**HON. GABRIEL TORWUA SUSWAM**

**V.**

**SEN. DANIEL I. SAROR AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 7TH DAY OF FEBRUARY, 2012

CA/MK/EPT/02/2012 (CON)

**LEX (2012) - CA/MK/EPT/02/2012 (CON)**

OTHER CITATIONS

3PLR/2017/150 (CA)

**BEFORE THEIR LORDSHIPS**

M. B. DONGBAN – MENSEM, J.C.A

T. N. ORJI - ABADUA, J.C.A

R. O. NWODO, J.C.A

**BETWEEN**

HON. GABRIEL TORWUA SUSWAM [- Appellant(s)

AND

1. SEN. DANIEL I. SAROR

2. ALL NIGERIAN PEOPLES PARTY

3. PEOPLES DEMOCRATIC PARTY

4. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

5. WEST AFRICAN EXAMINATIONS COUNCIL (WAEC)

6. COMMISSIONER OF POLICE, BENUE STATE - Respondent(s)

**ORIGINATING COURT**

GOVERNORSHIP ELECTION PETITION TRIBUNAL, HOLDEN AT MAKURDI

**REPRESENTATION/LAWYERS**

E.K. ASHIEKAA, MUSA TENDE, S. A. UDAGA, T. T. IGBA, N. L IKYAOGBA, F. T. KUSUGH - For Appellant

AND

C. S. ORPIN, SOLO AKUMAH (SAN), JOHN A. A. OCHOGA, C.A. GBEHE, G. E. UKAEGBU, T. J. HENKYA'A, P. N JOOJI, C. T. MUE, N. D TER, E. P ECHOR, ISAAC OBAJE, P. O. AGBESE, Assistant Director, Ministry of Justice, Benue State - For Respondent.

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

ELECTION PETITION - TIME FOR DETERMINING ELECTION PETITION:- Time for delivery of election petition judgment – How calculated

**PRACTICE AND PROCEDURE ISSUES**

ACTION - TIME FOR FILING AN ACTION:- Whether an action brought outside the prescribed period is contrary to the provisions of the law and whether same can give rise to a cause of action.

COURT - POWER OF COURT:- Whether the Court of Appeal has power to order a retrial – Relevant consideration

JUDGMENT AND ORDER - CASE LAW - DOCTRINE OF STARE DECISIS:- Effect of refusal by a judge of a lower court to be bound by a superior court’s decision – Attitude of appellate court thereon

INTERPRETATION OF STATUTE - S.285(5)(B) OF THE CONSTITUTION, S,142 OF THE ELECTORAL ACT - Section 285(5)(b) of the Constitution, section 142 of the Electoral Act, 2010 (as amended) and paragraphs 18(1) of the Practice Direction, 2011 considered.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

On 26th day of April, 2011 the 4th Respondent conducted Governorship Election in Benue State and other States in Nigeria. The Appellant was sponsored by the 3rd Respondent as its Governorship candidate while the 2nd Respondent sponsored the 1st Respondent as its Governorship candidate. The Appellant won the Governorship Election and was declared and returned winner of the said election on 27th April, 2011 by the 4th Respondent. The 1st and 2nd Respondents were not satisfied with the outcome of the election and filed a petition at the trial Tribunal.

Upon being served with the 1st and 2nd Respondent's Petition, the Appellant filed his Reply to the Petition. The Appellant in his Reply to the Petition and by motion on notice raised a preliminary objection challenging the competence of the Petition and the jurisdiction of the trial Tribunal to entertain the petition. The 3rd, 4th, 5th and 6th Respondents all had similar preliminary objections against the petition. On the 8/08/11, the preliminary objections were argued and the trial Tribunal delivered its ruling on 11/08/11 dismissing the petition.

The 1st and 2nd Respondents being dissatisfied with the ruling of the trial Tribunal appealed to the Court of Appeal. On the 29th day of September, 2011 the Court of Appeal delivered the judgment, allowing the appeal and setting aside the decision of the trial Tribunal.

Dissatisfied with the judgment of the Court of the Appeal, the 1st Respondent appealed to the Supreme Court which affirmed the decision of the Court of Appeal and ordered that the petition be heard on the merits.

At the resumed sitting of the new panel of the Tribunal, the Appellant applied that the petition be dismissed on the ground that it has lapsed by the operation of section 285(6) of the 1999 Constitution of the Federal Republic of Nigeria which provides that an election tribunal must deliver its judgment not more than 180 days from the date the petition was filed. The trial Tribunal heard the Appellant's application and dismissed same.

Dissatisfied, the appellant appealed to the Court of Appeal.

**DECISION(S) APPEALED AGAINST**

The trial Tribunal ruled that it had jurisdiction to entertain the election petition outside the 180 days allowed for election petition matters, on the ground that the time began to run from the date the Supreme Court made the order for a trial of the petition on the merit. Dissatisfied, the Appellant appealed to the Court of Appeal.

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

*BY APPELLANT:*

Whether the period of 180 days for the trial of the petition runs from any other date than from the date of filing of the petition.

Whether the judgment of the Supreme Court dated 28th day of November, 2011 in Appeal No. SC. 383/2011 SENATOR DANIEL I. SAROR V. HON. GABRIEL TORWUA SUSWAN & ORS. enables the trial Tribunal to assume jurisdiction to try the petition beyond the jurisdiction to determine that the petition is statute barred?

Whether Section 285(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) permits the hearing and determination of an election petition after 180 days from the date of filing of the petition?

*BY 1ST AND 2ND RESPONDENTS:*

Whether the re-Constituted panel of the Governorship Election Tribunal has jurisdiction, in the fight of the provisions of Section 285(6) of the 1999 Constitution, to entertain the petition after the expiration of 180 days calculated from the date of filling of the petition.

*BY 4TH RESPONDENT:*

Whether the petition is statute barred.

*AS ADOPTED BY COURT:*

[The Court adopted the issues formulated by the Appellant].

**MAIN JUDGMENT**

M. B. DONGBAN-MENSEM, J.C.A (DELIVERING THE LEADING JUDGMENT):

The facts which gave rise to this appeal are as stated @ page 2 of the Appellants brief as follows:-

This is on appeal against the Ruling of the Governorship Election Petition Tribunal, Makurdi delivered on the 8th day of December, 2011.

The Appellant herein was the 1st Respondent at the trial Tribunal. The 1st and 2nd Respondents in this appeal are the Petitioners of the trial Tribunal. The 3rd Respondent herein is the 2nd Respondent of the lower Court while the 4th, 5th & 6th Respondent herein are the 4th, 5th & 6th Respondents respectively of the lower Court. The parties to this appeal will be referred to in this brief as designated in the heading of this brief of argument.

