

1. CHIEF ALEX OLUSOLA ORE
2. PEOPLES DEMOCRATIC PARTY (PDP)

V.

1. DR. RAHMAN OLUSEGUN MIMIKO
2. LABOUR PARTY (LP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
4. RESIDENT ELECTORAL COMMISSIONER, ONDO STATE
5. THE STATE RETURNING OFFICER FOR THE ONDO STATE GOVERNORSHIP ELECTION

SUPREME COURT OF NIGERIA

SC. 153/2013

IBRAHIM TANKO MUHAMMAD, J.S.C. (*Presided and Read the Leading - Judgment*)

JOHN AFOLABI FABIYI, J.S.C.

SULEIMAN GALADIMA, J.S.C.

NWALI SYLVESTER NGWUTA, J.S.C.

MUSA DATTIJO MUHAMMAD, J.S.C.

CLARA BATA OGUNBIYL J.S.C.

STANLEY SHENKO ALAGOA, J.S.C.

ACTION - Academic or hypothetical suit - What amounts to - Attitude of court thereto.

APPEAL - Concurrent finding of fact by trial court and Court of Appeal - Attitude of Supreme Court thereto - When will interfere therewith - When will not.

APPEAL- Exercise of discretion by two lower courts - Attitude of Supreme court thereto.

APPEAL- Extension of lime - Application therefor - Exercise of lower court's discretion to grant or refuse - Attitude of appellate court thereto.

CONSTITUTIONAL LAW- Delivery of judgment - Delivery of judgment by election tribunal-Time-limit therefor - Section 285(6), 1999 Constitution.

CONSTITUTIONAL LAW- Election petition - Filing of Time limit therefor - Section 285(5), 1999 Constitution.

COURT- Academic or hypothetical suit - What amounts to - Attitude of court thereto.

ELECTION PETITION - Amendment of election petition - Whether can be made after expiration of period within which to present election petition - Paragraph 14(2)(a) and (c). First Schedule, Electoral Act. 2010.

ELECTION PETITION - Delivery of judgment - Delivery of judgment by election tribunal - Time-limit therefor - Section 285(6), 1999 Constitution

ELECTION PETITION - Election matters - Special nature of - Need to conclude within prescribed time limit.

ELECTION PETITION - Election tribunal - Jurisdiction of in election matters - Source of.

ELECTION PETITION - Election tribunal - Where no longer competent to hear election petition - Effect on jurisdiction of Court of Appeal or Supreme Court in the same petition.

ELECTION PETITION - Electoral Act, 2010 - Paragraph 4(1) and (5) First Schedule there to - How construed.

ELECTION PETITION - Facts in election petition - New facts not available at time of filing election petition - Whether can be introduced thereafter.

ELECTION PETITION - Filing of election petition - Time limit therefor - Section 285(5). 1999 Constitution.

ELECTION PETITION - Governorship election tribunal - Exclusive jurisdiction of in governorship election matters.

ELECTION PETITION - Irregularity in election petition - How treated.

ELECTION PETITION - Proof - Evidence fundamental to determination of election petition - Need to place before election tribunal within time-limit.

INTERPRETATION OF STATUTES - Electoral Act, 2010 - Paragraph 4(1) and (5), First Schedule thereto - How construed.

JUDGMENT AND ORDER - Delivery of judgment - Delivery of judgment by election tribunal - Time-limit therefor - Set turn 285(6), 1999 Constitution.

JURISDICTION - Election tribunal - Jurisdiction of in election matters - Source and extent of.

JURISDICTION - Election tribunal - Where no longer competent to hear election petition - Effect on jurisdiction of Court of Appeal or Supreme Court in the same petition.

JURISDICTION - Governorship election tribunal - Exclusive jurisdiction of in governorship election matters.

PRACTICE AND PROCEDURE - Academic or hypothetical suit - What amounts to - Attitude of court thereto.

PRACTICE AND PROCEDURE - Appeal Concurrent findings of fact by trial court and Court of Appeal- Attitude of Supreme Court thereto When will interfere therewith When will not.

PRACTICE AND PROCEDURE - Appeal - Extension of time -Application therefor - Exercise of lower court's discretion to grant or refuse - Attitude of appellate court thereto.

PRACTICE AND PROCEDURE - Exercise of discretion by two lower courts - Attitude of Supreme Court thereto.

STATUTE - Electoral Act, 2010 - Paragraph 4(1) and (5), First; Schedule thereto - How construed.

WORDS AND PHRASES - Academic or hypothetical suit - What amounts to - Attitude of court thereto.

Issues:

1. Whether the Court of Appeal was right in not applying the principles guiding the grant of application for extension of time, as laid down by the Supreme Court, in the consideration of appellants' application.
2. Whether the Court of Appeal was right when it affirmed the decision of the trial court which treated the appellants' application as one for amendment of the petition which if granted would overreach the respondents.

Facts:

On 20th October 2012, governorship election was held in Ondo State. The 1st respondent was the candidate presented for the election by the 2nd respondent. He was declared the winner of the election having scored the majority of votes cast and having satisfied the requirement of the Constitution as to geographical spread of the votes.

The appellants were dissatisfied with the declaration and they filed a petition at the Governorship Election Tribunal, Akure. The respondents tiled their respective answers to the petition. The appellants filed replies where necessary.

At the close of pleadings, the appellants filed a motion at the Tribunal seeking an order extending the time within which the appellants may file and make use of additional or further witness depositions to accompany the petition; an order granting the appellants leave to call an additional witness; an order granting the appellants leave to file, serve and rely on further and additional witness statement on oath; and an order deeming the further and additional witness statement on oath as being properly tiled and served.

The grounds upon which the application was premised included that some of the documents and other relevant facts needed in proof of the petition were not available to the appellants at the time of filing the petition; other relevant facts to the pleadings of the appellants came to the knowledge and possession of the appellants after the tiling of the

petition; and that all the documents and facts referred to would assist the tribunal in their fair and just determination of the petition. The respondents opposed the application.

At the conclusion of hearing, the Tribunal held that the application was unmeritorious as, from the grounds of the application, the applicants wanted to introduce fresh facts; the time within which to effect substantial amendment to the petition had passed by effluxion of time; and that the application if granted would overreach the respondents. The Tribunal then dismissed the application.

The appellants were dissatisfied and they appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the ruling of the Tribunal.

Aggrieved, the appellants appealed to the Supreme Court. The 1st respondent also cross-appealed.

In determining the appeal, the Supreme Court considered the provisions of paragraph 14(2)(a) and (b) of the First Schedule to the Electoral Act, 2010 (as amended) and section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which respectively state thus:

Paragraph 14(2)(a) and (b), First Schedule to Electoral Act, 2010 (as amended):

“14(2) After the expiration of the time limited by:

(a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made:

- i. introducing any of the requirements of subparagraph (I) of paragraph 4 of this Schedule not contained in the original election petition tiled, or
- ii. effecting a substantial alteration of the ground for, or the prayer in, the election petition, or
- iii. except anything which may be done under the provisions of subparagraph (2)(a)(u) of this paragraph, effecting a substantial alteration of or addition to the statement of fact relied on to support the ground for, or sustain the prayer in the election petition; and

- (b) Paragraph 12 of the Schedule for filing the reply, no amendment shall be made -
- i. alleging that the claim of the seat or office by the petitioner is incorrect or false; or
 - ii. except anything which may be done under the provisions of subparagraph (2)(a)(h) of this paragraph, effecting any substantial alteration in or addition; to the admissions or denials contained in the original reply filed, or to the facts **j** set out in the reply.”

