

**ALHAJI SANI ABUBAKAR DANLADI****V.**

- 1. BARR. NASIRU AUDU DANGIRI  
(Chairman, 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. ALH. MUSTAPHA SANI**
- 6. HAJIA. AISHATU MUHAMMED**
- 7. MR. JULIUS DAWHAI KAIGAMA  
(Members of the Panel)**

*SUPREME COURT OF NIGERIA*

SC.416/2013

WALTER SAMUEL NKANU ONNOGHEN, J.S.C. [*Presided*]  
SULEIMAN GALADIMA, J.S.C.  
BODE RHODES-VIVOUR, J.S.C.  
NWALI SYLVESTER NGWUTA, J.S.C. (*Read the Leading  
Judgment*)  
RUMAI BAYANG AKA' AHS, J.S.C.  
KUDIRAT MOTONMORI OLATOKUNBO KEKRRE-EKUN, J.S.C.  
JOHN INYANG OKORO, J.S.C.

FRIDAY, 21<sup>st</sup> NOVEMBER 2014

*ACTION - Commencement of action - Action commenced by  
originating summons - Procedure for hearing of.*

*APPEAL - Brief of argument - Bad or inelegant brief - Attitude  
of appellate court thereto.*

*APPEAL - Brief of argument - Reply brief - When unnecessary.*

*APPEAL - Court of Appeal - Power of under section 1b. Court of Appeal Act - Exercise of - Conditions precedent thereto.*

*APPEAL - Supreme Court - Power of to consider a relief sought at the trial court on its merits - Section 22, Supreme Court Act.*

*COURT - Administration of justice - Justice delayed is justice denied - Justice rushed is a travesty of justice - Application of.*

*CONSTITUTIONAL LAW - Fair hearing - Test therefor - Requirements of.*

*CONSTITUTIONAL LAW - Impeachment of Deputy Governor of a State - Panel set up to investigate allegations against Deputy Governor - Proceedings of - Conduct of - Whether can be challenged in court.*

*CONSTITUTIONAL LAW - Impeachment of Governor or Deputy Governor - Panel set up to investigate allegations against Governor or Deputy Governor - Report of - Submission of - Timeframe therefor - Section 188(7)(b), 1999 Constitution.*

*CONSTITUTIONAL LAW - Impeachment proceedings - Jurisdiction of court to inquire into - Whether extant - Need for scrupulous compliance with procedures laid down therefor - Rationale therefor.*

*CONSTITUTIONAL LAW - Right to fair hearing - Denial of - Order appellate court can make in respect thereof.*

*CONSTITUTIONAL LAW - Right to fair hearing within a reasonable time - Constitutional guarantee of - Fundamental nature of - Denial of - Effect of on proceedings of a quasi-judicial body conducted in breach of.*

*CONSTITUTIONAL LAW - Right to fair hearing - Section 36(1) of the 1999 Constitution - "Within a reasonable time" therein - Meaning of - How construed.*

*COURT – Court of Appeal - Power of under section 16, Court of Appeal Act – Exercise of Conditions precedent thereto.*

*COURT – Record of proceedings - Importance of - Absence of complete record of proceedings - Effect.*

*COURT – Record of proceedings - Incomplete record - Issue of How resolved.*

*COURT - Supreme Court - Power of to consider a relief sought at the trial court on its merits - Source of.*

*EVIDENCE - Affidavit evidence - Averment in affidavit - Evasive reaction thereto - Effect - How treated.*

*EVIDENCE - Affidavit evidence - Averment in affidavit - Where unchallenged - Effect - How treated.*

*EVIDENCE - Presumptions - Presumption of withholding evidence - When can be invoked and applied - Section 167(d), Evidence Act, 2011.*

*FAIR HEARING - Fair hearing - Test therefor - Requirements of.*

*FAIR HEARING - Right to fair hearing - Denial of - Order appellate court can make in respect thereof.*

*FAIR HEARING - Right to fair hearing within a reasonable time -Constitutional guarantee of - Fundamental nature of - Section 36( I ), 1999 Constitution - Denial of - Effect of on proceedings of a quasi-judicial body conducted in breach of.*

*INTERPRETATION OF STATUTES - Section 36(1) of the 1999 Constitution - “Within a reasonable time” therein - Meaning of - How construed.*

*JUSTICE - Administration of justice - Justice delayed is justice denied - Justice rushed is a travesty of justice - Application of.*

*NOTABLE PRONOUNCEMENT - On duty on courts to guard jealously the procedure for impeachment and removal of elected politicians.*

*NOTABLE PRONOUNCEMENT - On need for legal practitioners to avoid rude language.*

*NOTABLE PRONOUNCEMENT - On need for the process of impeachment to be strictly and duly observed.*

*NOTABLE PRONOUNCEMENT - On Need to draw the attention of Disciplinary Committee of the Bar to harm perpetrated by members of the legal profession sitting on impeachment panels.*

*NOTABLE PRONOUNCEMENT - On serious nature of impeachment and need for it to be handled with care.*

*PRACTICE AND PROCEDURE - Administration of justice - Justice delayed is justice denied - Justice rushed is a travesty of justice - Application of.*

*PRACTICE AND PROCEDURE - Affidavit evidence - Averment in affidavit - Where unchallenged - Effect - How treated.*

*PRACTICE AND PROCEDURE - Appeal - Brief of argument - Bad or inelegant brief- Attitude of appellate court thereto.*

*PRACTICE AND PROCEDURE - Appeal - Brief of argument - Reply brief - When unnecessary.*

*PRACTICE AND PROCEDURE - Appeal - Power of Court of Appeal under section 16, Court of Appeal Act - Exercise of - Conditions precedent thereto.*

*PRACTICE AND PROCEDURE - Commencement of action - Action commenced by originating summons - Procedure for hearing of.*

*PRACTICE AND PROCEDURE - Originating summons - Action commenced thereby - Procedure for hearing of.*

*PRACTICE AND PROCEDURE - Pleadings - Essential allegations in pleading - Where not specifically traversed - Effect - How treated.*

*PRACTICE AND PROCEDURE - Pleadings - General traverse - Effect of on specific complaint in pleadings.*

*PRACTICE AND PROCEDURE - Record of proceedings Importance of - Absence of complete record of proceedings - Effect.*

*PRACTICE AND PROCEDURE - Record of proceedings - Incomplete record - Issue of - How resolved.*

*PRACTICE AND PROCEDURE - Right to fair hearing - Denial of - Order appellate court can make in respect thereof.*

*PRACTICE AND PROCEDURE - Supreme Court - Power of to consider a relief sought at the trial court on its merits - Section 22, Supreme Court Act.*

*STATUTE - Section 36(1) of the 1999 Constitution - "Within a reasonable time" therein - Meaning of - How construed.*

*WORDS AND PHRASES - "Within a reasonable time" - Section 36(1) of the 1999 Constitution therein - Meaning of - How construed.*

**Issue:**

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 when the same Court of Appeal held that the trial court ought to have ordered pleadings and tried the suit on pleadings.