On 26th day of April, 2011 the 4th Respondent conducted Governorship Election in Benue State and other States in Nigeria. The Appellant was sponsored by the 3rd Respondent as its Governorship candidate while the 2nd Respondent sponsored the 1st Respondent as its Governorship candidate.

The Appellant won the Governorship Election and was declared and returned winner of the said election on 27th April, 2011 by the 4th Respondent.

The 1st and 2nd Respondents were not satisfied with the outcome of the election and filed a petition at the trial Tribunal.

Upon being served with the 1st and 2nd Respondent's Petition, the Appellant filed his Reply to the Petition dated and filed on 14/6/2011. The Appellant in his Reply to the Petition and by motion on notice raised a preliminary objection challenging the competence of the Petition and the jurisdiction of the trial Tribunal to entertain the petition. The 3rd, 4th, 5th and 6th Respondents all had similar preliminary objections against the petition. On the 8/08/11, the preliminary objections were argued and the trial Tribunal delivered its ruling on 11/08/11 dismissing the petition.

The 1st and 2nd Respondents being dissatisfied with the ruling of the trial Tribunal dated 11/08/17 appealed to the Court of Appeal. On the 29th day of September, 2011 the Court of Appeal delivered the judgment, allowing the appeal and setting aside the decision of the trial Tribunal.

Dissatisfied with the judgment of the Court of the Appeal, the 1st Respondent appealed to the Supreme Court which affirmed the decision of the Court of Appeal and ordered that the petition be heard on the merits.

At the resumed sitting of the new panel of the Tribunal, the Appellant applied that the petition be dismissed on the ground that it has lapsed by the operation of section 285(6) of the 1999 Constitution of the Federal Republic of Nigeria. The trial Tribunal heard the Appellant's application and dismissed some. This appeal is against the decision of the Governorship Election Tribunal Benue State dated 8th December, 2011 in Petition No. GET/BN/03/2011 wherein the Appellant being the 1st Respondent in the petition had applied to the Tribunal to dismiss the petition on the ground that it had become statute barred. See pages 234 to 241 of the record of appeal. The petition was filed on the 17th day of May, 2011. See Pages 1 to 55 of the record. Section 285(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that the Tribunal shall deliver its final judgment in the election petition not more than 180 days from the date of filing of the petition. Indeed the exact wordings of Section 285(6) of the Constitution read as follows:

"285(6) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition" (emphasis supplied)

A computation of 190 days "from" the 17th day of May, 2011 with that date inclusive actually gave the petition a life span not beyond the 12th day of November, 2011.

See OGBEBOR V. DANJUMA (2003) 15 NWLR (Pt. 843) 403 @ 426 B-D.  
MALAH V. KACHALLA (1999) 3 NWLR (Pt. 594) 309 @ 313 C and LAMIDO V. TURAKI (1999) 4 NWLR (Pt. 600) 578 @ 587 B-C.

The Appellant had applied in the Tribunal below for the petition to be struck out on the ground among others that the petition is not competent being that it is founded on a pre-election dispute. The dispute ultimately went to the Supreme Court where it was decided that that ground of the petition is competent. The petition was therefore remitted back to the Tribunal for trial on the merit. That judgment of the Supreme Court was delivered on the 28th day of November, 2011 in Appeal No . SC. 383 /2011 - HON. GABRIEL TORWUA SUSWAM V. SEN. DANIEL I. SAROR & ORS. See pages 58 to 60 of the record.

Upon the reconstitution of another panel of the Tribunal for trial of the petition the Appellant applied to the Tribunal for a determination that the petition had become statute barred and therefore incompetent.

In its considered Ruling dated 8th December, 2011 the Tribunal held that 180 days as provided in Section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) begins to run from the date when the Supreme Court made the order for a trial of the petition on the merit (i.e. 28th day of November, 2011). The Tribunal therefore assumed jurisdiction to try the petition outside 180 days from the 17th day of May, 2011 when the petition was filed. The ruling of the Tribunal can be found at pages 233 (a-p) of the record of appeal.

Being not satisfied with that decision of the Tribunal the Appellant has now appealed on four grounds. See pages 234 241 of the record.

After an intense assimilation of the grounds of appeal, the decision of the tribunal and the detailed submissions of the learned Counsel for the respective parties, a Pronouncement of the decision of this Court was made on the 1st day of February 2012. I now proceed to give the reasons for my decision dismissing appeal.

The Appellants formulated three issues:-

Whether the period of 180 days for the trial of the petition runs from any other date than from the date of filing of the petition. (Ground 4)

Whether the judgment of the Supreme Court dated 28th day of November, 2011 in Appeal No. SC. 383/2011 SENATOR DANIEL I. SAROR V. HON. GABRIEL TORWUA SUSWAN & ORS. enables the trial Tribunal to assume jurisdiction to try the petition beyond the jurisdiction to determine that the petition is statute barred? (Grounds 2)

Whether Section 285(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) permits the hearing and determination of an election petition after 180 days from the date of filing of the petition? (Ground 1 and 3).

1st and 2nd Respondents:

Whether the re-Constituted panel of the Governorship Election Tribunal has jurisdiction, in the fight of the provisions of Section 285(6) of the 1999 Constitution, to entertain the petition after the expiration of 180 days calculated from the date of filling of the petition.

The 4th Respondent's issue is raised as a question as to whether the petition is statute barred: which is in fact the crux of this appeal.

This appeal shall be determined on the issues formulated by the Appellant.

APPELLANT'S CASE:-

Whether the Court was right in assuming jurisdiction after the expiration of 180 days from the date the petition was filed.

The learned Counsel for the Appellant ties the determination of this issue on the interpretation of section 285(6) of the 1999 Constitution. It is the submission of the learned Counsel that the Tribunal adopted a wrong method of the interpretation of Statutes and Constitution and thereby fell into error by assuming jurisdiction to hear and determine the petition after the expiration of 180 days. In substantiation of their argument, the learned Counsel for the Appellant cites and quotes extensively the decision of the Supreme Court in the Action Congress v. INEC (2007) 12 NWLR Pt. 1048 Pg 222 @ 314 3.5 and Falae v. Obasanjo (1999) 3 LRECH 154 @ 160 OR (1999) 6 NWLR (Pt. 606) 283. Which held that the main function of the judge is to declare what law is and not what it ought to be? It is also an authority to say that where the words of the provisions of the Constitution or statute are unambiguous but clear in their ordinary and grammatical meaning a judge is duty bound to accord the wordings their literal natural and grammatical meanings. Also relied upon are the following cases: - (TANKO V. THE STATE (2009) 4 NWLR (Pt. 1131) 431 @ 452 C-H. PAUL UNONGO V. APER AKU & ORS. (1983) 11 SC. 129 @ 147, 175-176 & 183.)