Section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

“285(5) An election petition shall be filed within 21 days after the date of the declaration of result of the elections.”

Held (*Unanimously dismissing the appeal and striking out the cross-appeal*):

1. *On Special nature of election matters –*
Election matters are sui generis. They are limited by time-span especially the gubernatorial ones. They cannot withstand everlasting time span running *ad infinitum*. They must be concluded within a given time span in order to allow the winning candidate assume the responsibilities of the office and he has a very limited number of years. Time lapse will seriously affect his term of office, unlike in ordinary civil matters with no time bar. Time is of essence in election matters. The court will not allow a party to resort to any sort of subterfuge to frustrate the intention of the Electoral Act that petitions be disposed of expeditiously. In any event, in all cases, there must be end to litigation. [Hassan v. Aliyu (2010) 17 NWLR (Pt. 1223) 547; Abubakar v. Yar'Adua (2008) 19 NWLR (Pt. 1120) 1 referred to.] (Pp. 247, paras. P-G: 255, para, E; 257, para E; 258 paras. D-E)
2. *On Time-limit for filing election petition –*

By virtue of section 285(5) of the 1999 constitution (as amended), an election petition must be filed within 21 days after the date of the declaration of result of the elections. The use of the word “shall” in the provision connotes a command or mandatory obligation. It places a complete bar on any form of amendment to a petition filed and does not also allow for an exercise of discretion, [*Ugwu a Ararume* (2007) 12 NWLR (Pt. 1048) 367; *Onochie v. Odogwu* (2006) 6 NWLR (Pt. 975) 65; *Bamaivi v. A.-G.. Fed.* (2001) 12 NWLR (Pt. 727) 468; *Abdullahi v. Mil. Adm., Kaduna State* (2009) 15 NWLR (Pt. 1165) 411. *Ifezue v. Mbadugha* (1984) 1 SCNLR 427 referred to.] (Pp. 257, paras. B-C; 261. para. E; 267. para. C)

3. *On Contents of election petition*
By paragraph 4(1) and (5) of the first Schedule to the Electoral Act, 2010 (as amended), a composite analysis of the contents of an election petition and a list of materials which must be accompanied have been spelt out. The use of the word shall in the subsections is very instructive, mandatory and conclusive. In other words, the provisions do not allow for additions. (P. 263, paras. A-B)

4. *On Need to place before election tribunal within time limit evidence fundamental to determination of election petition –*
Where there is evidence which is fundamental to the determination of an election petition, such evidence ought to be placed willy-nilly before the tribunal within the time-limit specified by the Electoral Act or any other Act. The evidence ought to be regarded as the spinal cord of the petition. Even if it is being withheld by any person, there are several ways to go about placing same before the tribunal. In the instant case, the appellants ought to have resorted to that procedure but they failed to do so. (Pp. 253-254, paras. G-A)

5. *On Whether new facts which were not available at time of filing election petition can be introduced thereafter –*
It offends the provision of paragraph 14(2)(a) and (b) of the First Schedule to the Electoral Act, 2010 (as amended) to introduce new facts which were not available at the time of filing an election petition. And this is irrespective of the mode by which the applicant approaches the court, whether for extension of time to do an act or for an amendment to the petition. The result is the same. It must have impact on the petition. (P. 254, paras. B-C)
6. *On Whether amendment can be made to election petition after expiration of period within which to present petition –*
By virtue of paragraph 14(2)(a) and (b) of the First Schedule to the Electoral Act, 2010 (as amended), no amendment whatsoever can be entertained by the election tribunal after the expiration of the period within which to present an election petition and an exercise of discretion is not allowed. In the instant case, both the Election Tribunal and the Court of Appeal were right in refusing the appellants' application. [*Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) 367; *Bamaivi v. A.-G., Fed.* (2001) 12 NWLR (Pt. 727) 468 referred to.] (Pp. 247-248, paras. G-F; 256-257, paras. H-C; 263, paras. C-E; 267, paras. A-C)
7. *On Whether election petition hound by Rules of ordinary courts and treatment of irregularity in election petition –*
Election matters are governed by legislations which are circumscribed and which override the rules of court. The Electoral Act contains mandatory provisions. Election petitions stand on their own and are bound by their rules under the law. Defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition. A slight default in compliance

with a procedural step could result in fatal consequences for the petition. In view of the delicate nature of election matters, minor defects or irregularities would not be overlooked as would be in ordinary civil causes. [*Kalu v. Uzor* (2004) 12 NWLR (Pt. 886) 1 referred to.] (P. 262, paras. P-G)

8. *On Source of jurisdiction of election tribunal in election matters –*

It is the enabling statute that determines the jurisdiction of any adjudicatory body. In election matters, the Electoral Act is the governing legislation that guides and directs all the workings of an election tribunal in election matters placed before it. Where the workings of the Act require mandatory compliance, any exercise of discretion will be without jurisdiction and will be a nullity. (P. 262, para. H)

9. *On Exclusive original jurisdiction of Governorship Election Tribunal over governorship election-*

The Governorship Election Tribunal is specifically charged with the power to exercise original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State.

The (Power so conferred is exclusive. (P. 261, paras.C-D)

10. *On Effect on jurisdiction of Court of Appeal or Supreme Court where election tribunal no longer competent to hear election petition –*

Where an election tribunal is no longer competent to hear an election petition there is no ride of court that can confer jurisdiction on either the Court of Appeal or the Supreme Court. In the instant case, neither the Court of Appeal nor the Supreme Court was seized of any jurisdiction to entertain the matter because constitutionally, the trial tribunal's tenure had ended and proceedings could no longer

be re-opened for fresh evidence to be taken through the witness box. (Pp. 264-265, paras. D A)

11. *On Time-limit for delivery of judgment by election tribunal –*
By the operation of section 285(6) of the 1999 Constitution (as amended), an election tribunal shall deliver its judgment in writing within 180 days from the date of filing the petition. In the instant case, the petition was filed on 10th November 2012. The mandatory 180 days period from 10th November 2012 lapsed on 10th May 2013. (Pp. 263-264, paras. G-A)

12. *On What amounts to academic suit and how treated –*
A suit is academic when it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in its favour. A suit is academic if it is not related to practical situations of human nature and humanity. In the instant case, in the absence of any live issue, the appeal had become extinct and a mere academic exercise. It was no longer within the jurisdiction of the court. [*P.P.A. v. I.N.E.C.* (2012) 13 NWLR (Pt. 1317) 215; *Shettima v. Goni* (2011) 18 NWLR (Pt. 1279) 413; *Plateau State v. A.-G., Fed.* (2006) 3 NWLR (Pt. 967) 346 referred to.] (P. 264, paras. E-F)

