**LABOUR PARTY**

**V.**

**YAHAYA BELLO AND OTHERS**

SUPREME COURT OF NIGERIA

30TH DAY OF SEPTEMBER, 2016

SC. 689/2016

**LEX (2016) - SC. 689/2016**

OTHER CITATIONS

2PLR/2017/191 (SC)

**BEFORE THEIR LORDSHIP**

NWALI SYLVESTER NGWUTA, JSC (Presided)

OLUKAYODE ARIWOOLA, JSC

MUSA DATTIJO MUHAMMAD, JSC (Read the Lead Judgment)

CLARA BATA OGUNBIYI, JSC

K. MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC

JOHN INYANG OKORO, JSC

AMIRU SANUSI, JSC

**BETWEEN**

LABOUR PARTY – Appellant

AND

1. YAHAYA BELLO

2. ALL PROGRESSIVE CONGRESS

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL.

2. KOGI STATE GOVERNORSHIP ELECTION PETITION TRIBUNAL

**REPRESENTATION/LAWYERS**

Usman Sule Esq. with I. M. Iliyasu Esq., Williams Adamu Ataguba Esq., Reuben Egwuaba Esq., Emmanuel Okwoli Esq., L. N. Ilobuno Esq., D. D. Dugbaya Esq., O. O. Duruaku Esq., R. O. Adakole Esq., and S. E. Aruwa Esq. - for the Appellant.

A. A. Adeniyi Esq. with M. A. Abass Esq., M. Y. Abdullahi Esq., R. O. Balogun Esq., Adetunji Osho Esq., Kelechi Chris Udeoyibo Esq., Amina Zukogi, P. B. Daudu Esq., A. T. Ahmed Esq., Muzzammil Yahaya Esq., S. A. Abass Esq., S. O. Alhassan Esq., E. A. Osayomi Esq., K. C. Wisdom Esq., H. O. Umar, N. O. Isah, S. O. Ashiekaa Esq., Adekola Isaac Olawoye Esq., Fatima Al-Mustapha, O. J. Wada Esq., Chioma Merilyn Chuku, Adoyi Michael Esq., Steve Alabi Esq., H. M. Ibega Esq., C. C. Oyere, L. S. Mamman, Arome Abu Esq. and E. OmotayoOjo - for the 1st Respondent.

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

ELECTION PETITION - RIGHT OF APPEAL:- Constitutionality of - Failure to appeal within time - Effect on right of appeal.

ELECTORAL MATTERS - ELECTION MATTERS:- Sui generic nature of election petition proceedings – Legal implications

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - ISSUES FOR DETERMINATION:- Where distilled from incompetent grounds of appeal – Effect thereof.

APPEAL - PRACTICE DIRECTION:- Appeal filed in breach of – effect thereof.

APPEAL - RIGHT OF APPEAL:- Constitutionality of - Failure to appeal within time - Effect on right of appeal.

APPEAL:- Practice direction – Appeal filed in breach of – effect.

COURT - COMPETENCE OF COURT:- Determinants of.

COURT - SUPREME COURT:- Jurisdiction of to hear and determine appeals from Court of Appeal and not Election Tribunals - Sections 233(1) (2) (e) (iv) and 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) considered.

JURISDICTION - FAIR HEARING - BREACH OF:- Effect on jurisdiction of court to determine suit.

JURISDICTION - FAIR HEARING - RIGHT OF PARTY TO BE HEARD BEFORE JUDGMENT IS GIVEN:- Constitutional safeguards in respect thereof.

JUDGMENT AND ORDERS - JUDGMENT OF COURT OR TRIBUNAL:- Subsistence of until set aside – Implication of.

JURISDICTION - JURISDICTION OF COURT:– How derived - Lack of - Effect of on proceedings of court.

JURISDICTION - JURISDICTION OF COURT:- Parties conferring on court by agreement or acquiescence - Impropriety of.

WORDS AND PHRASES – “Ground of appeal” - Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

At the governorship election conducted in Kogi State by the 3rd respondent, the appellant and 2nd respondent were amongst the political parties that took part in the elections. After the election conducted on 21 November 2015 and a supplementary election on 5 December 2015, the 1st respondent, of the 2nd respondent party was declared and returned winner of the poll and the elected governor of Kogi State. The appellant, dissatisfied, challenged the return of the 1st respondent at the Kogi State Governorship Election Petition Tribunal, seeking the nullification of the election, withdrawal of the certificate of return issued to the 1st respondent and the conduct of fresh election in the state.

