IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON THURSDAY THE 26TH DAY OF OCTOBER 2023
BEFORE THEIR LORDSHIPS

JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
UWANI MUSA ABBA AJI	**JUSTICE, SUPREME COURT**
MOHAMMED LAWAL GARBA	**JUSTICE, SUPREME COURT**
IBRAHIM MOHAMMED MUSA SAULAWA	**JUSTICE, SUPREME COURT**
ADAMU JAURO	**JUSTICE, SUPREME COURT**
TIJJANI ABUBAKAR	**JUSTICE, SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE, SUPREME COURT**

SC/CV/937/2023

BETWEEN

1. Mr. Peter Gregory Obi
2. Labour Party (LP)

APPELLANTS

AND

1. Independent National Electoral Commission (INEC)
2. Senator Bola Ahmed Tinubu
3. Senator Shetima Kashim
4. All Progressives Congress (APC)

RESPONDENTS

JUDGMENT

(DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC)

I had a preview of the Judgment delivered by my learned brother, Lord Justice, **JOHN INYANG OKORO, JSC.** I completely agree with the reasoning, conclusions, decisions and orders therein. Let me however contribute my views on some of the issues.

Let me consider the issue of the Order of the United States District Court, Northern District of Illinois that the sum of 406,000 USD in the account of the 2nd respondent be forfeited to the State. It is not in dispute that this is a non-conviction based forfeiture. There is nothing to show that the forfeiture was a punishment for the 2nd respondent's conviction for any offence. There is no evidence of any conviction of any sort. It is a civil forfeiture made because the source of the money could not be explained. It is trite law that a civil forfeiture is a unique remedy that does not require conviction or even a criminal charge against the owner of the money. A civil forfeiture does not qualify as a fine or punishment for any unlawful activity so the argument that it qualifies as a fine for an offence involving dishonesty or fraud is not correct.

Let me also consider the question of whether S. 134(2) of the Constitution of the Federal Republic of Nigeria 1999(the 1999 Constitution) requires that a candidate

for an election to the office of President who has the highest number of votes cast at the election and not less than one-quarter of the votes cast at the election in each of at least two thirds of all the 36 states in the Federation must additionally have one-quarter of the votes cast in the election in the Federal Capital Territory, Abuja before he can be deemed to have been duly elected as President.

S.134(2) of the 1999 Constitution provides that –

"A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election

(a) he has the highest number of votes cast at the election, and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states in the Federation and the Federal Capital Territory, Abuja."

It is obvious that states of the Federation and the Federal Capital Territory, Abuja were lumped together

as a group by Subsection (2)(b) above. What differentiates the constituents of the group is their names and nothing more. One of them is called Federal Capital Territory and the rest called states of the Federation. Subsection(2) (b) clearly refers to two-thirds of all the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in Subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein as a group. The argument of Learned SAN that the provision by using the word "and" to conclude the listing of the areas to which it applies has created two groups to which it applies differently is, with due respects, a very imaginative and ingenious proposition that the wordings of that provision cannot by any stretch accommodate or reasonably bear. If S. 134(2) of the 1999 Constitution intended that the Federal Capital Territory, Abuja should be distinct from states of the Federation as a distinct group it would not have listed it together with states of the Federation in (b). Also, if S. 134(2) had intended having one-quarter of the votes cast in the Federal Capital Territory Abuja as a

separate requirement additional to the ones enumerated therein, it would have clearly stated so in a separate paragraph numbered (c). It is glaring that S.134(2) prescribed two requirements that must be cumulatively satisfied by a Presidential candidate in an election contested by not less than two candidates, before he or she can be deemed duly elected President. It prescribed the first requirement in (a) and the second one in (b). It did not impose a third requirement and so there is no (c) therein.

The Constitutional or statutory requirements to be satisfied for a candidate to be declared elected must be the ones expressly and clearly prescribed in the Constitution or statute as the case may be. A requirement that is not expressly and clearly prescribed cannot be assumed or implied to exist under any guise. Since S.134(2) or any other part of the 1999 Constitution did not expressly and distinctly prescribe that a Presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja as a third requirement additional to the two expressly prescribed, before he or she can be

deemed duly elected as President, it is not a requirement for election to that office.

The grouping of Federal Capital Territory, Abuja with states of the Federation in S.134(2) (b) of the 1999 Constitution so that the provision can apply to them equally is consistent with the tenor and principle of the 1999 Constitution treating the Federal Capital Territory, Abuja as a state of the Federation. This is clearly stated in S.299 of the 1999 Constitution thusly-

"The provisions of this Constitution shall apply to the Federal capital Territory, Abuja as if it were one of the States of the Federation; and accordingly –

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and

(c) the provisions of this Constitution pertaining to the aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section."

Even though words are most often prone to different meanings and even very simple words can be differently understood, the words of S.134(2) (b) cannot accommodate or support or bear what Learned SAN for the appellants proposed as its meaning. Such meaning would result in a situation where a Presidential candidate that has the highest votes cast in the election and not less than one-quarter of the votes cast in not less than two-thirds of 36 states of the Federation or in all the states of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the egalitarian principle of equality of persons, votes and the constituent territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional. I think that his said proposition is the result of reading those

provisions in isolated patches instead of reading them as a whole and in relation to other parts of the Constitution. Reading and interpreting the relevant provision as a whole and together with other parts of the Constitution as a whole is an interpretation that best reveals the legislative intention in the relevant provision. Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria) in his book Synopsis 2 stated thusly –

"Any document to be rightly understood must be read as whole. According to Lord Coke " It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers..... and this exposition is ex visceribus actus." (from the bowels of the statute). Reading it through helps also in gathering its object. An effort must be made to understand it as a harmonious whole."

Courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in the application of constitutional provisions and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the interpretation of statutes differ between statutes according to the subject matter of each

statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its sui generis nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its sui generis nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose. In interpreting the part of the Constitution providing for elections to public offices in a constitutionally established democratic culture, the court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of a democratic society.

For the above reasons and the more detailed ones brilliantly stated in the lead judgment, I dismiss this appeal.

EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT

Certified True Copy
Ahmad Muhammad Garba Esq
REGISTRAR
SUPREME COURT OF NIGERIA
6/12/2023

APPEARNACES:

Dr. Livy Uzochukwu, SAN, Awa Kalu, SAN, Alex Ejesieme, SAN, Peter Afuba, SAN, with Chike Obi Esq **for the Appellants.**

A.B. Mahmoud, SAN, Miannaya Essien, SAN, Sir Stephen Adehi SAN, with Musa A. Attah ESq and Chukwudi Enebeli Esq, **for the 1st Respondent.**

Chief Wole Olanipekun SAN, Yusuf Ali SAN, Emmanuel Ukala SAN, Prof Taiwo Osipitan SAN with Akintola Makinde **for 2nd and 3rd Respondents**.

Chief Akin Olujinmi SAN, Chief Charles Uwensuyi Edesomwan SAN, Chief Adeniyi Akintola SAN, Chief Afolabi Fashanu SAN, with Olumide Olujinmi Esq **for 4th Respondent.**

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REGISTRAR
SUPREME COURT OF NIGERIA
6/12/2023