

IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA  
ON THURSDAY, THE 26<sup>TH</sup> DAY OF OCTOBER, 2023  
BEFORE THEIR LORDSHIPS

JOHN INYANG OKORO  
UWANI MUSA ABBA AJI  
MOHAMMED LAWAL GARBA  
IBRAHIM MUSA MOHAMMED SAULAWA  
ADAMU JAURO  
TIJJANI ABUBAKAR  
EMMANUEL AKOMAYE AGIM

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

SC/CV/937/2023

BETWEEN:

1. MR. PETER GREGORY OBI
2. LABOUR PARTY

AND

Hon. Justice U. M. Abba Aji, JSC

..... APPELLANTS

*Original*  
Certified True Copy  
*Zaenal Muhammad Garba Esq*  
REGISTRAR  
SUPREME COURT OF NIGERIA  
6/12/2023

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
  2. SENATOR BOLA AHMED TINUBU
  3. SENATOR SHETTIMA KASHIM
  4. ALL PROGRESSIVES CONGRESS(APC)
- } RESPONDENTS

### JUDGMENT

(DELIVERED BY UWANI MUSA ABBA AJI, JSC)

I have read the draft judgment of my learned brother, **John, Inyang Okoro, JSC**, just delivered. His reasoning and conclusion are concurred to and I will just want to state my own side in this judgment.

The Independent National Electoral Commission (INEC), the 1<sup>st</sup> Respondent herein, conducted the presidential and National Assembly Elections in Nigeria on 25/2/2023. The 1<sup>st</sup> Appellant, who was sponsored by the 2<sup>nd</sup> Appellant as its Presidential candidate, as well as the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, who were sponsored by the 4<sup>th</sup> Respondent as

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its Presidential and Vice-Presidential candidates, contested the Presidential election, along with other candidates. At the end of the election, the 1<sup>st</sup> Respondent returned the 2<sup>nd</sup> Respondent as the duly elected President of the Federal Republic of Nigeria, with **8,794,726** votes. The 1<sup>st</sup> Appellant came third with **6,101,533** votes, behind Abubakar Atiku of the People's Democratic Party (PDP), who came second with 6,984,520 votes. Dissatisfied with the result of the election, the Appellants filed this Petition on the 20<sup>th</sup> of March, 2023, challenging the outcome of the election on the following three grounds, which are stated in paragraph 20 of the Petition:

- (i) The 2<sup>nd</sup> Respondent was, at the time of the election, not qualified to contest the election.

(ii) The election of the 2<sup>nd</sup> Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022.

(iii) The 2<sup>nd</sup> Respondent was not duly elected by majority of the lawful votes cast at the election.

Based on the above grounds, the Petitioners then sought for the reliefs stated in paragraph 102 of the Petition as follows:

1. First pray as follows:

(i) *That it be determined that at the time of the Presidential Election held on 25<sup>th</sup> February, 2023, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not qualified to contest the election.*

(ii) That it be determined that all the votes recorded for the 2<sup>nd</sup> Respondent in the election are wasted votes, owing to the non-qualification/ disqualification of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

(iii) That it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2<sup>nd</sup> Respondent) the 1<sup>st</sup> Petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each of at least 2/3 of the States of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25<sup>th</sup> February, 2023 Presidential election.

2. That it be determined that the 2<sup>nd</sup> Respondent having failed to score one-quarter of the votes cast at the Presidential election in the Federal Capital Territory,

*Abuja, was not entitled to be declared and returned as the winner of the Presidential election held on 25<sup>th</sup> February, 2023.*

*IN THE ALTERNATIVE TO 2 ABOVE:*

*3. An order cancelling the election and compelling the 1<sup>st</sup> Respondent to conduct a fresh election at which the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall not participate.*

*IN THE ALTERNATIVE TO 1, 2 AND 3 ABOVE:*

*4. (i) That it may be determined that the 2<sup>nd</sup> Respondent was not duly elected by a majority of the lawful votes cast in the election for the office of the President of the Federal Republic of Nigeria held on 25<sup>th</sup> February, 2023; and therefore, the declaration and return of the 2<sup>nd</sup> Respondent as the winner of the*

*Presidential election are unlawful, unconstitutional and of no effect whatsoever.*

*(ii) That it be determined that based on the valid votes cast at the Presidential election of 25<sup>th</sup> February, 2023, the 1<sup>st</sup> Petitioner scored 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 States of the Federation and the Federal Capital Territory, Abuja, and ought to be declared and returned as the winner of the Presidential election.*

*(iii) An order directing the 1<sup>st</sup> Respondent to issue Certificate of Return to the 1<sup>st</sup> Petitioner as the duly elected President of the Federal Republic of Nigeria.*

(iv) That it be determined that the Certificate of Return wrongly issued to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent is null and void and be set aside.