The 3rd respondent raised a preliminary objection on the appellant’s failure to apply for issuance of notice for pre-hearing notice. The tribunal upheld the objection and struck out the 3rd respondent’s name from the petition. The appellant appealed the tribunal’s ruling. The 2nd respondent in its cross appeal, sought a dismissal of the petition.

The Court of Appeal struck out the appellant’s interlocutory appeal which was filed one hundred and ten days (110) after the tribunal delivered its ruling. The court in its final judgment dismissed the appeal. The court dismissed the appeal on grounds that if it is allowed it cannot be enforced against the 3rd respondent and will be of no benefit as the party that would effect changes is not a party to the appeal.

Dissatisfied still, the appellant appealed to the Supreme Court.

**MAIN JUDGMENT**

**MUHAMMAD JSC** (DELIVERING THE LEAD JUDGMENT):

On 20 September 2016, I adjudged this appeal incompetent and promised to give my reasons for the decision today. The reasons are hereinunder supplied. To fully appreciate what informed these reasons, however, it is necessary to restate the facts which brought about the appeal.

The appellant, the Labour Party, a registered political party, sponsored a candidate to contest the Kogi State Governorship Election and the supplementary election conducted by the 3rd respondent, INEC, on 21 November 2015 and 5 December 2015 respectively. At the end of polls, the 3rd respondent declared the 1st respondent, 2nd respondent’s candidate in the election, the elected Governor of Kogi State.

Dissatisfied, the appellant challenged 1st respondent’s return at the Kogi State Governorship Election Petition Tribunal hereinafter referred to as the tribunal.

Pursuant to the grounds and the facts pleaded in support of its petition, the appellant sought from the tribunal certain declaratory reliefs and the following consequential orders:

“(i) An order nullifying the gubernatorial election of the Kogi State held on 21 November 2015 and the supplementary election held on 5 December 2015.

(ii) An order directing 3rd respondent to withdraw the certificate of return issued to 1st respondent by the 3rd respondent.

(iii) An order directing the 3rd respondent to conduct a fresh election.”

(Italicizing mine for emphasis)

It dawns on all the parties to the instant appeal, and correctly too, that only the 3rd respondent, INEC , is empowered by the law to facilitate reliefs (ii) and particularly (iii) above, which orders, in truth, constitute the ultimate solution to appellant’s grief.

Record of this appeal show, see pages 124 - 142 and 362 - 371 of volume 1 thereof, that at the tribunal the 3rd respondent was the first to file its reply to appellant’s petition on 14 January 2016. The 1st and 2nd respondents filed theirs subsequently on 1 February 2016 and 23 January 2016 respectively. 3rd respondent’s preliminary objection challenging the competence of appellant’s petition for the petitioner’s failure to apply for the issuance of a notice for a pre-hearing notice as provided for under paragraph 18(1) of the election was upheld by the tribunal.

By the tribunal’s very ruling and order of 9 March 2016, 3rd respondent’s name was struck off the appellant’s petition. Aggrieved, the appellant promptly filed Appeal No. CA/A/EPT/145/2016 against the ruling on a notice containing five grounds to the lower court. The 2nd respondent also cross-appealed against the very ruling of the tribunal of 9 March 2016, urging the lower court, beyond the mere exclusion of the 3rd respondent from the petition as ordered by the tribunal, to dismiss the entire petition.

On 5 May 2016, when both appeals were mentioned at the lower court, see page 1526 of vol. 3 of the record, the court held, particularly regarding appellant’s appeal, unfortunately to say the least, thus:

“Court: Ruling This is an interlocutory appeal. So it is the decision of the court that no interlocutory appeal will be taken while the main appeal is still pending. It is for this reason that we refuse to take this appeal and it is hereby struck out.”

Appellant’s misfortune, as it will unfold, lies in its failure to timeously appeal against the foregoing decision of the lower court!!

Instead, the appellant chose to represent its challenge to the tribunal’s interlocutory ruling striking out the petition against the 3rd respondent’s in its subsequent appeal to the lower court against the tribunal’s final judgment dismissing the petition. The subsequent appeal No. CA/A/EPT/385/2016 was filed on 27 June 2016, which notice spans pages 1329 - 1361 vol. II of the record of appeal.

