**ABDULRAHMAN ABUBAKAR & ANOR**

**V.**

**SENATOR AIDOKO ALI USMAN & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 10TH DAY OF MARCH, 2017

SC.167/2016

**LEX (2017) - SC.167/2016**

**OTHER CITATIONS**

3PLR/2017/9 (CA)

(2017) LPELR-41915(SC)

**BEFORE THEIR LORDSHIPS**

MARY UKAEGO PETER-ODILI J.S.C

CLARA BATA OGUNBIYI J.S.C

CHIMA CENTUS NWEZE J.S.C

AMINA ADAMU AUGIE J.S.C

SIDI DAUDA BAGE J.S.C

**BETWEEN**

1. ABDULRAHMAN ABUBAKAR

2. ALL PROGRESSIVES CONGRESS (APC) Appellant(s)

AND

1. SENATOR AIDOKO ALI USMAN

2. PEOPLES DEMOCRATIC PARTY (PDP)

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

4. THE RETURNING OFFICER, KOGI EAST SENATORIAL DISTRICT Respondent(s)

**ORIGINATING COURT**

1. COURT OF APPEAL (Ruling striking out the appellants’ Motion No. CA/A/36A/M/2016 ).

2. NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL LOKOJA

**REPRESENTATION/LAWYERS**

J.S. Okutepa, SAN with him, Aliu O. Saiki, Esq., John A. Mathew, Esq., J.J. Usman, Esq., M.S. Ibrahim, Esq., Ocholi O. Okutepa, Esq., Mrs Hokaha H. Bassey, W.C. Daniel, Esq., Mrs. Elizabeth O. Ifedayo, Ojonimi S. Apeh, Esq., M.O. Idam, Esq., O. A. Arowosebe, Esq., Miss Abodia O. Okutepa, M. O. Ogobuchi, Esq., Onu S. Achem, Esq., Miss G. O. Ejesieme, Miss A. E. Agunbiade, Miss B. E. Ameh and Miss C. O. Ozuzu - For Appellant

AND

P.I.N. Ikwueto, SAN with him, C.D. Eze, Esq., O.D. Soyebo, Esq. and N. U. Odimegwu, Esq. - for the 1st and 2nd Respondents.

A.A. Ibrahim, Esq. with him, Mrs. B. Sheyin - For the 3rd and 4th Respondents. - For Respondent

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

ELECTION PETITION – LEGISLATIVE OFFICES:- Finality of decisions given by the Court of Appeal over appeals arising from the National Assembly and State Houses of Assembly Election Petition Tribunal - .Basis of

ELECTION PETITION – APPEAL TO SUPREME COURT:- Decision of National Assembly Election Petition Tribunal - Against this background therefore, I shall not only enter an order striking out this appeal; I am under a duty to damnify learned senior counsel for this ill-advised and ill-fated forensic trip to this rare judicial altitude where only serious questions of law ought to be canvassed.

ELECTION PETITION – MISTAKE IN THE PUBLICATION OF AN ENROLLED ORDER OF THE COURT OF APPEAL BY REGISTRY:- Where withdrawn and corrected to reflect the proper order of court– Whether that very act elicits a different cause of action distinguishable from the constraints of Section 246 (1) (b) (i) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 thereby opening a window of appeal to the Supreme Court

CONSTITUTIONAL LAW:- Section 246 (1) (b) (i) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which confers finality on the judgments of the Court of Appeal in respect of appeals arising from decisions of the National Assembly Election Petitions as to whether anybody has been validly elected as a member of the National Assembly – Legal effect of - Duty of Supreme Court when confronted with appeal therefrom – Proper order to make

CONSTITUTIONAL LAW:- Section 246 (1) (b) (i) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 – Exercise of appellate powers of the Court of Appeal thereto - Whether can be appealed against even if manifestly wrong – Whether can be appealed to the Supreme Court based on a post-judgment motion to review an alleged error or mistake in the decision

ETHICS – LEGAL PRACTITIONER- DUTY AS OFFICER OF THE COURT:- Disrespect for clear precedents of the Supreme Court – Irritation of Court by posing the same question that has been serially affirmed – Attitude of Court thereto – Whether Court would damnify Counsel in cost for same

ETHICS – LEGAL PRACTITIONER:- Duty to client - Consistent refusal to adhere to what is well within their knowledge so as to desist from ill-advising their clients by giving then a false hope about a prospective litigation – Attitude of Court thereto

**PRACTICE AND PROCEDURE ISSUES**

COURT – COURT OF APPEAL:– Appellate jurisdiction over appeals arising the National Assembly and State Houses of Assembly Election Petition Tribunal – Whether final.

COURT – COURT OF APPEAL:- Finality of judgment and functus officio – Invitation to review final judgment ddue to error made by its Registry upon enrolment and publication which had been corrected – How treated

COURT – MISTAKE OF REGISTRY:- Mistake in the content of an enrolled order of Court 0 How corrected – Where correction reflects the proper order of Court – Motion against same – Whether a different cause of action or still part of the original proceedings which gave rise to the final judgment of court corrected

COURT – PUBLIC POLICY:- Rule of Public Policy that it is for the common good that there be an end to Litigation – Duty of court thereto

JURISDICTION – SUPREME COURT:– Jurisdiction over appeals from decisions of the Court of Appeal – Whether extends to the decision(s) of the Court of Appeal arising itself from the decision(s) of the National and State Houses of Assembly Election Petition Tribunal

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

On the 28th day of March, 2015, INEC conducted National Assembly Election for Kogi East Senatorial District and the 1st appellant herein contested as candidate of the 2nd appellant whilst the 1st respondent herein contested as candidate of the 2nd respondent. At the conclusion of the Senatorial Election, INEC declared the appellants winners. The 1st and 2nd respondents as Petitioners approached the National Assembly Election Petition Tribunal Lokoja, contending*, inter alia* that the 1st appellant herein was not qualified to contest the Senatorial Election.  
  