**Facts:**

The appellant was the Deputy Governor of Taraba State from May 2007 to May 2011. He was re-elected and

took another oath of office on 29<sup>th</sup> May 2011. On 3/9/2012 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. 4/9/2012. Upon being served with the notice the appellant filed a reply dated 12/9/2012. On 18/9/2012 the House sat and passed a motion pursuant to section 188(4) of the 1999 Constitution (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 its members sworn in on 24/9/2012. On the same 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 an injunction to restrain the defendants from conducting any investigation into the allegations against him. It was the appellant contention that notwithstanding the pending 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 Iris defence after which his counsel sought an adjournment of four days to enable him testify and call his remaining 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<sup>th</sup> 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 6<sup>th</sup> respondent entered a conditional appearance and filed a preliminary objection to the appellant's suit. The trial court ordered that the objection should be taken along with the amended originating summons. Consequently, the remaining defendants/respondents aligned themselves with

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

Being dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal. The Court of Appeal, in a considered judgment, resolved issues 1 and 3 against the appellant and issue 2 against the respondents and still proceeded to dismiss the appellant's appeal.

The appellant was aggrieved and he appealed to the Supreme Court.

In determining the appeal, the Supreme Court considered the provisions of section 36(1) & (6) (b) and (d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which states 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 a 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 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 practitioner, 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.”

**Held** (*Unanimously allowing the appeal*):

1. *On Constitutional guarantee of right to fair hearing within a reasonable time –*

**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. (P. 170 paras. A-B)**

**Per ONNOGHEN, J.S.C. at page 170, paras B-E**

**“Here is a case where the panel has three months within which to conduct and conclude its investigation of impeachable allegations against appellant but 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.”**

2. *On Constitutional and fundamental nature of right to fair hearing and effect of denial of-*

**Fair hearing is the foundation of any adjudication. It is a rule of natural justice enshrined in section 36(1) and (6) of the 1999 Constitution (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. 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. [*Tukur v. Govt. of Gongolo State* (1989) 4 NWLR (Pt. 117) 517; *Adigun v. A.G, Oyo State* (1987) 2 NWLR (Pt. 56) 197; *F.R.N v. Akabueze* (2010) 17 NWLR (Pt. 1223) 525; *Victino Fixed Odds Ltd.. v. Ojo* (2010) 8 NWLR (Pt. 1197) 486; *J.S.C., Cross River State v. Young* (2013) 11 NWLR (Pt. 1364) 1 referred to.] (P. 193, paras. B-D)

3. *On Fundamental nature of principle of fair hearing and effect of denial of –*

The principle of fair hearing is fundamental to all court procedure and proceedings (including those of Panels and Tribunals) and like jurisdiction, the absence of it vitiates the proceedings no matter how well conducted. In this case, the respondents were given three months within which to conduct the exercise. From the affidavit evidence of the appellant, it was 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. [*Atano v. Attorney-General, Bendel State* (1988) 2 NWLR (Pt. 75) 132; *Salu v. Egeibon* (1994) 6 NWLR (Pt. 348) 23; *Ceekay Traders v. G.M. Co. Ltd.* (1992) 2 NWLR (Pt. 222) 132 referred to.] (P. 197, paras. B-E)

4. *On Requirements of fair hearing –*

In a judicial or quasi-judicial body such as the respondents, a hearing, in order to be fair, must include the right of the person to be affected, and to in the instant case, the appellant:

- (a) to be present all through the proceedings 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 him. save in recognized exceptions;
- (e) to know the case he has to meet at the hearing and base 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.

[*Baba v. N.C.A.T.C.* (1991) 5 NWLR (Pt. 192) 388; *Kotoye v. C.B.N.* (1989) 1 NWLR (Pt. 98) 419; *Mohammed v. Kano N.A.* (1968) 1 All NLR 424 referred to.] (P. 198, paras. C-H)

Per OKORO, J.S.C. at page 198-199, paras. H-D:

“From the jurisprudential beacons offered in *Baba v. NCATC (supra)*, it appears to me that the panel tailed 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 the 3<sup>rd</sup> day of 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<sup>th</sup> October, 2012. On that same dale, 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.”

5. *On Test of fair hearing –*  
The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation, justice had been done to the case. In the instant case, any reasonable person who watched the proceedings on 3/10/13 and saw the haste in which the panel made to shut out the appellant, and that was in spite of the fact that it still had two months and three weeks to complete its assignment, would definitely come to the conclusion that justice was not done. [*Okafor v. A-G., Anambra State 1(1991) 6 NWLR (Pt. 200) 659* referred to.] (P. 199, paras. D-F)
6. *On Meaning of “within a reasonable time” in section 36(1) of the 1999 Constitution –*  
The phrase “within a reasonable time” in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) implies that the time for the determination of the matter should not be too short or too long, depending on the nature and facts of the case. In the instant case, the 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. (P. 167, paras. F-H)
6. *On Effect of denial of right to fair hearing by a quasi-judicial body –*  
Where a party before an investigating panel is denied fair hearing, the proceedings of the investigating panel is null and void. (P. 176, paras E-F)

7. *On Order appeal court can make once there is a denial of fair hearing –*  
**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 investigation panel, as in the instant case, to enable the appellant to be properly heard and not shut out. Consequently the consequential order in the leading judgment in the instant case was wrong. [Otapo v. Sunmonu (1987) 2 NWLR (Pt. 58) 587; Salu v. Egeibon (1994) 6 NWLR (Pt. 348) 23 referred to.] (P. 176, paras. F-H)**
  
8. *On Effect and implication of justice rushed –*  
**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 a civilized society together. In the instant case, the panel 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 the 28<sup>th</sup> day of September 2012 and the 3<sup>rd</sup> day of October, 2012 - a period of six days inclusive of the first and last dates. As if the rushed justice was not bad enough, the panel presented to the Taraba House of Assembly an incomplete and edited report upon which the appellant was removed on the 4<sup>th</sup> October, 2012, the day following the submission of the report. From the undisputed facts of the case, the inevitable impression was 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. The respondents in their purported investigations of the allegations made**

against the appellant, merely played out a script previously prepared and handed over to the panel. (P. 168, paras. C-F)

9. *On Procedure for hearing of action commenced by originating summons –*  
**Originating summons is usually heard on affidavit. The affidavit evidence in the amended originating summons in the instant case consisted of the appellant's supporting affidavit, the counter-affidavit of the respondents and the appellant's further affidavit in reply to the respondents' counter-affidavit. The Court of Appeal, having found that the entire record of proceedings of the panel were not before it, and having stated the correct position that originating summons are usually heard on the affidavit and documentary exhibits, ought to have resolved the issue of denial of fair hearing on the affidavit evidence before it. (Pp. 160, paras. F-G; 164 paras. E-F; 175 paras. A-B)**
  
