1. **HON. KOLA ADEFEMI**
2. **ALLIANCE FOR DEMOCRA CY (AD)**

V.

1. **MUYIWA EMMANUEL ABEGUNDE**
2. **PEOPLES DEMOCRATIC PARTY**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**
4. **RETURNING OFFICER, EMURE-EKITI LOCAL GOVERNMENT**
5. **ELECTORAL OFFICER, EMURE-EKITI LOCAL GOVERNMENT**
6. **RESIDENT ELECTORAL COMMISSIONER, EKITI STATE**

*COURT OF APPEAL (ILORIN DIVISION)*
CA/IL/EP/SA/2/2003

PATRICK IBE AMAIZU, J.C.A. *(Presided)*
WALTER SAMUEL NKANU ONNOGHEN, J.C.A. *(Read the Leading Judgment)*
JA'AFARU MIKA'ILU, J.C.A.
THURSDAY, 4TH DECEMBER, 2003

*ACTION - Commencement of action - Where party has done all required of him by law - Whether can be held liable for inaction of another party.*

*APPEAL - Brief of argument — Appeal from decision of Election Tribunal to Court of Appeal - Brief of argument in respect of-Time within which to file — Computation of time with respect thereto — Whether Sunday inclusive — Filing brief of argument out of time in election matters — Effect.*

*APPEAL - Judgment or decision of court not appealed against -Effect of- How treated.*

*CONSTITUTIONAL LAW - Constitution - Supremacy of -Conditions of service of servant inconsistent with provisions of the Constitution — Validity of.*

*CONSTITUTIONAL LAW - Election into House of Assembly of a State - Disqualification of candidates therefor - Section 107(J)(f) of the 1999 Constitution - Resignation of candidate from public service - Whether must be accepted before he qualifies to contest.*

*COURT- Interpretation of law - Duty on court in respect thereof— Limit thereto.*

*ELECTION- Election into House of Assembly - Disqualification of candidates therefor - Section 107(1 )(f) of the 1999 Constitution - Resignation of candidate from public service - Whether must be accepted before he qualifies to contest.*

*ELECTION PETITION-Appeal from decision of Election Tribunal to Cowl of Appeal - Brief of argument in respect of - Time within which to file - Computation of time with respect thereto- Whether Sunday inclusive — Filing brief of argument out of time in election matters - Effect.*

*ELECTION PETITION-Electoral Act, 2002 - Whether provisions of Interpretation Act apply thereto - Whether Sunday included in computation of time for filing brief of argument in election petition.*

*ELECTION PETITION-Hearing of election petition—Adjournment of proceedings or hearing - Procedure for - Paragraph 25(1) and (2) of the First Schedule to the Electoral Act, 2002 - Import*

*and purport of.*

*INTERPRETATION OF STATUTE- Clear and unambiguous words in statute or document - How interpreted.*

*INTERPRETATION OF STATUTE - Electoral Act, 2002 - Whether provisions of Interpretation Act apply thereto - Whether Sunday included in computation of time for filing brief of argument in election petition,*

*INTERPRETATION OF STATUTE - Interpretation of law - Duty on court in respect of- Limit thereto.*

*MASTER AND SERVANT - Conditions of service - Where inconsistent with provisions of the Constitution — Whether valid.*

*MASTER AND SERVANT- Resignation from employment - Meaning of- Whether must be accepted by employer to have efficacy.*

*PRACTICE AND PROCEDURE-Commencement of action - Where party has done all required of him by law - Whether can be held liable for inaction of another party.*

*PRACTICE AND PROCEDURE - Appeal - Appeal from decision of Election Tribunal to Court of Appeal - Brief of argument in respect of - Time within which to file - Computation of 'time with respect thereto — Whether Sunday inclusive - Filing brief of argument out of time in election matters - Effect.*

*PRACTICE AND PROCEDURE - Pleadings - Bindmgness of on parties and court.*

*STATUTE - Electoral Act, 2002 - Whether provisions of Interpretation Act apply thereto - Whether Sunday included in computation of time for filing brief of argument in election petition.*

*WORDS AND PHRASES-Resignation from employment - Meaning of-*

**Issues:**

1. Whether on the facts and circumstances of the case, the provisions of the Interpretation Act, particularly section 15(4) and (5) thereof, are applicable so as to exclude Sunday in computing the 5 days allowed an appellant to file his brief of argument in an appeal in election matters.
2. Whether upon proper interpretation of the provisions of section 107(l)(f)of the 1999 Constitution in relation to the facts of the case, it can be said that the 1st respondent did resign, withdraw or retire from the Public Service as Graduate Assistant, 30 days to the election of 3rd May, 2003 as required by the said section 107(1 )(f) of the said Constitution.

Facts:

On the 3rd of May, 2003, elections were held into the States Legislative Houses in Nigeria. Election similarly took place in the Emure Constituency of Ekiti State. In the election, the 1st appellant was sponsored by the 2nd appellant, Alliance for Democracy (AD), a political party, while the 1st respondent was sponsored by the 2nd respondent, Peoples Democratic Party (PDP).

At the conclusion of the election process, the 1st respondent was returned by the 4th respondent as elected with 6,218 (six thousand, two hundred and eighteen) votes while the 1st respondent was said to have scored 4,883 (four thousand, eight hundred and eighty-three) votes.

The appellants were dissatisfied with the result of the election. They decided to challenge same at the Ekiti State Governorship and Legislative Houses Election Tribunal holden at Ado-Ekiti. The petition was based *inter alia* on the ground that the 1st respondent was at the time of the election not qualified to contest the election and ought not to have been returned as the winner of the election, in that he was at the material time still in the employment of the University of Agriculture, Abeokuta, Ogun State as a Graduate Assistant and had not resigned, withdrawn or retired from such employment 30 (thirty) days before the date of election contrary to the 1999 Constitution. The appellant then prayed the tribunal to hold that the 1st respondent was not duly elected and that the 1st appellant was the one duly elected being the candidate with the highest number of valid votes.

The respondents on the other hand contended that the 1st respondent duly resigned his said appointment on the 2nd March, 2003 which resignation letter was acknowledged by his Head of Department on the 12th March, 2003 more than 30 days before the date of the election. They stated further that due to the industrial action embarked upon by the University staff at the material time, the letter of resignation could not get to the University Registrar for further action as indicated by a certain letter dated 7th May, 2003. At the conclusion of hearing, the tribunal dismissed the petition on the ground that the 1st. respondent was eligible to contest the election having resigned more than thirty days before the date of the election. Not satisfied with the judgment of the tribunal, the appellants appealed to the Court of Appeal.

The respondents' raised objection to the competence of the appeal stating that the appellants filed their brief of argument a day outside the length of time allowed by the rules for doing so. The appellants replied that the record of appeal was served on them on a Friday, as such Sunday should not be taken into account in computing the five days allowed for filing the brief.

