**DR. CASMIR ANYANWU**

**V.**

**CHIEF OKEY EZE & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 12TH DAY OF JULY, 2019

SC.626/2019

**LEX (2020) – SC. 625/2019**

**OTHER CITATIONS**

3PLR/2020/13 (SC)

(2019) LPELR-48740 (SC)

**BEFORE THEIR LORDSHIPS**

MARY UKAEGO PETER-ODILI, JSC

OLUKAYODE ARIWOOLA, JSC

AMIRU SANUSI, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC

**ORIGINATING COURT(S)**

1. COURT OF APPEAL, OWERRI DIVISION, OWERRI, IMO STATE, NIGERIA

2. FEDERAL HIGH COURT, OWERRI, IMO STATE, NIGERIA

**BETWEEN**

DR. CASMIR ANYANWU - Appellant(s)

AND

1. CHIEF OKEY EZE

2. SOCIAL DEMOCRATIC PARTY (SDP)

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) - Respondent(s)

**REPRESENTATION**

Chukwudi Adiukwu, Esq. with him, Ikechukwu Uwanna, C.B. Okoroafor, Fernanadez Marcus-obiene and Jacinta Azuatalam (Miss) - For Appellant

AND

A. I. Nwachukwu, Esq. with him, M.C. Arnanze, Esq. - for the 1st Respondent.

R.A. Lawal-Rabana, SAN with him, Ikechukwu Uwanna, Esq., Izito Zuoke, Esq., Michael Nwamu, Esq., Chinedu B. Okoroafor, Esq., Fermandez Marcus-Obiene, Esq. and Peter Abang , Esq. for the 2nd Respondent.

INEC for 3rd the Respondent. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CONSTITUTIONAL LAW – ELECTIONS:- Section 285 (10) of the Constitution of the Federal Republic of Nigeria 1999 – Requirement that judgments in election matters should be delivered within 180 days from the date the suit was filed – Order of re-trial – Whether changes the legal stipulation as to time

ELECTORAL MATTERS - PRE-ELECTION MATTERS: Maximum time limit within which an Election tribunal can hear and dispose of a pre-election matter – Constitutional basis of - Section 285 (10) of the Constitution of the Federal Republic of Nigeria 1999 – Failure thereof – Where caused by order for retrial – Whether has any redemptive effect

ELECTORAL MATTERS – PRE-ELECTION SUITS – ACADEMIC EXERCISE:- Claim for declaration as to the rightful winner of the Gubernatorial primary of a political party - Where the general election is conducted before pre-election suit was determined – Where the political party whose candidates are litigating was not declared winner of the general election – Whether suit consequentially becomes academic and moot - Proper order for court to make – Relevant considerations

ELECTORAL MATTERS - PRE-ELECTION MATTERS:- Stipulation that election matters be concluded within statutorily prescribed timeline - Section 285(10) of the 1999 Constitution of Nigeria – Order of trial de novo made by trial court after the prescribed time – Legal validity of – Whether amounts to academic or hypothetical exercise

**PRACTICE AND PROCEDURE ISSUES**

ACTION – ACADEMIC EXERCISE AND PRE-ELECTION SUITS:- When a pre-election suit would be deemed an academic exercise

APPEAL - FORMULATION OF ISSUE(S) FOR DETERMINATION: Respondent who has not cross appealed – Where he formulates issues for determination in excess of the issues formulated by the appellant – Attitude of court thereto

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant and 1st Respondent were both members of the Social Democratic Party, SDP. After the SDP’s nomination primary for the 2019 Gubernatorial elections in 2018, the Appellant as Plaintiff claimed, via an originating summons before a High Court, for several reliefs including two declarations, to wit: that the 2nd Defendant having not participated in the primary election of SDP’ for the 2019 general election cannot have his name submitted to the Independent National Electoral Commission, INEC as SDP’s governorship candidate for the general election and therefore any purported selection, nomination of the 2nd Defendant as the governorship candidate of their Party for the 2019 general election was illegal, invalid, null, void and of no effect. Appellant/Plaintiff also sought several orders from the Court including an order mandating the Party INEC to submit the name of the plaintiff as the governorship candidate of the Party for the 2019 General Election.

