**FEDERAL REPUBLIC OF NIGERIA**

**V**

**ENWENEDE SOLOMON AND OTHERS**

SUPREME COURT OF NIGERIA

15TH DAY OF DECEMBER 2017

SC. 178/2014

**LEX (2017) - SC.178/2014**

OTHER CITATIONS

2PLR/2017/127 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR JSC:

MARY UKAEGO PETER-ODILI, JSC

CLARA BATA OGUNBIYI, JSC (Read the Lead Judgment)

AMIRU SANUSI, JSC

SIDI DAUDA BAGE, JSC

**BETWEEN**

FEDERAL REPUBLIC OF NIGERIA – Appellant

AND

1. ENWENEDE SOLOMON

2. VICTOR ETERIGHO

3. VICTOR NWABUEZE OBI – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, BENIN.

2. HIGH COURT OF DELTA STATE, SAPELE JUDICIAL DIVISION (G. B. Briki-Okolosi J., Presiding)

**REPRESENTATION/LAWYERS**

ENOSA OMOGHIBO Esq. - for the Appellant.

A. M. KOTOYE Esq. with E. ELAIGWU - for the Respondents.

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

ELECTORAL MATTERS – ELECTION:- Conduct of - Cases on breaches of - Determination of - Duty of court to consider provisions of the Electoral Act.

ELECTORAL MATTERS - LOCAL GOVERNMENT ELECTORAL OFFENCE:- Exclusive jurisdiction of the Magistrate Court of Delta State to determine - Sections 107 and 108 of the Delta State Local Government Law, Cap. D27, 2004, S. 129(1) and 132(I)(b)(c) construed

CONSTITUTIONAL LAW – FEDERALISM:- Legislative powers of the National Assembly over Courts created by a State House of Assembly - Independent Corrupt Practices and other Related Offences (ICPC) Act – Purported conferment of jurisdiction on a High Court to hear cases relating to local government electoral offences – Constitutionality of

**PRACTICE AND PROCEDURE ISSUES**

COURT - MAGISTRATE COURT OF DELTA STATE:– Exclusive jurisdiction of over Local Government electoral offences - Sections 107 and 108 of Delta State Local Government Law 2004, Cap. D27, considered.

JURISDICTION:- Circumscription of by statute or constitution – Legal effect - Duty on court to stay within limit of circumscription

JURISDICTION:- Statutory basis of the jurisdiction of court – Purported conferment/donation of jurisdiction by litigants on court or unilateral assumption of same by a court – Validity and propriety of.

JURISDICTION - ISSUE OF:- Fundamental nature of - When can be raised.

JURISDICTION - JURISDICTION TO DETERMINE A MATTER:- Duty on court to ensure it possesses.

JURISDICTION - SPECIAL COURTS:- Jurisdiction of - Effect on jurisdiction of regular courts.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The respondents were arraigned before the High Court of Delta State, Sapele Judicial Division on a ten count charge contrary to provisions of the Independent Corrupt Practice and Other Related Offences Act, 2000. However, the charges bothered on electoral offences as contained in the Delta State Local Government Law of 2004.

Each of the accused persons plea was taken and they were admitted to bail.

The respondents filed a preliminary objection wherein they sought order of court dismissing/striking out the charges on grounds that the court lacked requisite jurisdiction to entertain the matter. They relied on sections 129(1)(a) and 132(1)(b) and (c) of the Delta State Local government Law of 2004 and section 64 of the Criminal Procedure Law. The trial court dismissed the application.

Dissatisfied, the respondents appealed to the Court of Appeal, which court upturned the trial court’s decision.

Dissatisfied, the appellant appealed to the Supreme Court.

At the Supreme Court, the court considered the provisions of section 132(1)(b)(c) and also section 129(1) of the Delta State Local Government Law of 2004 Cap. D27, Laws of Delta State viz:

Section 132(1)

An election may be questioned on the following ground:

(b) that the election was voided by corrupt practices, irregularities or offences against this law; or

(c) that the respondent was not duly elected by a majority of valid or lawful votes cast at the election; or”

Section 129(1)

“There shall be established in the State at least six and at most nine, election tribunals to be known as Local Government Election Tribunals (in this law referred to individually as an “Election Tribunal”) which shall to the exclusion of any other tribunal or court, have original jurisdiction to hear and determine -

(a) Election petitions as to whether a person has been validly elected as Chairman or Councillor, of a Local Government Council;” (emphasis supplied).

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, upturning the ruling of the trial court refusing to quash the information preferred against the Respondents. Dissatisfied, the Appellant appealed to the Supreme Court.

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

*BY APPELLANT:*

(1) Whether having regard to the facts and circumstances that councillorship elections did not hold on 10 May 2008 in Uzere ward 06, Isoko South Local Government Council, Delta State the jurisdiction of the Magistrates’ Court of Delta State to hear and determine electoral offences as provided under the Local Government Law Cap.D27, Laws of Delta State 2004 has been invoked.

(2) Whether the accused persons cannot be validly tried under the provisions of the Corrupt Practices and Other Related Offences Act, 2000, having regard to the facts and circumstances that councillorship elections did not hold on 10 May 2008 in Uzere Ward 06, Isoko South Local Government Council, Delta State and yet someone was issued a certificate of return and sworn in.

*BY RESPONDENTS:*

“Whether or not the lower court was right, when it set aside the ruling of G. B. Briki-Okolosi delivered on 21 February 2012, on the ground that the trial court “is devoid of jurisdiction” to try and determine the charge in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law, Cap. D27, Laws of Delta State, 2006.”

*AS FORMULATED BY COURT:*

Whether the lower court had jurisdiction to preside over the charge in view of the fact that the alleged offences took place in the course of an election and in view of the provisions of sections 132(1)(b)(c) and 129(1) of the Delta State Local Government Law 2004, Cap. D27, Laws of Delta State, 2008.