In determining the appeal, the lower court firstly reasoned at pages 1565 - 1566 thus:

“... Thus the appellant could not validly raise any appeal against the said interlocutory ruling of the tribunal made on 9 March 2016, on 27 June 2016 when it brought this appeal ...

This ... contraption called appeal is therefore, a complete nullity and incompetent having been brought about 110 days, after the ruling, and therefore barred.”

The court then proceeded to determine the preliminary objection against the entire appeal as follows:

“The 3rd respondent also raised a crucial point in the preliminary objection, to the effect that the entire appeal is an academic exercise in that, the 3rd respondent having ceased to be a party to the petition from 9 March 2016 when it name was struck out of the suit, it ceased to be a party to the petition and by extension, to the appeal against the final decision made on 18 June 2016. Thus, even if (and without conceding) the appeal were allowed, it cannot be enforced against the 3rd respondent who was not a party to the petition at the time of that judgment, and so it would ensure and benefit to any party. I agree with that reasoning and submission completely.” (Italicizing mine for emphasis)

The court concluded at pages 1569 - 1570 of the record thus:

“... there is merit in the preliminary objections raised by the 2nd and 3rd respondents (separately) and the same are hereby upheld. The result is that grounds 1 - 4 of the grounds of appeal are hereby struck out, and the effect of that is fatal to the entire appeal, as the rest of the grounds and issues distilled therefrom would amount to pursuing an academic venture, as highlighted above, if considered.

The appeal is accordingly struck out for incompetence. In the circumstance, I do not consider it necessary to determine the rest of the issues in this appeal ...”

The instant appeal is against the foregoing essential findings of the lower court delivered on 4 August 2016. Appellant’s notice of appeal filed on 23 August 2016 spans pages 1579 - 1603 of vol. 3 of the record of appeal and contains twenty two grounds.

At the hearing of the appeal, counsel to the parties, as indicated in the list of appearances, having identified their respective briefs, adopted and relied on same in prosecuting or opposing the appeal. Embedded in the briefs of all the respondents are arguments in respect of the preliminary objections to the competence of the appeal notice of which each of the respondents had given before the hearing of the appeal. Appellant’s response to these arguments are contained in its composite reply brief.

The objections raised by the respondents are founded on the same grounds. The arguments advanced in support of the objections are virtually the same. The merit or otherwise of the objections which challenge the jurisdiction of this court to hear and determine the appeal shall be determined at once.

The terse but devastating arguments in the respondents’ briefs as well as the further oral submissions of counsel on the preliminary objections urge this court to strike out the appeal on the grounds that:

“(a) The Supreme Court is without the vires/jurisdiction to determine this appeal.

(b) The appellant has not fulfilled the condition for the invocation of the jurisdiction of the Supreme Court under section 22 of the Supreme Court Act.

(c) The instant appeal is an academic exercise.

(d) The grounds of appeal (together with the issues for determination formulated therefrom) based on the ruling of the Court of Appeal on 5 May 2016, are incompetent because they were presented out of the time stipulated by law.

(e) Grounds 4 to 22 of the notice of appeal are grounds challenging the decision of the tribunal and not the judgment of the Court of Appeal.”

Having identified himself with all the submissions of P. B. Daudu Esq, learned counsel to the 1st respondent, Ayotunde Ogunleye Esq. who argued the appeal for the 2nd respondent insists, and rightly too, that grounds 1, 2 and 3 together with appellant’s first issue formulated from the grounds are incompetent. The grounds, he contends, are filed outside the time allowed by section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and paragraph 1 of this Court’s Practice Direction on election appeals, 2011. Grounds 1, 2 and 3 are appellant’s complaint against the lower court’s ruling of 5 May 2016 and filed on 23 August 2016, a clear 110 days after the date of the decision complained against. Relying on Okechukwu v. I.N.E.C. (2014) 17 NWLR (Pt. 1436) 255 at 285, (2014) 9 SCNJ 47, learned counsel urges that we so hold and strike out the grounds and the issue they gave birth to.

