

IN THE SUPREME COURT OF NIGERIA

Suit No: SC199/2003

Petitioner: Chief Chukwuemeka Odumegwu Ojukwu

And

Respondent: Chief Olusegun Obasanjo Independent National Electoral Commission The Chairman
Independent National Electoral Commission Peoples Democratic Party

Date Delivered: 2004-07-02

Judge(s): Muhammadu Lawal Uwais, Uthman Mohammed, Umaru Atu Kalgo, Sylvester Umaru Onu, Akintola Olufemi Ejiwun

Judgment Delivered

On 19th of April, 2003 presidential election was held in Nigeria. The appellant, Chief Chukwuemeka Odumegwu Ojukwu, contested the lid election under the platform of All Progressive Grand Alliance (APGA). The 1st respondent, Chief Olusegun Obasanjo, also contested the said election under the umbrella of People's Democratic Party (PDP), the 4th respondent, in this appeal. At the end of the exercise, the 1st respondent was duly returned as the winner by the hairman of the Independent National Electoral Commission, the respondent, in this appeal.

The appellant who lost the election filed this petition at the Court of Appeal and prayed for the following reliefs:

- "(i) A declaration that as at the 19th April, 2003 when the presidential election was held in Nigeria, Chief Olusegun Obasanjo, the 1st respondent, was not qualified to contest the election.
- (ii) An order invalidating the return of Chief Olusegun Obasanjo, the 1st respondent as the President - elect in the April 19th 2003 presidential election.
- (iii) An order commanding the 2nd respondent to conduct another presidential election.
- (iv) An order directing the Chief Justice of Nigeria to take over as the Head of State of Nigeria for a period of 3 months within which period he would re-organise the 2nd respondent and conduct a free and fair election.
- (iv) A declaration that the purported declaration of the 1st respondent as the winner of the 19th April, 2003 election is unconstitutional, null and void."

In response to the above petition, the 1st respondent stated that no election was held in Nigeria in 1976 and as such he could not have been elected as President of Nigeria in the alleged election. The 1st respondent further submitted that he had only been elected to the office of President in one previous election, that is, the 1999 election. The 1st respondent concluded the averments in his reply to the petition by submitting that he would lead evidence to show that the petition is totally misconceived, frivolous and a mere attempt to trivialise the judicial process.

The Court of Appeal heard evidence from the petitioner/ appellant, the 1st respondent and Alhaji Mohammed Dikko Yusuf who was a member of the Supreme Military Council from 1975 to 2nd October, 1979. After hearing addresses

from counsel the court adjourned the petition for judgment. In a very well considered judgment, written by Isa Ayo Salami, J.C.A (concurrented with by Oguntade, J.C.A (as he then was), Mahmud Mohammed, Nsofor and Tabai, J.J.C.A) the petition was dismissed.

Dissatisfied with the judgment, the petitioner, armed with nine grounds of appeal, filed this appeal and questioned the merit of the Court of Appeal's decision. Mr. J. C. Ezike, learned counsel for the appellant, identified five issues for the determination of the appeal. I have carefully gone through those issues and it is plain that one single issue will be quite adequate for the determination of this appeal. I therefore agree with learned counsel, Mr. Adebayo Adenipekun who wrote the brief for the 1st respondent, that the only question which arises for determination is:

"Whether or not the appointment of the 1st respondent in 1976 under a military regime as the Head of State following the death of General Murtala Muhammed amounted to an election within the meaning of Section 137 of the 1999 Constitution."

Before I consider the respective submissions of counsel representing the parties in this appeal it is pertinent to state the undisputed facts which gave rise to this petition. On the 13th of February, 1976, the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, General Murtala Mohammed was assassinated in an abortive coup. At that time the 1st respondent was the Chief of Staff, Supreme Headquarters, the second in command to the Head of State and the second most senior officer in the army.

As soon as the death of General Murtala Mohammed was confirmed, the Supreme Military Council, in pursuance to the provisions of Section 8(d) of the Constitution (Basic Provisions) Decree No 32 of 1975, met and appointed the 1st respondent as the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. In 1999 the 1st respondent was elected President of the Federal Republic of Nigeria. He completed the four years term and contested election for the second term of another four years last year. This petition was filed by the appellant when the 1st respondent was declared the winner of the 2003 presidential election.

Mr. Ezike for the appellant opened his submission with reference to Section 137(1) (b) of the 1999 Constitution which provides that a person shall not be qualified for election to the office of President if he has been elected to such office at any two previous elections. Mr. Ezike argued that by virtue of Sections 6(2) and 8(d) of the Constitution (Basic Provisions) Decree No 32 of 1975 and Section 26 of the Interpretation Act, 1964 the "election" of the 1st respondent as Head of State in 1976 was an election. Learned counsel referred to the definition of the word "election" in Black's Law Dictionary, 6th edition thus:

"The act of choosing or selecting one or more from a greater number of persons, things, courses or rights. The selection of one person from a specified class to discharge certain duties in a state, corporation or society... Election ordinarily has reference to a choice or selection by electors."

Mr. Ezike further submitted that Section 26 of the Interpretation Act has made it mandatory for the Supreme Military Council to act democratically wherein the section provides:

"Where a body established by an enactment comprises three or more persons, then:

(a) any act which the body is authorised or required to do may be done in the name of the body by a majority of those persons or of a quorum of them, and

(b) in any vote taken at a meeting of the body, the person presiding when vote is ordered shall have casting vote whether or not he also has a deliberative vote."

Learned counsel argued that since the Supreme Military Council was made up of more than 3 people the unanimous selection or appointment of the 1st respondent as Head of State in the name of such body amounts to his election to the office of President. I must pause here to point out that Section 26 of the Interpretation Act was wrongly quoted by the learned counsel. It is Section 27 of the Act and not 26 which provides for the procedure of voting at a meeting of statutory bodies. I honestly cannot see how the issue of voting at a meeting would support an argument that the 1st respondent was elected in 1976 when he was appointed the Head of State and Commander-in-Chief of the Armed Forces by the Supreme Military Council.

Mr. Ezike picked hole on the finding of the Court of Appeal where it held that:

"election goes beyond merely voting as it is a process inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and return or declaration of result."

He also referred to the judgment of the court below in which it concluded that for an election to qualify for consideration under Section 137(l)(b) it must respectfully be such which was conducted under the provisions of Section 132 of the 1999 Constitution. Counsel thereafter, in the appellant's brief, argued that the Court of Appeal was wrong because it is not all elections even under the 1999 Constitution that must be conducted by an "independent body" (like the INEC), Mr. Ezike pointed out that Section 50 of the 1999 Constitution provides that:

"(a) President and Deputy President of the Senate... shall be elected by the members of the House from among themselves; and

(b) a speaker and deputy speaker of the House of Representatives... shall be elected by members of that House from among themselves."

Learned counsel further submitted that elections vary according to circumstances and demand. Thus while delimitation of constituencies may be important to Senators and members of the Houses of Representatives/Assemblies, Section 132(4) of 1999 Constitution says that:

"For the purpose of an election to the office of President, the whole of the federation shall be regarded as one constituency."

Mr. Ezike argued that the Supreme Military Council is the constituency of the 1st respondent for the purpose of succeeding to the office left vacant after the death of General Murtala Mohammed. Therefore the election by the Supreme Military Council qualifies as "any" election. He supported this submission by reference to the case of Fisher v Bell (1961) 1 QB 394 at 399.

He also referred to the case of Ejilemele v Opara (2003) 9 NWLR (Pt. 826) 536 at 559 where Niki Tobi, J.S.C, held that a person can be recognised as the Head of a family "by election by members of the family." Mr. Ezike further elaborated that corporate bodies, clubs associations, town unions and students unions also hold elections just like the Senate and Houses of Representatives and Assemblies. Mr. Ezike concluded that the Supreme Military Council held one on 14th February, 1976.

I have endeavoured to reproduce the major submissions of Mr. Ezike in order to show the stand of his argument that the 1st respondent was disqualified to contest Presidential election in 2003 on the ground that he had been elected to the office of President in two previous elections held in 1976 and 1999.