IN THE FURTHER ALTERNATIVE TO 1, 2, 3 AND 4 ABOVE:

5. (i) That the Presidential election conducted on 25<sup>th</sup> February, 2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act, 2022 and Constitution of the Federal Republic of Nigeria 1999, as amended.

(ii) An order cancelling the Presidential Election conducted on 25<sup>th</sup> February, 2023 and mandating the 1<sup>st</sup> Respondent to conduct a fresh election for the office of President of the Federal Republic of Nigeria.

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The Appellants in proving their petition called 13 witnesses and tendered over 19,000 documents from 30/5/2023 when the hearing commenced to 5/7/2023 when the Respondents closed their case. After adoption of final written addresses of parties, the lower court delivered its judgment on 6/9/2023, dismissing the Appellants petition. Miffed with the judgment, the Appellants appealed before this court vide Notice of Appeal. The parties filed their respective briefs of argument with the following issues:

**APPELLANTS' ISSUES FOR DETERMINATION:**

1. *Whether upon a community reading of the Appellants' Petition and the applicable law, the learned Justices of the Court of Appeal were right in striking out/expunging some paragraphs of the Petition and the documentary evidence tendered by the Appellants for being vague, generic, imprecise, nebulous and inadmissible. [Grounds 1,2,3,4,5, 16,17 and 50 of the Notice of Appeal].*
2. *Whether upon a careful consideration of the Appellants' petition, the Respondents' respective Replies to the Petition and the Appellants' Replies to the Replies of the out some paragraphs of the Appellants' Replies to the*

- Replies of the Respondents to the Petition [Grounds 6 and 20 of the Notice of Appeal].*
3. *Whether having regard to the relevant provisions of the Electoral Act, 2022 as well as the 1<sup>st</sup> Schedule thereto, the Federal High Court (Civil Procedure) Rules 2019, Evidence Act, 2011 and current judicial pronouncements on the point, the learned Justices of the Court of Appeal, were correct in sustaining the objections of the Respondents to the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 and consequently striking out the evidence of the aforesaid witnesses and all the documents tendered and admitted in evidence through them for failure of the Appellants to file the written statements on oath of the witnesses along with the Petition. [Grounds 10, 11, 12, 13, 14 and 15 of the Notice of Appeal].*
  4. *Whether having regard to the provisions of Sections 131(c), 137(1)(d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) [herein after 1999 Constitution], Sections 31 and 35 of the Electoral Act, 2022 and the evidence before the Court, the learned Justices of the Court of Appeal were right when they held that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were qualified to contest the Presidential Election of 25 February 2023. [Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the Notice of Appeal].*
  5. *Whether having regard to the evidence adduced by the parties, the Learned Justices of the Court of Appeal were right when they held that the Appellants were not able to establish that there was substantial non-compliance with the provisions of the Electoral Act 2022, which*

- substantially affected the overall result of the election. [Grounds 7,8, ,18,21,22,23,24,25,26,27,28,29,30 and 31 of the Notice of Appeal].
6. Whether having regard to the explicit provisions of Section 134(2) (b) of the 1999 Constitution and the evidence adduced at the trial, the learned Justices of the Court of Appeal were right in coming to the determination that the 2<sup>nd</sup> Respondent was duly elected as the President of the Federal Republic of Nigeria. [Grounds 45,46, 47, 48 and 49 of the Notice of Appeal].
7. Whether from the totality of the pleadings and evidence adduced, the court below was right when it dismissed the Appellants' case. [Ground 51 of the Notice of Appeal].

