**ALHAJI SANI ABUBAKAR DANLADI**

**V**

1. **BARR. NASIRU AUDU DAN GIRI**
   *(Chairmart, panel of investigation into allegations of gross misconduct against the Deputy Governor of Taraba State)*
2. **ARCH. USMAN BINGA**
3. **BARR. R. J. IKITAUSAI**
4. **ELDER JAPHET WUBON**
5. **ALHAJI MUSTAPHA SANI**
6. **HAJIA AISHATU MUHAMMED**
7. **MR. JULIUS DAWHAI KAIGAMA**
   *(Members of the panel)*

*SUPREME COURT OF NIGERIA*

WALTER SAMUEL NKANU ONNOGHEN JSC *(Presided)*
SULEMAN GALADIMA JSC
BODE RHODES-VIVOUR JSC
NWALI SYLVESTER NGWUTA JSC *(Read the head Judgment)*
KUMAIB AYAN G AKA'AHS JSC
KUDIRAT M.O. KEKERE-EKUN JSC JOHN INYANG OKORO JSC

SC.416/2013

FRIDAY, 21 NOVEMBER 2014

*APPEAL - Court of Appeal - Powers conferred on by section 16, Court of Appeal Act - Exercise of - Conditions precedent to*

*COURT- Incomplete and edited record - Issue based on - Court - Where determines - Impropriety of*

*COURT- Issues joined by parties - Argument in support of - Form of - Irrelevance of to duty of court to determine same*

*FAIR HEARING - Gross misconduct - Allegation of levelled against political office holders (Deputy Governor of Taraba State in the instant case) - Investigation of - Panel charged with - Where conducís its proceedings arbitrarily - Impropriety of*

*FAIR HEARING - Hearing - When is fair - True test of*

*LEGAL PRACTITIONER - Counsel - Uncouth language - Where adopts in brief writing - Impropriety of*

*STATUTE- Court of Appeal Act, section 16 - Powers conferred on Court o f Appeal by - Exercise of - Conditions precedent to*

*WORDS AND PHRASES- "Within a reasonable time" - What implies*

**Issue:**

Whether the Court of Appeal was right in dismissing the appeal when the court did not dismiss all the reliefs of the amended originating summons, and when the self-same court held that the trial court ought to have ordered pleadings and tried the suit on pleadings.

**Facts:**

The appellant, the Deputy Governor of Taraba State, who was serving his second term, contended that the Taraba State House of Assembly served a complaint of gross misconduct on him, to which he duly forwarded his reply. That they, subsequently, passed a motion to investigate the allegation, consequent upon which the speaker requested the acting Chief Judge to constitute a 7-man panel to investigate. The appellant therefore filed an originating motion to restrain the panel from investigating the allegation levelled against him. The appellant alleged that despite his originating process, the panel went ahead with the investigation, report of which it submitted to the house and based on which, the House of Assembly impeached him. The appellant therefore filed an amended originating summons to incorporate issues related to denial of fair hearing in the panel proceedings. The respondents filed a joint counter-affidavit to the amended originating summons and a preliminary objection challenging the commencement procedure. The trial court upheld the objection and struck out the appellant's claims. Not satisfied, he filed an appeal to the Court of Appeal, where the appeal was dismissed. Yet aggrieved,

the appellant filed a further appeal to the Supreme Court, contending *inter alia* that the lower court erred by not determining the issues of breach of fair hearing raised by him.

In determination of the appeal, the Supreme Court considered the following statutes:

Constitution of the Federal Republic of Nigeria, 1999, section 36(1):

36(1) **"**In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time, in a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

188(10) No proceedings or determination of the panel of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court".

**Held:** *(Allowing the appeal)*

**1.** *Conditions precedent to exercise of powers conferred on Court of Appeal by section 16 of the Court of Appeal Act* **-The powers conferred on the Court of Appeal by section 16 of the Court of Appeal Act, are exercisable by that court where certain fundamental conditionalities are met, such as:**

**(a) Availability of the necessary materials to consider and adjudicate on the matter;**

**(b) The length of time between the disposal of the action; and**

**(c) The interest of justice by eliminating further delay that would arise in the event of remitting the case back to the trial court for rehearing and the hardship such an order would cause on either or both parties to the case.**

*[Inakoju v. Adeleke* **(2007) All FWLR** (Pt. 353) 3, (2007) **4** NWLR **(Pt. 1025) 427 referred to]** *[P. 873, paras. E-G]*

**2.** *Irrelevance of form of argument in support of issues joined by parties to duty of court to determine same –*

**Once an issue joined by the parties is clear from the record**

**of proeeedings and the briefs filed on behalf of the parties, the court, particularly the apex court, in order to do substantial justice in the matter, should not restrict itself to the way, manner and style of presentation of counsel's argument in the determination of the issue.** *[P. 843, paras. G-H]*

3. *Whal "within a reasonabìc time " implies -*
**The phrase "within a reasonable time", implies that the time for the determination of the matter should not be too short or too long, depending on the nature and faets of the case.** *[P. 851, para. E]*

**4.** *Impropri ety of court determinino issue based on incomplete and edited record -*
**Per NGWUTA JSC: [Pp. 844 - 846, paras. E-B, P. 849 - 850, paras. D-A]**

> **"Now, how did the court below approach the issue of denial of fair hearing? At page 578 of the record, their lordships of the court below said: 'Issue three cannot be determined without a careful consideration as to what transpired before the panel and the High Court of Justice, Taraba State. This is because, the entries in the report of the panel (exhibit "HAG 25") and the records of the lower court will be used to determine this issue.'**

**At page 579 of the record, the court below held that:**

> **'Originating summons is usually heard on affidavit and documentary exhibits, together with written addresses'**

**First, I will take exhibit HAG 25, the report of the panel. At page 581, the lower court held that: 'Exhibit 'HAG 25' is the final report of the proeeedings of the panel tendered by the applicant in the court below to prove lack of fair hearing.'**

**Having considered exhibit HAG 25, the lower court held that therc was nothing therein to support the appellant's complaint of denial of fair hearing. It held that:**

> **'The appellant did not exhibit the entire proeeedings of the panel to support his argument.'**

**The court below remarked that the appellant who tendered exhibit HAG 25, discredited same as incomplete and edited record of the panel... Also, it is noteworthy that the respondent relied on the incomplete**

**and edited report, their own report, to say that the appellant did not prove he was denied fair hearing. It is not enough on the facts of this case, for the respondents merely to assert that the appellant was not denied fair hearing. They ought to have exhibited their report to show they complied w ith section 36(1) of the Constitution. My lords, exhibit 'HAG 25', the incomplete and edited record of the panel composed of the respondents, is a document prepared by the respondents who submitted same to the House of Assemble, upon which the house removed the appellant and the respondents who were in a position to produce same in response to the appellant's allegation of denial of fair hearing withheld it, knowing that the complete record would spell doom to their claim that they did not deny appellant fair hearing. Section 149(d) of the Evidence Act. The respondents did not disclaim exhibit HAG 25 but rather relied on the fact that it was incomplete and edited, to say that the appellant did not prove that he was denied fair hearing.**

**On the undisputed facts of this case, the respondent having denied the specific allegation of denial of fair hearing in general terms, ought to have tendered the complete and unedited report of their own proeeedings to disprove the allegation of the appellant. Further, in the pursuit of substantial, rather than technical justice, the trial court and the lower court ought to have ordered the respondents to produce the complete and unedited record of their proeeedings, having in mind that the quest for justice cannot be reduced to a game of hide and seek. There is no suggestion that the complete and unedited record did not exist.**

**Between the appellant and the respondents, who would gain by reliance on exhibit HAG 25. It is the respondents, if they satisfied section 36(1) of the Constitution and not the appellant. The complete record was in issue and it is a fact within the knowledge of the respondents. Section 142 of the Evidence Act. Based on the facts of this case, I am of the view that exhibit "HAG 25" was deliberately edited before or after it was submitted by the respondents to the House of Assembly and the editing was done with the sole aim to defeat the appellant's case on denial of fair hearing.**

**It was not real justice for the court below to dismiss the issue on the convenient ground that the contents of the exhibit did not support the appellant's case. Exhibit**

**"HAG 25" did not present the complete picture of what transpired at the panel and the issue cannot be resolved without the complete records:** ***Nwana v.*** *Federal Capital Development Aulhority* **(2004) All FWLR (Pt. 220) 1243, (2007) 4 SC (Pt. 11) 1.**

**Next, the court below held rightly in my humble view, that 'originating summons is usually heard on affidavit' The affidavit evidence in the amended originating summons consists of the appellant's supporting affidavit and the counter affidavit of the respondents. ...**

**The court below having found that the 'entire record of proeeedings of the panel are not before this court', and having stated the correct position that 'originating summons are usually heard on affidavit and documentation exhibits...', ought to have resolved the issue on affidavit evidence before it.**

**Though the court below held that the entire record of proeeedings was not before it, it stated at page 582 of the record: 'I shall now considcr what transpired in the court below'. With profound respect to their lordships of the court below, this is a contradiction in terms. The only source from which to determine and consider what transpired before the court below, that is the trial court which had to determine the validity** *vel non* **of the proeeedings of the panel, in the record of proeeedings of the said panel, the same record the court below said was not complete. Magicians do not sit to decide issues in our courts or panel. In the absence of the complete record of the panel, neither the trial court, the court below nor this court, can determine that the appellant was not denied fair hearing:** *Edjekpo and 2 Ors. v. Osia and 3 Ors.* **(2007) All FWLR (Pt. 361) 1617, (2007) 8 NWLR (Pt. 1037) 635, (2007) 3 SC 1 (Pt.l) 1. There is no way the court below, composed of human beings, could have determined without the complete record, what transpired in the court below or in the panel.**

**In pursuit of its duty to do substantial justice in the case, the effeet of which transcends the parties therein and affects the entire voting population of Taraba State, the lower court ought to have called for the complete record. In the alternative, the court below should have complied with the principie it stated to the effect that originating summons is heard on affidavit."**

**Per GALADIMA JSC: [P. 857 - 858, paras. G-B]**

**"From the foregoing paragraphs, the court below having found that the entire record of proeeedings of the panel are not before it and having stated the correct position that originating summons are 'usually heard on affidavit and documentation exhibits', it ought to have resolved the issue on affidavit evidence before it.**

**I am of the view that in the absence of the complete record of the investigative panel, it becomes difficult for eifher the trial court, the court below or this court, to justly determine that the appellant was not denied fair hearing.**

**In the circumstance, from the totality of the affidavit evidence and the fact that exhibit "HA G 25" is incomplete and on edited record which was not disclaimed by the respondents, the proceedings of the respondents were conducted in gross violation of the appellant's right under section 36(1) of the Constitution** *(supra).* **He has been denied his fundamental right of being fairly heard. The court below ought to have resolved the issue of fair hearing against the respondents, but in favour of the appellant."**

**Per OKORO JSC: [P. 878, paras. C-E]**

**"It is also worrisome that the report placed before the Taraba State House of Assembly by the panel, which was used to impeach the appellant was incomplete. The appellant had pleaded that the only record he could lay hand on was only the report of the panel and not the proceedings. It is my view that if the panel wanted to adequately traverse the allegation of lack of fair hearing, it ought to have annexed the complete record of the panel or at least what transpired on October 3, 2012. This failure by the panel, appears, in my opinion to have left the case of the appellant unchallenged.**

**In the circumstance of this case, 1 hold the view that the court below did not properly consider the matter and that led to its wrongly upholding the judgment of the trial High Court."**

**5.** *Constitutionality of right to fair hearing, fundamental nature of and effect ofhreach of Constitution ofthe Federal Republic of Nigeria, 1999, section 36(1) and (6) considered -*

**By the provisions of section 36(1) and (6) of the Constitution of the Federal Republic of Nigeria. 1999 (as amended), fair hearing is a rule of natural justice enshrined in the Constitution that requires that the**

**other side be heard. It is the foundation of any adjudication. Any proceedings conducted in violation of a party's right to fair hearing will amount to a nullity, no matter how well conducted. In the instant case, where the proceedings of the panel established a breach of appellants's rights, the lower courts erred by not declaring the proceedings void. [***Tukur v, Government o f Gongola State* **(1989) 9 SCNJ 1, (1989) 4 NWLR (Pt. 117) 517***; Adigun v. Attorney-General, Oyo State* **(No. 2) (1987) 2 NWLR (Pt. 56) 197;** *Federal Republic of Nigeria v. Akubueze* **(2010) 17 NWLR (Pt. 1223) 525;** *Victino Fixed Odds Limited* **v.** *Ojo* **(2010) All FWLR (Pt. 524) 25, (2010) 8 NWLR (Pt. 1197) 486;** ***J****.S.C. Cross-Rivers State* **v.** *Young* **(2013) 11 NWLR (Pt. 1364) 1 referred to]** *[P. 872, paras. F-H]*

***6.*** *Impropriety of counsel adopting uncouth language in brief writing -*

**Per NGWUTA JSC: [P. 842, paras. E-H]**

> **"In what was headed "appellant's reply brief to the respondent's brief of argument", learned senior counsel for the appellant opened up thus: 'First issue: The respondents' counsel in his usual rude language has submitted at page 11 (paragraph 4.9) of his respondents' brief of argument that: 'The above submission of the appellant is embarrassingly contrary to what the Court of Appeal did.'...**

**With all respect due to the learned silk, the expression "in the usuai rude language" is not the language of learned colleague, definitely not that of a Senior Advocate of Nigeria. It is rude. It is a gutter language better rcserved for the lower breed without the law who operate in the motor parks. Even if the opposing counsel is rude, and I see no evidence of rudeness in the respondents' brief, the learned Silk should have raised the issue before the court. He should not have succumbed to a temptation to be rude himself. In any case, he ought to realizc that two wrongs do not make one right."**

*8. When a hearing is fair and true test of -*

***In*** **a judicial or quasi-judicial body, a hearing, in ordcr to be fair, must include the right of the person to be affected:**

**(a) to be present all through the proeeedings and hear all the evidence against him;**

*(b)* **to cross-examine or otherwise confront or contradict all the witnesses that testified against him;**

*(c)* **to have read before him all the documents tendered in evidence at the hearing;**

*(d)* **to have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognized exceptions;**

*(e)* **to know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence and**

*(f)* **to give evidence by himself, call witnesses if he likes, and make oral submission either personally or through a counsel of his choice.**

**The true test of fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done to the case. In the instant case, where the above requirements were not complied with by the panel, the lower courts erred by not declaring its proeeedings void.** *[Okafor v. Attorney-General, Anambra State* **(1991) 6 NWLR (Pt. 200) 659 referred to]** *[Pp. 876 - 877, paras. H-H]*