As is expected, all the learned counsel who participated in this appeal opposed the submission of Mr. Ezike and urged that the appeal be dismissed. Chief Afe Babalola, leading a team of lawyers for the 1st respondent, submitted that the 1st respondent was nominated and appointed as Head of Military Government in 1976. He was not elected. The definition of the office he was elected as President in 1999 and 2003 is in the 1999 Constitution. He referred to the conclusion in the brief filed for the 1st respondent which reads as follows:

"Military rule is usually anti-democratic, repressive and full of retroactive legislation. Democracy on the other hand is the government of the people, by the people and for the people. In other words, such government must have been elected by a majority of the people whom the government is meant to rule. The people must have been free to vote. They must on the same token, possess equal rights. As soon as the people feel they have outlived their usefulness, they vote them

out with the ease with which they brought them in by taking free vote and accepting the verdict of the majority'

Mr. Eghobamien, SAN in his submission, pointed out that the Supreme Military Council was not the whole Federation; neither did they represent the will and aspiration of the entire electorate. The election of the President must involve the whole country, anything short of that is bereft of the intent and purpose of Section 132(4) of the Constitution.

Learned counsel for the 4th respondent, Roland Otaru, gave a list of relevant facts which establish that the provisions of Section 13,7(1)(b) of 1999 Constitution is not applicable in the circumstances of this case as the 1st respondent's appointment in 1976 cannot by any stretch of imagination be referred to as previous election within the contemplation and intendment of the Constitution of the Federal Republic of Nigeria, 1999. Those facts which the learned counsel referred to are listed below:

- (a) The 1st respondent was appointed by the SMC on the 14th day of February, 1976 as Military Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.
- (b) There was no election held by the SMC before the 1st respondent was appointed.
- (c) Elections in democratic societies like ours must undergo some processes or procedures like delimitation of constituencies, nomination, accreditation, voting, counting, collation and return or declaration of result.
- (d) The candidates nominated to contest the election must be sponsored by their respective political parties.
- (e) Section 320 of the Constitution of the Federal Republic of Nigeria, 1999 enacts that the Constitution shall come into force on 29th day of May, 1999.

The key word in this appeal is "election". Was the 1st respondent "elected" to the office of President of Nigeria previous to his election to that office in 1999? Learned counsel for the appellant, Mr. Ezike answered that Chief Obasanjo was indeed elected to that office when he was appointed or selected as Head of the Federal Military Government by the Supreme Military Council in 1976. In support of this amazing submission Mr. Ezike hinged his argument on the literal meaning of the word "election". He argued that a head of a family is elected by members of the family. So also are elections conducted by corporate bodies, clubs, associations, town unions, student unions and elections of leaders in the

Senate and House of Representatives. Considering the fact of this case this is the most unconvincing argument in a case which is based on interpretation of the Constitution. Section 137(1)(b) of 1999 Constitution is very clear. Even a layman can understand the intention of the framers of that provision. In interpreting the provision of the Constitution the language of the Constitution where clear and unambiguous must be given its plain evident meaning. *Attorney-General Bendel State v Attorney-General of the Federation* (1981) 10 S.C 1; (1982) NCLR 1.

Further to what I have said earlier those who have the duty to interpret the provisions of a statute or Constitution must look at the statute or Constitution as a whole in order not to veer away from the intendment of its framers. In *P.D.P. v INEC* (1999) 11 NWLR (Pt. 626) 200 at page 142 Chief Justice Uwais pointed to what is required to be done in interpreting the provision of a statute or Constitution in the following words:

"It is settled that in interpreting the provisions or section of a statute or indeed the Constitution, such provisions or section should not be read in isolation of the other parts of the statute or Constitution. In other words, the statute or Constitution should be read as a whole in order to determine the intendment of the makers of the statute or Constitution."

In the case of *Canada Sugar Refining Co. v R.* (1988) AC 735 it was held that every clause of a statute should be

construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.

The relevant issue in this case is whether the 1st respondent, Chief Olusegun Obasanjo, had been elected to the office of President of Nigeria in any election as envisaged by the 1999 Constitution, previous to the presidential election of 1999 which he contested and won. Learned counsel for the appellant, Mr. Ezike, argued that the 1st respondent was indeed "elected" by his "appointment" or "selection" as Head of State by the Supreme Military Council in 1976.

Let me analyse the submission of Mr. Ezike on the appointment of the 1st respondent in 1976. Learned counsel referred in his submission to Section 6(2) of the Constitution (Basic Provisions) Decree No 32 of 1975 under which the Supreme Military Council was established and Section 8(d) of the said Decree which provided for the appointment of the Head of the Federal Military Government. It is pertinent to point out however that under the sections referred to above (of Decree No 32 of 1975) there is no provision for the appointment of "President of the Federal Republic of Nigeria." Section 6(1) (2) (a) of Decree No 32 of 1975 provides thus:

"6. (1) There shall be for Nigeria a Supreme Military Council, a National Council of States and a Federal Executive Council.

(2) The Supreme Military Council shall consist of:

(a) the Head of the Federal Military Government who shall be President of the Supreme Military Council."

Looking at the provisions of Section 6(1) (2) (a) of Decree No 32 of 1975 it is relevant to ask, "To which office was the 1st respondent, Chief Obasanjo, appointed on 14th of February, 1976 by the Supreme Military Council? The simple answer is that he was appointed to the office of the Head of the Federal Military Government. He was therefore not appointed to the office of President of Nigeria. His appointment as Head of the Federal Military Government also made him President of Supreme Military Council and not President of Nigeria as argued by Mr. Ezike. The object of all interpretations is to discover the intention of the law-makers which is deducible from the language used. Once the meaning is clear the courts are to give effect to it. See *Bradlaugh v Clarke* (1883) 3 App Cases 354.

On this point alone, assuming I accept that when the 1st respondent was appointed the Head of the Military Government he was elected, it is plain to say that he was not elected President of Nigeria but Head of Federal Military Government. The offices of the President and that of the Head of Federal Military Government are not the same designations. No amount of analogy and play about with words and phrases can change the meaning of what has clearly been provided in Section 137(1)(6) of 1999 Constitution and Section 6(2)(a) of Constitution (Basic Provisions) Decree No 32 of 1975, This alone has flawed the contention of the appellant in the petition that the 1st respondent had been elected President of Nigeria by the Supreme Military Council in 1976.

I will now look at the procedure for electing the President of Nigeria in a democratic dispensation. The process of performing such important task has been provided in Section 132 of 1999 Constitution. I reproduce the section in full as follows:

"132 (1) An election to the office of President shall be held on a date to be appointed by the Independent National Electoral Commission.

(2) An election to the said office shall be held on a date not earlier than sixty days and not later than thirty days before the expiration of the term of office of the last holder of that office.

(3) Where in an election to the office of President one of the two or more candidates nominated for the election is the only candidate after the close of nomination, by reason of the disqualification, withdrawal, incapacitation, disappearance or death of the other candidates, the Independent National Electoral Commission shall extend the time for nomination.

(4) For the purpose of an election to the office of President, the whole of the Federation shall be regarded as one

constituency.

(5) Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of President."

This is the only method prescribed by the Constitution for the election to the office of President of Nigeria. If any person is to be elected to the office of the President of Nigeria he must go through the process laid down above. There is no other way that the President of Nigeria is elected. The Constitution is very clear on the procedure. Equating such election with elections in clubs and town unions is not, with respect, an argument based on the interpretation of the Constitution of 1999. I think I am not wrong to conclude that the submissions of Mr. Ezike, in this case, have cast a negative impression of his power to interpret a provision of the Constitution or a Statute. Even the word "office" which the learned counsel made heavy weather of, when its definition is analysed, will show that it is of no help to the appellant's petition. Under Section 318 of the Constitution "office" is defined thus:

"office' when used with reference to the validity of an election means any office the appointment to which is by election under this Constitution."

Considering the interpretation of the word "office" above, it means that the only valid election to the "office" of President is the one conducted under the provisions of 1999 Constitution. Thus, where it has been provided under Section 137(1) (b) of 1999 Constitution that "a person shall not be qualified for election to the "office" of President if he has been elected to such "office" at any two previous elections", it means the "office" of President whose appointment is made by election under the 1999 Constitution. In this regard, since the appointment of the 1st respondent to the "office" of the Head of the Federal Military Government, in 1976, was not made under the provisions of the 1999 Constitution, the argument of learned counsel for the petitioner, Mr. Ezike, that the appointment of the 1st respondent in 1976 can stand as the second previous election to the office of President is groundless. Any election to the "office" of President which was not conducted under the provisions of 1999 Constitution is not a previous election to the "office" of President as envisaged by the provisions of Section 137(1)(b) of the 1999 Constitution.