The Respondents filed various preliminary objections as to the competence of the originating summons which were overruled.

DECISION(S) APPEALED AGAINST

1. FEDERAL HIGH COURT: On the merit of the case, the Trial Court granted all the reliefs claimed by the Appellant, who was adjudged the winner of SDP’s Governorship primary election held on the 5th and 6th October, 2018.

2. COURT OF APPEAL (Owerri Division):- The lower Court vacated the judgment of the trial Court on the ground that it did not meet the standard of adjudication expected in Nigeria’s adversarial system. However, the lower Court did not remit the case to the Federal High Court, rather, it ordered the Chief Judge of the Federal High Court to transfer the case to another Judge to be heard and determined de novo.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

i) Whether the appeal had not become academic if so; whether the lower Court was right to make an order of trial de novo given the provisions of Section 285 of the 1999 Constitution (As amended by the 4th Alteration).

ii) Whether the lower Court was right to hold that the parties right to address the Court was trampled upon and hence a breach of fair hearing.

*BY RESPONDENTS*

*1ST RESPONDENT*

i). "Was the lower Court right when it held that the 1st Respondent's Appeal was not an academic exercise?

ii. Was it proper for the lower Court to order the hearing de-novo of the suit by another Judge in the trial Court in view of Section 285 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)?

ii). Was the lower Court right to hold that the 1st Respondent's right to fair hearing had been breached by the trial Court?"

2ND RESPONDENT

1. Whether the Court below was not right in holding that the appeal before it was not academic.

2. Whether the Court below was not right in holding that the 1st Respondent herein was denied the right of fair hearing by the Trial High Court.

3. Whether the Court below was not right in ordering the Chief Judge of the Federal High Court to transfer the case to another Judge for hearing and determination de novo.

*AS ADOPTED BY COURT*

[The Court adopted the two issues submitted by the Appellant]

DECISION OF THE SUPREME COURT

The suit had become academic with no live issues for determination. Courts are to determine live issues. In the instant case, the general election was held and none of the contending candidates of the SDP or any of the parties to this appeal was declared the winner of the Governorship election in Imo State. There being no evidence that any of the parties to the appeal was challenging the election of the candidate of another political party who was declared winner of the 2019 general election in any Court, no useful or legal purpose would be by declaring any party to the suit the winner of the Governorship Primary election of the SDP in Imo State.

Appeal therefore dismissed for lacking in merit.

**MAIN JUDGMENT**

PAUL ADAMU GALUMJE, J.S.C. (Delivering the Leading Judgment):

The Appellant herein as plaintiff at the Federal High Court Owerri took out an originating summons in which he raised three questions for determination as follows: -

1. Whether having regard to the provision of the Section 87(1) and (2) of the Electoral Act of 2010 (as amended), the 1st Defendant can appoint, impose or select the 2nd Defendant as the governorship candidate of the 1st Defendant in Imo State, when the 2nd Defendant did not participate in the Primary election for the selection of the governorship candidate of the 1st Defendant.

2. Whether having regards to Section 87(4)b) of the Electoral Act 2010 (as amended), the 1st Defendant is not under a legal obligation to submit the name of the plaintiff who emerged winner of the primary election to the 3rd Defendant as the 1st Defendant's governorship candidate in Imo State for the 2019 general elections.

3. Whether the 2nd Defendant who did not participate in the primary election for the selection of the 1st Defendant’s governorship candidate in Imo State for the 2019 general election has his name submitted to the 3rd Defendant as the 1st Defendant's governorship candidate for the said election under any circumstance or guise or whatsoever.

Thereafter, the Appellant claimed the following reliefs: -

1. A declaration that the 2nd Defendant having not participated in the primary election for the selection of governorship candidate of the 1st Defendant for the 2019 general election cannot have his name submitted to the 3rd Defendant as the 1st Defendant's governorship candidate for the said election.