The 1st and 2nd respondents herein contended Before the Election Tribunal that having obtained the second highest votes in the result of the election as announced by the 3rd and 4th respondents, the 1st and 2nd respondents were entitled to be declared and returned as the winners of the election. The trial Tribunal agreed with the Petitioners and nullified the election of the 1st appellant. The trial Tribunal proceeded to declare the 1st respondent herein (as 1st petitioner) the duly elected Senator representing Kogi East Senatorial District. Dissatisfied with the decision of the trial Tribunal, the appellants herein appealed to the Court of Appeal. The Court of Appeal delivered a ruling striking out the appellants’ Motion No. CA/A/36A/M/2016. Being aggrieved, the appellants approached the Supreme Court.

DECISION(S) APPEALED AGAINST

The National Assembly Election Petition Tribunal Lokoja, entered judgment declaring the 1st respondent (as 1st petitioner) the duly elected Senator representing Kogi East Senatorial District.

Dissatisfied with the decision of the trial Tribunal, the appellants appealed to the Court of Appeal. The Court of Appeal delivered a ruling striking out the appellants’ Motion No. CA/A/36A/M/2016. Being aggrieved, the appellants approached the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANTS:*

“1) Whether the Court below was correct to hold that it has no jurisdiction to grant the reliefs set out in the motion papers of the appellants filed on 26th January, 2016, having regards (sic) to the facts that the consequential orders made in the judgment of 2nd December, 2015, were made on ground (*sic)* completely outside the jurisdiction of the Court below?

*BY RESPONDENTS*

"Whether By Section 246 (3) of the 1999 Constitution (as amended), the decision of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final."

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Appellants]

DECISION OF SUPREME COURT

1. Now, Section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) confers finality on the judgments of the Court of Appeal in respect of appeals arising from election petitions in the above trenchant phraseology.

2. 'Where an appeal is actively in respect of National Assembly election or other relevant election, whatever complaints of a procedural nature or of a procedural vice as to jurisdiction or competency, cannot be corrected by the Supreme Court. They can only be corrected by the Court of Appeal or else they will remain uncorrected or unresolved as the Supreme Court cannot intervene since it has no appellate or supervisory jurisdiction over the Court or Appeal in such circumstance.

3. The Supreme Court does not welcome deliberate attempt to put the consistency of the Court's established precedent to test through the back door. In such circumstances, the proper order for the Supreme Court to make is an order striking out the appeal and to damnify counsel for ill-advised and ill-fated forensic trip to the Supreme Court where only serious questions of law ought to be canvassed.

4. It is within the rights and precincts of a Court Registry to correct a mistake in an enrolled order to properly reflect the order made by the Court.

**MAIN JUDGMENT**

**CHIMA CENTUS NWEZE, J.S.C. (Delivering the Leading Judgment):**

My Lords, what prompted this appeal was the Ruling of the Court of Appeal, Abuja Division (hereinafter, simply, referred to as "the lower Court") delivered on February 11, 2016. The said Ruling was the lower Court's determination of the questions canvassed in a Motion on Notice wherein the appellants in this appeal entreated it with the following supplications:

"1. An order correcting clerical mistakes/errors in the orders made in the Judgment of this Honorable Court delivered on the 2nd of December, 2015 and the Enrolled Order issued on the 10th December 2015 in Appeal No. CA/A/EPT/609/2015 Abdulrahman Abubakar and Anor Vs. Senator Attai Aldoko Usman and 3 othersto give effect to the full meaning and the intention of the Court in allowing the appeal of the applicants.

2. An order correcting or varying the consequential orders in the judgment of this Honorable Court delivered on the 2nd December, 2015 and the Enrolled Order of this Court issued to the Applicants on 10th, December, 2015 in Appeal No. CA/A/EPT/609/2015 and 3 others by deleting the 3rd consequential order therein and replacing same with consequential order affirming the election and return of the 1st Applicant as Senator representing Kogi East Senatorial District, the order nullify the election of the 1st applicant and ordering for fresh election within 90 days having been made without jurisdiction.

3. An order deleting the word "partially" from the resolution of issue one in the judgment of this Honourable Court delivered on the 2nd December 2015 in Appeal No. CA/A/EPT/609/2015 Abdulrahman Abubakar and Anor Vs. Senator Attai Aidoko Usman and 3 Othersby affirming the election and return of the 1st Applicant to give effect to the full meaning and the intention of the Court in resolving issue one in favour of the Applicants, this Honorable Court having held and found at page 19 of the judgment, Exhibit JSO annexed to the affidavit thus:

By the provision of Paragraph 4(3) (a) of the First Schedule to the Electoral Act, 2010 as amended a petition shall conclude with a prayer or prayers. It is not difficult to see from the petition that relief A is standing alone.''

That there is no prayer that the election be nullified. There is no prayer that the 1st Respondent be declared as duly elected. Yet the Tribunal not only nullified the election but proceeded to declare the 1st Respondent duly elected.

4. THE ALTERNATIVE

An order extending time within which the Applicants herein may/can apply to set aside the consequential orders made in the judgment of this Honourable Court delivered on the 2nd December, 2015 and the Enrolled Order issued on the 17th December, 2015 in Appeal No. CA/A/EPT/609/2015 on the grounds that the said consequential order and Enrolled orders were made without jurisdiction.

5. An order setting aside the consequential orders made in the lodgment of this Honorable Court delivered on the 2nd December, 2015 and Enrolled Order issued on the 17th of December, 2015 in Appeal No. CA/A/EPT/609/2015 on the grounds that the said consequential and enrolled orders were made without jurisdiction.

6.   An order setting aside the letter written by the Deputy Chief Registrar Court of Appeal, Abuja judicial Division and dated 23rd December, 2015 which was addressed to the Chairman of the Independent National Electoral Commission on ground that the said letter was issued without jurisdiction.