In sum, this petition is devoid of any merit and I agree that it is an attempt to trivialize the judicial process. The appeal is accordingly dismissed. I affirm the decision of the Court of Appeal and award N10, 000.00 costs to each set of the respondents.

Judgment delivered by
Muhammadu Lawal Uwais CJN

I have had the advantage of reading in draft the judgment read by my learned brother, Mohammed, J.S.C. I entirely agree with him that this appeal is devoid of merit. By way of emphasis, I wish to add the following.

Both the appellant and the 1st respondent contested the 2003 presidential election as candidates for the All Progressive Grand Alliance (APGA) and People's Democratic Party (PDP) respectively. The 1st respondent was returned by the 2nd respondent as the winner of the election. Consequently, the appellant filed a petition in the Court of Appeal challenging the declaration that the 1st respondent was duly elected as President of the Federal Republic of Nigeria. He prayed for the following reliefs:

(i) A declaration that as at the 19th April, 2003 when the Presidential Election was held in Nigeria, Chief, Olusegun Obasanjo, the 1st respondent, was not qualified to contest the election,

(ii) An order invalidating the return of Chief Olusegun Obasanjo, the 1st respondent as the President elect in the April 19th 2003 presidential election.

(iii) An order commanding the 2nd respondent to conduct another Presidential Election.

(italics mine)

The keyword here is "appointment" which does not have the same meaning as "election" which the appellant canvassed that took place in the Supreme Military Council to appoint the 1st respondent in 1976 as Head of the Federal Military Government.

Surely, the office of Head of the Federal Military Government is not the same as the office of the President of the Federal Republic of Nigeria as envisaged by the 1999 Constitution which relates to a general election, while Decree No 32 of 1975 talks of appointment and not election.

For these reasons and those stated by my learned brother, Mohammed, J.S.C, I, agree with the Court of Appeal when it held that it could not be shown by the appellant in law or by evidence that the 1st respondent was elected as Military Head of State. This does away with all the consequential reliefs sought by the appellant in his petition. I do not, therefore, deem it necessary to consider any further argument canvassed by the appellant in that regard as that will, with respect, amount to an exercise in futility.

Accordingly, I too see no merit whatsoever in this appeal and I hereby dismiss it and affirm the decision of the Court of Appeal. I award N10, 000.00 as costs to set of the respondents.

Judgment delivered by
Sylvester Umaru Onu J.S.C.

Having been privileged to read in draft before now the judgment of my learned brother, Uthman Mohammed, J.S.C just delivered, I am in entire agreement with him that the appeal lacks merit and it fails.

I wish to add a few words of mine in expatiation to the leading judgment in this bizarre case which both in conception and presentation raises curious constitutional and interpretational issues.

The appellant was one of the presidential candidates that contested the nation-wide election to the office of the President of the Federal Republic of Nigeria held on the 19th of April, 2003. He (appellant) contested under the aegis of the All Progressive Grand Alliance (APGA), a registered political party. The 1st respondent who contested the same election was returned as the winner of the said election which was conducted nation-wide; that he (1st respondent) was previously, in his own words, unanimously "selected" or "appointed" (which in a military setting at the time was understandable) by the Supreme Military Council to hold a similar office between 14th February, 1976 and 1st October, 1979; that he was again elected to the office of President in 1999 and again in 2003. That it was the 2nd respondent that conducted the 3rd election in April, 2003, thus making a total of three elections to "such office" under powers granted to it in that behalf by the 1999 Constitution and the Electoral Act, 2002. He further stated that the 3rd respondent was at all material times the chairman of the 2nd respondent and chief returning officer for the said election and he it was who declared the 1st respondent as the winner of the April, 2003 presidential election. The 4th respondent, it was asserted, sponsored 1st respondent at the said presidential election.

Appellant's case in the Court of Appeal was that 1st respondent was ab initio not qualified to have contested the April, 2003 election by reason of the fact that he had been previously elected to "such office" and in previous elections prior to the 2003 presidential election.

At the end of the exercise, the 1st respondent was duly returned as the winner by the 3rd respondent and the appellant who lost, filed g the petition giving rise to this appeal in the Court of Appeal (hereinafter called the court below) and prayed for the following reliefs:

(i) A declaration that as at 19th April, 2003 when the presidential election was held in Nigeria, Chief Olusegun Obasanjo, the 1st respondent was not qualified to contest the election.

- (ii) An order invalidating the return of Chief Olusegun Obasanjo, the 1st respondent as the President-elect in the April 19th 2003 presidential election.
- (iii) An order commanding the 2nd respondent to conduct another presidential election.
- (iv) An order directing the Chief Justice of Nigeria to take over as the Head of State of Nigeria for a period of 3 months within which period he would reorganise the 2nd respondent and conduct a free and fair election.
- (v) A declaration that the purported declaration of the 1st respondent as the winner of the 19th April, 2003 election is unconstitutional, null and void.

The respondents each countered all the averments of the appellant's petition and after they had testified in support of their respective cases and addressed the court below, that court held, inter alia, per Ayo Salami, J.C.A and concurred in by Oguntade, Mohammed, Nsofor and Tabai, J.J.C.A as follows:

"... I am not unaware that the petitioner talked about voting in his testimony before us. The issue of election goes beyond merely voting as it is a process inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and return or declaration of result. There is no evidence that such process was gone through in 1976 when Chief Obasanjo became Head of State. Having failed to establish the fulcrum of his case, it follows necessarily that his case did not preponderate to warrant calling upon the respondents to enter upon their defence. In fact there is nothing to rebut. The election petition, in my respectful opinion, is therefore not established."

In case, the exercise that was conducted in the Supreme Military Council in 1976, is considered to be an election, without so deciding, it is not the type of election envisaged under Section 137(l)(b) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that:

"137 (1) A person shall not be qualified for election to the office of President if:

- (a) '
 - (b) he has been elected to such office at any two previous elections."

(italics mine).

The Constitution, in my respectful view does not contemplate an election such as the one alleged to have been held in 1976. If an election was held on that day it is not only an aberration but also a farce. Or how else would an election in which one of the candidates or the sole candidate presided over its conduct he described. It is not only undemocratic it also does violence to our sense of fairness, equity and good conscience. For an election to qualify for consideration under the provisions of Section

137(l)(b) it must respectfully be such that was conducted under the provision of Section 130 of the 1999 Constitution which envisages an election by an independent body and conducted by free citizens and not by a cabal that had no mandate of Nigerians to give them a leader. To them at the Supreme Military Council, the word election was an anathema and treason and to talk about it was treasonable as testified to by the third petitioner's witness.

The word appointment which was used at pages 31 and 32 of exhibit PI by the 1st respondent is defined in Section 318 of the Constitution 1999 as follows:

"318(1) In this Constitution, unless it is otherwise expressly provided or the context otherwise requires '

"appointment" or its cognate expression includes appointment or promotion and transfer or confirmation of appointment."

On the evidence before us, it seems to me that Obasanjo was appointed in 1976 on promotion in view of his seniority by rank and appointment or confirmed by virtue of the evidence, of third petitioner's witness under cross-examination that '

'When those who made the coup brought us in they told us that Murtala Mohammed was the Head of State and his number 2 was Obasanjo and that if he dies his successor would be Obasanjo. I was present on that occasion.'

(Italics mine)

The testimony on either view is within the contemplation of the definition of the word appointment which excludes possibility of an election. I am, therefore, not considering the provisions of the Constitution of the United States of America referred to by learned counsel for petitioner. Because where the words of the Constitution are clear the court will give it literal, grammatical and liberal interpretation without resorting to any extraneous matter in interpreting it. See *In Re: J. S. Olawoyin v Commissioner of Police* (1961) All NLR 203, (1961) 2 SCNLR 278. It held that report of constitutional conference was inadmissible unless the words used in the constitution are ambiguous. See also *Rabiu v State* (1981) 2 NCLR 293.