2. A declaration that any purported selection, nomination of the 2nd Defendant as the governorship candidate of the 1st Defendant for the 2019 general election is illegal, invalid, null, void and of no effect.

3. An order of this honorable Court setting aside any purported selection or nomination of the 2nd Defendant by the 1st Defendant as its governorship candidate for the 2019 General Election.

4. An order of this honorable Court mandating the 1st defendant to submit the name of the plaintiff as its governorship candidate for the 2019 General Election.

5. An order of this honourable Court restraining the 3rd Defendant from accepting the name of the 2nd Defendant as the 1st Defendant's governorship candidate for the 2019 General Election for non-compliance with the Electoral Act 2010 (as amended).

6. An order of this honourable Court restraining the 1st Defendant from submitting the 2nd Defendant's name as the governorship candidate for the 2019 General Election.

This originating summons is accompanied by an affidavit of nineteen paragraphs deposed to by Emeka Chris Ewuzie, a Director in the campaign office of the Appellant herein. Annexed to the supporting affidavit are copies of the Appellant's membership card, expression of interest form and nomination form, marked as Exhibit A, B and C respectively. Respondents filed various preliminary objection to the competence of the originating summons. These preliminary objections were overruled. On the merit of the case, the Trial Court granted all the reliefs claimed by the Appellant, who was adjudged the winner of the 2nd Respondent's Governorship primary election which was held on the 5th and 6th October, 2018. The 2nd Respondent was aggrieved with the decision of the trial Court and it therefore appealed to the Court of Appeal, Owerri Division (the lower Court) and submitted three issues for determination of its appeal. The Appeal was heard and in a reserved and considered judgment, delivered on the 4th day of May 2019, the lower Court vacated the judgment of the trial Court on the ground that it did not meet the standard of adjudication expected in our adversarial system of adjudication. The lower Court did not remit the case to the Federal High Court, but ordered the Chief Judge of the Federal High Court to transfer the case to another Judge to be heard and determined de novo.

The Appellant herein is dissatisfied with the decision of the lower Court. Being aggrieved he has brought this appeal. His notice of appeal filed on the 17th of May, 2019 contains three grounds of appeal.

Parties filed and exchanged briefs of argument. Mr. Chukwudi Adiukwu, Learned Counsel for the Appellant, settled the Appellants brief of argument which was filed on the 10th June, 2019. At page 5 of the Appellant's brief of argument, two issues have been formulated for determination of this appeal. They read as follows: -

i) Whether the appeal had not become academic if so; whether the lower Court was right to make an order of trial de novo given the provisions of Section 285 of the 1999 Constitution (As amended by the 4th Alteration).

ii) Whether the lower Court was right to hold that the parties right to address the Court was trampled upon and hence a breach of fair hearing.

Mr. R. A. Lawal- Rabana, Learned Senior Counsel for the 1st Respondent, who settled the 1st Respondent's brief of argument submitted three issues for determination of this appeal in the following terms: -

i). "Was the lower Court right when it held that the 1st Respondent's Appeal was not an academic exercise?

ii. Was it proper for the lower Court to order the hearing de-novo of the suit by another Judge in the trial Court in view of Section 285 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)?

ii). Was the lower Court right to hold that the 1st Respondent's right to fair hearing had been breached by the trial Court?"

After having set out the issues for determination of this appeal, Learned Senior Counsel issued what he termed "objection/preliminaries." Underneath the "objection/preliminaries" he inserted the following words, "INCOMPETENCE OF THE RECORDS OF APPEAL." However, at the hearing of this appeal, this objection/preliminary was withdrawn and same was struck out. Mr. A.I Nwachukwu, Learned Counsel for the 2nd Respondent, who settled the 2nd Respondent's brief of argument also formulated three issues for determination of this appeal as follows: -

1. Whether the Court below was not right in holding that the appeal before it was not academic.

2. Whether the Court below was not right in holding that the 1st Respondent herein was denied the right of fair hearing by the Trial High Court.

3. Whether the Court below was not right in ordering the Chief Judge of the Federal High Court to transfer the case to another Judge for hearing and determination de novo.