**MAIN JUDGMENT**

OGUNBIYI JSC (DELIVERING THE LEAD JUDGMENT):

The respondents herein were jointly charged before the Delta State High Court vide the charge sheet dated 19 August 2010 containing ten (10) counts. All the offences were charged under the Independent Corrupt Practices and Other Related Offences Acts, 2000 (pages 2 - 6 of the records contained the charge sheet and the proof of evidence). They were arraigned on 14 October 2010 before the High Court, Sapele Judicial Division.

The plea of each of the accused persons was taken and they were also granted bail on the same day (pages 137 - 139 of the records are in reference).

By a motion dated 5 November 2011, the 1st and 2nd respondents applied to the lower court for the quashing of counts 1, 2, 7, 8, 9 and 10 and the statement of offence in the information on the grounds set out on the motion paper. (The motion on notice/preliminary objection is at pages 82 - 90 of the records).

This application was however withdrawn and struck out during the proceedings of 29 November 2011 (see proceedings at pages 140 - 141 of the records).

By another application dated 16 August 2011 but filed on 29 August 2011, the 1st and 2nd respondents applied to the trial court, and prayed as follows:-

“An order of this honourable court dismissing/striking out this charge or otherwise quashing some on the ground that this honourable court lacks the requisite jurisdiction to try the offence as contained in the charge sheet in view of the provisions of sections 129(1)(a), 132(1)(9) and (c) of the Delta State Local Government Law of 2004 and section 64 of the Criminal Procedure Law.”

The said application was predicated on 8 grounds and supported by a 15 paragraphs affidavit deposed to by the 2nd respondent and the thrust of which was that the lower court lacked the requisite jurisdiction to sit over the charge, since all the offences alleged in the charge consist of electoral offences contained in the Delta State Local Government Law of 2004. (The preliminary objection/motion on notice, affidavit and written submission are at pages 105 - 122 of the records).

On 29 November 2011, the trial court took argument on the said application and delivered a ruling on 21 February 2012, wherein the said application was dismissed. The 1st and 2nd respondents thereafter approached the lower court vide two notices of appeal on 5 March 2012. Both notices contained only one ground.

An application by the 1st and 2nd respondents, to consolidate the two notices of appeal, to amend the notices and argue additional grounds of appeal as well as to raise fresh issue on appeal, was heard and granted in chambers.

The lower court delivered its judgment on 11 December 2013 and allowed the appeal. This appeal herein therefore is against the said decision of the lower court.

The notice of appeal was filed at the lower court on the 21 February 2014. It was dated the same day (see pages 313 – 316 of the record of appeal).

In accordance with rules of court, briefs of argument were filed by both parties:-

(1) Appellant’s brief of argument was settled by one Enosa Omoghibo Esq. and filed on 16 October 2014.

(2) 1st and 2nd respondents’ brief of argument was settled by one A. M. Kotoye Esq. and filed on 2 July 2015.

(3) Appellant’s reply brief of argument was settled also by his counsel Enosa Omoghibo and filed on 21 March 2015.

On 5 October 2017, at the hearing of the appeal, Mr. E. Omoghibo represented the appellant while A. M. Kotoye Esq. appeared for all the respondents. The learned counsel on behalf of the respondents applied to withdraw their preliminary objection filed on 2 July 2015 and same was struck out.

Both counsel representing the parties adopted and relied on their respective briefs of argument. While the appellant’s counsel moved the court to allow the appeal, a verdict of dismissal was sought for on behalf of the respondents. The two issues formulated by the appellant for determination are as follows:-

(1) Whether having regard to the facts and circumstances that councillorship elections did not hold on 10 May 2008 in Uzere ward 06, Isoko South Local Government Council, Delta State the jurisdiction of the Magistrates’ Court of Delta State to hear and determine electoral offences as provided under the Local Government Law Cap.D27, Laws of Delta State 2004 has been invoked.

(2) Whether the accused persons cannot be validly tried under the provisions of the Corrupt Practices and Other Related Offences Act, 2000, having regard to the facts and circumstances that councillorship elections did not hold on 10 May 2008 in Uzere Ward 06, Isoko South Local Government Council, Delta State and yet someone was issued a certificate of return and sworn in.

On behalf of the respondents, the lone issue raised was as following:

“Whether or not the lower court was right, when it set aside the ruling of G. B. Briki-Okolosi delivered on 21 February 2012, on the ground that the trial court “is devoid of jurisdiction” to try and determine the charge in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law, Cap. D27, Laws of Delta State, 2006.”

The issue raised by the respondents is in tandem with the appellant’s first issue which relates to question of jurisdiction. I seek to state straightaway that the fulcrum of the appeal herein centers around the issue of jurisdiction; that is to say, the competence of the lower court to entertain and determine the information (charge) preferred against the respondents. The issue of jurisdiction is well founded and cannot be underrated. It is the foundational life-wire of adjudication. No court can function without jurisdiction. It is a constitutional matter. Several judicial authorities are numerous and trite on this point.

The main issue therefore is:-

Whether the lower court had jurisdiction to preside over the charge in view of the fact that the alleged offences took place in the course of an election and in view of the provisions of sections 132(1)(b)(c) and 129(1) of the Delta State Local Government Law 2004, Cap. D27, Laws of Delta State, 2008.

It is submitted by the appellant’s counsel that the lower court erred in law and thereby occasioned a miscarriage of justice when it held that the Magistrates’ Court of Delta State has the exclusive jurisdiction under the Local Government Law, Cap. D27, 2004 to try and determine the case in question. Counsel argues further that the learned justices of the Court of Appeal totally misconceived the charges brought against the accused persons by the ICPC.

The learned counsel related to section 132(1) of the Delta State Local Government Law, 2004 and submits that the jurisdiction of the said Electoral Tribunal to adjudicate on electoral matters flows from an actual election dully conducted; in other words, there must be electoral materials distributed to the various polling booths/units, the actual vote cast by the voters, collation of the vote casts and the declaration of a winner.