Learned counsel for petitioner also craved in aid the definition of the word "office" under the same section 318. The word "office" is defined as follows:

'office' when used with reference to the validity of an election means any office the appointment to which is by election under this Constitution.'

I cannot fathom the reason for thinking that this definition enures to the petitioner. The definition merely deals with appointment which is made by election under the present Constitution. All it is being said is that certain offices under this Constitution are filled by election. Chief Obasanjo was not appointed under this Constitution in 1976. The most liberal interpretation is that certain appointment Q under this Constitution are made by election while others are made by appointment simpliciter or promotion or confirmation as has been shown earlier in this judgment without holding election for instance appointments of civil servants, or judicial officers. The appointing body may resort to voting to signify preferences of members of such officers when appointed or elected.

The court below went on to conclude its judgment by stating as follows:

'The petition lacks merit as it has not been shown either in law or fact that Chief Obasanjo was elected as alleged on 14th February, 1976 as the Military Head of State. Having found that the petition was not made out the same is dismissed by me with costs assessed at N7, 500 to each of the respondents.'

Being dissatisfied with the said decision the appellant appealed to this court on nine grounds. From the nine grounds appellant's counsel Mr. Ezike, formulated five issues for our determination, to wit:

1. Did the appellant prove that the appointment of the 1st respondent by the Supreme Military Council as Chief Executive and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria on the 14th February, 1976 was an election to the "office" of President within the meaning of Section 137(l)(b) of the 1999 Constitution of Nigeria'
2. What is the effect of the evidence suggesting that the 1st respondent was appointed Head of the Federal Military Government by the Supreme Military Council because of his seniority in the Armed Forces and in government as found by the Court of Appeal, on the appellant's contention that he was elected to the said office by the Supreme Military Council pursuant to the Constitution (Basic Provisions) Decree No 32 of 1975'
3. In the circumstances of this case, is there any difference between the "appointment" of the 1st respondent to the office of Head of State by the Supreme Military Council in 1976 under the Constitution (Basic Provisions) Decree, 1975 and his "appointment" to the office of President by election in 1999 under the Constitution'

4. Did the election of the 1st respondent in 1976 have to comply with the provisions of Section 130 of the 1999 Constitution in order to qualify for consideration under Section 137(l) (b) of the 1999 Constitution as "any previous election"

5. Was the appellant required to plead the evidence that the 1st respondent told him that he (the 1st respondent) was elected by the Supreme Military Council after the death of General Murtala Mohammed'

For his part, the 1st respondent submitted a lone issue for determination which queries:

1. Whether or not the appointment of the 1st respondent in 1976 under a military regime as the Head of State following the death of General Murtala Mohammed amounted to an election within the meaning of Section 137 of the 1999 Constitution.

The 2nd and 3rd respondents submitted in their joint brief two issues as calling for determination, to wit:

1. Whether or not on the totality of the evidence before the trial court there was a democratic election in the Federal Republic of Nigeria or within the Supreme Military Council on the 14th day of February, 1976 to the office of the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.

2. Whether or not the appointment of the 1st respondent as the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria under the Constitution (Basic Provisions) Decree No 32 of 1975 was an election envisaged under the unambiguous provision of Section 137(l)(b) of the Constitution of the Federal Republic of Nigeria.

Argument of issue:

In the argument of this appeal I propose to consider only 1st respondent's lone issue for determination which for its brevity and conciseness, or better still, its going to the root of the point at issue when it asks:

"Whether or not the appointment of the 1st respondent in 1976 under a military regime as the Head of State following the death of General Murtala Mohammed amounted to an election within the meaning of Section 137 of the 1999 Constitution."

Before I proceed further, I wish to pause here briefly to say a word or two on interpretation of documents generally with which we are herein concerned.

In the interpretation of documents, one of which is our 1999 Constitution its predecessors and statutes, especially the 1979 Constitution. Nasir, President of the Court of Appeal in Archbishop Anthony Olubumni Okogie & Others v The Attorney-General of Lagos State (1981) 2 NCLR 218 observed as follows:

"In interpreting the 1979 Constitution it (i.e. the Constitution) is a single document and every part of it must be considered as far as relevant and in order to get the true meaning and intent of any particular portion of the enactment."

It is trite law that certain propositions are fundamental to law and our system of justice. One is that a person whose right and interest are likely to be affected by a decision must be heard before the decision is taken against him. Another is that statutes should not be lightly presumed to have taken away a legal right upholding and preserving a right in the absence of express provisions to that effect. See P.D.P. v INEC (1999) 11 NWLR (Pt. 626) 200, (2001) FWLR (Pt.31) 2 735 (per Uwais,C.J.N).

While a person's access to the courts to have his civil rights adjudicated upon may be restricted or ousted by a Statute or Act, it must be construed rather strictly. Ouster of jurisdiction, it is also emphasized, needs express words vide Shodehinde v Registered Trustees, Ahmadiyya Movement-in-Islam (2001) FWLR (Pt. 58) 1065.

A court of law is without power to import into the meaning of a word, clause or section of a statute something that it does not say. See *Bronik Motors Ltd. & Others v Wema Bank Ltd.* (1983) 6 SC 158, (1983) 1 SCNLR 296.

Indeed, it is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. See *Thompson v Goold & Co.* (1910) AC 409 at 420.

Further, in interpreting statutory or constitutional provisions, such provisions should not be read in isolation of the other parts of the statute or Constitution. In other words, the statute or Constitution should be read as a whole in order to determine the intendment of the makers of the statute or Constitution. Every clause of a statute should be construed with reference to the context and other clauses of the Act so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter. See *Nafiu Rabi v State* (1981) 2 NCLR 293; *Egolum v Obasanjo* (1999) 7 NWLR (Pt.611) 355.

Such that a court in declaring that its jurisdiction has been ousted is itself exercising some jurisdiction. See *Wilkinson v Barking Corporation* (1949) KB 721.

Thus, where literal interpretation of a word or words used in any enactment will result in an absurdity or injustice, it will be the duty of the court to consider the enactment as a whole with a view to ascertain whether the language of the enactment is capable of any other fair interpretation, or whether it may not be desirable to put a secondary meaning on such a language or even adopt a construction which is not quite strictly grammatical.

Let me add by further stating in respect of interpretation of statutes and the Constitution, that in declaring the law, the court gives words used and employed in or the law or statute their ordinary and natural meanings. For as Lord Denning M.R. clearly put it in *Allen v Horn Electrical Industries Ltd.* (1987) 2 All ER 37 at 114.

"We are not slaves to words but their masters. We sit here to give them their natural and ordinary meaning in the context in which we find them."

Now to the rest of the consideration of the appeal. In resolving the lone issue identified as the one relevant to this appeal by me, I wish to hang my consideration thereof on very pertinent and salient sections of the 1999 Constitution, to wit: Section 137 of the 1999 Constitution, section 8(d) of the Constitution (Basic Provisions) Decree No 32 of 1975, Section 26(27) of the Interpretation Act and Section 132 of the 1999 Constitution, Section 50 of the said Constitution, Section 6(1) Decree No 32 of 1975, Section 312(2) and Section 318 of the 1999 Constitution on the definition of "office".

In the argument of both his brief and reply brief, the appellant contended among other things, that as the evidence of all three witnesses called by him including the contents of documentary evidence (exhibits PI - P1B) were neither denied nor contradicted, the same is adequate proof that the 1st respondent was first elected "President" by the Supreme Military Council within the meaning of Section 137 of the 1999 Constitution of Nigeria in addition to the provisions of Section 8(d) of the Constitution (Basic Provisions) Decree, 1975. Also to the effect is "the mandate of" the Supreme Military Council on the 14th of February, 1976; the purport of Section 26 of the Interpretation Act, 1964 whose provisions the said Constitution stipulates shall apply to the interpretation and the application of the said section of the said Act by the Supreme Court in *Adefulu v Oyesile* (1989) 5 NWLR (Pt. 122) 377, (1989) 12 SCNLR 44 at pages 66-67; Section 318 of the Constitution which makes it clear that the word "appointment" in the circumstances mean "election" and the legal and etymological definitions of the operative words of Section 137(1) of the 1999 Constitution.