13. *On Attitude of court to academic or hypothetical issues –*
No court of law will knowingly act in vain. The general attitude of courts of law is that they are loathe in making pronouncements on academic or hypothetical issues as it does not serve any useful purpose. In the instant case, a consideration of the respondent's cross-appeal would become academic, cosmetic and of no utilitarian value or benefit as the aim of the cross- appeal had been met by the earlier decisions of the trial court and the Court of Appeal. [*Oladipo v. Oyelami* (1989) 5 NWLR (Pt. 120) 210; *Ukejianya v. Uchendu* (1950) 13 WACA 45; *Nkwocha v. Gov., Anambra State* (1984) 1 SCNLR 634; *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162 referred to.] (Pp. 254-255,

paras. E.B; 258, para. F; 259. paras. A-C; 264, paras. B-C)

14. *On Attitude of appellate court to exercise of lower court's discretion to grant or refuse application for extension of time –*
The power of a court to grant or refuse an application for extension of time is discretionary and an appellate court will not interfere with the lower court's exercise of discretion except where such a discretion was not judicially and judiciously exercised. [Mobil Oil Nigeria Ltd. v. Nabsons Ltd. (1995) 7 NWLR (Pt. 407) 254; Ntukidem v. Oko (1986) 5 NWLR (Pt. 45) 909; Omadide v. Adajero (1976) 12 SC 87 referred to.] (.Pp. 267-268, paras. H-A)

15. *On Attitude of Supreme Court to exercise of discretion by two lower courts –*
It is not usual for the Supreme Court to interfere with the exercise of discretion carried out by two lower courts judicially and judiciously. [Eronini v. Iheuko (1989) 2 NWLR (Pt. 101) 46 referred to.] (P.255, paras. F-H)

16. *On Attitude of Supreme Court to concurrent findings of fact by trial court and Court of Appeal-*
The Supreme Court will not interfere with the concurrent findings on material facts made by a trial court and the Court of Appeal where no compelling reasons have been shown to justify interference or where the appellant failed to show a special circumstance for the Supreme Court to do so. The findings will be disturbed where such findings are perverse or there is a substantial error either of law or facts on the record which has occasioned a miscarriage of justice. [Anaeze v. Anyaso (1993) 5 NVVLR (Pt. 291) 1; Iri v. Erhurobara (1991) 2 NWLR (Pt. 173) 252; Ezewani v. Onwordi (1986) 4 NVVLR (Pt. 33) 27; Nigerian Bottling Co. Ltd. v. Ngonadi (1985) 1 NVVLR (Pt. 4) 739; Woluchem v. Gudi (1981) 5 SC 291 referred to.] (Pp. 255-256, paras. H-A; 258, para. D; 269, para. D)

Nigerian Cases Referred to in the Judgment:

- Abdullahi v. Mil. Admin., Kaduna State* (2009) 15 NWLR (Pt. 1165)417
- Abubakar v. Yar'Aduu* (2008) 19 NWLR (Pt. I 120) 1
- Adekeye v. Akin-Olugbade* (1987) 3 NWLR (Pt. 60) 214
- Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1
- Araka v. Ejeagwu* (2000) 15 NWLR (Pt. 692) 684
- Bamaiyi v. A.-G.. Led.* (2001) 12 NWLR (Pt. 727) 468
- Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162
- Eronini v. Iheuko* (1989) 2 NWLR (Pt. 101) 46
- Ezewuni v. Onwordi* (1986) 4 NWLR (Pt. 33) 27
- Hassan v. Aliyu* (2010) 17 NWLR (Pt. 1223) 547
- Ibe v. Onuorah* (1998) 7 NWLR (Pt. 558) 383
- Ifezue v. Mbadugha* (1984) 1 SCNLR 427
- Iriri v. Erhurobara* (1991) 2 NWLR (Pt. 173) 252
- Kalu v. Uzo* (2004) 12 NWLR (Pt. 886) 1
- Mobil Oil Nig. Ltd. v. F.B.I.R.* (1977) 3 SC 53
- Mobil Oil Nigeria Ltd. v. Nabsons Ltd.* (1995) 7 NWLR (Pt. 407)254
- Nigerian Bottling Co. Ltd. v. Ngonadi* (1985) 1 NWLR (Pt. 4) 739
- Njoku v. Eme* (1973) NSCC 366
- Nkwocha v. Gov., Anambra State* (1984) 1 SCNLR 634
- Ntukidem v. Oko* (1986) 5 NWLR (Pt. 45) 909
- Ogu v. Ekweremadu* (2006) 1 NWLR (PL 961) 255
- Ojiogu v. Ojiogu* (2010) 9 NWLR (Pt. 1 198) I
- Oladipo v. Oyelami* (1989) 5 NWLR (Pt. 120) 210
- Omadide v. Adajero* (1976) 12 SC 87
- Onochie v. Odogwu* (2006) 6 NWLR (Pt. 975) 65
- Osuji v. Ekeocha* (2009) 16 NWLR (Pt. 1166) 81
- Oyeyemi v. Irewole Local Govt.* (1993) 1 NWLR (Pt/270) 462
- P.P.A. v. I.N.E.C* (2012) 13 NWLR (Pt. 1317) 215
- Plateau State v. A.G., Fed.* (2006) 3 NWLR (Pt. 967) 346
- Shettima v. Gain* (20 11)18 NWLR (Pt. I 279) 41 3
- Tanko v. State* (2009) 4 NWLR (Pt. 1131) 430
- Ugwu v.Ararume* (2007) 12 NWLR (Pt. 1048) 367
- Ukejianya v. Ucliendu* (1950) 13 WACA45

Ukwu v. Bunge (1997) 8 NWLR (Pt. 518) 527
Uzuda v. Ebigah (2009) 15 NWLR (Pt. 1 163) 1
Woluchem v. Gudi (1981) 5 SC 291

Foreign Case Referred to in the Judgment:

Beck v. Value Capital Ltd. (1976) 2 All ER 102

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999
(as amended), Ss. 285(5) & (6)
Electoral Act, 2010 (as amended), S. 134(1);
Paragraphs 5(a) (b) & (e) and 14(2)(a)(i)(iii) & (b) of
the 1st Schedule

Nigerian Rules of Courts Referred to in the Judgment:

Court of Appeal Rules, O. 7 r. 10(1)
Federal High Court Rules, 2009, O. 43 r. 4

Appeal and Cross-appeal:

These were an appeal and a cross-appeal against the decision of the Court of Appeal dismissing the appeal against the ruling of the Governorship Election Tribunal which dismissed the appellants' application for extension of time. The Supreme Court, in a unanimous decision, dismissed the appeal and struck out the cross-appeal as having become academic.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal:
Ibrahim Tanko Muhammad, J.S.C. (*Presided and Read the Leading Judgment*); John Afolabi Fabiyi, J.S.C; Suleiman Galadima, J.S.C; Nwali Sylvester Ngwuta, J.S.C; Musa Dattijo Muhammad, J.S.C; Clara Bata Ogunbiyi, J.S.C; Stanley Shenko Alagoa, J.S.C.

