IN THE SUPREME COURT OF NIGERIA

Suit No: SC255/2005

Petitioner: Dr. Ime Sampson Umanah

And

Respondent: Obong (ARC.) Victor Attah The Resident Electoral Commissioner Akwa Ibom State The Returning Officer, Governorship Election Akwa Ibom State Independent National Electoral Commission Peoples Democratic Party

Date Delivered: 2006-09-29

Judge(s): Idris Legbo Kutigi, Umaru Atu Kalgo, Niki Tobi,Aloma Mariam Mukhtar, Mahmud Mohammed, Walter Samuel Nkan

Judgment Delivered

This is an appeal against the judgment of the Court of Appeal holden at Abuja wherein the court affirmed the decision of the trial Federal High Court which held that it had no jurisdiction to entertain the Plaintiffs suit and consequently struck it out.

The relevant facts are that the Plaintiff and the 1st Defendant contested the last general election held in April 2003 into the office of Governor of Akwa Ibom State. At the end of the election the lst Defendant who was sponsored by the 5th Defendant was returned by the 4th Defendant as the duly elected candidate.

Dissatisfied with the result of the election, the Plaintiff filed a petition before the Governorship and Legislative Houses Election Tribunal for Akwa Ibom State. The Tribunal consisted of a Chairman and four members. Whilst the proceedings were still pending before the Tribunal, the Plaintiff on 10th July 2003 petitioned the Chief Justice of Nigeria who is the Chairman of the National Judicial Council complaining that the chairman and members of the Tribunal had been compromised with large sums of money by the 1st Defendant. On 14th July 2003 the Tribunal delivered its judgment in which it dismissed Plaintiffs petition as unmeritorious. The Plaintiff timeously appealed to the Court of Appeal. But before doing so he addressed another petition to the Chief Justice of Nigeria on 24th July 2003 about his earlier petition or complaint. Upon receipt of the Plaintiffs petitions, the National Judicial Council set up an investigatory Committee to look into the allegations against the Tribunal. Meanwhile, the Court of Appeal which heard the appeal against the judgment of the Tribunal dismissed Plaintiffs appeal on 30th October 2003. The Committee of investigation confirmed the allegations made by the Plaintiff against the Tribunal and consequently the chairman and members of the Tribunal were dismissed from service as reported and published in the Guardian Newspaper of 16th March 2004.

On 3rd May 2004, the Plaintiff instituted this present suit in the Federal High Court against the Defendants claiming thus:-

\"(a) A declaration that the judgment of the Akwa Ibom Governorship Election Tribunal given in favour of the 1st Defendant as having been duly elected the Executive Governor of the Akwa Ibom State and confirmed by the Court of Appeal is a nullity because some of the Tribunal members have been found to have taken BRIBE.
(b) An account by the 1st Defendant of the emoluments and all perquisites received by the 1st defendant as the Executive Governor of Akwa Ibom State since he was sworn in May 2003 and a refund of same to the Akwa Ibom State Government treasury.

(c) Perpetual injunction restraining the 1st defendant from exercising any authority or carrying on as the Executive Governor of Akwa Ibom State of Nigeria.\"

On 5th May 2004, the Plaintiff filed an application for a constitutional reference of two questions to the Court of Appeal. On being served with the processes the 1st Defendant filed a Notice of Preliminary Objection pursuant to sections 246, 285 and 308 of the 1999 Constitution praying that the Plaintiffs suit be dismissed or struck out on the ground inter alia

that the court has no jurisdiction to entertain same or grant any relief against or touching upon or relating to the 1st Defendant.

The Preliminary Objection was taken first. After hearing the arguments of counsel on both sides, the learned trial judge came to the conclusion that he had no jurisdiction to entertain the suit and consequently struck it out.

Being dissatisfied with the Ruling of the learned trial judge, the Plaintiff appealed to the Court of Appeal holden at Abuja. In the Court of Appeal the Plaintiff submitted two issues for determination. The issues read as follows:-

\"1. Whether the Federal High Court has jurisdiction to nullify the judgment of an election petition tribunal (and the appellate judgment of the Court of Appeal affirming it) on the ground of fraud arising from the fact that the Tribunal chairman and members were found to have received bribe from one of the parties in favour of whom the judgment was ultimately given.

2. Whether section 308 of the 1999 Constitution is a bar to the second relief contained on the appellant\'s statement of claim which is consequential to the principal relief seeking to nullify the judgment of the election petition Tribunal on the ground that the said judgment which confirmed the return of the 1st respondent as Governor of Akwa Ibom State was tainted with fraud in that the Tribunal members were found to have received bribe from the 1st respondent.\"

In the lead judgment of the Court of Appeal delivered by Muhammad J. C. A., he said on page 373 of the record thus:-

\"The 5th respondent did not file any brief of argument Appellants issue No. 1, 1st respondent and 2 - 4th respondents issues are on jurisdiction of the lower court on the suit filed before it. 1 shall consider this issue first.\"

The lead judgment then proceeded straight to consider the submissions of counsel on the issue of jurisdiction. After a thorough review of the submissions, it came to the conclusion that the trial court was right to have declined jurisdiction in the suit. The court felt that there was no need for it to consider any other issue since the fundamental issue of jurisdiction has failed. 1 think the decision was right and proper. The Plaintiffs appeal was accordingly dismissed. The lead judgment on pages 376 and 377 of the record concluded thus:-

\"The subject matter before the trial court (which incidentally) was an Election petition challenging the declaration of the 1st respondent by the 4th respondent as the elected candidate for the Governorship of Akwa Ibom State. An appeal against that declaration at the Court of Appeal was also unsuccessful. Thus the subject matter before the Governorship and Legislative Houses Election Tribunal of Akwa Ibom State and the Court of Appeal, Calabar Division, was election Petition and appeal lodged against it. In his considered ruling, the learned trial Judge declined jurisdiction.

Now, having carefully considered the submissions of learned counsel for the respective parties in contrast with the ratio decidendi of the learned trial Judge, I cannot but agree with the learned trial Judge, that he lacked jurisdiction, same cannot be conferred on it by any guise even if with the consent of the parties. There are no two ways to it. There is no need for me to belabour the issues raised by the parties in this appeal any longer, as doing so will not change the position of the law on issue of Jurisdiction adumbrated above.