By formulating three issues each, the 1st and 2nd Respondents seem to be crying more than the bereaved. The Appellant, who is aggrieved by the decision of the lower Court issued only two issues for determination of this appeal.

Although the Respondents are entitled to either adopt the issues formulated by the Appellant, give the issues a slant in favour of his own side of his case or formulate his own issues derivable from the grounds of appeal, it is always desirable that the Respondent should not formulate more issues than the Appellant. See Kajawa v. State (2018) LPELR-43911 (SC). In this appeal, I am of the view that the two issues submitted by the Appellant have covered the field. I will adopt them in determination of this appeal.

This is a pre-election matter which was filed at the Federal High Court Owerri on the 24th October, 2018. By Section 285(10) of the Constitution of the Federal Republic of Nigeria 1999, the Federal High Court was mandatorily required to deliver its judgment within 180 days from the date of filing the suit. The lower Court's judgment was delivered on the 4th of May, 2019. At the time the lower Court's judgment was delivered, the trial Court no longer had jurisdiction to hear and determine this case, since the Constitutional period available for it to hear and determine pre-election matter had lapsed. From the date the petition was filed at the Federal High Court and the date the lower Court delivered its judgment was precisely 192 days. Clearly the lower Court's order for retrial was made in error, since the trial Court no longer had jurisdiction to hear and determine this case.

On whether a pre-election matter is academic or not, is dependent on the facts giving rise to the pre-election matter. For example, where a party from which the pre-election matter is being contested wins the general election, such pre-election suit can never be an academic exercise. In Plateau State v A. G. Federation (2006) 3 NWLR (Pt.967)346 this Court stated as follows: -

“A suit is academic where it is thereby theoretical, makes empty sound and of no practical utilitarian value to the plaintiffs even if judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity." See Odedo v. INEC (2008) 17 NWLR (Pt.1117)554.

Once a suit no longer has live issues for determination, such a suit is academic and a Court should on no account spend judicial time, or engage in academic exercise. Courts are to determine live issues. See Oyeneye v. Odugbesan (1972) 4 5C.244; Bakare v. A.C.B. Ltd (1986) 3 NWLR (Pt.26) 137; Okulate v. Awosanya (2002) 2 NWLR (Pt.645) 530; Nkwocha v. Gov. of Anambra State (1984) 1 SCNLR 634.

In the instant case, the general election was held and none of the candidate of the 2nd Respondent or any of the parties to this appeal was declared the winner of the Governorship election in Imo State. There is also no evidence that any of the parties to this appeal is challenging the election of the winner of the 2019 general election in any Court. Even if any of the party in this suit is declared the winner of the Governorship Primary election of the 2nd Respondent, of what use is the decision to the winner. This is what is described as academic exercise. I am therefore of the firm view that this appeal has clearly become an academic exercise and this Court cannot waste its precious time attending to it. The first issue for determination is accordingly resolved in favour of the Appellant.

This appeal being an academic exercise is hereby struck out. I make no order as to costs.

Parties had agreed before the hearing of this appeal that the decision in SC.627/2019, Dr. Casmir Anyanwu v. Social Democratic Party & Ors. shall abide the decision in this appeal.

I endorse their agreement.

**MARY UKAEGO PETER-ODILI, J.S.C.:**

I am at one with the judgment just delivered by my learned brother, Paul Adamu Galumje and to show the support on record, I shall make some remarks.

This is an appeal by the 1st respondent in the Court below against the decision of the Court of Appeal, Owerri Division, Coram: Raphael C. Agbo, Theresa Ngolika Orij-Abadua, Ibrahim Ali Andeyantso JJCA in which decision the Court of Appeal or Court below or Lower allowed the appeal and set aside the judgment of the Federal High Court and ordered a retrial.