Appeal No.: SC. 153/2013

Date of Judgment: Friday, 24th May 2013

Names of Counsel: Mr. Yinka Orokoto (*with him, O. Akinyibo; N.C Anyachebelu and CD. Ezeh*) - *for the Appellants*

Chief Wole Olanipekun, SAN (*with him, Ricky Tarfa, SAN; I.A. Adedipe, SAN; Adebayo Adenipekun, SAN; John Baiyeshea, SAN; Eyitayo Jegede, SAN; Abiodun Owonikoko, SAN; Abayomi Akamode, Esq.; Aderemi Olatubora, Esq.; Tunde Atere, Esq.; Kunle Ijalana, Esq. and Olumide Ogunje, Esq.*) -*for the 1st Respondent*

Mallam Yusuf O. Ah, SAN (*with him, A.O. Adelodun, SAN; Chukwuma Ekomaru, SAN; Prof. Wahab Egbewole; Ayo Olanrewaju, Esq.; K.K. Eleja, Esq; R.O. Balogun. Esq.; Yakub Dauda, Esq.; A.O. Abdulkadir, Esq.*) - *for the 2nd Respondent*

J.M.M. Majiyagbe (*with him, C. Nwekeocha [Mrs.] and Ayotunde Ogunleye*) - *for the 3rd, 4th and 5th Respondents*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Akure

Names of Justices that sat on the appeal: Tijjani Abdullahi, J.C.A. (*Presided*): Ah Abubakar B. Gumel, J.C.A. (*Read the Leading Judgment*): Massoud Abdul Rahman Oredola, J.C.A.; Uchechukwu Onyemenam, J.C.A.; Cordelia Ifeoma Jombo-Ofo, J.C.A.

Appeal No.: CA/AK/EPT/Gov./O1/2013

Date of Judgment: Thursday, 28th March 2013

Names of Counsel: P.I.N. Ikwueto, SAN (*with him. Mr. Yinka Orokoto and Sikiru Adewoye*) - *for the Appellants* Chief Wole Olanipekun, SAN (*with him. Ricky hula. SAN; J.O. Baiyeshea, SAN; Mr. A.J. Owonikoko, SAN; Mr. Eyitayo Jegede, SAN; Mr. Adeiemi Olatubora; Mr. E.A. Ibrahim Efliong; Mr. Kunle Ijalana; Mr. Ayo Adesanmi and Yusuf Dikko*) - *for the 1st Respondent Responden/Cross Appellant*

Mallam Yusuf O. Ali SAN (with *him*, Mr. A.O. Adelodun, SAN; Mr. K.K. Eleja; R.O. Balogun; A.O. Abdulkadir and S.A. Abdullahi) - *for the 2nd Respondent*
Dr. Onyeachi Ikpeazu, SAN (with *him*, Mr. A.A. Raji, SAN; Mr. O. Osaze-Uzzi and Olajide Kumuyi) - *for the 3rd - 5th Respondents*

Tribunal:

Name of the Tribunal: Governorship Election Tribunal, Akure

Name of Members: Kaka'an, J. (Chairman); Mohammed Meme, J and Alikali, J.

Petition No.: EPT/OD/Gov/04/2012

Date of Ruling: Monday, 4th February 20 13

Counsel:

Mr. Yinka Orokoto (*with him*, O. Akinyibo; N.C. Anyaeheloluwa and CD. Ezech) - *for the Appellants*

Chief Wole Olanipekun, SAN (*with him*, Ricky Tarfa, SAN; LA. Adedipe, SAN; Adebayo Adenipekun, SAN; John Baiyeshea, SAN; Eytayo Jegede, SAN; Abiodun Owonikoko, SAN; Abayomi Akamode, Esq.; Aderemi Olatubora, Esq.; Tunde Atere, Esq.; Kunle Ijalana, Esq. and Olumide Ogunje, Esq.) -*for the 1st Respondent*

Mallam Yusuf O. Ali, SAN (*with him*, A.O. Adelodun, SAN; Chukwuma Ekomaru, SAN; Prof. Wahab Egbewole; Ayo Olanrewaju, Esq.; K.K. Eleja, Esq; R.O. Balogun, Esq.; Yakub Dauda, Esq.; A.O. Abdulkadir, Esq.) - *for the 2nd Respondent*

J.M.M. Majiyagbe (*with him*, C. Nwekeoha [Mrs.] and Ayotunde Ogunleye) - *for the 3rd, 4th and 5th Respondents*

I. T. MUHAMMAD, J.S.C. (Delivering the Leading Judgment):

Governorship election was held in Ondo State on the 20th of October, 2012. Dr. Rahman Olusegun Mimiko, 1st respondent herein, was the candidate presented for lite election by the Labour Party (2nd respondent). He was declared the winner of the said election having scored the majority of votes cast and having satisfied the requirement of the Constitution as to geographical spread of the votes. In a petition No. EPT/ON/GOV/04/2012 tiled by Chief Olusola Oke and another before the Governorship Election Tribunal, Holden at Akure (the tribunal for short), the petitioners who are the appellants herein sought for the following reliefs:

1. “That it may be determined and thus determined that the 1st respondent, Dr. Rahman Olusegun Mimiko sponsored at the election by the 2nd respondent was not duly elected or returned by the majority of lawful votes cast at the governorship election held in Ondo State on Saturday, 20th October, 2012.
2. That it may be determined and thus determined that the election and return of Dr. Rahman Olusegun Mimiko as candidate of the 2nd respondent at the governorship election held on Saturday 20th of October, 2012 are vitiated/voided by corrupt practices widespread acts of substantial non-compliance and massive rigging.
3. An order setting aside as null and void the purported election and return of the 1st respondent, Dr. Rahman Olusegun Mimiko the 2nd respondent’s candidate as governor of Ondo State based on the election conducted by the 3rd - 5th respondents on 20th October, 2012.
4. A declaration that having regard to the lawful votes cast at the said election, it was the 1st petitioner and not the 1st respondent that scored the majority of lawful votes cast at the election and also secured at least 25% in more than $\frac{2}{3}$ of the 18 Local Governments in Ondo State and ought to have been declared and returned as the winner of the election.
5. An order declaring the 1st petitioner elected and returned as governor of Ondo State having polled majority of the lawful votes cast at the said election and also scoring at least 25% in at

- least 2/3 of the local governments in Ondo State.
6. That it may be determined and thus determined that having secured majority of the lawful votes cast at the election of 20th October, 2012, and having satisfied all other constitutional requirements in that regard, your 1st petitioner ought to have been declared elected and returned as the governor of Ondo State. Alternatively:
 7. A declaration that the Ondo State Governorship election held on 20th October, 2012 by the 3rd - 5th respondents in which the 1st respondent and petitioner are respectively candidates is null and void having been marred and vitiated by massive rigging, widespread substantial non-compliance and corrupt practices.
 8. An order nullifying the said governorship election and directing the 3rd respondent to conduct a fresh governorship election in Ondo State within a period determined and directed by this honourable tribunal.
 9. Any other orders.”