The Appellant is irked because the Tribunal adopted a broader and liberal approach to the interpretation of section 285(6) of the 1999 Constitution which has infact been interpreted by the Supreme Court by the liberal approach (Refer: Shettima's case: - Alhaji Kashim Shettima & Anor V. Alh., Mohammed Goni)

The learned Counsel contends that section 285(6) admits of no such broad and liberal interpretation. Maintains that the provisions of section 285(6) are unambiguous and clearly state that and Election Petition abates of the expiration of 180 days without remedy. To buttress this argument, the decision of the Supreme Court per Onnoghen, (JSC) in the twin consolidated cases of Shettima v. Goni and PDP v. CPC are quoted extensively. His Lordship, (JSC) held that the word "shall" used in section 285(6) makes its provision mandatory and must be applied strictly.

By failing to adopt the literal principles of interpretation as in the above cases, the learned Counsel purports that the Tribunal thereby breached the principle of stare decisis as laid down in a long line of cases particularly in UBA v. Etiaba (2005) 6 NWLR Pt. 1082 Pg. 154 @ 182 where the Supreme Court held that –

"All Courts in Nigeria are bound by the decisions of the Supreme Court of Nigeria which is the highest Court in the land this follows the doctrine of stere decisis which is fully entrenched in the Nigeria Jurisprudence to ensure certainty of the law it is a well settled principle of judicial Policy which must be strictly adhered to by all lower court however the Court must follow the principles of law or order upon which a particular case is binding such a principle is called ratio deci dendi"

The learned Counsel maintain that the Tribunal had no basis to assume jurisdiction to hear the petition outside the time allowed by section 285 (6) by adopting a wrong Principle of interpretation Court is urged to resolve this issue in favour of the Appellant.

The learned Counsel for the Appellant has cited numerous authorities in support of his argument on the interpretation of section 285 (6) of the Constitution (as amended). Among these are:- (See Ifezue v. Mbadugha (1984) 1 ANLR 256 and Ugwu & Anor v. Ararume & ors (2007) JSC (Pt. 1) 66, Prince Obiandu Ohochukwu v. Boniface Emeregwa & Anor (1999) 5 NWLR (pt. 602) 179 and Falae V. Obasanjo (1999) 3 LRECN 154 at 160 or (1999) 6 NWLR (Pt. 606) 283).

Most, if not all of these cases are on applications made for the elongation of time in the hearing and determination of Election Petitions. (See also Aboye vs. Udoh 9 1999) 3 LRECN 536; Tejuosho V. Omojowogbe (1999) 7 NWLR (Pt. 559) 628: Abari vs. Hose & Ors (1999) 3 LRECN 586: Sola vs. Ojo & Ors (1999) 1 LRECN 79: Waziri vs. Danboyi (1999) 4 LRECN 1, these cases are therefore not relevant to the instant appeal. There was no application as to elongation of the mandatory 180 days under consideration, either before the apex Court, this Court or the Tribunal. The circumstances are therefore very different. The instant appeal appears to be a subtle challenge to the exercise of discretion by the Supreme Court in whatever guise/garb it is being made.

In addition, the Appellant cited the followings:

1. On interpretation of S. 285(6) of 1999 Constitution (as amended).  
Appeal no. CA/5/36/2011: Sen. Adamu Aliero v. Sen. Abubakar Atiku (unreported judgment of the Court of Appeal Sokoto Judicial Division delivered on 12th January, 2012)

2. On interpretation of Statutes depriving Rights. Kalango v. Governor of Bayelsa State (2009) 1 - 2 SC. (PT. 11) p. 117 at 131 - 132 Paragraphs 15-25 and at 137 - 138 paragraphs 20-5

3. Brig. Gen Mohammed Buba Marwa and Anor v. Admiral Murtala Nyako and ors. Suit No. SC.141/2011: SC.282/2011: SC. 266/2011: SC. 267/2017

The general principle of law is that where the law provides for the bringing of an action within a prescribed period, in respect of a cause of action accruing to the plaintiff, proceedings shall not be brought after the time prescribed by statute.

Therefore an action brought outside the prescribed period is contrary to the provisions of the law and does not give rise to a cause of action. (See Sosan & Dr Ademuyi (1986) 3 NWLR (pt. 308) PG. (637) AT 661 Okafor vs. A. G. Anambra State (2005) 14.

In this case Mamud Mohammed held that the suit of the plaintiff is incompetent for failure of the plaintiff to bring the action within 42 months period prescribed under section 72(1) of the Nigerian Ports Decree No 74 of 1993.

In the case of Kareem vs. UBN LTD (1996) 5 NWLR (Pt. 451) 634 at 647 - 648, Uwais, (CJN) stated in construing similar provisions:

It is clear from the foregoing provisions that the power of the Court of Appeal to order a retrial in any event is discretionary.

In recognition of this discretionary power of the Court parag. 55 of the first Schedule to the Electoral Act 2010 (as amended) provides as follows:-

Subject to the provisions of this Act, on appeal to the Court of Appeal or to the Supreme Court shall be determined in accordance with the practice and procedure relating to civil appeals in the Court of Appeal or of the Supreme Court, as the case may be, regard being had to the need for urgency on electoral matters.

This appeal turns squarely on the ruling of the Tribunal made on the 8th day of December 2011 in which the learned members elected to give effect to the decision of the Supreme Court directing a trial of the 1st Respondents petition on the merit. I am therefore of the opinion that this appeal can be determined on any of the issues formulated by the Appellant. The said issues shall therefore be taken together.

It certainly is not in dispute that the Election Tribunal under review is a subordinate judicial organ to the Supreme Court.

It is therefore trite and indeed, it follows like water following its natural course that the Tribunal is bound by the order of the Apex Court. The binding character of the decision of the Supreme Court on all authorities, in this country is not just a fanciful idea of the Tribunal nor of any individual, group or institution. It is a constitutional provision conveyed in mandatory terms as follow:-

"Section 287(1) of the (1999 constitution as amended):-  
(1) The decision of the Supreme shall be enforced in any part of the Federation by all authorities and by persons and by Courts with subordinate jurisdiction to that of the Supreme Court –

Several decisions of the Apex Court and of this Court abound on this and indeed the consequence of non - compliance. I find as very instructive the decision of Katsina Alu, (JSC) (AHTW) in the case of Dalhatu v. Turaki (2003) 15 NWLR (pt. 823) Pg.310 @ 336. His Lordship held that:-

"This court is the highest and final court of Appeal in Nigeria. Its decision binds every Court, authority or person in Nigeria.   
  