Grounds 4 - 22 of the appellant’s notice of appeal and the issues distilled from them, learned counsel to the 1st and 2nd respondents jointly and severally submit further, are complaints against the decision of the trial tribunal which this court is devoid of jurisdiction to enquire into and determine. Learned counsel rely on the decision in Obiuweubi v. C.B.N (2011) All FWLR (Pt. 575) 208, (2011) 7 NWLR (Pt. 1247) 465, (2011) 2 - 3 SC (Pt. 1) 46, (2011) LPELR - 2185 (SC) 20. Section 22 of the Supreme Court Act the appellant seeks to invoke, it is further argued, does not avail the appellant. The section only enables this court to do that which the Court of Appeal left undone in a matter it had jurisdiction to determine.

In the case at hand, it is submitted, the lower court has lawfully declined jurisdiction. Relying on Leaders & Company Ltd v. Bamaiyi (2010) 18 NWLR (Pt. 1225) 329 at 345, (2011) NSCQR Vol. 46 and Obi v. I.N.E.C. (2007) All FWLR (Pt. 378) 1116, (2007) 11 NWLR (Pt. 1046) 565 at 629, counsel prays that this court also declines jurisdiction in respect of grounds 4 - 22 of appellant’s notice of the instant appeal.

Appellant’s response is three pronged.

Firstly, it is countered that it is not open to the respondents to challenge this court’s jurisdiction in the manner they have. Their objections being in respect of some and not all the grounds of the instant appeal should have been by way of motion on notice rather than by the preliminary objection resorted to. On the authority of Dangana v. Usman (2012) All FWLR (Pt. 627) 612, (2013) 6 NWLR (Pt. 1349) 50 at pages 91 - 92, it is urged that the objection be discountenanced.

In any event, it is further contended, all the grounds of appeal challenged are neither vague nor misleading. After all, grounds of appeal are only meant to prove the respondents notice of appellant’s complaints against judgment appealed against. The appellant herein, it is submitted, has by its grounds of appeal satisfied these overriding requirements. Learned appellant counsel commends to this court the cases of Iwuoha v. Nigerian Postal Services Ltd (2003) FWLR (Pt. 160) 1535, (2003) 28 WRN 111, (2003) 4 SCNJ 258, (2003) 8 NWLR (Pt. 822) 308 at 337; Ogunbiyi v. Ishola (1996) 6 NWLR (Pt. 452) 12 at pages 22 - 23; Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 431, (1989) 20 NSCC (Pt. III) 177, (1989) 7 SCNJ 216 and Ogboru v. Okowa (2016) 11 NWLR (Pt. 1522) 84 at page 111 in support of his submissions.

Further responding, learned appellant’s counsel submits that the lower court had the statutory duty, which it failed to discharge, of considering and determining all the issues urged on it. The complaints articulated in appellant’s grounds 4 - 22, it is argued, are in respect of matters the lower court refused to determine. Relying inter-alia on Ikpeazu v. Otti (2016)All FWLR (Pt. 833) 1946, (2016) 8 NWLR (Pt. 1513) 38 at page 79; Nyesom v. Peterside (2016) All FWLR (Pt. 824) 38, (2016) 7 NWLR (Pt. 1512) 452 at page 550; Ogboru v. Okowa (supra) and section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), learned appellant’s counsel urges that respondents’ preliminary objections be overruled and jurisdiction over the appeal assumed by the court in order, by virtue of section 22 of the Supreme Court Act, to do that the lower court failed to do.

In the determination of the preliminary objections raised by the respondents, the question to answer firstly is: Does the appellant have the right to contemporaneously appeal, as it does in the instant appeal, against the lower court’s ruling dated 5 May 2016, in respect of the tribunal’s interlocutory decision striking out appellant’s petition against the 3rd respondent and the court’s subsequent judgment of 4 August 2016, arising from the tribunal’s final judgment dismissing the petition?

The answer to the question is an unequivocal no. Right of appeal to as well as the jurisdiction to hear and determine appeals in the exercise of such right are statutorily conferred. For ease of reference sections 233(1) (2) (e) (iv), 285(7) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), paragraph 55 of the 1st schedule to the Electoral Act and paragraph 1 of this Court’s Practice Direction on election appeals to the Supreme Court are hereinunder reproduced. Section 233(1) and (2) (e) (iv) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

2331. The Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Court of Appeal.

2. An appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as a right in the following cases:

(e) decisions on any question

(iv) whether any person has been validly elected to the office of governor under this Constitution. Section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

285(7) An appeal from a decision of the Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of the judgment of the Court of Appeal.