INTRODUCTION OF THE FACTS:

By Originating Summons, the Appellant herein as Plaintiff at the Federal High Court brought an action against the Respondents as Defendants claiming the following reliefs: -

"(a) A declaration that the 2nd defendant having not participated in the primary election for the selection of governorship candidate of the 1st defendant for the 2019 general election cannot have his name submitted to the 3rd defendant as the 1st defendant's governorship candidate.

(b) A declaration that any purported selection nomination of the 2nd defendant as the governorship candidate of the 1st defendant for the 2019 general election is illegal, invalid, null and void and of no effect.

(c) An order of this Court setting aside any purported selection or nomination of the 2nd defendant by the 1st defendant as its governorship candidate for the 2019 general election.

(d) An order of this Court mandating the 1st defendant to submit the name of the plaintiff as its governorship candidate for the 2019 general election.

(e) An order of this Honourable Court restraining the 3rd defendant from accepting the name of the 2nd defendant as the 1st defendant's governorship candidate for the 2019 general election for non- compliance with the Electoral Act 2019.

(f) An order of the honourable Court restraining the 1st defendant from submitting the 2nd defendant's name as the governorship candidate for the 2019 General Election".

At the hearing on 4th July 2019, learned counsel for the appellant, Chukwudi Adiukwu Esq. adopted the brief of argument filed on 10/6/19 in which were framed two issues for determination which are thus:-

1. Whether the appeal had not become academic if so, whether the Lower Court was right to make an order of trial de novo given the provisions of Section 285 of the 1999 Constitution (as amended by the 4th Alteration). Grounds one and two.

2. Whether the Lower Court was right to hold that the parties rights to address the Court was trampled upon and hence a breach of fair hearing. (Ground three).

Learned counsel for the 1st respondent, Ikechukwu Uwana adopted the brief of argument settled by R. A. Lawal - Rabana SAN and filed on 20/6/19 in which he distilled three issues for determination which are as follows:-

i) Was the Lower Court right when it held that the 1st respondent's appeal was not an academic exercise? (Distilled from ground one of the notice of appeal).

ii) Was it proper for the Lower Court to order the hearing de novo of the suit by another judge in the trial Court in view of Section 285 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)? (Distilled from ground two of the notice of appeal).

iii) Was the Lower Court right to hold that the 1st Respondent's right to fair hearing had been reached by the trial Court? (Distilled from ground 3 of the notice of appeal).

For the 2nd respondent, learned counsel, A.I. Nwachukwu Esq. adopted the brief of argument filed on 27/6/2019 in which were formulated three issues for determination, viz:-

a. Whether the Court below was not right in holding that the appeal before it was not academic. This is formulated from Ground One of the Grounds of Appeal.

b. Whether the Court below was not right in holding that the 1st respondent herein was denied of a fair hearing by the trial Federal High Court. This is formulated from Ground Three of the Grounds of Appeal.

c. Whether the Court below was not right in ordering the Chief Judge of the Federal High Court to transfer the case to another Judge for hearing and determination de novo. This is formulated from Ground Two of the Grounds of Appeal.

For ease of reference, I shall make use of the issues as crafted by the appellant in the determination of this appeal.

(i) Whether the appeal had not become academic if so; whether the lower Court was right to make an order of trial de novo given the provisions of Section 285 of the 1999 Constitution (as amended 4th Alteration). (Grounds One and Two).

(ii) Whether the lower Court was right to hold that the parties rights to address the Court was trampled upon and hence a breach of fair hearing. (Ground Three)

Learned counsel for the appellant stated that Section 285(13) of the 1999 Constitution (as amended) which would be referred to as CFRN for short, that it is not capable of any other interpretation and therefore should be given its literary and ordinary meaning with the effect that the appeal is now spent and so the order of the Lower Court for a trial de novo for a matter already spent is in vain. He referred to Section 285 (10) CFRN; Coca Cola (Nig.) Ltd v Akinsanya (2017) 17 NWLR (Pt.1593) 74 at 121.

It was further canvassed for the appellant that there was no breach of fair hearing at the Lower Court or Court of first instance which makes the order for retrial at the High Court perverse. It was relied on the case of Kolo v COP (2017) LPELR - 42577 Pp 45 - 46; Newswatch Communications Ltd v Attah (2006) 12 NWLR (Pt.993) 144 at 171.

