

1. ABUBAKAR SANI DANLADI
2. ALL PROGRESSIVES CONGRESS (APC)

V.

1. USMAN UDI
2. JOSHUA PAAKU
3. GEORGE GEOFFREY
4. TANKO MUSLIM MUNKAILA
5. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

SUPREME COURT OF NIGERIA

SC. 518/2019

IBRAHIM TANKO MUHAMMAD, Ag. C.J.N. (*Presided*)

MARY UKAEGO PETER-ODILI, J.S.C. (*Read the Leading Judgment*)

OLUKAYODE ARIWOOLA, J.S.C.

PAUL ADAMU GALUMJE, J.S.C.

UWANI MUSA ABBA AJI, J.S.C.

FRIDAY, 5TH JULY 2019

*ACTION- "Pre-election matter"- Meaning of - Section 285(14), 1999 Constitution.*

*ACTION - Case of party - Need for to be consistent in his case.*

*APPEAL - Court of Appeal - Where finds appeal Incompetent- Duty on to determine its merit  
- Rationale therefor.*

*APPEAL - Hearing of appeal - Appeal from decision of court in pre-election matter - Time  
within which to hear and determine -Section 285(12), 1999 Constitution.*

APPEAL - *Preliminary objection to an appeal - Where raised - Need to determine first.*

APPEAL - *Supreme Court Act-Section 22 thereof - When Supreme Court lacks jurisdiction to invoke - Where Court of Appeal lacks jurisdiction to hear and determine matter - Effect.*

CONSTITUTIONAL LAW – *“Pre-election matter” - Meaning of - Section 285(14), 1999 Constitution.*

COURT - *Supreme Court Act - Section 22 thereof - When Supreme Court lacks jurisdiction to invoke - Where Court of Appeal lacks jurisdiction to hear and determine matter - Effect.*

ELECTION - *Hearing of appeal - Appeal from decision of court in pre-election matter - Time within which to hear and determine -Section 285(12), 1999 Constitution.*

ELECTION –*“Pre-election matter” -Meaning of Section 285(14) 1999 Constitution.*

PRACTICE AND PROCEDURE - *Appeal Court of Appeal - Where finds appeal incompetent Duty on to determine its merit - Rationale therefor.*

PRACTICE AND PROCEDURE - *Appeal - Hearing of appeal - Appeal from decision of court in pre-election matter - Time within which to hear and determine - Section 285(12), 1999 Constitution.*

PRACTICE AND PROCEDURE - *Appeal - Preliminary objection to an appeal - Where raised -Need to determine first.*

PRACTICE AND PROCEDURE - *Case of party- Need for to be consistent in his case.*

PRACTICE AND PROCEDURE- *Supreme Court Act-Section 22 thereof-When Supreme Court lacks jurisdiction to invoke - Where Court of Appeal lacks jurisdiction to hear and determine matter – Effect*

STATUTE - *Supreme Court Act - Section 22 thereof - When Supreme Court Lacks Jurisdiction to invoke - Where Court of Appeal lacks jurisdiction to hear and determine matter - Effect.*

WORDS AND PHRASES – *“Pre-election matter” - Meaning of - Section 285 (14), 1999 Constitution.*

**Issue:**

Whether the appellant's appeal is competent.

**Facts:**

The 1<sup>st</sup> appellant was the governorship candidate of the 2<sup>nd</sup> appellant for the March 2019 governorship election held in Nigeria. However, before the election, the 1<sup>st</sup> – 4<sup>th</sup> respondents, by an originating summons filed at the Federal High Court, Jalingo, instituted an action against the appellants and the 5<sup>th</sup> respondent.

The case of the 1<sup>st</sup> – 4<sup>th</sup> respondents was that the 1<sup>st</sup> – 4<sup>th</sup> appellant was disqualified to contest as the governorship candidate of the 2<sup>nd</sup> appellant because he lied on oath regarding his date of birth; and that while his correct date of birth is 14 February 1968, he filled a wrong date in Form CF001 submitted to the 5<sup>th</sup> respondent.

The 1<sup>st</sup> appellant admitted that his correct date of birth is 14 February 1968, backed by a declaration of age, but stated that the wrong date complained about was not his own making and was erroneously filled by his aide. The aide deposed to a counter affidavit on behalf of the appellants.