Paragraph 1 of the Supreme Court’s Practice Direction in Election Appeals:

“1. The appellant shall file in the registry of the Court of Appeal his notice and grounds of appeal within 14 days from the date of the decision appealed against.”

A communal reading of the foregoing clear and unambiguous provisions undoubtedly bears out the respondents in their objections as to the competence of grounds 1 - 3 of the instant appeal. Examination of these grounds of appeal clearly reveals that they are appellant’s complaint against the lower court’s ruling of 5 May 2016, on striking out appellant’s appeal No. CA/A/EPT/145/2016 challenging the tribunal’s order excluding the 3rd respondent from its petition. By the combined operation of section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), paragraph 1 of the Practice Direction for Election Appeals to this court made pursuant to section 236 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), paragraph 55 of the 1st schedule of the Electoral Act, 2010 (as amended), and Order 10 rule 2, of the Supreme Court Rules 1999 (as amended), these grounds being part of an appeal to this court filed on 23 August 2016, are complaints filed outside the 14 days and sixty days the law provide same should be filed and determined respectively. Indeed, as submitted by learned respondents’ counsel, the appeal which comes more than 110 days after the decision it challenges is clearly incompetent. Counsel’s reliance on the decision of this court in Okechukwu v. INEC (supra) remains apposite in this regard.

Learned respondents’ counsel also insist, and rightly too, that the remaining grounds in the appeal are complaints against the tribunal’s final decision dismissing appellant’s petition jurisdiction in respect of which the lower court declined. Indeed, this court’s jurisdiction as provided for by section 133 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is clearly limited to the hearing and determination of appeals against the lower court’s decision arising from appeals against the decisions of the election petition tribunal. It does not extend to determining appeals from the decisions of the tribunal which appellant’s grounds 4 - 22 constitute.

In addition to the foregoing is the effect of the lower court’s ruling of 5 May 2016 striking out appellant’s appeal No. CA/A/EPT/145/2016 and the court’s decision declining jurisdiction in respect of appellant’s subsequent appeal No. CA/A/EPT/385/2016. The first of these two decisions is the albatross that brought about the second thereby constituting the eternal cross the appellant must bear.

It is a trite principle that a decision of a court or tribunal of competent jurisdiction subsists until same is set aside on appeal. See Aladegbemi v. Fasanmade (1988) 3 NWLR (Pt. 81) 129, (1988) 1 NSCC (Vol. 19) 1087 and Fawehinmi v. N.B.A. (No. 1) (1989) 2 NWLR (Pt. 105) 494, (1989) 4 SCNJ 1, (1989) 20 NSCC (Pt. II) 43, (2008) All FWLR (Pt. 448) 205. Applying the principle to the instant appeal, the lower court’s decision striking out appellant’s appeal against the tribunal’s ruling excluding the 3rd respondent from its petition, in the absence of a reversal pursuant to an appeal thereon, persists. By extension, the tribunal’s order excluding the 3rd respondent from appellant’s petition equally remains extant.

The reliefs the appellant seeks in his petition have earlier been reproduced in this ruling. These are reliefs which only the 3rd respondent, which had ceased to be a party to the petition, can facilitate. By section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), no decision can be made without hearing the person against whom the court’s decision is given. This explains why the lower court, in its judgment the subject matter of the instant appeal, declined jurisdiction to entertain appellant’s appeal against the tribunal’s dismissal of appellant’s petition in which the 3rd respondent, the facilitator of the reliefs sought by the petitioner, is not a party.

A court does not exercise its jurisdiction in vain. Had the lower court exercised its jurisdiction in breach of the principle of fair hearing, it would have amounted to an exercise in futility. See Leaders & Company Ltd v. Bamaiyi (2010) LPELR – 1971 (SC), (2010) 18 NWLR (Pt. 1225) 329, (2011) NSCQR Vol. 46; Adigun v. Attorney-General, Oyo State (1987).

This court also lacks the jurisdiction to proceed with the instant appeal in the absence of the very party the appellant by the petition seeks its reliefs from. Assumption of jurisdiction over the appeal will constitute manifest violation of section 36(1) and 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and paragraph 1 of this court’s Practice Direction on Election Appeals. No court properly so called would do such a thing.