Accordingly, I find no merit in this appeal and 1 hereby dismiss it. 1 affirm the decision of the Lower Court.\"

Aggrieved by the decision of the Court of Appeal, the Plaintiff has now further appealed to this court. The parties, with the exception of the 5lh Defendant, filed and exchanged briefs of argument. These were adopted at the hearing. Plaintiffs learned counsel, Mr. Tayo Oyetibo SAN, has in his brief submitted three (3) issues for resolution in the appeal as follows:

\"1. Whether the Court of Appeal did not breach the appellant\'s fundamental right to a fair hearing in failing to consider and determine the points of law submitted by the appellant in his appeal.

2. Whether the Court of Appeal was right in affirming the decision of Adah. J. of the Federal High Court that he

lacked jurisdiction to entertain the appellant\'s action.

3. Whether the Court of Appeal was right when it held per Rhodes-Vivour J.C.A that the first relief claimed by the appellant could only be heard by the Election Petition Tribunal in A.kwa Ibom State or the Tribunal having jurisdiction over Akwa Ibom State or by a High Court judge sitting in Akwa Ibom State.\"

It has been demonstrated. above and clearly supported by the record of proceedings of both trial Federal High Court and the Court of Appeal, that the only and single issue or ground on which the trial court struck out the suit is entirely for want of jurisdiction. The trial court and the Court of Appeal did not strike out the case on any other ground or point of law. The parties are therefore obliged to keep their objections, complaints and submissions within the narrow issue of jurisdiction only. They will not be permitted to venture outside it.

The record shows on pages 373 and 374 the submissions of Mr. Oyetibo, Plaintiffs counsel, in the Court of Appeal. And his submissions were considered along with the submissions of counsel for the other parties. It is therefore not correct for Mr. Oyetibo to have alleged as he has done in issue (1) above, that the Court of Appeal breached the Plaintiffs fundamental right to a fair hearing in failing to consider and determine the points of law submitted by the Plaintiff in the appeal. Plaintiffs issue (1) before the Court of A.ppeal which was on jurisdiction, was amply considered and dismissed. The other issue (2) was not considered by the Court of Appeal at all as there was clearly no need for it, because there was no longer the jurisdiction for doing so. It must also be stated that apart from the two issues set out above, 1 cannot find anywhere in the record where Mr. Oyetibo set out points of law for determination by the Court of Appeal Probably he was referring to issue (2) above. In my view a court of law is not bound to answer any question of law or otherwise raised by a litigant or counsel unless the point or points so raised are necessary and material for the resolution of the case before it. This court has held times without number that it will not engage or indulge in academic exercise (see for example Oyeneye vs Odugbesan (1972) 4 SC.244, Bakare vs A.C.B (1989) 3NWLR (Pt.26)47. Also the Court does not issue opinions about potential cases. Issue (1) therefore fails.

Issue (2) is without any hesitation answered in the affirmative for the reasons ably set out in the judgment of the Court of Appeal as well as that of the trial court. The subject matter of the suit is undoubtedly an election petition matter which had since been concluded in the Court of Appeal which is the final Court in the matter. The reliefs claimed by the Plaintiff are clear and support that view. The Election Petition cannot be resurrected in any manner or form in the Federal High Court, which had rightly declined jurisdiction and confirmed by the Court of Appeal. The lower courts are in my view right in their stand. This issue also fails.

Issue (3) is about the obiter dictum of Rhodes-Vivour J.C.A. who participated in the appeal at the Court of Appeal. The statement in my view is a mere obiter dictum in a concurring judgment. It is not the ratio decidendi and cannot therefore form the basis or reason to set aside the judgment of the Court of Appeal. That was not the reason for dismissing the appeal. And as I said above the Court does not issue opinions about potential cases. The issue is therefore in my view incompetent coming as an arbiter in a concurring judgment only. It is hereby struck out.

All the three (3) issues are therefore resolved against the Plaintiff/Appellant.

The appeal completely fails. It is dismissed with N10,000.00 costs in favour of each set of Defendants/Respondents (except the 5th .Defendant/Respondent) against the Plaintiff/Appellant.

Judgement delivered by Umaru Atu Kalgo. J.S.C

1 have had the opportunity to read in draft the judgment just delivered in this appeal by Kutigi JSC. I entirely agree with his reasoning and the conclusions reached therein. I therefore agree that there is no merit in the appeal and it ought to be dismissed. I accordingly dismiss it with costs as assessed in the said judgment.

Judgement delivered by Niki Tobi. J.S.C

I have read in draft the judgment of my learned brother, Kutigi, JSC, and I agree with him that this appeal should be dismissed. It is a bogus appeal. The appellant and the 1st respondent contested the election to the office of Governor of Akwa Ibom State on 19th April, 2003. The 1st respondent won the election and was declared Governor of Akwa Ibom State. The appellant challenged the result of the election at the Governorship and Legislative Houses Tribunal set up for Akwa Ibom State. The Tribunal consisted of Hon. Justice M. M. Adamu, Chairman, and the following as members: Hon. Justice D. T. Abura, Hon. Justice A. M. Elelegwa and Chief Magistrate O. J. Isede.

After parties have closed their case, and precisely on 11th July, 2003, the appellant brought an application seeking to disqualify the members of the Tribunal on the ground of likelihood of bias, e.g. that \"the Chairman and members of this Hon. Tribunal as now constituted have acquired pecuniary interest(s) in this petition and are therefore biased against the petitioner/applicant\"

The Tribunal delivered judgment on 14th July, 2004, three days after the application was filed. Dissatisfied, the appellant appealed to the Court of Appeal on 25th July, 2003. That Court dismissed the appeal.

When the proceedings were pending in the Tribunal, the appellant petitioned the Chief Justice of Nigeria, who is Chairman of the National Judicial Council that the Chairman and members of the Tribunal had been compromised with large sum of money by the 1st respondent. That was on 10th July, 2003. On 24th July, 2003, the appellant addressed another petition to the Chief Justice of Nigeria on the same complaint of compromise. After investigation of the allegations by the National Judicial Council, the Chairman and members of the Tribunal were dismissed from service.