By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. The doctrine is a sine qua non for certainty to the practice and application of the law. A refusal, therefore by a judge of the court below to be bound by this Court's decision, is gross insubordination (and I dare soy such a judicial officer is a misfit in the judiciary)." (See also Ogunsola v. NICON (1998) 11 NWLR (Pt. 575) 683 @ 692, Ndili v. Akinsumade...)

A refusal of a subordinate judicial officer to follow a decision of a superior Court has been condemned in no uncertain terms. In the case of Atolagbe & I or v. Awuni & 2 ors (1997) 8 NWLR pt. 522, the wise men of the Apex court each expressed their revered opinions in these terms:-

Mohammed, (JCA)

"I agree entirely that Orilonise J, by refusing to abide by the decision of superior Court, had committed on abominable act contrary to the ethics of his appointment such a behaviour should not be condoned."

Wali, (JCA)

"The action of the judge is not wrong but amounts to arrogance and judicial irresponsibility which must be deprecated."

And Ogundare (JSC) "The learned trial judge was therefore guilty of judicial impertinence and insubordination to say he was not bound."

By these pronouncements were the learned members of the Tribunals not bound to obey the order of retrial made by the apex Court?

The provisions of section 285(7) having been thus expounded by the pronouncement of the Apex Court. It is inconceivable that the Tribunal would have ignored the clear order of the Apex Court to re-hear the petition of the 1st Respondent on the merit.

Thus, the election Tribunal being subordinate to the Supreme Court is bound to enforce the orders of the Supreme Court remitting the election bock for a trial on the merit by the Tribunal.

I am unable to comprehend the argument of the Appellant on the provisions of section 285(6) & (7) of the Constitution as amended. In the case of Shettima V. Goni (unreported.....). The Supreme Court held that the provision of the sections are clear without ambiguity and admit of no further interpretation thon the clear and plain words used therein. My challenge in this appeal stems from my in ability to find a nexus between section 285(6) & (7) and the appellate jurisdiction of the Apex Court and even of this Court to make consequential orders following the determination of an appeal one way or the other. In the unreported case of Senator Ita Solomon Gang v. I. Obong Nsima Umoh and 3ors. CA/C/NAEA/297/2011 & CA/C/NAEA/301/2011 (Unreported Judgment delivered on Thursday, the 26th day of January, 2012). My learned brother Garba, (JCA) of the Calabar Division puts it this way:-

"In fact, the basis of the new trial on the merit was not connected and affected by the date of filing the petition, but the order by this Court which has nothing to do with the provisions of sections 285(6), as demonstrated earlier, and sp cannot be said to have extended the period of 180 days provided therein. The Court did not pretend or give the impression that it extended the said period but very clearly showed that it was exercising the legitimate and unquestionable jurisdiction vested in it by the Constitution. Which having done so in no certain terms, the tribunal had the Constitutional duty to give effect to enhance the order made by commencing the trial of the petition as ordered as provided for by the provisions of Section 287 (2) of the Constitution(as alerted)..."

I agree entirely

Section 285(6) Provide as follows:-

"285(6) on Election Tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition."

I find no feature in the provisions of section 285(6) which prohibits the Apex Court from excising its appellate jurisdiction as conferred on it by the Constitution and statutes.

The enormity of the authority of on order of the Apex Court was expressed in the case of Ogunsola v. NICON (1998) II NWLR (Pt. 575) 683 @ 692, Ndili v. Akinsumade......) (supra) where the Court held that Consequentially...... Neither section 285(6) nor any other section of the constitution as amended made any special provisions for the nature of the order to be made by the Supreme Court after an appeal in an election matter has been determined. If this is omission, which I doubt, it does not thereby leave the litigants without remedy. The remedy would lie in section 6(6) of the Constitution which reserves the inherent jurisdiction of all Courts to make orders as the justice of every peculiar set of facts present for determination.

As earlier stated above, sections 285(6) & (7) of the Constitution are silent on the orders to be made of the confusion of the hearing of on appeal. The learned Counsel for the Appellant is resolute in his submission that in assuming jurisdiction to hear the petition outside the 180 days, and upon the orders of the Supreme Court, that the Tribunal adopted interpretation principles different from those adopted by the Supreme Court in the twin decisions of Alhaji Kashim Shettima & Anor V. Alh. Mohammed Goni, also Peoples Democratic Party (PDP) and Congress for Progressive Change (CPC and 41 Ors (unreported.) SC. 272/2011 & SC. 276/2011), judgment delivered on ....) The learned Counsel however failed to identify which aspect of the said decisions of the apex court held that it was fettered in its discretion to give effect to its decision other than as it relates to time.

The Apex Court clearly stated in the said decisions that the essence of the alterations of the Constitution relate mainly to the allocation of time in the determination of election matters in Court. The profound decision of the Apex Court per Onnoghen, (JSC) is hereby reproduced in extenso for the ease of ref reference: (See Pg. 21-25).

By the provisions of section 285(5)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended/altered) (herein-after referred to as the 1999 Constitution as amended/altered).

An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.

In Section 142 of the Electoral Act, 2010 (as amended).nThe national Assembly enacts that: -

"Without prejudice to the provisions of Section 294(1) of the Constitution of the Federal Republic of Nigeria, an election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or the Court."

The third and final provisions relevant to the determination of the issue and also relied upon by the Appellants is paragraph 18(1) of the Election Tribunal and Court Practice Directions, 2011 which provides thus: -

"An interlocutory appeal shall not operate as a stay of Proceedings, nor form a ground for a stay of proceedings before a Tribunal"

It is my considered view that the three provisions quoted supra are clear and unambiguous and by the principles of interpretation of statute, to the effect that where the words of any statute are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the Constitution or statute, effect must be given to those provisions without recourse to any other consideration, they ought to be so treated.

By the ordinary meaning of the words used in the provisions supra, it is clear that: -

i. An Election Tribunal must of necessity deliver its judgment/decision in writing in on Election Petition within 180 days from the date of the filing of the petition

ii. An Election Petition and an appeal arising therefrom must be given accelerated hearing and must take precedence over all other cases or matters before the Tribunal or Court.

iii. An interlocutory appeal shall not operate as a stay of proceedings nor shall it form a ground for stay of proceedings before a Tribunal.