9. *lmproprìety of panel charged with investigation of allegation of gross misconduct levelled against political office holders (Deputy Governor of Taraba State in the instant case) conducting its proeeedings arbitrarìly –*

**Per NGWUTA JSC: [Pp. 850 - 853, paras. B-B]**

**"From the affidavit evidence reproduced above, the panel was sworn in on 24 September 2012, from which date, the panel had three months to submit its report to the Taraba State House of Assembly. The panel held its inaugurai sitting the next day, 25 September 2012. At the sitting of the**

**panel on 28 September 2012, applicant appeared by his counsel under protest that his said counsel was yet to receive full briefing from him.**

**On the said date and in spite of the protest of the appellant's counsel, the panel took five witnesses callcd by its counsel. On the next date, 3 October 2012, appellant was not in court due to ill-health. His two witnesses were to arrive Jalingo the same 3 October to tcstify the next day, 4 October 2012. Appellant's counsel applied for adjournment based on the facts above, but his application was denied and he was compelled to open the defence.**

**Learned counsel called one witness and renewed his application for a continuance to call the remaining witnesses. Not only that the panel denied the application for adjournment, but unilaterally closed the appellant's case and submitted its report to the Taraba State House of Assembly based upon which the House removed the appellant from office the morning of 4 October 2012. Based on the above, the appellant complained that he was not given the opportunity to present his defence under section 36 of the Constitution** *{supra).*

**In the joint counter-affidavit of the respondents, it was averred that the appellant was before the panel till about 6:00p.m. "when the sitting adjourned to 3 October, which the plaintiff applied for to open and close his defence." ... unchallenged and are deemed admitted by the respondents who could have disputed same effectively but choose to dance around the facts.**

**In a further affidavit in reply to the respondent's counter-affidavit, the appellant not only repeated the facts in the supporting affidavit but added more damaging facts relating to the conduct of the panel. He averred that the panel**

**rose on 3 October 2012, and closed its secretariat and this made it impossible for him to access any member of the panel or its secretary. He could not obtain a copy of the record and the incomplete and edited record he exhibited was made available to the Taraba State House of Assembly, which it annexed to its counter-affidavit in suit No. TRSJ/ 80/2012.**

**The incomplete and edited report is marked exhibit HAG 25. There was no further counter-affidavit and again the respondents were deemed to have admitted the facts, which they could challenge but choose not to do so:** *Nwogu v. Njoku* **(1990) 3 NWLR (Pt. 140) 570.**

**While I am not concerned in this judgment with what happened before the Taraba State House of Assembly who are not parties to this appeal, I will like to mention in passing, the eloquent silence of the respondents on the incompleteness and edition of their report. Exhibit "HAG 25" is a clear admission that the report they submitted to the Taraba State House of Assembly on 3 October 2012, upon which the house removed the appellant the next morning was incomplete and edited, or that it was edited after its submission and the respondents acquiesced in the fraud since they did not disclaim the incomplete record.**

**From the totality of the affidavit evidence, if not also by inference from exhibit HAG 25, the incomplete and edited record, which was not disclaimed by its authors, the respondents, the proceedings of the respondents, were conducted in gross violation of the appellant's right under section 36(1) of the Constitution** *(supra).*

**The respondents had the privilege to decide the fate of the appellant. They acted in ignorance of the fact that the system that bestowed the**

**privilege on them to recommend the removal of the appellant also exacts tolls for the privilege so bestowed.**

**My noble lords, the impact of what happened in the panel on the country's impeachment jurisdiction is too alarming to contemplate.**

**Here is a panel that had three whole months to investigate the serious allegations of gross misconduct against the appellant, a Deputy Governor of the State. For no apparent reason for the indecent haste, the panel completed its sitting and prepared and submitted its report to the Taraba State House of Assembly, between 28 September 2012, and 3 October 2012 - a period of six days, inclusive of the first and last dates.**

**It is said that justice delayed is justice denied. The reverse is equally disturbing. Justice rushed is a travesty of justice and a threat to the fabric that binds civilized society together. As if the rushed justice was not bad enough, the panel presented to the Taraba State House of Assembly an incomplete and edited report upon which the appellant was removed on 4 October 2012, the day following the submission of the report. At least, the respondents did not disclaim the incomplete and edited report.**

**From the undisputed facts of this case, one has the inevitable but disturbing impression that the panel composed of the respondents was a mere sham and that the removal of the appellant from office was a done deal as it were. In my view, the respondents in their purported investigation of the allegation made against the appellant, merely played out a script previously prepared and handed over to the panel.**

**The most disturbing aspect of the kangaroo panel is that it was headed by a man described in the processes before this court as a Barrister -one Barrister Nasiru Audu Dangiri. The third member**

**of the panel was also described as a barrister - one Barrister R.J. Ikitausai. If these two men are actually members of the noble profession, to which your lordships and my humble self, by the grace of God, have the honour to belong, and not people who, for self-aggrandisement adopted the nomenclature "barrister", the harm they have deliberately perpetrated in this matter is so serious that the attention of the Disciplinary Committee of the bar ought to be drawn to it.**

**Impeachment of elected politicians is a very serious matter and should not be conducted as a matter of course. The purpose is to set implication aside the will of the electorate as expressed at the polls. It has implication for the impeached as well as the electorate who bestowed the mandate on him. Whether it takes one day or the three months prescribed by law, the rules of due process must be strictly followed.**

**If the matter is left at the whims and caprices of politicians and their panels, a State or even the entire country could be reduced to the status of a Banana Republic. The procedure for impeachment and removal must be guarded jealously by the courts.**

**In conclusion, based on the undisputed facts in the affidavits of the appellant, I am of the considered view that the court below ought to have resolved the issue of denial of fair hearing against the respondents and in favour of the appellant. The court below ought to have declared the entire proceedings of the panel made up of the respondent null and void and of no legal or factual effect whatsoever.**

**In consequence, I allow the appeal and vacate the judgment of the Court of Appeal. I hereby order that the entire proceedings of the panel that purported at the instance of the Taraba State**

**House of Assembly, to investigate the allegation of gross misconduct made by the House against the appellant, the Deputy Governor of Taraba State, up to and including the incomplete and edited report relied on in removing the appellant by the House, be, and is hereby, declared null and void and of no legal or factual consequence whatsoever.**

**In effect, at all material times, the appellant, Alhaji Sani Abubakar Danladi remained and still remains the Deputy Governor of Taraba State and he is to resume his interrupted duties of his office forthwith."**

**Per RHODES-VIVOUR JSC: [Pp. 858 - 859, paras. E-A]**

**"His lordship Hon. Justice N. S. Ngwuta JSC, found that the investigative panel denied the appellant fair hearing and proceeded to make the following pronouncements.**

**'... I allow the appeal and vacate the judgment of the Court of Appeal.'**

**His lordship proceeded to declare the proceedings before the investigative panel null and void because the appellant was denied fair hearing. Concluding, his lordship observed that the appellant still remains the Deputy Governor of Taraba State. I agree with his lordship that the proceedings of the investigating panel is null and void because the appellant was denied fair hearing.**

**My lords, the position of the law is long settled that once there is a denial of fair hearing, that in effect is a breach of the** *audi alteram partem* **principle of the rules of natural justice, that is to say, please hear the other side.**

**The only order that can be made by an appeal court is one of re-trial or re-hearing before the investigative panel, to enable the appellant to be properly heard and not shut out. Consequently,**

**the consequential order is wrong:** *Otapo* **v.** *Sunmonu* **(1987) 2 NWLR (Pt. 58) 587,** *Salu v. Egeibon* **(1994) 6 NWLR (Pt. 348) 23.**

**In view of the decision in SC. 418/2012, it is no longer necessary to go into the merits of this appeal."**

**Per AKA'AHS JSC: [Pp. 865 - 866, paras. F-B]**

**"In enacting this provision, the framers of the Constitution of the Federal Republic of Nigeria, 1999 could not have contemplated that an infraction of a fundamental right as provided under section 36(6) would lack a remedy:** *Dapialong* **v.** *Dariye* **at page 415. The right to fair hearing of a person being investigated for gross misconduct is implicit in section 188(6) of the Constitution. Where impeachment proeeedings have been challenged, the party who initiated the impeachment always seek to take umbrage under section 188(10) of the Constitution of the Federal Republic of Nigeria, 1999. If our democracy must be sustained and grow, everybody must abide by the rules of law and ensure that all procedures laid down for taking any action are scrupulously complied with.**

**The issue of lack of fair hearing in this appeal stuck out as a sore thump but which the court below failed to treat and come to a conclusion. In the result, I find that the appeal has merit and I agree with my learned brother, Ngwuta JSC that it should be allowed. The proeeedings and report of the panel set up to investigate the appellant for gross misconduct are hereby declared null and void and of no legal or factual consequence whatsoever. The judgments of the trial court and Court of Appeal are hereby set aside. The appellant, Alhaji Sani Abubakar Danladi remained and still remains the Deputy Governor of Taraba State and should resume the functions of this office forthwith."**

**Per KEKERE-EKUN JSC: [Pp. 874 - 875, paras. B-E]**

**"The relevant paragraphs of the affidavit in support of the amended originating summons, the counter affidavit and the plaintiffs further-affidavit in reaction to the counter-affidavit have**

**been fully reproduced in the lead judgment. I do not deem it necessary to repeat the exercise. Suffice it to say that the appellant in his supporting affidavit was very specific in the way and manner in which his right to fair hearing was allegedly breached by the respondents. In paragraphs 23-27 of the supporting affidavit, the appellant narrated how his counsel was compelled to open his defence in his absence on 3 October 2012, and take one witness; how the respondents refused his counsel's application for a short adjournment to enable him testify. The complete record of proceedings of the panel, if produeed, would have been unfavourable to the respondents.**

**Apart from this, a critical examination of the timeline in this matter points to undue haste to conclude the matter on the part of the respondents. By the provisions of section 188(7)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the panel was required to submit its report within three months of its appointment. In the instant case, the panel was sworn-in on 29 September 2012 and commenced sitting on 25 September 2012. On 28 September 2012, the panel took the evidence of five witnesses, notwithstanding the fact that appearance on behalf of the appellant was on protest and the respondents were informed that learned counsel for the appellant had not been fully briefed. The matter was then adjourned to 3 October 2012, on which date, the appellant through his counsel, sought an adjournment of four days on account of ill-health, to enable him testify and call two other witnesses who were already on their way to Jalingo. And yet, surprisingly, the case was concluded and a report rendered and submitted to the Taraba State House of Assembly the same day. Based on the report, the**

**appellant was removed the following day, 4 October 2012.**

**Having regard to the fact that the respondents had three months within which to submit their report, there was no reason why the appellant could not have been given the four days he asked for to enable him properly defend the allegations against him. Notwithstanding the incompleteness of exhibit "HAG 25", the factors enumerated above suggest that the respondents were acting out a predetermined script to achieve a pre-determined end.**

**It has been said by this court time and time again that politics should not be a do or die affair. What would it have cost the respondents to grant the appellant those few days? Even if the outcome would have been the same, they would have fulfilied all righteousness. The well-worn adage is that "justice must not only be done, it must be seen to have been done." Would an ordinary man observing the proceedings in this case conclude that justice was done? I venture to answer in the negative. It follows that the proceedings of the panel conducted in violation of the appellant's right to fair hearing amounts to a nullity and cannot be allowed to stand.**

**For these and the fuller reasons well articulated in the lead judgment, I also agree that the learned justices of the court below ought to have resolved the issue of denial of fair hearing in favour of the appellant. The appeal is accordingly allowed. The judgment of the Court of Appeal, Yola Division, delivered on 19 July 2013, is hereby set aside. I also declare that the proceedings and report of the panel set up at the instance of the Taraba State House of Assembly to investigate allegations of gross misconduct against the appellant are null and void and of no effect.**

**Consequently, the appellant Alhaji Sani Abubakar Danladi remained and still remains the Deputy Governor of Taraba State. He is to resume his duties forthwith as Deputy Governor of Taraba State."**

**Per OKORO JSC: [Pp. 877 - 878, paras. D-G]**

**"The question may be asked, was the appellant given enough opportunity to prepare and present his case before the panel? The answer is obvious. The appellant averred that on 3 October 2012, he was unable to attend the sitting of the panel on grounds of ill-health and that two of his witnesses were to arrive Jalingo on that same date in order to testify the following day being 4 October 2012. On that same date, his counsel, after one defencc witness had testifìed, applied for an adjournment to enable him present the appellant and the other two witnesses. Could not the panel, which still had two months and three weeks to complete its assignment, oblige the appellant with one or two days adjournment to enable him present his defence against the weighty allegations made against him which was to cost him his job? Why was it necessary for the panel to unilaterally close the appellant's case within seven (7) days of the ninety (90) days it had to conclude the exercise? Did the refusal not amount to denial of fair hearing? My view is that the panel did not act wisely. It has been held that the true test of fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done to the case:** *Okafor* **v.** *Attorney-General, Anambra State* **(1991) 6 NWLR (Pt. 200) 659. For me, any reasonable person who watched the proceedings on 3 October 2012, and saw the haste with which the panel made to shut out the appellant, and that was in spite of the fact that they still had two months and three weeks to complete its assignment, would definitely come to the conclusion that justice has not been done.**

**It is also worrisome that the report placed before the Taraba State House of Assembly by the panel, which was used to impeach the appellant was incomplete. The appellant had pleaded that the only record he could lay hand on was only the**

**report of the panel and not the proceedings. It is my view that if the panel wanted to adequately traverse the allegation of lack of fair hearing, it ought to have annexed the complete record of the panel or at least what transpired on 3 October 2012. This failure by the panel, appears in my opinion to have left the case of the appellant unchallenged.**

**In the circumstance of this case, I hold the view that the court below did not properly consider the matter and that led to its wrongly upholding the judgment of the trial High Court.**

**The appellant, from all I have demonstrated above, was denied fair hearing by the panel. Impeachment is a serious business and seeks to take away the mandate freely given to a person by the electorate. Such a delicate assignment must be handled with care. It is not a matter to be handled by a panel such as the respondents. The rush to complete the assignment within one week or less, of the 90 (ninety) days allowed by law seems to suggest that the panel was being teleguided. This must be discouraged and condemned by all right thinking persons and institutions.**

**Persons appointed to this type of panel must take it as a sacred duty, which they would give account not only to man but also to God their maker. I need say no more on this."**

**Nigerian Cases Referred to in the Judgment:**

*Abdullahi Baba v. Nigeria Civil Aviation, Zaria* (1991) 5 NWLR (Pt. 192) 388

*Adigun* v. *Attorney-General, Oyo State* (No. 2) (1987) 2 NWLR (Pt. 56) 197

*Atano v. Attorney-General, Bendel State* (1988) 2 NWLR (Pt. 75) 201

*Ceekay Traders v. General Motors Limited* (1992) 2 NWLR (Pt. 222)132

*Dapianlong v. Dariye* (No. 2) (2007) All FWLR(Pt. 373) 81, (2007) 8NWLR(Pt. 1036)332

*Edjekpo v. Osia* (2007) All FWLR (Pt. 361) 1617, (2007) 8 NWLR (Pt. 1037) 635, (2007) 3 SC 1

*Effiom v. Cross River State Independent Electoral Commission* (2010) All FWLR (Pt. 552) 1610,(2010) 7 SCM28

*Federal Republic of Nigeria* v. *Akubueze* (2010) 17 NWLR (Pt. 1223) 525, (2011) All FWLR (Pt.555) 204...

