rightly observed by learned counsel for the 2<sup>nd</sup> respondent, the Value Added Tax Decree No. 102 of 1993 was promulgated by the Federal Military Government and remained in effect, with necessary amendments, until the coming into effect of the 1999 Constitution. Section 315 (1) of the 1999 Constitution provides as follows:

- E**            ***“315 (1) Subject to the provisions of this Constitution, an existing law shall have effect with such modification as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be***
- F**            ***(c) An Act of the National Assembly to the effect that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and***
- G**            ***(d) A law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.”***

- H** At the time the cause of action arose, the VAT Act was deemed to be an Act of the National Assembly. At the risk of repetition, there was no prayer before the trial court or the lower court seeking to nullify the Act. Until
- I** there is a decision of a court of competent jurisdiction invalidating it, it remains valid and subsisting.

- A** Section 2 of the Decree (now the VAT Act) provides that the tax to be charged and payable on goods and services is as set out in column A of Schedules 1 and 2 of the Act. Section 1 of the Sales Tax Law of Lagos State makes similar provisions. The goods and services in respect of which tax is
- B** chargeable and the applicable rates are set out in Part 1 of the Sales Tax (Schedule Amendment) Order, 2000. As rightly observed by the two lower courts, the goods and services covered by both legislations are the same. It follows that the VAT Act has effectively covered the field in that regard.
- C** Section 7 (1) of the Act provides that the tax shall be administered by the 2<sup>nd</sup> respondent. In the circumstances, I am in complete agreement with the court below, which affirmed the finding of the trial court, that the VAT Act having covered the field on the issue of sales tax, its provisions prevail over
- D** the provisions of the Sales Tax Law of Lagos State. Thus, even if the Lagos State House of Assembly has the requisite legislative competence to enact the Sales Tax Law, which is not an issue before us, once an existing Federal law or an Act of the National Assembly has covered the field, the Act of the
- E** National Assembly or such existing Federal law must prevail. This issue is accordingly resolved against the appellant.

### **Issue 3**

- F**
- Whether the court below was right when it held that imposition of both VAT and Sales Tax will create double taxation.***
- G**
- In support of this issue, learned counsel for the appellant submitted that double taxation might arise in two situations: the first, is the imposition of two taxes on the same property, tax payer or profit or goods during the same
- H** period, for the same taxing period by one taxing authority, while the second is the imposition of comparable taxes in two or more States on the same tax payer for the same subject or identical goods. He referred to Black's Law Dictionary, 8<sup>th</sup> edition. He submitted that neither situation is applicable in
- I** this case. He contended that unless the VAT Act can validly impose tax on the same subject as the Sales Tax Law, the issue of double taxation would

- A** not arise. He argued that the VAT Act is unconstitutional and invalid to the extent of its inconsistency with the provisions of the Constitution for imposing tax on intra State trade and commerce. He submitted that item 7 of Part II of the Concurrent Legislative List does not confer legitimacy on
- B** the VAT Act. He argued that the tax imposed by the VAT Act is a consumption tax levied on the value added to a product in the course of production and is therefore neither a capital gains tax, nor does it qualify as income or profits of persons other than companies. He argued further that it
- C** is also not a levy on documents or transactions. He contended that the VAT Act and the Sales Tax Law are two different and distinct laws enacted by different legislative authorities imposing different taxes. He submitted that even if the issue of double taxation did arise, it is not for a customer to
- D** determine which law to obey without first invalidating one of the taxes.

- In response, learned counsel for the 1<sup>st</sup> respondent submitted that in so far as the objectives of the two taxes are the same and the incidence of the taxes is on the consumer, the court below could not have come to any other
- E** conclusion than its finding that the imposition of both taxes would create double taxation. He maintained that, as the VAT Act is still an existing law by virtue of Section 315 (1) of the Constitution, and in the absence of any decision of a court of competent jurisdiction invalidating it, the imposition
- F** of two taxes on the same consumers would create double taxation. He referred to **Aberuagba's case (supra)**.

- In a similar vein, learned counsel for the 2<sup>nd</sup> respondent submitted that the Sales Tax Law of Lagos State (Schedule Amendment) Order 2000,
- G** having imposed tax on the same goods and services and at the same rate of 5% as imposed by the VAT Act, as amended, would amount to double taxation as the actual payer of the tax in both cases is the same consumer of the goods and services. He noted that historically, prior to the
- H** promulgation of the VAT Act, the various States of the Federation operated various Sales Tax Laws, which had the effect of creating double taxation and that in consequence Section 45 of the Act, which repealed the Sales Tax Act was enacted, as a result of which various States of the Federation either
- I** repealed or suspended their respective Sales Tax Laws. He contended that the VAT Act was promulgated to correct the mischief and defects in the

- A** Sales Tax Laws and to protect the tax payers from double taxation. He submitted that the VAT Act sought to compensate the States for the abrogation of the Sales Tax Act by making provision in sections 21 and 22 of the Act for the involvement of State Governments in the administration
- B** of the tax. He also referred to Section 40 of the Act, which sets out the formula for distribution of revenue accruing by virtue of operation of the law between the Federal, State and Local Governments, with State and Local Governments receiving 50% and 35% respectively. He also referred
- C** to Section 36 of the VAT Amendment Act 2007, which provides:

- D** *“Provided that the principle of derivation of not less than 20% shall be reflected in the distribution of the allocation amongst States and Local Governments as specified in subparagraphs (a) and (c) of this section.”*

- E** He maintained his earlier position that the appellant, as a beneficiary of the VAT Act cannot be heard to complain.

- F** In resolving this issue, I shall first address the argument of learned counsel for the appellant to the effect that the VAT Act is unconstitutional for not being within the legislative powers of the National Assembly. In the course of resolving Issue 2 earlier, I did hold that the VAT Act is an existing law by virtue of Section 315 (1) of the 1999 Constitution and that the Act has covered the field on the subject of sales tax and therefore prevails over the Lagos State Sales Tax (Schedule Amendment) Order 2000. I am in
- G** complete agreement with learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents that not only do both legislations cover the same goods and services, they are also targeted at the same consumer. The tax has already been collected by the 1<sup>st</sup> respondent pursuant to the VAT Act. When a dispute arose as to
- H** which of the two claimants the tax collected should be remitted to, it rightly approached the court for direction. There is no doubt in my mind that it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumers under two different
- I** legislations. This issue is accordingly resolved against the appellant.

**A Issue 4**

**B** *Whether the court below misapprehended the objection of the appellant on the jurisdiction of the trial court and erred in law when it held that the trial court had jurisdiction to entertain the plaintiff's action as constituted.*

**C** Learned counsel for the appellant submitted that by virtue of Section 251 (1) of the 1999 Constitution, which provides for the exclusive jurisdiction of the Federal High Court, any dispute arising from the application of a State Law, such as the Sales Tax Law of Lagos State does not fall within the jurisdiction of the Federal High Court. He argued that it is the State High **D** court and not the Federal High Court that has jurisdiction to entertain any dispute dealing with the revenue of Lagos State. He referred to: **Shittu vs. Nigerian Agric. Coop. Bank Ltd. (2001) 10 NWLR (Pt. 721) 298 @ 317 – 318**. Referring to the appellant's submissions on the issue of jurisdiction **E** at pages 320 – 327 of the record, he noted that the appellant filed three grounds of appeal on the issue, to wit:

- F** 1. **The learned trial judge erred in law when he held that the Federal High Court has the jurisdiction to entertain the Plaintiff's case as constituted.**
- G** 2. **The learned trial judge erred in law when he held that the plaintiff's action is in respect of or connected with taxation of companies which is under the jurisdiction of the Federal High Court to entertain.**
- H** 3. **The learned trial judge erred in law when he held that the 2<sup>nd</sup> defendant should have brought a separate action to sever (sic) the claims and cannot bring up the issue by notice of preliminary objection.**
- I**

**A**

He submitted that the lower court formulated the following issue out of the said grounds of appeal:

**B**

***“Whether the Federal High Court has jurisdiction to entertain the plaintiff’s action as constituted (Grounds 1, 2 and 3) when the judge failed to follow the judgment of a superior court showing that the appellant had obtained judgment in respect of the subject matter of the proceeding.”***

**C**

He contended that the court below failed to appreciate the ground of objection, as the issue distilled from the aforesaid grounds of appeal is quite distinct from the issue of jurisdiction raised therein. He submitted that the court failed to consider the issue of the justifiability of the 1<sup>st</sup> respondent's (as plaintiff's) cause of action before the Federal High Court, which arose from the present appellant's demand for remittance of sales tax deemed to have been collected under the Sales Tax Law of Lagos State. He further contended that the court below misconceived the nature of 1<sup>st</sup> respondent's case when it concluded that the money in dispute is tax collected as VAT. He argued that there was not agreement between the parties that the money in dispute was VAT, nor was it so indicated in the Originating Summons. Learned counsel also submitted that the lower court had pre-judged the issue to be determined in the substantive suit. He contended that until the money in dispute is finally adjudged to be due to the 2<sup>nd</sup> respondent under the VAT Act, it cannot be concluded that it forms part of the revenue of the Federal Government.

**D**

He argued that it is the administrative or executive decision of any agency of the State Government, as opposed to an agency of the Federal Government, that was being contested by the 1<sup>st</sup> respondent when it refused to pay the money and subsequently commenced action in court. He submitted that the lower court erred in relying on Section 251 (1) (b) of the Constitution in holding that the Federal High Court has jurisdiction to entertain the suit on the ground that the tax in dispute is not a taxation on companies or persons but on goods and services, payable only by

**E**

**F**

**G**

**H**

**I**

**A** consumers and therefore the 1<sup>st</sup> respondent is not the tax payer but merely a collecting agent for the relevant tax authority. He likened the 1<sup>st</sup> respondent's position to that of an employer under the Pay as You Earn (PAYE) scheme where Personal Income Tax is deducted at source. He referred to **7UP Bottling Co. Plc. vs. LSBIR (2000) 3 NWLR (Pt. 650) 565**, a decision of the Court of Appeal.

He submitted that the holding of the lower court, relying on the decision of this court is **NEPA vs. Edegbero (2002) 18 NWLR (Pt. 798) 79**, that the Federal High Court had jurisdiction to entertain the suit simply because an agency of the Federal Government is a party, no longer represents the law. He relied on: **Onuorah vs. Kaduna Ref. Co. Ltd. (2005) 6 NWLR (Pt. 921) 393**. He contended that having regard to the subject matter of this case, the statutes and parties involved, the Federal High Court does not have exclusive jurisdiction to determine the suit. He submitted that this was why he proposed severance of the claims, which was rejected by the trial court.