All the above provisions emphasize the essential nature of an election matter either of trial or on appeal which is that it is an urgent matter. The urgency involved in election matters advised the National Assembly to fix a time limit of 180 days in section 285(5)(b) of the 1999 Constitution (as amended) while section 142 of the Electoral Act, 2010 (as amended) grant automatic, accelerated hearing to Election Petition and/or appeal arising therefrom to the extent that such matters take precedence over all other cases and matters including criminal matters.

The importance of time being of the essence in election matters is further emphasized by paragraphs 18(1) of the Practice Direction, 2011, supra, which forbids the use of interlocutory appeal as a ground for stay of proceedings before a Tribunal.

I hold the considered view that the above provisions are mandatory and not permissive as they admit of no discretion and the sooner both the Bar and Bench realize this and comply to the spirit and letter of the provisions the better for the notion's democracy.

Having regard to what I have stated above, can it be said, in relation to the issue under consideration, that the lower Court or any other Court for that matter, has the requite virus to order a stay of proceedings or arrest delivery of a ruling of an election tribunal which has time limit within which to conclude the proceedings and has been granted accelerated hearings?

In the case of PDP v. CPC, @ Pg. 13 Apex Court was called upon to interprete section 285(7) of the 1999 Constitution by adopting the brood rule of interpretation of Constitutional provisions as stated in the case of Rabiu V. Kano State (1980) 8-11 SC. 130 @ 149. The learned jurists declined such on invitation and held that where the words of the Constitution or statute are plain, clear and unambiguous: they must be given their natural ordinary meaning as there is nothing in effect, to be interpreted.

The Apex Court held that by the word "shall" in section 285(7) of the Constitution as amended the said provision of 285(7) is mandatory and admits of no discretion whatsoever. It is my humble view that the discretion ref erred to by the Apex Court is that relating to the extension of time beyond the 60 days mandatory provision of section 285(7). The Apex Court was emphatic in saying that not evens the apex Court itself could extend the time, in section 285(7)!

I am unable to stretch this decision of the Apex Court to mean a severance of all discretion which repose with the Apex Court in the performance of its judicial functions. This would be absured and totally against all known legal principles. Not even during the military era was the Apex Court so striped, bereft of all discretionary powers! No, I cannot even imagine such a situation.

I am strengthened in this view from the emphasis placed on "sixty" days by the Apex Court in its decision in Peoples Democratic Party (PDP) v. Congress for Progressive Change (CPC) at Pg. 14, where the court held that it means that the sixty days allotted in section 285(7) of the 1999 constitution (as amended) cannot be extended even for one second as the decision of the appellate Court must be rendered "within" sixty (60) days of the delivery of the judgment on appeal ... It is my further opinion that the sixty (60) days allotted in section 285(7) of the 1999 Constitution (as amended) includes Saturdays, Sundays and Public holidays well as Court vacations because if it was the intention of the framers of the Constitution to exclude these days they would have so Stated in clear and unambiguous terms. The only exception may be where the last day of the sixty (60) days happens to the Sunday of a public holiday then the action contemplated in section 285(7) of the 1999 Constitution (as amended) can be completed on the next working day as settled by a line of authorities.

The importance and purpose of the mandatory provisions of section 285 (6) is clearly aimed at curtailing the in ordinate delays arising from election matters where some leaned counsel engaged in delay tactics resulting in long delays in the hearing and conclusion of election matters to the embarrassment, not only of the legal profession in particular but, the nation in general.

The intension of the drafter being to stop the practice of unnecessary delays in election matters: it is our duty to ensure compliance with the law by doing what is needed within the time frame. It may be difficult, in fact it is very difficult but it is a sacrifice we all must make in the interest of our democracy until our politicians learn to accept the verdict of the people as expressed through the ballot box.

The emphasis of the Supreme Court has been time, curtailing time and not the discretion of the courts in the exercise of their duties. At page 17 of the said Judgment, Onnoghen, (JSC) further expatiated on the issue of time in these terms:

"I hold the considered view that in terms of time to do anything relating to an election petition or judgment thereon or arising therefrom, it is the above provisions that apply and that no court has the power to extend the times as Constitutionally provided in section 285 (5)-(7) of the 1999 Constitution (as amended), by interpretation of the sections or otherwise. (pg.17 & 18)

It is therefore the discretion to elongate the time in section 285(6) that has been taken away and not the entire discretion of the Court to give effect to its decision

I find solace on my opinion in the case of Savannah Bank Nig. Ltd v. Ajilo (2001) FWLR (pt. 75) pg. 513 @ 543 per Uwais, (CJN)

"Now for this court to perform its functions under the constitution effectively and satisfactorily, it must be purposive in its constitution of the provisions of the constitution. Where the Constitution bestows a right on its citizen and does not expressly take away or provide how the right should lost or forfeited in the circumstance, we have the duty and indeed the obligation to ensure that the ensured right is not lost or denied the citizen by Constitution that is narrow and not purposive. To this end the established practice of this Court is where the Constitutional right in particular, and indeed any right in general, of a citizen is threatened any violated, it is left for the Court to be creative in its decision in order to ensure that it preserves and protects the right by providing remedy for the citizen."

The discretionary powers of the Court in making an order of retrial, trial de novo trial on the merit were also sustained in the case of Unongo v. Aku (1983) 2 SC. 95 @ 195. (See per Sowemimo, (CJN)

"I have therefore, come to the conclusion that the Federal Court of Appeal, whilst right in setting aside the decision of the Election Petition Tribunal of the high Court of Makurdi in Benue State were not helpless in not excising their power to order a retrial of the petition on the merits of the appropriate high Court. These are my reasons why I allowed the appeal and sent the case back for trial on the merits to the election petition Tribunal of the Benue State High Court sitting at Makurdi and to deal with it with dispatch"

Upon this authority, I am of the firm view that the discretion reposed in the supreme court by sections 6(6)(a) and 22 of the Supreme court Act are reserved even by the mandatory section 285(6)(7) of the constitution. If cannot be otherwise.

Discretion is the handmaid of justice. No legislation, particularly the constitution could have in one scoop, swept away all the discretion of the Supreme Court in the provisions of section 285 of the same Constitution.

It is indeed absurd that such an interpretation is being advocated. It is the decision of the Supreme Court that the sections 285(6) are mandatory in terms of time which cannot be enlarged under whatever circumstances. I must refrain from acceding to the invitation to divest any court and most certainly not the Supreme Court of its essential tools of work-discretionary powers! (cases).

I prefer the submission of the 1st and 2nd Respondents that, since the Supreme Court ordered the petition to be heard on the merit, any attempt to circumvent or side-track that order would not only amount to a direct assault on the power and wisdom of the court but would also amount to judicial insubordination and impertinence. (See Atolagbe & 1 or v. Awuni & 2 ors (1997) 8 NWLR (pt. 522) 536.)