#### **1<sup>ST</sup> RESPONDENT'S ISSUES FOR DETERMINATION:**

- I. Whether having regard to the provision of paragraph 4(1)(d) and (7) of the First Schedule to the Electoral Act, 2022, and facts pleaded in the Petition, the Court below was not justified in striking out some offending paragraphs of the Appellants' petition and in rejecting some of the documents tendered by the Appellants? (Distilled from Grounds 1-5,16,17 and 50 of the Notice of Appeal).
- II. Whether in view of the provision of paragraph 16(1) of the First Schedule to the Electoral Act, 2022, and upon a careful consideration of the Appellants' Reply to the 1<sup>st</sup> Respondent's Reply to the petition, the decision of the Court below striking out paragraphs of the Appellants' Reply which constitute an introduction of new facts and a rehash of the

- contents of the petition can be faulted? (Distilled from Ground 6 and 20 of the Notice of Appeal).
- III. Whether the Court below in its decision that the witness statement on oath of Appellants' PW's 3, 4, 5, 6, 7,8, 9, 10, 11 and 13 which were all filed outside the 21 incompetent and in consequently expunging their testimonies and documents tendered through them from its records? (Distilled from Grounds 10 -15 of the Notice of Appeal).
- IV. Whether the Court below was right when it held that the Appellants failed to prove their nullification of the Presidential election held on the 25th of February 2023? (Distilled from Grounds 7,8,9,21,22,23,24-30 and 31 of the Notice of Appeal).
- V. Whether having regard to the provisions of sections 131 and 137 of the 1999 Constitution, the decision of the Honourable Court in the case of PDP v. INEC & Ors (2023) LPELR-60457 (SC), and the totality of the evidence adduced at trial, the Court below was not justified in its decision that the Appellants failed to establish that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not qualified to contest the election? (Distilled from Grounds 33,34,35,36,37,38,39,40,41,42,43 and 44 of the Notice of Appeal).
- VI. Whether upon a proper construction of the provision of section. 134(2)(b) of the 1999 Constitution, the Court below was not justified in its decision that in a Presidential election, polling one quarter (25%) of total votes cast in the Federal Capital Territory, Abuja is not a separate precondition for a candidate to be deemed as duly elected? (Distilled from

Grounds 45, 46,47,48 and 49 of the Notice of Appeal).

VII. Whether having regard to the pleadings and evidence led thereon, the decision of the Court below dismissing the Appellants' petition is justifiable and sustainable in law? (Distilled from Ground 51 of the Notice of Appeal).

**2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS' ISSUES FOR DETERMINATION:**

1. Having regard to the appellants' pleadings before the lower court, vis-a-vis the provisions of paragraphs 4(1)(d)(2) and 16(1)(a) of the First Schedule to the Electoral Act, 2022 and Order 13 Rule 4 of the Federal High Court(Civil Procedure)Rules,2019,coupled with consistent judicial authorities on the fundamental nature of pleadings, whether the lower court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the respondents' respective replies. Grounds 1, 2,3,4,5,6 and 20.
2. In view of the clear provisions of section 285(5) of the Constitution of the Federal Republic of Nigeria,1999 (as amended), section 132(7) of the Electoral Act,2022, paragraph 4(5) of the First Schedule to the Electoral Act, 2022 and the settled line of judicial authorities on the subject, whether the lower court did not rightly strike out and expunge the witness statements on oath and evidence of PW3,PW4,PW5,PW6, PW7,PW8,PW9,PW10,PW11 and PW13. Grounds 10, 11, 12,13 and 14.

3. Was the lower court right when it upheld the respondents' objection to the admissibility of the documents tendered by the appellants and struck out the said documents, while discountenancing appellants' objections to relevant and competent documents tendered by the respondents? Grounds 15,16,17,18,19 and 50.
4. In view of the clear provisions of sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 31 and 134 of the Electoral Act, 2022 along with binding judicial authorities on the subject, whether the lower court did not correctly hold that the 2nd respondent was qualified to contest election into the office of the President of the Federal Republic of Nigeria. Grounds 33,34,35,36,37,38,39,40,41,42,43 and 44.
5. Given the combined provisions of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); sections 47(2), 60 and 64 of the Electoral Act, 2022; paragraphs 38,48,50,51,53,54,55,91,92,93 of the Regulations and Guidelines for the Conduct of Election, 2022: the unappealed judgment of the Federal High Court in FHC/ABJ/CS/1454/2022-Labour Party v. INEC admitted by the lower court as Exhibit XI; the judgment of the Court of Appeal in Appeal No: CA/LAG/CV/332/2023-All Progressives Congress v. Labour Party & 42 Ors., and the preponderance of evidence before the lower court, whether the lower court came to a right decision in its interpretation and conclusion regarding the position of the law, vis-à-vis

- petitioners/appellants' complaints. Grounds 21,22,23,24,25,29,31 and 32.
6. Considering the clear provision of section 135 of the Electoral Act, pleadings and the reliefs sought by the court, whether the lower court was not right in dismissing the appellants' petition. Grounds 7,8,9,26, 27,28,30 and 51.
7. Upon a combined reading of the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 17(1), 134(2)(b), 299(1), thereof, section 66 of the Electoral Act, 2022 and other relevant statutes, whether the lower court was not right in coming to the conclusion that the 2nd respondent satisfied all constitutional and statutory requirements to be declared winner of the presidential election held on 25th February, 2023, and returned as President of the Federal Republic of Nigeria. Grounds 45,46, 47,48 and 49.