In the determination of the appeal, the Court of Appeal considered the provisions of section 107(1 )(f) of the 1999 Constitution which state:

"107(1) No person shall be qualified for election to a House of Assembly if:

(f) he is a person employed in the public service of the Federation or of any State and he has not resigned, withdrawn or retired from such employment thirty days, before the date of election."

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

1. *On Disqualification to contest election to House of Assembly -*
   **By virtue of section 107(l)(f) of the 1999 Constitution no person shall be qualified for election to a House of Assembly if he is a person employed in the public service of the Federation or of any State and he has not resigned, withdrawn or retired from such employment thirty days before the date of election.** (P. 25, *paras. F-G)*
3. *On Meaning of resignation from employment –*
   **Resignation froni employment is by the giving of the required length of notice or payment in lieu of notice.**
   *(P. 28, para. F)*
3. *On Whether resignation from employment depends on acceptance of same by employer –*
   Resignation dates from the date notice is received. There is absolute power to resign and no discretion to refuse to accept the notice. If resignation will only become effective after acceptance, then payment of salary in lieu of notice of resignation for the stated months will only be effective resignation after the expiration of the months for which the salary in lieu was paid. That cannot be so. *[Benson v. Onitiri* (1960) SCNLR 177 referred to.] *(P. 28, paras. C-G)*
   Per ONNOGHEN, J.C.A. at pages 27-28, paras. F-C:
   "Still on the issue as to whether the resignation of the 1st respondent can only be effective if approved, it is my view, granted that such a requirement exists in the conditions of service which conditions of service was pleaded, that that cannot vary the constitutional provisions in section 107(l)(f) of the 1999 Constitution. It will also result in absurdity with particular reference to the facts of this case. The 1999 Constitution is the Supreme Law of the land and its provisions have binding force on all authorities, institutions and persons throughout the country – *see Adediran v. Interland Transport Ltd.* (1991) 9 NWLR (Pt. 214) 155; *Kalu v. Odili* (1992) 5 NWLR (Pt. 240) 130. It is on record that at the relevant time when 1st respondent tendered his letter of resignation University staff were on strike as confirmed by the evidence of PW.2 who was called by the appellants. That the strike was on until after the election of 3/57 03. In such a circumstance to insist that there must be approval of the resignation before it could take effect for the purposes of the provisions in question will result in injustice to the candidate. That apart, those in authority who ought to give

such approval can deliberately delay or refuse the grant of such approval until after the election thereby doing injustice to the candidate. That is what nearly happened in the present case where the 1st respondent tendered his resignation dated 2/37 03 which was recommended for approval on 127 3/03 but the reply was made on 30/5/03. I am therefore of the view that the tribunal is right in holding that the resignation of the 1st respondent was effective."

Per AMAIZU, J.C.A. at page 30, paras. B-E:

"The evidence of a witness called by the appellant in the lower court is clear and unambiguous. It reads in part as follows –

'As of now we cannot say he (1st respondent) is still in the employment of the University by reason of the fact that we have in our file a letter from M. E. Abegunde dated 2nd March, 2003 in which he stated his intention to withdraw his services from the University to take effect from 1st April, 2003'.

It is further the evidence of the same witness (P.W.2) that the 1st respondent was on probation. And, those on probation wanting to withdraw their services need only give one month notice or pay one month's salary in lieu of notice. And that the 1st respondent has not reported for service and was last paid in January, 2003. The election which is the subject matter of this appeal was on 3rd of May. The resignation of the 1st respondent is clearly 30 days from the date of the election."

5. *On Supremacy of the Constitution* -

The Constitution is the basic law of the land which can neither be added to nor taken from by any other legislation or enactment except by due process of Constitutional amendment. Moreover, a right conferred or vested by the Constitution, in the instant case, the right of the 1st respondent to resign his appointment thirty days before the election, cannot be taken away or interfered with by any other legislation or statutory provision except the Constitution itself. In the instant case, section 107(l)(f) of the 1999 Constitution is the only provision to be complied with, with respect to resignation as condition for qualification for election to House of Assembly of a State. Therefore, even if the conditions of service of the 1st respondent were pleaded and same are found to be inconsistent with section 107(l)(f) of the 1999 f Constitution, they will be void to the extent of their | inconsistency with the said section of the Constitution. *[Tukur v. Govt., Gongola State* (1989) 4 NWLR (Pt. 117) 517; *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) 508; *Adisa v. Oyinwola* (2000) 10 NWLR (Pt. 674) 116 referred to.] *(P. 29, paras. E-G)*

6. *On Bindingness of pleadings on parties and court* -'

Parties and the court are bound by the pleadings in every case and any evidence that is not supported by facts in the pleadings goes to no issue. In the '-, instant case, there is no where the appellant pleaded that the 1st respondent did not resign in accordance with his conditions of service, but in accordance with section 107(l)(f) of the 1999 Constitution. Therefore, the evidence on condition of service which was on facts not pleaded should go to no issue. *(P. 27, paras. D-F)*

7. *On Limit to duty of court in interpreting law –*

Where the language of a statute is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. Thus, where by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. In the instant case, the clear language of the section of the Constitution cannot lead to absurdity nor can it even be said to be harsh. On the contrary, it would be absurd to make the effectiveness of the resignation of a candidate under section 107(1 )(f) of the 1999 Constitution subject to the conditions of service of the candidate with his employer. *[Adisa v. Oyinwola* (2000) 10 NWLR (Pt.

674) 116 referred to.] *(P. 29, paras. C-E)*

8. *On Interpretation of clear and unambiguous words in a statute or document* -
When the words of a document, legislation or constitution are clear, plain and unambiguous as in the present case as regards the provisions of section 107(l)(f) of the 1999 Constitution, there is no need to give them any other meaning than their ordinary natural and grammatical construction would permit unless that would lead to absurdity, or some repugnancy or inconsistency with the rest of the legislation or the Constitution. Thus, a court of law is without jurisdiction or power to import into the meaning thereof, what it does not say. Nothing is to be added or taken from the statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. What the 1999 Constitution requires is disengagement from the public service of any intending candidate by any of the modes stated, thirty days to the date of the election. It does not say that the disengagement must be one month before the date of the election in question. In the instant case, since the provisions of section 107(l)(f) of the 1999 Constitution are clear and unambiguous, they ought to be given their plain and ordinary meaning. *[Ogbuanyinya v. Okudo* (1979) 7 SC 32; *Ifezue v. Mbadugba* (1984) 1 SCNLR 427; *Shell Petroleum Dev. Co. (Nig.) Ltd. v. Federal Board of Internal Revenue* (1996) 8 NWLR (Pt. 466) 256; *National Bank of (Nig.) Ltd. v. Weide & Co. (Nig.) Ltd.* (1996) 8 NWLR (Pt. 465) 150; *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296; *Abioye v. Yakubu* (1991) 5 NWLR (Pt. 190) 130; *Imah v. Okogbe* (1993) 9 NWLR (Pt. 316) 159; *Adisa v. Oyinwola*. (2000) 10 NWLR (Pt. 674) 116 referred to.] *(Pp. 25, paras. G-H; 26-27, paras. F-B).*