Thus, the Tribunal was right in assuming jurisdiction to hear the petition of the Respondent on the merit. The time of 180 days start to run from the date of the reversed order of the Supreme Court. Such was the decision in Igwe v. Koru (2002) FWLR (pt. 97) 677 @ 694, where the Supreme Court held that;-

Where the statute says after the conclusion of evidence and addresses it does not inhibit a party from making any application made and considered by the Court the three month period would start from when the court adjourns for judgment.

With utmost due respect this decision of the apex court cannot be interpreted to mean that the Court can elongate the fixed 180 days of section 285(6) only the date of delivering judgment is thereby extended from the date of last address by learned counsel. It was PATS-ALHOLONU, (of blessed memory) who pointedly Stated the principles of time as follows:-

Where the time Prescribed by Election petition States certain things should be done within the time a period of time and these are not done within the time allowed or permitted by statute. The Court purporting to exercise jurisdiction under it is on a thankless and unworthy pursuit of its own. It would seem to me that is not the intension of the framers of the law that where the time has expired the law Court should invoke its lawful interpretative power to resurrect something that is supposed to be extinct when the time frame granted or given by the law has expired for the petitioner, it should be no business of the Court to temper with the provisions and inject its own idea of what ought to have been conjured by law."

This is the essence of the decision of the Apex Court in Shettima v. Goni. Fabiyi, (JSC) spells it out thus:-

Put bluntly, the mathematical permutations made on behalf of the Appellant in SC. 272/2011 in a bid to extend the 60 days mandated were to no avail. In the same vein, the case of NAFIU RABIU V. THE STATE (1980) 8-11 130 AT 151 in which this Court ruled in favour of brood interpretation liberal approach or even the employment of a global view had to do with issue of fair hearing. The law makers are aware of section 36 of the Constitution which covers same. The provision of section 285(7) of the Constitution as amended which comes after section 36 of same is specific and designed to fix the time for completion of Election matters. It is not in contest that the appeals filed in July, 2011 are non, more thon 60 days in existence. They are Constitution barred: or may be I should say statue barred. Unfortunately, they are dead and should be knocked to the ground."

This appeal is without merit and is hereby dismissed.

A cost of fifty thousand naira (N50, 000.00) is ordered the 1st Respondent against the Appellant.

**THERESA NGOLIKA ORJI-ABADUA J.C.A.:**

I had perused the opinion expressed in the leading judgment of this Court prepared and delivered by my learned brother, M.B. Dongban-Mensem, J.C.A., and I agree with the reasoning and conclusion therein. I, too, dismiss the appeal and abide by the orders made in the leading judgment.

I only want to add that for proper comprehension and dissection of the provisions of section 285 sub-section (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and determination of the issues sifted herein, it is desirable that they be approached from three different perspectives.

The first approach is by drawing an analogy between the said section 285(6) and section 294(1) of the 1999 Constitution (as amended) which prescribed the period within which the Courts created by the said Constitution of 1999, shall deliver their judgments in the matters or suits before them, and, which I am entitled to take judicial notice of by virtue of section 122 of the Evidence Act, 2011; secondly, by considering the said section 285(6) vis-a-vis the provisions of section 285(7) that granted the appellate Courts a period of sixty days to hear and determine appeals emanating from the decision or judgment of the Tribunal and the constitutionally guaranteed right of appeal of the party who is dissatisfied with the decision or judgment of the Tribunal; and, thirdly, by identifying the implications of the provisions of section 287(1) of the said Constitution which commanded every Court, authority or person to enforce the decision of the Supreme Court.

Now, considering the first approach and, for an in-depth appreciation of the wording of section 285(6); by drawing an analogy between the said section 285(6) and section 294(1) of the Constitution of the Federal Republic of Nigeria (as amended) which may have a burning effect of exposing the intendment of the Law makers and aid in ascertaining the purports of the two sections, it is imperative and, of immense necessity, to reproduce hereunder, the provisions of the said two sections thus:

"285 (6) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the Petition".

"294 (1). Every Court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all the parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof".

There is clear manifestation in sections 285(6) and 294(1) respectively of the 1999 Constitution of Nigeria (as amended) as to what the election Tribunal and every Court created by the said Constitution were mandated to carry out by the respective sections.

It is trite that the object of all interpretation is to discover the intention of the law makers which can only be ascertained from the words used in the section. Once the meaning is clear, the Courts are to give effect to it. The Courts are not to defeat the plain meaning of an enactment by importing into the section, the words that were never contemplated by the law makers. It was held in Nokes vs. Doncaster Amalgamated Collieries, Ltd (1940) A.C. 1014 at 1022 that where there are two choices of interpretation, the Courts must avoid the choice which would reduce the legislation to futility and should rather accept the other choice on the principle that the legislature would legislate only for purpose of bringing about an effective result. It is further of great necessity to ascertain the background leading to enactment of section 285 sub-section (6) of the 1999 Constitution of the Federal Republic of Nigeria.

It is a notorious fact that prior to the enactment of section 285 subsection (6) of the 1999 Constitution (as Amended), some election Petitions and election appeals lingered and dragged on to about three years due to some unending applications and deliberate attempts by the parties and their Counsel to delay hearing in the election proceedings and appeals arising therefrom and punctual delivery of judgments thereon by the Courts. Some, embarrassingly, were prolonged till 2011. It was against this background and agitation by Nigerians for amendment of the Constitution to prescribe a time limit within which hearing in an election petition could be concluded and judgment delivered therein, that, there were introduced into the Constitution, this section 285 (5) and other sections on the issue of time limit within which judgments in election petition proceedings shall be delivered. The period within which an election Tribunal shall deliver its judgment has been clearly and unambiguously defined unlike what was obtainable prior to the amendment of the Constitution 1999 and the Electoral Act. What the amendment secured was removing delay on the part of the Tribunal to hear and deliver judgment in any given election petition. It categorically defined the period within which the Election Tribunal shall deliver its judgment. So long as the Petition is pending before the Tribunal, and is not appealed against on any point that will state is being proceeded with at the Tribunal, it must be heard and judgment delivered thereupon by the Tribunal within 180 days from the date it was filed. As long as the Petition is pending thereat and has not left the adjudicative precincts of the Tribunal, the Tribunal must complete its adjudicative process thereon and deliver its judgment within 180 days.