#### **4<sup>TH</sup> RESPONDENT'S ISSUES FOR DETERMINATION:**

1. Whether the Court of Appeal was not right in striking out the paragraphs of the petition filed in violation of paragraph 4(1)(d) of the 1<sup>st</sup> Schedule to the Electoral Act, 2022 together with the associated witness statements on oath and the documents in support thereof? Grounds 1,2,3, 4 and 5.
2. Whether the Court of Appeal was not right in striking out the Replies and/or paragraphs of the Replies of the petitioners/Appellants and the associated witness statements on oath as well as the documents in support thereof, filed in violation of paragraph 16(1) of the 1<sup>st</sup> schedule to the Electoral Act, 2022? Grounds 6 and 20.

3. Whether the Court of Appeal was not right to conclude that the Appellants/ petitioners did not prove allegations of non-compliance and how it substantially affected the outcome of the election, having taken into consideration the failure of the Appellants/petitioners to plead and lead qualitative evidence on:(i) particulars of the polling units complained of;(ii) Tender and demonstrate necessary documents;(iii) Call relevant and (iv) necessary witnesses to testifying support of the allegation(s); and the inadmissibility of Exhibit X2 (the Report of the European Union election Observation Mission in respect of the 2023 presidential election)?  
Grounds  
7,8,9,16,17,18,21,22,23,24,25,26,27,28,29,30,31,50 and 51.
4. Whether the Court of Appeal rightly discountenanced/struck out the Appellants/petitioners' witness statements on oath not filed alongside the petition within the 21 days' constitutional time frame allowed to file petition and also the documents associated with the incompetent witness statements on oaths as well as evidence of witnesses who were also interested in the petition? Grounds 10,11,12, 13,14 and 15.
5. Whether having regard to the state of the law and evidence adduced, the Court of Appeal rightly held that Appellants/petitioners did not prove the allegation of corrupt practices in the petition? Ground 32.
6. Whether having regard to the state of the law, the materials before the court and the subsisting decision of the Supreme Court in *PDP vs. INEC* (2023) 13 NWLR (PT.1900) 89, the Court of Appeal was not right in holding



- that 3rd Respondent was validly nominated to run for the Presidential election with the 2nd Respondent and the Appellants/petitioners lacked locus standi, to challenge the nomination of the 3rd Respondent? Grounds 33,34 and 35.
7. Whether the Court of Appeal having considered the law and the materials placed before it, rightly resolved and dismissed the complaint of the Appellants/petitioners that, 2nd Respondent was not qualified and/or disqualified from contesting the presidential election? Grounds 36, 37,38,39,40,41,42,43 and 44.
  8. Whether having regard to the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Court of Appeal rightly concluded that, 25% of votes cast in the Federal Capital Territory need not be met before a candidate can be declared winner of the presidential election and that petitioners did not prove that they won by a majority of lawful votes cast? Grounds 45,46,47, 48 and 49.

#### **PRELIMINARY OBJECTION:**

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a notice of preliminary objection on 7/10/2023, seeking for:

1. AN ORDER of this Honourable Court, striking out the Appellants' Appeal before this Honourable Court.

*FURTHER OR IN THE ALTERNATIVE TO RELIEF 1*

*(SUPRA)*

2. *AN ORDER of this Honourable Court striking out reliefs (b) and (c) sought in the Appellants' Notice of Appeal.*
3. *AN ORDER of this Honourable Court, striking out grounds 11 and 27 of the Appellants' Notice of Appeal for want of competence.*
4. *AN ORDER of this Honourable Court, striking out issues 3 and 5 of the Appellants' Brief of Argument filed on 2<sup>nd</sup> October, 2023.*

The grounds upon which this objection is brought are as follows:

- i. *Grounds 11 and 27 of the Notice of Appeal are not complaints against the ratio decidendi of the lower court.*

ii. Issues 3 and 5 distilled from grounds 11 and 27, which are incompetent grounds of appeal, are themselves incompetent and liable to be struck out.