10. *On Importance of record of proceedings and effect of absence of complete record of proceedings –*  
**The only source from which to determine and consider what transpired before the court which had to determine the validity *vel non* of the proceedings of the panel in the instant case, was the record of proceedings of the said panel, the same record the Court of Appeal said was not complete. In the absence of the complete record of the panel neither the trial court, the Court of Appeal nor the Supreme Court could determine that the appellant was not denied fair hearing. There was no way the Court of Appeal, composed of human beings, could have determined without the complete record, what transpired in the trial court or in the panel. In pursuit of its duty to do substantial justice in the case, the effect of which transcended the parties therein and affected the entire voting population of Taraba State, the Court of Appeal ought to have**

called for the complete record. In the alternative, the Court of Appeal should have complied with the principle it stated to the effect that originating summons is heard on affidavit. [*Ediekpo v. Osia* (2007) 8 NWLR (Pt. 1037) 635 referred to.] (P. 164-165, paras. G-C)

11. *On How issue of incomplete records should be resolved—*

**Per NGWUTA, J.S.C. at page 160, paras. A-F:**

“On the undisputed facts of this case, 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 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 an 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 the exhibit HAG 25? It is the respondents if they satisfied appellant. The complete record was in issue and it is a fact within the knowledge of the respondents. See 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. See *Nwana v. Federal Capital Dev. Authority* (2007) 4 SC (Pt. 11) 1; (2007) 11 NWLR (Pt. 1044) 59

12. *On Importance of record of proceedings and when presumption of withholding evidence can be invoked –*  
**In a court of law, the record of proceedings speaks for the court. The record belongs to the court. In the instant case, the full record of what transpired before the panel Mas within the knowledge of the respondents and would have been borne out by the complete record of proceedings had it been produced. While it may be true that “exhibit HAG 25” m as in complete and edited, there was no doubt that the part} that ought to have produced the complete and unedited version was the party against whom it Mas sought to prove that there was a denial of fair hearing that is the respondents. In the circumstances of the instant case, the provisions of section 167(d) of the Evidence Act, 2011 ought to be invoked against the respondents. It must be presumed that the complete record of proceedings of the panel, if produced, would have been unfavourable to the respondents. It must be presumed that the complete record of proceedings of the panel, if produced, would have been unfavourable to the respondents. (P. 195, paras. E-F) pleadings-**  
**A general traverse cannot meet a specific complaint in pleadings or affidavit. (P. 166, paras. C-D)**

14. *On Treatment of evasive reaction to averment in an affidavit-*  
**Where a party is evasive in his reaction to the affidavit of his adversary, the facts averred by the adversary stand unchallenged and are denied admitted by that party who could have disputed same effectively but chose to dance around the facts. In pleadings, such**

**evasiveness is called negative pregnant. (P. 166, paras. E-F)**

15. *On Treatment of unchallenged averment in an affidavit -*  
**Where a party evasive not to react to the complaint of his adversary, he is deemed to have admitted his adversary's allegation. In the instant case, the respondents chose not to react to the appellant complaint that his counsel's application for adjournment on 3<sup>rd</sup> October was denied by the panel or that the panel compelled counsel to proceed with the defence. They were therefore deemed to have admitted the appellant's averments. [Ekwealor v. Obasi (1990) 2 NWLR (Pt. 131)231; U.B.A. Ltd v. Achoru (1990) 6 NWLR (Pt. 156) 254; Nwogo v. Njoku (1990) 3 NWLR (Pt. 140) 570 referred to.] (P. 166, paras. D-E)**
  
16. *On Treatment of essential allegation in pleadings/affidavit which is not specifically traversed –*  
**Essential allegations in a pleading or affidavit, which are not specifically traversed are deemed admitted by the adverse party. In the face of specific and detailed allegations of facts, a denial of those facts must also be specific. In the instant case, the respondents merely made a general denial of the allegations in paragraphs 22 and 23 of their counter-affidavit. They also had no response to the further affidavit of the appellant, particularly Paragraph 6 thereof wherein the appellant reiterated his position already stated in the supporting affidavit. [Lawson- Jack v. S.P.D.C (Nig.) Ltd (2002) 13 NWLR (Pt.783) 180; Okonkwo v. C.C.B. (Nig.) Ltd. (2003) 8 NWLR (Pt. 822) 347 referred to.] (P. 195, paras. A-D)**
  
17. *On time frame for submission of report by panel investigating allegation of misconduct for impeachment purposes –*  
**By virtue of the provisions of section 188(7)(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), a panel investigating allegation of**



misconduct for purpose of impeachment is required to submit its report within three months of its appointment. In the instant case, the panel was sworn in on 24/9/2012 and commenced sitting on 25/9/2012. On 28/9/2012 the panel took the evidence of five witness's 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 3/10/2012 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. Surprisingly, the case was concluded and a report tendered and submitted to the Taraba State House of Assembly the same day. Based on the report, the appellant was removed the following day, 4/10/2012. 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. The factors enumerated above suggest that the respondents were acting out a predetermined script to achieve a pre-determined end. (*P. 195-196, paras. G-C*)

18. *On Rationale for jurisdiction of court to inquire into impeachment proceedings -*

By virtue of section 188(10) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), 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. The above does not come into play to oust the Jurisdiction of the courts from looking into allegations of lack of fair hearing in impeachment proceedings. In enacting the above provision, the framers of the 1999 Constitution could not have contemplated that an infraction of a fundamental

right as provided under section 36(6) of the Constitution would lack a remedy. The right to fair hearing of a person being investigated for gross misconduct is implied in section 188(6) of the Constitution. Therefore, if our democracy must be sustained and grow, everybody must abide by the rule of law and ensure that all procedures laid down for taking any action are scrupulously complied with. [*Dapialong v. Dariye* (2007) 8 NWLR ('Pt. 1036) 332 referred to]. (P. 184-185, paras. G-B),

19. *On whether conduct of panel investigating allegations against a deputy governor for purpose of impeachment can be challenged in court -*

**Granted that members of a State House of Assembly can proceed under section 188(2) of' the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to present a notice of allegation of gross misconduct by a Deputy Governor to the-Speaker who in turn serves the notice on the Deputy Governor and proceeds to write to the Chief Judge of the State to set tip a panel to investigate the allegation, the conduct of the panel is not immuned front being challenged by the Deputy Governor. [*Dapialong v. Dariye* (2007) S NWLR (Pt. 1036) 332 referred to.] (P. 183, paras. A-B)**

20. **NOTABLE PRONOUNCEMENT:**

*On Duty on courts to guard jealously the procedure for impeachment and removal of elected politicians –*

**Per NGWLTA, J.S.C. at page 168-164, paras. H-B:**

**“Impeachment of elected politicians is a very serious matter and should not he conducted as a matter of course. The purpose is to set 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 he 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.”**

**21. NOTABLE PRONOUNCEMENT:**

*On Need to draw attention of Disciplinary Committee of the Bar of harm perpetrated by members of the legal profession sitting on impeachment panels –*