7. An order setting aside the consequential orders in the judgment of this Honourable Court delivered on the 2nd December, 2015 and the enrolled Order of this Honourable Court issued to the Applicants on 10th December, 2015 in Appeal No. CA/A/EPT/609/2015 which nullified the election of the 1st Applicant and ordered for fresh election within 90 days same having been made without jurisdiction.

And for such further order or other orders as the Honourable Court might deem fit to make in the circumstance."

In his swift and predictable response to the reliefs, Patrick I. N Ikwueto, SAN, for the respondents, contended *inter alia* that the lower Court was denuded of jurisdiction to sit on appeal over its judgment, citing Section 246 (3) of the Constitution (supra). In its said Ruling, the lower Court agreed with the submission of Ikwueto, SAN, holding that '...since this Court lacks jurisdiction to tamper with its judgment delivered on 2nd December, 2015, the application lacks merit and it is struck out." [page 35] of the record].

In this appeal against the said Ruling, the appellants herein inveighed against the logic of the reasoning in the lower Court Ruling. They framed only one issue for the determination of their appeal, thus:

Whether the Court below was correct to hold that it has no jurisdiction to grant the reliefs set out in the motion papers of the appellants filed on 26th January, 2016, having regards (sic) to the facts that the consequential orders made in the judgment of 2nd December, 2015, were made on ground (*sic)* completely outside the jurisdiction of the Court below?

At the hearing of this appeal on December 14, 2016, J. S. Okutepa, SAN, for the appellants, adopted the brief filed on March 8, 2016 and the Reply Briefs filed in response to the respondents' briefs.

In the said principal brief, learned senior counsel devoted Paragraphs 4.01 -4.27, pages 6 -21 to this issue. On his part, P. I. N. Ikwueto, SAN, for the first and second respondents/adopted his brief of argument filed on March 24, 2016. In the said brief, he greeted the appeal with a Preliminary Objection on six grounds. In my humble view, only the first ground is determinative of this appeal. It reads thus:

"By Section 246 (3) of the 1999 Constitution (as amended), the decision of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final."

Paragraphs 3.3 - 3.4, pages 7 -9 of the record, were dedicated to the arguments on the Objection. He urged the Court to hold that the lower Court was right in upholding the finality of its said judgment. Learned senior counsel, further placed reliance on the arguments in the said brief with regard to the sole issue, Paragraphs 4.2-4.41, pages 10 -23 of the said brief. Learned senior counsel for the third and fourth respondents, Ibrahim K. Bawa, SAN, equally adopted the brief filed on March 11, 2016 in urging the Court to affirm the approach of the lower Court.

J. S. Okutepa, SAN, for the appellants, as indicated earlier, adopted the appellants' Reply briefs in answer to the points of law raised in the respondents' briefs. In addition, he cited the judgment of the Federal High Court [per Nnamdi Dimgba, J.] in Suit No FHC/ABJ/CS/10734,/201*Air Marshal Isaac M. Affa, CFR v PDP and Ors of April 18, 2016.*

On January 11, 2017, P.I.N. Ikwueto, SAN, by his letter addressed to the Chief Registrar of this Court, forwarded a Certified True Copy of the judgment of the Court of Appeal, Abuja Division, delivered on December 14, 2016 in Appeal No *CA/A/260/2016, Senator Atai Aidoko v Air Marshall Isaac Alfa and Ors.* In the said judgment, the lower Court set aside the above judgment of the Federal High Court.

RESOLUTION OF THE ARGUMENTS IN THE PRELIMINARY OBJECTION

Now, Section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) confers finality on the judgments of the Court of Appeal in respect of appeals arising from election petitions in the above trenchant phraseology.

Interestingly, this Court has dealt with the meaning and breadth this section on numerous occasions. Only a handful of these decisions would be cited in this judgment.Opara and Anor v Amadi [2013] 6- 7 SC (pt 2) 49; Madumere v Okwara [20l3] 6-7 SC (pt 2) 95; Okadigbo v Emeka and Ors (2012) LPELR -7839 (SC) 17; Emordi v Igbeke (2011) 4 SC (pt 11) 107, 145; Salik v Idris [2014] 15 NWLR (pt 1429) 36; Dangana v Usman (2012) LPELR-7827 (SC); Onuaguluchi v Ndu and Ors [2001] 7 NWLR (pt 712) 309; (2001) LPELR -2699 (SC); Salik v Idris [20I4] 15 NWLR (pt 1429) 36,60; Jegede v Akande (2014)16 NWLR (pt 1432) 43, 72.

Instructively, inDangana and Anor v Usman and Ors (2012) LPELR-25012(SC) where the first respondent in this appeal was also the first respondent, this Court dealt with this question. For their bearing on the self-same issue, I would take the liberty to set out this Court's view in extenso. Listen to this:

"It is apparent that the provisions of the 1999 Constitution (as amended) do not envisage an appeal to the Supreme Court from the Court of Appeal in National Assembly Election Petitions based on whether anybody has been validly elected as a member of the National Assembly. *The Court of Appeal shall be the final Court by virtue of Section 246 (3) of the 1999 Constitution. The provision of Section 246 (3)* affirms the previous decisions of this Court. In the case Onuaguluchi v. Ndu [2001] 7 NWLR (pt. 712) 309, this Court held at pages 321-322 Paragraphs H-D:

'Where an appeal is actively in respect of National Assembly election or other relevant election, whatever efforts of a procedural nature or of a procedural vice as to jurisdiction or competency, cannot be corrected by this Court. They can only be corrected by the Court of Appeal or else they will remain uncorrected or unresolved as this Court cannot intervene since it has no appellate or supervisory jurisdiction over the Court or Appeal in such circumstance. *This Court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the Constitution has in clear and unambiguous language made the Court of Appeal the final Court. It follows that an appeal in respect of a decision of the Tribunal in an election petition when decided by the Court of Appeal cannot be taken on appeal to the Supreme Court but is final for all purposes.'*