**E** Learned counsel for the 1<sup>st</sup> respondent, in reply to the above submissions, argued that the lower court gave proper consideration to the submission of learned counsel for the appellant on the justiciability of the plaintiff's claim by interpreting Section 251 of the 1999 Constitution and came to the correct conclusion that since the suit was prompted by the 2<sup>nd</sup> respondent's administrative action and that the 2<sup>nd</sup> respondent is an agent of the Federal Government, the Federal High Court had the requisite jurisdiction to entertain the suit. He submitted that the authority of **NEPA vs. Edegbero (supra)** was properly applied in this case, having regard to Section 251 (1) (r) of the Constitution. With regard to the submission that there was no agreement between the parties that the money collected was VAT, learned counsel referred to the finding of the lower court that it was on record that the 1<sup>st</sup> respondent had been paying VAT to the 2<sup>nd</sup> respondent until the adverse claim of the appellant. He also submitted that having regard to evidence on record (he referred to affidavit in support of the originating summons at pages 23-24 of the record), there was no need for the court to first determine whether the money in dispute belonged to the Federal Government before assuming jurisdiction. He submitted that all

A the court needed to consider in determining whether or not it had jurisdiction were the processes filed by the plaintiff and nothing more. He referred to: **Onuorah vs. KRPC Ltd. (2005) 6 NWLR (Pt. 921) 393; Turkur vs. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 @ 561.**

B In response to the submission that Section 251 (1) (b) of the Constitution is inapplicable in the circumstances of this case since the tax in issue is not the taxation of companies, as envisaged in the section, he referred to Section 14 of the VAT Act, which makes a collecting agent liable to pay tax for failure to remit. He submitted that in the circumstances of this case, it is the company that would be liable. He argued that this provision makes the Act applicable to companies, particularly as it forms part of their returns. He referred the court to page 94 of the record (Exhibit 10) attached to the further affidavit in support of the originating summons), which is a letter dated March 4<sup>th</sup> 2004, addressed to the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent, advising it of the consequences, under Section 14 of the VAT Act, of failure to file appropriate VAT returns for the period from December 2003 to February 2004. He submitted that the lower court's finding on the issue at page 426 of the record is correct. He submitted that the submission of learned counsel for the appellant is without factual or legal basis and that the authority of **7UP Bottling Co. Plc. vs. LSBIR (supra)**, relied upon is inapplicable to the facts of this case.

On the contention that **NEPA Vs. Edegero (supra)** has been impliedly overruled by the decision of this court in **Onuorah vs. KRPC Ltd. (supra)**, he submitted that the court did not confine its consideration to the fact that the 2<sup>nd</sup> respondent is an agency of the Federal Government, but also considered the entire facts and subject matter as disclosed in the originating summons before reaching its conclusion. He also submitted that there is no conflict between the two decisions as this court in **Onuorah's case** confirmed the exclusive jurisdiction of the Federal High Court by virtue of Section 230 (1) (q) of the 1979 Constitution (now Section 251 (1) (p) of the 1999 Constitution). He noted that what this court decided in **Onuorah's case** was that items not listed under Section 251(1) (p) of the 1999 Constitution would still be within the jurisdiction of the State High

- A** Court by virtue of Section 236 of the 1979 Constitution (Section 272 of the 1999 Constitution), while items specifically listed under Section 251 (p) of the 1999 Constitution remained within the exclusive jurisdiction of the Federal High Court. He submitted that the claims in ***Onuorah's case***
- B** (*supra*) were based on simple contract and that since disputes on simple contracts are not among the items listed in Section 251 (p) of the 1999 Constitution, this court rightly held that the Federal High Court lacked jurisdiction.
- C** He reiterated that there was no dispute arising from the Sales Tax Law of Lagos State, as the issue before the court was the determination of the rightful body to collect money due as tax in respect of the 1<sup>st</sup> respondent's sales to its consumers, and therefore the trial court was right
- D** to have assumed jurisdiction and the court below was also right to have affirmed the decision. He submitted that there is no known law in Nigeria which prevents the Federal High Court from interpreting or making pronouncements on laws enacted by a State government. He contended
- E** that the authority of ***Shittu vs. Nigerian Agric. Coop. Bank Ltd. (supra)*** relied upon by learned counsel is not relevant to the facts of this case.
- Learned counsel for the 2<sup>nd</sup> respondent agreed substantially with the submissions of learned counsel for the 1<sup>st</sup> respondent to the effect that by
- F** virtue of Section 251 (1) (b) of the 1999 Constitution, the Federal High Court has the power to hear and determine civil causes and matters connected with or pertaining to taxation of companies and that since the 2<sup>nd</sup> respondent is an agency of the Federal Government, the Federal High Court
- G** has exclusive jurisdiction to entertain the suit. He also restated his earlier position that assuming, without conceding, that the VAT Act is not covered by Section 251 (1) of the Constitution, that the said Act is deemed to be an Act of the National Assembly by virtue of Section 315 (1) of the
- H** Constitution. He also referred to the exclusive and concurrent legislative powers of the National Assembly as provided for in Section 4. He submitted that the taxing powers of the National Assembly are as provided in items 59, 62, 67 and 68 of the exclusive legislative list and items 7 and 8
- I** of the concurrent legislative list. He submitted that the charges on the supply of goods and services form part of the gross income received by the

- A** supplier of the said goods and services and thus qualifies as tax on income. He urged the court to give full meaning to the phrase “taxation of income” as expressed in Section 251 (1) (b) of the Constitution and to hold that when interpreted in its plain and ordinary meaning, it illustrates the intention of
- B** the framers of the Constitution that all forms of income fall under the taxing power of the National Assembly. On the guiding principles of constitutional interpretation, he referred to: **AG Federation vs. Abubakar (2007) 10 NWLR (Pt. 1041) 1 @ 119; AG Bendel State vs. Federation & Ors. (1981) 10 SC 1 @ 132 – 134; (2002) 5 NWLR (Pt. 751) 209.**

Now, the first issue to consider is whether the lower court did indeed misconstrue the appellant's objection on the issue of the court's

**D** jurisdiction? In his brief of argument at page 320 of the record, learned counsel formulated 4 issues for the determination of the appeal before the lower court. Issues 1 and 2 are germane and they read as follows:

- E**           1.       **Whether the lower court (Federal High Court) has jurisdiction to entertain the plaintiff's action as constituted (Ground 1, 2 & 3).**
- F**           2.       **Whether the learned trial judge was right when he failed to follow the judgment of a superior court showing that the appellant had obtained judgment in respect of the subject matter of the proceeding on the ground that the appellant did not avail him copy (sic) of the judgment. (Ground 4).**
- G**

Although learned counsel reproduced grounds 1, 2, and 3 of the grounds of

**H** appeal and the first issue as formulated by the lower court, he failed to fully reproduce the part of the judgment of the court showing how it arrived at the formulation of the issue. I refer to pages 418 – 419 of the record, where His Lordship, Dongban-Mensem, JCA who wrote the lead judgment, stated

**I** thus:

- A ***“After an indebt (sic) consideration of all the briefs, it is my humble opinion that this appeal can be determined under two issues. Accordingly issues 1, 2, 3 and 4 are each merged together. Issues 1 and 2 can be taken together in this appeal.***
- B ***If there exists a judgment of a superior court showing that the appellant had obtained judgment in respect of the subject matter of the proceedings, then the trial court obviously lacked jurisdiction to hear and determine the matter.***
- C ***Issues 3 and 4 are also taken together. If VAT has covered the field, under what circumstance can the plaintiff/1<sup>st</sup> respondent collect and remit other forms of taxes on the appellant?***
- D ***The issues are interwoven and it is unnecessary to proliferate them.  
(Emphasis mine)***
- E I am of the view that the court below did not in any way misapprehend learned counsel's submissions. In the course of his judgment, the learned trial judge made the following observation at page 220 of the record:
- F ***“The learned counsel for the defendant referred to the case of Stevenson & Sons Ltd. Vs. Brownell 1912 344 in support of his submission that where one of the defendants to an interpleader has already obtained judgment in respect of the***
- G ***subject matter of the proceedings, the question of interpleader would no longer arise. He did not however avail this court with copy of any judgment in respect of the subject***
- H ***matter of this proceeding which is to whom between the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant is the plaintiff to remit the money collected as tax by it on its sales to its consumers.”***
- I Another ground upon which he sought to persuade the trial court that it lacked jurisdiction was his contention that the constitutionality and right of the Federal and State Governments to impose and collect taxes had already

**A** been considered and determined by this court in **Aberuagba's case (supra)** and by the lower court in the **Nigerian Soft Drinks case (supra)**. That in the Nigerian Soft Drinks case, the lower court had held that the Sales Tax Law of Lagos State is valid and constitutional and that in Aberuagba's case, **B** this court determined the competence of the State House of Assembly to make the Sales Tax Law. Clearly, if indeed there are existing judicial authorities of either the lower court or this court specifically deciding the issue that arose in this case in favour of the Sales Tax Law, the trial court **C** would be bound by the doctrine of *stare decisis* to follow those decisions and decline jurisdiction. The merger and consideration of issues 1 and 2, which gave rise to issue 1 formulated by the court below, was quite in order. There was no misapprehension of the issue.

**D** Learned counsel for the appellant has argued that there was no agreement between the parties that the money in issue is VAT and that the trial court ought to have determined this issue before assuming jurisdiction in the matter. The submission, with due respect to learned counsel, is **E** misconceived. I must emphasise again that the question as to whether the money collected by the 1<sup>st</sup> respondent was VAT or not does not arise. Paragraphs 4 & 5 of the affidavit in support of the originating summons at page 4 of the record, is quite clear on this. It was averred therein as follows:

**F**

**“4. That the applicant has been a “taxable person” or collecting agent to the 1<sup>st</sup> defendant [2<sup>nd</sup> respondent in this appeal] since 1994 and has been remitting tax on its sales to its consumers to it.**

**G**

**5. That sometimes in 2001, the 2<sup>nd</sup> defendant agent wrote to the plaintiff and demanded remittance of money due as tax on the plaintiff's sales to its consumers to it by virtue of a newly enacted law which is Sales Tax Amendment Order 2000.” (Emphasis mine)**

**H**

**I** The issue in contention was whether the money already collected by the 1<sup>st</sup> respondent from its consumers under the VAT Act should be paid over to the appellant rather than the 2<sup>nd</sup> respondent, as had hitherto obtained. The

- A** validity of the Sales Tax Law of Lagos State was also not in issue. As rightly held by the trial court, the proceedings were in the nature of interpleader proceedings wherein the appellant and the 2<sup>nd</sup> respondent were required to satisfy the court as to which of them was entitled to the
- B** remittance of the money collected by the 1<sup>st</sup> respondent. It would also not be correct to say, as learned counsel for the appellant has argued, that the dispute has to do with the revenue of the Lagos State Government.