**Per NGWUTA, J.S.C, on page 168, paras. E-H:**

**“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.”**

**22. NOTABLE PRONOUNCEMENT:**

*Or Need for the process of impeachment to be strictly and duly observed-*

**Per GALADIMA, J.S.C. at page 170, paras. G-H**

**“This appeal has once again brought to the fore the frequent impeachment of elected politicians, we have witnessed in 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 process of impeachment must be strictly and duly observed so as not to thwart the will of the electorate freely expressed at the polls.”**

**23. NOTABLE PRONOUNCEMENT:**

*On Serious nature of impeachment and need for it to be handled with care –*

**Per OKORO, J.S.C. at page 200, paras. D-F**

**“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 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.”**

**24. *On Conditions precedent to exercise of powers of Court of Appeal under 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 that court under certain fundamental considerations such as:**

- (a) availability of the necessary materials to consider and adjudicate in 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 should cause un either or both parties to the case.**

**In the instant case, the conditionalities for the invocation of section 16 of the Court of Appeal Act were present. Since all the necessary 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. [Dapialong v. Dariye (2007) 8 NWLR (Pt. 1036) 332 referred to.] (P. 193-194, paras. H-F)**

25. *On Power of the Supreme Court to consider a relief sought at the trial court on its merits –*  
**By virtue of section 22 of the Supreme Court Act, the Supreme Court is in as good a position as the Court of Appeal to consider relief 3 of the amended originating summons on its merits in the instant case. (P. 144, paras. F-G)**
26. *On Attitude of appellate court to bad brief of argument –*  
**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. (P. 158, paras. A-B)**
27. *On When reply brief unnecessary-*  
**Reply brief is not for a repetition or improvement of arguments in the appellant's brief. An appellant need not repeat issues joined either by emphasis or expatiation. [Ochemaje v. State (2008) 15 NWLR (pt. 1109) 15 referred to.] (P. 157, paras. A-B)**
28. **NOTABLE PRONOUNCEMENT:**  
*On Need for legal practitioners to avoid rude language –*  
**Per NGWUTA, J.S.C. at page 156-157, page F-A:**  
**“In what was headed “appellant's reply brief to the respondents' 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 ‘the above submission of the appellant is**

**embarrassingly contrary to what the Court of Appeal did...” (Italics mine for emphasis).**

**With all respect due to the learned silk, the expression “in his usual rude language” is not the language of learned counsel in reference to a learned colleague, definitely not that of a Senior Advocate of Nigeria. It is rude. It 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 realise that two wrong do not make one right.’”**

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

- Adigun v. A-G., Oyo State (1987) 2 NWLR (Pt. 56) 197  
Atano v. A-G., Bendel State (1988) 2 NWLR (Pt. 75) 201  
Baba v. N.C.A.T.C (1991) 5 NWLR (Pt. 192) 388  
Ceekay Traders Ltd. v. G.M. Co. Ltd. (1992) 2 NWLR (Pt. 222) 132  
Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 332  
Ediekpo v. Osia (2007) 8 NWLR (Pt. 1037) 635  
Efon v. C.R.S.I.E.C (2010) 14 NWLR (Pt. 1213) 106.  
Ekwealor v. Obasi (1990) 2 NWLR (Pt. 131) 231  
F.R.N. v. Akabueze (2010) 17 NWLR (Pt. 1223) 525  
Green v. Green (1987) 3 NWLR (Pt. 61) 480  
J.S.C. Cross River State v. Young (2013) 11 NWLR (Pt. 1364) 1  
Kotoye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419  
Lawson-Jack v. S .P.D.C (Nig.) Ltd. (2002) 13 NWLR (Pt.783) 180  
Miliary Gov., Lagos State v. Ojukwu (1986) NWLR (Pt. 18) 621  
Mohammed v. Kano N. A. (1968) SCNLR 558  
Nwana v. F.C.D.A. (2007) 11 NWLR (Pt. 1044) 59  
Nwogo v. Njoku (1990) 3 NWLR (Pt. 140) 570  
Nworah v. Nwabueze (2011) 17 NWLR (Pt. 1277) 699  
Ochemaje v. State (2008) 15 NWLR (Pt. 1109) 57  
Ogunyade v. Oshunkeye (2007) 15 NWLR (Pt. 1057) 218

Okafor v. A-G., Anambra State (1991) 6 NWLR (Pt. 200) 659  
Okonkwo v. C.C.B. (Nig.) Ltd. (2003) 8 NWLR (Pt. 822) 347  
Okonta v. Philips (2010) 18 NWLR (Pt. 1225) 320  
Omoknnajo v. F.R.N (2013) 9 NWLR (Pt. 1359) 300  
Otapo v. Sunmonu (1987) 2 NWLR (Pt. 58) 587  
Panalpina World Transport Nig. Ltd. v. J. B. O. Int. (2010) 19  
NWLR (Pt. 1226) 1  
Salu v. Egeibon (1994) 6 NWLR (Pt. 348) 23  
Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517  
U.B.A. Ltd. v. Achoru (1990) 6 NWLR (Pt. 156) 254  
Vaswani Trading Co. v. Savalakh & Co. (1972) 12 SC 77  
Victino Fixed Odds Ltd. v. Ojo. (2010) 8 NWLR (Pt. 1197) 486

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

Constitution of the Federal Republic of Nigeria, 1999, Ss. 36(i);  
36(1)(6)(b); 188(2), (3), (4), (5), (7), & (10); 271 (4) & (5)  
Court of Appeal Act, S. 16  
Evidence Act, 2011, S. 142, 149(d), 167(d)  
Supreme Court Act, S. 22

**Appeal:**

This was an appeal against the judgment of the Court of Appeal which dismissed the appellant's appeal from the decision of the trial court which had struck out the appellant's suit as being incompetent. The Supreme Court, in a unanimous decision, allowed the appeal and declared the proceedings and report of the panel null, void and of no effect.

**History of the Case:**

*Supreme Court:*

Names of Justices that sat on the appeal: Walter Samuel Nkanu Onnoghen. J.S.C. (Presided); Suleiman Galadima, J.S.C.; Bode Rhodes-Vivour. J.S.C.; Nwali Sylvester Ngwuta. J.S.C, (Read the Leading Judgment); Kumai Bayang Aka'ahs. J.S.C.: Kudirat Motonmori Olatokunbo Kekere-Ekun. J.S.C.: John Inyang Okoro, J.S.C. Appeal No.: SC416/2013  
Date of Judgment: Friday, 21<sup>st</sup> November 2014

Names of Counsel: Kanu Agabi. SAN (with him. Yunus Ustaz Usman, SAN (with them. 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]; Mathias Ikyav. Esq.: Oyindamola Jegede [Miss]; Kuyik Usoro, Esq.; J.D. Yakubu, Esq. (DCL), MOJ, Taraba State; M.N. Sa'ad, Esq. (DLD); E.A. Ibrahim Effiong and N.A.Tanko, Esq. (SC II) MOJ, Taraba State) - for the Respondents

*Court of Appeal:*

Division of the Court of Appeal front which the appeal was brought: Court of Appeal, Yola

Name of Justices that sat on the Appeal: Uwani Musa Abba Aji, J.C.A. (Presided): Jummai Hanatu Sankey. J.C.A.; Ignatus Igwe Agube, J.C.A.; Joseph Tine Tur, J.C.A. (Read the Leading Judgment); Haruna Simon Tsammani, J.C.A.