The trial court, in its judgment delivered on 6 March 2019, granted all the reliefs sought by the 1<sup>st</sup> – 4<sup>th</sup> respondents and disqualified the 1<sup>st</sup> appellant from contesting the governorship election.

The appellants were aggrieved and appealed to the Court of Appeal by a notice of appeal filed on 6<sup>th</sup> March 2019. On their part, the 1<sup>st</sup> – 4<sup>th</sup> respondents filed a notice of preliminary objection to the competence of the appeal. The Court of Appeal in its judgment upheld the preliminary objection, struck out the appeal and did not consider the merits of the appeal.

Still aggrieved, the appellants appealed to the Supreme Court. The 1<sup>st</sup> – 4<sup>th</sup> respondents again raised a preliminary objection to the appeal on the ground that the appeal from a pre-election matter was incompetent having not been disposed of within the time constitutionally

prescribed by section 285 (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and that consequently, the Supreme Court could not invoke the provisions of section 22 of the Supreme Court Act to do what the Court of Appeal did not do.

**Held** (Dismissing the appeal):

*1. On Meaning of pre-election matter*

**By virtue of section 285(14) of the 1999 Constitution (as amended), “pre-election matter” means any suit by**

- (a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries at political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selections or nominations of candidates for an election;**
- (b) an aspirant challenging the election decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election; and**
- (c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election.**

**In the instant case, by the definition in section 285(14) of the Constitution, the appeal was on a pre-election matter. (Pp. 198-199, paras. H-G)**

2. *On Time within which to hear and determine appeal from decision of court in pre-election matter –*

**By virtue of section 285(12) of the 1999 Constitution (as amended), an appeal from a decision of a court in a pre-election matter shall be heard and disposed of within sixty days from the date of filing and of the appeal. In the instant case, the Court of Appeal's jurisdiction had been ousted by the expiration of the sixty days allowed by section 285(12) of the 1999 Constitution (as amended) from the filing of the appeal to its determination. The matter was a pre-election matter as defined and provided for by section 285(14) of the Constitution. The appellant filed his notice of appeal at the Court of Appeal on 6<sup>th</sup> March 2019 and having not been disposed of within sixty days, the appeal was rendered incompetent having been limited by section 285(14) of the Constitution. (Pp. 199, paras. G-H, 204, paras. D-F)**

3. *On When Supreme Court lacks jurisdiction to invoke section 22 of Supreme Court Act –*

**The lack of jurisdiction on the part of the Court of Appeal robs the Supreme Court of the jurisdiction to invoke section 22 of the Supreme Court Act. The Supreme Court can only exercise its powers under section 22 by exercising the jurisdiction of the lower court where it has the jurisdiction to act, not where that court has ceased to have jurisdiction over the matter. The jurisdiction of the Supreme Court under section 22 of the Supreme Court Act depends completely on the Court of Appeal having jurisdiction to deal with the matter in issue and pending before it. Where the time constitutionally prescribed for the hearing and determination of an appeal before the Court of Appeal has elapsed, the Supreme Court has no jurisdiction to order for retrial before the Court of Appeal nor can it invoke the provision of section 22 of the Supreme Court Act to exercise the powers of the Court of Appeal and pronounce on issues not decided by the Court of Appeal which are spent and foreclosed. (*Shettima v. Goni* (2011) 18 NWLR (Pt. 1279) 413; *Ikenya v. P.D.P.* (2012) 12 NWLR (Pt. 1315) 493 referred to] (Pp. 200-201, paras. G-B; 202, paras. D-E)**

4. *On Need for party to be consistent in his case -*

**A party should be consistent in stating his case and consistent in proving it or defending it as the case may be. He will not be permitted to dance any way he**

chooses such as take a stand at the trial, take a new turn at the Court of Appeal and when he gets to the Supreme Court rely on the stance at the trial court thus creating confusion as to which way to go, resulting in the game of hide and seek. This will not be encouraged. [*Ajide v Kelani* (1985) 3 NWLR (PL. 12) 248; *Adamu v. State* (1991) 4 NWLR (Pt. 187) 530; *Osuji v. Ekeocha* (2009) 16 NWLR (Pt. 1166) 81; *FG.N. v. Zebra Energy Ltd.* (2002) 18 NWLR (Pt. 798) 162; *Dabo v. Abdullahi* (2005) 7 NWLR (PL. 923) 181 referred to.] (P. 203, paras. A-C)