The learned counsel contends further that unless and until the actual conduct of elections, the jurisdiction of the tribunal and the Magistrates’ Court of Delta State cannot be invoked. While drawing attention to paragraph 132(1)(b), the learned counsel argues that something can only be voided if that thing has happened or if it has been; that one cannot void that which is not or has not been; that election was never held in Uzere Ward 06 of Isoko South Local Government Area of Delta State on 10 May 2008 or at any time before or after. If there was no election, counsel argues, then there will be no basis to invoke the jurisdiction of the tribunal or that of the Magistrates’ Court of Delta State.

The onus is on the prosecution, learned counsel submits, to establish during trial that this position was the state of affairs on 10 May 2008 when the materials that would have been used for the conduct of the elections were returned to the Oleh Police Station from where the commission’s operatives recovered them; that there was no such conduct of any councillorship election on 10 May 2008 in Uzere Ward 06, Isoko South Local Government Council, Delta State as the election never held; that all that happened before and until the morning of 10 May 2008 in Uzere Ward 06, Isoko South Local Government Council, Delta State were mere preparations for councillorship elections which did not hold. In other words, that the condition precedent for the coming into effect of the said law was never fulfilled. Counsel cites in support, the Court of Appeal case of I.N.E.C v. Action Congress (2009) All FWLR (Pt. 480) 732, (2009) 2 NWLR (Pt. 1126) page 524 at 588 - 589 on what is an election. Further reference was also made to the decision of this court in the case of Agbakoba v. I. N. E. C & 2 Ors (2008) All FWLR (Pt. 410) 799, (2008) 18 NWLR (Pt. 1119) 489, (2008) 12 SC (Pt. 111) page 171 at 205.

It is the contention of the appellant’s counsel that his client’s complaint was not contesting the votes cast, but rather that the election never held. Reference was made also to the reasoning held by his lordship, Niki Tobi JSC (of blessed memory) at page 60 of the case of Odedo v. I.N.E.C (2007) All FWLR (Pt. 392) 1907, (2008) 17 NWLR (Pt. 1017) 554,(2008) 7 SC page 25.

Counsel submits finally that in the absence of any election held, the jurisdiction of the Elections Petitions Tribunal for that elections, and the Magistrates’ Courts of Delta State cannot be invoked since a condition precedent for doing so was not fulfilled; the court, counsel argues should resolve the issue in favour of the appellant.

The learned respondents’ counsel in response to the foregoing argument by the appellant’s counsel, refuted the very foundation thereof in totality. Counsel argues in support, that given the totality of all the allegations as contained in the statements, particulars of offence and the proof of evidence in support of the charge sheet, the trial court lacked the jurisdiction to put them to trial. This is because they are all offences allegedly committed during election and which had been appropriately made a ground for petitioning pursuant to sections 132(1)(b) and 129(1) of Delta State Local Government Law of 2004, Cap. D27, Laws of Delta State; that all the allegations against the 1st and 2nd respondents borders on irregularities as envisaged in section 132(1) supra. Counsel submits further that it is in the nature of “corrupt practice irregularity” upon which an election may be questioned. Such allegations, he contends, are quasi-criminal in nature and it is the tribunal set up under section 129(1) (supra) that have jurisdiction to adjudicate on the allegations as contained in the charge sheet under reference and not the lower court.

The learned counsel related to a number of decided authorities in terms of Obi-Odu v. Duke & 2, 339 Ors (2006) All FWLR (Pt. 337) 537, (2006) 1 NWLR (Pt. 961) 375, (2006) 21 WRN page 113 at 159; Aikulola v. Akogwu & 2 Ors (2006) 41 WRN page 29 at 82 - 83; Obasanjo & 2 Ors v. Yusuf & Anor (2004) All FWLR (Pt. 213) 1884, (2004) 9 NWLR (Pt. 877) 144, (2005) 20 WRN page 1 at 49 and Ogboru v. Ibori (2004) All FWLR (Pt. 225) 173, (2004) 44 WRN page 98 at 118 - 119.

Counsel re-iterates also that it is immaterial that the allegations border on the commission of a crime because none of the facts contained in the proof of evidence directly linked the 1st and 2nd respondents herein with any of the allegations. Counsel cites further the case of Buhari & Anor v. Obasanjo & Ors (2005) All FWLR (Pt. 258) 1604, (2005) 2 NWLR (Pt. 910) 241, (2005) 50 WRN page 1 at 188.

The learned counsel relates copiously to the Criminal Procedure in Nigeria, Law and Practice, Chapter 13; that the reliance on section 61(3) of the ICPC Act, 2000 by the learned trial judge in this instance is unhelpful as it is inapplicable. The learned counsel urges us to discountenance all the arguments advanced on behalf of the appellant. This is because whether the facts of the charge are pre-election or post election, it still does not fall under the purview of the ICPC Act. Counsel contends further that the learned trial judge did not read the depositions of the potential witnesses before dismissing the motion seeking to quash the charge.

It is again submitted by learned counsel that the conduct of the election and the alleged offences of the 1st and 2nd respondents herein being in respect of the Local Government election in Delta State are covered by the said Delta State Local Government Law 2004, and not by the ICPC Act.

The main plank of the allegations against the respondents counsel re-affirms, is that there was ‘no election’ on the said 10 May 2008 and that none of the potential witnesses mentioned any of the 1st and 2nd respondents as being part of the process leading to the non-holding of the election.

That the appellant’s contention in issue 1 has no support and cannot be sustained therefore.

Resolution of the issue

The main plank of the allegations against the respondents is that there was no election on the said 10 May 2008. Consequently, that the lower court erred when it set aside the ruling of the trial court delivered on 21 February 2012 on the ground that it is devoid of any jurisdiction to try and determine the charge “in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law, Cap D27, Laws of Delta State.”