Appeal No: CA/YL/28/2013

Date of Judgment: Friday, 19<sup>th</sup> July 2013

Name of Counsel: Yunus Ustaz Usman, SAN (with him, S.S. Dalong, Esq.; E.N. Chia, Esq.; H. 1. Hassan, Esq.; A.O. Philip, Esq.; P. N. Chinedu, Esq. and M. Omale, Esq.] - for the Appellant

A.J. Akanmode (with him. E.A. Ibahim and E.Afions) - for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

B.M. Isa, (Solicitor-General. Taraba State); (with him, J.O. Yakubu, Director of Civil Litigation, M.N. Sa'ad Director of Legal Drafting and Silas Haruna, Director of Public Prosecution) - for the 3<sup>rd</sup> Respondent

*High Court:*

Name of the High Court: High Court of Taraba State, Jalingo

Name of the Judge: Bashir, J.



Suit No: TRSJ/821/2012

Date of Judgment: Tuesday, 19<sup>th</sup> March 2013

Name of Counsel: Yunus Ustaz Usman, SAN (with him, S.S. Delong, E.N. Chia and A. Umar) -for the Plaintiff

E. A. Nyaro, Esq. and Sani Marke, Esq.) - for the Defendants

**Counsel:**

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

Yusuf Ali SAN (with him, Adebayo Adelodun.SAN; Abayom 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.; KT. Sulyman [Miss]; Nkechi Aniebonam [Miss]; Safinat Lamidi [Miss]; Mathias Ikyav, Esq.; Oyindamola Jegede [Miss]; Kuyik Usoro, Esq.; J.D. Yakubu, Esq. (DCL), MOJ, Taraba State; M.N. Sa'ad, Esq. (DLD); E.A. Ibrahim Effiong and N.A. Tanko, Esq. (SC II) MOJ, Taraba State) - for the Respondents

**NGWUTA, J.S.C. (Delivering the Leading 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 I which struck out 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 the 4<sup>th</sup> of September, 2012 members of the Taraba State house of assembly laid before the Speaker of the said House, a (notice of complaint of gross misconduct against the appellant. On The said 4<sup>th</sup> 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<sup>th</sup> 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. Consequent 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 the 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 fair 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 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 (*sic*) commenced this case by way of an originating summons and not through the 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 argument:

- “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 action being commenced by originating summons is incompetent. (Ground 2 of the notice and grounds of appeal).
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 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 thus:

“In my humble view, notwithstanding the resolution of issue two in favour of the appellant, on a fair 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 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. (Ground 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 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&5).
4. Whether the Court of Appeal was right in dismissing the appeal when the court did not dismiss all the reliefs. (Ground) 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 the investigation activities and the forwarding of the report to the Taraba State House of Assembly despite being served with the motion for interlocutor)' injunction on 28<sup>th</sup> September, 2012. (Grounds 9, 10 and 11 of the grounds 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 reliefs. 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 1999 Constitution of the Federal Republic (as

amended).” He argued that though the court resolved issues 1 and 3 against the appellant, issues 2 resolved in his favour was enough for the court below to have allowed the appeal. He contended that the court A ; below should have relied on S. 16 of the Court of Appeal Act to determine the issue of lack of fair hearing based on documentary evidence including the report of the panel which formed part of the record of the court. He urged the court to rei) on its powers under S. 22 of the Supreme Court Act 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 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 1 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: Appeal No. SC.29/2011 in which judgment was delivered on 8<sup>th</sup> March, 2013 now reported in (2013) 9 NWLR (Pt. 1359) 300 and submitted 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 submitted 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 F who is a necessary party, he relied on *Panalpina World Transport Nig. Ltd. v. J. B. Olandeen international & ors* (2010) 19 NWLR (Pt. 1226) 1 at 23, paras. 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 of 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) 2 NSCC page 1115 at 1126 lines 34-41(1987) 3 NWLR (Pt. 61) 480 to the effect that ;

failure to join a party will not be fatal to the proceedings 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 appellantly 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 5/9/2012 and that the court below should have voided the proceedings. He relied on *Vaswani Trading Company v. Savalakh & Company* (1972) NSCC (Vol. 7) 692 at pages 694-699; *Military Governor of Lagos State v. Ojukwu & Amor* (1980) NSCC (Pt. I) 304 at pages 309- 310, 313-341. among others; (1986) 1 NWLR (Pt. 18)621.

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<sup>th</sup> July, 2013 affirming the judgment of the trial court; (c) set aside the judgment of the trial court delivered on 19<sup>th</sup> 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, learned counsel for the respondents complained of inconsistencies in the paragraphs of the appellants brief and argued that the appellants arguments on fair hearing and failure of the court below to invoke its powers under S. 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 a 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 fair 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 the 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 appellants amended originating summons. In support of this contention, he referred to counsel for appellants 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 *Effiong & ors v. CROSJEC & Anor* (2010) C, 7 SCM 28 at 48. paras. A-B wherein this court held: reposed as [ *Effiom v. C.R.S.I.E.C.* (2010) 14 NWLR (Pt. 1213) 106.

“As I indicated above, this principle that the court ought not to raise an issue *suo motu* and decide upon it without hearing from 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 271-230 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 principle of fair hearing in S. 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 Nig. Ltd. v. J. B. Olandeen International & ors (supra)*; *Wkonta v. Philips* (2010) 18 NWLR (Pt. 1225) 320 at 326-327, ; paras. E-A, 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 proceedings of the respondents.

He said that the appellant did not appeal against the said finding and so cannot raise same in this appeal. He relied on *Ogunvade v. Dawodu* (2007) 12 SCM (Pt. 2) 480 at 504-505; reported as *Dawodu v. Oshunkeye* (2007) 15 NWLR (Pt. 1057) 218; *Nworah v. Nwabueze* (2012) All FWLR (Pt. 613) 1838, para. D. (2011) 17 NWLR (Pt. 1277) 699. He urged the court to resolve the issue against the appellant.

In issue 4, learned counsel referred to paragraph 7.1 at page 19 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 assertion that the respondents ignored the motion for interlocutory injunction served on them and preceded 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 pages 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<sup>th</sup> 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 respondents' 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 'The above submission of the appellant is embarrassingly



contrary to what the Court of Appeal did ...” (Italics mine for emphasis).