iii. The entire appeal is academic in that:

a. Relief(b) of the Notice of Appeal which limits itself to the "the perverse judgment of the Court below" is ungrantable insofar as there is no direct and specific allegation of perverseness against the judgment of the lower court.

b. As far as the said relief (b) is concerned, this Honourable Court can only consider same upon a prima facie case of perverseness against the judgment of the lower court..

c. Relief(c) of the Notice of Appeal which prays this Honourable Court to grant the reliefs sought in the

*petition "either in the main or in the alternative" is imprecise, uncertain and liable to be struck out.*

*d. Further to (a)-(c) supra, the entire appeal is of no utilitarian value.*

*iv. It is in the interest of justice for this Honourable Court to grant the reliefs sought in this Notice of Preliminary Objection.*

The 7-paragraph affidavit was deposed to by Adoga Moses. The learned senior Counsel formulated this issue for the consideration of the objection:

**In view of the circumstances of the appellants' appeal before this Honourable Court and the settled position of the law on the subject, whether this Honourable Court will not grant the reliefs sought on the face of this Notice of Preliminary Objection.**

The learned silk to the Appellants opposed same with a 7-paragraph counter affidavit deposed to by Chukwuebuka David, filed on 11/10/2023. In their written address, this issue was distilled for determination:

**Whether on account of the complaints discernable on the face of ground 11 and 27 of the Notice of Appeal and the tenor of the claim in Reliefs (b) and (c) of the Notice of Appeal, this Notice of Preliminary Objection ought to be dismissed.**

The Objectors' issue shall be used in the determination of this objection:

It was submitted by the learned SAN to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that relief (b) as contained in the Appellants' Notice of Appeal, prayed the court to "set aside the perverse judgment of the Court of Appeal". That reliefs are very

sacrosanct to the assumption of jurisdiction by a court of law and it is the manner in which the appellants have presented their reliefs before this Honourable Court, that will determine what the court will make of the appeal or proceedings as reliance was made to **UZOUKWU V EZEONU II (1991) 6 NWLR (PT 200) 708 AT 784-85**. He therefore argued that this Honourable Court can only grant the reliefs sought by a party and will not do for the party what he has not asked for. He cited in support **OKUBULE V. OYAGBOLA (1990) 4 NWLR (PT. 147) 723 AT 744, IGE V. OLUNLOYO (1984) 1 SCNLR 162 AT 182**. Again, that relief (c) is "either in the main or in the alternative", which does not make it clear, specific and unambiguous as held in **A.C.B. PLC V. NWODIKA (1996) 4 NWLR (PT.443) 470 AT 486**. He concluded that the net effect of all of these is that the Appellants have not sought any cognizable relief before this

Honourable, thereby making the entire appeal academic and of no utilitarian value. **LAWSON V. OKORONKWO (2019)3 NWLR (PT. 1658) 66 AT 78** was relied on. He prayed that the Notice of Appeal be struck out.

On the incompetence of grounds 11 and 27 of the Appellants' Notice of Appeal, it was submitted that the said grounds of appeal have not appealed against the ratios decidendi of the lower court, but rather, are mere complaints against obiter dicta of the lower court; and appeals can only lie against a ratio decidendi and not an obiter dictum. He called for support **UZOUKWU V. IDIKA (2022)3 NWLR (PT.1818) 403 AT 468, PARAS. E -F**. He urged that issues 3 and 4 therefrom be struck out.

Contrarily, the learned SAN to the Appellants submitted that a Notice of Preliminary Objection is only competent in an appeal, where it goes to the root of the appeal, or

challenges all the grounds in a Notice of Appeal. In the instant case, the present objection challenges only two grounds of appeal out of fifty-one grounds. Furthermore, out of three Reliefs being claimed in the Notice of Appeal, the objection merely challenges two of the grounds. He urged this Honourable Court to strike out the Notice of Preliminary Objection on the grounds that it is incompetent. **DANGANA & ANOR V. USMAN & ORS (2012) LPELR-25012(SC) (PP 50-50 PARAS B-E)** was cited in support.

He argued that in **EMEKA VS. STATE (2014) 13 NWLR (PT. 1425) 614 AT 632C SC**, this Court defined "perverse" to literally mean unacceptable or unreasonable, implying that its decision is "unacceptable" to them or is "unreasonable" in their perception and understanding of it vis-à-vis the facts and the law! On relief (c) of the notice of appeal, learned SAN questioned, "did the Appellants not



claim main and alternative Reliefs in their Petition, and are courts of law not allowed to grant alternative Reliefs?" Relying on **NWOYE VS. FAAN (2019) 5 NWLR (PT 1665)193 SC**, he submitted that the Supreme Court can grant alternative Reliefs claimed.