Microscopic analysis of the wording of section 285(6) reveals a mandatory obligation placed on the election Tribunal to deliver its judgment within 180 days which shall be computed from the date of filing of the Petition. It is quite explicit in the said Constitution, that no mention whatsoever was made about the lifespan of the Petition unlike what obtains in the High Court (Civil Procedure) Rules of each State of the Federation, wherein the validity or lifespan of the Writ of Summons or any other originating process issued thereunder, were specifically stated to be a period of either 6 months or 12 months from the date of issuance. It is extravagantly clear that if the Legislators had intended an election Petition's lifespan to be 6 months or the 180 days stated therein, whether, heard or not, it would have expressly, and, distinctly stated so in the said Constitution. Therefore, since there is complete silence on the lifespan of a petition in the said Constitution, it would amount to importing into the Constitution, words the Legislators never envisaged nor contemplated, if the 180 days mentioned therein, were construed to mean the inextensible lifespan of a petition.

It is instructive to note as I earlier demonstrated, that the unmistakable command given in section 285 (6) to election Tribunals is for them to deliver their judgments within 180 days. The emphasis in the said section is only on "delivery of judgment", which must be accomplished within 180 days from the date of filing the petition.

Also, the emphasis in section 294(1) of the Constitution with regard to regular courts established under the Constitution is on 'delivery of their decisions not later than 90 days which are computed from the date of conclusion of evidence and final addresses of Counsel.

It is quite distinct in section 285(6) that the provision applies to only election Tribunals, it merely defined the period within which election Tribunals shall deliver their judgments in respect of Election petitions pending before them and being heard by them without any interruption or intervening circumstances, such as appeals, just like the Courts established by the Constitution are commanded to deliver their decisions in writing not later than 90 days after the conclusion of evidence and final addresses. The said period of 180 days, undoubtedly applies to only election Tribunals. There is nothing suggestive of any other interpretation in the wording of the said section that the said period of 180 days given to the Tribunals is inclusive of the respective 60 days given to the Court of Appeal to hear appeals from the Tribunals and the Supreme Court in respect of appeals on gubernatorial and Presidential election petitions. Just like in the wording of section 294(1) of the 1999 Constitution (as amended), there is no restriction in section 285(6) of the said 1999 Constitution (as amended) precluding an appellate Court from ordering a retrial where the order is found most appropriate or excluding any retrial that may be ordered by appellate courts or stating the impermissibility of such retrial. The section simply commanded the Tribunal to deliver it's own judgment within 180 days from the date the petition was filed, just like the manner in which section 294(1) commanded the regular courts established by the said Constitution to deliver their judgments not later than 90 days from the date of conclusion of evidence and final addresses of Counsel.

It is absolutely necessary for this Court to ascertain the connotation of the word "within" used in limiting the 180 days period. The word, "within" is described in Word Web as "not more or further than; "in the limits of". Then in Oxford Advance Learner's Dictionary, it is stated to mean '' before a particular period of time has passed; during a particular period of time; not further than a particular distance from something; inside the range or limits of something; or inside something." What all these dictate or portray is that the judgment of the election Tribunal must be delivered either before the expiration of the 180 days or on the last day of the 180 days i.e. on the 180th day from the date of filing the petition. It is glaringly obvious that the 180 days prescribed by section 285(6) relates to only the proceedings before the Tribunal. Another obvious point that worths mentioning is; all that the Tribunal is expected to achieve with regard to an election petition is the conclusion of its duty in the petition within the 180 days, meaning, therefore, that if before the expiration of the 180 days, the Tribunal made an order that would have the effect of terminating the proceedings in the petition or dismissing it for one reason or the other without actually conducting hearing in the election proceedings, the Tribunal has, by every connotation, complied with the period of 180 days prescribed.

It is similar to the 90 days period given to the High Courts either at the Federal or State level, as part of the Courts created by the said Constitution of 1999, to deliver their judgments in any matter before them from the date of conclusion of evidence or final addresses of Counsel.

It is imperative to note that an appellate court does not conduct trials. It reviews documents/papers, exhibits and record of proceedings from the trial Court or Tribunal i.e., the record of appeal. After the record had been reviewed, it is also important to note that Court of Appeal or Supreme Court Justices have three main choices when making a decision, that is to say;

i. Affirm (agree with) the judgment of the lower Court's decision or in the case of the Supreme Court affirm the judgment of the lower court which means that the judgment is final or

ii. In the case of the Supreme Court, reverse (disagree with) the decision of the lower Court, meaning the Supreme Court's decision must be carried out and/ or

iii. Remand the case, (send it back to the trial Court for further action and possible retrial).

Judgment is defined as the Court's final determination of the rights and obligations of the parties in a case. It includes an equitable decree and any order from which an appeal lies. In legal parlance, it refers to a final finding, statement, or ruling based on a considered weighing of evidence.

Further, judgment is defined in law to include the determination by a Court of competent jurisdiction on matters submitted to it or the act of determining, as in Courts of law, what is conformable to law and justice, also, the determination, decision or sentence of a Court or of a judge, deliver judgment i.e. its opinion. In Merrian Webster dictionary, judgment is also defined as a formal decision by a Court. Oxford Advanced Learner's Dictionary defined it as including, the decision of a Court or a judge.

It is stark in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) that it did not, and, has not, under any guise or pretence, rendered futile or null and void any decision of the Court of Appeal or the Supreme Court arising from election appeals delivered by them outside the 180 days period prescribed by section 285 (6) within which election Tribunal only, shall deliver its judgment, nor did it stipulate that any decision of the Court of Appeal or the Supreme Court arising from election Petition shall be null and void if delivered outside the 180 days period prescribed for the Tribunal to deliver its own judgment. Just like under the 1979 Constitution of the Federal Republic of Nigeria the Constitution rendered null and void any judgment delivered by any of the Courts created by the Constitution outside the mandatory 90 days (3 months) period. What the Constitution clearly prescribed in section 285 sub-section (7) of the said Constitution (as amended) is that;

"An appeal from a decision of an election Tribunal or court shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal."

Further, when such approach introduced in the 1979 Constitution proved much hardship, the lawmakers then deemed it necessary to amend the Constitutional provisions to what is now, section 294 (5) of the 1999 Constitution (as Amended) which reads;

"294 (5) The decision of a Court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of sub-section (1) of this section unless the Court exercising jurisdiction by way of appeal from or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof".

It became necessary to reproduce the above-stated provisions to establish the readiness of the lawmakers to expressly state when they intend to invalidate or void a proceeding or decision/judgment of a Court due to failure to deliver judgment within the period stipulated in the Constitution.