It is for all these that I find merit in the objections raised by the respondents and uphold same. The incompetent appeal is resultantly hereby struck out. Parties are to bear their costs.

**ARIWOOLA JSC:**

The appeal in the matter was heard on 20 September 2016 and judgment, having been reserved was delivered the same day but reasons for the striking out of the appeal was duly reserved to be given today, 30 September 2016. I have had the opportunity of reading in draft, the lead judgment and the reasons delivered by my learned brother, Musa Dattijo Muhammad JSC, upon consideration of all processes filed by both parties. I had agreed with the order striking out the appeal and now after reading the reasoning of my learned brother, I am again in agreement entirely with the reasoning that led to our conclusion to strike out the appeal. I have nothing new to add. I adopt the said reasoning as mine.

Appeal had been rightly struck out. I abide by the consequential orders including the order on costs.

**OGUNBIYI JSC:**

The preliminary objection raised by the 1st, 2nd and 3rd respondents in this appeal was upheld on 20 September 2016, the date this appeal was heard. The full judgment giving reasons why the appeal was adjudged as incompetent was adjourned to 30 September 2016 and I now proceed to give same.

I read in draft before now, the judgment of my learned brother, Musa Dattijo Muhammad JSC and I agree that the appeal is incurably incompetent and should be struck out. My brother has dealt with all the issues raised in the appeal and I agree completely with the outcome and adopt his judgment as mine. Without having to belabour the issues, the interlocutory appeal is clearly incompetent for two reasons. First, it was filed out of time having not been filed within mandatory 14 days allowed by the Practice Direction. With the filing of the notice of appeal within 110 days of the ruling delivered by the Court of Appeal on 5 May 2016, the appellant had lost focus and failed to appreciate the sui generis nature of election petition and also the 60 days limit within to hear and determine an appeal from the date of delivery of judgment by the Court of Appeal.

Furthermore, by the operation of law pursuant to section 233(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), appeals to this court must only emanate from the Court of Appeal. The provision is explicit and says thus:

“1. The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal.”

For all intents and purposes, and from the interpretation of the Constitutional provision of section 233(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the grounds of appeal 4 - 22 from which issues 2 - 6 are formulated are, in the circumstance incompetent for being grounds of appeal complaining against the decision of the trial tribunal. The grounds cannot come within the jurisdiction of this court.

My learned brother, Dattijo Muhammad has dealt squarely with the preliminary objection which I also endorse his upholding same and thereby rendered the appeal as hollow and without any foundation. It must crumble for being incompetent and I also strike out same in terms of the lead judgment. The appeal is struck out for incompetence and parties are to bear their respective costs.

**KEKERE-EKUN JSC:**

On 20 September 2016 when we heard this appeal, I upheld the preliminary objections of the 1st, 2nd and 3rd respondents and struck out the appeal and promised to give my reasons today. I have had a preview in draft of the lead reasons for the judgment given by my learned brother, M. D. Muhammad JSC. I agree with the reasons advanced and adopt them as mine. I shall add just a few words for emphasis. Every court or tribunal is a creation of statute or of the Constitution. Its jurisdiction is clearly defined in the law creating it and its powers are thus circumscribed by the provisions of the enabling statute. See: A.N.P.P. v. Goni (2012) All FWLR (Pt. 623) 1821, (2012) 7 NWLR (Pt. 1298) 147 at page 181, paragraph C; Arjay Ltd v. Airline Management Support Ltd (2003) FWLR (Pt. 156) 943, (2003) 7 NWLR (Pt. 820) 577, (2003) 5 MJSC 1, (2003) 2 - 3 SC 1; Egharevba v. Eribo (2010) All FWLR (Pt. 530) 1213, (2010) 9 NWLR (Pt. 1199) 411.

A court is said to be competent to determine a cause or matter when:

(a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another;

(b) The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and,

(c) The case comes before the court initiated by due process of law, and upon the fulfillments of any condition precedent to the exercise of its jurisdiction. See: Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587, (1962) 2 SCNLR 341, (1962) 2 NSCC 374. Where a court acts without jurisdiction, the proceedings, no matter how well conducted, are a nullity. See: Kalio v. DanielKalio (1975) 12 SC 175; Oloriode v. Oyebi (1984) 1 SCNLR 390, (1984) 5 SC 1; Garba v. Mustapha Sani Mohammed & Ors. (2016) LPELR - SC. 377/2015.