The respondents, each filed his/its respective reply to the petition. The petitioners tiled replies where necessary.

After the close of pleadings, the appellants filed in the tribunal a motion dated the 16th day of January, 2013. The reliefs sought in that motion read as follows:

1. “An order of this honourable tribunal extending the time within which the petitioners may file and make use of additional or further witness depositions accompanying this application for a just and fair determination of the petition.
2. An order of this honourable tribunal granting leave to the petitioners/applicants to call an additional witness, to wit: “A.E.O.” whose statement / deposition on oath accompanies this motion.
3. An order of this honourable tribunal granting leave/ allowing the petitioners/applicants to file, serve and rely on further and additional witness statement oath in support of this petition which said additional statement accompanies this motion.

4. An order of this honourable tribunal deeming as properly filed and served the further and additional witness' statement on oath accompanying this motion. And for such further or other orders the honourable tribunal may deem fit to make in the circumstance."

In response thereof, the respondents tiled all necessary processes in opposition to the appellants' motion. The tribunal heard the motion, and some other motions during the pre-hearing session. In its ruling delivered on the 4th of February, 2013, the tribunal refused the application. Dissatisfied with the said ruling, the appellants appealed to the Court of Appeal, Akure Judicial Division (the lower court). In its decision of 28th March, 2013, the lower court affirmed the ruling of the tribunal.

Dissatisfied further, the appellants filed their appeal to this court on five grounds of appeal. There is also filed a cross-appeal by the 1st respondent/cross-appellant. I shall re-visit this cross-appeal later in this judgment.

After having settled briefs of arguments, each of the parties formulated issues for this court to consider in determining the appeal. The learned counsel for the appellants' issues are as follows:

- “1. Whether the Court of Appeal was not in error and its decision perverse and unreasonable when it failed to apply the principles guiding the grant of application for extension of time as laid down by the Supreme Court in *Mobil Oil Nig. Ltd. v. F.B.I.R.* (1977) 3 SC 53 and *Ukwu v. Bunge* (1997) 8 NWLR (Pt. 518) 527 to the consideration of appellants' application.
2. Considering the fact that the evidence sought to be adduced was covered by the pleadings and give the further facts that the appellants both in the grounds and supporting affidavit to the application generously supplied materials justifying the application for extension of time and leave to adduce further evidence and call additional witness, whether the Court of Appeal was not in error which occasioned miscarriage of justice when it affirmed the decision of the trial court which wrongly treated appellants' application as one for amendment of the petition which if granted would over-reach the respondents without showing or demonstrating how it arrived at the decision.”

Learned SAN for the 1st respondent's lone issue reads as follows:

“Having regard to the *sin generis* nature of an election petition, the provisions of statutes, rules of court and practice directions and the binding decisions of appellate courts, whether the Court of Appeal was not right when it affirmed the decision of the trial tribunal which refused the appellants' application to file additional or further witness depositions outside the period provided for in the Electoral Act.”

Learned SAN for the 3rd - 5th respondents' sole issue is as follows:

“Whether the Court of Appeal was right when it upheld and agreed with the tribunal that granting of the appellants' application would overreach and prejudice the respondents.”

The appellants' two issues were argued together in the brief of argument. 1st respondent's issue is identical with the issue formulated by the 3rd - 5th respondents' counsel.

I will take all the issues together as they are of same tenor, though differently couched.

It is the submission of learned SAN for the appellant that the appellants' complaint before the court below was that the trial tribunal wrongly treated the application leading to this appeal as one for amendment, when the prayers, grounds and affidavit evidence dearly show that it was for extension of time. The point was also made before the court that the evidence sought to be adduced was covered by the pleadings before the tribunal and therefore required no amendment to the petition. It was also strongly contended that the trial tribunal reached its erroneous decision because it failed to consider the nature of the evidence contained in the accompanying witness depositions. It was submitted further that the Court of Appeal in arriving at its decision to uphold the trial tribunal's decision which treated appellants' application for extension of time as one for amendment, failed to consider the appellants' complaint that the tribunal failed to examine the evidence sought to be tendered with due regard to the pleadings and that the pleadings cover the evidence accompanying the application. The learned SAN conceded that an application for extension of time seeks the exercise of a discretionary power of the court, he however submitted that such discretion is not exercisable on mere figment of

the person doing so but upon facts and circumstances necessary for the proper exercise of that discretion. He referred to *Osuji v. Ekeocha* (2009) All FWLR (Pt. 490) 614 at 647; (2009) 16 NWLR (Pt. 1166) 81. He , argued further that an appellate court has a duty to interfere with the exercise of judicial discretion if it is shown to have been exercised without due regard to the facts and circumstances presented before it from which it must draw a conclusion which must be governed by law. The learned SAN cited several cases to support his submission: *Osuji v. Ekeocha* (2009) All FWLR (Pt. 490) 614 at 647; (2009) 16 NWLR (Pt. 1166) 81; *Tanko v. State* (2009) 4 NWLR (Pt. 1131) 430 at 457; *Oyeyemi v. Irewole Local Government* (1993) 1 NWLR (Pt. 270) 462 at 484.

The learned SAN challenged the exercise of discretion of the Court of Appeal as it demonstrated total failure to consider dispassionately, the case of the appellants that evidence in support of pleaded facts cannot constitute amendment which would warrant the finding of same being over-reaching. The failure of the court to consider issues of coverage of the evidence sought to be tendered by the pleadings tantamounts to a violation of appellants' right to fair hearing and the appellants are denied the opportunity to present evidence in proof of their petition. Cases of *Uz.uda v. Ebigah* (2009) All WLR 122; (2009) 15 NWLR (Pt. 1163) 1; *Araka v. Ejeagwu* (2000) 15 NWLR (Pt. 692) 684, were among others, cited.

At the end of his submission, the learned SAN for the appellants urged this court to hold that the tribunal did not exercise its discretion judicially and judiciously having tailed to base same on the facts and circumstances presented before it and that the decision of the Court of Appeal affirming the decision of the tribunal is itself perverse, unreasonable and liable to be set aside.

The learned SAN for the 1st respondent; the learned SAN for the 2nd respondent and the learned counsel for the 3rd – 5th respondents in their various briefs of argument show that they are agreed that

- a) the appellant, after the close of pleadings came up with an application seeking leave of court to file additional or further witness deposition outside the prescribed period provided by the Electoral Act for filing of election petition and for effecting amendment on matters relating to the substance or contents of the petition.