It is trite and well settled that jurisdiction is at the threshold of the power of the court to adjudicate over any matter. It is the authority of the court to exercise judicial power, to take cognizance and decide on matters presented before it. It is an essential factor in the determination of an action and therefore indispensable to the capacity of the court to exercise judicial authority. See the following authorities in Ajomale v. Yarduat & Anor (No.1) (2003) FWLR (Pt. 1820) 1902 at 1910 SC; The Miscellaneous Offences Tribunal & Anor v. Okoroafor (2001) FWLR (Pt. 81) 1730 at 1748 SC. It is also trite that whereby the rules of court or any other rule whatsoever, the unlimited jurisdiction of the court is curtailed by statute or the Constitution as to subject matter or cause of action or as to person who can bring the action, such curtailment renders the court incompetent to adjudicate over a matter which has been taken outside its powers by such statute. Therefore, where tribunal or special court is set up to adjudicate over specialized matters, the powers of the normal courts created under the Constitution will be ousted in respect of such specialized matters.

The courts have held overtime that where there is a tribunal set up as special court under state law, to adjudicate over specialized matters, the power of the State High Court which under the Constitution is vested with jurisdiction to hear and determine any civil and criminal proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation, claim or crime is in issue, is ousted. See the case of Chief Emmanuel Osita Okereke v. Alhaji Umaru Musa Yar’Adua (2008) All FWLR (Pt. 430) 626, (2008) 6 NWLR (Pt. 1082) 37,(2008) 4 - 5 SC (Pt. 1) page 206 at 238 wherein this court, per Onnoghen JSC (as he then was) held thus:-

“It is settled law that where legislation lays down a procedure for doing a thing, there should be no other method of doing it.”

See also the case of C.C.B Plc v. The Attorney-General of Anambra State (1992) 8 NWLR (Pt. 261) 528, (1992) 10 SCNJ 137 at 163, also Buhari v. Yusuf (2003) FWLR (Pt. 174) 329, (2003) 14 NWLR (Pt. 84) 446, (2003) 6 SC (Pt. 11) 156.

The reproduction of two stronghold sections predicating the determination of this issue are sections 132(1)(b) and (c) also 129(1) of Delta State Local Government Law of 2004, Cap. D27, Laws of Delta State are as follows:-

Section 132(1) says:-

“An election may be questioned on the following ground:

(b) that the election was voided by corrupt practices, irregularities or offences against this law; or

(c) that the respondent was not duly elected by a majority of valid or lawful votes cast at the election; or”

Section 129(1):-

“There shall be established in the state at least six and at most nine Election Tribunals to be known as Local Government Election Tribunals (in this law referred to individually as an “election tribunal”) which shall to the exclusion of any other tribunal or court, have original jurisdiction to hear and determine –

(a) Election petitions as to whether a person has been validly elected as chairman or councillor, of a Local Government Council;” (emphasis supplied).

As rightly submitted by the learned counsel representing the respondents, it is clear that from the facts of the charge as contained in the statement and particulars of offence, as well as the proof of evidence in support thereof, all the allegations against the 1st and 2nd respondents border on irregularities as envisaged in section 132(1) reproduced (supra). It is all in the nature of “corrupt practice/irregularity” upon which an election may be questioned. Such allegations are quasi-criminal in nature and it is the tribunal set up under section 129(1) (supra) that have jurisdiction to adjudicate on the allegations as contained in the charge sheet under reference. Several authorities were cited in support by the learned counsel for the respondents.

The law is trite and well settled that no litigant can confer jurisdiction on any court where the Constitution or a statute or any provision of the common law says that the court shall have no jurisdiction. See Jikantoro & 6 Ors. v. Dantoro & 5 Ors (2004) All FWLR (Pt. 216) 390, (2004) 13 NWLR (Pt. 889) 189, (2004) 5 SC (Pt. 2) page 1 at 21.

It is in evidence, clearly on the record that the complains relates to the conduct of elections into the councillorship seat of Uzere Ward in Isoko South Local Government of Delta State which was held on 10 May 2008 in which the 2nd respondent was declared the winner.

The petition which formed the basis of the investigation and pursuant to which the charge at the trial court was filed is at page 12 of the record and it is dated 19 May 2008. Reference to the said page is self explanatory wherein the petition relates to:-

“A fraudulent Act perpetrated by Mr. Utho DS1EC official” (sic)

In summary, the complaint against Mr. Utho alleges that he collected sums of money from “influential individuals”; and it borders on electoral issues/irregularities.

Mr. Bernard Utho, the man in the eye of the storm, also made statements at pages 39 - 46 of the record, and which border on electoral malpractice/irregularity, which occurred during the conduct of the said election. With reference made to the case of Obasanjo & 2 Ors v. Yusuf & Anor (2005) 20 WRN page 1 at 86, this court held and said:-

“Complaints against the conduct of election can only be found in the Electoral Act, as the Act provides breaches in the conduct of elections. The Electoral Act is a comprehensive Act which deals with the conduct of elections in this country. The courts are bound to look into the Act in cases of breach in the conduct elections.”

The Delta State Local Government Law, Cap. D27, 2004 was enacted pursuant to section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which says:-

“7. The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed, and accordingly, the government of every State shall, subject to section of this Constitution, ensure their existence under a law which provides for the establishment structure composition, finance and functions of such councils.”

What is more, under the Second Schedule, Part II (the concurrent legislative list) of the 1999 Constitution, it is provided by paragraph 12 thus:-

“Nothing in paragraph 11 hereof shall preclude a House of Assembly from making Laws with respect to election to a Local Government Council in addition to but not inconsistent with any law made by the National Assembly.

In the instant case, the Delta State Local Government Law (supra) has, by the provision of sections 107-128 thereof, conferred special powers on Magistrates’ Courts in the State to try (Local Government) electoral offences. Consequently, the High Court lacks the jurisdictional competence to try the offences prescribed under sections 107 - 128 of the law, supra.

Undoubtedly, the High Court’s jurisdiction is as regards appeals from the decisions of the trial Magistrates’ Courts in the State. The appellate and supervisory powers of the High Court over and above the Magistrate’s Courts are very well taken.