*Green v. Green* (1987) 3 NWLR (Pt. 61) 480, (1987) 2 NSCC 1115, (2001 ) FWLR (Pt. 76) 795, (2001) 45 WRN 90
*Inakoju v. Adeleke* (2007) All FWLR (Pt. 353) 3, (2007) 4 NWLR (Pt. 1025) 423
*J.S.C. Cross River State v. Young(2013) 11* NWLR (Pt. 1364) 1
*Kotoye v. Central Bank of Nigeria* (1989) 1 NWLR (Pt. 98) 419
*Military Governor; Lagos State v. Ojukwu (1*986) 1 NSCC (Vol.17) (Pt. 1) 304, (2001) FWLR (Pt. 50) 1779
*Minister of Internal Affairs v. Shugaba* (1982) 3 NCLR915
*Mohammed* v. *Kano N.A.* (1968) All NLR 424
*Nwana v. Federal Capital Development Authority* (2004) All FWLR (Pt. 220) 1243, (2007) 4 SC (Pt. 11) 1
*Nwogu v. Njoku* (1990) 3 NWLR (Pt. 140) 570
*Nworah* v. *Nwabueze* (2011) 17 NWLR (Pt. 1277) 699, (2011) CLR 6, (2012) All FWLR (Pt. 613)1824
*Ochemaje* v. *State* (2008) All FWLR (Pt. 435) 1661 S.C, (2008) 6-7 SC (Pt. 11)1
*Ogunyade* v. *Dawodu* (2007) 12 SCM (Pt. 2) 480
*Okafor* v. *Attorney-General, Anambra State* (1991) 6 NWLR (Pt. 200)659
*Okonta v. Philips* (2010) 18 NWLR (Pt. 1225) 320, (2011) All FWLR (Pt. 568) 977
*Omokuwajo v. Federal Republic of Nigeria (20l3) All LFWLR(Pt.* 684) 1
*Panalpina World Transport Nig. Limited v. J.B. Olandeen* (2010) 19 NWLR (Pt. 1226)1
*Salu v. Egeibon* (1994) 6 NWLR (Pt. 348) 23
*Tukur v. Government of Gongola State* (1989) 9 SCNJ 1, (1989) 4 NWLR (Pt. 117)517
*Vaswani Trading Company v. Suvalaki & Company* (1971) 7 NSCC 692, (1972) 1 All NLR (Pt. II) 483, (1972) 12 SC 77, (2000) FWLR (Pt. 28)2174
*Victino Fixed Odds Limited* v. *Ojo* (2010) All FWLR (Pt. 524) 25, (2010) 8 NWLR (Pt. 1197) 486

**Nigerian Statutes Referred to in the Judgment:**

Companies and Allied Matters Act, Cap. 20, Laws of the Federation of Nigeria, 2004
Constitution of the Federal Republic of Nigeria, 1999, sections 36(l)(6)(b)(c)(d), 271(4)(5) and 188(2)(3)(4)(5)(6)(7)(d)(8)
Court of Appeal Act, section 16
Evidence Act, sections 142 and 149(d)
Supreme Court Act, Cap. S15, Laws of the Federation of Nigeria, 2004, section 22

**Nigerian Rules of Court Referred to in the Judgment:**

Taraba State High Court (Civil Procedure) Rules 2011, Order 1, rules 2(1), 5, 6 and 7

**Counsel**:

Kanu Agabi (SAN) [with him, Yunus Ustaz Usman (SAN), E.N. Chia Esq., A. Umar Esq., J.J. Usman Esq., Peter Arivwode Esq., Uchenna Ede (Mrs.), Nana Aisha Usman (Miss) and E.E. Nwachukwu-Agbada (Miss)] -*for the Appellant.*

Yusuf Ali (SAN) [with him, Adebayo Adelodun (SAN), Abayomi Akanmode Esq., A. K. Adeyi Esq., M.M. Nurudeen Esq., Prof. Wahab Egbewole, Y. Maikasuwa Esq., K. K. Eleja Esq., S.A. Oke Esq., N. N. Adegboye Esq., K.T. Sulyman (Miss), Nkechi Aniebonam (Miss), Safinat Lamidi (Miss), Matliias Ikyav Esq., Oyindamola Jegede (Miss), Kuyik Usoro Esq., J. D. Yakubu Esq., (DCL), M. N. Sa'ad Esq., (DLD), E. A. Ibrahim Effiong Esq., and N. A. Tanko Esq. (SOI)] - *for the Respondent.*

**NGWUTA JSC (Delivering the Lead Judgment)**: This appeal is against the judgment of the Court of Appeal, Yola Division, on appeal against the judgment of the High Court of Taraba State, which struck out the appellant's originating summons seeking to set aside his impeachment by the Taraba State House of Assembly.

Appellant was serving his second term as Deputy Governor of Taraba State.

On 4 September 2012, members of the Taraba State House of Assembly laid before the Speaker of the house, a notice of complaint of gross misconduct against the appellant.

On the said 4 September, the complaint was served on the appellant for his reaction. Appellant duly prepared and forwarded his reply to the charges laid against him.

On 18 September 2012, the house passed a motion, pursuant to section 188(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to investigate the allegations of gross misconduct against the appellant. Consequently, upon the resolution of the House to investigate the allegations against the appellant, the Speaker of the Taraba State House of Assembly requested the acting Chief Judge of the state to constitute a 7 member panel to investigate the allegations pursuant to section 188(5) of the Constitution *(supra).*

Appellant filed an originating summons and a motion restraining tire panel from investigating the allegations against him. Appellant alleged that in spite of his motion, the panel went ahead with the investigation, at the conclusion of which it submitted its report to the House. Appellant filed an amended originating summons to incorporate new issues relating to denial of fear hearing in the proceedings of the panel.

In support of the amended originating summons, appellant filed a 34 Paragraph affidavit. The respondents filed a joint counter-affidavit

of 27 paragraphs. The appellant filed a further affidavit of 14 paragraphs.

At the trial, learned counsel for the panel called five witnesses and closed his case. Appellant's learned counsel called one witness and asked for four days adjournment on health grounds, to enable the appellant call two more witnesses and testify on his behalf. He alleged that the application was denied and the appellant's case was closed by the panel. The panel submitted its report, which was adopted by the house and based on same, the house removed the appellant from office.

Appellant continued to prosecute his amended originating summons, to which the respondents had raised a preliminary objection challenging the procedure in the commencement of the suit.

At the conclusion of the trial, the learned trial judge concluded *Inter alia:*

> "Since the plaintiff have commenced this case by way of an originating summons and not through a writ of summons, questions and allegations of denial of fair hearing, which will certainly involve acrimonious and riotous dispute of fact, it will be inappropriate on the part of this court to proceed to resolve this complaint under the procedure chosen and adopted by the plaintiff. The objection raised by the defendants therefore has merit as the deficiencies highlighted in the case are fatal. The case is only good for striking out and it is hereby struck out."

In his appeal to the Court of Appeal against the judgment, appellant formulated the following three issues from his grounds of appeal for determination in his brief of arguments:

"1. Whether having regard to the fact that no order or relief is sought against either the acting Chief Judge of Taraba State or the Taraba State House of Assembly, their non-joinder is fatal to the plaintiff's suit. (Ground 1 of the notice and grounds of appeal).

2. Whether the honourable learned trial judge ought to have set aside the proceedings and the report of the seven-man panel, which investigated the allegation of gross misconduct against the appellant for want of fair hearing. (Ground 3 of the notice and grounds of appeal)"

The above issues were adopted by the respondents in their joint brief of argument.

The Court of Appeal resolved issues 1 and 3 against the appellant and issue 2 against the respondent. The court below dismissed the appeal

> "In my humble view, notwithslandmg the resolution of issue two favour of the appellant, on a calrn view of issues one and three, I hold that this appeal lacks merit and is dismissed. Parties to bear their respective costs."

Appellant was aggrieved and appealed to this court on an eleven grounds, from which he distilled the following five issues in his brief of argument:

> "(1) Whether having held that the mode of commencement of the action *via* originating summons was proper in the circumstance of this case, the Court of Appeal was right to have dismissed the appeal on the ground that the suit was improperly commenced. (Grounds 1 and 2 of the appeal).
>
> (2) Whether the honourable learned justices of the court below were right in striking out issues 1, 2, 4 and 5 of the appellant's amended originating summons without giving the parties an opportunity to be heard. (Ground 3 of the notice and ground of appeal).
>
> (3) Whether the Taraba State House of Assembly and the acting Chief Judge of Taraba State were necessary parties to the amended originating summons. (Grounds 4 and 5).
>
> (4) Whether the Court of Appeal was right in dismissing the appeal when the court did not dismiss ali the reliefs of the amended originating summons and when the self-same court held that the trial court ought to have ordered pleadings and tried the suit on pleadings. (Ground 6, 7 and 8 of the grounds of appeal).
>
> (5) Whether the court below was right when it held that the panel was right to have proceeded with the investigation activities and the forwarding of the report to the Taraba State House of Assembly, despite being served with the motion for interluctory mjunction on 28 September 2012. (Grounds 9, 10 and 11 of the ground of appeal).

In his brief of argument, learned counsel for the respondents reproduced and adopted the five issues framed by the appellant. Arguing issue one in his brief, learned senior counsel for the appellant contended that the court below, having held that the trial court was wrong to have struck out the suit as incompetent, was wrong to have dismissed the appeal as lacking in merit. Learned senior counsel made particular reference to relief No. 3 of the amended originating summons, in which the appellant complained of denial of right to fair hearing by the panel and reminded the court

that the said relief was not struck out by the court below along with the other relief. Learned counsel reproduced the said relief No. 3 thus:

> "3. A declaration that the proceedings and the report of the defendants are in breach of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)."

He argued that though the court resolved issues 1 and 3 against the appellant, issue 2 resolved in his favour was enough for the court below to have allowed the appeal. He contended that the court below should have relied on section 16 of the Court of Appeal Act, to determine the issue of lack of fair hearing based on documentary evidence includine the report of the panel which formed part of the record of the court. He urged the court to rely on its powers under section 22 of the Supreme Court Act, Laws of the Federation of Nigeria to decide the issue of denial of fair hearing.

In issue 2, learned counsel impugned the Order made *suo motu* striking out reliefs 1, 2, 4 and 5 of the appellant's amended originating summons without giving the parties an opportunity to be heard.He maintained that reliefs 1,2.4 and 5 in the amended originating summons did not in any way affect either the Taraba State House of Assembly or the acting Chief Judge of the said state.

He relied on the *dictum* of Rhodes - Vivour JSC in *Blessing Toyin Omokuwajo v. Federal Republic* (Unprinted) [2013] All FWLR (Pt. 684) 1 S.C., until he found himself at appeal No. SC. 29/2011 in which judgment was delivered on 8 March 2013, and subrnitted that the exceptions to the principle that a court should not decide issues it raised *suo motu* without affording those affected opportunity to be heard do not apply to the facts of this case.

In issue 3, learned counsel reproduced the three reliefs sought by the appellant in the amended originating summons and subrnitted that neither the Taraba State House of Assembly nor the acting chief judge of Taraba State could be said to be a necessary party to the claims and declarations sought. On the question as to who is a necessary party, he relied *on Panalpina World Transport Nigeria Limited v. J.B. Olandeen International and Ors.* (2010) 19NWLR(Pt. 1226) 1 at 23, paragraphs A-C. He argued that since no order is sought against either the acting Chief Judge and/or the Taraba State House of Assembly, failure to join them as parties to the suit is not fatal, adding that non-joinder does not defeat the cause of action particularly in view of the third relief on denial of fair hearing which was not struck out.

He relied on *Green v. Green* ( 1987) 3 NWLR (Pt. 61) 480,(2001) FWLR (Pt. 76) 795, (1987) 2 NSCC 1115 at 1126, lines 34-41,(2001) 45 WRN 90 to the effect that failure to join a party will not be fatal to the proeeedings as the court may determine the

issues as far as those issues relate to the parties actually before the court. He urged the court to resolve the issue in favour of the appellant.

In issue 4, learned counsel argued that it was an error for the court below to have agreed with the appellant that the trial court ought not to have struck out the case but proceeded to dismiss the case. He complained that the court below held in one breath that the case was properly constituted and in the next breath proceeded to dismiss it.

In issue 5, it was argued for the appellant that the trial court was wrong to have held that the panel was right to have proceeded with its investigation after it was served the motion for interlocutory injunction on 5 September 2012, and that the court below, should have voided the proeeedings. He relied on *Vaswani Trading Company v. Suvalaki & Company* (1971) 7 NSCC 692 at 694-699, (1972) 1 All NLR (Pt. II) 483, (1972) 12 SC 77, (2000) FWLR (Pt. 28) 2174 ; *Military Governor of Lagos State v. Ojukwu and Anor.* (1986) 1 NSCC (Vol. 17) (Pt. 1) 304 at 309-310,313-341, (2001 ) FWLR (Pt. 50) 1779, among others.

He urged the court to resolve the issues in favour of the appellant and to, (a) allow the appeal; (b) set aside the judgment of the Court of Appeal delivered on 19 July 2013 affirming the judgment of the trial court; (c) set aside the judgment of the trial court delivered on 19 March 2013; (d) hear the amended originating summons and (e) set aside the proceedings of the panel, exhibit HAG 25.

Dealing with issue 1 in his brief, leamed counsel for the respondents complained of inconsistencies in the paragraphs of the appellant's brief and argued that the appellant's arguments on fair hearing and failure of the court below to invoke its powers under section 16 of the Court of Appeal Act, are unrelated to issue No. 1 and ought to be ignored.

He referred to the complaint in issue 1, to the effect that the court below ought not to have dismissed the appeal, after finding that it was properly commenced by way of originating summons.

He reproduced a portion of the judgment wherein the court below had held:

> "In my humble view, notwithstanding the resolution of issue two in favour of the appellant, on a calrn view of issues 1 and 3, I hold this appeal lacks merit and is dismissed."

