**HON. NED MUNIR NWOKO**

**V.**

**SEN. PETER N. WAOBOSHI & ORS**

IN THE SUPREME COURT OF NIGERIA

ON TUESDAY, THE 16TH DAY OF JULY, 2019

SC. 671/2019

**LEX (2020) - SC.671/2019**

**OTHER CITATIONS**

3PLR/2020/24 (SC)

(2019) LPELR-49202(SC)

**BEFORE THEIR LORDSHIPS**

JOHN INYANG OKORO, JSC

AMIRU SANUSI, JSC

AMINA ADAMU AUGIE, JSC

EJEMBI EKO, JSC

UWANI MUSA ABBA AJI, JSC

**BETWEEN**

HON. NED MUNIR NWOKO - Appellant(s)

AND

SEN. PETER N. WAOBOSHI & 3 ORS - Respondent(s)

**ORIGINATING COURTS**

High Court of the Federal Capital Territory

Court of Appeal, Abuja Division

**REPRESENTATION**

AHMED RAJI SAN, with him ONYEKA NWOKOLO, ADEOLA ADEDIPE,DOLAPO KEHINDE and MUBARAK IMAM for the APPELLANT - For Appellant

AND

A.I IDIGBE (SAN), with him CHIEF ROBERT CLARKE (SAN), GEORGE OGBEMIE, ESQ. and DR.FRANK NWUGO for the 1ST RESPONDENT

WENDY KUKU with him S.M DANBABA, ESQ. for the 2ND RESPONDENT

EMMANUEL ENODIM, ESQ. with him A. FANOKUN and N.N. ASOBINUAKWU for the 3RD RESPONDENT

ORJI NWAFOR ORIZE with him S.N ANICHEVE for PARTY INTERESTED - For Respondent

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

ELECTION LAW - PRE-ELECTION MATTERS:- Time within which a pre-election cause of action is deemed to have ripened under S.285(9) of the Constitution – Failure to file within the stipulated period – Implication for jurisdiction of court – Whether action statute-barred

CONSTITUTIONAL LAW - ELECTIONS - PRE-ELECTION MATTERS:- Time within which a pre-election cause of action is deemed to have ripened – Constitutional basis of under S.285(9) of the Constitution – Failure to file within the stipulated period – Implication for jurisdiction of court – Proper order for court to make

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

1st Appellant commenced a suit by Originating Summons on the 11th of December 2018 where he contended that he was the lawful candidate who won the primary election of his political party which took place on the 2nd of October 2018. He sought to have the Independent National Electoral Commission (INEC) who supervised and monitored the Primary Election of the political party to publish his name instead of that of the 1st Respondent as candidate for the general elections.

DECISION(S) APPEALED AGAINST

The Federal High Court, on Thursday, April 3, overturned 1st Appellant’s declaration as winner of the primary of the PDP on October 2, 2018, PDP by the Independent National Electoral Commission, INEC and in his place, declared Ned Nwokwo as the lawful candidate of the People’s Democratic Party for the February 23, 2019, National Assembly Senatorial election, which the party had already won.

However, the Court of Appeal in Abuja, on April 3, 2019, reversed the judgment of the Federal High Court, Abuja and restored Senator Nwaoboshi as the candidate of the Peoples Democratic Party for Delta North Senatorial seat.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

[Supreme Court, suo motu, raised the lone issue of jurisdiction based on Section 285(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by the 4th Alteration Act) as to when the cause of action arose vis-a-vis the date the originating summons was filed at the trial Federal High Court. That lone issue became the basis for which the appeal was decided, thus overriding other issues which were not considered.

*BY RESPONDENTS*

[Same as above]

*AS ADOPTED BY COURT*

[Same as above]

DECISION OF SUPREME COURT

1. The cause of action arose on 2nd October, 2018 when the decision to declare the 1st respondent winner of the election was announced. The argument that the injury was continuous until general election was held does hold weight as the 4th Alteration Act to the 1999 Constitution of the Federal Republic of Nigeria does not permit the doctrine of continuous injury as election and election related matters are sui generis.

2. The filing of this suit at the trial Court on 11th December, 2018 was outside the 14 days allowed by the 4th Alteration Act to the 1999 Constitution of the Federal Republic of Nigeria. The Originating Summons at the trial Court was incompetent. The judgment of the trial Court was without jurisdiction.