Also in the case of Awuse v. Odili [2003] 18 NWLR (pt. 851) 116, this Court said:

'It is therefore now well settled that pursuant to the provisions of Section 246 (1) (b) (i) and (3) of the 1999 Constitution, the Court of Appeal acting within its jurisdiction in deciding an appeal rising from an election petition as stipulated under the said Section of the Constitution is the final Court of Appeal. *Whether it did so rightly or wrongly in its decision cannot be questioned on appeal in this Court by virtue of the express provisions of* *the said Section 246(3) of the 1999 Constitution which stipulates that the decision of the Court of Appeal in respect of appeals arising from the relevant election shall be final .'*

Esewe v. M. T Gbe [1888] 5 NWLR (pt. 93) 134; Eco Consult Ltd. v. Pancha ViIa Limited [1999] 1 NWLR (pt. 588) 507. In short, by virtue of Section 246 (1) (b) (i) and (3) of the 1999 Constitution, the Court of Appeal has the mandate to decide an appeal arising from an election petition and shall be the final Court. *Whether it did so perfectly, rightly or wrongly, the decision it arrives at cannot be taken on appeal to the Supreme Court for consideration.* [Dangana v Usman and Ors (supra) 33 -3 E-C].

My Lords, I have deliberately set out only a handful of these decisions [there are, indeed, many more of such decisions] to expose the futility of this appeal on such an issue which this Court, as shown above has dealt with on numerous occasions. That is why, with profound respect, I must express my reservation about the propriety of irritating this Court with this issue *ad nauseam!*

True, indeed, it is rather strange that learned senior counsel opted to bother this Court with this appeal woven around the propriety of appealing against the judgment of the lower Court in National Assembly election matters: a question that has been adequately addressed in the judgments cited above.

What I find even more worrisome is the fact that the learned Senior Advocate for the appellant in this appeal was involved in one of the three judgments which this Court delivered on December 9, 2016 affirming its earlier decisions on this question. Indeed, in SC. 168/2016 Rt. Hon Abdullahi Bello and Anor v Hon Yusuf Ahmed Tijani Damisa and Ors, he appeared for the appellants.

He was confronted with the same arguments canvassed in this appeal, namely, that Section 246 (3) (supra) confers finality of judgments of the lower Court on National Assembly election matters. In sustaining the Preliminary Objection against the said appeal which he filed for the appellant in that case [the same learned senior counsel is also counsel for the appellant in the present appeal], this Court reaffirmed the view that:

*".... Looking closely at the wording of Section 246 (3) of the 1999 Constitution (as amended)... it is clear ...that the* *decision of the Court of Appeal is final. The decision therefore has no business climbing or driving to this Court for adjudication because this Court is certainly bereft of jurisdiction to entertain, hear and determine any such appeal from the lower Court. This Court had also in numerous of its decided authority (sic) decided (sic) that it lacked jurisdiction to entertain and determine this and similar appeals..."*

[per Sanusi, JSC, page 27 of the unreported judgment; italics supplied for emphasis]. On the same day, this Court maintained the same position in SC. 187/2016 - Okocha Samuel Osi v Accord and Ors and SC. 120/2016 - Hon Barambu Umaru and Anor v PDP and Ors.

Although, I am tempted to do so, I refuse to entertain the misgiving that the learned senior advocate's agitation of this same question in this appeal was a deliberate attempt to put the consistency of this Court's reasoning to test. From my painstaking and intimate reading of the entreaties before the lower Court, it would no doubt seem obvious that he[ learned senior counsel for the appellant], craftily tabled those reliefs before that Court in the vain hope that it [the said Court] could be decoyed into arrogating to itself a jurisdiction which it clearly did not possess. Happily, it [the said Court] saw through his [the appellant's] disingenuous ploy and declined to entertain the matter.

Be that as it may, this Court is not seised of jurisdiction to deal with this appeal: an appeal which ought to have stopped at the lower Court. To underscore the futility of the attempt in this appeal, I am constrained to set out the consistent views of this Court in previous decisions. In Madumere and Anor v. Okwara and Anor (2013) LPELR -20752 (SC) at 13 -14; E -C, the Court, pointed out that:

"The provisions of Section 246 (3) of the 1999 Constitution, as amended is (sic) very clear and unambiguous. It (sic) enacts as follows:

'3.  The decisions of the Court of Appeal in respect *of appeal arising from the National and State Houses of Assembly Election petitions shall be final'. By numerous decisions of the Supreme Court, the above provision and similar ones to the like effect have been interpreted to mean that no further appeal can be filed against the decision of the Court of Appeal in appeals on National and State Houses of Assembly* *Election Petitions.*

See the case of Esewe v. Gbe [1988] 5 NWLR (pt. 93) 134 at 136-137; Onuagnwchi (Sic) v. Ndu [2001] 7 NWLR (pt. 712) 309 at 321; Dingyadi v. INEC (No.1) [2010] 18 NWLR (Pt. 1224) 1 at 98- 99; Ugwa v. Lekwauwa [2010] 19 NWLR (pt. 1226) 26 at 47 - 48; Sha'Aban v. Sambo [2010] 19 NWLR (pt. 1226) 353 at 360-361, etc." [per Onnoghen, JSC, (as he then was); italics for emphasis]

In the same vein, M. D. Muhammad, JSC declared that:

"By the clear and unambiguous words of the provision of Section 246 (3*) which makes the Court below the last port for any relief and its decision final as it were, there cannot be a further appeal against the lower Court's decision*. *This Court has stated this much in very many decisions and there is no feature in the present case which makes departure from that position legally permissible.* See;Onuaguluchi v. Ndu [2001] 7 NWLR (part 712) 309 at 327; Dingyadi v. INEC (No.1) [2010] 18 NWLR (part 1224) 1 at 98 - 99; Ugwa v. Lekwauwa (2010) 19 NWLR (part 1226) 26 at 47 and Sha'aban v. Sambo [2010] 19 NWLR (part 1226) 353 at 360 - 361." [page 10; A D; italics supplied for emphasis]

In Paragraph 4.27, page 21 of the appellants brief, the Learned Senior Advocate spiritedly contended that

"...the Court below was in grave error to hold as it did that it had no jurisdiction to hear and determine the case..."