Already the Tribunal has been given 180 days within which to deliver it's judgment. It follows, therefore, that if the Tribunal delivered it's judgment on the very last day, the 180 days is to expire or elapse, then, the period of 60 days allotted to the Court of Appeal by section 285(7) of the Constitution aforestated, to hear and deliver it's judgment in the appeal arising from that judgment of the election Tribunal delivered on the 180th day, shall commence from that last day. It is clear that the appellate Court's period of 50 days to hear and dispose of the election appeal will start to run only from the date the Tribunal delivered it's judgment, and not otherwise. By this scenario, it is explicit that the 180 days prescribed by the Constitution within which the Tribunal shall deliver its judgment in the petition do not comprise the 60 days respectively allocated to the Appellate Courts. The two sets of period are quite distinctive and do not run concurrently or conjunctively. The Appeal Court's period would start counting from the date the Tribunal discharged its obligation by delivering a decision or judgment that would have the effect of bringing to an end before the Tribunal, every proceeding in the petition.

It is obvious that the 60 days period given to the Court of Appeal do not form part of the 180 days granted to the Tribunal to deliver it's judgment, otherwise, the jurisdictional competence of the Court of Appeal specially entrenched in section 246(1)(b) (ii) and (iii) of the 1999 Constitution (as amended) to hear appeals from the decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunal on any question as to whether-(ii) any person has been validly elected to the office of Governor or Deputy Governor, or (iii) the term of office of any person has ceased or the seat of any such person has become vacant; ought not to have been inserted therein and would have, from the inception, been scuttled. I completely resist the temptation to believing that the Law makers on the one hand guaranteed a party's right of appeal against any decision of the Election Tribunal in an election petition he was distraught with, and, on the other hand robbed the same party of the right to the result or fruit of the appeal or the hallowed decision of the Court of Appeal or the Supreme Court, the Final Court of the la n d in respect of the same election petition.

If I may ask; is it possible for the Constitution to contradict itself, approbate and reprobate at the same time, and render futile or invalid the appellate Courts' i.e. Court of Appeal and the Supreme Court's functions/decisions in relation to election appeals heard by them within the respective 60 days given to them by the same Constitution? What then was the essence of enacting the provisions relating to appeals in election matters if the eventual decisions of the appellate Courts in that respect were supposedly ousted by the Constitution or that whatever order they might have handed down would have been ineffectual? I must say that I find myself unable to accept that proposition as the intendment of the law makers. What they strictly did was to regulate the period within which judgment at each stratum of court created by the Constitution is to be delivered but not the lifespan of the originating process that would set the machinery in motion.

It is an established fact and, a matter of common knowledge which this Court is bound to take judicial notice of, that where a High Court delivered its decision in an ordinary suit within the first 90 days it had under the Constitution to deliver it's judgment, and the decision is appealed against to the Court of Appeal and even up to the Supreme Court with the result that the matter or case involved is remitted to the High Court for retrial or trial on the merits, and, retrial then commenced before the same High Court that previously heard and delivered its judgment in it. It has never been contended nor has it been enunciated in any case that, the trial Court, having previously delivered its first decision or judgment in the matter within 90 days from the date of final addresses of Counsel, no longer possess the authority in law to hear and the determine the same case the Court of Appeal or the Supreme Court, as the case may be, had remanded to it for retrial; or that the 90 days granted to it under the Constitution to deliver it's judgment in respect of that suit had expired. There has never been any challenge against the said period of 90 days granted to the regular Courts. Furthermore, it has never been interpreted that the 90 days period given to the High Courts only once in a matter as is being contended thereat. The said 90 days period has never been interpreted to include the period given to the Appellate Courts to hear and deliver their judgments in appeals a rising therefrom.

In Unongo vs. Aku, Uwais, JSC (as he then was) opined thus;

"I do not see how a reasonable person will have the impression that a party has a fair hearing where his petition which has been instituted within the time limit stipulated by the Electoral Act cannot be concluded because the time available to the court for the petition to be heard will not be sufficient for either or both parties to the petition to present their cases or will not allow the court at the close of the parties' cases sufficient time to deliver its judgment. There can be no doubt that the provisions of sections 129 subsection (3) and 140 subsection (2) of the Electoral Act 1982 neither allow a petitioner or respondent reasonable time to have fair hearing, nor give the court the maximum period of 3 months to deliver its judgment after hearing a petition as envisaged by sections 33 subsection (1) and 258 subsection (1) of the Constitution, respectively".

Further, section 287 of the 1999 Constitution provides as follows:

"1. The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and by Courts with subordinate jurisdiction to that of the Court of Appeal.

2. The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons and by Courts with subordinate jurisdiction to that of the Court of Appeal.

3. The decisions of the Federal High Court, a High Court and of all other Courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons and by Courts with subordinate with subordinate jurisdiction to that of the Federal High Court, a High Court and those other Courts, respectively".

The aforestated section of the Constitution of 1999 (as Amended) is clear. It asserted affirming the supremacy of the decisions of the Supreme Court, commanding all and sundry, that is to say; all authorities, and persons and Courts with sub-ordinate jurisdiction to that of the Supreme Court to enforce the decisions of the Supreme Court.

Certainly, Election Tribunal is sub-ordinate to the Supreme Court and must, without any pretence, obey and enforce the decisions of the Supreme Court.

As I noted earlier, there is no specific provision of the Constitution ousting the decisions of the Court of Appeal and the Supreme Court the moment the 180 days granted to the election Tribunal to deliver its judgment in the proceedings before it had elapsed. One cannot then, in the absence of such provision read into the Constitution what was never intended by its makers. This would, obviously lead to mangled Justice and denying the citizens of this Country their constitutionally entrenched rights. It is on this basis I find no merit in this appeal and I hereby dismiss the same. I make no order as to costs.

**REGINA OBIAGELI NWODO, J.C.A.:**

I had the privilege to read the judgment of my learned brother, DONGBAN-MENSEM, J.C.A. I agree with the reasoning contained therein and the conclusion arrived thereat dismissing the appeal.

The language of Section 285(6) of the Constitution is specific on time within which the Tribunal must give a decision. The directive on the Election Tribunal is to deliver judgment within 180 days whether in respect of an interlocutory decision or final judgment. The 180 days is to run from the date of filing of petition. Therefore whether the hearing is concluded or not before the Tribunal, once the 180 days lapses the period for delivery of judgment cannot be extended. However when the decision arising from an interlocutory application goes to the Appellate Court, and the Court of Appeal or Supreme Court orders a retrial, the 180 days will commence from the date of the order. It cannot be otherwise when there is a community reading of Section 285 of the Constitution. It must be read as a whole and interpreted broadly.

For the above and the fuller reasoning in the lead judgment I also dismiss this appeal.