For the 1st respondent, it was contended that a pre-election matter does not become academic merely because election has taken place as election matters are sui generis. He cited Hassan v Aliyu & ors (2010) LPELR - L357 (SC); Charles Chikwendu Odedo v INEC & Anor. (2008) LPELR. 2204 (SC); Senator Umaru Dahiru & Anor. v All Progressives Congress & Ors.(2016) LPELR - 42089 (SC.).

That the Court below was within its jurisdiction to order the retrial at the Court of first instance and the 180 days would begin to run in the light of the finding by the Court below that some documents had been fraudulently tampered with at the trial Court hence the lack of fair hearing as that Court did not address the issue. He cited FRN v Mohammed (2014) 9 NWLR (Pt.1413) 551 at 593 - 594 etc.

Learned counsel for the 2nd respondent submitted that the Court below was right in holding that the appeal before it was not academic. He cited Plateau state of Nigeria v Attorney General of the Federation (2006) All FWLR (Pt.305) 590 at 646-647.

That the order for trial de novo made by the Court of Appeal was correct in the light of the obvious breach of fair hearing at that Court of first instance.

The 3rd respondent was absent though properly served with the hearing notice as shown in the Affidavit of service of 27/6/19. It filed no brief.

The angle taken by the appellant is that the order of the Court of Appeal for a retrial at the High Court is not supportable as the 180 days within which such a trial would be incepted and concluded had long passed. Also that the denial of fair hearing alleged by the respondents cannot be sustained either as the parties failed to take advantage of the judicial instruments available to ventilate their grouse and so had waived their right.

The respondents 1st and 2nd on the other hand posit that the Court below had not acted on an academic exercise and had correctly found that the 1st respondent's right to fair hearing had been breached.

It is true and now very well settled that the Court including the Supreme Court does not embark on an academic exercise and the reason for it is glaring in the sight of all well thinking persons. A suit is defined as academic when it is merely theoretical, makes an empty sound and has no practical utilitarian value to the plaintiff or claimant if the judgment ensures in his favour. Again, a suit is academic if it is not related to the practical situations of human nature and humanity. The converse is thus, that a suit does not become academic just because what brought about the action had been concluded. See Plateau State of Nigeria v Attorney General of the Federation (2006) All FWLR (Pt.305) 590 at 646 - 647; Senator Umaru Dahiru & Anor. v All Progressives Congress & Ors. (2016) LPELR - 42089 (SC).

Taken in context, in this appeal, the Court of Appeal found that there was a denial of fair hearing to the 1st respondent and the other parties by not taking any address from them after voiding the written Address in support of the originating Summons and without the said address the trial Court proceeded to resolve the issues formulated for determination in the originating summons. That was the basis upon which the Court below vacated the judgment of the trial Court and ordered a transfer of the case to another judge for hearing and determination de novo in the light of the breach of fair hearing which was duly established at the Court below. The stance of the appellant is that with the general election having been conducted, concluded, a winner emerged and has taken the oath of office as Governor and operating as such, this matter is not to be gone into since it presents the picture of an academic exercise. That posture is not sustainable as a pre-election matter such as the one that brought this appeal does not become academic or hypothetical merely because the general election had taken place and on the face of it the pre-election over-taken by events. The correct position is that the pre-election is well within the relevant statutes and time prescribed remains a live issue inspite of the general election that had been concluded. See Odedo v INEC (2009) All FWLR (Pt.449) 448 at 488-489 per Tobi JSC; Adeogun v Fashogbon (2009) All FWLR (Pt.449) 531 at 546-547 per Tabai JSC; Gwede v INEC (2015) All FWLR (Pt.767) 615 at 656; Agboola v UBA Plc (2012) All FWLR (Pt.574) 74 at 103; Ladoja v Ajimobi (2016) All FWLR (Pt.843) 1846 at 1884; Ngige v Obi (2006) All FWLR (Pt'330) 1041; Aiyeola v Pedro (2014) All FWLR (Pt.744) 14.