The law is well settled that where a particular court or tribunal has been specifically conferred with a special power to adjudicate upon a matter or action, as in the instant case, it is not the business of any other court or tribunal which lacks such express power to arrogate to itself the power to entertain such a matter or action. See Enagi v. Inuwa (1992) 3 NWLR (Pt 231) 548 at 565.

With the criminal allegations arising from the conduct of the Local Government election in question, the provisions of the Local Government Law (supra) pertaining to elections, especially sections 107 - 128 thereof ought to be strictly applied. See Obasanjo v. Yusuf (2005) 20 WRN 1 at 86.

Notwithstanding that the information (charge) was filed against the appellant pursuant to the ICPC Act, the Magistrates’ Court of Delta State has the exclusive jurisdiction under the Local Government Law, Cap. D27, 2004 (supra) to try and determine the case in question. See Utih v. Ononyivwe (1991) 1 NWLR (Pt. 166) 166, (1991) 1 SC (Pt. 1) 61; Obi v. I.N.E.C (2007) All FWLR (Pt. 378) 1116, (2007) 11 NWLR (Pt. 1046) 565 (2007) SC 268 at 301.

For the purpose of exercising jurisdiction thereof, the court has an onerous duty to be properly seized of the matter before it. See Madukolu v. Nkemdilim (1962) 1 All NLR 587 at 594 and Obasanjo v. Yusuf (2005) 20 WRN (Vol 2) 1 wherein this court said:

“Jurisdiction is a very hard matter of law which is donated by the Constitution and the enabling statute. It is also a very sensitive matter in the judicial process. Considering its very hard and sensitive nature, courts of law must always bow to the provisions of the Constitution and the enabling statute. On no account should we remove from a court which has jurisdiction to hear a matter to another court which has nojurisdiction to hear it.”

The High Court is devoid of jurisdiction to try and determine the instant case in view of the express and unequivocal provisions of the Delta State Local Government Law (supra).

Section 129(1) of the Local Government Law (supra) established the Local Government Electoral Tribunal; while section 132(1) states the ground upon which an election may be questioned. One of the grounds is as contained in section 132(1)(b), supra. Therefore, complaints against any wrong doings, malpractice or corrupt practice which occurred during the elections held on 10 May 2008 in Uzere Ward can only be heard at the tribunal established pursuant to section 129(1) (supra).

Again see Obasanjo & Anor v. Yusuf & Anor (2004) 5 SC (Pt 1) page 27 at 50. Any provision in the ICPC Act which tend to confer jurisdiction on the trial court contrary to the provision of the Constitution is null and void and of no effect whatsoever; as rightly submitted by the learned counsel for the respondents.

The said issue is resolved in the positive and against the appellant herein. In other words, the lower court was right when it set aside the ruling by G. B. Briki-Okolosi, delivered on 21 February 2012 on the ground that “the trial court is devoid of jurisdiction” to try and determine the charge in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129(1)(a) of the Delta State Local Government Law, Cap. D27, Laws of Delta State.

The appeal is dismissed on the totality, while the judgment of the lower court delivered on 11 December 2013 is affirmed by me.

**RHODES-VIVOUR JSC:**

I have had the advantage of reading in draft the leading judgment delivered by my learned brother Ogunbiyi JSC, and I entirely agree that this appeal should be dismissed. It is hereby also dismissed by me.

**PETER-ODILI JSC:**

I agree with the judgment just delivered by my learned brother, Clara Bata Ogunbiyi JSC and to underscore that support, I shall make some remarks.

This is an appeal from the Court of Appeal or court below, Benin Division which set aside the ruling of the G. B. Briki-Okolosi J of the High Court, Delta State sitting at Asaba delivered on 21 February 2012 refusing to quash the information preferred against the accused persons.

Dissatisfied with the said judgment of the Court of Appeal, the respondents filed a notice of appeal filed on 21 February 2014.

Facts briefly stated On 14 October 2010, the three accused persons were arraigned before his lordship, Hon. Justice G. B. Briki-Okolosi of the Delta State High Court of Justice, then sitting at Sapele, Delta State on a ten-count charge brought against them by the Independent Corrupt Practices and Other Related Offences Commission (ICPC). The charges were read to them and they all entered a plea of not guilty.

On 11 November 2010, the next adjourned date, counsel to the 2nd and 3rd accused persons filed and served on the prosecution a motion on notice asking the court to quash the counts in the information against the 2nd and 3rd accused persons on the grounds that the offences are not disclosed in the statement of offences and the proof of evidence attached and that no prima facie case is disclosed in the proof of evidence against the 2nd and 3rd accused persons.

After several adjournments, counsel to the 1st accused person also filed and served on the prosecution on 12 April 2011 a notice of preliminary objection asking his lordship to quash the counts in the information against the 1st accused person on the ground that the charge is incompetent and that the lower court lacks the jurisdiction to entertain the matter.

In opposition to the motion to quash the charges filed against the 2nd and 3rd accused persons, and the preliminary objection asking the lower court to quash the charges filed against the 1st accused person in this criminal trial, prosecution filed a six paragraph counter-affidavit on 13 January 2011 and another 10-paragraph counter-affidavit on 12 February 2011 respectively.

Upon agreement of counsel, the learned trial judge ordered written addresses in lieu of oral submissions. The written arguments were adopted on 29 November 2011. Thereafter, the learned trial judge adjourned ruling for 21 February 2012.

The ruling of the trial judge delivered on 21 February 2012, in a well considered ruling, the learned trial judge dismissed the preliminary objection and refused the application to quash the charge against the accused persons.

Dissatisfied with the decision of the trial judge, the 2nd and 3rd defendants filed separate notices of appeal dated 5 March 2012 consolidated by order of the Court of Appeal on 21 February 2013 and another amended notice of appeal dated 11 March 2013. The appellant’s brief of argument dated 13 March 2013 was filed on 19 March 2013. The respondents’ brief was filed on 24 April 2013.