5. *On Duty on Court of Appeal to determine merit of appeal where finds it incompetent – Per PETER-ODILI, J.S.C. at page 200, paras. D-F:*

“From the angle in which the court below dealt with the appeal albeit restricting itself only to the preliminary objection on the competence of the appeal which that appellate court held did not exist and therefore struck out without attending to the merits of the appeal that came from the trial Federal High Court, clearly a dereliction of duty being an intermediate court since the finality of the matter is the exclusive preserve of the apex court in this instance. What I am saying in other words is that indeed the court below would pronounce on the incompetence of the appeal but must go further to give room for the Supreme Court to manoeuvre if it did not agree on the incompetence and so would go into the merits and give the final decision. The court below ought not to have just ruled on the jurisdiction and dispatch the merits as academic without delving into it.”

6. *On Need to determine preliminary objection to an appeal first where raised –*

Where there is a preliminary objection to an appeal, the preliminary objection must be determined first before anything else as the competence of the appeal and the possible jurisdiction of the court are dependent on it. (P. 198, paras. B-C)

#### **Nigerian Cases Referred to in the Judgment:**

*Adamu v. State* (1991) 4 NWLR (Pt. 187) 530

*Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248

*Dabo v. Abdullahi* (2005) 7 NWLR (Pt. 923) 181

*F.G.N.v. Zebra Energy Ltd.* (2002) 18 NWLR (Pt. 798) 162

*Ikenya v. P.D.P.* (2012) 12 NWLR (Pt. 1315) 493

Osuji v. Ekeocha (2009) 16 NWLR (Pt. 1166) 81

Shettima v. Goni (2011) 18 NWLR (Pt. 1279) 413

**Nigerian Statutes Referred to in the Judgment:**

Constitution of the Federal Republic of Nigeria, 1999, (as amended by the Fourth Act, No.8, (2017), S. 285(9) (12) (14)

Supreme Court Act, S. 22 192

**Nigerian Rules of Court Referred to in the Judgment:**

Court of Appeal Rules, 2016, O. 8 rr. 2 & 3; O. 10 r. 1

**Appeal:**

This was an appeal against the decision of the Court of Appeal striking out the appeal against the judgment of the Federal High Court which granted the 1<sup>st</sup> – 4<sup>th</sup> respondents' claims. The Supreme Court dismissed the appeal.

**History of the Case:**

**Supreme Court:**

Names of Justices that sat on the appeal: Ibrahim Tanko Muhammad, Ag. CJ.N. (Presided); Mary Ukacgo Peter – Odili, J.S.C. (Read the Leading Judgment); Olukayode Ariwoola, J.S.C.; Paul Adamu Galumje, J.S.C.; Uwani Musa Abba Aji, J.S.C.

Appeal No.: SC. 518/2019

Date of Judgment: Friday, 5<sup>th</sup> July 2019

Names of Counsel: Yusuf Ali, SAN; K. K. Eleja, SAN (with them, Yakubu Maikasuwa, Esq.; Patricia Ikpegbu,

Esq. and A. O. Oyediran, Esq.)- for the Appellants

Ahmed Raji, SAN (with him, E. U. Eriinure, Esq.; Adeola

Adedipe, Esq. and Mubarak Imam, Esq.)- for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents

5<sup>th</sup> Respondent absent and not represented

**Court of Appeal:**

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Yola

Names of Justices that sat on the appeal: Chidi Nwaoma Uwa, J.C.A. (Presided and Read the Leading Judgment); James Shehu Abiriyi, J.C.A.;

Abdullahi Mahmud Bayero, J.C.A.

Appeal No: CA/YL/41/19

Date of Judgment: Friday, 3 May 2019

Names of Counsel: Yakubu Maikasuwa, Esq.- for the Appellants

E. U. Erhinuro, Esq.-for the 1<sup>st</sup> – 4<sup>th</sup> Respondents

5<sup>th</sup> Respondents not represented by Counsel

**High Court**

Name of the High Court: Federal High Court, Jalingo

Name of the Judge: Pam, J.