On 3rd May, 2004, the appellant instituted an action at the Federal High Court against the respondents asking for the following reliefs:

\"(a) A declaration that the judgment of the Akwa Ibom Governorship Election Tribunal given in favour of the 1st Defendant as having been duly elected the Executive Governor of the Akwa Ibom State and confirmed by the Court of Appeal is a nullity because some of the Tribunal members have been found to have taken BRIBE.

(b) An account by the 1st Defendant of all the emoluments and all perquisites received by the 1st Defendant as the Executive Governor of Akwa Ibom State since he was sworn in May 2003 AND; a refund of same to the Akwa Ibom State Government treasury.

(c) Perpetual injunction restraining the 1st Defendant from exercising any authority or carrying on as the Executive Governor of Akwa Ibom State Nigeria.

\"On 5th May, 2004, the appellant filed an application for constitutional reference to the Court of Appeal on two questions. The 1st respondent entered a conditional appearance and filed a notice of preliminary objection pursuant to sections 246, 285 and 308 of the 1999 Constitution praying that the suit be dismissed or struck out on the following grounds:

\"1. The suit as constituted against the 1st defendant is unconstitutional, incompetent, null and void having regard to section 308 of the 1999 Constitution; accordingly this Hon. Court has no jurisdiction to entertain the same or to grant any relief against or touching upon or relating to the 1st defendant.

2. The Federal High Court has no jurisdiction under the 1999 Constitution, or the Electoral Act 2002 or any other law to review the judgment of an Election Tribunal or to review and/or set aside or nullify or sit on appeal over the judgment of the Court of Appeal arising from an election petition or howsoever.

3. The Writ is incompetent, null and void pursuant to Order 6 of the Federal High Court (Civil Procedure) Rules; the

plaintiff has no locus standi to sue for account.

4. This Hon. Court cannot rely on or act on a bare allegation of crime (bribery) against persons who are not parties to the suit; who are given no opportunity to defend themselves before this Hon. Court; of whom no certificate of conviction by a court of competent criminal jurisdiction is alleged or pleaded as no investigative panel or committee other than a court of law can try, convict and/or punish for any crime in the Federal Republic of Nigeria.

5. It is incompetent to claim for a case to be stated in the Court of Appeal on a Writ or Statement of Claim since reference can only be so made if the constitutional question arises in the course of proceedings and has arisen ex tempo re or ex im proviso.\"

Counsel argued the preliminary objection. The learned trial Judge upheld the objection. He held that he had no jurisdiction to entertain the suit. He accordingly struck it out. An appeal to the Court of Appeal was dismissed. This is a further appeal to this Court. As usual briefs were filed and exchanged. The appellant filed the following issues for determination:

\"1. Whether the Court of Appeal did not breach the appellant\'s fundamental right to a fair hearing in failing to consider and determine the points of law submitted by the appellant in his appeal.

2. Whether the Court of Appeal was right in affirming the decision of Adah. J. of the Federal High Court that he lacked jurisdiction to entertain the appellant\'s action.

3. Whether the Court of Appeal was right when it held per Rhodes-Vivour J.C.A that the first relief claimed by the appellant could only be heard by the Election Petition Tribunal in A.kwa Ibom State or the Tribunal having jurisdiction over Akwa Ibom State or by a High Court judge sitting in Akwa Ibom State.\"

The 1st respondent adopted the three issues formulated by the appellant for determination in his appeal. The 2nd, 3rd and 4th respondents formulated three issues which are exactly the same as those of the appellant. I shall therefore not reproduce them here. It is the case of the appellant that the Court of Appeal breached the appellant\'s fundamental right to fair hearing in failing to consider and determine the points of law submitted by the appellant in his appeal. Learned counsel for the appellant submitted that the Court of Appeal was wrong in affirming the decision of Adah, J. that the Federal High Court lacked jurisdiction to entertain the appellant\'s action. He also submitted that Rhodes-Vivour, JCA, was wrong in holding that the first relief claimed by the appellant could only be heard by the Election Petition Tribunal in Akwa Ibom State or the Tribunal having jurisdiction over Akwa Ibom State or by a High Court judge sitting in Akwa Ibom State. He urged the Court to allow the appeal.

Learned counsel for the 1st respondent submitted that having regard to the issues formulated for determination, the court was perfectly right to take the issue of jurisdiction in the way it did, thus not breaching the provisions of section 36(1) and 318(1) of the 1999 Constitution. He submitted that the Court of Appeal was right in affirming the decision of the trial Judge that he lacked jurisdiction to entertain the appellant\'s action. On Issue No 3, learned counsel submitted that an appeal does not lie against a minority decision. He urged the court to dismiss the appeal and affirm the decision of the Court of Appeal. As counsel for the 2nd, 3rd and 4th respondents made generally similar submissions in the 1st respondent\'s brief, I do not see reason to repeat them here. The first attack on the Court of Appeal is failure on the part of that Court to consider and examine the points of law submitted by the appellant in his appeal before arriving at the conclusion that the learned trial Judge lacked jurisdiction to entertain the suit. As the appellant\'s desire for fair hearing is for this Court to consider the points of law submitted by him, I must give his client that fair hearing and this I will do by taking all the three issues he formulated for determination in this appeal.

The points of law submitted for determination by the appellant are:

\"(a) a judgment that is obtained by or tainted with fraud can be impeached by means of a fresh action which may be brought without leave: see pages 19-23 of the record;

(b) an action for the setting aside of a judgment that was obtained by or tainted with fraud is not an action for the review of the judgment concerned: pages 25-28;

(c) section 308 of the 1999 Constitution is not a bar to the second relief contained in the appellant\'s statement of claim which is consequential to the principal relief seeking to nullify the judgment of the Election Petition Tribunal on the ground of fraud: pages 34-40.\"

As it is, the first two points of law are on fraud while the third and last one is on section 308 of the 1999 Constitution. I have thoroughly examined the submission of learned Senior Advocate from page 7 to page 11 and pages 18 to 24 of the brief and I do not see how the position can change in favour of the appellant. The issue of fraud canvassed by learned Senior Advocate cannot vest jurisdiction in a court that lacks it. .A judgment that is obtained by or tainted with fraud cannot be used as basis for conferring jurisdiction in a court that has none. If a court has no jurisdiction to entertain a matter, no amount of successful case made out of fraud can resuscitate or rescue jurisdiction. Once a court lacks jurisdiction, a party cannot use any statutory provision or common law principles to repair it because lack of jurisdiction is irreparable in law. The matter ends there and the only procedural duty of the court is to strike it out. No more and no less. The position of the law is as hard and as strict as that. The only valid way is to file the action in a court of competent jurisdiction. The above takes care of the first two points of law.