Much as I sympathize with his position, and I must quickly add that the Law neither brooks sympathy nor empathy, Suleiman v. C. O.P. Plateau State [2008] 21 WRN 1, 13; Udosen v. State [2007] 4 NWLR (pt 1023) 125, 137; Ezeugo v Ohanyere [1978] 6- 7 SC 171; Oniah v Onyia [1989] 1 NWLR (pt 99) 514; Omole and Sons Ltd v Adeyemo [1994] 4 NWLR (pt 336) 48; The stark position is as this Court put in Okadigbo v. Emeka and Ors (2012) LPELR-7839 (SC) that:

"The lower Court is the final Court in the appeals arising from the National and State Houses of Assembly Election Petition Tribunal. Therefore, this Court lacks the jurisdiction to entertain such appeals *vis-a-vis* election petitions from the lower Court.*It is the final Court in such matters whether rightly or wrongly decided."* [pages 15-16; D-A; italics supplied for emphasis)

My Lords, the leading law reports deserve plaudits for diligently, accentuating the consistent posture of this Court on the question under consideration. Thus, counsel, whether senior or junior who decides to ignore the extant posture of this Court and wantonly irritates it [this Court] with the self-same question that has been answered in many decisions does so at his or her own peril.

As indicated earlier, the cases include: Opara and Anor v Amadi (supra); Madumere v Okwara (supra); Okadigbo v Emeka and Ors (supra); Emordi v Igbeke (supra); Salik v Idris (supra); Dangana v Usman (supra); Onuaguluchi v Ndu and Ors (supra); Sulik v. Idris (supra); Jegede v Akande (supra); Dingyadi v. INEC (No.1) (supra); Ugwa v Lekwauwa (supra); Sha'aban v. Sambo (supra); Awuse v Odili (supra) etc.

Against this background therefore, I shall not only enter an order striking out this appeal; I am under a duty to damnify learned senior counsel for this ill-advised and ill-fated forensic trip to this rare judicial altitude where only serious questions of law ought to be canvassed.

Accordingly, I hereby award costs, assessed and fixed at N1,000,000 (One Million Naira) only in favour of the first and second respondents/objectors to be personally paid by senior counsel for the appellants. Appeal struck out.

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

I agree with the judgment just delivered by my learned brother, Chima Centus Nweze JSC and to register the support, I have for the reasonings, I shall make some comments.

By Notice of Appeal dated and filed on the 24/2/2016 and filed on the same day, the appellants being dissatisfied with the Ruling of the Court below delivered on 11/2/2016 appealed to the Supreme Court vide three grounds of appeal.

By the said Ruling of 11/12/2016, the Court below struck out the appellants Motion No. CA/A/36A/M/2016 the Court of Appeal wherein the appellants prayed the Court to alter/change its final judgment delivered on 2/12/2015 in Election Petition Appeal No. CA/ EPT/609/2015. The Court of Appeal refused that invitation hence this appeal to the Apex Court.

**FACTS:**

On the 28th day of March, 2015, INEC conducted National Assembly Election for Kogi East Senatorial District and the 1st appellant herein contested as candidate of the 2nd appellant whilst the 1st respondent herein contested as candidate of the 2nd respondent.

At the conclusion of the Senatorial Election, INEC declared the appellants winners. The 1st and 2nd respondents as Petitioners approached the National Assembly Election Petition Tribunal Lokoja, contending*, inter alia* that the 1st appellant herein was not qualified to contest the Senatorial Election.

Before the Election Tribunal, the 1st and 2nd respondents herein contended that having obtained the second highest votes in the result of the election as announced by the 3rd and 4th respondents, the 1st and 2nd respondents were entitled to be declared and returned as the winners of the election.

The trial Tribunal agreed with the Petitioners and nullified the election of the 1st appellant. The trial Tribunal proceeded to declare the 1st respondent herein (as 1st petitioner) the duly elected Senator representing Kogi East Senatorial District.

Dissatisfied with the decision of the trial Tribunal, the appellants herein appealed to the Court below.

In a well-considered judgment delivered on 2/12/2015, the Court below agreed with the trial Tribunal that no evidence was given to show that APC held any primary election for the nomination of the 1st appellant.

Accordingly, the Court below upheld the nullification of the election of the 1st appellant but the Court below however set aside the decision of the trial Tribunal which declared the 1st respondent as duly elected.

In its initial Enrolled Order, the Registry of the Court below mistakenly captured Order No. 2 thereof as follows:-

**"2. THE ELECTION OF THE 1ST RESPONDENT IS HEREBY NULLIFIED."**

Upon realising the above mistake, the Registry of the Court below promptly issued another Enrolled Order wherein the orders of the Court of Appeal were correctly captured as follows:-

"1. THE ELECTION OF THE 1st APPELLANT IS HEREBY NULLIFIED.

2. THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) IS HEREBY ORDERED TO CONDUCT FRESH ELECTION FOR KOGI STATE EAST SENATORIAL DISTRICT WITHIN 90 (NINETY) DAYS FROM TODAY."

By a letter under the hand of the Deputy Chief Registrar of the Court below dated 23/12/2015, the initial Enrolled order was withdrawn and replaced with the correct copy.