- b) the application culminating into this appeal was a subtle attempt to amend and introduce new facts into the petition after the expiration of time for same;
- c) a grant of the application would have overreached the respondents irreparably;
- d) the refusal of the appellants' application by the tribunal flows from a judicial and judicious exercise of discretion which cannot be faulted.
- e) no case is presented for interference with the exercise of discretion of the trial court as affirmed by the Court of Appeal;
- f) the decisions of the two lower courts are concurrent and no justification for interference with same has been established by the appellants.

Each of the learned SANs and other counsel supported then-submissions copiously by decided authorities and other statutory provisions. Each of them urged this court to dismiss the appeal and affirm the concurrent judgments of the two lower courts.

In the consideration of this appeal, I find it necessary to reproduce the application which gave birth to this appeal. The application was filed by the appellants as applicants before the trial tribunal on the 16th of January, 2013. It sought for the following reliefs:

1. "An order of this honourable tribunal extending the time within which the petitioners may file and make use of additional or further witness depositions accompanying this application for a just and fair determination of the petition.
2. An order of this honourable tribunal granting leave to the petitioner/applicants to call an additional witness, _____ to wit; "A.E.O." whose statement/deposition on oath accompanies this motion.
3. An order of this honourable tribunal granting leave/allowing the petitioners/applicants to file, serve and rely on further and additional witness statement on oath in support of this petition which said additional statement accompanies this motion.
4. An order of this honourable tribunal deeming as properly filed and served the further and additional witness statement on oath accompanying this motion, And for such further or other orders the

honourable tribunal may deem fit to make in the circumstances.”

The grounds upon which the application was premised are as follows:

- “1. Some of the documents and other relevant facts needed in proof of the petition were not available to the petitioners at the time of filing.
2. The 3rd respondent who has custody of the documents relevant to the petition has recently made certified true copies of some of them available to the petitioners.
3. Other relevant facts to the pleadings of the petitioners have also come to the knowledge and possession of the petitioners after the filing of this petition.
4. All the documents and facts referred to above would assist the honourable tribunal in the fair and just determination of the petition and the petitioners in ventilating their grievances.
5. That by the time the 3rd respondent made a comprehensive documents which the applicants applied for and which the applicants needed to prepare a comprehensive statement on oath, the time to file this statement on oath along with the petitioners’ reply had elapsed.
6. The final report of the expert commissioned to scientifically examine the register of voters used for the election in order to determine if there was any unauthorized injection was recently received after the close of pleadings.”

Having considered the affidavit evidence and counsels’ addresses, placed before it, the trial tribunal, held, *inter alia*, as follows:

“In the main, we hereby hold that this application is hereby unmeritorious as:

1. From the grounds of the application the applicants want to introduce fresh facts.
2. The time within which to effect substantial amendment to the petition has passed by effluxion of time.
3. Election petition being *sui generis* is guided by statute.
4. This application if granted will certainly overreach the respondent.

The application is hereby dismissed.”

In affirming the above decision, the court below, held as follows:

“Against this background and tribunal saw this application has more to do with the amendment of the petition than for extension of time the tribunal was entitled to so do. It was quite in its enabling powers. But would the exercise of its discretion to treat the application as it did be said to have been done judicially and judiciously ... in the instant case the tribunal in my view exercised its discretion judicially and judiciously because I believe that it adequately had before it sufficient materials on which it came to the conclusion that the prayer for extension of time was really meant to be for an amendment to the petition. It was also within, the competence of the tribunal to believe as it did that any amendment to the petition would in the circumstance be substantial as to prejudice and overreach the respondent.”

Secondly, it is to be noted that this is an election matter and a petition on governorship election for that matter. The general principle of the law is that election matters are *sui generis*. They are limited by time span especially the gubernatorial one. They cannot withstand everlasting time span (*ad infinitum*). They must be concluded within a given time span in order to allow the winning candidate (governor-elect etc) assume his responsibilities of the office. He has a very limited number of years. Time lapse will seriously affect his term of office unlike in other ordinary civil, matters with no time bar. In any event, in all cases, there must be end to litigation.

By the provision of paragraph 14(2)(a) and (b) of the 1st Schedule to the Electoral Act 2010 (as amended), no amendment whatsoever shall be entertained by the tribunal after the expiration of the period within which to present an election petition. The paragraph provides as follows:

“14(2) Alter the expiration of the time limited by:

- a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made:
 - i. introducing any of the requirements of ‘ subparagraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or

- ii. effecting a substantial alteration of the ground for, or the prayer in, the election petition, or
 - iii. except anything which may be done under the provisions of subparagraph (2)(a)(ii) of this paragraph, effecting a substantial alteration of or addition to the statement of fact relied on to support the ground for, or sustain the prayer in the election petition; and
- b) paragraph 12 of the Schedule for filing the reply, no amendment shall be made –
- i. alleging that the claim of the seat or office by the petitioner is incorrect or false; or
 - ii. except anything which may be done under the provisions of sub-paragraph (2)(a)(ii) of this paragraph, effecting any substantial alteration in or addition to the admissions or denials contained in the original reply filed, or to the facts set out in the reply.”

It is the finding of the tribunal, if my lords will permit me to quote *in extenso*, that:

“With the review of the application and the reply by the petitioners/applicant’s counsel and the counter affidavit of the C, 2nd and 3rd – 5th respondents, it is our candid view that from the gamut of the affidavits, counter-affidavits, written addresses of counsel in support of this application based on the variegated issues identified and distilled for determination, we prefer the issue formulated by learned counsel to the 1st respondent. We adopt it with some modification to wit:

Whether having regard to the *sui generis* nature of election petition particularly the provisions of Electoral Act, this application is grantable.

The applicants seek to state that their application at this stage of the proceeding is not meant to over-reach the respondents. The point is whether the Electoral Act supports such an application. To our mind, the more appropriate paragraphs of the Electoral Act dealing with this issue are paragraphs 4(1) and 5(a), (b) & (c) and 14(2) a(i) and (iii) of the

1st Schedule to the Electoral Act 2010 (as amended). We had earlier reproduced paragraph 4(d), paragraph 14(2) a(i) and (iii) state:

After the expiration of the time limited by –

- a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made:
 - i. introducing any of the requirements of sub- paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed; or
 - ii. Except anything which may be done under the provisions of subparagraph 2(a) ii of this paragraph, affecting a substantial alteration of or addition to the statement of facts relied on to support the ground for, or sustain the prayer in the election petition and ...

The requirements of paragraph 134(1) of this Act are now part of the Constitution. What we are concern (sic) with specifically at this stage is whether the applicants grounds for the application as contained therein are tenable grounds. It is obvious that the reliefs the applicants seek are based principally on grounds 1 and 3 to wit:

1. Some of the documents and other relevant facts needed in proof of the petition were not available to the petitioners at the time of filing.
2. Other relevant facts relevant to this pleadings of the petitioners have also come to the knowledge and possession of the petitioners after the tiling of this petition.

It must be noted that the tribunal can only admit evidence where it is supported by the pleadings tit this stage. This nature of evidence is so obvious, that it cannot be said that it has a space in the pleadings: *Ogu v. Ekweremadu* (2006) 1 NWLR (Pt. 961) 255. The petitioners/applicants had been consistent in their deposition that what they seek to introduce are facts which came to their knowledge after filing the petition, thus it cannot be said that what the petitioners seek to introduce is evidence based on facts already contained in the petition.