**MAIN JUDGMENT**

**JOHN INYANG OKORO, J.S.C. (Delivering the Lead Ruling):**

This Court raised the issue of jurisdiction suo motu based on Section 285(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by the 4th Alteration Act) as to when the cause of action arose vis-a-vis the date the originating summons was filed at the trial Federal High Court. Appellant agrees that at the end of the primary election on 2nd October, 2018, the 3rd Respondent purported to declare the 1st Respondent winner of the election. That the said act sparked off protest from the appellant who lodged an appeal to the 3rd Respondent’s panel but that the panel refused and/or failed to look into the complaint stating that the complaint was not filed within 24 hours.

The above summation by the appellant shows that the appellant was aggrieved on 2nd October, 2018 when the decision to declare the 1st respondent winner of the election was announced. Clearly, his cause of action arose on that date. The argument by the learned Senior counsel for the appellant that the injury was continuous until general election was held does not fly at all. The 4th Alteration Act does not permit the doctrine of continuous injury as election and election related matters are sui generis.

The learned Senior counsel for the 1st Respondent and other respondents’ counsel’s argument that cause of action arose on 2nd October, 2018 is unassailable. Based on this, I agree that the filing of this suit at the trial Court on 11th December, 2018 was clearly outside the 14 days allowed by the 4th Alteration Act. The Originating Summons at the trial Court was incompetent. The judgment of the trial Court was without jurisdiction.

It is my view that both the Court below and this Court have no jurisdiction to entertain any appeal arising from the incompetent judgment of the learned trial Judge. Accordingly, this appeal is hereby struck out for want of jurisdiction. There shall be no order as to costs.

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

I was opportuned to read in draft form, the Ruling just rendered by my learned brother John I. Okoro JSC while I agree with his reasoning and the conclusion reached, I will also offer few comments to support the Ruling.

At the hearing of this appeal, this Court suo motu invited learned counsel for the parties in this appeal to address it on issue of jurisdiction to hear the appeal in the light if the provisions of Section 285 (9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by 4th Alteration Act).

As could be gleaned from the record of appeal, the originating Summons filed by the plaintiff at the trial Federal High Court clearly shows that the primary election was held on 2nd October 2018 in which the 1st Respondent was declared winner of the primary election by INEC, (the 3rd Respondent). To my mind, that was the day when the cause of action arose. Also as clearly shown by the record, the action that culminated into this appeal was filed on 11th December 2018.

By the provisions of Section 285 (9) of the 1999 Constitution as amended, such action is supposed to be filed on or before 14 days from the date of the happening of the cause of action i.e. 2nd October 2018.

The action filed vire the originating summons was therefore filed outside the 14 days stipulated by the said provisions. That being the case, the trial Court was bereft of jurisdiction to entertain and determine the suit, same having been filed out of time. Therefore, the originating summons was right from the outset and incompetent.

It goes without saying therefore that since the originating summons is incompetent, the Judgment of the trial Court was given without jurisdiction as it is a nullity as it was given by the trial Court which is bereft of jurisdiction.

Similarly, the Judgment of the lower Court is also a nullity since same was given on an incompetent suit or action.

Apropos, of the above, I adjudge this appeal to be lacking in merit and I accordingly strike it out. I make no order as to costs, so each party is to bear its his costs.

**AMINA ADAMU AUGIE, J.S.C.:**

I had the privilege of reading in draft the Ruling of my learned brother, Okoro, JSC. I am in complete agreement with him that both the Court of Appeal and this Court have no jurisdiction to entertain any appeal arising from the incompetent Judgment of the learned trial Judge. In the circumstances, this Appeal is struck out for want of jurisdiction. There shall be no order as to cost.

**EJEMBI EKO, J.S.C.:**

Upon the occurrence of any of the three circumstances; that is - "the occurrence of the event, decision or action complained of," the cause of action for purposes of S.285(9) of the Constitution, as amended, ripens or matures for the Plaintiff to commence his suit.

The indubitable facts of this case point to the cause of action being the disputed primary election that took place on 2nd October, 2018. It prompted the Appellant, to commence his action at the High Court of the Federal Capital Territory on 19th October, 2018 - more than 14 days after the disputed election complained of. He withdrew the suit and recommenced a similar suit at the Federal High Court on 11th December, 2018 to challenge the purported or alleged sham election.

Clearly the cause of action arose on 2nd October, 2018. The suit is statute barred by operation of S.285 (9) of the Constitution as amended. The jurisdiction of the trial Court was ousted thereby.

I agree that the appeal lacks substance and it is hereby dismissed as I affirm the decision of the lower Court.

Parties shall bear their respective costs.

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

I completely agree with the Ruling just delivered by my learned brother, John Inyang Okoro, JSC that this appeal is devoid of any merit.

Same shall be and is hereby struck out for want of jurisdiction.