He further submitted that ground 11 of the Notice of Appeal complains of an Error in Law and Lack of Jurisdiction to strike out the evidence of 10 out of the 13 witnesses called by the Appellants, while ground 27 of the Notice of Appeal complains against the misapprehension of the lower Court of the submissions of Appellants' Counsel. Further, that ground 27 challenged the interpretation of the lower Court of the Final Written Address settled by the Appellants' Counsel. He relied on **YOUTH PARTY VS. INEC (2023) 7 NWLR (PT. 1883) 249 AT 311H-312A SC; EMETUMA VS. NWAGWU (2022) 9 NWLR (PT. 1828) 71 AT**

96H SC; NIKAGBATE VS. OPUYE (2018) 9 NWLR (PT. 1623) 85 AT 109H SC. The Appellants' learned SAN asked for the dismissal of the preliminary objection with substantial costs.

#### **RESOLUTION OF PRELIMINARY OBJECTION:**

Glaring and obvious is that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' preliminary objection challenges only two grounds, grounds 11 and 27 of the Notice of Appeal filed by the Appellants, out of fifty-one grounds. Furthermore, out of three Reliefs being claimed in the Notice of Appeal, the objection merely challenges only reliefs (b) and (c). Only issues 3 and 5 are also sought to be struck out, out of the Appellants' seven issues. There is no objection that has asked for a complete and absolute thing to be done that will terminate this appeal. Hence, a preliminary objection is inappropriate, but a motion on notice.

A preliminary objection is only raised to the hearing of the appeal, and not to a few grounds of appeal. The purport of preliminary objection is the termination or truncation of the appeal in limine. A Preliminary Objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal when there are other grounds to sustaining the appeal; which purported Preliminary Objection is, therefore, not capable of truncating the hearing of the appeal. In such a situation, a preliminary objection is not the appropriate procedure to deploy against defective grounds of appeal when there are other grounds, not defective, which can sustain the hearing of the appeal. See Per EKO, JSC, in **AJUWON & ORS V. GOVERNOR OF OYO STATE & ORS (2021) LPELR-55339(SC) (PP. 4-5 PARAS. D).**

I will therefore restrain and recuse myself from entertaining the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' preliminary objection and consider the appeal on the merit.

**MAIN APPEAL:**

I shall first consider the Appellant's issue four.

**ISSUE FOUR:**

Whether having regard to the provisions of Sections 131(c), 137(1)(d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) [herein after 1999 Constitution], Sections 31 and 35 of the Electoral Act, 2022 and the evidence before the Court, the learned Justices of the Court of Appeal were right when they held that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were qualified to contest the Presidential Election of 25 February 2023. [Grounds

33,34,35,36,37,38,39,40,41,42,43 and 44 of the Notice of Appeal].

It was submitted by the learned SAN to the Appellants that one of the grounds upon which the Appellants challenged the qualification of the 2<sup>nd</sup> Respondent to contest the Presidential Election is that he was "fined the sum of \$460,000.00 (Four Hundred and Sixty Thousand United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division, in Case No:93C 4483"; and therefore, disqualified by Section 137(1)(d) of the 1999 Constitution (as amended), and the proceedings and decision/order of the US District Court in this connection was tendered and rightly admitted in evidence by the Court below as Exhibit PA5. However, that the lower court referring to **UMAR v. STATE (2018) LPELR-**

23190(SC) concluded that the Appellants failed to show evidence that the 2<sup>nd</sup> Respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence. He contended that the Court below refused to abide by the earlier dictum in JONATHAN v. FRN (supra) that a "civil forfeiture is a unique remedy which does not require conviction or even a criminal charge against the owner. Again, that the lower court was wrong to find that the orders made in Exhibit PA5 were not in personam against the 2<sup>nd</sup> Respondent. Furthermore, that the Court below was in error to place reliance on the evidence of RW2 and Exhibits RA8 and RA9 to water down the sting and potency of Exhibit PA5, as against the express pronouncements of the US District Court, which is a court of law. Similarly, that the Court below misdirected itself when it held that the Appellants'

case came under the provisions of section 137(1)(e) of the Constitution, which has placed a 10-year limitation on proof of conviction!