I go to the third point. It is on section 308 of the Constitution, a section which provides for what is generally called Immunity Clause. It is the contention of learned Senior Advocate that section 308 is not a bar to the second relief contained in the plaintiff\'s statement of claim. Let me allow myself to quote the following submission of learned Senior Advocate from page 36 of the brief of the appellant:

\"It is respectfully submitted that section 308 of the 1999 Constitution does not apply to any proceeding in which it is being sought to establish that a person occupying the office of Governor of a State is not lawfully occupying the office. Although it is conceded here that the proceeding in the trial court was not an election Petition in which it is being sought to show that the judgment in the election Petition affirming the election of the 1st respondent was obtained by fraud and as such the judgment is a nullity.\"

While I do not really see the relevance of section 308 in this matter, I am amazed at the above submission of learned Senior Advocate which is contradictory, although he tries to palliate or soften the contradiction by some application of cleverness. I shall return to the submission when I take Issue No. 2 on jurisdiction.

And here I am. The principal relief sought by the appellant, according to the appellant himself, reads, and I repeat it at the expense of prolixity and for ease of reference:

\"(a) A declaration that the judgment of the Akwa Ibom Governorship Election Tribunal given in favour of the 1st Defendant as having been duly elected the Executive Governor of the Akwa Ibom State and confirmed by the Court of Appeal is a nullity because of some of the Tribunal members have been found to have taken BRIBE.\"

In the light of the above relief, the learned trial Judge said at page 217 of the Record:

\"It must be said therefore that under the Constitution of Nigeria, 1999, this Court has no jurisdiction in any form over Election Petition Matters at any level. Furthermore, under the Constitution, no jurisdiction is given to this Court to review decisions of Election Tribunals and decisions of the Court of Appeal on judgment of Tribunals. In fact by the Supreme Law of Judicial precedent which calibrates the hierarchy of Courts under the Constitution, it is not only a taboo but sacrilegious for this Court, a High Court, to be called upon to review the decision of the Court of Appeal.\"

This is a very brilliant one. The learned trial Judge, Adah, J. got the law properly. How can counsel go to the High Court to urge that court to make the declaration sought for, in the guise that it is not an election matter when it is one in reality and substance' Let me look a bit at the relief. It is for a declaration in respect of the judgment of the Akwa Ibom Governorship Election Tribunal declaring the 1st respondent Governor of the State. Can. any relief seeking language be clearer than relief (a) above' The learned trial Judge was asked to declare that judgment delivered by the Court of

Appeal a nullity on the ground that members of the Tribunal \"have been found to have taken BRIBE\". It is clear to me that the principal relief is to declare the Court of Appeal judgment a nullity. I do not know of any relief available to the appellant to declare that \"the members of the Tribunal have been found to have taken BRIBE\" to make it a principal relief in the circumstances of this case. How can counsel go to the High Court to seek for a nullification of a decision of the Court of Appeal' What law was counsel relying on or upon' Did he forget the existence of section 240 of the Constitution of the Federal Republic of Nigeria, 1999' What is in section 249 of the Constitution to accommodate the action of the appellant' I still have one more question. I do not want to ask it. This is my first experience and I do not think I enjoy it. The learned trial Judge did not enjoy it too. To him, it was a taboo or a sacrilege for his Court to be called upon to review the decision of the Court of Appeal. He is correct, very correct indeed. I pray it does not come our way the second time.

In my humble view, learned Senior Advocate laboured in vain to argue that the matter did not involve election petition. If the matter did not involve election petition, did it involve the taking of bribe by the members of the Tribunal' If so, where is the relief known to law that the appellant has sought or asked without tying it to the main issue of election' If the principal matter is bribery, should the appellant not think of obtaining fiat to prosecute the matter' And if he does that, is the Federal High Court the place to commence the prosecution' Head or tail, the appellant comes out worse.

In the Court of Appeal, the learned Justice had not the slightest difficulty to dismiss the appeal. Muhammad, JCA, said in the penultimate paragraph at p.377 of the Record:

\"Now having carefully considered the submissions of learned counsel for the respective parties in contrast with the ratio decidendi of the learned trial Judge, I cannot but agree with the learned trial Judge, that he lacked jurisdiction to entertain the suit.\"

Again, I entirely agree with the Court of Appeal. It cannot be otherwise. This Court has held in a number of cases that it has no jurisdiction to entertain or hear election matters in respect of election to the office of Governor of a State. This is because by section 246(3) of the 1999 Constitution, the decision of the Court of Appeal in respect of appeals arising from election petitions to the Office of Governor of a State is final. See Awuse v. Odili (20031 18 NWLR (Pt. 851) 116.

I now move to issue No. 3 for whatever it is worth. Learned Senior Advocate said that the issue is based on the minority judgment of Rhodes-Vivour, JCA. I do not think I should take further time here. The law is elementary that a minority judgment, as the name implies, is not the judgment of the Court. The judgment of the Court is the majority judgment. As appeals lie only in respect of the majority judgment and not the minority judgment, I do not see my way clear in considering the issue.

Learned Senior Advocate seemed to appreciate the law when he said that \"an appeal does not lie against a minority decision\". He however fell into serious error when he said he was doing so \"out of abundance of caution\". What type of abundance of caution' Abundance of caution not known to law' In my humble view, there is no legal basis for even the application of minimum caution, not to talk of abundance of caution. Considering the meaning of abundance as \"a great quantity; plenty\", there is no such quantity or plenty to deserve the issue.

It is sad that this has to come to us. It is a bogus appeal, I repeat. I will say no more. I stop here. But not before I give the final order and it is obvious. The appeal is dismissed for lack of merit. I order costs as in the lead judgment of my learned brother, Kutigi, JSC.