The fundamental structure of the principle of fair hearing and as enshrined in Section 36 of the 1999 Constitution is such that its breach could not have been ignored by the Court below which was within its powers guaranteed in Section 285 (12) of the same Constitution and so had to go into the alleged infringement and the records showed quite clearly that an infraction of fair hearing was grossly made. The allegation of the breach of fair hearing was not lightly made nor brought up unadvisedly or just to whip up a distraction and therefore different from what brought about the admonition of this Court inKolo v COP (2017) LPELR - 42577 (SC) per Nweze JSC; Newswatch Communications Ltd v Attah (2006) 12 NWLR (Pt,993) L44 at 171 Per Tobi JSC.

The situation as I said herein is opposite what the Supreme Court found in the cases above cited as in this instance the Lower Court rightly found that documents had been fraudulently tampered with thereby rendering the documents and records unreliable which facts were brought out in the further and better affidavit of 1st respondent and also the issue of the non-signing of the 1st respondent’s Notice of preliminary objection which the trial Court left unattended. It is trite that a Court has a duty to consider all evidence and arguments placed before it before reaching a decision and it was the failure of that trial Court's lack of consideration of the evidence and argument of the 1st respondent properly placed before it, before reaching the decision that amounted to the violation of the party's fair hearing and the resultant effect is that the decision so reached cannot stand as it is a nullity. See Cookey v Fombo (2005) 5 SC (11) 102 at 111; FRN v Mohammed (2014) 9 NWLR (Pt.1413) 551 at 593-594; Audu v FRN (2013) LPELR-19897; Akinfe v The State (1988) 3 NWLR (Pt.85) 729 at 753; Bamgboye v University of Ilorin (1999) 10 NWLR (Pt.672) 290 at 333; Offor v State (1999)12 NWLR (Pt,623) 609 at 623; Salu v Egeibon (1994) 6 NWLR (Pt.348) 23.

The situation therefore clearly shows that the Court of Appeal acted rightly in declaring that the matter before it was not academic and was well endowed with jurisdictional powers to entertain the appeal as the Court below was well within its 60 days to hear and determine the appeal. That the Lower Court did and rightly found that there had been a breach of fair hearing at the trial Court and it is the next step that created a puzzle with the lower Court ordering a trial de novo at the Court of first instance albeit by another judge.

The opposing views on this order for retrial is, firstly put forward by the appellant that the 180 days for trial and judgment at the Court of first instance having been exhausted, the order for retrial is one in vain. The opposing stance is that the 180 days would start to run from the time of the starting of the new trial. To take a position either way of the contending postures stated above is to first have a recourse of Section 285 (10) of the 1999 Constitution (as amended) (4th alteration) which provides thus:

"A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit".

The action in this instance was filed at the High Court on 24th October, 2018 which lapsed on 21st April, 2019 and the judgment of the Court of Appeal was delivered on 4th May, 2019 by which time, the 180 days of the trial Court had expired. The immediate reaction is that the order for trial de novo at the Court of first instance cannot be implemented in the face of the expiration of the time allowed it to entertain the trial from filing to judgment.

What cannot be denied is the Court of Appeal's right is well within the 60 days granted it by the Constitutional provisions of Section 285 (12) to consider all the issues before it on appeal which it did and making the finding that the fair hearing rights of the 1st respondent had been breached set aside the judgment of the trial Court. That being so, the decision and reliefs which had been given by the trial Court to the appellant remain vacated. The further order for retrial as I said earlier is an order that has been overtaken by event, simply the expiration of the 180 days for trial at first instance and so would take the status of a muted trumpet.

Finally, this appeal has no merit and is dismissed based on the foregoing and the better reasoned lead judgment.

**OLUKAYODE ARIWOOLA, J.S.C.:**

I had the opportunity of reading in draft the lead judgment of my learned brother Galumje, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal is unmeritorious and should be struck out. I too will strike out the appeal.

Appeal struck out.