With all respect due to the learned silk, the expression “in his usual rude language” is not the language of learned counsel in reference to a learned colleague, definitely not that of a Senior Advocate of Nigeria. It is rude. It 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 realise 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. See *Ochemaje v. State* (2008) 6-7 SC (Pt. 11) p. 1.; (2008) 15 NWLR (Pt. 1109) 57.

My noble Lords, I have perused the record, and considered the arguments of learned counsel in their respective briefs on the five issues submitted by the appellant for resolution and adopted by the 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 1999 Constitution of the Federal Republic of Nigeria (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 all 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 or 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 determined 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, relief No. 3 in the amended originating summons gave rise to issue No. 3 before the court below. Issue No.4 in this 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 ail 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 their (sic) 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 S. 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

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. See 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 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 the exhibit MAG 25? It is the respondents if they satisfied S. 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. See 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. See *Nwana v. Federal Capital Dev. Authority* (2007) 4 SC (Pt. 11) 1.; (2007) 11 NWLR (Pt. 1044)59.

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 19-25 of the supporting affidavit are relevant and are hereunder reproduced:

- “19. The seven man panel was inaugurated on the 24<sup>th</sup> September, 2012 and they held their inaugural sitting on the 25<sup>th</sup> of September, 2012 during which sitting they ordered substituted service on me.
20. That on the 28<sup>th</sup> 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 the 3<sup>rd</sup> of 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 been (sic) on that day to come and testify alongside with two other witnesses who were indisposed to attend the sitting on that day.
23. That on the 3<sup>rd</sup> 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<sup>rd</sup> 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<sup>th</sup> 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<sup>th</sup> September.
29. That I also know as a fact that on the 3<sup>rd</sup> 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.”

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 by the plaintiff in this matter in support of the originating summons dated the 10<sup>th</sup> day of October, 2012.
4. That I carefully perused through the said affidavit with particular reference to paragraphs 17, 18, 19, 20, 21, 22, 22(a), 23, 24, 25, 26, 27 and 29.
14. That after I was appointed with other defendants, the panel smoothly commenced sitting on the 25<sup>th</sup> day of September, 2012.
15. That on the 28<sup>th</sup> day of September the hearing commenced with the participation of all the parties including the plaintiff appeared in person with his counsel and stayed for hours until about 6pm when the sitting was adjourned to the 3<sup>rd</sup> of October which the plaintiff applied for to open and close his defence.
16. That on the 3<sup>rd</sup> day of 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 the 3<sup>rd</sup> day of 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 proceeding of the panel was held in the public in an atmosphere conducive (sic) 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 filed on 14<sup>th</sup> January, 2013/1. Paragraphs 5 (in parts), 6, 8, 9, 11, 12 and 13 are 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 upon (sic) and close my case on the 3<sup>rd</sup> of October, 2012 but to possibly open my case on the 3<sup>rd</sup> October, 2012. However I was absent on panel on 3<sup>rd</sup> October, 2012 due to ill-health.
6. That I was informed by my lead counsel Yunus Ustaz Usman, SAN on the 4<sup>th</sup> of October, 2012 in Abuja at about 2.45 pm which information I verify 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 defendants 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<sup>th</sup> October, 2012 without giving me and two of my witnesses all opportunity to testify. When upon 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 the 28th 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 from its sitting on the 3rd of 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 secretariats (sic) was closed.
  10. That I know as a fact that the panel never made available the said record of proceedings to me.
  11. 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/80/2012. A copy of same is hereby annexed and marked exhibit HAG 25.
  12. That I know as a 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 defendants as a panel on the 3<sup>rd</sup> 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 resolve 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 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 proceedings of the panel, is the record of proceedings 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 panels.

In 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. See *Ediekpo & 2 ors v. Osia & 3 ors* (2007) 3 SC(Pt. 1)page 1 ; (2007) 8 NWLR (Pt. 1037) 635. 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 is 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 have done but failed or neglected to do.

From the affidavit evidence reproduced above, the panel was sworn in on the 24<sup>th</sup> day of 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 inaugural sitting the next day, 25<sup>th</sup> September, 2012. At the sitting of the panel on 28<sup>th</sup> 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<sup>rd</sup> October, 2012, appellant was not in court due to ill-health. His two witnesses were to arrive Jalingo the same 3<sup>rd</sup> October to testify the next day, 4<sup>th</sup> 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<sup>th</sup> 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 pm "when the sitting adjourned to the 3<sup>rd</sup> of October which the plaintiff applied for to open and close his defence."

In reaction to the specific allegation that the appellant was denied the opportunity to prepare and present his defence, the respondents stated:

"That the parties involved were given equal opportunity to present their cases and they all did as they desired."

It was also averred as follows:

"That the panel never at any time unilaterally closed the case of the plaintiff. That the hearing of naturally came to a close parties called their witnesses."

Above, my Lords, is a general traverse specific complaint of denial of fair hearing by the panel which did not allow him an adjournment to testify in his defence and

call two other witnesses who were outside the state capital, the venue of the proceedings.

The respondents chose not to react to the appellant's complaint that his counsel's application for adjournment on 3<sup>rd</sup> October was denied by the panel or that the panel compelled counsel to proceed with the defence. They are deemed to have admitted the appellant's averments. See *Ekwealor v. Obasi* (1990) 2 NWLR (Pt. 131) 231; *U.B.A. Ltd. v. Achoru* (1990) 6 NWLR (Pt. 156) 254.

Respondents were evasive in their reaction to the appellant's affidavit. It is in the nature of a person accused of stealing N100 whose only answer is that he did not steal N100. In pleadings, it is called negative pregnant. In my view, the facts averred by the appellant stand unchallenged and are deemed admitted by the respondents who could have disputed same effectively but chose 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 supporting affidavit but added more damaging facts relating to the conduct of the panel. He averred that the panel rose on 3<sup>rd</sup> 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 chose not to do so. See *Nwogo 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<sup>rd</sup> 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 front 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 S. 36(1) of the Constitution (supra). It provides:

“S. 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 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 impartiality.”

In my view, 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 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 toll s for the privilege so bestowed.

My noble Lords, the impact of what happened in the panel on the country's impeachment jurisprudence 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 the 28th day of September 2012 and the 3<sup>rd</sup> day of 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 House of Assembly an incomplete and edited report upon which the appellant was removed on the 4<sup>th</sup> 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 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.

Parties are to bear their respective costs.

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

**ONNOGHEN, J.S.C.:** I have had the benefit of reading in draft, the lead judgment of my learned brother, Ngwuta, JSC just delivered. I agree with his 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 appellant but 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 Deputy Governor of Taraba State forthwith. I abide by the order as to costs.

**GALADIMA, J.S.C.:** This appeal has once again brought to the fore the frequent impeachment of elected politicians, we have witnessed in 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 process 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 is 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 recapitulate same, as my learned brother Ngwuta, JSC has ably set them bare in his lucid leading judgment. On 4/9/2012 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 to 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 1999 Constitution of the Federal Republic (as amended) the House of Assembly on 18/9/2012 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 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, 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, appellant supported same with an affidavit of 34 paragraphs. The respondents filed a joint counter - affidavit of 27 paragraphs and the appellant filed his further affidavit of 14 paragraphs.