The briefs were adopted by the parties and the Court of Appeal delivered its judgment on Wednesday, 11 December 2013.

In its judgment, the Court of Appeal held amongst others thus:

Notwithstanding the fact that the information (charge) was filed against the appellants pursuant to the ICPC Act, I am of the considered view that the Magistrates’ Court of Delta State has the exclusive jurisdiction under the Local Government Law Cap. D27, 2004 (supra) to try and determine the case in question.”

On 5 October 2017, learned counsel for the appellant, Enosa Omoghibo Esq. adopted the brief of argument of the appellant filed on 16 October 2014 and deemed filed on 16 March 2016. In it were distilled two issues for determination which are as follows:

1. Whether having regard to the facts and circumstances that councillorship elections did not hold on 10 May 2008 in Uzere Ward 06, Isoko South Local Government Council, Delta State, the jurisdiction of the Magistrates’ Court of Delta State to hear and determine electoral offences as provided under the Local Government Law, Cap. D27, Laws of Delta State 2004 has been invoked.

2. Whether the accused persons cannot be validly tried under the provisions of the Corrupt Practices and Other Related Offences Act 2000, having regard to the facts and circumstances that councillorship elections did not hold on 10 May 2008 in Uzere Ward o6, Isoko South Local Government Council, Delta State and yet someone was issued a certificate of return and sworn in. He also filed appellant’s reply brief on 21 July 2015.

A.M. Kotoye of counsel for the respondents adopted the brief he filed on the 2 July 2015. He crafted a single issue, viz:

“Whether or not the lower court was right, when it set aside the ruling of G. B. Briki-Okolosi delivered on 21 February 2012, on the ground that the trial court “is devoid of jurisdiction” to try and determine the charge in view of the express and unequivocal provisions of sections 132(1)(b)(c) and 129 (1) (a) of the Delta State Local Government Law. Cap. D27, Laws of Delta State, 2006.”

The sole issue so drafted by the respondents is apt and I shall utilise it in the determination this appeal.

The learned counsel for the appellant, Enosa Omoghibo contended that the court below misconceived the charges brought against the accused persons by the ICPC, that section 97 of the Delta State Local Government Law 2004 provides that the Delta State Independent Electoral Commission shall conduct local government elections subject to any Act of the National Assembly providing for election matters according to the provisions of the said law. That sections 107 - 127 created various electoral offences triable in the Magistrates’ Court by the Attorney General of the State or the police, as provided in section 128, while section 129 establishes the Election Tribunal. That section 132 set out the grounds for questioning an election in the context above.

For the appellant, it was submitted that unless and until the actual conduct of elections, the jurisdiction of the tribunal and Magistrates’ Court of Delta State cannot be invoked and in this case at hand, elections never held nor was there any election conducted in Uzere Ward 06 of Isoko South Local Government Area on 10 2008 or at any time before or after. That if there was election then there will be basis to invoke the jurisdiction of Election tribunal or the Magistrates’ Court of Delta State.

He stated that the condition precedent for the invocation of the jurisdiction of the Magistrates’ Court was not fulfilled. He cited I.N.E.C v. Action Congress (2009) 2 NWLR (Pt. 1126) 524 at 588 - 589 for the definition of an election. Also Agbakoba v. I.N.E.C. & 2 Ors (2008) 12 SC (Pt. 111) 171; Odedo v. I.N.E.C. (2008) 7 SC 25.

Going on further, learned counsel for the appellant submitted that the complainant and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) are concerned about how the 3rd accused person was sworn in to hold an elective position for which no election was conducted. That it is for this reason that the ICPC brought charges not under the Delta State Local Government Law 2004, but the ICPC Act 2000, as observed by the learned trial judge. That all the counts with the exception of count 6 were brought under the said Act, while count 6 was under section 104 of the Criminal Code Act, Cap. C38, Laws of the Federation 2004, which are all extant laws. That the trial judge was right to hold he had jurisdiction to try the offences charged.

Mr. Omoghibo of counsel for the appellant contended that the Court of Appeal erred in setting aside what the trial court did and the Supreme Court should allow the appeal and order that the accused persons face their trial. He cited Attorney-General, Ondo State v. Attorney-General, Federation (2002) FWLR (Pt. 111) 1972, (2002) 9 NWLR (Pt. 772) 222; Bello v. Attorney-General Oyo State (1986) 5 NWLR (Pt. 45) 825. A. M. Kotoye Esq. of counsel for the respondents contended that it is trite that jurisdiction is at the threshold of the power of the court to adjudicate over any matter and it is the authority of the court to exercise judicial power, to take cognizance and decide on matters presented before it. That it is an essential fact in the determination of an action and indispensable to the capacity of the court to exercise the judicial authority. He cited Ajomale v. Yarduat & Anor. (No 1) (2003) FWLR (Pt. 1820) 1902 at 1910; Miscellaneous Offences Tribunal & Anor. v Okoroafor (2001) FWLR (Pt. 81) 1730 at 1748.

For the respondents, it was contended further that it is trite that whereby the rules of court or any other rules, the unlimited jurisdiction of the court is curtailed by statute or the Constitution as to subject matter or cause of action or as to person who can bring the action, such curtailment renders the court incompetent to adjudicate over a matter which has been taken outside its powers by such statute. That where a tribunal or special court is set up to adjudicate over specialized matters, the powers of the normal courts created under the Constitution will be ousted in respect of such specialized courts, and so happened in this instance. He referred to Okereke v. Yar’Adua (2008) 4 - 5 SC (Pt 1) 206 at 238; C. C. B. Plc v. Attorney-General of Anambra State (1992) 10 SCNJ 137 at 163; Buhari v. Yusuf (2003) 6 SC (Pt. 11) 156.

That no litigant an confer jurisdiction on any court where the Constitution or a statute or any provision of the common law says that the court has no jurisdiction. He cited Jikantoro & 6 Ors v. Dantoro & 5 Ors (2004) 5 SC (Pt. 2) page 1 at 21.