It was submitted on double-nomination of the 3<sup>rd</sup> Respondent that Court below was wrong to rely on **PDP v. INEC (2023) LPELR-60457** to hold that since the Appellants belong to a different political party, they have no locus standi to complain. He contended that the issue of qualification/disqualification can be competently instituted as a post-election matter by a political party/candidate that contested election with the political party/candidate in default, hence the Appellants have locus standi. He cited in support **DANGANA v. USMAN (2013) 6 NWLR (Pt 1349) 50 SC; FAYEMI v. ONI (2019) LPELR-49291 (SC) at 19-24D-A.**

Again, that by section 31 of the Electoral Act, 2022, the Appellants established that the 3<sup>rd</sup> Respondent did not withdraw his candidacy. Further, that by Exhibits PA2 and PA3, the 3<sup>rd</sup> Respondent was the nominated candidate for Borno Central Senatorial District for the 2023 general election. That by the said Exhibits, there was nothing to show that the nomination of the 3<sup>rd</sup> Respondent as Senatorial Candidate for Borno Central was withdrawn as required by law before he knowingly accepted his nomination as Vice Presidential Candidate. He urged that this issue be resolved in favour of the Appellants.

The 1<sup>st</sup> Respondent, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and 4<sup>th</sup> Respondents respectively submitted contrarily that the evidence of PW1 and PW12, and RW2 on the other hand, who gave evidence on the US proceedings did not dispute the fact that the 2<sup>nd</sup> Respondent was not at any time, charged



before any court, caused to make a plea, convicted or sentenced for any offence. Also, that a non-conviction based forfeiture does not translate to a conviction. He relied on **JONATHAN V. FEDERAL REPUBLIC OF NIGERIA (2019) 10 NWLR (PT.1681) 533**. Further, that Exhibit RA9 tendered before the lower court established that the 2<sup>nd</sup> Respondent maintains a clean record in the US archives.

On dual-nomination, it was maintained that this Honourable Court vide Exhibit X2 and RA23, being certified true copies of the Supreme Court unanimous judgment in SC/CV/501/2023- **PDP V. INEC & 3 ORS** delivered on 6/5/2023, had not only determined that the Petitioners in that case had no locus standi to question the nomination of the 3<sup>rd</sup> Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3<sup>rd</sup> Respondent. In the same vein, that the 3<sup>rd</sup>

Respondent who was ab initio, a senatorial candidate of the 4<sup>th</sup> Respondent for Borno Central Senatorial District, had earlier on 6<sup>th</sup> July, 2022, vide a letter delivered to the 4<sup>th</sup> Respondent on the same date (Exhibit RA22), notified the party of his withdrawal from the election as the latter's senatorial candidate for the 2023 general election. They asked this court to resolve this issue in favour of the Respondents.

#### **RESOLUTION OF ISSUE FOUR:**

The Appellants' challenge of the qualification of the 2<sup>nd</sup> Respondent to contest the Presidential Election is that he was "*fined the sum of \$460,000.00 (Four Hundred and Sixty Thousand United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division, in Case No:93C 4483*"; and therefore,

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disqualified by section 137(1)(d) of the 1999 Constitution (as amended). This seems to intersect with the provision of section 137(1)(d) of the 1999 Constitution (as amended) providing for *“sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority...”*

What matters always in this kind of situation is that there must be proof of such a sentence. A criminal conviction and sentence must be proved by the CTC of the judgment of court delivered or any admissible way of proving same and the said judgment must reflect all the ingredients of a valid judgment to bind the parties concerned. This is unfortunately where the Appellants could not proceed further or substantiate the sentence of fine against the 2<sup>nd</sup> Respondent.

At page 3228 (vol.5) of the record, PW1 and PW12, who gave evidence on the US proceedings did not dispute the fact that the 2<sup>nd</sup> Respondent was not at any time, charged before any court, caused to make a plea, convicted or sentenced for any offence. Similarly, at page 3464 (vol.5) of the record, RW2, a US attorney and an associate of the 2<sup>nd</sup> Respondent, testified that the 2<sup>nd</sup> Respondent was never convicted or fined for any criminal offence in the United States. In fact, PW1 confirmed that the proceedings in Exhibit PA5 series are civil proceedings, while equally admitting that he never mentioned anything about charge in the proceedings and that he never had one. By virtue of section 135 of the Evidence Act, it is beyond peradventure that the proof of this allegation ought to be beyond reasonable doubt. Section 249 of the Evidence Act clearly prescribes the manner of discharging this proof, by the provision of "certificate

purporting to be given under the hand of a police officer" from the US, "containing a copy of the sentence or order and the finger prints of the 2<sup>nd</sup> Respondent or photographs of the finger prints of the said 2<sup>nd</sup> Respondent, together with evidence that the finger prints of the person so convicted are those of the 2<sup>nd</sup> Respondent. See **PML (NIG.) LTD. V. F.R.N. (2018) 7 NWLR (PT. 1619) 448 AT 493.**