9. *On Whether provisions of Interpretation Act apply to interpretation of Electoral Act, 2002* -There is nothing in the Electoral Act, 2002, the First Schedule thereto and the Practice Direction No. 2 of 2003 made with respect thereto, which states that the provisions of the Interpretation Act shall not apply in their interpretation. It is only a clear provision to that effect that will render the Interpretation Act inapplicable. *(P. 21, paras. A-B)*

10. *On Procedure for adjourning hearing of election petitions* -
By virtue of Paragraph 25(1) and (2) of the First Schedule to the Electoral Act, 2002, after the hearing of an election petition has begun, if the inquiry cannot be continued on the ensuing day, or if the day is a Sunday or a public holiday, on the day following the same, the hearing shall not be adjourned *sine die* but to a definite day to be announced before the rising of the tribunal or court and notice of the day to which the hearing is adjourned shall forthwith be posted by the Secretary on the notice board. The hearing may be continued on a Sunday or on a public holiday if circumstances dictate. This provision does not state that election petition should be adjourned from day to day including Sundays and public holidays. In fact, the continuation of hearing on a Sunday or public holiday is only permissive, not mandatory. [ *Ojugbele v. Lamidi* (1999) 10 NWLR (Pt.621) 167; *Auto Import v. Adebayo* (2002) 4 NWLR (Pt.799) 544 distinguished.] *(Pp. 20-21, paras.'E-C)*

Per ONNOGHEN. J.C.A. at pages 20-21, paras. H-G: "It is important to note that paragraph 25 is sub titled "Adjournment of hearing" by the side notes. It does not talk of computation of time at all. That apart, it clearly does not even say that hearing of an election petition SHALL be from day to day including Sundays and public holidays. Sub-paragraph 2 of paragraph 25 makes the continuation of hearing on a Sunday or public holiday permissive, not mandatory as the learned senior counsel would want us to hold. I have gone through the Electoral Act, 2002 and the First Schedule thereto and the Practice Direction No. 2 of 2003 that was made thereunder and have seen no provision whatsoever, which stipulates that in interpreting the provisions of the said Act or rules made thereunder the provisions of Interpretation Act shall not apply. I am of the firm view that only a clear provision to that effect will render the Interpretation Act, particularly section 15(4) & (5) thereof, inapplicable. I have also gone through the cases of *Ojugbele v. Lamidi* and

*Auto Import Export v. Adebayo supra* both cited by learned Senior Advocate for the 1st and 2nd respondents and have found them irrelevant to the fact of this case. In *Ojugbele v. Lamidi* this court considered a completely different Practice Direction which provided for the filing of both the Notice of Appeal and brief of argument at the same time. In that case, this court held that a brief of argument not filed along with the Notice of Appeal is not competent. In the case *of Auto Import Export v. Adebayo supra* the Supreme Court held that failure to file a notice of appeal within the time allowed to do so constitutes an incurable defect which deprives the appellate court of jurisdiction to hear the appeal. In none of the cases is it decided that where the time allowed for the taking of any step does not exceed six days, holidays must be counted in computing the time allowed. In conclusion, I hold the view that since the five days allowed the appellants to file their brief in this appeal after service of the record of appeal on them includes a Sunday which by the operation of Interpretation Act is a public holiday which shall not be taken into consideration in computing the said time, the filing of the brief on 24th July, 2003 after service of the record on 18/7/2003 is **within the five days allowed by law and therefore the brief of arguments is competent. The of objection is therefore overruled for being misconceived."**

11. *On Whether a party can be lield liable for inaction of another party -*
**Where a party has done all that is required of him by law to commence his action or initiate a process, what is left to be done is the domestic affair of the other party whose duty it is to conclude the process. In the instant case, what was required of the 1st respondent by section 107(l)(f) of the 1999 Constitution is to resign his appointment thirty days before the election which he did. *[Alawode v. Semoh* (1959) SCNLR 91 referred to.] *(P. 29. paras. A-B)***

12. *On Effect of failure of party to deny allegations of fact made by another party -*
**In the instant case, the 3rd - 6th respondents, not having denied the allegations of the appellants that their respondent's brief was filed out of time, they are deemed to have conceded the facts of the brief having been filed out of time, especially when there was nothing on record to show that the 3rd - 6th respondents were granted extension of time within which to file their brief. *(P. 23, paras. F-G)***

13. *On Effect of decision of court not appealed against –*
**The decision of the court in respect of each of the issues it formulated as arising from the pleadings or petition of parties constitute the decision which must be appealed against, unless the appellant accepts or are deemed to have accepted them as correct. In the instant case, the appellants only appealed against the judgment of the tribunal touching on the qualification of the 1st respondent but this was not the only issue determined by the tribunal. That being the case, appellants are deemed to have conceded the other issues as resolved by the tribunal and are therefore bound by the findings of facts on the issues not appealed against. *(P. 25, paras. A-C)***

*On Effect of filing brief of argument out of lime without order for extension of time -*

**14. The legal effect of filing a brief out of time, as the 3rd - 6th respondents herein did without an order of the court extending the time to do so is that there is no legally recognisable brief of argument filed on behalf of the affected party. The court cannot look at the brief so filed out of time since it is not properly before the court, same should therefore be discountenanced. *(P. 23, paras. G-H)***

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

*Abioye v. Yakubu* (1991) 5 NWLR (Pt. 190) 130
*Adediran v. Interland Transport Ltd.* (1991) 9 NWLR (Pt. 214) 155
*Adixa v. Oyinwola* (2000) 10 NWLR (Pt. 674) 116
*Akcredolu v. Akinremi* (1985) 2 NWLR (Pt. 10) 787