Judgement delivered by
Aloma Mariam Mukhtar. J.S.C

I have read in advance the lead judgment delivered by my learned brother Kutigi, JSC. The issues raised in the appeal are issues that cannot be resolved in favour of the appellant, and the grounds of appeal to which they are married lack

merit and must fail. The issues have been thoroughly dealt with in the lead judgement and there is nothing to else I wish to add to it. In this wise I agree entirely with the reasoning and conclusion reached in the judgment and also dismiss the appeal in its entirety. I abide by the consequential orders made in the lead judgment.

Judgement delivered by Mahmud Mohammed. J.S.C

The appellant was a candidate in the last general election that took place on 19-4-2003. He participated in the contest for the office of the Governor of Akwa-Ibom State and lost to the 1st Respondent.

\"The appellant in exercise of his right, challenged the result of the election at the Governorship and Legislative Houses Election Tribunal set up for the State. The petition was duly heard by the Tribunal which in its judgment delivered on 14-7-2003, dismissed the petition and affirmed the election of the 1st Respondent. Still not satisfied with the decision of the Tribunal, the appellant appealed against it to the Court of Appeal which also heard and dismissed the appeal.

However, the appellant who was still aggrieved with the outcome of his petition at the Tribunal and the dismissal of his appeal against the judgment of the Tribunal dismissing his petition, conceived and instituted a fresh case against the respondents by a writ of summons and a statement of claim filed at the Federal High Court. On being served with these court processes, the 1st Respondent filed a memorandum of conditional appearance and a notice of preliminary objection to the competence of the action and the jurisdiction of the Federal High Court to entertain it. The learned trial judge after hearing the parties on the preliminary objection, in his ruling delivered on 30-7-2004, upheld the 1st Respondent\'s objection and proceeded to strike out the action on the ground that the court lacked jurisdiction to entertain it. The appellant\'s appeal to the Court of Appeal was dismissed hence the present appeal.

In the appellant\'s brief of argument, the following three issues were raised for the determination of this appeal.

\"1. Whether the Court of Appeal did not breach the appellant\'s fundamental right to a fair hearing in failing to consider and determine the points of law submitted by the appellant in his appeal.

2. Whether the Court of Appeal was right in affirming the decision of Adah. J. of the Federal High Court that he lacked jurisdiction to entertain the appellant\'s action.

3. Whether the Court of Appeal was right when it held per Rhodes-Vivour J.C.A that the first relief claimed by the appellant could only be heard by the Election Petition Tribunal in A.kwa Ibom State or the Tribunal having jurisdiction over Akwa Ibom State or by a High Court judge sitting in Akwa Ibom State.\"

Although these three issues were duly adopted by the respondents in their respective briefs of argument, taking into consideration that this appeal arose from proceedings challenging the jurisdiction of the trial court to entertain the appellant\'s action on the ground that the trial court lacked jurisdiction to entertain it, this appeal can be determined effectively on the second issue only. It is in this respect that I entirely agree with the judgment of my learned brother Kutigi. JSC, just delivered, the draft of which I have been privileged to read before today that this court has no jurisdiction to entertain this appeal which ought therefore to be struck out.

It is desirable for a better appreciation of the second issue for determination in this appeal to set out the relevant section of the 1999 Constitution of the Federal Republic of Nigeria necessary for the determination of the issue. The section is 246 which reads-

'246. (1) An appeal to the Court of Appeal shall lie as of right from '

(a) decisions of the Code of Conduct Tribunal established in the Fifth Schedule to this Constitution;

(b) decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election

Tribunals on any question as to whether

(i) any person has been validly elected as a member of the National Assembly or of a House of Assembly of a State under this Constitution,

(ii) any person has been validly elected to the office of a Governor or Deputy Governor, or

(iii) the term of office of any person has ceased or the seat of any such person has become vacant.

(2) The National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly.

(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final. '

The above provisions of Section 246 of the Constitution of the Federal Republic of Nigeria particularly sub-section (3) thereof, are quite clear and plain. From the undisputed facts of this case earlier narrated in this judgment, there is no doubt whatsoever from the Writ of Summons and the statement of claim filed by the appellant as the plaintiff at the trial Federal High Court seeking reliefs among others, the declaration that the judgement of the Akwa-Ibom Governorship Election Tribunal given in favour of the 1st defendant now 1st Respondent as having been duly elected the Executive Governor of the Akwa-Ibom State and confirmed by the Court of Appeal is a nullity because some of the Tribunal Members have been found to have taken bribe, the appellant\'s action clearly arose from an election petition. Therefore the action as disclosed from the terms of the appellant\'s claim, having been heard and determined by the Election Tribunal and affirmed in a final decision of the Court of Appeal under Section 246 (3) of the 1999 Constitution, the trial Federal High Court has no jurisdiction to entertain the same action no matter how craftily dressed and presented. See Onuaguluchi v. Ndu (2001) 7 NWLR (pt 712) 309 at 321-322 and Awuse v. Odili (2003) 18 NWLR (pt 851) 116 at 151. This of course means that pursuant to the clear provisions of Section 246 (1) (b) (i) and (ii) and (3) of the Constitution of the Federal Republic of Nigeria 1999, the decision of the Court of Appeal in exercise of its jurisdiction arising from an election petition, is final and the substance of the action cannot be brought again before any other court including this court for fresh or further adjudication. In other words whether the decision of the Court of Appeal in such matters is right or wrong, cannot be questioned or challenged in this Court on appeal.

On the whole, having regard to the circumstances giving rise to this appeal which is against the decision of the Court of Appeal arising from the judgment of the Governorship Election Tribunal on the appellant\'s election petition in which the return of the 1st Respondent to the office of Governor of Akwa-Ibom State is being challenged, is not only incompetent but also unconstitutional. Consequently, the trial court was right in holding that it had no jurisdiction to entertain it. Equally right is the decision of the court below affirming the decision of the trial court. The appeal is accordingly hereby dismissed. I abide by the order on costs in the lead judgment.

Judgement delivered by Walter Samuel Nkanu Onnoghen. J.S.C

This is an appeal against the judgment of the Court of Appeal holden at Abuja in appeal No CA/A/166/2004 delivered on the 6th day of July, 2005 dismissing the appeal of the present appellant against the judgment of Adah. J. of the Federal High Court, Abuja Division in suit No FHC/ABJ/CS/199/2004 in which the court upheld the preliminary objection of the present 1st respondent, then 1st defendant, as to the jurisdiction of that court to entertain the matter. The ruling was delivered on the 30th day of July, 2004.