The initial Enrolled Order was*ex facie*a mistake and the second Enrolled Order effected the correction, showing the proper orders made by the Court of Appeal in its judgment delivered on 2/12/2015. However the appellants in a Motion No. CA/36A/M/2016 sought the reliefs stated hereunder, viz:-

(a) An order deleting the consequential orders of the Court of Appeal for fresh election within 90 days and "replacing same with consequential order affirming the election and return of the 1st applicant as Senator representing Kogi East Senatorial District, the order nullifying the election of the 1st applicant and ordering for fresh election within 90 days having been made without jurisdiction."

(b) An order setting aside the consequential orders made in the judgment of this Honourable Court delivered on the 2nd December 2015 and the enrolled order issued on the 17th December, 2015 in Appeal No. CA/A/EPT/609/2015.... on the grounds that the said consequential and enrolled orders were made and issued without jurisdiction.

(c) An order setting aside the letter written by the Deputy Chief Registrar Court of Appeal Abuja Judicial Division and dated 23rd December 2015 which was addressed to the Chairman of the Independent National Electoral Commission on the ground that the said letter was issued without jurisdiction.

In opposition to the appellants' application above, the 1st and 2nd respondents herein joined issues with the appellants by filing a counter affidavit and written address.

The Court below on the 11th February 2016 delivered a well considered Ruling as follows:-

(a) The appellants' application is actually nothing but a prayer for the Court below "to tamper and change the findings/judgment" of the Court of Appeal delivered on 2/12/2015.

(b) The panel of the Court below that heard the appellants' application has no jurisdiction to sit on appeal against the judgment of the Court of Appeal delivered on 2/12/2015.

(c) Hence, the Court below cannot delete the consequential order for fresh election within 90 days and replace "same with consequential order affirming the election and return of the 1st applicant as Senator representing Kogi East Senatorial District."

(d) Even if the Court below can delete the 3rd consequential order for fresh election, it can only do so within 60 days of the judgment of the trial Tribunal, in accordance with Section 285 (7) of the 1999 Constitution and the case of PDP v CPC (2011) 17 NWLR (Pt.1277) 485 at 508.

(e) The Court of Appeal "is the final Court in respect of appeals arising from the National and State House of Assembly Election Petition by the provisions of Section 246 (3) of the Constitution of Nigeria 1999 (as amended). When its decision given within the stipulated time as enshrined in Section 285 (7) of the 1999 Constitution (as amended) that is, within 60 days, such decision cannot be revisited. The slogan there must be an end to litigation, should persistently sound loud and clear in our Polity."

It is against that Ruling that the appellants have come before this Court on appeal.

On the 14/12/16 date of hearing, learned counsel for the appellants, J. S. Okutepa SAN adopted their brief filed on 8/3/16 in which he distilled a sole issue which is thus:-

Whether the Court below was correct to hold as it did that it has no jurisdiction to grant the reliefs set out in the motion papers of the appellants filed on 26th January, 2016 having regards to the facts that the consequential order made in the judgment of 2nd December, 2015 were made on ground completely outside the jurisdiction of the Court below.

(Distilled from grounds 2 and 3 of the Notice of Appeal Learned counsel for the appellants also adopted the Reply Brief filed on 18/4/2010.

Learned counsel for the 1st and 2nd respondents, P. I. N. Ikwueto SAN adopted their argument filed on 24/3/2016 in which he argued a Preliminary Objection and raised a single issue in the event that the Preliminary Objection failed and thus:-

Whether the Court of Appeal rightly refused to sit on appeal over its final judgment of 21/12/2015 but relied on the provisions of Sections 246 (3) and 285 (7) of the 1999 Constitution in striking out the appellants' application.

T, M. Inuwa Esq, learned counsel for the 3rd and 4th respondents adopted their brief of argument settled by Ibrahim K. Bawa SAN and filed on 11/3/2016 and also adopted the sole issue raised by the appellants.

It is to be stated that the hurdle presented by the Preliminary Objection would be first tackled before anything else as competence of the appeal is dependent on it.

NOTICE OF PRELIMINARY OBJECTION

(i) Section 246(3) 1999 Constitution (as amended)

(ii) Order 2 Rule 9 (1) Supreme Court Rules

(iii) Inherent Jurisdiction of the Supreme Court

TAKE NOTICE that the 1st and 2nd Respondents shall before or at the hearing of the instant appeal raise a Preliminary Objection to the competence of the appeal and shall urge the Honourable Court to summarily strike out the appeal for want of jurisdiction.

GROUNDS FOR THE OBJECTION

1. By Section 246(3) of the 1999 Constitution (as amended) ''The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final."

2.  On 11/2/2016, the Court of Appeal relied on the above Constitutional provision in striking out the appellants' Motion No. CA/A/36A/M/2016 - praying the Court of Appeal to alter/change its final judgment delivered on 2/12/2015 in Election Petition Appeal No. CA/A/EPT/609/2015.

3. By its said Ruling of 11/2/2016, the Court of Appeal refused to sit on appeal over its final judgment delivered on 2/12/2016, hence this appeal.

4. The jurisdiction of the Supreme Court is limited and circumscribed by the 1999 Constitution (as amended). Hence, the instant appeal is unconstitutional and amounts to a gross abuse of Court process.

5. Neither the Court below nor this Honourable Court has jurisdiction to sit on appeal over the final decision of the Court of Appeal "in respect of appeals arising from the National and State Houses of Assembly Election Petitions," as in the instant appeal.

6. The instant appeal is an exercise in gross frivolity. It ought to be struck out with heavy costs as a deterrent.

Canvassing the stance of the 1st respondent/objector, learned Senior Counsel P. I. N. Ikwueto contended that this Court should decline jurisdiction and strike out the appeal based on Section 246 (3) of the 1999 Constitution (as amended). He cited Dangana v Usman (2013) 6 NWLR (Pt. 1349) 50.