Learned counsel for the appellant further argued that the said Constitution (Basic Provisions) Decree, 1975 and the words "select", "vote" and "appoint" used in the said Constitution and in exhibits PI A and PI B as well as in the evidence of PW2 and PW3 before the court below.

He further submitted that by virtue of Sections 6(2) and 8(d) of the said Constitution (Basic Provisions) Decree 1975 and Section 26 of the Interpretation Act, 1964 the selection of the 1st respondent in 1976 was an election.

In view of the fact that in 1976 under a military regime the appointment of the 1st respondent following the death of General Murtala Mohammed could under no guise have amounted to an election within the meaning of Section 137 of the 1999 Constitution the appellant's argument is misconceived. The election of a president is as provided by Section 132 of the 1999 Constitution which states:

"132(1) An election to the office of President shall be held on a date to be appointed by the Independent National Electoral Commission.

(2) An election to the said office shall be held on a date not earlier than sixty days and not later than thirty days before the expiration of the term of the last holder of ; that office.

(3) Where in an election to the office of president one of the two or more candidates nominated for the election is the only candidates after the close of nomination by reason of the disqualification, withdrawal, incapacitation, disappearance or death of the other candidates, the Independent National Electoral Commission shall extend the time for nomination.

(4) For the purpose of an election to the office of President, the whole of the Federation shall be regarded as one constituency.

(5) Every person who is registered to vote at an election a member of a legislative house shall be entitled to vote at an election to the office of President."

(Italics for emphasis)

The only method for electing a person to fill the office of the President of Nigeria is by the electoral process provided for in this section-Section 132 of the Constitution (ibid). It cannot be otherwise in a democratic set up.

In sum, I am in entire agreement with the decision of the court below, extracts from which judgment I had reason to set out in extenso in the earlier part of this judgment. Consequently, the tall orders we are asked to make or reliefs we arc impertuned to grant, would not avail the appellant.

This action is clearly vexatious and misconceived in as much as the claims or reliefs therein sought are an admixture or hotch'potch of grievances alleged to emanate from the 1999 Constitution or from disused and moribund military enactments. Rather than the briefs and submissions of the respondents being diversionary in their entirety as Mr. Ezike, learned appellant's counsel has dubbed them, to borrow the words of Chief Afe Babalola, SAN the learned leading counsel for the 1st respondent, this is an "unfit" action that should not have been allowed to be brought in the first place.

I, too, will dismiss the appeal and make the same consequential orders inclusive of those as to costs as contained in the leading judgment of my learned brother, Uthman Mohammed, J.S.C.

Judgment delivered by
Umaru Atu Kalgo

I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Mohammed, J.S.C. I entirely agree with his reasoning and conclusions. I therefore agree that there is no merit at all in the appeal and should be dismissed.

Accordingly, I dismiss it with costs as assessed in the leading judgment.

Judgment delivered by
Akintola Olufemi Ejiwunmi

Being privileged to have read in advance the lead judgment just delivered by my learned brother, Mohammed, J.S.C, it is clear from the said judgment that he had carefully considered the facts raised in the appeal and the issues raised thereon that this appeal lacks merit. I agree with him.

In this matter, the appellant, Chief Chukwuemeka Odumegwu Ojukwu contested for the presidency of this country on the platform of the All Progressive Grand Alliance (APGA), and the 1st respondent, Chief Olusegun Obasanjo, also contested for the same position on the platform of the Peoples Democratic Party (PDP) in the presidential election held in Nigeria on the 19th of April, 2003. Following that election, the 1st respondent was declared as the winner of the said election by the 2nd and 3rd respondents, having been found to have in his favour that he secured the majority votes of the voters throughout the country in this election. As the appellant was not satisfied with the declaration so made in favour of the 1st respondent, he filed the election petition, which led to his appeal to the Court of Appeal. The Court of Appeal being by virtue of the provisions of the Constitution, the Election Petition Court in respect of a presidential election (see Section 239 of the Constitution of Nigeria 1999).

The appellant therefore sought for the following reliefs in that court:

- \(i) A declaration that as at the 19th April, 2003 when the presidential election was held in Nigeria, Chief Olusegun Obasanjo, the 1st respondent was not qualified to contest the election.
- (ii) An order invalidating the return of Chief Olusegun Obasanjo the 1st respondent as the President-elect in the April 19th 2003 presidential election.
- (iii) An order commanding the 2nd respondent to conduct another presidential election.
- (iv) An order directing the Chief Justice of Nigeria to take over as the Head of State of Nigeria for a period of 3 months within which period he would reorganise the 2nd respondent and conduct a free and fair election.
- (v) A declaration that the purported declaration of the 1st respondent as the winner of the 4/19/03 election is unconstitutional, null and void.\"

At the trial, witnesses gave evidence. They were the appellant, the 1st respondent, and as P.W.3, Mohammed Dikko Yusuf, At the end of it all, the Court of Appeal by the judgment of Salami, J.C.A, (concurrent with, by Oguntade, Mahmud Mohammed, Nsofor and Tabai, J.J.C.A) dismissed the petition. In the following words at the tail end of the judgment, thus:

\\"The petition lacks merit as it has not been shown either in law or fact that Chief Olusegun Obasanjo was elected as alleged on 14th February as the Military Head of State,\"

As the appellant was not satisfied with the judgment of the trial court, he has appealed to this court. Pursuant thereto, five issues were raised in the appellant's brief for the determination of this appeal. And learned counsel for the 1st respondent has right submitted that the only question for determination in this appeal is:

\\"Whether or not the appointment of the 1st respondent \" in 1976 under a military regime as the Head of State following the death of General Murtala Mohammed amounted to an election within the meaning of Section 137 of the 1999 Constitution.\"

For this purpose, it is Section 137 (I) (b) of the 1999 Constitution that is relevant and it simply says:

"(1) A person shall not be qualified for election to the office of President if-

(b) he has been elected to such office at any two previous elections ..."

It follows therefore that the petitioner has the duty to satisfy this court that the court below was wrong to have held that that burden was not discharged by the appellant. The various arguments advanced for the appellant in pursuit of this appeal by learned counsel for the appellant when considered in all its ramifications, do not show anything to warrant my intervention with the judgment of the court below which in my humble view is right both in law and its evaluation of facts. It is settled law that an appellate court would not intervene and or interfere with the judgment of the court below except it is shown that the court fell into error in its evaluation of the facts or applied the law erroneously to findings of facts which were properly made. See *Victor Woluchem & Ors. v Chief Simon Gudi & Ors.* (1981) 5 SCNLR 372, (1981) 5 SC 291 at 326; *Obisanya v Nwoko* (1974) 6 SC 33 at 80; *Lawal v. Dawodu* (1972) 1 All NLR p (Pt. 2) 270 at 286; *Mogaji v Odofin* (1978) 4 SC 91; *Ebba v Ogodo* (1984) 1 SCNLR 372, (1984) 1 SCNLR 372 - 381; *Omorieg v Idugiemwanye* (1985) 2 NWLR (Pt. 5) 41; *Kate Enterprises v Daewoo Nig. Ltd.* (1985) 2 NWLR (Pt. 5) 116.

It follows therefore that having regard to what I have said above and the fuller reasons given in the lead judgment of my learned brother, Mohammed, J.S.C, this appeal is also dismissed by me. I abide by the consequential orders made in the said judgment including the order as to costs.

Judgment delivered by
Niki Tobi J.S.C

I have read the judgment of my learned brother, Mohammed, J.S.C, just delivered. I entirely agree with him. I will add this bit in support of the judgment. Election to the office of the President of the Federal Republic of Nigeria was held throughout the country on 19th April, 2003. The appellant contested the election on the platform of All Progressives Grand Alliance bearing the cognomen (APGA), a registered political party. The 1st respondent also contested the election on the platform of Peoples Democratic Party, bearing the cognomen (PDP), also a registered political party. The 1st respondent was declared a winner of the election. The appellant did not like it. He contested the results. He filed an election petition.

Paragraphs 8 and 9 of the petition are important for the purpose of this appeal and I reproduce them verbatim et literatim:

"8. Your petitioner states that the ground upon which the petition is founded is as follows:

(i) That the 1st respondent was not duly elected or returned for the reason that the said 1st respondent was not qualified to contest the said election on the date same was conducted and therefore his candidature was in frontal conflict with Section 137(1) of the 1999 Constitution.