Learned counsel contended that the dismissal was based on a consideration of the merit of the case and not on the ground that it was commenced by way of originating summons. He urged die court to resolve the issue against the appellant.

In issue 2, learned counsel said that counsel for the parties addressed the court below before it struck out issues 1,2,4 and 5 of the

appellant's amended originating summons. In support of this contention, he referred to counsel for appellant's argument at page 493 of the record to the effect that the trial court could have struck out only the reliefs against non-parties. He contended that the court below, in striking out reliefs 1.2.4 and 5 did exactly what learned counsel for the applicant argued that the trial court should have done. He relied on *Effiom and Ors.* v. *Cross River State Independent Electoral Commission and Anor*. (2010) All FWLR (Pt. 552) 1610, (2010) 7 SCM 28 at 48, paragraphs A-B wherein this court held:

> "As I indicated above, this principle that the court ought not to raise an issue *suo motu* and decide upon it without hearing front the parties, applies mainly to issue of fact. In some special circumstances, the court can raise an issue of law or Jurisdiction *suo motu* and without hearing the parties, decide upon it."

He urged the court to resolve issue 2 in favour of the respondents.

In issue 3, learned counsel for the respondents deemed it necessary to reproduce and did reproduce the amended originating summons at pages 217-230 as well as sections 188(2), 271(4) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

He referred to the principie of fair hearing in section 36(1) of the Constitution and contended that questions 1,2,4 and 5 of the amended originating summons could not have been determined without the Taraba State House of Assembly and the acting Chief Judge of Taraba State as parties. He relied on *Panalpina World Transport Nigeria Limited v. J.B. Olandeen and Ors.; Okonta* v. *Philips* (2010) 18 NWLR (Pt.1225) 320 at 326-327, paragraphs E-A, (2011 ) AH FWLR (Pt. 568) 977; among others.

Learned counsel referred to the affidavit in support of the originating summons (as amended), particularly paragraphs 19-29 in answer to the complaint of denial of fair hearing. He said that the court below held that the appellant could not prove that he was denied the opportunity to present his defence from the contents of exhibit HAG 25 the record of proeeedings of the respondents.

He said the appellant did not appeal against the said finding and so, cannot raise same in this appeal. He relied on *Ogunyade v. Dawodu* (2007) 12 SCM (Pt. 2) 480 at 504-505; *Nworah v. Nwabucze* (2011) 17 NWLR (Pt. 1277) 699,(2011)CLR6, (2012) All FWLR(Pt. 613) 1824 paragraph D. He urged the court to resolve the issue against the appellant.

In issue 4, learned counsel referred to paragraph 7.1 atpage ] 9 of the appellant's brief and argued that the appellant misrepresented what the lower court said. He referred to page 575 of the record and said that the court below did not say: "I hold that his lordship's ought not to have ordered pleadings" and said that the lower court actually at the

said page, said that: "I hold that his lordship in the lower court ought to have ordered pleadings". He urged the court to resolve the issue against the appellant.

In issue 5, learned counsel denied the ascertion that the respondents ignored the motion for interlocutory injunction served on them and proceeded with the investigation. He said that the truth is that the court below said that the respondents were not served with the motion before it was withdrawn.

Learned counsel reproduced page 164, 167, 173, 180-181, 589 and 590, 439-441 (in parts) of the record and argued that the motion was withdrawn and struck out on 5 October 2012, contending that the lower court could not have made any order based on same. He urged the court to resolve issue 5 against the appellant. He urged the court to dismiss the appeal on all the issues.

In what was headed " appellant's reply brief to the respondent's brief of argument", learned senior counsel for the appellant opened up thus:

> "First issue: The respondents' counsel in his *usual rude language* has submitted at page 11 (paragraph 4.9) of his respondents' brief of argument that: 'The above submission of the appellant is embarrassingly contrary to what the Court of Appeal did..." *(Italics minefor emphasis)*

With all respect due to the learned silk, the expression "in the usual rude language" is not the language of learned colleague, definitely not that of a Senior Advocate of Nigeria. It is rude. Il is a gutter language better reserved for the lower breed without the law who operate in the motor parks. Even if the opposing counsel is rude, and I see no evidence of rudeness in the respondents' brief, the learned silk should have raised the issue before the court. He should not have succumbed to a temptation to be rude himself. In any case, he ought to realize that two wrongs do not make one right.

The learned senior counsel appeared to have been unaware of the essence of a reply brief. It is not for a repetition or improvement of arguments in the appellant's brief. Appellant need not repeat issues joined either by emphasis or expatiation: *Ochemaje v. State* (2008 ) All FWLR (Pt.435) 1661 S.C, (2008) 6-7 SC (Pt. 11) 1.

My noble lords, I have perused the record, and considered the arguments of learned counsel in their respective briefs on the fivc issues submitted by the appellant for resolution and adopted by the g respondents in their brief. The record shows, and the parties agreed, that the court below struck out reliefs No. 1, 2, 4 and 5 contained in the appellant's amended originating summons, leaving the appellant with his relief No. 3. The said relief, is hereby reproduced:

> "3. A declaration that the proceedings and report of the defendants are in breach of section 36(1) of the

Constitution of the Federal Republic of Nigeria, 1999 (as amended)."

Issue No. 4 in this appeal, culled from grounds 6, 7, and 8 of the grounds of appeal queries:

"4. Whether the Court of Appeal was right in dismissing the appeal when the court did not dismiss ali the reliefs. (Grounds of the amended originating summons)"

In effect, the complaint is that relief No. 3 in the amended originating summons, which was not dismissed along with reliefs No. 1,2,4 and 5, ought to have been determined or adequately determined by the court below before it can rightly determine the appeal one way of the other.

My lords, issue No. 4 herein, complaining of dismissal of the appeal notwithstanding the fact that relief No. 3, in the amended originating summons was sustained by the Court of Appeal is a threshold issue. The issue here is whether or not the court below, having struck out all the reliefs in the amended originating summons except relief No. 3, resolved the said issue before dismissing the appeal. This issue runs as a golden thread from the trial court, through the court below to this court.

In spite of apparent shortcoming in the appellant's brief, the issue is live before this court and being a threshold issue; it ought to be detennined one way or the other before any further step is taken in the determination of the appeal.

In my view, once an issue joined by the parties is clear from the record of proceedings and the briefs filed on behalf of the parties, the court, particularly the apex court, in order to do substantial justice in the matter, should not restrict itself to the way, manner and style of presentation of counsel's argument in the determination of the issue. This is the case in this appeal.

The question calling for resolution is whether or not the court below determined the question of denial of fair hearing and if it did, did it arrive at the correct conclusion?

To start with, No. 3 in the amended originating summons gave rise to issue No. 3 before the court below. Issue No. 4 in tliis appeal, complaining of the dismissal of the appeal even though the court did not strike out relief No. 3 in the amended originating summons is in the prevailing circumstances. a complaint that issue relating to relief No. 3 in the originating summons ought to have been resolved in favour of the appellant, or at all for that matter.

In my humble view, relief No. 3 in the amended originating summons is the crux of issue No. 3 before the court below and before this court, it is issue No. 4 on the dismissal of the appeal by the court below even though the said court Struck out reliefs Nos. 1,2,4 and 5 of the originating summons, leaving issue No. 3, a complaint arising from the relief No. 3 in the amended originating summons.

Again, the brief prepared and presented by the learned Silk for the appellant may not be a model but this court cannot afford to shut its eyes to obvious matters, which I have traced from the amended originating summons, through the court below to this court. It will amount to a return to the era of technical justice not to resolve the issue of denial of fair hearing raised by reference to relief No. 3 in the amended originating summons.

Now, how did the court below approach the issue of denial of fair hearing? At page 578 of the record, their lordships of the court below said: "Issue three cannot be determined without a careful consideration as to what transpired before the panel and the High Court of Justice, Taraba State. This is because, the entries in the report of the panel (exhibit "HAG 25") and the records of the lower court will be used to determine this issue."

At page 579 of the record, the court below held that:

> "Originating summons is usually heard on affidavit and documentary exhibits, together with written addresses..."

First, I will take exhibit HAG 25, the report of the panel. At page 581, the lower court held that:

> "Exhibit 'HAG 25' is the final report of the proceedings of the panel tendered by the applicant in the court below to prove lack of fair hearing..."

Having considered exhibit HAG 25, the lower court held that there was nothing therein to support the appellant's complaint of denial of fair hearing. It held that:

> "The appellant did not exhibit the entire proceedings of the panel to support his argument."

The court below remarked that the appellant who tendered exhibit HAG 25, discredited same as "incomplete and edited record of the panel..."

Also, it is noteworthy that the respondent relied on the incomplete and edited report, their own report, to say that the appellant did not prove he was denied fair hearing. It is not enough on the facts of this case, for the respondents merely to assert that the appellant was not denied fair hearing. They ought to have exhibited their report to show they complied with section 36(1) of the Constitution.

My lords, exhibit "HAG 25", the incomplete and edited record of the panel composed of the respondents, is a document prepared by the respondents who submitted same to the House of Assembly upon which the House removed the appellant and the respondents who were in a position to produce same in response to the appellants allegation of denial of fair hearing withheld it, knowing that the complete record would spell doom to their claim that they did not deny appellant fair hearing. Section 149(d) of the Evidence Act. The respondents did not disclaim exhibit HAG 25 but rather relied on the fact that it was

incomplete and edited, to say that the appellant did not prove that he was denied fair hearing.

On the undisputed facts of this case, die respondent having denied the specific allegation of denial of fair hearing in general terms, ought to have tendered the complete and unedited report of their own proceedings to disprove the allegation of the appellant. Further, in the pursuit of substantial, rather than technical justice, the trial court and the lower court ought to have ordered the respondents to produce the complete and unedited record of their proceedings, having in mind that the quest for justice cannot be reduced to a game of hide and seek. There is no suggestion that the complete and unedited record did not exist.

Between the appellant and the respondents, who would gain by reliance on exhibit HAG 25? It is the respondents, if they satisfied section 36(1) of the Constitution and not the appellant. The complete record was in issue and it is a fact within the knowledge of the respondents. Section 142 of the Evidence Act. Based on the facts of this case, I am of the view that exhibit HAG 25 was deliberately edited before or after it was submitted by the respondents to the House of Assembly and the editing was done with the sole aim to defeat the appellant's case on denial of fair hearing.

It was not real justice for the court below to dismiss the issue on the convenient ground that the contents of the exhibit did not support the appellant's case. Exhibit HAG 25 did not present the complete picture of what transpired at the panel and the issue cannot be resolved without the complete records. *Nwana v. Federal Capital Development Authority (2004)* All FWLR (Pt. 220) 1243, (2007) 4 SC (Pt. 11) .

Next, the court below held rightly in my humble view, that "originating summons is usually heard on affidavit." The affidavit evidence in the amended originating summons consists of the appellant's supporting affidavit and the counter-affidavit of the respondents.

Paragraphs 10-25 of the supporting affidavit are relevant and are hereunder reproduced:

> "19. The seven man panel was inaugurated on 24 September 2012, and they held their inaugural sitting; on 25 September 2012. during which sitting they ordered substituted service on me.
>
> 20. That on 28 September 2012, the defendants sat and I appeared under protest through, my counsel whom I only invited on phone and had not received full briefing from me.
>
> 21. That the defendants compelled me to continue, which I did under protest through my counsel and counsel to the panel called 5 witnesses.

22. That on 3 October 2012. I appeared through my counsel under protest having filed and served the defendants with summons in the case with a motion for injunction against all defendants.

22 (a) That the defendants compelled my counsel to commence my defence in my absence, which he did under protest and called one witness after which my counsel applied for an adjournment to enable me come and testify alongside with two other witnesses who were indisposed to attend the sitting on that day.

23. That on 3 October 2012, I was unable to attend sitting of the panel on grounds of ill-health and two of my witnesses, who were not in Jalingo had concluded arrangement to arrive Jalingo the same 3 October, to testify- before the panel on the next sitting of the panel.

24. That the defendants compelled my counsel to open my defence in my absence, which he did under protest and called one witness after which he asked for an adjournment to enable me attend the sitting and testify with my remaining two witnesses.

25. That upon the application for adjournment, the defendants unilaterally closed my case and proceeded to submit a report to the Taraba State House of Assembly, which they used to remove me from office the following morning of 4 October 2012.

26. That I was not allowed the opportunity to testify in my defence and call two other witnesses in my defence.

27. That I was not allowed full opportunity to prepare for my defence.

28. That I know as a fact that the defendants had three months within, which to finish their investigation and submit their report from September 24.

29. That I also know as a fact that on 3 October 2012 when the defendants unilaterally closed my case, the defendants still had two months and three weeks to finish their investigation and submit their report."

Paragraphs 3, 4, 14, 15, 16, 17, 18, 19, 20 and 26 of the joint counter-affidavit of the respondents are hereunder reproduced:

"3. That I was given a copy of the affidavit deposed to by the plaintiff in this matter in support of the originating summons dated 10 October 2012.

4. That I carefully perused through the said affidavit with particular reference to paragraphs 17, 18, 19, 20, 21, 22, 22(1), 23, 24, 25, 26, 27 and 29.

14. That after I was appointed with other defendants, the panel smoothly commenced sitting on 25 September 2012.
15. That on 28 September, the hearing commenced with the participation of all the parties including the plaintiff who appeared in person with his counsel and stayed for hours until about 6:00p.m when the sitting was adjourned to 3 October, which plaintiff applied for to open and close his defence.
16. That on 3 October, the plaintiff called one witness in his defence.
17. That counsel to the panel called five witnesses together while counsel to the plaintiff called a witness.
19. That the panel never at any time unilaterally closed the case of the plaintiff.
20. That the hearing of the panel naturally came to a close after the parties called their witnesses.
21. That I know as a fact that on 3 October the plaintiff was conspicuously absent from the panel sitting without any-tenable reason.
22. That I know as a fact that the allegation of breach of fair-hearing of the plaintiff by the panel... is not true.
23. That the proceedings of the panel was held in public, in an atmosphere conducive for all the parties to conduct their cases.
26. That myself and the other defendants are not in any position to say anything outside matters touching on the proceedings of the panel or directly involving any of us or all of us collectively."

In addition, and perhaps of a more substantial impact, is the "plaintiff's further affidavit in reply to the defendants' counter-affidavit led on 14 January 2013." Paragraphs 5 (in parts) 6, 8, 9, 11, 12 and 13 *v* relevant and are reproduced hereunder:

"5. ...That I read paragraphs 15, 16, 17, 18, 19, 20 and 21 of the defendants' counter-affidavit and state that, I never applied to open and close my case on 3 October 2012 but to possibly open my case on 3 October 2012. However, I was absent on panel on 3 October 2012 due to ill-health.