**C** I shall now consider the main complaint regarding the jurisdiction of the trial court to entertain the matter. For a court to be competent to adjudicate in a cause or matter, the following conditions must be satisfied:

- D** **d. It must be properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other.**
- E** **e. The subject matter of the case must be within its jurisdiction, and there must be no feature in the case which prevents the court from exercising its jurisdiction; and**
- F** **f. The case must come before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction”.**

**G** See: **Madukolu vs. Nkemdilim (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587 at 594; Skenconsult (Nig.) Ltd. vs. Ukey (1981) 1 S.C. 6 at 62; Inakoju vs. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 588 F.** It is equally trite that where the court lacks jurisdiction to entertain a cause or matter the entire process, no matter how well conducted, is an exercise in futility. The

**H** proceedings would amount to a nullity *ab initio* and liable to be set aside.

**I** In determining whether or not the court has jurisdiction to entertain a cause or matter it is the originating processes filed by the plaintiff that would be considered. See: **A.G. Federation vs. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt. 618) 187; (1989) 5 SC (Pt. III) 59; Uwaifo vs.**

**A A.G. Bendel State (1982) 7 SC 124; Adeyemi vs. Opeyori (1976) 6 – 10 SC 31; Amaechi vs. INEC (No. 2) (2007) 18 NWLR (Pt. 1065) 98.** In the course of this judgment several references have been made to the cause of action that gave rise to this appeal. I need not repeat it again. Suffice it to

**B** say that both lower courts were of the opinion that the trial court had jurisdiction to entertain the suit on two grounds: (a) by virtue of Section 251 (1) (b) of the Constitution and (b) having regard to the fact that an agency of the Federal Government is a party Section 251 (1) (r). It is not correct, as

**C** argued by learned counsel for the appellant, that the courts simply relied on the fact that an agency of the Federal Government is a party. They also considered the subject matter of the action. This is in keeping with decisions of this court in cases such as: **Ohakim vs. Agbaso (1010) 19**

**D NWLR (Pt. 1226) 172 @ 236 – 237 G – D; Salim vs. CPC (2013) 6 NWLR (Pt. 1351) 501; Ucha vs. Onwe (2011) 4 NWLR (Pt. 1237) 386,** to the effect that in determining the jurisdiction of the Federal High Court, notwithstanding the fact that one of the parties is an agency of the Federal

**E** Government, the subject matter of the dispute is also relevant.

A “taxable person” is defined in Section 46 of the VAT Act as:

**F** *“a person (other than a public authority acting in that capacity) who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of services (including mining, and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business.”*

**G**

While it is true that the VAT Act regulates the tax payable by consumers on goods and services, I am inclined to the view expressed by the court below at page 426 of the record, to wit:

**H**

**I** *“... the 1<sup>st</sup> respondent is subject to the VAT Act collects and remits VAT) and could be held liable for default (See Section 18 VAT Act). The company is a person subject to Federal taxation and is also known as taxable person under VAT Act*

**A** *(see Section 8 VAT Act).*

**B** *..... A company that fails to collect the VAT from consumer will be made to pay the tax (See Section 19 VAT Act). Furthermore, while a company (collecting agent or taxable person) can be seriously liable under the VAT Act the consumer (who is at large) cannot be liable. (See sections 15, 18, 25 and 26 VAT Act.) Subject matter falls within the subjects listed under Section 251 [of the 1999 Constitution] and the party or one of the parties is the Federal Government or an agent of the Federal Government, then the only court with jurisdiction at first instance is the Federal High Court. The learned trial judge accordingly rightly applied the provisions of Section 251 and the decisions in Oshiomole and NEPA (supra)."*

**E** I am unable to fault the above finding after my examination of the relevant provisions of the Constitution and the VAT Act. I agree that having regard to the subject matter of the dispute and the fact that one of the parties is an agency of the Federal Government, the Federal High Court, pursuant to Section 251 (1) (b) & (r) of the 1999 Constitution had the requisite jurisdiction to entertain the suit. Learned counsel for the appellant has failed to persuade me that the findings of the two lower courts are perverse. In the circumstances, this issue is resolved against the appellant.

**G** **Issue 5**  
*Whether the court below misdirected itself on the submissions of the appellant that it should invoke its power under S. 16 of the Court of Appeal Act to determine the merit of the case.*

**H** This issue has to do with learned counsel's contention that the court below misconstrued the basis upon which, in his oral submissions at the hearing of the appeal, he urged it to exercise its power under Section 16 of the Court of Appeal Act to determine the merit of the case and unfairly castigated him in

- A** the process. He submitted that his contention was that in the event that the court found merit in the objection to the jurisdiction of the Federal High Court, rather than striking out or remitting the case to the State High Court, it should invoke its powers under the Court of Appeal Act and assume
- B** jurisdiction to determine the suit, as the State High Court would also lack jurisdiction to determine the issue regarding both legislations i.e. it would only have jurisdiction to determine an issue relating to its Sales Tax law and not the VAT Act. He submitted that the court below erred in viewing his
- C** submission as contending “mutual bias” to the effect that the State High Court would likely find in favour of its State Law while the Federal High Court would likely find in favour of the VAT Act. Interestingly, learned counsel then concluded by submitting thus at paragraph 3.4.18 of his brief:
- D** *“In exercise of its power under S.16 of the Court of Appeal Act, the court was however right to have considered the other issues raised in the appeal on their merit.”* What then is the complaint? Whether the court rightly or
- E** wrongly perceived learned counsel's argument, from his own showing, it did consider all the issues raised in the appeal on their merit. He may not agree with the court's conclusion, but I see no basis for the complaint under this issue. In my view, it is merely academic and not worthy of the precious time of the court. I accordingly discountenance the submissions made in
- F** this regard.

- In conclusion, I hold that this appeal lacks merit. It is accordingly dismissed. The judgment of the Court of Appeal, Lagos delivered on 18<sup>th</sup> January, 2007 is hereby affirmed. The parties shall bear their respective
- G** costs in the appeal.

**Kudirat M. O. Kekere-ekun**  
**Justice, Supreme Court**

- H INYANG OKORO, (JSC):** I read in advance the Lead Judgment of my learned brother, **Kekere-Ekun**, JSC just delivered and I am in agreement with both the conclusions and the reasons advanced therein. My learned brother has admirably resolved all the issues submitted by the parties for the
- I** determination of this appeal and I intend to make a few comments only in support of the judgment.

- A** The main issue in this appeal is whether the Court of Appeal was right when it held that the Value Added tax Act has covered the field of Sales Tax and its provisions over the Sales Tax Law of Lagos State. I rely on the facts as fully outlined in the lead judgment.
- B** There is no doubt that both the Value Added Tax Act and the Sales Tax Law of Lagos State provide for the collection of tax from the customer on consumable items stated in the schedules of two laws. The rates and goods upon which charges are made under both laws are similar. It follows naturally that there is unhealthy competition between the two laws, thus throwing the consumer and collection agents into confusion. This is not the purposes of governance. Be that as it may, the law does not leave us without a remedy. By Section 4 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency, be void. I shall limit myself to the issue before this court. We are neither asked to determine on the validity of Value Added Tax Act nor the Sales Tax laws of Lagos State. The issue for determination is whether the Value Added Tax Act has covered the field such that the Lagos State Tax Law remains significance.
- F** The doctrine of covering the field is essentially that where the main, principal or superior law has covered a given field or area, any other subsidiary law made in that area or field cannot operate side by side with the main, principal or superior law. If the inferior law is inconsistent with the principal, law, it has to be declared void to the extent of its inconsistency. But where it is consistent with the principal law, it has to be left in abeyance i.e. inoperative pending when the principal law may give way. See **Saraki vs. Federal Republic of Nigeria (2016) LPELR 40013 (SC)**, **MPPP vs. INEC & ors (2015) LPELR – 25706 (SC)** **AG Abia State & ors vs. AG of the Federation (2002) LPELR – 611 (SC)**, **(2002) 6 NWLR (pt. 763) 264**. This court, in **Attorney General of Ogun State vs. Attorney General of Federation (1982) LPELR – 11 (SC)**, **Per Fatayi Williams, JSC** (as he then was) held on this issue as follows:-
- I**

**A**            *“It is of course, settled law, based on the doctrine of covering the field with which I shall deal in more detail later, that if parliament and a Regional Legislature are empowered to make laws, and a Regional legislature enacts an identical*

**B**            *law on the same subject matter, the law made by Parliament shall prevail. That made by the Regional legislature shall become irrelevant and therefore impliedly repealed.”*

**C**            With due respect to the learned counsel for the appellant, the above principal of law, and without much ado places the Sales Tax Law of Lagos State in abeyance. Should the two laws be allowed to operate simultaneously, it will amount to double taxation on the same goods and services. The consumer would have to suffer under the weight of the two laws while two tiers of government smile to the bank. This is unhealthy and must not be allowed to stand.

**D**            On the whole, I agree with the court below that the Value Added Tax Act has fully covered the field and nothing was left for the Sales Tax Law of Lagos State to glean. I also agree that the imposition of both laws would create double taxation. In consequence thereof, the Federal Board of Inland Revenue, the 2<sup>nd</sup> Respondent herein is entitled to receive the tax in contention from the 1<sup>st</sup> Respondent Eko Hotels Ltd on behalf of the Federation for which the appellant is an intergral part.

**E**            From all I have said above and the more elaborate adumbration in the lead judgment, I hold that this appeal lacks merit and is hereby dismissed by me. The judgment of the Court of Appeal is hereby affirmed. I also agree that parties do bear their respective costs.

**John Inyang Okoro**  
*Justice, Supreme Court*

**H**            **AMIRU SANUSI, (JSC):** The leading judgment prepared by my learned brother Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC just delivered, was made available to me before now. Having carefully read same, I must

**I**            say that my lord has ably and painstakingly dealt with all the salient issues

- A** canvassed by the parties' learned counsel when arguing the appeal. I am at one with the reasoning and conclusion arrived at in the lead judgment that this appeal is devoid of any merit and ought to be dismissed. While adopting the reasoning in the judgment of my learned brother Kudirat
- B** Motonmori Olatokunbo Kekere-Ekun, JSC as mine, I also have no hesitation in dismissing this appeal and affirming the decision of the lower court. I will also decline to award any costs hence I order that each party should bear its own costs.

**C** **Amiru Sanusi**  
*Justice, Supreme Court*

- D** **EJEMBI EKO, (JSC):** I had the privilege of reading in draft the judgment just delivered in this appeal by my learned brother, HON. K. M. O. KEKERE-EKUN, JSC.

I need only to just add a few comments of mine.