Suit No. FHC/JAL/CS/2019

Date of Judgment: Wednesday, 6 March 2019

**Counsel:**

Yusuf Ali, SAN; K. K. Eleja, SAN (with them. Yakubu Maikasuwa, Esq.; Patricia Ikpegbu, Esq. and A. O. Oyediran, Esq.)-for the Appellants Ahmed Raji, SAN (with him, E. U. Eriinure, Esq.; Adeola Adedipe, Esq. and Mubarak Imam, Esq.)- for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents

5<sup>th</sup> Respondent absent and not represented

**PETER-ODILI, J.S.C. (Delivering the Leading Judgment):**

This is an appeal against the decision of the Court of Appeal, Yola Division or lower court or court below, Coram: C. N. Uwa, J. S. Abiriyi and A. M. Bayero, JJCA, a judgment delivered on the 3<sup>rd</sup> May 2019 in which the court below upheld the preliminary objection of the 1<sup>st</sup> – 4<sup>th</sup> respondents to the competence of the appeal.

The background facts are better captured by the questions raised on the originating summons filed at the Federal High Court, Jalingo, Coram S. D. Pam, J. which are as follows:

1. Whether regard being had to the provisions of section 31 (5) of the Electoral Act, 2010 (as amended) the information given by the 1<sup>st</sup> defendant as to his age in the



affidavit in support of his personal particulars in the INEC Form CF001 submitted to the 3<sup>rd</sup> defendant by him is false when the 1<sup>st</sup> defendant stated in the affidavit supporting his personal particulars that he was born. on 14<sup>th</sup> January 1968, when the 1<sup>st</sup> defendant's date of birth contained in the West African Senior Certificate submitted by him to the 3<sup>rd</sup> defendant indicates that the 1<sup>st</sup> defendant was born on 3<sup>rd</sup> April, 1977

2. Whether regard being had to the provisions of section 31(6) of the Electoral Act, 2010 (as amended) the 1<sup>st</sup> defendant is not liable to be disqualified by this honourable court from contesting election as the candidate of the 2<sup>nd</sup> defendant in the Governorship Election for Taraba State slated for March 2019, when the information contained in the affidavit in support of the 1<sup>st</sup> defendant's particulars in the INEC Form C CF001 submitted to the 3<sup>rd</sup> defendant as to his age is false?

The seven relief on the said originating summons and these are contained on pages 2 - 3 of the record. The said relief are also reproduced as follows:

1. A declaration of this honourable court that the 1<sup>st</sup> defendant's information contained in the affidavit supporting his personal particulars that he was born on 14<sup>th</sup> February 1968 is in conflict with the 1<sup>st</sup> defendant's date of birth contained in the West African Senior Certificate submitted by him to the 3<sup>rd</sup> defendant which indicates that the 1<sup>st</sup> defendant was born on 3<sup>rd</sup> April, 1977.
2. A declaration of this honourable court disqualifying the 1<sup>st</sup> defendant from contesting election as the candidate of the 2<sup>nd</sup> defendant in the Governorship Election for Taraba State slated for March, 2019 on the ground that the information contained in the affidavit in support of the 1<sup>st</sup> defendant's personal particulars in the INEC Form CF001 submitted to the 3<sup>rd</sup> defendant by him is false.
3. An order of this honourable court disqualifying the 1<sup>st</sup> defendant from contesting election as the candidate of the 2<sup>nd</sup> defendant in the Governorship Election for Taraba State slated for March 2019 on the ground that the information contained in the affidavit in support of the 1<sup>st</sup> defendant's personal particulars in the INEC Form CF001 submitted to the 3<sup>rd</sup> defendant as to his age is false.
4. An order of this honourable court restraining the 3<sup>rd</sup> defendant from recognizing, accepting or treating the 1<sup>st</sup> defendant as the candidate of the 2<sup>nd</sup> defendant in the Governorship Election for Taraba State slated for March, 2019.

5. An order of this honourable court restraining the 2<sup>nd</sup> defendant from recognizing, holding out or treating the 1<sup>st</sup> defendant as its candidate in the Governorship Election for Taraba State slated for March 2019.
6. An order of this honourable court prohibiting the 1<sup>st</sup> defendant from parading himself as the candidate of the 2<sup>nd</sup> defendant in the Governorship Election for Taraba State slated for March 2019.
7. And such further order(s) as this honourable court may deem fit to make in the circumstance of this case. 7.

The crux of the case of the 1<sup>st</sup> - 4<sup>th</sup> respondents as plaintiffs is that the 1<sup>st</sup> appellant as 1<sup>st</sup> defendant was disqualified to contest as the governorship candidate of the 2<sup>nd</sup> appellant because he lied on oath regarding his date of birth.