*Alawode v. Semoh* (1959) SCNLR 91
*Amokeodo v. I.G.P.* (2001) FWLR (Pt. 33) 344
*Auto Import Export v. Adebayo* (2002) 18 NWLR (Pt. 799) 544
*Benson v. Onitiri* (1960) SCNLR 177
*Bronix Motors Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296
*Coker v. UBA* (1997) 2 NWLR (Pt. 490) 641
*Compt. Comm. & bid. Ltd. v. OG. S.W.C.* (2002) 9 NWLR (Pt. 773) 629
*Idoniye-Obu v. N.N.P.C.* (2003) 2 NWLR (Pt. 805) 589
*Ifezue v. Mbadugha* (1984) 1 SCNLR 427
*bnah v. Okogbe* (1993) NWLR (Pt. 316) 159
*INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72
*Kahi v. Odili* (1992) 5 NWLR (Pt. 240) 130
*Mele v. Mohammed* (1999) 3 NWLR (Pt. 595) 425
*Military Administrator, Benue State v. Ulegede* (2001) 17NWLR (Pt. 741) 194
*National Bank of (Nig.) Ltd. v. Weide & Co. (Nig.) Ltd.* (1996) 8 NWLR (Pt. 465) 150
*Obarov. Dantata and Sawoe Const.* (1997) 10 NWLR (Pt. 526) 676
*Ogbuanyiya v. Okudo* (1979) 7 SC 32
*Ogunbiyi v. Ishola (1996) 6 NWLR (Pt. 452) 12*
*Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508*
*Ojugbele v. Lamidi (1999) 10 NWLR (Pt. 621) 167*
*Rossek v. ACB (1993) 8 NWLR (Pt. 312) 382*
*Saliu v. Adesanya (1999) 2 NWLR (Pt. 592) 533*
*Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387*
*Shell Petroleum Dev. Co. (Nig.) Ltd. v. FBIR (1996) 8 NWLR(Pt. 466) 256*
*Solanke v. Somefum (1974) NMLR 214*
*Tangale Traditional Council v. Fawu (2001) 17 NWLR (Pt.742)293*
*Tukur v. Govt., Gongola State (1989) 4 NWLR (Pt. 117) 517*

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

Constitution of the Federal Republic of Nigeria, 1999, S. 107(l)(f)
Electoral Act, 2002, First Schedule, paragraph 25(1) & (2)
Interpretation Act, Cap. 102, Laws of the Federation of Nigeria, 1990
Practice Direction No. 2 of 2003

**Appeal:**

This was an appeal against the judgment of the Governorship and Legislative House Election Tribunal, Ekiti State, which dismissed the appellants' petition. The Court of Appeal, in a unanimous decision, dismissed the appeal.

**History of the Case:**

*Court of Appeal-Division of the Court of Appeal to which the appeal was brought:* Court of Appeal, Ilorin

*Names of Justices that sat on the appeal:* Patrick Ibe Amaizu, J.C.A. *(Presided);* Walter Samuel Nkanu Onnoghen, J.C.A. *(Read the Leading Judgment);* Ja'afaru Mika'ilu, J.C.A. *Appeal No.:* CA/IL/EP/SA/2/2003 *Date of Judgment:* Thursday, 4th December, 2003 *Names of Counsel:* F. Omotosho, Esq. *-for the Appellants* Yusuf O. Ali, SAN *(with him,* A. O. Akanle, SAN; K. K. Eleja, Esq.; Chief A. O. Okeya; G. N. Obi, Esq.; B. Ajanaku, Esq. and I). M. Toln |Miss|) - *for the 1st and 2nd Respondents* Chief O. Daramola *-for the 3rd - 6th Respondents*

*Tribunal:*

*Name of the Tribunal:* Governorship and Legislative House Election Tribunal, Ekiti State *Date of Judgment .-Wednesday,* 9th July, 2003 *Petition No.:* EPT/EK/HA/3/2003

**Counsel:**

F. Omotosho, Esq. *-for the Appellants*

Yusuf O. Ali, SAN *(with him, A.* 0. Akanle, SAN; K. K. Eleja, Esq.; Chief A. 0. Okeya; G. N. Obi, Esq.; B. Ajanaku, Esq. and D. M. Tobi [Miss]) *—for the 1st and 2nd Respondents* Chief O. Daramola *-for the 3rd - 6th Respondents*

**ONNOGHEN, J.C.A. (Delivering the Leading Judgment):** This is an appeal against the judgment of Ekiti State Governorship/ National Assembly/Legislative House Election Tribunal holden at Ado-Ekiti, Ekiti State in petition No. EPT/EK/HA/3/2003 delivered on the 9th day of July, 2003.

*The facts of the case include the following:*

On the 15th day of May, 2003 the appellant, as petitioner presented a petition before the aformentioned tribunal against the respondents in respect of the legislative election to the Ekiti State House of Assembly with particular reference to Emure State constituency which election was held on 3rd May, 2003. In that election, the 1st appellant was a sponsored candidate of the 2nd appellant, Alliance For Democracy - one of the recognized political parties for the 2003 general elections, while the 1st respondent was the sponsored candidate of the 2nd respondent; Peoples Democratic Party, another recognized political party. At the conclusion of the election process, the 1st respondent was returned by the 4th respondent as duly elected with 6,218 votes while the 1st appellant scored 4,883 votes. The appellants were not satisfied with the result so declared and consequently challenged the election of the 1st respondent on the ground *inter alia,* that:

> "... the 1st respondent was at the time of the election not qualified to contest the election and ought not to have been returned as the winner of the election. *Particulars*

(1) The 1st respondent was at the time of the election employed in the public service of the Federation to wit:

> He was a Graduate Assistant in the Department of Chemistry, University of Agriculture, Abeokuta, Ogun State, Nigeria and had not resigned, withdrawn or retired from such employment 30 days before the date of election on the 3rd of May, 2003 contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and the guidelines on the elections made pursuant to the Electoral Act, 2002."

The petitioners therefore prayed the tribunal for the following reliefs:

"J 6 Whereof your petitioner *(sic)* prays *(sic)* that it may be determined that:

(a) The said Abegunde Muyiwa Emmanuel the 1st respondent was, at the time of the election into the House of Assembly Ekiti State held on the 3rd May, 2003 not qualified to contest the said election having regards to the provisions of sections 106(b), 107(1) of the Constitution of the Federal Republic of Nigeria, 1999, sections 2(2), 114(b) and (c) of the Electoral Act, 2002 and also under paragraph 5(g) of the Guidelines for the Federal, State and Area Council (FCT) Elections.

(b) The said Abegunde Muyiwa Emmanuel having regard to (a) Above was not duly elected or returned as a member of Ekiti State House of Assembly from Emure constituency.

The petitioner Hon. Kola Adefemi, being the candidate with the highest number of valid votes cast at the election be declared by the 3rd respondent as duly elected into the Ekiti State House of Assembly from Emure constituency." The respondents, on the other hand, contended that the 1st respondent duly resigned, his said appointment on the 2nd day of March, 2003 which resignation letter was acknowledged by his head of Department on 12th March, 2003. That this was more than the 30 days required by the Constitution. That due to the strike action embarked upon by the ASUU/ASANU/NASU the letter of withdrawal of service could not get to the Registrar of the University P for further action as indicated by a letter dated 7th May, 2003. At the conclusion of the hearing, the tribunal in its judgment of 9th July, 2003 dismissed the petition on the ground that the 1st respondent was eligible to contest the election in question in accordance with section 107(l)(f) of the 1999 Constitution. The appellants were dissatisfied with the said judgment and have

appealed to this court on the single ground of appeal out of which learned counsel for the appellants F. Omotosho, Esq., in his brief of argument filed on 24th July, 2003 and adopted in argument during the hearing of the appeal on the 29th and 30th day of October, 2003, has formulated an issue for the determination of the appeal.