- E** The constitutional doctrine of “covering the field” only applies in a federal set up where legislative powers are shared between the central government and the federating units/state governments. Under the 1999 Constitution the legislative powers of the Federation and the States are shared thus:

**F**

**4. (1) *The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.***

**G**

**(2) *The National Assembly shall have power to make laws for the peace, order and good governance of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.***

**H**

**(3) *The power of the National Assembly to make laws for***

**I**

**A** *the peace, order and good governance of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of*  
**B** *the House of Assembly of States.*

**C** *(4) In addition and without prejudice to the powers conferred by subsection (2) of this Section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:*

**D** *(a) any matter in the Concurrent Legislative List set out in the first Column of part II of the Second Schedule to this Constitution to the extent prescribed in the Second Column opposite thereto; and*

**E** *(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*

**F** *(5) If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.*

**G** *(6) The Legislative powers of state of the Federation shall be vested in the House of Assembly of the State.*

**H** *(7) The House of Assembly of a state shall have power to make laws for the peace, order and good governance of the State or any part thereof with respect to the following matter, that is to say:*

**I** *(a) any other matter not included in the Exclusive Legislative List set out in part 1 of the Second*

- A ***Schedule to this constitution;***
- B ***(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the Second column opposite thereto; and***
- C ***(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.***

D That issue of covering the field is not much of any problem as regards subsections (1), (2) & (3) of Section 4 of the Constitution. It is only in respect of Section 4 (4) & (5) that the issue of covering the field poses a problem. In respect of any matter in the concurrent list both the National Assembly and the State House of Assembly are empowered to make laws. However, whenever both the National Assembly and the State House of

E Assembly purport to make laws in any common item or matter in the Concurrent Legislative List two situations may arise thus:

- F ***I. If the Law enacted by the House of Assembly of a State is inconsistent with the Law validly enacted by the National Assembly, the law made by the National Assembly shall prevail, and the Law made by the House of Assembly shall, to the extent of inconsistency, be void. Section 4(5) of the Constitution is emphatic on this; and***
- G
- H ***II Where the Laws made by both the National Assembly and the House of Assembly of a State with regard to the same issue or matter in the Concurrent Legislative List are not inconsistent, the Law made by the National Assembly enjoys superiority or paramountcy over the Law enacted on the subject by the House of Assembly of the State.***
- I

A

The decision of this Court in A.G, ABIA vs. A. G, FEDERATION (2002) 6 NWLR (pt. 763) 264 at 435 F puts it succinctly thus:

B

*The doctrine (of covering the field) however renders the paramount legislation predominant and the subordinate legislation remains inoperative so long as the paramount legislation remains operative. Where, of course, there is obvious inconsistency, the subordinate legislation is void.*

C

The dispute in this case is not whether the Value Added Tax Act and the Lagos State Sales Tax Law are inconsistent. I should be careful not to state:

D

as between the two statutes which is more predominant than the other.

There is no counter-claim, to the interpleader action instituted by the 1<sup>st</sup> Respondent, Eko Hotels Limited, as the plaintiff which merely sought to be determined that: as between the Appellant and the 2<sup>nd</sup> Respondent to whom shall the 1<sup>st</sup> Respondent pay the tax it collected on services it rendered to its customers?

E

The Value Added Tax Act was promulgated in 1993 as a Decree during the Military era, when the Federal Military Government was empowered to enact laws on just any matter, unrestrained by any Legislative List as Section 4 of the extant Constitution does. At the commencement of the 1999 Constitution it was, and still is, an existing Law within the context of Section 315 of the Constitution that provides inter alia

F

G

*315.(1) Subject to the provisions of this Constitution, an existing Law shall have effect with such modifications as may be necessary to bring it into conformity with this Constitution and shall be deemed to be:*

H

*(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and*

I

**A** (b) *a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.*

**B**

As earlier stated, there is no substantive issue made in this action on the question: whether or not the Value Added Tax Act could be deemed either as “an Act” of the National Assembly with respect to which the National Assembly is empowered to by this constitution to make Laws,” or a law deemed enacted by the House of Assembly of Lagos State.

**C**

Suffice for now, that I say that an Act of the National Assembly, for purposes of covering the field, can only be said to be a “predominant paramount” legislation if it was validly enacted, or could be deemed to have been validly enacted, with respect to any matter the National Assembly is empowered by the constitution to make laws. An Act of the National Assembly enacted in respect of any residual matter, not being a matter either in the Exclusive Legislative or the Concurrent Legislative List, cannot be arrogated a predominant paramount legislation so as to override any law validly enacted by a House of Assembly of a State in respect of any residual matter. The determinant factor in covering the field is the validity of the predominant paramount legislation Viz-a-viz the subordinate legislation.

**D**

**E**

**F**

I am not aware of any decision of this Court directly affirming the validity of the Lagos State Sales Tax Law viz-a-viz the Value Added Tax Act, and vice versa, justifying the plea of *stare decisis* by the Appellant. The Court of Appeal had posited, in NIGERIAN SOFT DRINKS LTD Vs. ATTORNEY GENERAL, LAGOS STATE (1987) 2 NWLR (pt. 57) 444, that Section 2 of the STL Cap. 175 Laws of Lagos State is neither unconstitutional nor in conflict with the provisions of item 61 in the Exclusive Legislative List under the 1979 Constitution (which item 61 is now item 62 of the extant constitution) or paragraph D7 & 8 of the Concurrent List. The decision in the NIGERIAN SOFT DRINKS LTD Vs. A. G, LAGOS STATE (supra), for purposes of the plea of *stare decisis*, did not pronounce that any provisions of the VAT Act had either covered the field covered by Section 2 of the STL of Lagos State or was in conflict with

**G**

**H**

**I**

A any provision of the STL of Lagos State.

The decision of this court, A. G, OGUN STATE vs. ABERUAGBA (1985) 1 NWLR (pt. 3) 395, handed down several years before the promulgation of the VAT Act, 1993, did not decide that provisions of a

B statute *in pari materia* with any provisions of the VAT Act had either covered the field or was in conflict with any provisions of the STL of Lagos State or Ogun State. The *ratio decidendi* of the ABERUAGBA case (supra) is that, by the exclusive legislative powers of the National Assembly in respect of  
 C international and inter State trade and commerce, and the National Assembly can enact a law enabling the Federal Government to levy and collect taxes on goods brought into the country and or moving inter-State. It also held that, in respect of  
 D intra state commerce the State Government can levy and collect sale taxes on some consumer goods, transactions and services. It is for this reason that I hold the view that ABERUAGBA case (supra) cannot be pleaded by the Appellant for purpose *stare decisis*.

E The appellant, saddled with the burden of establishing that the decision appealed was erroneous, has not satisfied me that the lower court's decision the subject of this appeal was erroneous.

F The issue at the trial Federal High Court, from the three reliefs thereat, related to the tax or revenue accruing to the Federal Government. The issue sufficiently agitates the jurisdiction of the Federal High Court donated by Section 251(1)(a) & (b) of the 1999 Constitution. The Federal High Court, in my opinion, was a proper forum for the determination of the said three reliefs brought by the 1<sup>st</sup> respondent, as the plaintiff.

G In view of my foregoing stance and the reasons contained in the opinion of my learned brother, HON. K. M. O. KEKERERE-EKUN, JSC, I hereby dismiss the appeal in its entirety and affirm the decision of the lower court. Parties shall bear their respective costs.

H

**Ejembi Eko**  
*Justice, Supreme Court*

I

**HON. CHRIS AZUBUOGU  
AND**

- 1. HON. (DR.) HARRY N. ORANEZI**
- 2. PEOPLES DEMOCRATIC PARTY**
- 3. ALHAJI A. ADAMU MUAZU**  
(National Chairman of Peoples Democratic Party and  
Chairman of National Executive Committee and National  
Working Committee of Peoples Democratic Party)
- 4. PROF. WALE OLADIPO**  
(National Secretary of Peoples Democratic Party)
- 5. HON. JULIUS OFFORMAH**
- 6. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION (INEC)**

**SC/279/2016**

**IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA**

**WEDNESDAY, 12<sup>TH</sup> DAY OF JULY, 2017**

**BEFORE THEIR LORDSHIPS**

<b>WALTER SAMUEL NKANU ONNOGHEN</b>	<b>CHIEF JUSTICE OF NIGERIA</b>
<b>IBRAHIM TANKO MUHAMMAD</b>	<b>JUSTICE, SUPREME COURT</b>
<b>OLABODE RHODES-VIVOUR</b>	<b>JUSTICE, SUPREME COURT</b>
<b>OLUKAYODE ARIWOOLA</b>	<b>JUSTICE, SUPREME COURT</b>
<b>MUSA DATTIJO MUHAMMAD</b>	<b>JUSTICE, SUPREME COURT</b>

*ACTION: Preliminary objection – Where preliminary objection is filed  
approach of court thereto.*

*APPEAL: Findings of a lower court – When to be set aside – When a decision  
is perverse – Meaning.*

*COURT: Jurisdiction – Source – How determined.*

*COURT: Jurisdiction – Where challenged – How resolved*

*COURT: Jurisdiction – Where there are more than one primary election conducted by a political party in respect of the same purpose – Whether court has power to determine the authentic primary election that will produce the party's candidates.*

*COURT: Decisions of superior courts – Where superior courts have decided cases – Whether lower courts are bound thereby.*

*ELECTION: Challenge of the outcome of a primary election of a political party – Whether an aspirant who participated in a primary election of a political party can challenge the proper conduct of the election – S. 87(9) of the Electoral Act 2010 – Relevant principles.*

*ELECTION: Where a candidate in a primary election who alleges that he scored the highest votes but his name was wrongly substituted with another – Whether his claim is justiciable by the Federal High Court – Section 87(4) and (9) of the Electoral Act 2010 – Relevant considerations.*

*PRACTICE AND PROCEDURE: Pleadings – How construed.*

### **Issues for Determination**

**“Whether the Court of Appeal was right in holding that the 1<sup>st</sup> respondent's case can be founded within Section 87(4)(c) and 9 of the Electoral Act 2010 as amended (Grounds Three, Four, Five and Six of the grounds of appeal).**

**“Whether the learned justices of the court below were right when they held that 1<sup>st</sup> respondent's case (the appellant's case) was founded within Section 87 (4) and (9) of the Electoral Act, 2010 (as amended)? (DISTILLED FROM GROUNDS FOUR & FIVE).**

## **Facts of the Matter**

This is an appeal against the decision of the Court of Appeal, Enugu Division, in appeal No. CA/E/207/2015. The decision appealed against was delivered on 4<sup>th</sup> February 2016. A brief summary of the facts that brought about the appeal is hereinafter supplied.

The 1<sup>st</sup> respondent herein, Hon. Dr. Harry Oranezi, as plaintiff at the Federal High Court sitting at Awka, initiated suit No. FHC/AWK/CS/24/2015 against the appellant and five others as defendants seeking, on the basis of votes he avers in his writ to have scored in the 2<sup>nd</sup> respondent's primary election conducted on the 7<sup>th</sup> December, 2014., declaratory and injunctive reliefs to the effect that he is the party's candidate for the Nnewi North/South/Ekwusigo Federal House of Representatives Constituency in the Federal House of Representatives election scheduled for 14<sup>th</sup> February 2015. He is entitled to the reliefs, he further asserts, by virtue of Section 87(4) (c) of the Electoral Act 2010 (as amended) as well as 2<sup>nd</sup> respondent's Electoral Guidelines for Primary Election 2014.

In its ruling delivered on 19<sup>th</sup> March 2015, the trial court sustained the objections of the defendants to the competence of the suit, declined jurisdiction and struck out 1<sup>st</sup> respondent's suit.

Aggrieved, the 1<sup>st</sup> respondent appealed to the lower Court of Appeal whereat, in upholding the appeal and setting aside the trial court's ruling, the suit was remitted to the trial court for same to be heard and determined by a judge other than M.L. Abubakar J.

Dissatisfied with the court's judgment, the appellant has appealed to the Supreme Court.