That the Court of Appeal was right when it upheld the finality of its judgment delivered on 2nd December 2015 hence the incompetence of the present appeal.

In response, J.S. Okutepa SAN stated that there is a distinction between appeals to the Supreme Court in respect of appeals arising from National and State House of Assembly Election Petitions and an appeal such as the present where the Court of Appeal declined jurisdiction to set aside its decision that was null and void. That the first instance, the appeal does not lie but in the latter, there is jurisdiction on which the appeal can be anchored. He referred to Section 246 of the 1999 Constitution, Section 6(6) also of the CFRN, Order 7 Rules (1) (2) and (12) and Order 19 Rule 4 of the Court of Appeal Rules, 2011; Mark v Eke (2004) All FWLR (pt. 200) 1455 at 1475 - 1476; Ukiri v UBA (2016) 3 NWLR (Pt.1500) 440 at 461.

That by the provision of Section 233 of the 1999 Constitution (as amended) this Court is possessed with the vires to assume jurisdiction and entertain this appeal. Learned counsel cited Madumere & Anor v Okwara & Anor (2013) LPELR - 20752.

The crux of the objection that this Court should decline jurisdiction and strike out the appeal for the reason that Section 246 (3) of the 1999 Constitution (as amended) and robbed the Supreme Court of the vires to entertain the appeal.

The appellant contends differently stating that the appeal does not come within the purview of Section 246 (3) of 1999 Constitution (as amended).

The objection is anchored on whether or not Section 246(3) of the 1999 Constitution (as amended) applied to the effect that the determination at the Court of Appeal was with finality, the implication being that there cannot be a revisit to the matter by the Supreme Court on appeal, since it is a matter that has arisen from the National and State Houses of Assembly Election Petition.

This Court in the case of Danoana v Usman (2013) 6 NWLR (pt.1349) 50faced with a similar question had held thus per Adekeye JSC:-

"It is apparent that the provisions of the 1999 Constitution as amended do not envisage an appeal to the Supreme Court from the Court of Appeal in National Assembly Election Petitions based on whether anybody has been validly elected as a member of the National Assembly. The Court of Appeal shall be the final Court by virtue of Section 246(3) of 1999 Constitution. The provision of Section 246(3) affirms previous decisions of this Court."

This Court had relied on the earlier decision inOnuaguluchi v Ndu (2001) 7 NWLR (Pt. 712) 309 at 321 wherein it was held thus Per Uwaifo JSC, viz:-

"The Court of Appeal throughout acted within its mandate of deciding an appeal arising from an election petition under Decree 5 of 1999. Whether it did so perfectly, rightly or was wrong in the decision, it arrived at cannot be taken on appeal to this Court for consideration. The reason for this can be founded on the provisions of Section 81(1) and (3) of Decree 5 of 1999."

Adekeye JSC in the said Dangana v. Usman (supra) still utilizing in aid Onuaguluchi v Ndu stated further thus:-

"Where an appeal is actually in respect of National Assembly election or other relevant election, whether error of a procedural nature or of a procedural vice as to jurisdiction or competence, cannot be corrected by this Court. They can only be corrected by the Court of Appeal itself or else they will remain uncorrected, unresolved as this Court cannot intervene since it has no appellate or supervisory jurisdiction over the Court of Appeal in such circumstances. This Court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the Constitution has in clear and unambiguous language made the Court of Appeal the final Court. It follows that an appeal in respect of a decision of the Tribunal in an election petition when decided by the Court of Appeal cannot be taken on appeal to the Supreme Court but is final for all purposes.

She concluded at page 83 as follows:-

"In short, by virtue of Section 246(1) (b) and (3) of the 1999 Constitution, the Court of Appeal has the mandate to decide an appeal arising from an election petition and shall be the final Court. Whether it did so perfectly, rightly or wrongly, the decision it arrives at cannot be taken on appeal to the Supreme Court for consideration. The Supreme Court cannot entertain appeals which it has no jurisdiction to adjudicate upon, once a Court has no jurisdiction, a party cannot use any statutory provision or common law principle to impose it because absence of jurisdiction is irreparable in law. The matter ends there."

In his contribution at pages 93-94, My Lord Rhodes-Vivour JSC in the same case of Danagana v. Usman (supra) in a way as to suggest, he had the present situation in mind stated as follows:-

"The starting point would be to find out the intention of the legislature. Subsection (3) of Section 246 of the Constitution is clear.

The words used are Plain as Plain can be.

The intention of the legislature clearly expressed is that all appeals from National and State House of Assembly Election Petitions shall come to an end after the Court of Appeal delivers its judgment. There shall be no further appeal to the Supreme Court...The intention of the legislature is that the Court of Appeal shall be the final Court for the hearing of election petition appeals arising from the National and State Houses of Assembly Elections...

This appeal is from the elections conducted by INEC for the Kogi East Senatorial Seat (precisely like the instant appeal). It is an appeal from the National Assembly election petition in view of the fact that it is for a senatorial seat. By virtue of the clear provisions of Subsection (3) of the Section 246 of the Constitution, the judgment of the Court of Appeal delivered on the 13th day of December 2001 is final.

This Court has no jurisdiction to hear an appeal from the judgment even if the judgment is wrong. It remains inviolate forever.

The pending appeals are incompetent."

Indeed, from the provisions of Section 246 (3) of the 1999 Constitution (as amended) and the plethora of judicial authorities especially of this Court even very recent times, this Preliminary Objection is standing rock solid on a foundation that cannot be shaken. Therefore, the Court of Appeal was right in rejecting a revisit of its own final judgment earlier delivered in the election petition appeal to it as it was akin to sitting on appeal over its final decision.

Again to be said in rejecting the re-visitation offer, the Court below underscored its lack of jurisdiction to entertain the matter which translates to this Court lacking jurisdiction to do what the Court of Appeal had no power to enter into.