In a bid to prove the allegations of gross misconduct against the appellant, the panel called 5 witnesses and then closed its case. One witness was called by the appellant's counsel who thereafter asked for 4 days adjournment 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 with the judgment. He appealed to the Court of Appeal which dismissed the appeal. Thoroughly aggrieved by that decision, appellant further appealed to this court on eleven grounds, front 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 tight 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 dismissing the appeal when the court did not dismiss all the reliefs (grounds) 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 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<sup>th</sup> September, 2012 (Grounds 9, 10 and 11 of the notice and grounds of appeal).

Close examination of the issues clearly show 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 36(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)."

Section 36(1) (6) (b) and (d) of the 1999 Constitution of the Federal Republic of Nigeria (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 a 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 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 conditions 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. See *Atlas v. Rhodes* (1961) 1 All NLR (pt.2) 248 and *Julius Berger (Nig.) Ltd. v. Femi* (1993) 5 NWLR (Pt.295) 612 at 619 - 620 and *Horst Sornner Nig. Lid. v. F.H.A.* (1992) 15 SCNJ 73 ...”

At the middle of page 579 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”HAG25” 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 “HAG25” 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 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 proceedings 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.

The court below rightly held the view that originating summons is usually heard on affidavit evidence. In the leading

judgment, my Lord Ngwuta, JSC has graciously reproduced paragraphs 19 - 25 of the appellant's supporting affidavit, paragraphs 3, 4, 14, 15, 16, 17, 18, 19, 20 and 26 of the respondents' joint counter-affidavit. More importantly paragraphs 5, 6, 8, 9, 11, 12, and 13 of appellant's further affidavit in reply to the respondent's affidavit. These have made substantial impact to his claim of denial of fair hearing. See paragraphs 12 and 13 for example, which read:

“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/BO/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 defendants as a panel to the Taraba State House of Assembly which is annexed as exhibit “HAG25” does not reflect all that took place before the defendants as a panel on the 3<sup>rd</sup> October, 2012.”

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 the investigative panel, it becomes difficult for either 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 “HAG 25” is incomplete and 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 S.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, J.S.C.:** 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 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 proceeding 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 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. See *Otapo v. Sunmonu* (1987) 2 NWLR (Pt. 58) p. 587; *Salu v. Egeibon* (1994) 6 NWLR (Pt. 348) p.23

In view of the decision in SC.4I8/2013 it is no longer necessary to go into the merits of this appeal.

**AKA’AHS, J.S.C.:** On the 25<sup>th</sup> of 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<sup>th</sup> day of 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 Alh. 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, Alh. Abubakar Danladi as the Deputy Governor of Taraba State.
5. An order setting aside the report of the defendants’ (seven man 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 at pages 480-481 of the records –

“With regard 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 any 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. See *Federal Ministry of Internal 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. See Order 1 rule 2(1) and Order 1 rules 5, 6 G, 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<sup>th</sup> 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 tight to have dismissed the appeal on the ground that the suit was improperly commenced (Grounds 1 and 2) of the Appeal)
2. Whether the Honorable 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).
3. Whether the Court of Appeal was right in dismissing the appeal when the court did not dismiss all the reliefs (grounds) 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 the 3<sup>rd</sup> 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<sup>rd</sup> 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<sup>th</sup> October, 2012.
26. That I was not allowed the opportunity to testify in my defence and call two other witnesses in my defence.”

The 6<sup>th</sup> respondent deposed to a counter-affidavit on behalf of all the respondents 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), 23, 24, 25, 26, 27 and 29.
15. That on the 28<sup>th</sup> day of 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 6pm when the sitting was adjourned to the 3<sup>rd</sup> of October which the plaintiff applied for to open and close his defence.
16. That on the 3<sup>rd</sup> day of 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 anytime 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 the 3<sup>rd</sup> day of 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<sup>th</sup> January, 2013 the following facts:

- “6 That I was informed by my lead counsel, Yunus Ustaz , Usman, SAN on the 4<sup>th</sup> of October 2012 in Abuja at about 2.45pm which information I verily believed to be true as follows:
- a. That because of my health condition he applied for 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 defendants 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. Where upon the Taraba State House of Assembly immediately commences (sic) 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 the 28<sup>th</sup> 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 from its sitting on the 3<sup>rd</sup> October 2012 it become (sic) 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 close.
11. That I 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/80/2012. A copy of same is hereby annexed and marked exhibit H AG 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 HA G 25 does not reflect all that took place before the defendant as a panel on the 3<sup>rd</sup> 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 proceeded to strike out the case.

The appellant’s appeal to the court below was on the issue of lack of fair hearing which was the complaint 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 or 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 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. See *Dapianlong v. Dariye* (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 investigation 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 directed 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 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 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 Governor of Taraba State), if any submitted to the Taraba State House of Assembly”

The Court of Appeal made reference to exhibit “HAG 25” which it said was tendered by the appellant in the court below to prove lack of fair hearing and after reproducing some of the arguments in the appellant’s brief and the further affidavit in

support of the amended originating summons went on to state at page 597 of the record:

“This affidavit was sworn on 21st January 2013 after the panel had completed her assignment on 3<sup>rd</sup> October, 2012. See pages 432 - 433 of the printed record. There is nothing in exhibit HAG 25 to support these averments since the entire record of proceedings of the panel are not before this court. Furthermore, the appellant who tendered exhibit “HAG 25” discredited same as “incomplete and edited record of the panel.”

I am afraid that the lower court either did not appreciate the circumstances under which exhibit HAG 25 was produced or simply stood logic on the head. It was in response to the averments by the respondents that they did not unilaterally close appellant’s case and parties were given 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<sup>rd</sup> October, 2012 and all that happened was that they submitted exhibit HAG 25 on 4th 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 of 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 1999 Constitution could not have contemplated that an infraction of a fundamental right as provided under section 36(6) would lack a remedy. See *Dapianlong v. Dariye (supra)* at page 415. The right to fair hearing of a person being investigated for gross

misconduct is implied in section 188(6) of the Constitution. Where impeachment proceedings have been challenged, the party who initiated the impeachment always seeks to take umbrage under section 188(10). If our democracy must be sustained and grow, everybody must abide by the rule 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 thumb 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 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 forth with. Parties are to bear their respective costs.