The issue so formulated is as follows:

> "Whether the 1st respondent was qualified to contest the election to the Ekiti State House of Assembly held on the 3rd of May, 2003 by reason of having not resigned, withdrawn or retired from his appointment as a Graduate Assistant in the University of Agriculture Abeokuta in accordance with section 107(l)(f) of the Constitution of the Federal Republic of Nigeria, 1999."

In arguing the appeal learned counsel for the appellants submitted that to determine whether a candidate for an election "has effectively and completely resigned, withdrawn or retired from his employment" in accordance with section 107(l)(f) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution) "one has to look beyond the confines of section 107(l)(f) of the Constitution, significantly and more appropriately to the staff regulations and condition of service exhibit "F". For this counsel cited and relied on the case of *Mele v.Mohammed* (1999) 3 NWLR (Pt. 595) 425 at 427 where this court is said to have held that in interpreting a similar provision in Decree No. 36 of 1998, Regulations 25 of Borno State Revised Local Government Staff Regulations, 1986 must be considered.

That exhibit E, the letter of withdrawal of the service of the 1st respondent was dated 2/3/03 which, as evidenced in exhibit P, was received by the head of department of Chemistry on 12/3/03. Thai the tribunal was wrong in holding that the effective date of withdrawal was 1st April, 2003, which was more than 30 days to the date of election of 3rd May, 2003 because it:

> "failed to take into consideration the need for the notice to run its course of 31 days being given in March before the withdrawal could even be effective on the 1st of April, since a public officer who intends to retire from public service still remains in the service until the expiration of the period of notice."

Relying on *Amokeodov. I.G.P.* (1999)6NWLR (Pt.607)467; (2001) FWLR (Pt. 33) 344 at 367.

That even if the 1st respondent is an officer on probation he has given inadequate notice of withdrawal of service. That "the period of days from 2/3/03 - 31/3/03 or 12/3/03 - 31/3/03 are not up to a month" counsel further submitted. For this, counsel relied on *Akeredolu v. Akinremi* (1985) 2 NWLR (Pt. 10) 787 at 794.

That the employment of the 1st respondent is governed by exhibit F, the University regulations and conditions of service. That the resignation of the 1st respondent must be in accordance with exhibit P, not under the common law as decided in the case *of Benson v. Onitiri* (1960) 1 SCNLR 177; (1956 - 60) 1 NSCC 52 at 62 as relied upon by the tribunal. That exhibit F abrogates the provision of the common law on conditions of service or resignation. That the resignation of the 1st respondent having not been accepted in accordance with paragraphs 4.4 and 7.3 of exhibit is ineffective and incompetent. That paragraph 7.5 of exhibit F provides conditions for withdrawal of services and that by that provision the 1st respondent cannot withdraw his services before he attained at least 5 years in the service of the University. That the 1st respondent having entered into the contract of employment with the above terms is bound to comply with the terms relying on *Idoniboye Obu v. N.N.P. C.* (2003) 2 NWLR (Pt.805) 589; (2003) FWLR (Pt.'l46) 959 at 1001.

Learned counsel then urged the court to hold that the 1st respondent was not qualified to contest the election of 3rd May, 2003 and resolve the issue in favour of the appellants and allow the appeal.

In a brief of argument filed by senior for the 1st respondent A.O. Akanle, Esq., SAN on 28/7/03, who was led in as to the competence of the appeal was raised on the ground that the brief of argument of the appeallant was filed out of time. That the record of proceedings was served on the appellants on 28th

of July, 2003 while the brief was filed on 24/7/03 a day excess of the five days allowed by the paragraph 5 of the Practise Direction No. 2 of 2003. Counsel then cited and relied on Ojugbele v.Lamidi (1999) 10 NWLR 214 at 218 (Pt. 621) 167 at 171; *Solanke v. Somefun* (1974) NMLR 214 at 218; " *Auto Import Export v. Adebayo* (2002) 18 NWLR (Pt. 799) 554 at 578. During oral argument learned senior counsel for the 1st and 2nd respondents Y. 0. Ali, Esq., SAN leading A. O. Akanle, Esq., SAN and others referred to paragraph 25(2) of the First Schedule to the Electoral Act, 2002 and submits that there is nothing like public holiday in computing time under the Electoral Act. That being the case, counsel submitted, the provisions of the Interpretation Act do not apply; citing *Saliu v. Adesanya* (1999) 2 NWLR (Pt. 592) 533 at 535.

In his reply brief to the brief of 1st and 2nd respondents filed on 1/8/03, learned counsel submitted that the brief filed on 24/7/03 is competent in that it was filed within time. That on 18/7/03 when the record of proceedings was served on the appellants was a Friday and that by the operation of section 15(4) and (5) of the Interpretation Act, Cap. 102, Laws of the Federation, 1990, Sunday cannot be taken into consideration in computing the five days allowed for filing of appellant brief in the Practice Direction No. 2 of 2003. That the words of section 15(4) and (5) be given their ordinary meaning and be applied to the facts of this case relying on *Military Administrator, Benue State v. Ulegede* (2001) 17 NWLR (Pt. 741) 194 at 220; *Adisa v. Oyinwola* (2000) 10 NWLR (Pt. 674) 116 at 203. Counsel further submitted that the cases cited by his learned friend in support of Ins contention in the matter are not relevant to the facts of this case and should be discountenanced.

I have carefully gone through the argument of both counsel mi the preliminary objection and the authorities cited and relied upon in support of their contentions.

Both parties agree that the record of proceedings in the appeal was served on the appellants on the 18th day of July, 2003 and that the appellants brief was filed on the 24th day of July, 2003. That by paragraph 5 of the Practice Direction No, 2 of 2003 an appellant is given five days after service of the record of appeal on him to file his brief of argument. Equally not in dispute is the fact that the 5 days allowed the appellants to file their brief from 18/7/03 being a Friday includes a Sunday. The question therefore that calls for determination is whether on the facts and circumstances of this case the provisions of Interpretation Act, particularly section 15(4) & (5) thereof are applicable so as to exclude Sunday in computing the said 5 days allowed the appellant to file his brief of argument in an appeal in election matters. In other words whether the said provisions of the Interpretation Act are applicable to computation of time in election appeals.

From the argument of both parties it is clear that they agree that under normal circumstances or proceedings where time allowed for the doing of an act does not exceed six days, holidays, such as Sundays, are not to be reckoned with in computing the time allowed. What is disputed is whether the interpretation applies to election appeals or computation of time in election proceedings.