6. That I was informed by my lead counsel Yunus Ustaz Usman, SAN on 4 October 2012 in Abuja at about 2.45pm which information I verily believe to be true as follows:
   (a) That because of my ill-health condition, he applied for an adjournment but the adjournment was refused by the defendants.
   (b) That, he called the only witness that was in court on that day and applied for adjournment to enable me and two

other witnesses to attend and give evidence before the panel, but the defendant's sitting as a panel refused the application and said it was an attempt by the plaintiff to delay the proceedings and unilaterally closed my case.

(c) That, the defendants proceeded to submit their report to the Taraba State House of Assembly the next day in the early hours of 4 October 2012, without giving me and two of my witnesses an opportunity to testify. Whereupon the Taraba State House of Assembly immediately commenced sitting the same morning and removed me from office.

8. That, I know as a fact that Yunus Ustaz Usman, SAN who led a team of lawyers representing me before the panel applied orally on 28 September 2012 to the panel for the day to day record of proceedings of the panel, which application was officially recorded by the panel.
9. That I know as a fact that immediately the panel arose front it's sitting on 3 October 2012, it became impossible to access any of the members or secretary to the panel for the purpose of their record of proceedings, as the panel's secretariat was closed.
11. That 1 know as a fact that the panel never made available the said record of proceedings to me.
12. That I have seen the incomplete and edited record of the panel made available to the Taraba State House of Assembly and annexed to their counter-affidavit in suit No TRSJ/08/2012. A copy of same is hereby annexed and marked exhibit HAG 25.
13. That I know as a fact that the report of the defendant: as a panel to the Taraba State House of Assembly which is annexed as exhibit "HAG 25" does not reflect all that took place before the defendants as a panel on 3 October 2012."

The court below having found that the "entire record of proceedings of the panel are not before this court", and having stated the correct position that "originating summons are usually heard on affidavit and documentation exhibits...", ought to have resolved the issue on affidavit evidence before it.

Though the court below, held that the entire record of proceedings was not before it, it stated at page 582 of the record: "I shall now consider what transpired in the court below ". With profound respect to their lordships of the court below, this is a contradiction in terms. The only source, from which in determine and consider what transpired before the court below, that is the trial court, which had to determine the validity *vel non* of the proceedings of the panel, in the record of proceedings of the said panel, the same record of the court below was

not complete. Magicians do not sit to decide issues in our courts or panel.

In the absence of the complete record of the panel, neither the trial court, nor the court below, nor this court, can determine that the appellant was not denied fair hearing: *Edjekpo and 2 Ors* v. *Osia and 3 Ors*. (2007) All FWL.R (Pt. 361) 1617", (2007) 8 NWLR (Pt. 1037) 635. (2007) 3 SC 1 (Pt. 1)1. There is no way the court below, composed of human beings, could have determined without the complete record, what transpired in the court below or in the panel.

In pursuit of its duty to do substantial justice in the case, the effect of which transcends the parties therein and affects the entire voting population of Taraba State, the lower court ought to have called for the complete record. In the alternative, the court below should have complied with the principle it stated to the effect that originating summons ìs heard on affidavit. Rather than demand, the complete record of the proceedings of the panel, this court can, pursuant to its powers in section 22 of the Supreme Court Act, do what the court below ought to bave done but failed or neglected to do.

From the affidavit evidence reproduced above, the panel was sworn-in on 24 September 2012. from which date, the panel had three months to submtt its report to the Taraba State House of Assembly. The panel held its inaugural sitting the next day, 25 September 2012. At the sitting of the panel on 28 September 2012, applicant appeared by his counsel under protest that his said counsel had yet to receive full briefing from him.

On the said date and in spite of the protest of the appellant's counsel, the panel took five witnesses called by its counsel. On the next date, 3 October 2012, appellant was not in court due to ill-health. His two witnesses were to arrive Jalingo the same 3 October, to testify the next day. 4 October 2012. Appellant's counsel applied for adjournment based on the facts above, but his application was denied and he was compelled to open the defence.

Learned counsel called one witness and renewed his application for a continuance to call the remaining witnesses. Not only that the panel denied the application for adjournment, but unilaterally closed the appellant's case and submitted its report to the Taraba State House of Assembly, based upon which the House removed the appellant from office the monung of 4 October 2012. Based on the above, the appellant complained that he was not given the opportunity to present his defence under section 36 of the Constitution *(supra).*

In the joint counter-affidavit of the respondents. ìt was averred that the appellant was before the panehl till about 6:00pm "when the sitting adjourned to 3 October, which the plaintiff applied for to open and close his defence."... unchallenged and are deemed admitted by the respondetus who could have disputed same effectively but choose to dance around the facts.

In a further affidavit in reply to the respondents counter-afiìdavìt. the appellant not only repeated the facts in supporting affidavit but added more damaging facts relating to the conduct of the panel. He averred that the panel rose on 3 October 2012, and closed its secretariat and this made it impossible for him to access any member of the panel or its secretary. He could not obtain a copy of the record and the incomplete and edited record he exhibited was made available to the Taraba State House of Assembly. which it annexed to its counter-affidavit in suit No. TRS.T/80/2012.

The incomplete and edited report is marked exhibit HAG 25. There was no further counter-affidavit and again the respondents were deemed to have admitted the facts. which they could challenge but choose not to do so: *Nwogu* v. *Njoku* (1990) 3 NWLR (Pt. 140) 570.

While I am not concerned in this judgment with what happened before the Taraba State House of Assembly who are not parties to this appeal. I will like to mention in passing, the eloquent silence of the respondents on the incompleteness and edition oí their report. Exhibit "HAG 25" is a clear admission that the report they submitted to the Taraba State House of Assembly on 3 October 2012 upon which the House removed the appellant the next morning was incomplete and edited. or that it was edited after ns Submission and the respondents acquiesced in the fraud since they did not disclaim the incomplete record.

From the totality of the affidavit evidence, if not also by inference from exhibit HAG 25, the incomplete and edited record, which was not disclaimed by its authors, the respondents, the proceedings of the respondents were conducted in gross violation of the appellant's right under section 36(1) of the Constitution *(supra)*.

It provides:

> "Section 36(1): In the determination of his civil rights and obligations, including any question or determination by or against any govemment or authority, a person shall be entitle to a fair hearing within a reasonable time, in a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

In my view, the pirrase "within a reasonable tune" implies that the time for the determination of the matter should not be too short or too Iong, depending on the nature and facts of the case. Appellant said that he contacted his counsel by phone and had not briefed him fully and properly and this was not disputed by the respondents. On the undisputed facts, the appellant was denied the opportunity to prepare his defence or present his case before the panel composed of the respondents.

The respondents had the privilege to decide the fate of the appellant. They acted in ignorance of the fact that the system that bestowed the

privilege on them to recommend the removal of the appellant also exacts tolls for the privilege so bestowed.

My noble lords, the impact of what happened in the panel on the country's impeachment Jurisdiction is too alarming to contemplate.

Here is a panel that had three whole months to investigate the serious allegations of gross misconduct against the appellant, a Deputy Governor of the State. For no apparent reason for the indecent haste, the panel completed its sitting and prepared and submitted its report to the Taraba State House of Assembly between 28 September2012 and 3 October2012 - a period of six days inclusive of the first and last dates.

It is said that justice delayed is justice denied. The reverse is equally disturbing Justice rushed is a travesty of justice and a threat to the fabric that binds civilized society together. As if the rushed justice was not bad enough, the panel presented to the Taraba State House of Assembly an incomplete and edited report upon which the appellant was removed on 4 October 2012, the day following the submission of the report. At least, the respondents did not disclaim the incomplete and edited report.

From the undisputed facts of this case, one has the inevitable but disturbing impression that the panel composed of the respondents was a mere sham and that the removal of the appellant from office was a done deal as it were. In my view, the respondents, in their purported investigation of the allegation made against the appellant, merely played out a script previously prepared and handed over to the panel.

The most disturbing aspect of the kangaroo panel is that it was headed by a man described in the processes before this court as a Barrister - one Barrister Nasiru Audu Dangiri. The third member of the panel was also described as a Barrister - one Barrister R.J. Ikitausai. If these two men are actually members of the noble profession, to which your lordships and my humble self, by the grace of God, have the honour to belong, and not people who, for self-aggrandisement adopted the nomenclature "Barrister", the harm they have deliberately perpetrated in this matter is so serious that the attention of the Disciplinary Committee of the bar ought to be drawn to it.

Impeachment of elected politicians is a very serious matter and should not be conducted as a matter of course. The purpose is to set implication aside the will of the electorate as expressed at the polls. It has implication for the impeached as well as the electorate who bestowed the mandate on him. Whether it takes one day or the three months prescribed by law, the rules of due process must be strictly followed.

If the matter is left at the whims and caprices of politicians and their panels, a State or even the entire country could be reduced to the status of a Banana Republic. The procedure for impeachment and removal must be guarded jealously by the courts.

In conclusion, based on die undisputed facts in the affidavits of the appellant, I am of the considered view that the court below, ought to have resolved the issue of denial of fair hearing against the respondents and in favour of the appellant. The court below ought to have declared the entire proceedings of the panel made up of the respondent null and void and of no legal or factual effect whatsoever.

In consequence, I allow the appeal and vacate the judgment of the. Court of Appeal. I hereby order that the entire proceedings of the panel that purported at the instance of the Taraba State House of Assembly to investigate the allegation of gross misconduct made by the House against the appellant, the Deputy Governor of Taraba State, up to and including the incomplete and edited report relied on in removing the appellant by the house, be, and is hereby, declared null and void and of no legal or factual consequence whatsoever.

In effect, at all material times, the appellant, Alhaji Sani Abubakar Danladi remained and still remains the Deputy Governor of Taraba State and he is to resume his interrupted duties of office forthwith. Parties are to bear their respective costs.

Appeal allowed. Proceedings and report of tin panel declared null void and of no effect. Appellant to resume his duties forthwith, as the Deputy Governor of Taraba State.

**ONNOGHEN JSC:** I have had the benefit of reading in draft, the lead judgment of my learned brother, Ngwuta JSC just delivered I agree with the reasoning and conclusion that the appeal has merit and should be allowed.

The right to fair hearing is a fundamental right, which must be jealously guarded by the courts of law to protect other human rights.

Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), not only guarantees the right to fair hearing in the determination of the civil rights and obligations of a person, but orders that the said determination should be within a reasonable time.

Here is a case where the panel has three months within which to conduct and conclude its investigation of impeachable allegations against the appellant. The appellant requested for a four days adjournment on health grounds and to enable two of his witnesses attend and testify on his behalf but the panel refused the request, closed the case of appellant and prepared its report, which was submitted to the Taraba House of Assembly the next day. The said House proceeded on the same day of receipt of the report to remove appellant from office. In all, the proceedings lasted a period of about six days, out of the three months assigned. Why all the rush? One may ask. The rush in this case has obviously resulted in a breach of the right to fair hearing of appellant, which in turn nullifies the proceedings of the panel. Appellant was in the circumstances of the case, not given sufficient

time or opportunity' to present his defence to the charges levelled against him.

I therefore, allow the appeal of appellant, set aside the judgments of the lower, courts and restore appellant to office as the Depuly Govemor of Taraba State forthwith, I abide by the order as to costs.

**GALADIMA JSC**: This appeal has once again brought to the fore, the frequent impeachment of elected politicians, we have witnessed recent times, As serious as the matter is, the legislators have found a veritable weapon to exit the faces of those they don't like. It should not be so. The proccss of impeachment must be strictly and duly observed so as not to thwart the will of the electorate freely expressed at the polls.

What really was at stake at the courts below, that has made the aggrieved appellant to find his way to this court? The appellant's appeal ìs against the judgment of the Court of Appeal, Yola Division, which confirmed the judgment of the High Court of Taraba State, which struck out his originating summons, seeking to set aside his impeachment by the Taraba State House of Assembly.

The facts are simple. I need only recapitúlate same, as my learned brother, Ngwuta JSC, has ably set them bare in his lucid lead judgment. On 4 September 2012, members of the Taraba State House of Assembly laid before the Speaker of the House, a notice of complaint of gross misconduct against the appellant who was serving his second term in office as a Deputy Governor of the State. On that day, the complaint was served on him for his reply, which he promptly did and forwarded to the said House.

Pursuant to section 188(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the House of Assembly on 18 September 2012, passed a motion to investigate the allegations of gross misconduct against the appellant.

Consequently, the Speaker of the House of Assembly requested the Acting Chief Judge of the state to constitute a (seven) 7-member panel to investigate the allegations of gross misconduct against the appellant, pursuant to section 188(5) of the Constitution *(supra)*.

Agitated by the happenings, the appellant filed an originating summons, followed by a motion restraining the panel from investigating him. In spite of his motion, the panel went ahead with the investigation against him. The respondents concluded and submitted their report to the State House of Assembly.

In his amended originating summons. the appellant supported same with an affidavit of 34 paragraphs. The respondents filed a joint counter-affidavit of 14 paragraphs.

In a bid to prove the allegations of gross misconduct against the appellant. the panels called 5 witnesses and then closed its case. One witness was call ed by the appellant's counsel. who thereafter asked for 4 days adjouniment on health grounds to enable the appellant call two

more witnesses to testify on his behalf. He was denied of that opportunity, and his case was closed by the panel, which then submitted its report and this was adopted by the house and the appellant was removed from office.

Appellant. However, continued to prosecute his amended originating summons to which the respondents raised their preliminary objection, challenging the procedure. The learned trial judge sustained the objection and struck out the case.

The appellant was not satisfied by that decision and appellant further appealed to this court on eleven grounds. from which 5 issues were raised in his brief of argument as follows:

"1. Whether having held that the mode of commencement of the action *via* originating summons was proper in the circumstance of this case, the Court of Appeal was right to have dismissed the appeal on the ground that the suit was improperly commenced. (Grounds 1 and 2 of the appeal).

2. Whether the honourable learned justices of the court, were right in striking out issues 1, 2, 4 and 5 of the appellant's amended originating summons without giving the parties an opportunity to be heard. (Ground 3 of the notice and grounds of appeal).

3. Whether the Taraba State House of Assembly and the acting Chief Judge of Taraba State were necessary parties to the amended originating summons. (Grounds 4 and 5).

4. Whether the Court of Appeal was right in dismissmg the appeal when the court did not dismiss all the reliefs of the amended originating summons and when the self-same court held that the trial court ought to have ordered pleadings and tried the suit on pleading. (Grounds 6. 7 and 8 of the grounds of appeal).