**Held:** *(Unanimously dismissing the appeal)*

1. *Approach of court to issues of preliminary objection*

**At the hearing of the appeal, parties adopted and relied on their earlier filed and exchanged briefs as arguments for and against the appeal. 1<sup>st</sup> respondent's preliminary objection filed on 28<sup>th</sup> February 2017 to the competence of the appeal, in keeping with the practice in**

**this court, has been argued in his brief. Appellant's response to the objection is as contained in his reply brief duly filed on 21/3/2017.**

**The objection shall be determined first in order to ensure that this court has the necessary jurisdiction to proceed to hear and determine the appeal on its merits. To do otherwise, by proceeding without necessarily determining whether or not it indeed has the jurisdiction to, is for the court to embark on a time wasting and fruitless venture. On the authorities, the court's eventual decision will be a nullity. *See* Madukolu Vs. Nkemdilim (1962) 2 SCNLR 341, Usman Dan Fodio University Vs. Kraus Thompson (Nig.) Ltd (2001) 15 NWLR (pt., 736) 305 and Dr. Kemdi & Anor Vs. Hon. Bethel Amadi & Anor (2013) LPELR – 20747 (SC). (Pp 193 – 194 Paras G – C)**

2. *Issues are related to the decisions of Court of Appeal*  
**An examination of the 1<sup>st</sup> and 2<sup>nd</sup> grounds in the notice of the instant appeal at pages 305-310 of the record of appeal against the background of the findings of the lower court at pages 293 297 of the record readily vindicates learned appellant counsel's submission that the two grounds are a direct attack on those findings. It is also instructive to note that other than the two grounds the 1<sup>st</sup> respondent contends are incompetent, the notice of appeal contains four more grounds all of which, in addition to the grounds in contention, attack the lower court's crucial finding that the trial court's ruling declining jurisdiction in respect of 1<sup>st</sup> respondent's suit is perverse. The appeal, in the light of all the valid grounds, including the contested 1<sup>st</sup> and 2<sup>nd</sup> grounds, learned appellant's counsel is right, being unarguably valid, cannot be discountenanced. 1<sup>st</sup> respondent's unsustainable objection is accordingly hereby dismissed. *See* Alhaji Abiola Ekunola Vs. Central Bank of Nigeria & Anor (2013) LPELR – 20391 (SC); Niger Construction Ltd. Vs. Okugbeni (1987) 4 NWLR (pt. 76) 787; Nwaigwe Vs. F.B.N. (2009) 16 NWLR (pt. 1166) 169 at 414 and Chief Ameke Chricato Ikechukwu Vs. Hon. Tony Nwoye & Anor (2014) 4 NWLR (pt. 1397) 227 at 241. (Pp 194 – 195 Paras G – C)**

3. *When findings of a lower court are to be set aside on appeal*  
**The foregoing finding of the lower court is unassailable. Learned appellant's counsel must be reminded that a court's finding on appeal is only set aside where same is found to be perverse. An appellate court, learned counsel is to further appreciate, adjudges a decision appealed against perverse if it neither draws from the evidence on record nor upon correct application of some principle. See Adimora Vs. Ajufu (1988) 3 NWLR (Pt. 80) 1; Clifford Osuji Vs. Nkemjika Ekeocha (2009) LPELR-2816 (SC) and Raphael Ude Vs. State LPELR-40441 (SC).**  
**Since the lower court's judgment appealed against is devoid of these defects and is not further shown to have either taken into account matters it ought not to have taken or shut out obvious facts, I agree with learned counsel to the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents that the judgment should persist. In justifying this position, three trite principles of law need to be restated at this point.**  
*(P 199 Paras E – H)*
4. *The jurisdiction of a court is derived from the law creating it.*  
**Firstly, jurisdiction of a court is generally provided by a statute and or the Constitution. Any challenge to a court's jurisdiction, therefore, is resolved within the purview of the legislation that donates the jurisdiction to the court. See Okocha Samuel Osi Vs. Accord Party & Ors (2016) LPELR-41388 (SC) and Galadima Vs. Tambai (2000) 6 SC (Pt. 1) 196. (Pp 199 – 200 Paras H – A)**
5. *How to resolve the issue of court's jurisdiction.*  
**Secondly, whenever the jurisdiction of a court is challenged, in an action fought on pleadings, the objection is resolved by examining the plaintiff's claim alone within the context of the source of the court's jurisdiction. See Ibori Vs. Agabi (2004) 6 NWLR (Pt 868) 78 and Vivian Clems Akpangbo-Okadigbo & Ors Vs. Egbe Theo Chidi & Ors (2) (2015) LPELR-24565 (SC). (P 200 Paras A – B)**
6. *Courts are bound by earlier decisions of superior courts.*  
**Thirdly, courts are bound by the earlier authoritative pronouncements of superior courts on same or similar issues they are subsequently asked to determine. See Olu of Warri Vs.**

**Kperegbeyi (1994) 4 NWLR (Pt. 339) 416; Osagie II Vs. Offor (1998) 3 NWLR (Pt. 541) 205 and Dalhatu Vs. Turaki (2003) 15 NWLR (Pt. 843) 310 at 350. (P.....paras.....)**

“Now, a cumulative reading of the foregoing averments manifest the facts necessarily required for the invocation of the court's jurisdiction under Section 87(4) (b) and (9) of the Electoral Act 2010 (as amended), which facts the trial court evidently discountenanced. The reliefs the 1<sup>st</sup> respondent claims are premised on the fact of his having participated in 2<sup>nd</sup> respondent's primary election of 7<sup>th</sup> December 2014 and emerged victorious. Contrary to 2<sup>nd</sup> respondent's Electoral Guidelines and the Electoral Act, he further asserts, his name was substituted with that of the 4<sup>th</sup> defendant at the trial court. His suit, it is further asserted, is informed by this breach of the party's Electoral Guidelines and the Electoral Act obtaining relief for which breach Section 87(4) (b) and (9) of the Electoral Act (as amended), provides access to court. The trial court fell into serious error when it isolated paragraph 31 of the statement of the claim in determining the objections to its assumption of jurisdiction over 1<sup>st</sup> respondent's suit.

*(P 204 Paras A–D)*

It is settled that in construing pleadings, as it is with statutes, the averments should be considered as a whole to gather the collective import of the pleaded facts. The trial court's reading of paragraph 31 of the statement of claim in isolation, without relating the paragraph to the preceding paragraphs, not surprisingly, pushed the court into an avoidable error. The preceding paragraphs are not only complementary to the paragraph the court singled out and relied on in determining the objections to its jurisdiction over the suit they also explain the meaning and scope of the subsequent paragraph. *(P 204 paras E–G)*

7. *Failure of court to be guided by past decisions of the Supreme Court*  
Again, had the trial court availed itself of the myriad of decisions of this Court, which the lower court elaborately and painstakingly considered and applied, it would have avoided the needless error it succumbed to. Instead, the court focused its entire mind on the “three” primaries the 1<sup>st</sup> respondent mentions in paragraph 31 of his statement of claim completely oblivious of the fact, in the preceding

paragraphs, that 1<sup>st</sup> respondent's real grief pertains his substitution by the 4<sup>th</sup> defendant as the 2<sup>nd</sup> respondent's flag bearer in the election to which the primary relates. It is this pervasion of the result of the 2<sup>nd</sup> respondent's primary election, occasioned by the breach of the party's Electoral Guidelines and the Electoral Act 2010 (as amended), that constitute the injury the 1<sup>st</sup> respondent's action seeks to curtail given the access Section 87 (4)(b) and (9) of the Electoral Act 2010 (as amended) creates for the reliefs thereinunder. (Pp 204 – 205 Paras H – C)

8. *Trial court has jurisdiction to determine the authentic primary elections of a political party.*

**Granting without conceding that paragraph 31 of the statement of claim is an actual reference to three primaries, one must agree with learned 1<sup>st</sup> respondent's counsel that, unlike the trial court, the lower court in the discharge of its responsibility rightly insists that 1<sup>st</sup> respondent action is still justiciable. In Ugwu Vs. P.D.P. (supra) this Court per Akaahs JSC at page 478 of the law report has enthused as follows:**

*“I am of the considered view that the trial court will be abdicating its responsibility if it declares that the suit is not justiciable. It has a duty to say which of the two primaries is the authentic one. This is the reason while Section 87 (1)(4)(c) (i), 4(c), (i),(ii) and (9) has been put in place and to avoid arbitrariness by some officials of the political party who may want to impose their preferred candidates who probably did not take part in the primaries because of the conflicting claims by the parties. It is only the court that could resolve the issue. This is the dimension which the decision in C. C.P.C. Vs. Ombugadu supra introduced.” (P 205 Paras C – G)*

9. *The decision of the trial court was properly set aside.*

**One is unable, in the light of the facts of this matter and the applicable law, therefore, to agree with learned appellant counsel's submission that the trial court's manifestly perverse decision, properly adjudged so and set aside by the lower court, be restored.**

**The 1<sup>st</sup> respondent having participated in the 2<sup>nd</sup> respondent's primary election is the aspirant the Electoral Act in Section 87(4) (b)**

and (9) provides a platform for to seek the reliefs he circumscribes in his claim. The section has already been interpreted and applied by this Court in a seemingly endless number of its decisions a great deal of which have been cited by both sides to the appeal. In *Garba Vs. Mohammed (2016) 16 NWLR (Pt 1537) 114* this court per Mohammed CJN (as he then was) at pages 164 – 165 paragraphs H – C of the law report held as follows:

*“As for the additional jurisdiction conferred on the Federal High Court under Section 87(9) of the Electoral Act, 2010 (as amended) quoted above, it gives any aspirant member of a registered political party who participated in a primary election conducted by a political party to choose a candidate to contest an election under its platform, who is not satisfied with the outcome of the primary election contested with other members of the same political party, to approach the Federal High Court or High court of a State or FCT High Court for redress..... In other words, any dispute arising from the conduct of primary elections by political parties to nominate candidates to contest elections, may be brought to the Federal High Court under Section 87(9) of the Electoral Act, 2010 (as amended) by an aggrieved aspirant member of any political party who participated in the primary election conducted by a political party for resolution by that court.”* (Underlining supplied for emphasis).