Learned SAN for the 1st and 2nd respondents has cited and relied on paragraph 25(2) of the First Schedule to the Electoral Act, 2002 in submitting that the provisions of Interpretation Act do not apply to computation of time in election proceedings. I am of the view that to do justice to the objection, it is better to look at paragraph 25(1) & (2) together; not just paragraph 25(2) cited and relied upon by the learned SAN. The said paragraph provides as follows:

> "25(1). After the hearing of an election petition has begun, if the inquiry cannot be continued on the ensuring day or, if that day is a Sunday or a public holiday, on the day following the same, the hearing shall not be adjourned sine die but to a definite day to be announced before the rising of the tribunal or court and notice of the day to which the hearing is adjourned shall forthwith be posted by the secretary on the notice board.
>
> (2) The hearing may be continued on a Saturday or on a public holiday if circumstances dictate."

It is important to note that paragraph 25 is sub titled" Adjournment of hearing" by the side notes. It does not talk of computation of time at all. That apart, it clearly does not even say that

hearing of an election petition shall be from day to day including Sundays and public holidays. Sub-paragraph 2 of paragraph 25 makes the continuation of hearing on a Saturday or public holiday permissive, not mandatory as the learned senior counsel would want us to hold. I have gone through the Electoral Act, 2002 and the First Schedule thereto and the Practice Direction No. 2 of 2003 that was made there under and have seen no provision whatsoever, which stipulates that in interpreting the provisions of the said Act or rules made there under the provisions of Interpretation Act shall not apply. I am of the firm view that only a clear provision to that effect will render the Interpretation Act, particularly section 15(4) & (5) thereof, inapplicable.

I have also gone through the cases of Ojugbele v. Lamidi and Auto Import Export v. Adebayo supra both cited by learned Senior Advocate for the 1st and 2nd respondents and has found them irrelevant to the facts of this case. In Ojugbele v. Lamidi this court considered a completely different Practice Direction which provided for the filing of both the notice of appeal and brief of argument at the same time. In that case, this court held that a brief of argument not filed along with the notice of appeal is not competent.

In the case of Auto Import Export v. Adebayo supra the Supreme Court held that failure to file a notice of appeal within the time allowed to do so constitute an incurable defect which deprives the appellate court of jurisdiction to hear the appeal.

In none of the cases is it decided that where the time allowed for the taking of any step does not exceed six days, holidays must be counted in computing the time allowed.

In conclusion, I hold the view that since the five days allowed. the appellants to file their brief in this appeal after service of the record of appeal on them includes a Sunday which by the operation of Interpretation Act is a public holiday which shall not be taken I into consideration in computing the said time, the filing of the brief on 24th July, 2003 after service of the record on 18/7/2003 is within the five days allowed by law and therefore the brief of argument is competent. The objection is therefore overruled for being misconceived. I therefore proceed with a consideration of the appeal on the merit.

On the issue under consideration, learned counsel for the 1st and 2nd respondents submitted that the Constitution supercedes every other enactment relying on INEC v. Musa (2003) 3 NWLR (Pt. 806) 72 at 157 and Rossek v. ACB Ltd, (1993) 8 NWLR (Pt. 312) 382 at 439.

That no other law other than the Constitution can lay down more stringent resignation conditions for contesting any election. That from the date the 1st respondent resigned i.e. 2/3/03 to 3/5/03 when the election was held is a period of 62 days which is more than the 30 days allowed by the Constitution. That the Constitution did not say that the resignation must be accepted. That exhibit E was minuted upon on 12/3/03 by the Head of Department to whom 1st respondent should submit his letter of resignation. That from 12/ 3/03 to 3/5/03 is a period of 52 days. That resignation dates from the date of receipt of the notice of resignation relying on Benson v. Onitiri supra and that there is nothing in the University regulations which run contrary to the principle in Onitiri's case supra.

That apart, that 1st respondent was on probation at the time he resigned. That PW.2 said the 1st respondent needed to give a month's notice of resignation. That under paragraph 2.1.6(a) (iii) and (iv) of exhibit F, a worker on probation can be sacked with a month notice and that though the said exhibit does not contain the length of notice to be given before such an officer can resign his appointment, it is only equitable that it be within one month in the interest of justice, equity and fairness. That paragraph 7.3 of exhibit F does not apply to the 1st respondent because he did not serve up to 5 years and particularly as he was on probation and had not obtained his second degree as required before his appointment could be confirmed. That section 107(l) (f) of the 1999 Constitution is very clear and unambiguous and only requires the 1st respondent to give 30 days notice.

That P.W.2 was a witness called by the appellants whom the tribunal believed. That he was not treated as a hostile witness.

That the tribunal made specific findings of facts in relation to the evidence of P.W.2 which had not been appealed against. That without appeal against such findings this court has no power to disturb

them relying on Obaro v. Dantata and Sawoe Const. (1997) 10 NWLR (Pt. 526) 676 at 692 - 693, Compt. Comm. & Ind. Ltd. v. O.G.S.W.C (2002) 9 NWLR (Pt. 773) 629 at 659.

That as long as there is evidence to support such findings, it is not in the province of the court to intervene. That the evidence of PW.2 is binding on the appellants and it amounts to admission against interest, learned senior counsel further submitted.

That where a party has taken the steps, he is required by law to take the refusal or negligence of the officials to do their part cannot be visited on the party relying on Alanwode v. Semoh (1959) SCNLR 91; (1959) 1 NSCC 36 at 39, Saudc v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 436 and 437.

Finally, learned counsel urged the court to dismiss the appeal.

The brief of argument of the 3rd - 6th respondents was filed on 4/8/03 by learned counsel, Chief Olufemi Daramola on very similar points as the submission of counsel for the 1st and 2nd respondents. He did adopt that brief in argument on 29/10/03 and urged the court to dismiss the appeal.

However in the appellants' reply brief filed on 25/8/03 in reaction to the brief of 3rd — 6th respondents, the appellants counsel raised a preliminary objection on the competence of the said respondents' brief on the ground that it was filed outside the time allowed to do so. That the brief was to have been filed within 3 days of the service of the appellants brief by virtue of the provisions of the Practice Direction No. 2 of 2003, paragraph 5 thereof. That the 3rd - 6th respondents were served with the appellants' brief on 251 7/03 while their brief was filed on 4/8/03 about 10 days after service. Relying on the authority of Tangale Traditional Council v. Fawu (2001) 17 NWLR (Pt. 742) 293 at 314 - 315. Counsel submitted that the said brief be discountenanced having been filed out of time. It must be noted that Chief Daramola of counsel for the 3rd - 6th respondents did not react to this preliminary objection as to the competence of the brief when he had the opportunity to do so during the oral argument of the appeal. He simply adopted the said brief and told the court that he had nothing more to add except to urge the court to dismiss the appeal. It is my view that learned counsel for 3rd - 6th respondents, not having denied the allegations of the appellants on the point, is deemed to concede the facts of the brief having been filed out of time. I have carefully gone through the record of this court and there is nothing to show that the 3rd - 6th respondents were granted extension of time within which to file their brief before filing same on 4/8/03 neither has this court's attention be drawn to any such application or order.