Section 233(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

“The Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determined appeals from the Court of Appeal.”

The provision is clear and unambiguous and does not require any interpretative aid.

It follows that this court lacks the competence to hear an appeal against the decision of a trial court or tribunal. Thus all the grounds of appeal (Grounds 4 - 22) challenging the decision of the trial tribunal are incompetent as they have no nexus with the judgment of the lower court appealed against. It is also well settled that issues for determination predicated on incompetent grounds of appeal suffer the same fate. They are also incompetent. Issues 2 - 6 in the instant appeal are incompetent. See: Jev v. Iyortyom (2014) All FWLR (Pt. 747) 749, (2014) 14 NWLR (Pt. 1428) 575, (2014) LPELR - 23000 (SC) at pages 36 - 37, paragraphs F - C; Ogundipe v. Adenuga (2006) All FWLR (Pt. 336) 266; Akpan v. Bob (2010) All FWLR (Pt. 501) 896, (2010) 17 NWLR (Pt. 1223) 421, (2010) 43 NSCQLR 409, (2010) 5 SCNJ 141.

The argument of learned counsel for the appellant that the defective grounds of appeal gave sufficient notice to the respondents of his complaints and that they are thus not in doubt as to the case they have to meet fails to take cognisance of the settled principle of law that parties cannot by agreement or acquiescence confer jurisdiction on a court where it has none. See: Okolo v. U.B.N. Ltd (2004) All FWLR (Pt. 197) 981, (2004) 1 SC (Pt. 1) 1, (2004) 3 NWLR (Pt. 859) 87, (2004) LPELR - 2465; Uwagba v. F.R.N. (2009) 15 NWLR (Pt. 1163) 191; All Progressive Grand Alliance v. Anyanwu & Ors. (2014) All FWLR (Pt. 735) 243, (2014) LPELR 20/2013 at page 30, paragraphs C - E, (2014) 2 SC (Pt. 1) 1.

This court has no jurisdiction to entertain an appeal directly from a High Court or Election Tribunal. See: section 233 (1) and 2 (e) (iv) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). I also agree that grounds 1, 2 and 3, which are premised on an interlocutory decision of the lower court delivered on 5 May 2016, are grossly incompetent for being filed 110 days after the decision complained of. Paragraph 1 of the Practice Directions of this court on election appeals, 2011 requires an appeal against an interlocutory decision of the Court of Appeal to be filed within 14 days from the date of the decision while section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that an appeal from a decision of an election tribunal or the Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of delivery of the decision of the tribunal or Court of Appeal. Issue 1 formulated from grounds 1, 2 and 3 of the notice of appeal is therefore incompetent. It follows from all that I have said above that this appeal does not have a leg to stand on. It is entirely incompetent.

It was for these reasons and the more elaborate reasons advanced in the lead judgment by my learned brother, M. D. Muhammad JSC, that I struck out the appeal on 20 September 2016. I agree with the order that parties shall bear their costs in the appeal.

**OKORO JSC:**

Judgment in this appeal was pronounced on Tuesday, 20 September 2016, the same day the appeal was heard. The appeal was thereafter adjourned till today, 30 September 2016, for reasons which informed the striking out of the appeal for being incompetent. My learned brother, Musa Dattijo Muhammad JSC has carefully and efficiently resolved all the issues leading to the striking out of this appeal. I adopt those reasons as mine.

There is no doubt from the records that grounds of appeal numbers 1, 2 and 3 relate to the ruling of the Court of Appeal delivered on 5 May 2016. By this court’s practice direction, particularly, paragraph 1 thereof, notice of appeal must be filed within 14 days from the date of the decision appealed against. In spite of the above provision, notice of this appeal was filed on 23 August 2016, clearly more than the 14 days allowed by the Practice Direction which by all intents and purposes is the rule of this court governing election appeals to this court.

It must be noted that election matters are sui generis and such proceedings are therefore not to be treated like ordinary civil proceedings where certain lapses and irregularities may be cured by invoking certain rules of court for extension of time. See Peoples’ Democratic Party v. Kwara State Independent Electoral Commission (2006) All FWLR (Pt 339) 839; Prince Abubakar Audu & Anor. v. Capt. Idris Wada & Ors. (2012) LPELR - 19641 (SC). It is my view that the appeal filed in breach of the Practice Direction has not been initiated by due process. It is therefore incompetent and the court is without jurisdiction to entertain it. See Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587, (1962) 2 SCNLR 341, (1962) 2 NSCC 374. In the circumstance, grounds of appeal Nos. 1 - 3 and issue 1 distilled therefrom are incompetent and are struck out.