The appellant also contended that the allegations in issue bordered on the commission of crime which fact is immaterial because none of the facts in the proof of evidence directly linked the 1st and 2nd respondents nor were they mentioned in the statements of the witnesses. Also, that the fact that the charge was brought under the ICPC Act is immaterial because the Act being a statute of parliament cannot override a constitutional provision which had declined that the trial court cannot exercise jurisdiction on complaints arising from the conduct of an election. He cited Utih v. Ononyivwe (1991) 1 SC (Pt. 1) 61; Peter Obi v. INEC & 6 Ors. (2007) SC 268 at 301.

The plank on which this appeal is standing is that the appellant is inviting the Supreme Court to allow the appeal in the interest of justice, as a criminal offence had occurred and the court should not be hampered by the fact that no election took place, though an election was to be conducted and it was in the course of such anticipation that the criminal offence took place and the court should not shy away from the remedial process of righting the wrong done.

The attack by the respondents to that reasoning of the appellant is that there being no jurisdiction in the court of trial and along the way, the appellate courts, that there is nothing anyone can do about it. It has now assumed the position of immutability that jurisdiction is at the threshold of the power of a court to adjudicate over a matter and while it is within the authority or power of the court to exercise judicial power, it has to do so mindful of whether it has the power to enter into the suit or appeal placed before it.

That is a first hurdle and there is no running away from it. Though, a court cannot ignore an illegality in any matter it has to have the necessary vires to be properly seised of the matter to proceed however odious or reprehensible the presentation of the criminal activity may be. See Madukolu v. Nkemdilim (2001) 46 WRN 1; Obasanjo v. Yusuf (2005) 20 WRN (Vol. 2) 1.

For a fuller understanding, it is trite that where the rules of court or any other rules whatever have curtailed an otherwise unlimited jurisdiction of a court and this can be by a specific statute or even the Constitution as to the subject matter or cause of action or as to the person who can bring the action, such curtailment renders the court incompetent, stripped of its power to adjudicate over the said matter, as what has happened is that such a matter is outside the confines of the power of the court and that limitation has been done by statute or Constitution. It follows that where a tribunal or special court is set up to adjudicate over specialized matters, the powers of the regular courts created under the Constitution will be ousted in respect of such specialised matters.

The courts including the present one have held time without number that where there is a tribunal set up as special court under State Law such as the Delta State Local Government Law of 2004, Cap. D27, Laws of Delta State which is at the foundation of this matter at hand, then the State High Court or any other court needs to pause advisedly, since it cannot just assume jurisdiction without being properly so vested. See Chief Emmanuel Osita Okereke v. Alhaji Umaru Musa Yar’Adua (2008) 4 - 5 SC (Pt. 1) 206 at 238; Ajomale v. Yarduat & Anor. (No 1) (2003) FWLR (Pt. 1820) 1902 at 1910; Miscellaneous Offences Tribunal & Anor. v Okoroafor (2001) FWLR (Pt. 81) 1730 at 1748

I shall quote the relevant sections of the said Delta State statute for effective clarity and it is thus:

Sections 132(1)(b)(c) and 129(1) of Delta State Local Government Law of 2004, Cap. D27, Laws of Delta State.

Section 132 (1) says:

“An election may be questioned on the following ground:

(b) That the election was voided by corrupt practices, irregularities or offences against this law; or

(c) That the respondent was not duly elected by a majority of valid or lawful votes cast at the election; or”

Section 129(1):

“There shall be established in the state at least six and at most nine election tribunals to be known as Local Government Election Tribunals (in this lave referred to individually as an “election tribunals”) which shall to be exclusion of any other tribunal or court, have original jurisdiction to hear and determine-

(a) Election petitions as to whether a person has been validly elected as Chairman or Councillor of a Local Government Council.”

It needs be reiterated that no litigant, court or counsel can confer jurisdiction on any court where the Constitution or a statute or any provision of the common law has stated that the particular court has no jurisdiction. The complaint from which the action was commenced relate to the conduct of elections into the councillorship seat of Uzere Ward in Isoko South Local Government of Delta State which was purportedly held on 10 May 2008 in which the 2nd respondents was declared winner.

The petition which formed the basis of the investigation and from which the charge was initiated at the trial High Court was headed. “A fraudulent Act perpetrated by Mr. Utho, DSIEC official”

The crossroad came about because section 128(1)(a) of the Delta State Local Government Law had established a tribunal to look into infractions emanating from elections conducted within sight of the Delta Law aforementioned which is impari material to section 286(1) of the Constitution of the Federal Republic of Nigeria, 1999 and which Delta law established the Electoral Tribunal for local government elections of Delta State. In the case of Obasanjo & 2 Ors v. Yusuf & Anor (2005) 20 WRN page 1 at 86 where complaints such as the present albeit the said complaints were at the Federal level. This court stated as follows:

“Complaints against the conduct of election can only be found in the Electoral Act, as the Act provides for breaches in the conduct of elections. The Electoral Act is a comprehensive Act which deals with the conduct of elections in this country. The courts are bound to look into the Act in cases of breach in the conduct of elections”.

The case above cited, Obasanjo & 2 Ors v. Yusuf & Anor (supra) is in line with the rock solid principle that jurisdiction cannot be donated nor assumed at will by a court because the particular court is confronted by some infractions criminal in content. It is not a matter for sentiments. See Jikantoro & 6 Ors v. Dantoro & 5 Ors (2004) 5 SC (Pt.2) 1 at 21.

Clearly, the learned trial judge did not advise himself that he needed to attend to the matter before him dispassionately in line with the relevant statute as to whether or not he had the jurisdiction or power to entertain the matter. It seems being confronted with strong allegations of criminal infractions, he felt he needed to apply whatever remedy he could lay his hands on. The Court of Appeal faced with the challenge over that court of trial ruling assuming jurisdiction had no difficulty in setting down the appropriate guides and having at its disposal the necessary materials and interpreting the statutory provisions stated as follows:

“Thus, it would be strange, in my considered view to proceed to charge the appellants under the ICPC Act (supra) in view of the unequivocal and express provisions of the Delta State Local Government Law, Cap. D27 Laws of Delta State 2006 (supra).