The legal effect of the filing of the brief of 3rd - 6th respondents out of time and without an order of this court extending the time to do so is that there is no legally recognizable brief of argument in respect of the 3rd - 6th respondent in this appeal. This court cannot look at the purported brief of argument filed on 4/8/03 since it is not properly before the court, having been filed in the circumstances earlier stated. The said brief is hereby discountenanced by this court. Reacting on points of law to the additional authorities cited and relied upon by learned senior counsel for the 1st and 2nd respondents during oral hearing of the appeal, Omotosho, Esq. of counsel for the appellant's submitted that a ground of appeal is predicated on the ratio of the decision -in this case, the qualification of the 1st respondent to seek election. That that is what is in issue between the parties. He then cited and relied on Ogunbiyi v. Ishola (1996) 6 NWLR (Pt. 452) 12 at 23, Coker v. UBA Plc. (1997) 2 NWLR (Pt. 490) 641 at 664 - 665.

Thereafter the appeal was adjourned to today for judgment. I have carefully gone through the ground of appeal, the issue formulated there from and argument of both counsel thereon.

In the first place I have to state that the tribunal did formulate five issues arising from the petition and resolved all of them against, the appellants.

The issues are as follows

"(1) Whether the 1st respondent was ineligible to contest the election of 3rd May, 2003 into Ekiti State House of Assembly by reason of not having resigned, withdrawn or retired from his appointment as graduate assistant in the University of Agriculture

Abeokuta as per section 107(l)(f) of the 1999 Nigerian Constitution.

(2) Whether the 1st respondent registered in two registration centres with different names Abegunde Muyiwa aged 30 years at Oke-Emure Ward 5 and Abegunde Emmanuel aged 25 years at Odo Emure III.

(3) Whether the 1st respondent was disqualified for duplicate finger print at Oke Emure II.

(4) Whether the 1st respondent fraudulently altered his age 25 years to read 35 years in the voter's register.

(5) Whether the 1st respondent was duly returned as winner by having scored majority of lawful votes or whether it is the 1st petitioner who will be returned as the winner having regards to the unlawful votes scored by the 1st respondent,"

The appellants only appealed against the resolution of issue No. 1 and never complained against the findings of fact and resolution as regards the other four issues. It is in the light of the above that the submission of learned senior counsel for the 1st and 2nd respondents that since there are no grounds of appeal against the specific findings of fact by the tribunal, this court has no jurisdiction to interfere with such findings becomes relevant. The submission of learned counsel for the appellants to the contrary begs the issue. It is trite that the decision of the tribunal in respect of each of the issues it formulated as arising from the petition (pleadings) of the parties constitute the decision which must be appealed against unless the appellants accepted or are deemed to have accepted them as correct. From the judgment of the tribunal it is clear that the issue of disqualification of the 1st respondent is not the sole or only issue determined by the tribunal. Those being the case I hold the view that the appellants are deemed to have conceded the other issues as resolved by the tribunal and are therefore bound by the findings of facts on issues not appealed against.

It is clear that the primary issue for consideration in this appeal is whether upon the proper interpretation of the pro visions of section 107(1 )(f) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution) in relation to I the facts of this case, it can be said that the 1st respondent did resign, withdraw or retire from his public service appointment as graduate assistant, 30 days to the election of 3rd May, 2003 as required by the said section 107(l)(f) of the 1999 Constitution.

In an attempt to prove that the 1st respondent was disqualified to contest the said election the appellants relied on the provisions of section 107(l) (f) of the 1999 Constitution which they specifically pleaded. The said section provides, inter alia thus:

"107(l) No person shall be qualified for election to a House of Assembly if:

(f) He is a person employed in the public service of the Federation or of any State and he has not resigned, withdrawn or retired from such employment thirty days, before the date of election."

From the above provisions, it is very clear that what the 1999 Constitution requires is disengagement from the public service of any intending candidate by any of the modes stated, thirty days to 1 the date of the election. It does not say that the disengagement must be one month before the date of the election in question. This distinction is very crucial because where it is not appreciated it leads, to much misconceptions. When we talk of a month or calendar month, we mean the period from the 1st day of that month to the last day thereof whereas 30 days means any 30 days of twenty-four hours each. In other words, whereas thirty days could be a period within the same month, it may extend beyond that month depending on when the counting starts.

From the totality of the facts, it is not in dispute that the 1st respondent wrote a letter of resignation dated 2/3/03 which was recommended by his head of department for approval on 14/3/03. The election in question took place on 3/5/03. There is evidence, which the tribunal accepted that during the period in question University staffs were on strike, so no reaction came from the University administration until much after the election which the 1st respondent won. The appellants have argued that the resignation of the 1st respondent can only take effect if accepted by the University authorities.

I do not agree with that proposition. It is trite law that the Constitution is the basic law of the land which can neither be added to nor taken from by any other legislation or enactment except by due process of constitutional amendment. That apart, it is very clear that for the purposes of qualification for election into a House of Assembly of a State provision of section 107(l) (f) of the 1999 Constitution is the only provision to be complied with and nothing more. That section does not say that the resignation or disengagement of the candidate must have been approved by the relevant authorities thirty days before the election which would have been the case if that is what was intended. From 2/3/03 to 3/5/03 we have about 62 days while there are 52 days between 12/3/03 when the said letter of resignation was recommended for approval to 3/5/03 when the election took place.

It is trite law that when the words of a document, legislation or Constitution are clear, plain and unambiguous as in the present case as regards the provisions of section 107(l) (f) of the 1999 Constitution, there is no need to give them any other meaning than their ordinary natural and grammatical construction would permit unless that would lead to absurdity, or some repugnancy or inconsistency with the rest of the legislation or Constitution. It has therefore been held time without number, that in such a situation a court of law is without jurisdiction or power to import into the meaning thereof, what it does not say. That nothing is to be added or taken from the statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted A to express. In the present case, since the provisions of section I07(l)(f) of the 1999 Constitution are very clear and unambiguous, they ought to be given their plain and ordinary meaning - see Ogbuanyinya v. Okudo (1979) All NLR 105; Ifezue v. Mbadugha (supra); Shell Petroleum Dev. Co. (Nig.) Ltd. v. Fed. Bd. of Internal B Rev. (1996) 8 NWLR (Pt. 466) 256; National Bank of (Nig.) Ltd. v. Weide & Co. (Nig.) Ltd. (1996) 8 NWLR (Pt. 465) 150; Bronix Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296, (1983) 6 SC 158;Abioye v. yakubu (1991)5NWLR(Pt. 190) 130; iman v. Okogbe (1993) NWLR (Pt. 316) 159; Adisa v. Onyinwola (2000) 10 NWLR (Pt. 674) 116 at 203-204.