The present appellant contested the 2003 general elections against the 1st respondent into the office of Governor of Akwa-lbom State and lost as a result of which he challenged the declaration of the result at the Governorship and Legislative Houses Tribunal holden at Uyo, Akwa-lbom State, and in a judgment delivered on 14tn July, 2003, which he lost.

Meanwhile and during the course of trial, appellant filed an application seeking to disqualify the Chairman and Tribunal members on the ground of likelihood of bias in that the chairman and members were accused of receiving pecuniary gratification from the 1st respondent, which application was dismissed by the Tribunal.

Appellant was dissatisfied with the judgment of the Tribunal and consequently filed an appeal against same in the Court of Appeal, holden at Calabar which appeal was subsequently dismissed. It should be noted that out of the 17 grounds of appeal filed against the judgment of the Tribunal, none complained against the ruling of the Tribunal dismissing the application of the appellant to disqualify the chairman and members of the Tribunal on grounds of bias. Also of importance is the fact that by constitutional arrangements, the Court of Appeal is the final Court of Appeal in respect of Governorship and Legislative Houses elections. It follows therefore that with the failure of the appellant to appeal against the dismissal of his allegation of bias against the Chairman and members of the said election tribunal, he is deemed by law to have accepted that decision on the issue particularly as appellant had no other opportunity to ventilate that complaint before the courts as the Court of Appeal is the final court on the matter.

However, appellant subsequently filed suit No FAC/ABJ/CS/199/2004 in the Federal High Court, Abuja claiming the following reliefs:

\"Whereof the plaintiff\'s claim against the defendants is for-

(a) A declaration that the judgment of the Akwa Ibom Governorship Election Tribunal given in favour of the 1st Defendant as having been duly elected the Executive Governor of the Akwa Ibom State and confirmed by the Court of Appeal is a nullity because some of the Tribunal members have been found to have taken BRIBE.

(b) An account by the 1st Defendant of all the emoluments and all perquisites received by the 1st Defendant as the Executive Governor of Akwa Ibom State since he was sworn in May 2003 AND; a refund of same to the Akwa Ibom State Government treasury.

(c) Perpetual injunction restraining the 1st Defendant from exercising any authority or carrying on as the Executive Governor of Akwa Ibom State Nigeria.'

As stated earlier in this judgment, an objection was taken to the suit as constituted particularly on the ground that the court lacked the jurisdiction to entertain same which objection was upheld by the trial court. An appeal against that judgment was dismissed by the Court of Appeal resulting in the further appeal to this court.

In the appellant\'s brief of argument filed on 15/11/05 by learned Senior Counsel for the appellant, Tayo Oyetibo Esq, SANJ the following issues have been identified for determination:-

\"1. Whether the Court of Appeal did not breach the appellant\'s fundamental right to a fair hearing in failing to consider and determine the points of law submitted by the appellant in his appeal.

2. Whether the Court of Appeal was right in affirming the decision of Adah. J. of the Federal High Court that he lacked jurisdiction to entertain the appellant\'s action.

3. Whether the Court of Appeal was right when it held per Rhodes-Vivour J.C.A that the first relief claimed by the appellant could only be heard by the Election Petition Tribunal in A.kwa Ibom State or the Tribunal having jurisdiction over Akwa Ibom State or by a High Court judge sitting in Akwa Ibom State.\"

From the facts of the case it is very obvious that appellant\'s issue No 2 ought to have come first before issues 1 and 3 particularly as it deals with the question of the competence or jurisdiction of the trial court to entertain the action before it. Jurisdiction is a fundamental issue in litigation particularly as it can be said to supply the blood that gives life to the authority of the court to entertain the matter formally presented before it. The limits of such authority are determined by the Constitution, Statute, Charter or Commission under which the court is constituted and can be extended or

restricted by similar means. We have unlimited jurisdiction where no restriction is imposed by law.

It has been held by this court in Madukolu vs Nkemdilim (1962) 2S.C NLR 341, that a court is competent when:-

(a) It is properly constituted as regards members and qualification of the members of the bench and no member is disqualified for one reason or another.

(b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising it jurisdiction, and

(c) The case comes before the court instituted by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

All these requirements must co-exist conjunctively before the jurisdiction can be exercised by the court - see also Skenconsult vs Ukey (1981) 1 S.C. 6.

It therefore means that where a court has no jurisdiction to hear and determine a case but goes ahead to do so, it becomes an exercise in futility as the decision arrived at in such a case amounts in law to a nullity irrespective of how well the proceedings was conducted, it is therefore very clear that it is only after the issue of jurisdiction is determined in favour of the appellant that the court can proceed to determine the issue as to whether the Court of Appeal did not breach the appellant\'s fundamental right to a fair hearing in failing to consider and determine the points of law submitted by the appellant in his appeal.

In arguing the issue of jurisdiction, learned counsel for the appellant submitted that it is the claim of the plaintiff that determines the jurisdiction of the court relying on Tukur vs Government of Gongola State (1989) 4 NWLR (pt. 117) 517 at 549; Mclaren vs Jennings (2003) 3 NWLR (pt. 808) 470 at 490 - 491. Learned counsel then referred the court to paragraphs 6 -14 of the Statement of Claim as being the facts relevant to the issue of the jurisdiction of the trial court to determine the matter before it; that the gravamen of the claim of the plaintiff is that the judgment of the Tribunal was obtained by the 1st respondent by fraud thereby invoking the original jurisdiction of the Federal High Court to set aside the said judgment; that the options opened to a party who alleges that a judgment was obtained by fraud as stated in Vukan Gases Ltd vs Gesellschaft Fur Industries Gas verwertunga A.G. (G.I.V) 2001 19 NWLR (pt. 717) 610 at 668 is by bringing a fresh action to set it aside.

Learned Counsel then proceeded to submit that the case was not an election petition as held by the lower court particularly as defined in section 131(1) of the Electoral Act No 4 of 2002 since the action never questioned the election or return made at the election in issue; that appellant\'s action in the trial court was predicated on the finding by the NJC that the Chairman and Members of the Tribunal took bribe and that the finding took place after the Court of Appeal had determined the appeal against the judgment of the Election ribunal and therefore it could not have been attacked before that court; and that since by operation of section 246(3) of the 1999 Constitution no appeal lies against the judgment of the Court of Appeal over the judgment of the Election Petition Tribunal and the authority of Awuse vs Odili (2003) 18 NWLR (pt. 851) 116 at 151, the only option opened to the appellant is to invoke the original jurisdiction of the Federal High Court in the manner appellant did in the instant case.

