

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Election Petition.

FACTS:

The consolidated appeals arose from the decision of the Court of Appeal, holden at Sokoto in appeal no. CA/S/EPT/GOV/31/2011 delivered on the 29th day of December, 2011 in which the Court allowed the appeals of the 1st and 2nd respondents against the Judgment of the Kebbi State Governorship election tribunal and dismissed the cross appeal of the appellants.

On the 26th day of April, 2011 Governorship election into the Office of Governors of various States in Nigeria including Kebbi State, were held. At the election, 1st and 2nd appellants were sponsored by 3rd appellant Congress for Progressive Change while 1st and 2nd respondents were the candidates of 3rd respondent, Peoples Democratic Party (PDP).

The 4th respondent is the body constitutionally assigned the role of conducting national elections.

At the conclusion of the election, the 4th respondent declared the 1st and 2nd respondents winners of the election into the Office of Governor and Deputy Governor of Kebbi State having scored the majority of lawful votes cast at the election and fulfilled all other constitutional requirements. Appellants were not satisfied with that result and challenged same at the tribunal on 18th May, 2011 vide an election petition, contending that the election was not conducted in compliance with the provisions of the Electoral Act and the Election Manual in that there was no due election. The respondents' contention is that the election was conducted in substantial compliance with the Electoral Act and Election Manual and that all relevant forms were used in strict compliance with the laws and regulations.

At the conclusion of trial, the tribunal held that 4th respondent failed to establish proper conduct of the election vide actual or proper distribution of ballot papers and ballot boxes and other sensitive electoral materials which failure was fatal to the conduct of the election; that the hand written entries on plain sheets of paper - exhibits Kebbi State ten (10) and Kebbi State Eleven (11) in place of the prescribed statutory forms is of no evidential value as the statutory forms are key to proper conduct of creditable election. The tribunal consequently nullified the election and ordered a proper election to be conducted.

The decision resulted in all the respondents appealing separately against same while appellants cross appeal which appeals were consolidated by order of Court made on 28th December, 2011 and heard accordingly. The judgment was adjourned to 29th

December, 2011. The judgment was given in the following terms: "1st set of appeal succeed, and is allowed. 2nd set of appeal succeed and is allowed. 3rd set of appeal is succeed (sic) and is allowed. Cross appeal lacks merit and is dismissed the judgment and order of the tribunal delivered on 13th November, 2011 in petition No. EPT/KR/GOV/1/2011 is set aside". No reason(s) for the above decision was given until 23rd January, 2012. Appeal no. SC/14/2011 was therefore against the decision of the Court of Appeal allowing the appeal of the 1st set of appellants i.e. 1st and 2nd respondents herein.

ISSUES:

The Supreme Court framed the following two issues for the determination of the appeal as follows:

- "1. Whether in view of the provisions of Sections 285(7) & (8) and 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 as Amended, the judgment of the lower Court delivered on the 29th day of December, 2011 in respect of which the reasons for the decision was given on the 23rd day of January, 2012, is a nullity and,
2. Whether or having regards to the totality of the pleadings and evidence on record, the lower Court was right in setting aside the judgment of the tribunal which nullified the decision of the 1st and 2nd respondents and ordered fresh election and whether the said Court was right in dismissing the cross appeal."

DECISION/HELD:

In the final analysis, the Supreme Court found merit in the appeals and allowed appeal nos. SC/14/2012; SC/14A/2012; SC/14B/2012 for being meritorious, while appeal no. SC/14C/2012 arising from the decision on the cross appeal was struck out.