The case of the 1<sup>st</sup> respondent on the other hand is that his correct date of birth is 14<sup>th</sup> February 1968 which is backed by the Declaration of Age exhibit UJGT 12 on page 27 of the record and the date on exhibit UGJD 10 was not his own making but erroneously filed by one Stephen Maisamani who personally deposed to the counter-affidavit filed by the 1<sup>st</sup> and 2<sup>nd</sup> appellants before the trial court as may be seen on pages 67-70 of the record. The 1<sup>st</sup> and 2<sup>nd</sup> appellants stated that the issue of his age had been decided in previous cases up to the Court of Appeal as final court on 11<sup>th</sup> December 2008.

The trial court heard arguments on the preliminary objection and substantive case together and came to the decisions thus:

*Decision of the trial court:*

The trial court held on the preliminary objection of the appellants as follows:

1. That the suit of the 1<sup>st</sup> – 4<sup>th</sup> respondents was not caught by the provisions of section 285 (9) of the Constitution as altered because the case did not qualify as a pro-election matter, it was therefore filed within time as required by law.
2. On issue estoppel raised by the appellants A against the case of the 1<sup>st</sup> – 4<sup>th</sup> respondents, it was the view of the trial court that the case was not affected by issue estoppel and that line of argument by the appellants was rejected. See page 1052 of the record.
3. That on the substantive case, the relevant consideration is the presentation of the date of birth of the 1<sup>st</sup> appellant on Form CF001 and the WAEC Certificate presented by the 1<sup>st</sup> appellant to INEC bearing a different date of birth which contravene section 312(5) and (6) of the Electoral Act. See page 1106 of the record.

4. That issues submitted for the court's resolution by the 1<sup>st</sup> – 4<sup>th</sup> respondents must be resolved in their favour. See page 1107 of the record.

The trial court granted all the reliefs sought by the 1<sup>st</sup> - 4<sup>th</sup> respondents.

The appellants aggrieved approached the court below. The 1<sup>st</sup> – 4<sup>th</sup> respondent filed a notice of preliminary objection on the appellants on the ground that the appeal was incompetent which objection, the court below upheld, striking out the appeal and did not go into the merits of the appeal, thus the grouse of the appellants for which they have come before this court.

On the 1<sup>st</sup> day of July, 2019 date of hearing, learned Senior Advocate for the appellant Yusuf Ali adopted the appellants brief of argument filed on 21/5/19 in which were distilled four issues.

1. Whether the court below was not wrong by its failure after upholding the preliminary objection of the 1<sup>st</sup> – 4<sup>th</sup> respondents, to consider the merit of the appeal when the parties has exchanged their briefs and the issues crystallized in spite of the binding of the Supreme Court that enjoin an intermediate appellate court to always consider cases on their merits even if the preliminary objection was found meritorious like in this case? (Ground 1)
2. Whether the court below did not truncate the right of the appellants to a fair hearing when it failed to properly interpret and uphold the mandatory provisions of Order 10 rule 1 of the Court of Appeal Rules, 2016 which enjoins a party relying on a preliminary objection to give three days' notice to the adversary? (Grounds 2 and 3)
3. Whether the Court of Appeal was right in damnifying the appellants for the acts of the Registry of the trial court that has the duty to notify, compile and transmit record of proceedings under the provisions of Order & rules 2 and 3 of the Court of Appeal Rules, 2016 and thereby imposing the duty of the Registry of the trial court on the appellants? (Grounds land 6)
4. Whether having regard to the facts and circumstances of this matter, the court below was right in holding that the notice of appeal and record of proceedings were not served on the respondents inspite of the fact that there was no verifiable evidence to support this and the respondents having been served with interlocutory applications to which the notice of appeal was attached could claim ignorance of the existence of the appeal? (Grounds 5 and 7)”

Yusuf Ali SAN also adopted appellants' reply brief filed on 28/6/19.

Learned counsel for the 1<sup>st</sup> – 4<sup>th</sup> respondents, Ahmed Raji SAN adopted their brief of argument filed on 27/6/19 in which was argued the preliminary objection and reply on points of law of 1/7/19 in respect of the objection.