9. The facts relied upon in support of the petition are as follows:

(a) Your petitioner states that the 1st respondent has been elected to the office of the President in two previous elections in 1976 and 1999.

(b) By virtue of the provisions of the 1999 Constitution relating to election of individuals into the office of the President, a candidate is not qualified to contest for the said office if he had been elected into the said position in any two previous elections."

In the 1st respondent's reply to the petition, the 1st respondent in paragraph 5 denied inter alia paragraphs 8 and 9 of the petition. The 1st respondent raised preliminary objection to the competence of the petition. There were also other objections to dismiss the petition. All the applications to dismiss the petition in limine were agreed to be taken along with the merits of the petition and subsequent judgment.

The Court of Appeal took oral evidence. The appellant was the first witness. He called two other witnesses, viz: the 1st respondent and one other. The respondents did not call any evidence. After address by counsel, the Court of Appeal delivered judgment. Dismissing the petition, Salami, J.C.A, said in the penultimate paragraph at page 102 of the record:

"The petition lacks merit as it has not been shown either in law or fact that Chief Obasanjo was elected as alleged on 14th February, 1976 as the Military Head of State."

Dissatisfied, the appellant has come to us. He filed a brief of argument on 3rd September, 2003. The 1st respondent filed a brief dated 8th October, 2003. The 2nd and 3rd respondents also filed a brief dated 15th July, 2003. The 4th respondent filed a brief dated 25th July, 2003. The appellant filed three reply briefs in respect of the above briefs dated 26th November, 2003; 8th October, 2003 and 6th November, 2003 respectively. My learned brother in the leading judgment has copiously dealt with the arguments in the brief and I will not repeat the exercise. All I intend to do is to take the arguments briefly in relevant situations in this judgment. I will however take the issues set out by the appellant seriatim. The first issue is whether the appellant proved that the appointment of the 1st respondent by the Supreme Military Council to the office of Head of the Federal Military Government, Chief Executive and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria on 14th February, 1976 was an election to the office of President within the meaning of Section 137(l)(b) of the 1999 Constitution'.

What was the evidence before the court' PW1, the appellant, said in evidence-in-chief:

"The 1st respondent was elected head of state. The 1st respondent wrote a book "Not My Will" and therein admitted he was elected. This is the book I had been aware that a prior decree of the military had stated amongst others that in case of the vacancy such as the country was going through that the Supreme Military Council would sit and designate a successor. That successor would be President, Head of State. I request most respectfully of this Honourable Court to declare the 1st respondent was not qualified at the time of the election and declare that the declaration by the 2nd respondent that he had been lawfully elected null and void. I further request that in the interim, the Honourable Chief Justice of the Federation be charged with the responsibilities as the Nation's Chief Executive to properly run an election which will produce for this groaning nation a legitimate government."

PW2, the 1st respondent, Chief Olusegun Obasanjo, said in evidencce-in-chief:

"Between 14th February, 1976 and 30th September, 1979, I was the Military Head of State of Nigeria. I was also the Commander- in-chief. Between 29/5/99 and 28/5/03, I was the elected President of Nigeria... My coming into power in 1976 is not by the force of any law. It is purely military... I was unanimously endorsed for the position of Head of State much against my will."

Under cross-examination, witness said:

"As I explained, it was a Military hierarchy. Once the first is out, the next in the hierarchy succeeds. In war, when No 1 falls, No 2 takes over. There is no argument about it. I was the next most senior after the Head of State in 1976 in appointment and rank. There are differences between appointment and election. Election by my understanding is the result of voting under the 21st Century Chambers Dictionary. Appointment does not involve voting. I did not say in exhibit PI (A) and PI (B) that I was elected as Head of State. I could not have said so. The SMC by practice made me Head of State. As No 2 with the demise of my Head of State, I automatically chaired the SMC."

In his evidence in-chief, PW3, Mohammed Dikko Yusuf, said:

"I was a member of the SMC from 1975 to 2nd October, 1979. On 14/2/76, the SMC selected the 1st respondent as Head of State, I was present at the meeting. It was the responsibility of the SMC to do so."

Under cross-examination, witness said:

"In the absence of General Murtala, the 1st respondent took the chair. I was present. The 1st respondent was reluctant to take office as Head of State but he was persuaded to do so. We were to remain in office for 4 years. Anybody who wanted to remove us was asking for trouble. The circumstance did not warrant election."

It is clear from the above that the evidence of PW2 and PW3 is basically similar. Both witnesses agreed on the vital point that there was no election at the Supreme Military Council. And what is more.

PW3 seems to agree with PW2 on the issue of seniority, as the determinant factor for appointment to the office of Head of State, when he said under cross-examination: "In the absence of General Murtala, the 1st respondent took the chair". He also said in examination-in-chief that the "No 2 to the then Head of State was the Chief of Staff, Supreme Headquarters". And that Chief of Staff was PW2. This is confirmed by the evidence of the 1st respondent when he said under cross-examination:

"No 2 was Chief of Staff, Supreme Headquarters. When the Chairman was alive I was his No 2. Before General (Murtala Mohammed) died, I was his No 2 in appointment and seniority... In war, when No 1 falls, No 2 takes over. There is no argument about it."

The appellant in his evidence-in-chief used the word "designate". He said that the "Supreme Military Council would sit and designate a successor. That successor would be President, Head of State". The word "designate" etymologically means to choose or name for a particular purpose. It is not a synonym of the word "elect"; and the appellant did not even use it as such in his evidence. Let me take another factual situation and it is from the evidence of both PW2 (the 1st respondent) and PW3. PW2 carefully chose his words when he said:

"I was unanimously endorsed for the position of Head of State much against my will."

PW3 also said on the issue of the unwillingness of PW2 to take the position:

"The 1st respondent was reluctant to take office as Head of State but he was persuaded to do so." In exhibits P1 (A) and P1 (B), PW2 indicated his unwillingness to take the position. He said at page 32:

"I thanked my colleagues for rallying to give unqualified loyalty and support since the event of the previous twenty-four hours and I explained that I had to bow out, as the toll which had been taken on my mental and physical health was far greater than I had anticipated. But my colleagues would not accept my excuse; they were apparently unanimous I was to take over, I was adamant, and they were just as unrelenting in their insistence that I become the next Head of State."

And the above takes me to a human situation. A person who contests an election is no more under persuasion or reluctance. He could be persuaded to contest the election but the moment he agrees, the element of reluctance or persuasion is gone. I am more inclined to agreeing with PW2 that the Supreme Military Council endorsed him as the Head of State, the word "endorse" in the context mean an expression of approval or support.

And that takes me to the book, exhibit P1(A) and P1(B). This is important because counsel for the appellant submitted that the exhibit gave details of "how the 1st respondent was elected as Head of State in 1976. In exhibit P1 (A), the respondent narrated the story of how he told Yakubu Danjuma and MD. Yusuf of his mood in not willing to accept the appointment as Head of State and that he would help to search for a candidate. He also informed the members of his family. In exhibit P1 (B), the 1st respondent narrated the story of how he was appointed Head of State against his will. And it would appear from the evidence before the court that his unwillingness to be the Head of State gave rise to the title of his book: "Not My Will". It is possible that I am wrong. It will be bad if I am wrong.

Of relevance to the issues raised by counsel for the appellant are the words "select" and "appoint". Perhaps, I should take the sentences where 1st respondent used the words in the context of their continuous tense and noun respectively.

In exhibit P1(B), 1st respondent said:

"Then came the issue of selecting a successor to Murtala 'Murtala's death was formally announced before the announcement of the appointment of a new Head of State in the evening."

The 1st respondent did not say in the exhibit that he was elected as Head of State. He used the words "selecting" and "appointment" - words which did not or do not mean "elected".

I have dealt so much with the factual situation. Let me now go to the law. The fulcrum of the submission of learned counsel for the appellant is that the words "select" and "appoint" mean "elect" within the meaning of Section 137(l)(b) of the Constitution of the Federal Republic of Nigeria, 1999. He called in aid Black's Law Dictionary definition of election and Webster's New 20th Century Dictionary definition of the same word. He also cited a number of cases, the Constitution (Basic Provisions) Decree, 1975 and the Interpretation Act, 1964.