I therefore agree with the tribunal that the 1st respondent did resign his appointment with the University of Agriculture, Abeokuta thirty days before the election of 3/5/03 as required by section D 107(l) (f) of the 1999 Constitution.

That apart, there is evidence that the 1st respondent was on probation at the time of his resignation and what it requires is one month notice of resignation contrary to the three months claimed by the appellants. In this respect, it is important to note that parties and the court are bound by the pleadings in every case and that evidence that is not supported by facts in the pleadings ground to no issue. I have carefully gone through the pleadings of the parties and have not seen where the conditions of service of the 1st respondent are pleaded. It is not pleaded that the 1st respondent did not resign in accordance with his conditions of service but in accordance with section 107(l)(f) of the 1999 Constitution. From the foregoing it is my view that evidence on the conditions of service which has facts not been pleaded, go to no issue.

Still on the issue as to whether the resignation of the 1st G respondent can only be effective if approved, it is my view, granted that such a requirement exists in the conditions of service which conditions of service was pleaded, that that cannot vary the constitutional provisions in section 107(l)(f) of the 1999 Constitution. It will also result in absurdity with particular reference H to the facts of this case. The 1999 Constitution is the Supreme Law of the land and its provisions have binding force on all authorities, institutions and persons throughout the country - see Adediran v. Interland Transport Ltd. (1991) 9,NWLR (Pt. 214) 155; Kalu v. Odili (1992) 5 NWLR (Pt. 240) 130. It is on record that at the relevant time when 1st respondent tendered his letter of Resignation University staff was on strike as confirmed by the evidence of PW.2 who was called by the appellants. That the strike was on until after the election of 3/5/03. In such a circumstance to insist that there must be approval of the resignation before it could take effect for the purposes of the provisions in question will result in injustice to the candidate. That apart, those in authority who ought to give such approval can deliberately delay or refuse the grant of such approval until after the election thereby doing

injustice to the candidate. That is what nearly happened in the present case where the 1st respondent tendered his resignation dated 2/3/03 which was recommended for approval on 12/3/03 but the reply was made on 30/5/03. I am therefore of the view that the tribunal is right in holding that the resignation of the 1st respondent was effective particularly as the Supreme Court has held in the case of Benson v. Onitiri (1960) SCNLR 177 at 189-190, (1960) 5 FSC 69 per Ademola, CJF thus:

> "Resignation dates from the date notice was received ... There is absolute power to resign and no discretion to refuse to accept notice. In the instant case, I do not think it matters to whom the notice of resignation was addressed, whether to the Minister who made the appointment or to the board, on which Benson was serving ... I am of the view that a notice of resignation to either is good, nor do I think it necessary for the board or anybody else to reply that the resignation is accepted."

I am of the firm view that this is still good law, there being no other authority to the contrary. It must be noted that resignation is by the giving of the required length of notice or payment in lieu of notice. The question is if resignation will only become effective after acceptance, will the payment of salary in lieu of notice of resignation for the stated months be effective resignation after the expiration of the months for which the salary in lieu was paid? I don't think so.

However in the present case, there is evidence that the 1st respondent was last paid in January, 2003. It would have been a different thing if he was still being paid and he collected same during the period he said he resigned. That would have been the case if the 1st respondent was still regarded as a staff of the University despite his resignation and pending the acceptance of same by the University authorities as canvassed by the appellants. I am of the view that the fact that the University never paid him for the period he was supposed to have been waiting for the acceptance of his resignation confirms the fact that the resignation was effective.

That apart, there is a principle of law to the effect that where a party has done all that is required of him by law to commence his action or initiate a process, what is left to be done is the domestic affair of the other party whose duty it is to conclude the process -see the case of Alawode v. Semoh (1959) SCNLR 91; (1956 - 1960) 1 NSCC 36. In the present case, what was required of the 1st respondent by section 107(1 )(f) of the 1999 Constitution is to resign his appointment thirty days before the election; which he did.

It has been held by the Supreme Court that where the language of a statute is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. That where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be -Adisa v. Oyinwola supra at 202. In the present case the clear language of the section of the Constitution cannot lead to absurdity nor can it even be said to be harsh. On the contrary, it would be absurd to make the effectiveness of the resignation of a candidate under section 107(l) (f)of the 1999 Constitution subject to the conditions of service of the candidate with his employer.

It is trite law that a right conferred or vested by the Constitution in this case, the right to resign his appointment thirty days before the election - cannot be taken away or interfered with by any other legislation or statutory provision except the Constitution itself. That being the case, granted that the fact that the provisions of section 107(l)(f) of the 1999 Constitution is subject to the provisions of the conditions of service of the 1st respondent, is pleaded and therefore relevant; which is not conceded; it would be void to the extent of its inconsistency with the said section 107(l)(f) of the said 1999 Constitution, See Tukur v. Govt. ofGongola State (1989) 4 NWLR (Pt. 117) 517; Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508; Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116 at 191.

In conclusion it is my view that the issue be and is hereby resolved against the appellants. Consequent on the resolution of the sole issue against the appellants it is clear that the appeal lacks merit and should be dismissed. I order accordingly. There shall be no order as to cost.

Appeal dismissed.

**AMAIZU, J.C.A.:** the draft of the judgment just read by my learned brother, onnoghen, JCA, was made available to me before now. I agree that the appeal has no merit. Accordingly, it should be dismissed.

The evidence of a witness called by the appellant in the lower court is clear and unambiguous. It reads in part as follows -

> "As of now we can not say he (1st respondent) is still in the employment of the University by reason of the fact that we have in our file a letter from M. E. Abegunde dated 2nd March, 2003 in which he stated his intention to withdraw his services from the University to take effect from 1st April, 2003".

It is further the evidence of the same witness (P.W.2) that the 1st respondent was on probation. And, those on probation wanting to withdraw their services need only give one month notice or pay one month's salary in lieu of notice. And that the 1st respondent has not reported for service and was last paid in January, 2003.

The election which is the subject matter of this appeal was on 3rd of May. The resignation of the 1st respondent is clearly 30 days from the date of the election.

For this, and other reasonably marshalled out in the lead judgment, I also dismiss the appeal. I abide by the consequential order made in the said lead judgment including the order on costs.

MIKA'ILU, J.C.A.: I have studied the reasoning of my learned brother, Hon. Justice Onnoghen, and his conclusion thereof, in his leading judgment just delivered. I am in total agreement with all therein. I therefore also dismiss the appeal. Order as to costs as in the leading judgment.
Appeal 'dismissed