

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Electoral Matters.

FACTS:

This is an appeal against the decision of the Court of Appeal.

Both the appellant and the 1st respondent participated in the primary election conducted by the 2nd respondent on the 2nd day of December, 2014 which was duly monitored by the 3rd respondent. The primary election was for the selection of a candidate to represent the Party as its candidate for Gabasawa Constituency of the Kano State House of Assembly in the 2015 general election. The 1st respondent won the said primary election by scoring 216 votes against the appellant who only scored 32 votes. The 3rd respondent recognized the name of the appellant as the candidate for Gabasawa Constituency of the Kano State House of Assembly.

The 1st respondent approached the Federal High Court, Kano Judicial Division for redress. The 1st respondent's question for determination before the trial Court was whether the 3rd respondent can publicize, recognize and include the name of the appellant or deal with him as the candidate of the 2nd respondent (APC) to contest election into Kano State House of Assembly representing Gabasawa Constituency of Kano State scheduled to take place on 28th day of February, 2015 the 1st respondent having scored the majority of the lawful votes cast at the primary election held by the 2nd respondent on the December, 2014 in Gabasawa Local Government Area of Kano State for the purpose of presenting a candidate of the party for election into Kano State House of Assembly to represent Gabasawa Constituency of Kano State."

The trial Court found as a fact that there was a valid primary election conducted by the 2nd respondent and duly monitored by the INEC directed the said INEC to consider, recognize and treat the 1st respondent as duly nominated candidate of the 2nd respondent in the general election for Gabasawa Constituency of Kano State House of Assembly.

At the trial Court, issue Pertaining to non-compliance with Section 97 of the Sheriffs and Civil Processes Act was raised by the appellant after he had filed all his necessary and requisite Court Processes. The appellant was residing within the jurisdiction of the trial Court at the time of the filing and service of the originating processes and he was equally served within the jurisdiction. All other respondents were served in Kano within the jurisdiction. The 2nd and 4th respondents were served through the Kano State Chapter Legal Adviser, while the 3rd respondent was served through its Kano office. The 2nd and 4th respondent did not file any application to challenge the service or any

purported irregularity of the trial Court. The appellant, who was served within jurisdiction, was not affected in any way by the purported non-compliance with Section 97 of the Sheriff and Civil Process Act.

The appellant dissatisfied with the decision of the trial Court appealed to the Court of Appeal. On the other hand, the 1st respondent cross-appealed against the portion of the judgment of the trial Court which said the appellant can raise the issue of non-compliance with Section 97 of the Sheriff and Civil Processes Act. The Court of Appeal dismissed the appellant's appeal and allowed the 1st respondent's cross appeal.

The appellant now appealed to the Supreme Court against the concurrent findings of the two lower Courts.

ISSUES:

The appellant formulated 5 issues in his Brief of Argument and that is:

1. Whether the lower Court was right to have held that leave to issue the Originating Summons, leave to serve the Originating Summons and leave to mark same for service outside jurisdiction are not necessary, not mandatory, has been waived by the 2nd and 3rd Respondents and cannot be raised by the Appellants at all.
2. Whether the lower Court rightly held that issue of substituted service and personal service was not raised both at the trial Court and before the lower Court, and indeed the issue of mode of service is phantom, esoteric and not real?
3. Whether the lower Court rightly ignored the failure to mark the summons as "concurrent" and trial Court's non-consideration of the "Further and Better Counter-Affidavit in this Suit"?
4. Whether the lower Court was right to hold that the trial Federal High Court was competent and did competently assume jurisdiction in this case?
5. Whether, in the circumstances of this case, the Suit was rightly commenced by Originating Summons and the lower Court rightly found on the Affidavit before it including issues of forgery.

DECISION/HELD:

In the final analysis, the Supreme Court held that the Appeal lacked merit in its entirety, and it was dismissed. The Judgment of the Court of Appeal was affirmed.