In the brief were crafted three issues for determination which are as follows:

1. Whether the learned Justices of the Court of Appeal were right when they held that failure to serve the 1<sup>st</sup> – 4<sup>th</sup> respondents with notice of appeal from the Federal High Court to the Court of Appeal before the appellants unilaterally compiled record of appeal from the Federal High Court and transmitted it to the Court of Appeal deprived the Court of Appeal of jurisdiction. (Distilled from grounds 3, 5, 6 and 7 of the appellants' grounds of appeal)
2. Whether regard being had to the entire circumstance of the appeal before the Court of Appeal, the failure by the Court of Appeal to consider other issues raised in the appeal after resolving the issue of jurisdiction against the appellant occasioned a miscarriage of justice. (Distilled from ground 1 of the appellant's grounds of appeal)
3. Whether regard being had to the totality of the record of appeal, the learned Justices of the Court of Appeal afforded the appellants the opportunity to offer their defence to the 1<sup>st</sup> – 4<sup>th</sup> respondent's preliminary objection before the Court of Appeal. (Distilled from grounds 2 and 4 of the appellant's grounds of appeal).

It needs no saying that the preliminary objection would be first tackled before anything else as the competence of the appeal and the possible jurisdiction of the court are dependent on it.

*Preliminary Objection:*

The 1<sup>st</sup> – 4<sup>th</sup> respondents/objectors contended that even from the position of the appellants that the appeal is a pre-election matter and so within the ambit of section 285 (12) of the Constitution of the Federal Republic of Nigeria, 1999, as amended by the Fourth Alteration Act No.8 of 2017). That by the computation of time the appellants' notice of appeal to the court below from the decision of the Federal High Court was filed at the registry of the Federal High Court on 6<sup>th</sup> March 2019 and the matter having not been heard and disposed of by the 4<sup>th</sup> May 2019 and so the appeal at the court below being filed outside of the 60 days rendered the appeal incompetent. That being so this court cannot invoke the provisions of section 22 of the Supreme Court Act to do that which the Court below did not do.

Responding, Yusuf Ali, SAN stated that the mere nomenclature of “pre-election” by any party does not automatically transmute a matter to a “pre-election” so as to situate it within the confines of Section 285 CFRN. That this matter is not pre-election haven been filed before

the election of March 9, 2019 challenging the candidature of the 1<sup>st</sup> appellant and none of the respondents as aspirants to bring the matter into the confines of section 285 (12) CFRN.

I need to state that several judicial authorities were called in aid of the position taken on either side of the divide. On the matter of the discourse under review being pre-election, I shall refer to section 285 (14) CFRN for the definition thus:

“For the purpose of this section “pre-election matter” means any suit by

- (a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries at political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selections or nominations of candidates for an election.
- (b) an aspirant challenging the election decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election; and
- (c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election”.

From the definition above quoted, clearly this is an appeal on a pre-election and section 285(12) CFRN provides as follows:

“An appeal from a decision of a court in a pre-election matter shall be heard and disposed of within 60 days from the date of filing and of the appeal.”

Excerpts of the Court of Appeal judgment as seen at pages 1233-1234 of the record are thus: -

It is on record that the appellants had argued that the matter is a pre-election matter bound by the constitutional provision of section 285 (9) of the Constitution of the Federal Republic of Nigeria (as amended) even though not conceded by the 1<sup>st</sup> – 4<sup>th</sup> respondents, learned counsel) limiting the date of filing an appeal to 14<sup>th</sup> days from the date of the judgment being appeal

against. The judgment of the lower court was delivered on 6 March 2019. As rightly argued by the learned counsel to the 1<sup>st</sup> – 4<sup>th</sup> respondents a cross-appeal would also be subject to the same limitation period. By the 20<sup>th</sup> March 2019 when the 1<sup>st</sup> – 4<sup>th</sup> respondents were served with compiled record of appeal the time for the 1<sup>st</sup> – 4<sup>th</sup> respondents to file a cross-appeal if desire had elapsed.”

From the angle in which the court below dealt with the appeal albeit restricting itself only to the preliminary objection on the competence of the appeal which that appellate court held did not exist and therefore struck out without attending to the merits of the appeal that came from the trial Federal High Court, clearly a dereliction of duty being an intermediate court since the finality of the matter is the exclusive preserve of the apex court in this instance. What I am saying in other words is that indeed the court below would pronounce on the incompetence of the appeal but must go further to give room for the Supreme Court to manoeuvre if it did not agree on the incompetence and so would go into the merits and give the final decision. The Court below ought not to have just ruled on the jurisdiction and dispatch the merits as academic without delving into it. That situation however has not changed the fact clearly evident herein that the Court of Appeal's jurisdiction had been ousted by the expiration of the 60 days allowed by section 285 (12) CFRN from the filing of the appeal to its determination.