On his part, learned counsel for the 1st respondent submitted that there is a difference between a judgment obtained by fraud and a proceeding tainted with bias arising from percuniary interest; that counsel for the appellant has failed to address the issue properly in his brief; that the effect of the facts pleaded in the Statement of Claim is that the judgment of the Tribunal be impeached on grounds of bias; that appellant did raise the issue of bias before the Tribunal and was overruled but no appeal was filed against that decision and is therefore deemed to have accepted the position; that by calling on the Federal High Court to set aside the judgments of the Tribunal and of the Court of Appeal the appellant clearly asked for a review of the judgments, which the learned trial judge had no jurisdiction to do and that the Court of Appeal was right in so holding. Finally learned counsel submitted that since all the events took place in Akwa Iborn State and do not come within the purview of section 251 of the 1999 Constitution and as the suit relates to the office of Governor of Akwa-Ibom State, it is the High Court of Akwa Ibom State and not the Federal High Court, Abuja that has

jurisdiction to entertain the matter.

From the facts, it is not disputed that the action giving rise to this appeal emanates from proceedings in an election petition before an Election Tribunal. Also not disputed is the fact that during the said proceedings appellant did accuse the Chairman and Members of the Election Tribunal of receiving bribes from the 1st respondent and consequently biased by virtue of that action and called on them to disqualify themselves from further participation in the said proceedings. From the records and particularly at page 131 it is clear that the application calling on the Chairman and Members to disqualify themselves was dismissed. I have carefully gone through the records and can confirm that appellant filed a total of 17 grounds of appeal against the decision of the Tribunal before the Court of Appeal and that none of these grounds complained against the decision of the said tribunal on the allegation of bias. The legal consequence of that situation is simply that appellant is deemed to be satisfied with that decision and is consequently bound by same, he cannot later be allowed to contend the contrary particularly as the decision of the Court of Appeal on the Judgment of the Tribunal is final.

I have carefully gone through the facts pleaded in the Statement of Claim and I agree with the submission of learned counsel for the appellant that in determining whether a court has jurisdiction to entertain a matter, it is the claim of the plaintiff made up of the writ of summons and Statement of Claim where one has been filed, that determines the issue. From the facts as pleaded in the Statement of Claim, it is very dear that the substance of the complaint of the appellant before the trial court is that of bias or real likelihood of bias arising from percuniary interest and not fraud. 1 hold the view that the term fraud is employed as a term of art to bring the matter within the original jurisdiction of the Federal High Court not that fraud is the bedrock of the action.

1 hold the considered view that once a court or tribunal is accused of being induced to enter judgment in favour of a litigant by offer or acceptance of gratification, it means that the judgment so obtained is induced by bias or real likelihood of bias not that it was obtained by fraud. When a judgment is obtained by fraud, it is the court or tribunal that is the innocent victim of the fraud whereas it is, the court that is the culprit where its judgment is said to be tainted by bias arising from percuniary interest. As defined in Vulcan cases Ltd vs G.F. ind. A-G (2001) 9 NWLR (pt. 719) 610 at 624.

\"Fraud in most cases, involves dishonesty, actual fraud takes either the form of statement which is false or a suppression of what is true. The partial statement of fact and the withholding of essential qualifications may make that which is stated absolutely false and fix it under the head of suggestion falsi.\"

On the other hand, \"bias in its ordinary meaning, is opinion or finding in favour of one side in a dispute or argument resulting in the likelihood that the court so influenced will be unable to hold an even scale\" - see Kenon vs Tekam (2001) 14 NWLR (pt. 732) 12.

Looked at from the above perspectives it becomes very clear that all the submissions and authorities cited and relied upon by learned counsel for the appellant on original jurisdiction of the Federal High Court to set aside a judgment obtained by fraud are irrelevant and ground to no issue; the facts not being in support of fraud but bias. Secondly since appellant by not appealing against the decision of the tribunal on allegation of bias is deemed to have accepted same and cannot now be heard to re-open the matter by fresh action, the right to appeal against that decision having been lost for ever. I hold the further view that an allegation of fraud will not confer jurisdiction on the Federal High Court to re-open an election petition matter which is a matter constitutionally outside its jurisdiction.

Finally, I hold the view that since the facts clearly show that the matter resulting in the action arose from an election petition before an election tribunal, the Federal High Court has no jurisdiction, granted that it is true that the judgment was obtained by fraud, which is not conceded, to entertain same as it does not fall within the purview of section 251 of the 1999 Constitution. On the facts of the case, if there exists such fraud, which is denied, it is only the Election Tribunal concerned that will have the jurisdiction to set aside its judgment obtained by fraud. The issue is therefore resolved against the appellant.

In conclusion, since the court of trial had no jurisdiction to entertain the matter, it becomes unnecessary for me to consider the other issues formulated for determination as they are thereby rendered academic or hypothetical. I

therefore agree with the lead judgment of my learned brother Kutigi. JSC that the appeal is without merit and should be dismissed. I accordingly dismiss same with costs as assessed and fixed in the said lead judgment.

Appeal dismissed.

Judgement delivered by
Ikechi Francis Ogbuagu. J.S.C

I have had the privilege of reading before now, the lead Judgment of my learned brother, Kutigi, JSC, just delivered by him. I entirely agree with the reasoning and conclusion that the appeal, deserves being dismissed. However, for purposes of emphasis, I will make my brief contribution.

For the avoidance of any doubt, let me reproduce herein some of the relevant averments in the Appellant\'s Statement of Claim at the trial High Court, Abuja. They read as follows:

\" The Plaintiff, a Company Executive of Ikot Obioko Village, was a candidate for the election to the office of the Governor of Akwa Ibom State of Niqeria during the election held on the 19th day of April, 2003.

3. The 2nd and 3rd Defendants are official of the 4th Defendant who was charged with the responsibility of conducting the Governorship election of Akwa Ibom State held on the 19th day of April, 2003.