The point has to be made therefore that since it is obvious that the facts now sought to be introduced by

the applicants raise new issues that were not contained in the petition, it has the tender of springing surprise at the respondent, this is more so that the respondents may not have a right to respond. This is because the¹ time of tiling pleading has lapsed. At any rate any evidence given which is at variance with averments in the pleadings go to no issue. See: *Ojiogu v. Ojiogu* (2010) 9 NWLR (Pt. 1198) 1 at 20; *Njoku & Ors v. lane A Ors* (1973) NSCC 366.

We are also of the firm view that the said action also runs counter to the principle of *audi alteram partem*. This ride demands not only that both parties be heard, but also none should be permitted to overreach the other by raising unforeseen issues as presently done in this motion. It is clear that the 1st – 5th respondents would have no opportunity of proffering a reply to those allegations raised in the aforementioned paragraphs. An exercise of jurisdiction is not done in vacuum, it has to be in accordance with the rules. Having not complied with the rules, as stipulated in paragraphs -1(1) d, 5(a-c) and 14(2) a(i) and (iii) the applicants cannot expect the favour of this tribunal therefore. We are not oblivious of the authorities ably cited by the petitioner's counsel, and paragraphs of the 1st Schedule to the Electoral Act referred. We however hold that the respondents had traversed whatever it was that was stated to the effect that the content of the further and additional witness statement on oath accompanying the motion is not rooted in the pleadings of the applicant. The tribunal shall not allow a party to embark on a voyage of discovery at this stage. In the main, we hereby hold that this application is hereby unmeritorious as:

1. From the grounds of the application the applicants want to introduce fresh facts.
2. The time within which to effect substantial amendment to the petition has passed by affluxion of time.
3. Election petition being *sui generis* is guided by statute.
4. This application if granted will certainly overreach the respondents.

The application is hereby dismissed.”

In affirming the ruling of the tribunal on this issue, the court below, per Gumel, JCA, held as follows:

“out of the 4 reliefs on the application of the appellants, one is for extension of time and 2 are for leave and the other main relief is for a deeming order, and if they were to be granted the appellants would have had their wish of bringing in additional evidence to be adduced through a new witness that was not contemplated to be a witness at the date of tiling the petition. I have carefully read and considered all the grounds for this application, the supporting facts as well as the erudite arguments of respective learned counsel. I observe that learned counsel to the appellants has heavily relied on paragraphs 3 - 7 and 9 - 10 of the affidavit in support to anchor his belief that if they were to be taken together they would clearly show that the first relief on the motion paper did not seek for any amendment to the petition but specifically for extension of time within which to file and make use of additional or further witness depositions. While it is correct that Order 43 rule 4 of the Federal High Court Rules 2009 along with paragraph 45 of the 1st Schedule allow for extension of time within which to take step inappropriate and deserving circumstances. Also Order 7 rule 10(1) of the Court of Appeal Rules with paragraph 45 of L’ Schedule also allow for extension of time to be granted. A court may enlarge time for the doing of anything to which the rules apply. It is within the discretionary power of a court to grant or refuse a prayer for extension of time. Like all discretions, this too must be exercised judicially and judiciously.

An applicant who seeks for an order for extension of time availed it by the rules of court to take certain steps must explain satisfactorily to the court why those step were not taken within the time stipulated for the taking of those steps. A party seeking for extension of time must give good and substantial reasons for the delay in filing the process within the prescribed time frame as the court does not exercise its discretion as a matter of course. In the instant appeal, both the grounds for the application and

paragraphs of the affidavit have generously set out the need for extension of time has arisen and the reasons why this application ought to have been granted, the lower court saw beyond the mere words of the application and declined to grant it. This refusal to grant the application arose from the belief of the tribunal that prayer one was a surreptitious attempt by the petitioners/applicants to effect a substantial amendment of the petition outside the period the law allows for such a fundamental and monumental endeavour. The tribunal was of the further view that granting the application as prayed would only overreach and prejudice the respondents.

In refusing the application, the tribunal was exercising its discretion upon its understanding of the materials placed before it. It is correct, and I fully agree with learned counsel to the petitioners/ applicants, that there were enough materials to consider in deciding whether or not to grant extension of time. However, the tribunal, while considering those materials saw it necessary to be mindful of the prayers against which those materials were placed before it. Against this background the tribunal saw this application as more to do with the amendment of the petition than for extension of time. The tribunal was entitled to so do.

It was quite within its enabling powers. But could the exercise of its discretion to treat the application as it did be said to have been done judicially and judiciously. In the instant case the tribunal in my view exercised (is discretion judicially and judiciously because I believe that it adequately had before it sufficient materials on which it came to the conclusion that the prayer for extension of time was really meant to be for an amendment to the petition. It was also within, the competence of the tribunal to believe as it did that any amendment to the petition would in the circumstance be substantial as to prejudice and overreach the respondents. I have taken time to consider and review the entire circumstance of this matter and I found no

reason to see the decision of the tribunal as being perverse or unreasonable. I am also unable to interfere with the exercise of the discretion of the tribunal. Issues one and two in the appellants' issues for determination are therefore hereby resolved in favour of the respondents."

My noble lords, do I need to add anything on the above lucid and comprehensive decisions of the two lower courts? Indeed I do not have to as I am full of satisfaction that both lower courts have done the right thing.

Perhaps the only thing I may add is that the application placed before the tribunal was, I think, an after-thought. It was orchestrated certainly with a view to over-reach. If there was an evidence which was fundamental to the determination of the petition, that evidence ought to have been placed willy-nilly before the tribunal within the time limit specified by the Electoral Act or any other Act. That evidence ought to be regarded as the spinal cord of the petition. Even if it was being withheld by any person, there are several ways to go about placing same before the tribunal. The Evidence Act is very clear on this. The petitioners ought to have resorted to that procedure. It was never done. I am in tandem with the learned SANs for the 1st and 2nd respondents in their submissions that the ground upon which the petitioners wanted to bring in facts that were not available to them at the time of tiling the petition, is an admission by the petitioners that it was an attempt by them to introduce new facts which were not available at the time of tiling the petition. This clearly offends the provision of paragraph 14(2)(a) and (b) of the Act referred to earlier. This is irrespective of the mode the petitioners/applicants approached the court: whether for extension of time to do an act or for an amendment to the petition, the result is one and the same. It must have impact on the petition. The refusal of the application by the two courts is quite justified. I am in total agreement with the concurrent decisions thereof which I affirm. The appeal is hereby dismissed as it lacks merit.

I shall now consider the cross-appeal. But before I do that, I think there is need for me to look at the relief'(s) being sought by the cross-appellant. In his notice of cross-appeal (although inadvertently titled "notice of appeal")

(pages 1945 - 1948 Vol. III), the cross-appellant in paragraph 4 thereof, urges the Supreme Court to grant “an order *allowing* the appeal by affirming the decision of the Governorship Election Tribunal Holden at Akure ...”