The reason for the scenario is that Section 246 (3) CFRN had left no room for manoeuvre under whatever guise the Court below or this Court can nibble into the process. Therefore, this appeal is clearly not only an abuse of Court process, is irritating and vexatious leaving the Court no option than to uphold the Preliminary Objection.

The Preliminary Objection of the 1st and 2nd respondents is hereby upheld and in line with the fuller reasoning of my Lord, Nweze JSC. I strike out the appeal and abide by the consequential orders as made.

**CLARA BATA OGUNBIYI, J.S.C.:**

My learned brother Nweze, JSC has dealt with this appeal very comprehensively. I agree that the preliminary objection raised by the 1st and 2nd Respondents should be the determining point of this appeal.

This is apt because the appeal arises from the decision of the Court of Appeal in respect of an appeal arising from the National and State Houses of Assembly election Petitions.

It is pertinent to state and emphasize that the jurisdiction of this Court is limited and circumscribed by the 1999 Constitution (as amended). Hence, the instant appeal as rightly submitted by the objectors, is unconstitutional and amounts to a gross abuse of Court process.

It is not open to the Court to act without jurisdiction and in futility. Without mincing words, it should be emphasized in strong terms that neither the Court below nor this Court has jurisdiction to sit on appeal over the final decision of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly Election Petitions, as sought by the appellants' counsel in the instant appeal.

Plethora of decisions of this Court are trite and have shown times without number that Section 246(3) of the Constitution 1999 confers finality of the lower Court in cases of this nature. The section reproduced hereunder:-

*"246....*

*(3) The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly Election Petitions shall be final."*

The preliminary objection in this matter is therefore very well taken.

It is unfortunate I must say that despite the clear and unambiguous provision of the law, counsel have failed consistently to be guided therewith and rather seek their way around the provision. This to my mind is not only deliberate but also a surreptitious move to break in through a back wall into a building which does not entitle any entrance whatsoever.

The Court of Appeal is specially designated as the lost port of call in cases of this nature. There can be no act of wisdom or ingenuity that can change this position without amending the Constitution.

Counsel are to blame for the consistent refusal to adhere to what is well within their knowledge and should desist from ill-advising their clients by giving then a false hope.

I agree with my learned brother Nweze, JSCthat the costs of N1,000,000.00 is appropriate in the circumstances. Some should be paid by the senior counsel for the appellant in favor of the 1st and 2nd respondents/objectors.

Appeal is hereby struck out for incompetence.

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

I have had a preview of the lead Judgment delivered by my learned brother - Nweze, JSC, and I agree with him that the Appeal must be struck out and learned senior counsel for the Appellants must bear the brunt for the ill-fated voyage to this Court by paying costs personally.

The interpretation of Section 246(3) of the Constitution *vis-a-vis* jurisdiction of this Court has been settled by this Court in a long line of cases, and the consensus is that an appeal in respect of a decision of the Tribunal in an election matter, when decided by the Court below, cannot be taken on appeal to this Court but is final for all purposes. See Onuaguluchi V. Ndu (2001) 7 NWLR (Pt. 712) 309 and Dangana V. Usman (2013) 6 NWLR (Pt. 1319) 50, where this Court, per Adekeye, JSC, relying on Onuaguluchi V. Ndu *(supra),* stated –

*By virtue of Section 246(1) (b) and (3) of the Constitution, the Court of Appeal has the mandate to decide an appeal arising from an election* *petition and shall be the final Court. Whether it did so perfect rightly or wrongly, the decision it arrives at cannot be taken on appeal to the Supreme Court for consideration. The Supreme Court cannot entertain appeals which it has no jurisdiction to adjudicate upon. Once a Court has no jurisdiction, a party cannot use any statutory provision or common law principle to impose it because absence of jurisdiction is irreparable in law. The matter ends there.*

That is the position of this Court, which has not changed, and which it asserted in its recent Judgment delivered on 9/12/2015 in the case of Bello & Anor V. Damina & Ors [SC.168/2016], wherein it was held-

*Looking closely at the wording of Section 246(3) of the 1999 Constitution (as amended) it is clear - - that the decision of the Court of Appeal is final. The decision - - has no business climbing or driving to this Court for adjudication because this Court is completely Bereft of jurisdiction to entertain, hear and determine any such appeal from the lower Court.*

In the circumstances, this Court has no jurisdiction to hear this appeal and it is hereby struck out. I also order that learned senior counsel for the Appellants shall pay the costs assessed at N1, 000, 000 personally.

SIDI DAUDA BAGE, J.S.C.:

I have had a preview of the lead Judgment delivered by my leaned brother Nweze, JSC., and I agree with him that the Appeal lacks merit. I will add a few words of my own in total support. The issue of Section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which confers finality on the Judgment of the Court of Appeal in respect of appeals arising from election petitions should by now enjoy a befitting burial in view of the numerous pronouncements made by this Court on the subject. Both the Senior and the Junior Counsel have made this subject a recurring decimal, asking the same question before this revered Court. As there is a rule of Public Policy that it is for the common good that there be an end to Litigation.

This is another good case of*Estoppel per rem judicatam.*See NJOKU VS DIKIBO (1998) 1 NWLR (PT. 534) 496 AT 509; IGBESUSI AR VS FABOLUDE (1983) 2 S.C. 75 at page 84; CARDOSO & ORS VS MRS. WILLIAMS ( 1982) 7 S.C.17 at page 52. SAMUEL IDOWU BANIRE & ORS VS FOLAKE BALOGUN (1986) 4 NWLR (Pt. 38) 746, ISHOLA vs AJIBOYE ( 1998) 1 NWLR (Pt. 532) 71 at 77-78This must stop now.

It is for this and other reasons in the lead Judgment that I also dismiss the Appeal and affirm the decision of the Court below.