**KEKERE-EKUN, J.S.C.:** This is an appeal against the judgment of the Court of Appeal, Yola Division delivered on 19<sup>th</sup> July 2013 affirming the judgment of the High Court of Taraba State, Jalingo Judicial Division delivered on 19<sup>th</sup> March 2013 declining Jurisdiction 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 took another oath of office on 29<sup>th</sup> May 2011. On 3/9/2012 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, 4/9/2012. Upon being served with the notice the appellant filed a reply dated 12/9/2012. On 18/9/2012 the House sat and passed a motion pursuant to section 188(4) of the 1999 Constitution (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 24/9/2012. On the same 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 pending 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 an adjournment of four days to enable him testify and call his remaining 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<sup>th</sup> 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 10/10/2012 but filed on 15/10/2012. 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 complied with for the purpose of commencing and sustaining an impeachment 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 Governments 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 1999 Constitution of the Federal Republic of Nigeria (as amended).
4. Whether having regard to section 271(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria (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 the 24<sup>th</sup> September 2012 when there was no competent Chief Judge to perform those functions in Taraba State.
5. 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 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 appointment and swearing in of the defendants as the Chairman and members of the investigating panel into the allegations of gross misconduct against Alh. 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 Alh. 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 Governor 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 6<sup>th</sup> defendant entered a conditional appearance and filed a motion on notice dated 1/10/2012 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 6<sup>th</sup> 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 summons rather than by writ of summons having regard to what it considered to be the contentious nature of the claims and reliefs sought; and that proper parties, namely the Acting Chief Judge and the 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 19/3/2013 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 of Assembly their non-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 19/3/2013, 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 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 determination:

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 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 dismissing the appeal when the court did not dismiss all the reliefs (grounds) 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 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<sup>th</sup> September 2012 (Grounds 9, 10 and 11 of the notice and grounds of appeal.)

The respondent adopted the appellant's issues.

Having critically examined the issues formulated by the appellant, I am inclined to agree with my learned 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 1999 Constitution of the Federal Republic of Nigeria (as amended).”

Section 36 (6) (b), (c) and (d) of the 1999 Constitution 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 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.”

The appellant's complaint was that the respondents rejected an application for an adjournment of four days made by his counsel on 3/10/2012 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 affidavit as exhibit “HAG25” at pages 445-457 of the record citing *Uzodinma v. Izunaso & 2 Ors.* (2011) 17 NWLR (Pt. 1275) 30 @ 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 “HAG25” to their counter affidavit. 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. It 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 “HAG25” as “incomplete and edited record of the panel and that it did not reflect all that took place’ before the respondents on 3<sup>rd</sup> October 2012.” That the only conclusion to be reached is that exhibit “HAG25” 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 pages 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 the 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 “HAG25”, 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 1999 Constitution (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. See: *Tukur v. Govt. of Gongola State* (1989) 2 SCNJ 1, (1989) 4 NWLR (Pt. 117) 517; *Adigun & Ors. v. A-G. Oyo State & Ors.* (1987) 2 NWLR (Pt. 56) 197; *F.R.N. v. Akabueze* (2010) 17 NWLR (Pt. 1223) 525 @ 537, E - F; *Victino Fixed Odds Ltd. v. Ojo & Ors.* (2010) 8 NWLR (Pt. 1197) 486 @ 499 - 500, G - B; J A.C. *Cross River Slate v. Young* (2013) 11 NWLR (Pt. 1364) 1 @ 21, 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 "HAG25" 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 HAG25, 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) 8 NWLR (Pt. 1036) 332 @ 405, paras. C -E per Onnoghen, JSC that:

“The powers conferred on the Court of Appeal by A 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 in the matter;
- (b) the length of time between the disposal of the action at the trial court and the hearing of the appeal; 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 see *Inakoju v. Adeleke supra* [(2007) 4 NWLR (Pt. 1025) Q 423] 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 necessary 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 3rd October 2012 and take one witness; how the respondents refused his counsel's application for a short adjournment to enable him testify in his own defence and call other witnesses and how they unilaterally closed his case the same day. The law is that essential allegations in a pleading or affidavit, which are not specifically traversed are deemed admitted by the adverse party. In the face of specific and detailed allegations of facts, a denial of those facts must also be specific. See: *Lawson-Jack v. S.P.D.C. (Nig.) Ltd.* (2002) 13 NWLR (Pt.783) 180 @ 197 C - F; *Okonkwo v. C.C.B. (Nig.) Ltd.* (2003) 8 NWLR (Pt. 822) 347 @ 418, C. The respondents merely made a general denial of the allegations in paragraphs 22 and 23 of their counter affidavit. They also had no response to the further affidavit of the appellant, particularly paragraph 6 thereof wherein the appellant reiterated his position already stated in the supporting affidavit.

While it may be true that “exhibit HAG25” was incomplete and edited, there is no doubt that the party that ought to have produced the complete and unedited version was the party against whom it was sought to prove that there was a denial of fair hearing i.e. the respondents. In a court of law, the record of proceedings speaks for the court. The record belongs to the court. In the instant case the full record of what transpired before the panel was within the knowledge of the respondents and would have been borne out by the complete record of proceedings had it been produced. I agree with my learned brother in the lead judgment that in the circumstances of this case the provisions of section 167(d) of the Evidence Act 2011 ought to be invoked against the respondents. It must be presumed that 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 1999 Constitution (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 24/9/2012 and commenced sitting on 25/9/2012. On 28/9/2012 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 3/10/2012 on which date the appellant, A 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, 4/10/2012. 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 "HAG25", 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 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 amount to a nullity and cannot be allowed to stand.

For these and the Filler 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<sup>th</sup> July 2013 G 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, J.S.C.:** 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 constituted to examine the allegations of misconduct levelled against him which led to his 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. See *Alano v. Attorney-General, Bendel State* (1988) 2 NWLR (Pt. 75) 201, *Sala v. Egeibon* (1994) 6 NWLR (Pt. 348) 23; *Ceekay Traders v. GM. Co. Ltd.* (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 the 3rd 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<sup>rd</sup> 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<sup>th</sup> October, 2012.
26. That I was not allowed the opportunity to testify in my A 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<sup>th</sup> September.
29. That I also know as a fact that on the 3<sup>rd</sup> 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 *Alhaji Abdullah Baba v. Nigerian Civil Aviation and Anor.* (1991) 5 NWLR (Pt. 192) 388 page 423 paras. B-E that in a judicial or quasi-judicial body such as the respondents, a hearing, in order to be fair, must include the right 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 recognized exceptions;
- v. to know the case he has to meet at the hearing and have adequate opportunity to prepare for his 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. See also the cases of *Kotoye v. Central Bank of Nigeria & Ors* (1989) 1 NWLR (Pt. 98) 419 and *Mohammed V. Kano NA.* (1968) 1 All NLR 424 at 426; (1968) SCNLR 558.

From the jurisprudential beacons offered in *Baba v. NCATC (supra)*, 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 the 3<sup>rd</sup> day of 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<sup>th</sup> 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 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. See *Okafor v. Attorney-General Anambra State* (1991) 6 NWLR (Pt. 200) 659. For me, any reasonable person who watched the proceedings on 3/10/12 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 observe 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<sup>rd</sup> 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 days allowed by law seems to suggest that the panel was being tele guided. 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 costs, inclusive.

*Appeal allowed*