Again to be said is that lack of jurisdiction of the court below has robbed this court of jurisdiction to invoke section 22 of the Supreme Court Act.

I humbly rely on the case of: *Alhaji Kashim Shettima & Anor v. Alhaji Mohammed Goni & Ors.* (2012) All FWLR (Pt.609) pg 1007 at 1043 paras. C-F: (2011) 18 NWLR (Pt. 1279) 413 where it was held per Onnoghen, JSC (as he then was) –

“It is settled law that this court can only exercise its powers under the said section 22 by exercising the jurisdiction of the lower court where it has the jurisdiction to act, not where that court has ceased to have jurisdiction over the matter. In short, the jurisdiction of this court under section 22 of the Supreme Court Act depends completely on the Court of Appeal having jurisdiction to deal with the matter in issue and pending before it.

That apart, the instant appeal if it succeeds on the merit would result in the setting aside of the order of the lower court adjourning the hearing of appeal No CA/EPT/GOV/151/2011 sine die thereby resulting in the consequential order that the appeal be put back on the cause list of either the lower court or of this court; if the application to invoke section 22 of Supreme Court Act is granted; to be dealt with

accordingly. In either case, it would be an exercise in futility as both courts no longer have the jurisdiction to deal with the matter complained of.

In the circumstances of this case and having regards to the state of the law on the relevant facts, I hold that the preliminary objections of the 1<sup>st</sup> and 2<sup>nd</sup> respondents is meritorious and the same is accordingly sustained by me. Consequently, this appeal haven become an academic exercise in view of the lost of jurisdiction by the lower court to hear and determine same, is hereby struck out for being incompetent.”

See also Sen. Joel Danlami Ikenya & 2 Ors. v. Peoples Democratic Party (PDP) & 3 Ors. (2012) All FWLR (Pt. 628) pg.837 at 852-853, paras. E-C, (2012) 12 NWLR (Pt. 1315) 493 where it was held per Muntaka-Coomasie, JSC thus:

“The question is - can this court rightly make this order in view of the provision of section 285 (7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Learned counsel to the 1<sup>st</sup> respondent, Emmanuel Aremo, Esq. submitted that the judgment of the trial court was delivered on 10<sup>th</sup> November 2011, the sixty (60) days provided for the determination of the appeal before the lower court expired on 9<sup>th</sup> January 2012.

Hence, by virtue of the provisions of section 285 (7), the lower court has lost its jurisdiction to hear or rehear the appeal. He relied on the judgment of this court delivered on 31<sup>st</sup> October 2011, in People’s Democratic Party (PDP) v. Congress for Progressive Change CPC) SC.272/2011 and All Nigeria Peoples Party (ANPP) Alhaji Mohammed Goni and Ors. SC. 1/2012 delivered on 17<sup>th</sup> February 2012 (unreported) and contended that to make an order of remitted would amount to an extension of time provided in section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 C (as amended). Also, in view of the fact that the lower court has been divested of its jurisdiction to hear the appeal by reason of effluxion of time as provided in section 285 (7) of the said Constitution, any such order of remittal would amount to exercise of futility.”

I agree with learned counsel for 1<sup>st</sup> – 4<sup>th</sup> respondents that where the time constitutionally prescribed for the hearing and determination of an appeal before the Court of Appeal has elapsed, the Supreme Court has no jurisdiction to order for a retrial before the Court of Appeal nor can it invoke the provision of section 22 of the Supreme Court Act to exercise the powers of the Court of Appeal and pronounce on issues not decided by the Court of Appeal which are spent and foreclosed.

Learned senior counsel for the appellants had sought to lead the court to the earlier situation relating to the cause of action at the trial court by contending that the trial court itself had no jurisdiction to determine the matter in the first place if section 285 CFRN is applicable since the cause of action arose on 25<sup>th</sup> October, 2018 a point not disputed and the originating summons filed on 9<sup>th</sup> January 2019 which made the action filed 76 days after the accrued cause of action, instead of 14 days provided by section 285 (9) of the Constitution.