*See also Lokpobiri Vs. Ogola (2016) 3 NWLR (Pt 1499) 328.*

The lone issue, from the foregoing, is determined against the appellant. The appeal is hereby dismissed and the judgment of the Court of Appeal in appeal No. CA/E/207/2015 delivered on 4<sup>th</sup> February 2016 affirmed. The costs of the appeal is assessed at Three Hundred Thousand Naira (N300,000.00k) in favour of the 1<sup>st</sup> respondent against the appellant. (Pp 205 – 206 paras C – H)

#### **Nigerian cases cited in this Judgment**

*Adimora Vs. Ajufo (1988) 3 NWLR (Pt. 80) 1;*

*Akpangbo Okadigbo Vs. Chidi (No 1) 2015 19 NWLR (Pt. 1466) 171;*

*Alhaji Abiola Ekunola Vs. Central Bank of Nigeria & Anor (2013) LPELR 20391 (SC);*  
*Amobi Vs. Nzegwu (2014) 2 NWLR (pt. 1302) 510;*  
*Ardo Vs. Nyako (2014) 10 NWLR (Pt. 1416) 591;*  
*Calabar East Corporation Vs. Ikot (1999) 14 NWLR (pt. 638) 225;*  
*Charles Odedo Vs. Ejike Oguebejo and 4 Ors (2015) 13 NWLR (Pt. 1476) 229;*  
*Chief Ameke Chiscato Ikechukwu Vs. Hon. Tony Nwoye & Anor (2014) 4 NWLR (pt. 1397) 227;*  
*Clifford Osuji Vs. Nkemjika Ekeocha (2009) LPELR-2816 (SC);*  
*CPC Vs. Ombugodu (2013) 18 NWLR (Pt 1385) 66;*  
*Dalhatu Vs. Turaki (2003) 15 NWLR (Pt. 843) 310;*  
*Dr. Kemdi & Anor Vs. Hon. Bethel Amadi & Anor (2013) LPELR 20747 (SC);*  
*Emeka Vs. Okadigbo (2012) 18 NWLR (Pt. 1331) 55;*  
*Emenike Vs. P.D.P (2012) 12 NWLR (Pt 1315) 556;*  
*Fiicharles Organ & Ors V. NLNG Ltd & Anor (2013) LPELR-20942 (SC);*  
*Galadima Vs. Tambai (2000) 6 SC (Pt. 1) 196;*  
*Garba Vs. Mohammed (2016) 16 NWLR (Pt 1537) 114;*  
*Ibori Vs. Agabi (2004) 6 NWLR (Pt 868) 78;*  
*Ikweki Vs. Ebele (2005) 11 NWLR (pt. 936) 397;*  
*Jev Vs. Iyortyom (2014) 14 NWLR (Pt 1428) 575;*  
*Krans Thompson Org VS. NIPSS (2004) 17 NWLR (Pt 901) 44;*  
*Lado V. CPC (2011) 18 NWLR (Pt 1279) 689;*  
*Lokpobiri Vs. Ogola (2016) 3 NWLR (Pt 1499) 328;*  
*Madukolu Vs. Nkemdilim (1962) 2 SCNLR 341;*  
*Mobil Oil (Nig.) Plc Vs. IAL 36 Inc (2000) 4 SC (Pt 1) 85;*  
*Niger Niger Construction Ltd. Vs. Okugbeni (1987) 4 NWLR (pt. 76) 787;*  
*Nwaigwe Vs. Okere (2009) 13 NWLR (pt. 1105) 445;;*  
*Nsefik Vs. Muna (2014) 2 NWLR (pt. 1390) 15;*  
*Okocha Samuel Osi Vs. Accord Party & Ors (2016) LPELR-41388 (SC);*  
*Olu of Warri Vs. Kparegbayi (1994) 4 NWLR (Pt. 339) 414;*  
*Osagie II Vs. Offor (1998) 3 NWLR (Pt. 541) 205;*  
*P.D.P Vs. SYLVA (2012) 13 NWLR (Pt 1316) 85;*  
*Peter Obi Vs. INEC & Ors (2007) 7 SC 268;*  
*Raphael Ude Vs. State LPELR-40441 (SC);*

*The Minister of Housing and Local Government Vs. Lawbert (1969) 2 NWLR 447;*

*Ugwu Vs. P.D.P (2015) 1 NWLR (Pt. 1459) 478;*

*Ukachukwu Vs. P.D.P (2014) 17 NWLR (Pt. 1435) 134;*

*Usman Dan Fodio University Vs. Kraus Thompson Organisation Ltd. (2001) 15 NWLR (pt., 736) 305;*

*Vivian Clems Akpangbo-Okadigbo & Ors Vs. Egbe Theo Chidi & Ors (2) (2015) LPELR-24565 (SC); and*

*Yesuf & Anor Vs. Ojo & Ors. (1958) Vol. 1 NSCC 99.*

### **Nigerian statutes cited in this Judgment**

*Electoral Act, 2010 (as amended) Section 87 (4) (b) and (9).*

### **Representations**

**Clement Ezika**, with **Nicholas Asuzu** and **Gloria Ossai (Mrs)**, for the appellant.

**Chief Tagbo Ike** for the 1<sup>st</sup> respondent.

**Echezona Etiaba** with **Itery Yona (Esq.)**,

**Obinna Okonkwo (Esq.)**, for the 3<sup>rd</sup> respondent.

**Fidelis Iteshi** for the 4<sup>th</sup> respondent.

**Nnenna Onyama** for the 5<sup>th</sup> respondent.

**C.B. Anyigbo** for 6<sup>th</sup> respondent.

### **DATTIJO MUHAMMAD, JSC (Delivering the Lead Judgment):**

This is an appeal against the decision of the Court of Appeal, Enugu Division, hereinafter referred to as the lower court, in appeal No. CA/E/207/2015. The decision appealed against was delivered on 4<sup>th</sup> February 2016. A brief summary of the facts that brought about the appeal is hereinafter supplied.

The 1st respondent herein, Hon. Dr. Harry Oranezi, as plaintiff at the Federal High Court sitting at Awka, hereinafter referred to as the trial court, initiated suit No. FHC/AWK/CS/24/2015 against the appellant and five

- A** others as defendants seeking, on the basis of votes he avers in his writ to have scored in the 2<sup>nd</sup> respondent's primary election conducted on the 7<sup>th</sup> December, 2014., declaratory and injunctive reliefs to the effect that he is the party's candidate for the Nnewi North/South/Ekwusigo Federal House of
- B** Representatives Constituency in the Federal House of Representative election scheduled for 14<sup>th</sup> February 2015. He is entitled to the reliefs, he further asserts, by virtue of Section 87(4) (c) of the Electoral Act 2010 (as amended) as well as 2<sup>nd</sup> respondent's Electoral Guidelines for Primary Election 2014.
- C** In its ruling delivered on 19<sup>th</sup> March 2015, the trial court sustained the objections of the defendants to the competence of the suit, declined jurisdiction and struck out 1<sup>st</sup> respondent's suit.
- Aggrieved, the 1<sup>st</sup> respondent appealed to the lower court whereat, in
- D** upholding the appeal and setting aside the trial court's ruling, the suit was remitted to the trial court for same to be heard and determined by a judge other than M.L. Abubakar J.
- Dissatisfied with the lower court's judgment, the appellant has
- E** appealed to this court vide his notice containing six grounds filed on the 23<sup>rd</sup> February 2016.
- At the hearing of the appeal, parties adopted and relied on their
- F** earlier filed and exchanged briefs as arguments for and against the appeal. 1<sup>st</sup> respondent's preliminary objection filed on 28<sup>th</sup> February 2017 to the competence of the appeal, in keeping with the practice in this court, has been argued in his brief. Appellant's response to the objection is as contained in his reply brief duly filed on 21/3/2017.
- G** The objection shall be determined first in order to ensure that this court has the necessary jurisdiction to proceed to hear and determine the appeal on its merits. To do otherwise, by proceeding without necessarily determining whether or not it indeed has the jurisdiction to, is for the court
- H** to embark on a time wasting and fruitless venture. On the authorities, the court's eventual decision will be a nullity. *See Madukolu Vs. Nkemdilim (1962) 2 SCNLR 341, Usman Dan Fodio University Vs. Kraus Thompson Organisation Ltd (2001) 15 NWLR (pt., 736) 305 and Dr. Kemdi & Anor Vs. Hon. Bethel Amadi & Anor (2013) LPELR – 20747 (SC).*
- I** The 1<sup>st</sup> respondent challenges the competence of the 1<sup>st</sup> and 2<sup>nd</sup>

- A** grounds in the extant notice of appeal as well as the issues distilled from them. He argues that the two grounds which do not attack the ratio decidendi in the lower court's judgment and the issues purportedly formulated from them, being incompetent, should be discountenanced.
- B** Learned 1<sup>st</sup> respondent's counsel relies on **Calabar East Corporation Vs. Ikot (1999) 14 NWLR (pt. 638) 225, Ikweki Vs. Ebele (2005) 11 NWLR (pt. 936) 397, Nsefik Vs. Muna (2014) 2 NWLR (pt. 1390) 15 and Amobi Vs. Nzegwu (2014) 2 NWLR (pt. 1302) 510** and insists that the grounds and the issues be struck out.
- C** In response, learned appellant's counsel refers to pages 39 – 41 and 41 – 43 of the lower court's judgment at pages 293 – 294 and 295 – 297 of the record of appeal respectively and submits that the two grounds which
- D** attack the lower court's findings thereat, cannot be said to be incompetent. Issues distilled from the grounds of appeal against these findings, it is further submitted, are equally competent. Learned counsel urges that 1<sup>st</sup> respondent's misconceived objection be dismissed. I agree.
- E** An examination of the 1<sup>st</sup> and 2<sup>nd</sup> grounds in the notice of the instant appeal at pages 305-310 of the record of appeal against the background of the findings of the lower court at pages 293 – 297 of the record readily vindicates learned appellant counsel's submission that the two grounds are
- F** a direct attack on those findings. It is also instructive to note that other than the two grounds the 1<sup>st</sup> respondent contends are incompetent, the notice of appeal contains four more grounds all of which, in addition to the grounds in contention, attack the lower court's crucial finding that the trial court's
- G** ruling declining jurisdiction in respect of 1<sup>st</sup> respondent's suit is perverse. The appeal, in the light of all the valid grounds, including the contested 1<sup>st</sup> and 2<sup>nd</sup> grounds, learned appellant's counsel is right, being unarguably valid, cannot be discountenanced. 1<sup>st</sup> respondent's unsustainable objection is
- H** accordingly hereby dismissed. *See* **Alhaji Abiola Ekunola Vs. Central Bank of Nigeria & Anor (2013) LPELR 20391 (SC); Niger Niger Construction Ltd. Vs. Okugbeni (1987) 4 NWLR (pt. 76) 787; Nwaigwe Vs. Okere (2009) 13 NWLR (pt. 1105) 445 at 414 and Chief Ameke**
- I** **Chriscato Ikechukwu Vs. Hon. Tony Nwoye & Anor (2014) 4 NWLR (pt. 1397) 227 at 241.**

**A** Now to the appeal.  
The 3<sup>rd</sup> of the three issues the appellant distilled in his brief and on the basis of which the appeal shall be determined reads:

**B** *“3 Whether the Court of Appeal was right in holding that the 1<sup>st</sup> respondent's case can be founded within Section 87(4)(c) and 9 of the Electoral Act 2010 as amended (Grounds Three, Four, Five and Six of the grounds of appeal)”.* (Underlining supplied for emphasis).

**C**

The 1<sup>st</sup> respondent's 2<sup>nd</sup> similar issue to appellant's foregoing 3<sup>rd</sup> issue reads:

**D** *“(b) Whether the learned justices of the court below were right when they held that 1<sup>st</sup> respondent's case (the appellant's case) was founded within Section 87 (4) and (9) of the Electoral Act, 2010 (as amended)? (DISTILLED FROM GROUNDS FOUR & FIVE).”*

**E**

The other respondents have also formulated and argued similar issues for the determination of the appeal in their respective briefs.