5. Whether the court below was right when it held that the panel was right to have proeceded with its investigative activities and the forwarding of its report of the Taraba State House of Assembly, despite being served with the motion for interlocutory injunction on 28 September 2012 (Grounds 9, 10 and 11 of the notice and grounds appeal).

A close examination of the issues clearly shows that issue 4 is very crucial to the determination of this appeal. This issue, which is distilled from grounds 6, 7 and 8 of the grounds of appeal, is all about whether the Court of Appeal was right in dismissing the entire suit when relief 3 of the amended originating summons of the appellant was still a live issue before the court and not having been struck out along with reliefs 1, 2, 4 and 5 and also for the fact that the same court rather than strike out the appellant's suit, the trial court ought to have ordered pleadings.

The said relief 3 of the appellant's amended originating summons sought the following declaration:

"A declaration that the proceedings and report of the defendants are in breach of section 3 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)".

Section 36(1)(6)(b) and (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides as follows:

"36( 1 ). In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

6. Every person who is charged with a criminal offence shall be g entitled to:

(b) be given adequate time and facilities for preparation of his defence;

(c) Defend himself in person, or by a legal practitioner of his own choice;

(d) Examine in person, or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same condition as those applying to the witnesses called by the prosecution.

It is quite interesting to observe how the court below approached the issue of denial of fair hearing.

At pages 578-579 of the record, the court below stated that:

"Issue three cannot be determined without a careful consideration as to what transpired before the panel and the High Court of Justice, Taraba State. This is because, the entries in the report of the panel (exhibit "HAG 25") and the records of the lower court will be used to determine this issue".

"Every appeal court is bound by the records of a panel or of a lower court compiled and transmitted to it: *Allas* v. *Rhodes*(1961) 1All NLR (Pt. 2) 248 and *Julins Berger Nigeria Limited* **v.** *Femi* (1993 ) 5 NWLR (Pt. 295) 612 at 619 - 620 and *liarse Somner Nigeria Limited v. F.HA.* (1962) 15 CNJ 73".

At the middle of page 579 of the court further held thus:

"Originating summons is usually heard on affidavit and documentary exhibits, together with written addresses".

Considering exhibit "HAG 25", the report of the panel, at page 581, the lower court held as follows:

> "Exhibit "HAG 25" is the final report of the proceeds of the panel tendered by the applicant in the court below to prove lack of fair hearing".

At page 582, having considered exhibit "HAG 25", the lower court then concluded that:

> "The appellant did not exhibit the entire proceedings of the panel to support their (sic) argument".

Exhibit "HAG 25" was the incomplete and edited record of the panel prepared by the respondents, which they submitted to the House of Assembly. It is based on this document, which was submitted to the House of Assembly, that the appellant was removed. I cannot fathom why the respondents, who were in a position to produce same, withheld the complete record. Is it because, if produced, it would have been favourable to the appellant allegation that he was denied fair hearing? The respondents agreed that exhibit "HAG 25", though incomplete and edited, appellant could not prove that he was denied fair hearing. I agree that the respondents having denied the specific allegation of denial of fair hearing in general terms, ought to have tendered the complete and unedited report of their own proceedmgs to disprove the appellant's allegation. Respondents have given the impression that exhibit "HAG 25" was deliberately edited before or after it had been submitted to the House of Assembly with the sole purpose of defeating the appellant's complaint of denial of fair hearing....

From the foregoing paragraphs, the court below having found that the entire record of proceedings of the panel are not before it, and having stated the correct position that originating summons are "usually heard on affidavit and documentation exhibits", it ought to have resolved the issue on affidavit evidence before it.

I am of the view that. in the absence of the complete record of investigative panel, il becomes difficult for either the trial court below or this court, to justly determine that the appelant was not denied fair hearing.

In the circumstance, from the totality of the affidavit evidence and the fact that exhibit "HAG 25" is incomplete and an edited record, which was not disclaimed by the respondents, the proceedings of the respondents were conducted in gross violation of the appellant's right under section 36(1) of the Constitution *(supra).* He has been denied of his fundamental right of being fairly heard.

The court below ought to have resolved the issue of fair hearing against the respondents, but in favour of the appellant.

I am in total agreement with my learned brother, Ngwuta JSC, to allow the appeal. I set aside the judgment of the court below. The entire proceedings of the Taraba State House of Assembly, to investigate the allegation of gross misconduct made against the

appellant is hereby declared null and void and of no legal consequences whatsoever.

In effect, the appellant, Alhaji Sani Abubakar Danladi remains the Deputy Governor of Taraba State. He should resume as such forthwith.

**RHODES-VIVOUR JSC:** The issue in this appeal is:

> "Whether the investigative panel appointed by the acting Chief Judge of Taraba State in accordance with subsection (5) of section 188 of the Constitution afforded the appellant a fair hearing".

His lordship Honourable Justice N.S. Ngwuta JSC, found that the investigative panel denied the appellant fair hearing and proceeded to make the following pronouncements.

> "... I allow the appeal and vacate the judgment of the Court of Appeal".

His lordship proceeded to declare the proceedings before the investigative panel *null and void*' because, the appellant was denied fair hearing. Concluding, his lordship observed that the appellant still remains the Deputy Governor of Taraba State.

I agree with his lordship that the proceedings of the investigating panel is null and void because, the appellant was denied of fair hearing.

My lords, the position of the law is long settled that once there is a denial of fair hearing, that in effect is a breach of the *audi alteram partem* principle of the rules of natural justice, that is to say: please hear the other side.

The only order that can be made by an appeal court is one of retrial or rehearing before the investigative panel, to enable the appellant to be properly heard and not shut out. Consequently, the consequential order is wrong: *Otapo* v. *Sunmonu* (1987) 2 NWLR (Pt.58)587; *Salu* v. *Egeibon* (1994) 6 NWLR (Pt. 348) 23.

In view of the decision in SC. 418/2012, it is no longer necessary to go into the merits of this appeal.

**AKA'AHS** JSC: On 25 September 2012, the plaintiff now appellant, then Deputy Governor of Taraba State, challenged the process of his impeachment initiated by the Taraba State House of Assembly by originating summons, which was amended on 10 October 2012. One of the questions he formulated in the amended originating summons is:

Whether the right of fair hearing guaranteed to the plaintiff by virtue of sections 36(1) and 188(6) of the Constitution was not breached by the defendants as an investigation panel, which the plaintiff was not given enough opportunity to defend himself by testifying in person and calling two other witnesses. He then sought for the following reliefs:

1. A declaration that the purported appointment and swearing-in of the defendants as the Chairman and members of the investigation panel into the allegations of gross misconduct against Alhaji Sani Abubakar Danladi Deputy Governor of Taraba State is unconstitutional, null and void.
2. A declaration that the findings/report of the defendants if any to the Taraba State House of Assembly is null and void and of no effect whatsoever.
3. A declaration that the proceedings and report of the defendants are in breach of section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
4. An order of perpetual injunction, restraining the defendants as Chairman and members of the investigation panel from conducting any investigation into the allegations of gross misconduct against the plaintiff, Alhaji Abubakar Danladi, as the Deputy Governor of Taraba State.
5. An order setting aside the report of the defendants' (seven men panel of investigation into the allegations of gross misconduct against the plaintiff as the Deputy Governor of Taraba State), if any, submitted to the Taraba State House of Assembly.

The plaintiff deposed to a 34 paragraph affidavit in support of the amended originating summons, while the defendants deposed to a 27 paragraph joint counter-affidavit in opposition to the originating summons and this prompted the plaintiff to file a further-affidavit. The pith of the amendments in the affidavits for and against is that while the plaintiff alleged that he was not given adequate time to present his defence on the allegations of gross misconduct before the panel closed his case, the panel on the other hand, maintained that it did not unilaterally close the case of the plaintiff, but brought the proceedings to a close after the parties had called their witnesses. The learned trial judge found that the mode of commencement of the action was not proper and ruled that this was fatal to the plaintiff's case and struck out the case. Before striking out the case, the court said al pages 480 - 481 of the records:

> "With regards to the issue of denial of fair hearing alleged by the plaintiff against the panel in the course of its proceedings, this action was commenced by an originating summons, by its very nature, the procedure is only apposite in cases that involve little or no factual dispute, generally used in cases involving interpretation of statutes or some form of agreement, which admits of minimal factual contest. However, allegation of denial of fair hearing in a proceeding will invariably attract serious factual altercation as will require the court to pronounce and resolve same. The practice is usually that originating summons is not a

proper procedure where contentious issues of fact are to be resolved by the court: *Federal Ministiy of Internai Affairs v. Shugaba* (1982) 3 NCLR 915; *Keyamo* v. *Lagos State House of Assembly.* A writ of summons in the proper procedure for the commencement of this type of actions. Order 1, rule 2(1) and Order 1, rules 5, 6 and 7 of the Taraba State High Court (Civil Procedure) Rules, 2011".

Dissatisfied with the order striking out the suit, the plaintiff appealed to the Court of Appeal. The Court of Appeal (herein referred to as "the court below") in its judgment delivered on 19 July 2013, held that the trial judge should have ordered the parties to file pleadings instead of striking out the suit. Nonetheless, it dismissed the appeal based on exhibit "HAG 25".

In the further appeal of the appellant to this court, issues 1, 2 and 4 out of the five issues distilled are:

1. Whether having held that the mode of commencement of the action *via* originating summons was proper in the circumstance of this case, the Court of Appeal was right to hâve dismissed the appeal on the ground that the suit was improperly commenced. (Grounds 1 and 2 of the appeal).
2. Whether the honourable learned justices of the Court of Appeal below, were right in striking out issues 1, 2, 4 and 5 of the appellant's amended originating summons without giving the parties an opportunity to be heard. (Ground 3 of the notice and grounds of appeal).
4. Whether the Court of Appeal was right in dismissmg the appeal when the court did not dismiss all the reliefs of the amended originating summons and when the self-same court held that the trial court, ought to have ordered pleadings and tried the suit on pleading. (Grounds 6, 7 and 8 of the grounds of appeal).

Exhibit "HAG 25'' is the report the respondents submitted to the Taraba State House of Assembly, which the House considered to remove the appellant as Deputy Governor of Taraba State in accordance with section 188(9) of the Constitution. The appellant had challenged the proceedings of the panel on the ground that he was not given fair hearing. In paragraphs 23. 24, 25 and 26 of the affidavit in support of the amended originating summons, the appellant deposed to the following facts:

"23 That on 3 Oetoher20I2, I was unable to attend sitting of the panel on grounds of ìll-health and two of my wimesses who were not in Jalingo had concluded arrangement to arrive Jalingo the same 3 witnesses to testify before the panel on the next sitting of the panel.

24. That the defendants compelled my counsel to open my defence in my absence, which he did under protest and

called one witness after which. he asked for an adjoumment to enable me attend the sitting and testify with my remaining two witnesses.

25. That upon the application for adjournment. the defendants unilaterally closed my case and proceeded to submit a report to the Taraba State House of Assembly, which they used to remove me from office the following morning of 4 October 2012.
26. That, I was not allowed the opportunity to testify in my defence and call two other witnesses in my defence.

The sixth respondent deposed to the counter-aftidavit on behalf of all the respondent, in which they denied the appellant's assertions and maintained that the panel did not unilaterally close the plaintiff's case. She made the following averments in paragraphs 4, 15, 16, 17, 19, 20, 21 and 22 of the counter-affidavit:

"4 That, I carefully perused through the said affidavit with particular reference to paragraphs 17, 18, 19, 20, 21, 22, 22(a), 24, 25, 26, 27 and29.

15. That on 28 September, the hearing commenced with the participation of all the parties including the plaintiff, who appeared in person with his counsel an stayed for hours until about 6:00p.m., when the sitting was adjourned to 3 October, which the plaintiff applied for to open and close his defence.
16. That on 3 October, the plaintiff called one witness in his defence.
17. That counsel to the panel called five witnesses together, while counsel to the plaintiff called a witness.
19. That the panel, never at any time unilaterally closed the case of the plaintiff.
20. That, the hearing of the panel naturally came to a close after the parties called their witnesses.
21. That I know as a fact that on 3 October, the plaintiff was conspicuously absent from the panel sitting without any tenable reason.
22. That I know as a fact, that the allegation of breach of fair hearing of the plaintiff by the panel made up of my humble self and other defendants is not true".

The counter-affidavit prompted a response from the plaintiff/ appellant, who stated in paragraphs 6, 8, 9, 11, 12 and 13 of the further affidavit in reply to the defendants counter-affidavit filed on 14 Januarv 2013 the following facts:

"6. That I was informed by my lead counsel, Yunus Ustaz Usman SAN, on 4 October 2012, in Abuja at about 2.45p.m,, which information, I verily believed to be true as follows:

(a) That because of my health condition, he applied for adjoumment but the adjoumment was refused by the defendants.
(b) That he called the only witness that was in court on that day, and applied for adjoumment to enable me and two other witnesses to attend and give evidence before the panel but the defendants sitting as a panel, refused the application and said it was an attempt by the plaintiff to delay the proceedings and unilaterally close my case.
(c) That, the defendants proceeded to submit their report to the Taraba State House of Assembly the next day, in the hours of 4 October 2012, without giving me and two of my witnesses an opportunity to testify. Whereupon the Taraba State House of Assembly immediately commenced sitting the same morning and removed me from office.

8. That, I know as a fact the Yunus Uztas Usman (SAN) who led a team of lawyers representing me before the panel applied orally on 28 September 2012, to the panel for the day to day record of proceedings of the panel, which application was officially recorded by the panel.
9. That, 1 knows as a fact that immediately the panel arose from its sitting on 3 October 2012, it became impossible to access any of the members or secretary to the panel for the purpose of their record of proceeding: as the panel's secretariat was closed.
11. That, 1 knows as a fact that the panel never made available the said record of proceedings to me.
12. That, I have seen the incomplete and edited record of the panel made avaiiable to the Taraba State House of Assembly and annexed to their counter-affidavit in suit No. TRSJ/80/2012. A copy of same is hereby annexed and marked exhibit: "HAG 25".
13. That, I know as fact that the report of the defendants as a panel to the Taraba State House of Assembly, which is annexed as exhibit HAG 25 does not reflect all that took place before the defendant as a panel on 3 October 2012".

With this state of affairs, it was clear to everybody including the learned trial judge that oral evidence had to be called before the suit could be decided either in favour of or against the appellant. But the learned trial judge hid under the cover that the necessary parties were not before the court and procceded to strike cut the case.

The appellant's appeal to the court below was on the issue of lack of fair hearing, which the complaint was made in ground 3, from which issue 3 was formulated as follows:

> "Whether the honourable learned trial judge ought to have set aside the proceedings and the report of the seven man panel, which investigated the allegations of gross, misconduct against the appellant for want of fair hearing".