4. The 4th Defendant in the body (sic) charged with among other things conduct of elections in the Federal Republic of Nigeria with supervisory authority over the 2nd defendant.

5. The 5th Defendant is the registered Political Party on whose platform the 1st Defendant contested the Governorship elections of 19th April 2003.

8. The Election Petition Tribunal in its Judgment delivered on 14/07/2003 dismissed the Plaintiff\'s election petition for lack of merit and held the 1st Defendant to be duly elected. A copy of the Judgment of the tribunal is hereby pleaded.

9. The Plaintiff subsequently filed an appeal against the judgment of the Election Tribunal on the 25th day of July 2003.

10. The Court of Appeal in affirming the judgment of the Election Tribunal dismissed the Plaintiff\'s Appeal in its judgment delivered on 30/10/2003

.....

16. Whereof the Plaintiff\'s Claim against the Defendants is for:

(a) A declaration that the judgment of the Akwa Ibom Governorship Election Tribunal given in favour of the 1st Defendant as having been duly elected the Executive Governor of the Akwa Ibom State and confirmed by the Court of Appeal is a nullity because some of the Tribunal members have been found to have taken BRIBE\".

[the underlining mine]

(b) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

At the Federal High Court, a Preliminary Objection was filed on 17th May, 2004 under Sections 246, 285 and 308 of the Constitution of the Federal Republic of Nigeria, 1999. In his Ruling delivered on 30th July, 2004, the learned trial Judge - Adah, J. at page 221 of the Records, stated as follows:

\"From the foregoing therefore I come to the conclusion that I have no jurisdiction to entertain this suit .....
I hold therefore that the preliminary objection has succeeded. The matter is hereby struck out\".

On appeal by the Appellant to the court below, that court per Mohammad, JCA, stated at page 377 of the Records, inter alia, as follows:

\"Now having carefully considered the submission of learned counsel for the respective parties in contrast with the ratio decidendi of the learned trial urge, I cannot but agree with the learned trial Judge that he lacked Jurisdiction to entertain the suit. Once a court or tribunal lacks Jurisdiction, same cannot be conferred on it by any guise even if with the consent of the parties. There are no two ways to it. There is no need for me to belabour the issues raised by the parties in this appeal any longer, as doing so will not change the position of the law on issue of jurisdiction adumbrated above. Accordingly, I find no merit in this appeal and I hereby dismiss it.

I affirm the decision of the lower court ..... \".

The court below, at pages 376 and 372 of the Records, stated inter alia, as follows:

\"..... The subject matter before the trial court (which incidentally) was an Election Petition Challenging the declaration of the 1st respondent by the 4th respondent as the elected candidate for the Governorship of Akwa Ibom State. An appeal against that declaration at the Court of Appeal was unsuccessful. Thus the subject matter before the Governorship and Legislative Houses Election Tribunal of Akwa Ibom State and the Court of Appeal, Calabar Division, was election, petition and appeal lodged against it. In his considered ruling, the learned trial Judge declined jurisdiction\".

[the underlining mine]

Now, Section 246 (3) of the 1999 Constitution provides as follows,

\"The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final\".

[the underlining mine]

I note that at page 374 of the Records, the learned counsel for the Appellant, had submitted in the court below, among other things, that the action in the trial court, did not constitute an appeal against the Judgment of the Tribunal and the Court of Appeal. What a misconception ! If the action did not constitute what amounts to an appeal or review against the decisions of the Election Tribunal and the court below, or a review of the said decisions by the Tribunal and the court below, I wonder what else it is. This is because, in relief (a) of the Appellant in the trial court, it was a declaration that the judgment of the said Tribunal, is a nullity.

When this appeal came up for hearing on 29th June, 2006, the Court tried unsuccessfully, to draw the attention of the learned counsel for the Appellant to the provisions of Section 246 (3) of the said Constitution. He told the Court that he had no instructions to withdraw the appeal. When he was asked whether he was urging the Court to allow the appeal, in what I regard as \"bluffing\", he said that their Brief speaks for itself and that he will not say he was urging the Court to allow the appeal.

With profound humility and respect, if any appeal is absolutely and completely frivolous, (and a deliberate attempt by the learned counsel to the appellant, not only to ridicule his client but the two lower courts) this is certainly one of them. I say so because, in the face of many decided authorities in respect of the subject-matter of the case that has led to this appeal, it is ridiculous to me, for the learned counsel to \"fight on\" so to say, in a matter of law and fact that are very obvious and firmly settled. It has been held that the decision of the court of Appeal, shall not be subject to a further

appeal to or review by any other court which includes this Court. This indeed, includes even interlocutory decisions arising from election petition matters pursuant to Section 81 (1) of Decree No. 5 of 1999.

Let me, for the avoidance of further doubt refer to the cases of Rev. Hyde Onuaguluchi v. Ndu & 2 ors. (2001) NWLR (Pt.712) 309 (5) 321; (2001) 3 SCNJ. 110 (5) 724 and recently, Chief Sergeant Awuse v. Dr. Peter Odili & 4 ors. (2003) 18 NWLR (PL 851) 116, (2003) 11 SCNJ. 88 (a) 98, 100.

In any case, as it stands, there are concurrent findings of fact by the two lower courts. Since the decisions are not perverse and cannot be faulted in any manner whatsoever by this Court, it cannot interfere. See the cases of Calabar East Co-operative Thrift & Credit Society Ltd. & ors. v. Ikot (1999) 14 NWLR (Pt.638) 223; (1999) 12 SCNJ. 121 and recently Oyadare v. Chief Keji & anor. (2005) 1 SCNJ. 35; (2005) 1 S.C. (pt.1) 79; Prince Sosanya v. Engr. Onadeko & 5 ors. (2005) 2 S.CNJ. 103 @ 127-128, 137; (2Q05) 2 S.C.(Pt.ll) 13 @ 33 -34, 36 - 37, 39 - 41; and Onwudiwe v. Federal Republic of Nigeria (2006) 4 SCNJ. 350 @ 369 and many others.

In conclusion, I too, dismiss the appeal. I too affirm the decision of the court below affirming the decision of the trial court. I abide by the consequential order in respect of costs although if I had my way, or if the Rules of the Court, had allowed me, I should have awarded a well deserving punitive costs against the learned counsel for the Appellant personally.