Indeed, it is long settled principle that where a particular court or tribunal has been specifically conferred with a special power to adjudicate upon a matter or action, as in the instant case, it’s not the business of any other court or tribunal which lacks such express power to arrogate to itself the power to entertain such a matter or action...

As painstakingly alluded to above, the criminal allegation arose from the conduct of the local government election in question. Thus, the provisions of the local government law (supra) pertaining to election, especially sections 107 - 128 thereof ought to be strictly applied...”

The learned justice of the Court of Appeal, Saulawa JCA stated further, viz:

“In the instant case, its rather obvious, that it’s the Magistrates’ Court that has the express original jurisdiction to try the instant case by virtue of the provisions of Delta State Local Government Law, Cap. D27 Laws of Delta State 2006 (supra)...

Thus, flowing from the foregoing far reaching postulation, its rather obvious that the lower court is devoid of jurisdiction to try and determine the instant case, in view of the express and unequivocal provision of the Delta State Local Government Law (supra)...”

There is nothing upon which this court would go against what the court below did, as indeed sections 107 to 108 of the said Delta State Local Government Law have provided for how to deal with offences relating to the election. Section 128 (1) provided that an offence committed under such an electoral process is triable in the Magistrates’ Court of Delta State at the instance of the Attorney-General of Delta State, any officer in his office or by the Nigerian Police Officer. Therefore, the ICPC Act has no field of play in the matters pertaining to the local government electoral processes of Delta State which state has fully and properly within its power granted it by the Constitution taken care of such matters.

Indeed and in conclusion, the court below said it as it is, and all courts are minded to stay within its boundary especially where that boundary has been streamlined by a statute which must be respected to avoid interloping confusion that would arise where a particular court gets into the way of another which it ought not to. I agree with the better and fuller reasoning in the lead judgment that there is no basis to upset what the Court of Appeal did. This appeal lacks merit and I dismiss it. I abide by the consequential orders made.

**SANUSI JSC:**

I read the advance copy of the leading judgment prepared by my learned brother, Ogunbiyi JSC just delivered.

Her reasoning and the conclusion reached are agreeable to me that this appeal is unmeritorious and deserves to be dismissed. The gamut of this appeal is centred on issue of jurisdiction which is certainly the life wire of every case. Issue of jurisdiction is radically fundamental, as such it can be raised at any time or at any stage of the case even before this court which is court of last resort. See Management Enterprise Ltd and Another v. Jonathan Otusanya (1987) 2 NWLR (Pt.55) 179. The live-issue canvassed by the parties’ learned counsel is whether the lower court had jurisdiction to enquire into the charge the respondents faced trial on in view of the fact that the offences were allegedly committed in the course of an election, bearing in mind the provisions of section 132(1)(b)(c) and section 129(1) of the Delta State Local Government Law 2004, Cap. D27 Laws of Delta State 2008. The two provisions mentioned above being the catch phrase of the case, shall be reproduced below for ease of reference and clarity.

Section 129 (1) of the law provides, thus:-

“An election may be questioned on the following grounds:-

(b) That the election was voided by corrupt practices, irregularities or offences against thislaw; or

(c) That the respondent was not duly elected by a majority of valid or lawful votes cast at the election.

Section 129 (1) states:-

“There shall be established in the State at least six and at most nine, election tribunals to be known as LocalGovernment Election Tribunals (in the Law referred to individually as an “Election Tribunal”) which shall, to the exclusion of any other tribunal or court have original jurisdiction to hear and determine:-

(a) Election Petitions as to whether a person has been validly elected as chairman or Councillor of a Local Government Council”

Now looking closely at the charge, the first two respondents were to face especially the proof of evidence and particulars of the offence, there is no gainsaying that they border on “irregularities” which is one of the grounds upon which an election can be challenged as provided in section 132(1) of the law as reproduced, supra. Again, by the wordings of section 129 of the Law, only the Election Tribunal has exclusive jurisdiction to enquire into such allegation to the exclusion of any tribunal or court. The trial High Court therefore lacks jurisdiction to do so.

In other words, the jurisdiction of the trial court is ousted as rightly held by the lower court. The Delta State Government by virtue of section 7 of the 1999 Constitution of the Federal Republic of Nigeria as amended, had power to enact the Delta State Local Government Law, Cap. D27 of 2004 through its House Assembly. The said law, therefore had the backing of the 1999 Constitution. Similarly, the said law had donated and conferred special jurisdictional powers on magistrates throughout the state to entertain and determine electoral offence and had ousted the jurisdiction of the High Court in entertaining and determining such offences. The settled law is, that where a special court is created by an instrument ousting jurisdiction of any conventional court in specific offences, such conventional court must relinquish its jurisdiction to give way to the newly established special court or tribunal. A good example that comes to one’s mind is the creation of Election Tribunals established by the Constitution to handle election petitions/matters and even election appeals in the case of the election of President of the Federal Republic of Nigeria which handles such case as first instance tribunal. In a nut-shell, all I am saying is that the High Court (trial court) lacks jurisdiction to try and determine the case in view of the provisions of section 129(1) of the Law.

In the result, I find no merit in this appeal being lacking in merit, I accordingly dismiss it, while endorsing the reasoning and conclusion of my learned brother Ogunbiyi JSC. Appeal dismissed.

**BAGE JSC:**

I have had the benefit of reading in draft the lead judgment of my learned brother Clara Bata Ogunbiyi JSC, just delivered. I agree entirely with the reasoning and conclusion reached. I do not have anything to add. The appeal lacks merit, and it is accordingly dismissed by me. Judgment of lower court is hereby affirmed.

Appeal dismissed.