The attitude as depicted by the posture of the appellants seems to suggest a retraction from the pathway of the case from inception, is appellants at one instance anchored on section 285 CFRN on the matter being pre-election and at another instance veers from that position. This style has been depreciated again and again by this court and several judicial authorities as a party should be consistent in stating his case and consistent in proving it or defending it as the case may be. He will not be permitted to dance any way he chooses such as take a stand at the trial, take a new turn at the Court of Appeal and when he gets to the Supreme Court relies on the stance at the trial court thus creating confusion as to which way to go, thereby producing to the game of hide and seek. This chancy dance cannot be encouraged. See *Salawu Ajide v. Kadiri Kelani* (1985) 3 NWLR (Pt. 12) 248 at 269 per Oputa JSC; *Adamu v. The State* (2014) Vol.32 WRN page 1 at 41; (1991) 4 NWLR (Pt. 187) 530; *Osuji v. Ekeocha* (2009) All FWLR (PL490) 614 at 649; (2009) 16 NWLR (Pt. 1166) 81; *Federal Government of Nigeria v. Zebra Energy Ltd.* (2002) FWLR (PL.92) 1749; (2002) 18 NWLR (PL. 798) 162; *Dabo v. Abdullahi* (2005) All FWLR (PL.255) 1039 at 1051; (2005) 7 NWLR (PL. 923) 181.

Getting back to the invitation by the appellants to revisit the cause of action and its possible expiration at the trial court clearly at this stage and in the prevailing circumstances water under the bridge as this court has been shackled by the lack of jurisdiction of the Court of Appeal which implication is that the vires for this court does not exist. That being so this court cannot invoke section 22 of the Supreme Court Act to review what transpired at the High Court.

Indeed, there is no point going on further as the matter before court had died, with the lack of jurisdiction of the Court of Appeal which was right in striking it out and there is nothing else I can do now than to declare that the appeal before the Supreme Court lacks competence and the court has no jurisdiction to do anything else than to strike out.

I therefore uphold the preliminary objection of the 14 respondents and hereby strike out the appeal.

Parties to bear their own costs.



**I. T. MUHAMMAD, Ag. C.J.N.:** My learned brother, Mary Peter Odili, JSC, had afforded me an opportunity to read before now, the judgment just delivered. For the fuller reasons set out in the lead judgment, I have nothing to add to my reasoning and conclusion. The appeal is unmeritorious and ought to be dismissed. I, too, hereby, dismiss the appeal.

**ARIWOOLA, J.S.C.:** I had the privilege of reading in draft the lead judgment of my learned brother, Peter-Odili, J.S.C. just delivered. I agree entirely with the reasoning and conclusion that the appeal is incompetent and should be struck out. I too will strike out the appeal.

Appeal struck out.

**ABBA AJI, J.S.C.:** The case of the 1<sup>st</sup> to 4<sup>th</sup> respondents is that the 1<sup>st</sup> appellant was disqualified to contest as the Governorship candidate of the 2<sup>nd</sup> appellant because he lied on oath regarding his date of birth. The 1<sup>st</sup> appellant however stated that his correct date of birth is 14/2/1968, backed up by the declaration of age (exhibit UJGT 12) and not exhibit UGJD 10, which was mistakenly filed by one Stephen Maisamani. The trial court granted the reliefs sought by the 1<sup>st</sup> to the 4<sup>th</sup> respondents.

The appellants' learned senior counsel distilled 4 issues for the determination of the appeal. Nevertheless, the 1<sup>st</sup> to the 4<sup>th</sup> respondents objected to the competence of the appellants' appeal, having been filed outside 60 days statutorily provided by section 285(12) of the 1999 Constitution, as amended by the Fourth Alteration Act No.8 of 2017).

Indeed, the matter is a pre-election matter as defined and provided by section 285(14) of the 1999 Constitution (as amended). The appellant therefore having filed the notice of appeal since 6/3/2019 and was not disposed of within 60 days, being 4/5/2019, the appeal was rendered incompetent, been limited by the stated statute.

It is for the foregoing and fuller reasons marshaled in the lead judgment by my learned brother, Mary Peter-Odili, JSC, that I also dismiss the unmeritorious appeal. The preliminary objection of the 1<sup>st</sup> to 4<sup>th</sup> respondent is sustained and upheld.

Appeal dismissed