The court below completely went off the mark, when it held that it was the conduct of the Taraba State House of Assembly and the acting Chief Judge in the discharge of their respective functions that were being called into question by the appellant in the amended originating summons. At pages 559 - 560 of the records the court below reasoned thus:

> "The Taraba State House of Assembly and the acting Chief Judge of Taraba State each performed their respective functions and duties as thrust upon them by the Constitution of the Federal Republic of Nigeria, 1999 (as altered). Therefore, it is the acts of conduct of the Taraba State House of Assembly and the acting Chief Judge that were being called into question by the appellant in the amended originating summons. This is because, the panel did not come into existence from the blues, if the lower court interpreted the questions in favour of the appellant, the declarations and injunctive reliefs would have been made against the Taraba State House of Assembly and the acting Chief Judge of Taraba State in their absence".

Granted that members of the Taraba State House of Assembly could proceed under section 188(2) to present a notice of allegation of gross misconduct by the appellant to the Speaker who in turn served the notice on the appellant and proceeded to write to the Chief Judge or acting Chief Judge (as the case may be), to set up the seven-man panel to investigate the allegation, is the conduct of the seven-man panel immune from being challenged by the appellant? The answer is that it can be challenged: *Dapianlong v. Dariye* (No. 2) (2007) All FWLR (Pt. 373) 81, (2007) 8 NWLR (Pt. 1036) 332. One of the questions for determination in the amended originating summons was:

> "Whether the right of fair hearing guaranteed to the plaintiff by virtue of section 36(1) and 188(6) of the Constitution was not breached by the defendants as an investigating panel, when the plaintiff was not given enough opportunity to defend himself by testifying in person and calling two (2) other witnesses".

Reliefs 2, 3, 4 and 5 were specifically directly targeted at the panel of investigation, which are:

2. A declaration that the findings/report of the defendants, if any, to the Taraba State House of Assembly is null and void and of no effect whatsoever.

3. A declaration that the proceeding and report of the defendants are in breach of section 36(6) of the 1999 Constitution of the Federal Republic id Nipcua in-amended).
4. An order of perpetual injunction, restraining the defendants as Chairman and members of the investigation panel from conducting any investigation into the allegations of gross misconduct against the adequate opportunity to call their witnesses that prompted the appellant to depose to the further affidavit and categorically stated that exhibit HAG 25, which the respondents annexed to the counter was not the proceedings of the investigation panel.

The burden of producing the proceedings of the investigative panel was on the respondent who had asserted that both parties were afforded adequate opportunity to call their witnesses. The appellant said he could not obtain the proceedings because, the respondents were nowhere to be found after the proceedings of 3 October 2012, and all that happened was that they submitted exhibit HAG 25 on 4 October 2012, which the Taraba State House of Assembly considered the same day to remove the appellant as Deputy Governor of Taraba State.

I do not think that section 188(10) of the Constitution comes into play to oust the jurisdiction to the courts from looking into allegations of lack of fair hearing in impeachment proceedings. The section states:

> "188(10) No proceedings or determination of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court".

In enacting this provision, the framers of the Constitution of the Federal Republic of Nigeria, 1999 could not have contemplated that an infraction of a fundamental right as provided under section 36(6) would lack a remedy: *Dapialong v. Dariye* at page 415. The right to fair hearing of a person being investigated for gross misconduct is implicit in section 188(6) of the Constitution. Where impeachment proceedings have been challenged, the party who initiated the impeacliment always seek to take umbrage under section 188(10) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). If our democracy must be sustained and grow, evervbody must abide by the rules of law and ensure that all procedures laid down for taking any action are scrupulously complied with.

The issue of lack of f air hearing in this appeal stuck out as a sore thump but, which the court below failed to treat and come to a conclusion.

In the result, I find that the appeal has merit and I agree with my learned brother, Ngwuta JSC that it should be allowed. The proceedings and report of the panel set up to investigate the appellant for gross misconduct are hereby declared null and void and of no legal or factual consequence whatsoever. The judgrnems of the trial court and Court of

Appeal are hereby set aside. The appellant, Alhaji Sani Abubakar Danladi remained and still remains the Deputy Govemor of Taraba State and should resume the functions of this office forthwith. Parties are to bear their respective costs.

**KEKERE-EKUN JSC:** This is an appeal against the judgment of the Court of Appeal, Yola Division, delivered on 19 July 2013, affirming the judgment of the High Court of Taraba State, Jalingo Judicial Division delivered on 19 March 2013, decliningJurisdiction and striking out the appellant's suit.

The facts of the case as can be gleaned from the record of proceedings and the briefs of argument of the parties are as follows:

The appellant was the Deputy Governor of Taraba State from May 2007 to May 2011. He was re-elected and look another oath of office on 29 May 2011. On 3 September 2012, certain members of the Taraba State House of Assembly initiated the process of impeachment against him by signing a notice of allegation of gross misconduct, which was laid before the House of Assembly the following day, 4 September 2012. Upon being served with the notice, the appellant filed a reply dated 12 September 2012. On 18 September 2012, the House sat and passed a motion pursuant to section 188(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), that the allegations should be investigated. The Speaker requested the acting Chief Judge of the State to constitute a seven-man panel to investigate the allegations. The panel was duly constituted and members sworn in on 24 September 2012. On the sanie day, the appellant filed an originating summons before the High Court of Taraba State, against the Chairman and members of the panel seeking two reliefs. He also filed a motion for injunction to restrain the defendants from conducting any investigation into the allegations against him. It was the appellant's contention that notwithstanding the pendmg suit and motion, the members of the panel proceeded to conduct their investigation.

The appellant appeared under protest through his counsel. At the hearing, 5 witnesses were called to prove the allegations against him. The appellant was absent. However, one witness was called in his defence, after which his counsel sought for adjourtiment of four days to enable him testify and call his remaming witnesses on grounds of ill-health. The request was refused. The panel closed the case for the defence, rendered its decision the same day and forwarded its report to the House of Assembly. Based on the report, the appellant was removed from office the following day, 4 October 2012.

As a result of these developments, the appellant sought and was granted leave to amend his originating summons in order to raise more questions and seek additional reliefs. The amended originating summons is dated 10 October 2012, but filed on 15 October 2012. The appellant sought the determination of the following questions:

1. Whether the defendants as the investigating panel into the allegations of gross misconduct against the plaintiff as Deputy Governor of Taraba State can proceed with the investigation and submit a report under section 188(7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), irrespective of the violation of section 188(2), (3), (4) and (5) as well as section 91 of the Constitution.
2. Whether the seven-man panel (defendants) can be said to have been validly constituted under section 188(5) of the Constitution, when the provision of section 188(2) to (5) of the Constitution has not been compiled with, for the purpose of commencing and sustaining an impeacliment proceedings.
3. Whether in view of the indictment of one of the members of the panel, Hajiya Aishatu Mohammed the sixth defendant, by the judicial commission of inquiry into the finances management and expenditure of the Ministry/Bureau for Local Govemments and Chieftaincy Affairs between May 2003 and May 2007; the panel can be said to have been validly constituted in view of section 188(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. Whether having regard to section 271(4) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the defendants can be said to have been validly appointed and sworn in as members of the investigation panel pursuant to section 188(5) of the Constitution on 24 September 2012, when there was no competent Chief Judge to perform those functions in Taraba State.
5. Whether the right to fair hearing guaranteed to the plaintififf by virtue of section 36(1) and 188(6) of the Constitution was not breached by ihe defendants as an investigation panel, when the plaintiff was not given enough opportunity to defend himself by testifying in person and calling two other witnesses'".

He sought the following reliefs:

1. A declaration that the purported appointnient and swearing-in of the defendants as the Chaimian and memhers of the investigating panel into the allegations of gross misconduct against Alhaji Sani Abubakar Danladi, Deputy Governor of Taraba State is unconstitutional, null and void.
2. A declaration that the findings/report of the defendants, if any, to the Taraba State House of Assembly is null and void and of no effect whatsoever.

3. A declaration that the proceedings and report of the defendants are in breach of section 36(6) of the Constitution of the Federal Republic of Nigeria. 1999 (as amended).
4. An order of perpetual injunction, restraining the defendants as Chaimian and members of the investigation panel front conducting any investigation into the allegations of gross misconduct against the plaintiff, Alliaji Sani Abubakar Danladi as the Deputy Governor of Taraba State.
5. An order setting aside the report of the defendants (seven-man panel of investigations into the allegations of gross misconduct against the plaintiff as the Deputy Govemor of Taraba State), if any, submitted to the Taraba State House of Assembly.
6. And for such further order(s) as this honourable court may deem fit to make in the circumstance.

The 6th defendant entered a conditional appearance and filed a motion on notice dated 1 October 2012, for an order dismissing or striking out the suit on the following grounds:

i. That it was not properly constituted;
ii. That no cause of action was disclosed against the defendants;
iii. That the subject matter of the suit is not justiciable; and
iv. That the suit was an abuse of the court's process.

The trial court ordered that the objection would be taken along with the amended originating summons. Consequently, the remaining defendants aligned themselves with the 6th defendant's submissions in support of the objection. The trial court upheld the preliminary objections challenging its jurisdiction to entertain the suit on two grounds: that the suit was improperly instituted by originating summon, rather than by writ of summon, having regard to what it considered to be the contentious nature of the claims and relief's sought; and that proper parties, namely the acting Chief Judge and the Taraba State House of Assembly were not joined in the suit. Consequently, it struck out reliefs 1, 2, 4 and 5 of the amended originating summons for being incompetent.

The appellant was dissatisfied with the decision and filed a notice of appeal, dated 19 March 2013, containing three grounds of appeal. Three issues were distilled for determination as follows:

1. Whether having regard to the fact that no order or relief is sought against either the acting Chief Judge or the Taraba State House ofAssembly, theirnon-joinder is fatal to the plaintiff's suit.
2. Whether the action, being commenced by originating summons is incompetent.
3. Whether the honourable learned trial judge ought to have set aside the proceedings and the report of the seven-man

panel, which investigated the allegations of gross misconduct against the appellant for want of fair hearing.

In a considered judgment delivered on 19 March 2013, the lower court resolved issues 1 and 3 against the appellant but resolved issue 2 in his favour. On the whole, the court concluded that the appeal lacked merit and accordingly dismissed it.

Dissatisfied with the decision, the appellant has appealed to this court on an 11 grounds of appeal. The parties duly filed and exchanged briefs of argument in compliance with the rules of this court. The appellant distilled 5 issues for détermination:

1. Whether having held that the mode of commencement of the action *via* originating summons was proper in the circumstance of this case, the Court of Appeal was right to have dismissed the appeal on the ground that the suit was improperly commenced. (Grounds 1 and 2 of the appeal).
2. Whether the honourable learned justice of the court below were right in striking out issues 1, 2, 4 and 5 of the appellant's amended originating summons without giving the parties an opportunity to be heard. (Ground 3 of the notice and grounds of appeal).
3. Whether the Taraba State House ofAssembly and the acting Chief Judge of Taraba State were necessary parties to the amended originating summons. (Grounds 4 and 5).
4. Whether the Court of Appeal was right in dismissing the appeal, when the court did not dismiss all the reliefs of the amended originating summons, and when the self-same court held that the trial court ought to have ordered pleadings and tried the suit on pleadings. (Grounds 6, 7 and 8 of the grounds of appeal).
5. Whether the court, below was right, when it held that the panel was right to have proceeded with its investigative activities and the forwarding of its report to the Taraba State House of Assembly. despite being served with the motion for interlocutory injunction on 28 September 2012. ( Grounds 9. 10. and 11 of the notice and grounds of appeal).

The respondent adopted the appellant's issues.

Having critically exammed (he issues formulated by the appellant, I am inclined to agree with my Iearned brother. Ngwuta JSC, in the lead judgment, with whose reasoning and conclusions, I fully agree that the issue that is crucial to the determination of this appeal is issue 4. The issue is concerned with, whether the lower court was right in dismissing the entire suit, notwithstanding the fact that relief 3 of the amended originating summons was still a live issue before the court, not having been struck out along with reliefs 1, 2, 4 and 5 and in view

of the fact that the same court held, that rather than strike out the appellant's suit, the trial court ought to have ordered pleadings.

Relief 3 of the amended originating summons sought:

> "A declaration that the proceedings and report of the defendants are in breach of section 36(6) of the Constitution of the Federal Republic of Nigeria, 1999 ( as amended)".

Section 36(6) (b), (c) and (d) of the Constitution of the Federal Republic of Nigeria, 1999 provides:

> "36(6) Every person who is charged with a criminal offence shall be entitled to:
>
> (b) be given adequate time and facilities for the preparation of his defence;
>
> (c) defend himself in person or by legal practitioners of his own choice;
>
> (d) Examine in person or by his legai practitioners, the witnesses called by the prosecution, before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same condition as those applying to the witnesses called by the prosecutton".

The appellant's complaint was that the respondents rejected an application for an adjouniment of four days made by his counsel on 3 October 2012. based on his (appellant's) ill-health and his desire to call two other witnesses. The lower court referred to this issue, while resolving issue 2 at pages 569 - 576 of the record. On the submissions of learned counsel on both sides, the court stated thus:

> ''The learned silk submitted on issue two that a complaint on fair hearing made by the appellant is to be decided by a cursory look at the report of the panel annexed to the respondent's counter-afftdavtt as exhibtt "HAG 25" at pages 445 - 457 of the record citing *Uzodinma* v. *Izunaso and 2 Ors*. (2011) 17 NWLR (Pt 1275) 30 at 75 - 76. That, even if the originating summons was not the proper procedure in commencing the proceedings, the learned trial judge should have ordered pleadings rather than striking out the process. *The learned trial judge was seised of the proceedings of the panel, from which he could have arrived at the decision that the appellant was denied fair hearing...*
>
> The respondents' learned counsel replied that they did not annex exhibit "HAG 25" to their counter-afftdavit. The said exhibit emanated from the appellant's further-affidavit. Counsel referred to pages 340 - 343, 431-432 and 446-459 of the printed record. 1t was contended that there were conflicts in the affidavits filed by the parties. Originating summons

was not the appropriate procedure to have commenced the proceedings when fair hearing was a contested issue before the lower court. This is more so that the appellant described exhibit "HAG 25" as "incomplete and an edited record of the panel and that it did not reflect all that took place before the respondents on 3 October 2012". That the only conclusion to be reached is that exhibit "HAG 25" was unreliable and untenable. This court should affirm the holding of the lower court.