Let me start from the genesis of the appointment of the 1st respondent as Head of State, Commander-in-Chief of the Armed Forces. Although the appointment took place in 1976, the law applicable which was the enabling law was promulgated in 1975. It is the Constitution (Basic Provisions, etc.) Decree No 32 of 1975. Historically, General Murtala Muhammed was appointed under that Decree.

Section 8 of the Decree provided for the functions of the Supreme Military Council. Of direct relevance is (d). It provided thus:

"The functions of the Supreme Military Council include... exclusive responsibility for the appointment of the Head of the Federal Military Government..."

The operative word in section 8(d), at the time it was law. Is "appointment". I do not think learned counsel's search for the definition of "election" in both Black's Law Dictionary and Webster's New 20th Century Dictionary is helpful to his case. I say this because none of the dictionaries extend the definition of election to mean appointment. The word "appoint" is defined in Black's Law Dictionary (Sixth edition) at page 99, as follows:

"To designate, choose, select, assign, ordain, prescribe, constitute or nominate. To allot or set apart. To assign authority to a particular use, task, position or office. Term is used where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. It is usually distinguished from 'elect' meaning to choose by a vote of the qualified voters of the city; though this distinction is not invariably observed."

Applying the definition above to Decree No 32 of 1975, section 8 of the Decree vested in the Supreme Military Council, the authority, to name, that is, to appoint the 1st respondent to the office of Head of State, Commander-in-Chief of the Armed Forces.

The above apart, the second leg of the definition clearly says that the word "appoint" is usually distinguished from the word "elect" which means to choose by a vote of the qualified voters. Although Black's Law Dictionary says that the distinction is not invariably observed, there exists a distinction and it is in terms of choosing a person to hold an office by votes of the qualified voters.

And that takes me to Section 137(1) (b) of the 1999 Constitution. It provides thus:

"A person shall not be qualified for election to the office of President if... he has been elected to such office at any two previous elections."

Section 8(d) of the repealed Decree No 32 of 1975 and section 137(l)(b) of the 1999 Constitution talk of different offices. While section 8(d) provided for the office of Head of the Federal Military Government, Section 137(l) (h) of the 1999 Constitution provides for the office of President. It is my view that the two offices do not mean the same as their functions are different. And so, it is futile for counsel for the appellant to invoke section 137(l) (b) because the 1st respondent is not caught by the subsection. In view of the fact that this is his second term in office as President of the

Federal Republic of Nigeria, Section 137(1) cannot be invoked against him.

No, not at all. And when I come to this conclusion, I interpret the words "such office" in section 137(1) (b) as referring to the office of President and not the office of Head of State.

Assuming that I am wrong, I am not prepared to go along with learned counsel that the appointment of the 1st respondent under Section 8 of repealed Decree No 32 of 1975 was an election within the meaning of Section 137(1) (b) of the 1999 Constitution. In my view, the word "election" in section 137(1) (b) means exercise of adult suffrage, which involves voters, materials for voting and supervision and counting of votes by electoral personnel.

Learned counsel for the appellant invoked Section 26 of the Interpretation Act, 1964. How does that section help the appellant? His argument that the Supreme Military Council should act democratically, with the greatest respect, does not change the position. In other words, it does not make the appointment of the 1st respondent as Head of State as an election. I think the appellant has failed on issue No 1.

I go to issue No 2. It has to do with the evidence of the 1st respondent that he was appointed as the Head of State because of his seniority in the Armed Forces and the evidence of the appellant that he was elected by the Supreme Military Council pursuant to the Constitution (Basic Provisions) Decree, 1975.

It is the argument of learned counsel for the appellant that in the light of the evidence of PW1, PW2, PW3 and exhibit P1 (A) and P1(B), it is clear that Section 8(d) of Decree No 32 of 1975 was fully complied with. He submitted that from the printed record, there is no evidence that the 1st respondent became Head of the Federal Military Government other than in compliance with the requirements of the Constitution at the material time. While I concede the point that the 1st respondent was appointed Head of State pursuant to Section 8(d) of Decree No 32 of 1975, I do not agree with the contention that his appointment was an election within the meaning of Section 137(1)(b) of the Constitution of the Federal Republic of Nigeria.

Learned counsel seems to disagree with the evidence of seniority as he feels more comfortable with the argument that 1st respondent was elected to the office of Head of State by virtue of Section 8 of Decree No 32 of 1975. It is useful at this stage to remind him of the evidence of the appellant which he freely quoted at page 14 of his brief. PW1 said:

"I know by my experience in the Nigerian Army, that the rightful person to take over was either the most senior officer or the officer elected by the Supreme Military Council to assume that post. I had been aware that the law at that time envisaged such election but more than this I had confirmed this from my good friend general Obasanjo."

There are two versions in the above evidence. The first version is the one counsel, is not prepared to hear and it is that the most senior officer can assume the post. This is from the mouth and head of the appellant himself and counsel cannot afford to underplay it. He made alternative statement, which is punctuated by the word "or". For obvious reasons counsel decided to ignore the first option and moved to the second option because that is convenient to his client. As a matter of fact, he went the whole length to underline it. Why should he neglect the first leg of the statement, if really the cliché that first things come first is still available in human affairs and human conduct?

I realise that the evidence of seniority by the appellant cuts across the evidence of PW2 and PW3. I should pause here to reproduce part of the evidence of PW2, even at the expense of prolixity. I will, this time around, quote the evidence in extenso:

"The composition of the SMC which came into force in 1976 under General Murtala Mohammed were these:

General M. Mohammed was Chairman. No 2 was Chief of Staff, Supreme Headquarters. When the Chairman was alive, I was his No 2. The Chief of Army Staff was General Danjuma. He was No 3. The Chief of Naval Staff was No 4. He was Admiral Michael Adelanwa, The Chief of Air Staff was No 5. He was Air Marshall John Yisa Doko. The Inspector-General of Police was No 6. He was Alhaji M.D. Yusuf. The General officers Commanding the divisions were members. It is absolutely incorrect that there was no seniority in the Supreme Military Council. There was a hierarchy.

Before General Murtala Mohammed died, I was No 2 in appointment and seniority. As I had explained, it was a Military hierarchy. Once the first is out, the next in the hierarchy succeeds. In war, when No 1 falls, No 2 takes over. There is no argument about it. I was next most senior after the head of state in 1976 in appointment and rank."

PW3, would appear to have been mentioned in the evidence of PW2, as that Inspector-General who was No 6 in the hierarchy in the Supreme Military Council. He said in examination-in-chief, and I repeat what the witness said:

"I was a member of the SMC from 1975 to 2nd October, 1979. On 14/2/75 the SMC selected the 1st respondent as Head of State. I was present at the meeting. It was the responsibility of the SMC to do so."

Under cross-examination, witness gave evidence in respect of seniority and hierarchy in the Supreme Military Council. He said:

"The No 2 to the then Head of State was Chief of Staff, Supreme Headquarters. The person who held the office then was 1st respondent. The next person was the Chief of Naval Staff, Admiral Michael Adelanwa. The next person was Chief of Air Staff, Air Marshall Yisa Doko. I was next in the then hierarchy. In the situation as was in 1975, General Murtala was made the Head of State and the 1st respondent was next. In the absence of General Murtala, the 1st respondent took the chair. I was present."

It is sad that learned counsel quoted only the introductory parts of the evidence of PW3. I expected him to go down and read the evidence of the witness given under cross-examination.

And that takes me to the 3rd issue. It is whether there is any difference between the appointment of the 1st respondent to the office of the Head of State by the Supreme Military Council in 1976 under Decree No 32 of 1975 and his appointment to the office of President by election in 1999 under the 1999 Constitution.

I think I have dealt with this aspect in away. I can still directly deal g with it. Learned counsel for the appellant relied on the definition of "office" in Sections 296 and 318 of the Constitution; and Section 151 of the Electoral Act, 2002 vis-a-vis the provisions of section 137(l) (b) of the Constitution and submitted that in the circumstances of the case, the words "appointment" and "election" are co-terminus.