More so, Exhibit RA9 tendered before the lower court, is a document proceeding from the US authorities to the Nigerian authorities, upon a thorough combing of the Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC). Therein, it is established that the 2<sup>nd</sup> Respondent maintains a clean record in the US archives. The said Exhibit further stated that "the NCIC is a centralized information center that maintains the record of every criminal arrest and conviction within the United States

and its territories". RW2 corroborated this content in Exhibit RA9.

On the allegation of sentence of fine against the 2<sup>nd</sup> Respondent, this Honourable Court in **JONATHAN V. FEDERAL REPUBLIC OF NIGERIA (2019) 10 NWLR (PT.1681) 533**, held that "*there is no need to prove any crime in forfeiture of property under section 17 of the Advanced Fee Fraud & Other Related Offences Act, as civil forfeiture is a unique remedy which rests on the legal fiction that the property, not the owner is the target*". This of course was the basis of the lower court's finding that the orders made in Exhibit PA5 were not in personam against the 2<sup>nd</sup> Respondent. There is no prove or preponderance of evidence to allow this arm of the Appellants' issue.

On dual or double nomination, there is no need to go on any judicial expedition. This Honourable Court vide Exhibit


X2 and RA23, being certified true copies of the Supreme Court unanimous judgment judgment-**SC/CV/501/2023-PDP V. INEC & 3 ORS, DELIVERED ON 6/5/2023**, had not only determined that the Petitioners in that case had no locus standi to question the nomination of the 3<sup>rd</sup> Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3<sup>rd</sup> Respondent.

Evidently, Exhibit RA22 clearly shows that the 3<sup>rd</sup> Respondent who was a senatorial candidate of the 4<sup>th</sup> Respondent for Borno Central Senatorial District, had earlier on 6/7/2022, vide a letter delivered to the 4<sup>th</sup> Respondent on the same date, notified the party of his withdrawal from the election as the latter's senatorial candidate for the 2023 general election.

I have not seen any reason or perverseness to tamper with the lower court finding on this issue. The issue is therefore resolved against the Appellants.

Issues 1, 2, 3, 5, 6, and 7 in **SC/CV/935/2023**, which facts and decisions considered therein are in all fours with this appeal, shall abide this appeal.

On the whole, this appeal lacks merit and is hereby dismissed. Parties are to bear their respective costs.

  
**UWANI MUSA ABBA AJI**  
**JUSTICE, SUPREME COURT**

*Official*  
Certified True Copy  
*Zaynah Muhammad Garba Esq*  
REGISTRAR  
SUPREME COURT OF NIGERIA

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*6/12/2023*  
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**APPEARANCES:**

**Dr. Livy Uzochukwu, SAN** appears with Awa Kalu, SAN, Alex Ejiesime, SAN, Pater Ayuba, and Chike A. Obi, Esq. for the **APPELLANTS**.

**A. B. Mahmoud, SAN** appears with Miannaya Essien, SAN and Sir. Stephen Adehi, SAN, Musa A. Attah, Esq. and Chukwudi Enebeli, Esq. for the **1<sup>ST</sup> RESPONDENT**.

**Chief Wole Olanipekun, SAN** appears with Yusuf Ali, SAN, Emmanuel Ukala, SAN, Prof. Taiwo Olupitan, SAN and Akintola Makinde, Esq. for the **2<sup>ND</sup> & 3<sup>RD</sup> RESPONDENTS**.

**Chief Akin Olujinmi, SAN** appears with Chief Charles U. Edosomwan, SAN, Chief Adeniyi Akintola, SAN, Chief Afolabi Fashanu, SAN and Olumide Olujinmi, Esq. for the **4<sup>TH</sup> RESPONDENT**.

Certified True Copy  
*Zainab Muhammad Garba Esq*  
.....  
**REGISTRAR**  
**SUPREME COURT OF NIGERIA**  
*Zainab Muhammad Garba Esq*  
6/12/2023

Hon. Justice U. M. Abba Jc, JSC

SC/CV/937/2023