**F** On the issue learned appellant's counsel submits that it is settled that once the dispute in a suit is as to which of the two primaries of a political party confers the right to the party's candidature in an election, the matter is taken outside the purview of Section 87 (4)(b) and (9) of the Electoral Act

**G** 2010 as amended. By paragraph 31 of his statement of claim, it is contended, the 1<sup>st</sup> respondent is asking the trial court to prefer one out of the three primaries of the 2<sup>nd</sup> respondent as the one that produced its flag bearer. The lower court, it is further contended, is wrong in its finding at page 295

**H** of the record of appeal that 1<sup>st</sup> respondent's complaint is cognizable under Section 87(9) of the Electoral Act. As held in a large body of decisions of the Supreme Court which necessarily bind the lower court, learned appellant's counsel submits, the 1<sup>st</sup> respondent having participated in one

**I** out of the three primaries is not entitled to the reliefs he claims. Relying inter-alia on **Lado V. CPC (2011) 18 NWLR (Pt 1279) 689 at 703, Emeka**

- A** **Vs. Okadigbo (2012) 18 NWLR (Pt. 1331) 55; Emenike Vs. P.D.P (2012)12 NWELR (Pt 1315) 556 at 562; P.D.P Vs. SYLVA (2012) 13 NWLR (Pt 1316) 85 and Charles Odedo Vs. Ejike Oguebejo and 4 Ors (2015) 13 NWLR (Pt. 1476) 229 at 237**, learned appellant's counsel urges
- B** that the issue be resolved in appellant's favour and the perverse decision of the lower court set aside.

- In arguing the issue, learned 1<sup>st</sup> respondent's counsel submits that the lower court's finding that the trial court has jurisdiction cannot be faulted.
- C** All the declaratory reliefs the 1<sup>st</sup> respondents seeks, it is submitted, fall squarely within the purview of Section 87 (4) (b) and (9) of the Electoral Act, 2010 (as amended). The lower court's decision particularly at page 295 of the record of appeal on these complaints relating to the wrongful
- D** substitution of 2<sup>nd</sup> respondent's candidate being in tandem with the Supreme Court's interpretation and application of Section 87 (9) of the Electoral Act, it is submitted, remains unassailable. Citing inter-alia the **Ardo Vs. Nyako (2014) 10 NWLR (Pt. 1416) 591; CPC Vs. Ombugodu (2013) 18 NWLR (Pt 1385) 66; Ukachukwu Vs. P.D.P (2014) 17 NWLR (Pt. 1435) 134; Jev Vs. Iyortyom (2014) 14 NWLR (Pt 1428) 575, Ugwu Vs. P.D.P (2015) 1 NWLR (Pt. 1459) 478 and Akpangbo Okadigbo Vs. Chidi (No 1) 2015 19 NWLR (Pt. 1466) 171**, learned counsel submits that since 1<sup>st</sup>
- F** respondent, by paragraphs 26-32 of his statement of claim, has asserted the fact of being an aspirant in the primary election of the 2<sup>nd</sup> respondent, the conduct of which involves a breach of the provisions of the Electoral Act and the party's Electoral Guidelines, the lower court's finding availing the
- G** 1<sup>st</sup> respondent access to court by virtue of Section 87(9) of the Electoral Act (as amended) should persist. He urges the resolution of the issue against the appellant and the dismissal of the appeal.

- Relying on virtually the same judicial authorities, learned counsel
- H** for the 5<sup>th</sup> and 6<sup>th</sup> respondents have proffered similar arguments as canvassed by the 1<sup>st</sup> respondent in their briefs. It serves no purpose to reproduce them.

- The 2<sup>nd</sup> respondent, though served, was neither in court, nor
- I** represented. It also did not file any brief of argument. It is further intriguing

**A** also, to say the least, that the 3<sup>rd</sup> respondent rather than defend the lower court's judgment and urge for the dismissal of the appeal, has proffered contrary argument in his brief. Having not cross appealed, such arguments do not avail the 3<sup>rd</sup> respondent and are accordingly discountenanced. *See*

**B** **Peter Obi Vs. INEC & Ors (2007) 7 SC 268 and Fiicharles Organ & Ors V. NLNG Ltd & Anor (2013) LPELR-20942 (SC).**

It is important to recall that at the hearing of the appeal the 4<sup>th</sup> respondent's brief was struck out same having been withdrawn without objection.

**C** Now, the very narrow issue in this appeal is indeed whether the lower court is right in finding that the trial court has jurisdiction over 1<sup>st</sup> respondent's action and ordering that it be heard and determined on the merit. In sustaining the preliminary objections of the 1<sup>st</sup> – 3<sup>rd</sup> defendants,

**D** the appellant and 3<sup>rd</sup> and 4<sup>th</sup> respondents herein, against 1<sup>st</sup> respondent claim, the trial court at pages 109 – 111 has held as follows:

**E** *“It is settled that court have (sic) consistently declined to entertain jurisdiction in inter party disputes concerning the candidate a political party chooses to sponsor for an election. The courts cannot therefore compel a political party to sponsor one candidate in preference for another candidate of a self-*

**F** *same party. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justifiable (sic) in a court of law.... From the facts available, three different*

**G** *primary elections were held by three different groups of the Peoples Democratic Party and each producing its candidate..... Based on the above, I entirely agreed with the learned counsel for the 1<sup>st</sup> 3<sup>rd</sup> defendants/applicants that this*

**H** *court lacks jurisdiction to entertain this suit and is accordingly.”*

In setting aside the trial court's foregoing finding, the lower court at pages 297 – 300 of the record of appeal adopted the criteria the apex court fashion in adjudging whether a person's claim comes within the purview of Section

**I** 87(4)(b)(9) of the Electoral Act 2010 (as amended) thus:

- A        **“2.    The complaint must be founded on the selection or nomination of a candidate for an election.**
- B        **3.    There must have been a primary for the selection or nomination of a candidate by political party.**
- C        **4.    The Claimant must be a member of the political party and must have or ought to have participated in the primary.**
- D        **5.    An aspirant who claims that any of the provisions of the Electoral Act and the guidelines of a political party has not been complied with or complains of rigging in the primary has right to approach the court for redress. Since the appellant herein averred that he participated in the primary conducted by 1<sup>st</sup> 3<sup>rd</sup> respondents and the Ken Emeakayi-led State Executive Committee, he has a right to approach the court to seek redress for his complaints of manipulation of the result of the primary and the court has the jurisdiction and the duty to decide which of the primaries is the valid and authentic one and who actually won the primary. See C.P.C. Vs. Ombugadu supra; Ugwu Vs. PDP (supra).”**
- E
- F

G    The court then concluded at page 300 as follows:

H        **“Since the appellant herein averred that he participated in the primary conducted by the 1<sup>st</sup> 3<sup>rd</sup> respondents and the Ken Emeakayi led State Executive Committee, he has right to approach the court to seek redress for his complaints of manipulation of the result of the primary and the court has the jurisdiction and the duty to decide which of the primaries is the valid and authentic and who actually won the primary. See C.P.C. Vs. Ombugadu (supra); Ugwu Vs. PDP supra.”**

I

- A** The foregoing finding of the lower court is unassailable. Learned appellant's counsel must be reminded that a court's finding on appeal is only set aside where same is found to be perverse. An appellate court, learned counsel is to further appreciate, adjudges a decision appealed against
- B** perverse if it neither draws from the evidence on record nor upon correct application of some principle. *See Adimora Vs. Ajugo (1988) 3 NWLR (Pt. 80) 1; Clifford Osuji Vs. Nkemjika Ekeocha (2009) LPELR-2816 (SC) and Raphael Ude Vs. State LPELR-40441 (SC)*. Since the lower
- C** court's judgment appealed against is devoid of these defects and is not further shown to have either taken into account matters it ought not to have taken or shut out obvious facts, I agree with learned counsel to the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents that the judgment should persist. In justifying this position,
- D** three trite principles of law need to be restated at this point.

- Firstly, jurisdiction of a court is generally provided by a statute and or the Constitution. Any challenge to a court's jurisdiction, therefore, is resolved within the purview of the legislation that donates the jurisdiction
- E** to the court. *See Okocha Samuel Osi Vs. Accord Party & Ors(2016) LPELR-41388 (SC) and Galadima Vs. Tambai (2000) 6 SC (Pt. 1) 196*.

- Secondly, whenever the jurisdiction of a court is challenged, in an action fought on pleadings, the objection is resolved by examining the
- F** plaintiff's claim alone within the context of the source of the court's jurisdiction. *See Ibori Vs. Agabi (2004) 6 NWLR (Pt 868) 78 and Vivian Clems Akpangbo-Okadigbo & Ors Vs. Egbe Theo Chidi & Ors(2) (2015) LPELR-24565 (SC)*.

- Thirdly, courts are bound by the earlier authoritative pronouncements of superior courts on same or similar issues they are subsequently asked to determine. *See Olu of Warri Vs. Kparegbayi (1994) 4 NWLR (Pt. 339) 414; Osagie II Vs. Offor(1998) 3 NWLR (Pt. 541) 205 and Dalhatu Vs. Turaki (2003) 15 NWLR (Pt. 843) 310 at 350*.
- H**

The reliefs the 1<sup>st</sup> respondent sought at the trial court read:

- I** “1 *DECLARATION that the plaintiff having polled the majority of votes at the... respondent's Primary election conducted on 7<sup>th</sup> December, 2014 for the*

**A** *emergence of its candidate for Nnewi North, South and Ekwusigo Federal constituency in the Federal House of Representative election scheduled for 14<sup>th</sup> February, 2015 is the candidate of the 1<sup>st</sup> defendant at the February 2015 election.*

**B**

**C** 2. *DECLARATION that the Plaintiff having pulled majority of votes at the said defendant primary election was entitled to have his names as the 1<sup>st</sup> defendant's candidate for Nnewi North/South/ Ekwusigo Federal House of Representatives Constituency in the Federal House of Representative election 2015 submitted by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to the 6<sup>th</sup> Defendants.*

**D**

**E** 3. *DECLARATION that the plaintiff having declared the winner of the said primary election under Section 87 (4) (c) of the Electoral Act 2010 (as amended), he cannot be substituted with the 4<sup>th</sup> defendant, albeit 5<sup>th</sup> defendant, both of who lost the primary election under the Electoral Guidelines for primary Election 2014 of Peoples Democratic Party and Electoral Act (supra).*

**F**

**G** 4. *PERPETUAL MANDATORY INJUNCTION compelling the 1<sup>st</sup> – 3<sup>rd</sup> and 6<sup>th</sup> defendants to recognize the Plaintiff as the candidate of the 1<sup>st</sup> defendant, and in that behalf accord him al perquisite as the 1<sup>st</sup> defendant's Candidate for the Federal House of Representatives election 2015 in respect of Nnewi North/South/Ekwusigo Federal House of Representatives Constituency.”*

**H**

**I** The reliefs are predicated on the facts averred to in particularly paragraphs 26 – 31 of the 1<sup>st</sup> respondent's statement of claim hereinunder reproduced for ease of reference:

“26 On the 7/12/14, 1<sup>st</sup> defendant, acting through the National

**A** *Assembly Electoral Commission, did conduct the primary election for Nnewi North/South/Ekwusigo Federal House of Representatives Constituency wherein plaintiff, along with 4<sup>th</sup> and 5<sup>th</sup> defendants stood for the primary election. At*  
**B** *the end of polls, plaintiff emerged victorious and was declared the winner by the returning officer having pulled 93 votes out of 123 accredited delegates as against*  
**C** *4<sup>th</sup> defendant's 12 votes and 5<sup>th</sup> defendant's 9 votes. The result of the said primary election shall be found upon at the trial.*

**D** *27. Notwithstanding the conduct of the said primary election, and Plaintiff's emergence thereof as the candidate of the 1<sup>st</sup> defendant, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants for self serving reasons substituted the name of the plaintiff with that of the 4<sup>th</sup> respondent contrary to the party's Electoral Guidelines and Electoral Act.*

**E** *28. The result of the said primary election was properly recorded on the official result sheet Form Code PD004/NA /2014, signed by the Returning Officer and publicly announced in compliance with the PDP Electoral Guideline Elections 2014. The copy of the result was given to contestants and security operatives present by the Returning officer. Copy of the result shall be found upon at the trial.*

**F**

**G** *29. As precipitated by the development in paragraph 27 above, Plaintiff quickly took steps to confront some of the members of the Party's National leadership in order to ascertain the reason for the manipulation of the outcome of the Primary election only to be informed by some national officer of the 1<sup>st</sup> defendant who acknowledged the fact that he won convincingly the primary election but that result had been manipulated to favour of the 4<sup>th</sup> defendant as the preferred choice of President Jonathan. In similar*  
**H** *fashion, names of other aspirants preferred by powerful*  
**I**

- A**                    *persons within the party made the list of candidates in Anambra State.*
- B**                    **30.**    *Widespread discontent and criticism greeted the list of candidates published by the 1<sup>st</sup> defendant for Anambra State. The dust thrown up by the hullabaloo was yet to wane, when a rebel group within the party effected a contraption and manipulation with the 6<sup>th</sup> defendants. In a strange twist of event, 6<sup>th</sup> defendant accepted the name of the 5<sup>th</sup> defendant as the candidate of the 1<sup>st</sup> defendant from a rebel group in the party known as Oguebego-led Anambra State Executive who held a primary parallel to that organized by the 1<sup>st</sup> – 3<sup>rd</sup> defendants.*
- C**
- D**
- E**                    **31.**    *The drama playing out in the submission and publication of list of candidates has thrown up three characterization of aspirants seeking to fly the 1<sup>st</sup> defendant's flag at the February, 2015 polls:*
- F**                    *a.        The first group, where the Plaintiff belongs, were those who contested and won primary election conducted by the 1<sup>st</sup> – 3<sup>rd</sup> defendants in tandem with Ken Emeakayi-led State Executive Committee.*
- G**                    *b.        The second group, where the 4<sup>th</sup> defendant belongs, were those who emerged from a supposed primary conducted by 1<sup>st</sup> – 3<sup>rd</sup> defendants in tandem with Rtd. General Aliyu Kama-led care-taker or South-East Zonal Committee Care-Taker.*
- H**                    *c.        The third group, where the 6<sup>th</sup> defendant belongs, were those emerged from a supposed primary conducted by a group known as Oguebego led State Executive Committee in exclusion of 1<sup>st</sup> – 3<sup>rd</sup> defendants.*
- I**                    **32**    *Plaintiff shall at the trial contend that the validity of primary election cannot be located by the 1<sup>st</sup> –*

**A** *3<sup>rd</sup> defendants organizing the primary election alone but in the organization synergy between the 1<sup>st</sup> 3<sup>rd</sup> defendants and the recognized elected State Executive Committee. Plaintiff is a product of the later.”*

**B** Now, a cumulative reading of the foregoing averments manifest the facts necessarily required for the invocation of the court's jurisdiction under Section 87(4) (b) and (9) of the Electoral Act 2010 (as amended), which  
**C** facts the trial court evidently discountenanced. The reliefs the 1<sup>st</sup> respondent claims are premised on the fact of his having participated in 2<sup>nd</sup> respondent's primary election of 7<sup>th</sup> December 2014 and emerged victorious. Contrary to 2<sup>nd</sup> respondent's Electoral Guidelines and the  
**D** Electoral Act, he further asserts, his name was substituted with that of the 4<sup>th</sup> defendant at the trial court. His suit, it is further asserted, is informed by this breach of the party's Electoral Guidelines and the Electoral Act obtaining relief for which breach Section 87(4) (b) and (9) of the Electoral Act (as  
**E** amended), provides access to court. The trial court fell into serious error when it isolated paragraph 31 of the statement of the claim in determining the objections to its assumption of jurisdiction over 1<sup>st</sup> respondent's suit.

It is settled that in construing pleadings, as it is with statues, the  
**F** averments should be considered as a whole to gather the collective import of the pleaded facts. The trial court's reading of paragraph 31 of the statement of claim in isolation, without relating the paragraph to the preceding paragraphs, not surprisingly, pushed the court into an avoidable  
**G** error. The preceding paragraphs are not only complementary to the paragraph the court singled out and relied on in determining the objections to its jurisdiction over the suit they also explain the meaning and scope of the subsequent paragraph. *See The Minister of Housing and Local  
**H** Government Vs. Lawbert (1969) 2 NWLR 447 and Mobil Oil (Nig.) Plc Vs. IAL 36 Inc (2000) 4 SC (Pt 1) 85, Yesuf & Anor Vs. Ojo & Ors.(1958) Vol. 1 NSCC 99 and Krans Thompson Org VS. NIPSS (2004) 17 NWLR (Pt901) 44.*

**I** Again, had the trial court availed itself of the myriad of decisions of this Court, which the lower court elaborately and painstakingly considered

A and applied, it would have avoided the needless error it succumbed to. Instead, the court focused its entire mind on the “three” primaries the 1<sup>st</sup> respondent mentions in paragraph 31 of his statement of claim completely oblivious of the fact, in the preceding paragraphs, that 1<sup>st</sup> respondent's real

B grief pertains his substitution by the 4<sup>th</sup> defendant as the 2<sup>nd</sup> respondent's flag bearer in the election to which the primary relates. It is this pervasion of the result of the 2<sup>nd</sup> respondent's primary election, occasioned by the breach of the party's Electoral Guidelines and the Electoral Act 2010 (as amended),

C that constitute the injury the 1<sup>st</sup> respondent's action seeks to contain given the access Section 87 (4)(b) and (9) of the Electoral Act 2010 (as amended) creates for the reliefs thereinunder.

D Granting without conceding that paragraph 31 of the statement of claim is an actual reference to three primaries, one must agree with learned 1<sup>st</sup> respondent's counsel that, unlike the trial court, the lower court in the discharge of its responsibility rightly insists that 1<sup>st</sup> respondent action is still justiciable. In **Ugwu Vs. P.D.P. (supra)** this Court per Akaahs JSC at page

E 478 of the law report has enthused as follows:

F *“I am of the considered view that the trial court will be abdicating its responsibility if it declares that the suit is not justiciable. It has a duty to say which of the two primaries is the authentic one. This is the reason while Section 87 (4) (i), 4(c), (i), (ii) and (9) has been put in place and to avoid arbitrariness by some officials of the political party who may want to impose their preferred candidates who probably did not take part in primaries because of the conflicting claims by the parties. It is only the court that could resolve the issue. This is the dimension which the decision in C.C Vs. Ombugadu supra introduced.”*

G

H One is unable, in the light of the facts of this matter and the applicable law, therefore, to agree with learned appellant counsel's submission that the trial court's manifestly perverse decision, properly adjudged so and set aside by the lower court, be restored.

I The 1<sup>st</sup> respondent having participated in the 2<sup>nd</sup> respondent's primary

A election is the aspirant the Electoral Act in Section 87(4) (b) and (9) provides a platform for to seek the reliefs he circumscribes in his claim. The section has already been interpreted and applied by this Court in a seemingly endless number of its decisions a great deal of which have been  
 B cited by both sides to the appeal. In **Garba Vs. Mohammed (2016) 16 NWLR (Pt 1537) 114** this court per Mohammed CJN (as he then was) at pages 164– 165 paragraphs H C of the law report held as follows:

C *“As for the additional jurisdiction conferred on the Federal High Court under Section 87(9) of the Electoral Act, 2010 (as amended) quoted above, it gives any aspirant member of a registered political party who participated in a primary election conducted by a political party to choose a candidate to contest an election under its platform, who is not satisfied with the outcome of the primary election contested with other members of the same political party, to approach the Federal High Court or High court of a State or FCT High Court for redress..... In other words, any dispute arising from the conduct of primary elections by political parties to nominate candidates to contest elections, may be brought to the Federal High Court under Section 87(9) of the Electoral Act, 2010 (as amended) by an aggrieved aspirant of any political party who participated in the primary election conducted by a political party for resolution by that court.”* (Underlining supplied for emphasis).

*See also Lokpobiri Vs. Ogola (2016) 3 NWLR (Pt 1499) 328.*

G The lone issue, for the foregoing, is determined against the appellant. The appeal is hereby dismissed and the judgment of the Court of Appeal in appeal No. CA/E/207/2015 delivered on 4<sup>th</sup> February 2016 affirmed. The costs of the appeal is assessed at Three hundred thousand naira  
 H (N300,000.00k) in favour of the 1<sup>st</sup> respondent against the appellant.

**Musa Dattijo Muhammad**  
*Justice, Supreme Court*

I **NKANU ONNOGHEN, CJN:** I have had the benefit of reading in draft the lead judgment of my learned brother M.D. Muhammad, JSC just

**A** delivered.

I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

**B** I order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal dismissed.

**Walter Samuel Nkanu Onnoghen**  
*Chief Justice Of Nigeria*

**C**

**I.T. MUHAMMAD, JSC:** I have read the lead judgment of my learned brother M.D. Muhammad, JSC. I am in agreement with him that the appeal is worthless and unmeritorious. The appeal is dismissed by me, too, I abide

**D** by all orders made in the lead judgment including one on costs.

**Ibrahim Tanko Muhammad**  
*Justice, Supreme Court*

**E RHODES-VIVOUR, JSC:** I read a draft copy of the leading judgment delivered by my learned brother M.D. Muhammad, JSC. I agree with his lordship that this appeal should be dismissed. I also dismiss it with costs of three hundred thousand naira (N300,000.00) in favour of the 1<sup>st</sup> respondent and against the appellant.

**F**

**Olabode Rhodes-vivour**  
*Justice, Supreme Court*

**G OLU ARIWOOLA, JSC:** My learned brother Dattijo Muhammad, JSC obliged me a draft of the lead judgment His Lordship just delivered and I am in agreement entirety with the reasoning and the conclusion of the said lead judgment. The appeal is unmeritorious. I too will dismiss the appeal.

**H** Appeal dismissed. I abide by the consequential orders in the lead judgment including order in costs.

**Olu Ariwoola**  
*Justice, Supreme Court*

**I**