Another virus which has infested this appeal is the grounds of appeal challenging the decision of the election tribunal. This court has no jurisdiction to entertain appeals directly from election tribunals. By section 233 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal. Definitely not from election tribunals. All those grounds of appeal start with the words “The Honourable Tribunal erred in law.” This court lacks jurisdiction to hear this appeal as it is grossly incompetent.

In consequence thereof, I find the objections of the respondents meritorious. They are accordingly upheld. This appeal is adjudged incompetent and is accordingly struck out. Parties to bear their respective costs.

**SANUSI JSC:**

This appeal was taken by this panel on 20 September 2016. After perusing the briefs of argument filed and exchanged by learned senior counsel for the parties and considering their respective oral submissions in court, I adjudged the appeal to be lacking in merit and accordingly dismissed same. On that day, I promised to give my reasons for dismissing the appeal today, Friday, 30 September 2016. I will now proceed to advance my reasons for dismissing the appeal hereunder. I have read the leading reasons for judgment ably and painstakingly rendered by my learned brother, Musa Dattijo Muhammad JSC. I am in entire agreement with the reasons marshalled by my noble lord in the leading reasons for judgment. I shall however chip in few remarks on the preliminary objections filed by the respondents challenging the grounds of appeal from which the issues for determination of this appeal were formulated. The respondents, in their respective preliminary objection challenged the competence of all the grounds of appeal and the issues formulated therefrom and by extension the competence of the entire appeal, as well as the jurisdiction of this court to entertain the appeal.

The respondents challenged the competence of grounds of appeal Nos. 4 to 22 in the appellant’s notice of appeal for being against the decision of the trial election tribunal and urged this court to strike them out including the issues raised or distilled from them. As regards grounds 1 and 2, they urged this court to also strike them out because no issue or issues were distilled from them and also because they were filed outside the period stipulated by law. Perhaps it will be pertinent to at this stage define what a “Ground of appeal” means. A ground of appeal, in my humble view, is a highlight of an error of law or facts or both alleged by an appellant as constituting defects (s) in the judgment appealed against and relied upon, for the appellate to set it aside. For purpose of emphasis, it must be against the ‘judgment appealed against’ and not any other. Now looking at grounds 4 to 22 in the appellant’s notice of appeal, all those grounds are posing challenges against errors allegedly made nor found in the judgment of the lower court which the appellant is now appealing against. See F.M.B.N. v. NDIC (1999) 2 NWLR (Pt. 591) 333, (1999) 2 SC 44, (1999) LPELR - 1270. Therefore these grounds of appeal not being challenges against the error of judgment of the lower court (i.e. Court of Appeal), the said grounds of appeal are incompetent and liable to be struck out. They are therefore hereby struck out by me.

Again, regarding grounds of appeal Nos. 1, 2 and 3 challenging the decision of the lower court in an interlocutory ruling but were filed outside the time stipulated by law. By the provision of section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) read with paragraph 1 of the Practice Direction for Election Appeals to the Supreme Court, paragraph 55 of 1st Schedule to the Electoral Act, 2010 (as amended), Order 10 rule 2 of the Supreme Court Rules of 1999, (as amended), these grounds of appeal were filed outside the fourteen days period and six days respectively, same having been filed on 23 August 2016. They are therefore incompetent for being filed more than 110 days from the date of the decision now being challenged. The issues distilled from them are equally incompetent too. I also hold that this court lacks jurisdiction to hear and determine this appeal due to the incompetence of the grounds of appeal and the issues for determination raised on them, which are also accordingly struck out by me.

Finally, for these few reasons I marshalled above and for the detailed ones contained in the leading reasons judgment of my learned brother, Musa Dattijo Muhammad JSC, I also adjudge the appeal incompetent and therefore sustain the preliminary objections filed and argued by the respondents. While sustaining the preliminary objections, I accordingly strike out the appeal. I award no costs to any of the parties, hence each party should bear his or its own costs. Appeal struck