**AMIRU SANUSI, J.S.C.:**

The leading judgment prepared by my learned brother Galumje, JSC was supplied to me before now. Having perused same, I find myself at one with his reasoning and the conclusion he reached by striking out the appeal.

There is no mincing words and it is even supported by the record of appeal that the Federal High Court delivered its judgment on 24th October, 2018. By the provisions of Section 285 (10) of the Constitution of the Federal Republic of Nigeria 1999, as amended, judgments should be delivered within 180 days from the date the suit was filed before it. On its part, the lower Court delivered its judgment on 4th May, 2019. In its judgment, the lower Court made an order of retrial of the suit by the trial Court. As at the time the lower Court delivered its judgment now being appealed against ordering the retrial of the suit by the trial Court on 4th May, 2019, the 180 days provided by Section 285 (10) as period for trial and determination of the suit had already elapsed as it would be more than 190 days. To my mind, Courts are not supposed to make order which could be in vain or impracticable to be obeyed or which will simply amount to academic exercise. In the case of Odedo v INEC (2008)17 NWLR (pt.117) 554 this Court while referring to the case of Plateau State v AG Federation (2006) 3 NWLR (pt.967) 346 Niki Tobi,JSC (of blessed memory) defined academic suit to mean “a suit which is merely theoretical, makes empty sound and of no practical utilitarian even if judgment is given in his favour. A suit is academic if it is not related to the practical situation of human nature and humanity.” See Congress for Progressive Change Vs INEC (2011) LPELR-8257 (SC).

It is my considered view therefore, that even if the matter/suit were to be remitted to the trial Court for trial de novo, it will be met with the challenge of effluxion of the 180 days period and the trial Court would be bereft of jurisdiction to hear and determine it. It would therefore be hypothetical or a moot exercise.

Thus, in the result, the suit in my view is really an academic exercise which will serve none of the parties any useful purpose. As a corollary, the appeal deserves to be struck out and I accordingly do same. I make no order on costs so each party shall bear his or its respective costs.

**UWANI MUSA ABBA AJI, J.S.C.:**

The Appellant vide originating summons came before the Federal High Court, Owerri, to seek for reliefs bordering on the Governorship primary election organized and conducted by the 2nd Respondent wherein all the reliefs sought by the Appellant were granted him by the trial Court, having adjudged him as the winner of the said primary election held on 5-6/10/2018. On appeal by the 2nd Respondent, the lower Court in vacating the judgment of the trial Court, ordered for a trial de novo before another judge instead of remitting the matter to the trial Court. Aggrieved, the Appellant brought up the matter to this Court and distilled the following as issues for determination:

1. Whether the appeal had not become academic, if so, whether the lower Court was right to make an order of trial de novo given the provisions of Section 285 of the 1999 Constitution (as amended by the 4th Alteration).

2. Whether the lower Court was right to hold that the parties' right to address the Court was trampled upon and hence a breach of fair hearing.

It must be noted that the Appellant filled this pre-election matter at the Federal High Court on 24/10/2018, and the judgment of the lower Court ordering a trial de novo was delivered on 4/5/2019. Thus, from the date the pre-election matter was filed to the date the lower Court delivered its judgment, 192 days were spent already. By virtue of Section 285(10) of the 1999 Constitution of Nigeria, the matter was caught up with the statute of limitation providing for 180 days within which the Federal High Court was to deliver its judgment from the date of filing the matter. The trial Court therefore does not have the jurisdiction to hear the suit de novo since its statutory time to entertain same has elapsed. To continue with the hearing de novo will be an exercise in futility and therefore academic and the duty of the Court is to determine live issues only. It has no business delving into academic or hypothetical issues. Judicial time is too precious for such an exercise. See Per KEKERE-EKUN, JSC in LAWSON V. OKORONKWO & ORS (2018) LPELR-46356(SC). This matter appealed against is dead and this Court is not permitted to delve into it or resuscitate it, having become hypothetical.

This appeal therefore lacks merit and is dismissed. I entirely agree with the decision of my learned brother, Galumje, JSC, in dismissing the appeal.