Counsel further submitted that the lower court did not just strike out the amended originating summons on the grounds that the proceedings were wrongly instituted. The learned trial judge addressed the issue of fair hearing at pages 480 - 481 of the printed record. It was the cumulative deficiencies highlighted by the learned trial judge, that led to the striking out of the amended originating summons. For instance, it was held by the learned trial judge at page 472 and 475 - 479 that no cause of action was disclosed against the respondents because the rights of the appellant under section 188 of the Constitution *(supra),* were not violated by the respondents".

After summarizing the submissions of learned counsel, the lower court held thus at page 573 of the record:

"In considering whether a claimant should commence proceedings by originating summons or not, the court should examine the main issue before the court, the facts in the affidavits, the documentary exhibits, the questions for determination or construction, the declaratory and injunctive reliefs sought against the respondents but exclude facts that are not relevant to the determination of the main issues in controversy. If the learned trial judge had adopted this methodology, his lordship would have found that as appellant was in the main seeking the interpretation of sections 188 (1) to (11) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the most appropriate procedure to be adopted was to commence the proceedings by originating summons...

"I hold that his lordship in the lower court ought to have ordered pleadings".

This issue was accordingly resolved in favour of the appellant. In considering issue 3 for determination, the lower court noted that learned counsel for the appellant had urged the court to invoke the provisions of section 16 of the Court of Appeal Act, to evaluate the evidence relating to denial of fair hearing and enter judgment for his client. The court held that the issue could not be determined without a careful consideration of what transpired before the panel and the trial court but found itself unable to conduct the exercise on the ground that exhibit

"HAG 25", by the appellant's showing is incomplete and edited. It held the view that the appellant had failed to adduce evidence to substantiate the allegation of denial of fair hearing.

Now the question is, whether having found that the suit was properly instituted by way of originating summons and having not struck out relief 3 of the amended originating summons, which raises the issue of fair hearing, the lower court ought to have dismissed the suit.

There is no doubt that fair hearing is the foundation of any adjudication. It is a rule of natural justice enshrined in section 36(1) and (6) of the Constitution of tire Federal Republic of Nigeria, 1999 (as amended), that requires that the other side be heard. Any proceedings conducted in violation of a party's right to fair hearing will amount to a nullity, no matter how well conducted: *Tukur v. Government of Gongola State* (1989) 9 SCNJ 1, (1989) 4 NWLR (Pt. 117) 517; *Adigun and Ors. v. Attorney-General, Oyo State and Ors.* (No. 2) (1987) 2 NWLR (Pt. 56) 197; *Federal Republic of Nigeria v. Akubueze* (2010) 17 NWLR (Pt. 1223) 525 at 537, paragraphs E - F, (2011) All FWLR (Pt. 555) 204; *Victino Fixed Odds Limited v. Ojo and Ors.* (2010) All FWLR (Pt. 524) 25, (2010) 8 NWLR (Pt. 1197) 486 at 499 - 500, paragraphs G - *B; J.S.C. Cross River State v.Young* (2013) 11 NWLR (Pt. 1364) 1 at 21. paragraphs F - H. Since it goes to the root of the case, it is an issue that must be considered and resolved before delving into any other issue in the suit. In the instant case, it was the sole surviving issue before the court.

Learned counsel for the respondents addressed the issue of fair hearing in paragraphs 6.25 - 6.29 of his brief while responding to issue 3. It is contended on behalf of the respondents that the appellant failed to appeal against the finding of the lower court that he failed to prove the allegation of denial of fair hearing based on exhibit "HAG 25" and that he could therefore, not be heard to complain of the alleged breach before this court. Learned counsel argued that the appellant is deemed to have conceded the point.

With due respect to learned counsel, it would not be correct to say that the appellant has conceded the point. This is because, the crux of the complaint in issue 4 is that having found that relief 3 was competent, the court ought not to have dismissed the entire suit.

The position of the lower court was that the allegation of denial of fair hearing could not be determined based on the incomplete and edited record of proceedings of the panel, exhibit HAG 25, upon which the appellant relied. The issue is: was this a situation in which the lower court ought to have invoked its powers under section 16 of the Court of Appeal Act? It was held in: *Dapianlong v. Dariye* (No. 2) (2007) All FWLR (Pt. 373) 81, (2007) 8 NWLR (Pt. 1036) 332 at 405, paragraphs C - E per Onnoghen, JSC that:

"The powers conferred on the Court of Appeal by section 16 of the Court of Appeal Act are exercisable by that court, where certain fundamental conditionalities are met, such as:

(a) Availability of the necessary materials to consider and adjudicate on the matter;
(b) The length of time between the disposal of the action; and
(c) The interest of justice by eliminating further delay that would arise in the event of remitting the case back to the trial court for hearing and the hardship such an order would cause on either or both parties to the case: *Inakoju v. Adeleke* (2007) All FWLR (Pt. 353) 3, (2007) 4 NWLR (Pt. 1025) 427 at 691 - 692."

In the instant case, the lower court found rightly in my view, that the suit was properly commenced by originating summons.

Where a suit is commenced by originating summons, it is fought on the basis of affidavit evidence. In the instant case, the conditionalities for the invocation of section 16 of the Court of Appeal Act were present. Since all the neecssary materials were before the court. It ought to have invoked its powers under section 16, to consider relief 3 on its merits, and in order to eliminate further delay. At the worst, the parties could have been ordered to adduce oral evidence, or additional documentary evidence in the event of contradictory averments requiring further elucidation.

By virtue of section 22 of the Supreme Court Act, this court is in as good a position as the lower court to consider relief 3, of the amended originating summons on its merits.

The relevant paragraphs of the affidavit in support of the amended originating summons, the counter affidavit and the plaintiff's further-affidavit in reaction to the counter-affidavit have been fully reproduced in the lead judgment. I do not deem it necessary to repeat the exercise. Suffice it to say that the appellant in his supporting affidavit was very specific in the way and manner in which his right to fair hearing was allegedly breached by the respondents. In paragraphs 23-27 of the supporting affidavit, the appellant narrated how his counsel was compelled to open his defence in his absence on 3 October 2012, and take one witness; how the respondents refused his counsel's application for a short adjoumment to enable him testify. The complete record of proceedings of the panel, if produced, would have been unfavourable to the respondents.

Apart from this, a critical examination of the timeline in this matter points to undue haste to conclude the matter on the part of the respondents. By the provisions of section 188(7)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the panel was required to submit its report within three months of its appointment. In the instant case, the panel was swom-in on 29 September 2012 and commenced sitting on 25 September 2012. On 28 September 2012, the

panel took the evidence of five witnesses, notwithstanding the fact that appearance on behalf of the appellant was on protest and the respondents were informed that learned counsel for the appellant had not been fully briefed. The matter was then adjoumed to 3 October 2012, on which date, the appellant through his counsel, sought an adjoumment of four days on account of ill-health, to enable him testify and call two other witnesses who were already on their way to Jalingo. And yet surprisingly, the case was concluded and a report rendered and submitted to the Taraba State House of Assembly the same day. Based on the report, the appellant was removed the following day, 4 October 2012.

Having regard to the fact that the respondents had three months within which to submit their report, there was no reason why the appellant could not have been given the four days he asked for to enable him properly defend the allegations against him. Notwithstanding the incompleteness of exhibit "HAG 25". The factors enumerated above suggest that the respondents were acting out a predetermined script to achieve a pre-detemined end.

It has been said by this court time and tune again that politics should not be a do or die affair. What would it have cost the respondents to grant the appellant those few days?

Even if the outcome would have been the same, they would nave fulfilled all righteousness. The well-worn adage is that "justice must not only be done, it must be seen to have been done." Would an ordinary man observing the proceedings in this case conclude that justice was done? I venture to answer in the negative. It follows that the proceedings of the panel conducted in violation of the appellant's right to fair hearing amounts to a nullity and cannot be allowed to stand.

For these and the fuller reasons well articulated in the lead judgment. I also agree, that the leamed justices of the court below, ought to have resolved the issue of denial of fair hearing in favour of the appellant. The appeal is accordingly allowed. The judgment of the Court of Appeal, Yola Division, delivered on 19 July 2013, is hereby set aside. I also declare that the proceedings and report of the panel set up at the instance of the Taraba State House of Assembly to investigate allegations of gross misconduct against the appellant, are null and void and of no effect. Consequently, the appellant Alhaji Sani Abubakar Danladi remained and still remains the Deputy Governor of Taraba State. He is to resume his duties forthwith, as Deputy Governor of Taraba State.

The parties shall bear their respective costs in the appeal.

**OKORO JSC:** I have had the privilege of reading in draft, the illuminating judgment of my learned brother, Ngwuta JSC, just delivered. I agree with the reasons adduced and the conclusion, that this

appeal is meritorious and ought to be allowed. The facts of this case have been ably marshalled by my learned brother in the lead judgment and I do not intend to repeat the exercise here. I rather adopt the facts as therein contained.

Clearly, the pivotal issue in this appeal turns on whether the appellant was given fair hearing by the seven-man panel constimted to examine the allegations of misconduct leveled against him, which led to hiis removal as Deputy Governor of Taraba State. It is pivotal because, the principle of fair hearing is fundamental to all court procedure and proceedings (including panels and tribunals) and like Jurisdiction, the absence of it vitiates the proceedings no matter how well conducted: *Atano v. Attorney-General, Bendel State* (1988) 2 NWLR (Pl. 75) 201; *Salu v. Egeibon* (1994) 6 NWLR (Pt. 348) 23; *Ceekay Traders* v. *General Motors Limited (1992)* 2 NWLR (Pt. 222) 132.

In this case, the respondents were given three months within, which to conduct the exercise. In the affidavit of the appellant in support of the originating summons, and in paragraphs 23 to 29, thereof, the appellant states clearly the reasons why he says he was denied fair hearing as follows:

23. That on 3 October 2012, I was unable to attend sitting of the panel on grounds of ill-health and two of my witnesses who were not in Jalingo had concluded arrangement to arrive Jalingo the same third to testify before the panel on the next sitting of the panel.
24. That the defendants compelled my counsel to open my defence in my absence, which he did under protest and called one witness after which, he asked for an adjournment to enable me attend the sitting and testify with my remaining two witnesses.
25. That upon the application for adjournment, the defendants unilaterally closed my case and proceeded to submit a report to the Taraba State House of Assembly, which they used to remove me from office the following morning of 4 October, 2012.
26. That I was not allowed the opportunity to testify in my defence and call two other witnesses in my defence.
27. That I was not allowed full opportunity to prepare for my defence.
28. That I know as a fact, that the defendants had three months within, which to finish their investigation and submit their report from 24 September.
29. That I also know as a fact, that on the third day of October 2012, when the defendants unilaterally closed my case, the defendants still had two months and three weeks to finish their investigation and submit their report.

From the above paragraphs of the affidavit, it is clearly shown that the respondents refused to allow the appellant enough opportunity to ventilate his case before they unilaterally closed his case even when they still had two months and three weeks to conclude the fact finding exercise. This court has stated succinctly in the case of *Abdullahi Baba v. Nigeria Civil Aviation and anor.* (1991) 5 NWLR (Pt.192) 388, that in a judicial or quasi-judicial body such as the respondents, a hearing in order to be fair, must include the righ of the person to be affected and in this case the appellant:

i. to be present all through the proceedings and hear all the evidence against him;
ii. to cross-examine or otherwise, confront or contradict all the witnesses that testified against him;
iii. to have read before him all the documents tendered in evidence at the hearing;
iv. to have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognised exceptions;
v. to know the case he has to meet at the hearing, and have adequate opportunity' to prepare for Iris defence; and
*vi.* to give evidence by himself, call witnesses if he likes, and make oral submission, either personally or through a counsel of his choice.

Also, the cases *of N.A.B. Kotoye* v. *Central Bank of Nigeria and Ors.* (1989) 1 NWLR (Pt. 98) 419 and *Mohammed* v. *Kano N.A.* (1968) All NLR (Pt. 424) 426.

From the jurisprudential beacons offered in *Baba v. NCATC,* it appears to me that the panel failed woefully in (v) and (vi) thereof. The question may be asked, was the appellant given enough opportunity to prepare and present his case before the panel? The answer is obvious. The appellant averred that on 3 October 2012, he was unable to attend the sitting of the panel on grounds of ill-health and that two of his witnesses were to arrive Jalingo on that same date in order to testify the following day being 4 October 2012. On that same date, his counsel, after one defence witness had testified, applied for an adjournment to enable him present the appellant and the other two witnesses. Could not the panel, which still had two months and three weeks to complete its assignment, oblige the appellant with one or two days adjournment to enable him present his defence against the weighty allegations made against him which was to cost him his job? Why was it necessary for the panel to unilaterally close the appellant's case within seven (7) days of the ninety (90) days it had to conclude the exercise? Did the refusal not amount to denial of fair hearing? My view is that the panel did not act wisely. It has been held that the true test of fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done to the case: *Okafor v.*

*Attorney-General, Anambra State* (1991) 6 NWLR (Pt. 200) 659. For me, any reasonable person who watched the proceedings on 3 October 2012, and saw the haste with which the panel made to shut out the appellant, and that was in spite of the fact, that they still had two months and three weeks to complete its assignment, would definitely come to the conclusion that justice has not been done.

Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), is very lucid in this matter. It states:

> "36(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

Without much ado, from the facts of this case, the above constitutional provision was observed by the panel in the breach. The counter-affidavit of the respondents contained merely a general traverse, which could not hit the nail on the head.

It is also worrisome that the report placed before the Taraba State House of Assembly by the panel, which was used to impeach the appellant was incomplete. The appellant had pleaded that the only record he could lay hand on was only the report of the panel and not the proceedings. It is my view that if the panel wanted to adequately traverse the allegation of lack of fair hearing, it ought to have annexed the complete record of the panel or at least what transpired on 3 October 2012. This failure by the panel appears in my opinion to have left the case of the appellant unchallenged.

In the circumstance of this case, I hold the view that the court below did not properly consider the matter and that led to its wrongly upholding the judgment of the trial High Court. The appellant, from all I have demonstrated above, was denied fair hearing by the panel. Impeachment is a serious business and seeks to take away the mandate freely given to a person by the electorate. Such a delicate assignment must be handled with care. It is not a matter to be handled by a panel such as the respondents. The rush to complete the assignment within one week or less, of the 90 (ninety) days allowed by law, seems to suggest that the panel was being teleguided. This must be discouraged and condemned by all right thinking persons and institutions.

Persons appointed to this type of panel must take it as a sacred duty, which they would give account not only to man but also to God their maker. I need say no more on this.

It is on the above reasons and the fuller ones contained in the lead judgment alluded to above, that I agree that the appeal has merit. I also allow this appeal and abide by all the consequential orders made in the lead judgment, that relating to the costs, inclusive.

*Appeal allowed*