Section 137(l) (b) of the Constitution uses the word "office" in the context of the President and in relation to election. Section 296 also uses the word "office" in relation to election. So too section 318. As a matter of law both sections 296 and 318 provide for "the validity of an election". There is no such provision in Decree No (1) (b) 32 of 1975 because there was no election during the military regime. In the circumstances, the word "appointment" under section 8 of Decree No. 32 of 1975 cannot convey the same meaning of "election" in the 1999 Constitution. With the greatest respect to counsel, the submission is misconceived.

It is not my intention to take issue 4 in the light of my conclusions above. I do not see the necessity of taking issue No 4 since it is predicated on what the appellant calls "the election of the 1st respondent in 1976".

Issue No 5 deals with the adjectival aspects of the case. I do not think I should waste my time considering the issue as it will not in any way determine the fortunes of the appeal in favour of the appellant. Whether what the appellant said he was told by the 1st respondent should be pleaded or not is not relevant in the determination of the live issues in the appeal.

Learned counsel for the appellant virtually repeated his arguments in the appellant's brief in the reply brief. A reply brief is not expected to be a repetition of the appellant's brief. A reply brief must reply to new issues or points raised in the respondent's brief. A mere repetition of the arguments in an appellant's brief with one or two new authorities does not qualify as a reply brief.

In sum, the appeal has no merit and I also dismiss it. I also abide by the orders as to costs in the leading judgment of my learned brother.

Judgment delivered by
Dennis Onyejife Edozie J.S.C

I had a preview of the leading judgment of my learned brother, Mohammed, J.S.C and I entirely agree therewith.

The appeal, which focuses on a very narrow compass is of great constitutional importance. It concerns the qualification vel disqualification of the 1st respondent to contest the 2003 presidential election. The salient and undisputed background facts as portrayed in the printed record are that:

(1) In 1976, the then Supreme Military Council S.M.C. (for short) appointed the 1st respondent, Chief Olusegun Obasanjo as the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria pursuant to Section 8(d) of the Constitution (Basic Provisions) Decree No 32 of 1975. This appointment is hereinafter referred to as the '1976 appointment'

(2) In 1999, the 1st respondent contested an election and was elected President of the Federal Republic of Nigeria for a four year term which he duly served. I refer to this as the '1999 appointment'

(3) In 2003, the 1st respondent again contested an election and was re-elected as the President of the Federal Republic of Nigeria for another term of 4 years. This is referred to as the '2003 appointment'

The ground of the disqualification canvassed by the appellant is that having regard to the 1976 and 1999 appointments, the 1st respondent was not qualified for the '2003 appointment' that is, that he was not qualified to contest the 2003 election the subject matter of this appeal. For this contention, the appellant relies on the provisions of Section 137(l) (b) of the 1999 Constitution which are to the following effect:

'137 (1) A person shall not be qualified for election to the office of President if

(b) he has been elected to such office at any two previous elections.'

(italics for emphasis)

From the wordings of the section, it is plain that for a person to be disqualified to contest a particular election into the office of the President of the Federal Republic of Nigeria, it must be shown:

(1) That the person was elected to the office of president on two previous occasions prior to the particular Presidential election in question.

(2) That he was appointed into that office on two previous occasions by the process of an election and additionally,

(3) That the provisions of Section 137(l) (b) of the 1999 Constitution applied to the elections of the two previous occasions.

These three conditions must co-exist before a person is disqualified to contest a presidential election. From this guideline, it seems to me that for the 1st respondent to be disqualified to contest the 2003 presidential election it must be shown that his '1999 appointment' as well as the '1976 appointment' relate to the office of the president of the Federal Republic of Nigeria; that he was elected or appointed by a process of election into that office and that Section 137(l) (b) of the 1999 Constitution applied to the two appointments. There is no dispute over the '1999 appointment'. It is common ground that the 1st respondent was elected or appointed by an electoral process or elected into the office of the President of Federal Republic of Nigeria in 1999 under the 1999 Constitution. The bone of contention in this appeal relates to the '1976 appointment'. Was it an appointment into the office of the President of the Federal Republic of

Nigeria; and if so, was he so appointed by the process of an election and finally, is the 1999 Constitution applicable to that appointment. My short answer to the three questions is in the negative. I will expatiate by reference to Section 318 of the 1999 Constitution where the following words used in Section 137(l) (b) of the Constitution are defined thus:

"Office" means 'any office the appointment to which is by election under the Constitution'.

"President" means 'the President of the Federal Republic of Nigeria.'

By implication, therefore, election to the office of the president as used in Section 137(l)(b) of the 1999 Constitution relates to the office of the president of Federal Republic of Nigeria to which one is appointed by the process of an election under the 1999 Constitution. I am not unmindful of the expression "such office" as used in section 137(l) (b) of the 1999 Constitution. By the ejusdem generis rule, the expression has a limited scope.

The ejusdem generis rule is an interpretative rule which the court applies in an appropriate case to confine the scope of general words which follow special words as used in a statutory provision or document within the genus of those special words. In the construction of statutes, therefore, general terms following particular ones apply only to such person or thing as are ejusdem generis with those understood from the language of the statute to be confined to the particular terms. In other words, the general words or terms are to be read as comprehending only things of the same kind as that designated by the preceding particular expression unless there is something to show that a wider sense was intended. See Maxwell on the Interrelation of Statutes, 12th edition, p. 287; Fawehinmi v Inspector General of Police (2002) 7 NWLR (Pt.767) 606 at 688. In the instant case, the expression, 'such office' coming after the words 'the office of president' is confined to a comparable office to the office of president, which can be filled through electoral processes. It excludes office to which one is appointed by the Supreme Military Council.

The Constitution did not define the word 'election'; but the Electoral Act, 2003, which governs the election into various political offices defines the term 'general election' as:

"an election held in the Federation at large and at all levels, a regularly recurring election to select officers to serve after the expiration of the full terms of their predecessors."

The Advanced Learners' Dictionary of Current English defines the word election thus:

"(1) Choosing especially by voting

(2) an instance of this, as a general election (e.g. when members of the House of Commons are chosen throughout Great Britain.)"

I am of the view, that the word 'election' in the context in which it is used in Section 137(l)(b) of the Constitution means the process of choosing by popular votes a candidate for a political office in a democratic system of government. It is my candid opinion that the 1st respondent's '1976 appointment' does not fall within the ambit of Section 137(l)(b) of the 1999 Constitution. Put differently, the 1st respondent was not in 1976 appointed to the office of president of the Federal Republic of Nigeria let alone by the popular vote of the people of this country. This, is understandably so because the country was in a military regime under the Supreme Military Council. Even if, but without conceding, that the '1976 appointment' is by any strained construction equated to an election into the office of the president of the Federal Republic of Nigeria, the 1999 Constitution and the provisions therein including the section under consideration have no retrospective effect to include the appointment made in 1976 long before the coming into effect of the 1999 Constitution in May, 1999. It is a cardinal rule of English law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implications: In Re Athlumney (1998) 2QB at p.551, Maxwell on Interpretation of Statutes supra at p.215. The position is the same in this country, for, in the case of Olaniyi v Aroyehim (1991) 5 NWLR (Pt. 194) 652, this court held:

"A Constitution like other statutes operates prospectively and not retrospectively unless it is expressly provided to be otherwise. Such legislation affects only rights which came into existence after it has been passed."

See also the case of *Afolabi & Ors. v Governor of Oyo State* (1985) 2 NWLR (Pt. 9) 734; *Ojokolobo v Alamu* (1987) 3 NWLR (Pt. 61) 377, (1987) 2 NSCC 1277. Since in the instant case there is nothing suggesting that the provision of Section 137(l)(b) of the 1999 Constitution has a retroactive operation, it follows that the 1st respondent's '1976 appointment' does not come within the purview of the section. Consequently, the said appointment cannot be counted in considering whether the 1st respondent had been elected 'at any two previous elections'. What can be counted is the '1999 appointment' which is insufficient to disqualify him to contest the 2003 election.

The sum total of all that I have been saying is that the 1st respondent was not disqualified by reason of Section 137(l)(b) of the 1999 Constitution from contesting the presidential election in the year 2003. It is for the foregoing reasons in addition to those lucidly set out in the leading judgment of my learned brother, Mohammed, J.S.C that I also dismiss the appeal as being groundless. I abide by the order as to costs made in the leading judgment.