Equally, in his brief of argument, the cross-appellant (pages 21 thereof) urges this court “to resolve the issues formulated herein in favour of the cross- appellant and set aside the Court of Appeal restoration of paragraphs ... and to dismiss the petition as sought in the notice of cross-appeal.”

One single question which is lingering in my mind is: granted that I allow the cross-appeal on its merit and set aside that part of the court below’s judgment complained of by the cross-appellant, and affirm the decision of the tribunal on the paragraphs struck out, of what tangible benefit shall that be to the cross-appellant? Would it change the current position of the cross-appellant as the incumbent governor of Ondo State? One thing with the courts is that no court of law will knowingly act in vain. See: *Oladipo v. Oyelami* (1989) 5 NWLR (Pt. 120) 210.

Thus, consideration of this cross-appeal will, in my view, become academic cosmetic and of no utilitarian value or benefit as the aim of the cross-appeal has already been met by the earlier decisions of the trial court and of course that of the court below. I shall therefore reuse to consider the cross-appeal

It is a principle of law long settled that the general attitude of the courts of law is that they are loathe in making pronouncements on academic/hypothetical issues as it does not serve any useful purpose. See: *Ukejianya v. Uchendu* (1950) 13 WACA45; *Nhvocha v. Gov. of Anambra State* (1984) 1 SCNLR 634; *Epemkiin v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162.

The cross-appeal is hereby struck out by me.

In the final analysis, larder each of the parties to bear his/its own costs in the main appeal and in the cross-appeal.

FABIYI, J.S.C.: I have had a preview of the judgment just delivered by my learned brother, I. T. Muhammad, JSC. I agree with the reasons therein adumbrated to arrive at the conclusion that the main appeal deserves to be dismissed while the cross- appeal should be struck out.

The appellants, after the close of pleadings, desired to file additional witness deposition outside the prescribed

period by the Electoral Act for filing of election petition. Same was designed, as it were, to effect amendment on matters relating to the substance of the petition. The appellants had an up-hill task as it is basic that in election matters, time is of essence. This is because election matters are *sui generis*. They are unlike ordinary civil proceedings without a time bar. See: *Hassan v. Aliyu* (2010) All FWLR (Pt. 539) 1007) at 1046; (2010) 17 NWLR (Pt. 1223) 547.

The trial tribunal considered the application and in its discretion which was exercised judicially and judiciously, as well, found that the application was a subtle attempt to amend and introduce new facts into the petition after the expiration of time for same. It felt that the application was designed to over-reach the respondents irreparably in a radical fashion. The Court of Appeal, in essence, agreed with the stance posed by the trial tribunal. It is difficult to fault them. It is not usual for this court to interfere with exercise of discretion carried out by the two lower courts judicially and judiciously. See: *Eronini v. Iheuko* (1989) 2 NSCC (Pt. I) 503 at 513; (1989) 3 SC (Pt. 1) 30; (1989) 2 NWLR (Pt. 101) 46.

Perhaps, I should further add that since the trial tribunal and the Court of Appeal made concurrent findings on material facts, this court will not interfere as no compelling reasons have been shown to justify interference. See: *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1.

For the above reasons and the detailed ones ably set out in the judgment of my learned brother, which I hereby adopt, I too feel that the main appeal should be dismissed and the cross-appeal which borders on academic exercise should be struck out. I order accordingly. I endorse the order relating to costs in the lead judgment.

GALADIMA, J.S.C: I was privileged to have read the draft of the leading judgment just delivered by my learned brother, FT. Muhammad, JSC. I agree with his reasoning therein leading to the conclusion that the main appeal be dismissed while the cross-appeal should be struck out.

This appeal is against the part of the decision of the Court of Appeal, Akure Division delivered on 28/3/2013 which affirmed the decision of the Governorship Election Tribunal. The tribunal in its

ruling refused the appellants' application for enlargement of time within which to file and use further witness depositions and to call additional witness on the ground that the application constituted an attempt to amend the petition after the expiration of the period prescribed by the Electoral Act to do so.

The prayers sought for and the grounds for the application as contained at pages 980 - 981 vol. 11 of the record of appeal have been reproduced in the lead Judgment. It is not necessary to do the same, save for the fact that the appellants' main grounds for their application were that:

- “(a) Some of the documents and other relevant facts needed in proof of the petition were not available to the petitioners at the time of tiling,
- (b) The 3rd respondent who was in custody of the documents relevant to the petition has recently made certified true copies of some of them available to the petitioners”

My careful study of the amendment sought clearly reveals that it has the effect of amending the matters relating to the substance of the petition after the expiration of time limited by law. For section 14(2) of the First Schedule to the Election Act provides as follows:

- “After the expiration of the time limited by –
- (a) Section 134(1) of this Act for presenting the election petition no amendment shall be made-
 - (i) Introducing any of the requirements of and paragraph I of paragraph 4 of the Schedule not contained in the original election file ...”

More importantly, section 285(5) of the 1999 Constitution (as amended) provides that:

- “An election petition shall be filed within 21 days after the date of the declaration of result of the elections.”

The use of the word “*shall*” in the section 285(5) *supra*) connotes a “command or mandatory obligation”. It places a complete bar on any form of amendment to a petition tiled and does not also allow for an exercise of discretion: See *Ugwu v. Arantme* (2007) 12 NWLR (Pt. 1048) 367 at 510 -511; *Onocliie v. Odogwu* (2006) 2 SCNJ 94 at 114; (2006) 6 NWLR (Pt. 975) 65;

Bamaixi v. Attorney General of Federation (2001) 12 NWLR (Pt. 727) 468 at 497. The Court of Appeal agreed with the trial Tribunal that the application was an attempt to introduce new facts into the petition after the expiration of time for same. I cannot fault or interfere with the concurrent exercise of lower courts, which was judicious. There are no compelling reasons to do so. Election matters are “*sui generis*,” very much unlike ordinary civil or criminal proceedings. Time is of the essence. Time within which to effect substantial amendment to the petition has passed by affluxion of time.

In the light of the foregoing and the fuller reasons given in the leading judgment I too find no merit in the appeal and the cross-appeal, they are dismissed and struck out respectively. Main appeal dismissed. Cross-appeal struckout.

NGWUTA, J.S.C.: I have had the honour reading in draft the lead judgment just delivered by My Lord Muhammad, JSC and I entirely agree with the lucid reasoning and apt conclusion reached.

Appellants’ principal relief before the trial tribunal is their relief number one in the motion paper hereunder reproduced:

“An order of this honourable tribunal extending the time within which the petitioners may file and make use of additional or further witness depositions accompanying this application for a judgment and fan-determination of the petition”

The other three reliefs will sink or swim with the 1st relief; reproduced above. It is noteworthy that from the point of view of the appellants, the additional or further witness depositions are necessary “for a just and fair determination of the petition”, thereby emphasizing the importance of the depositions. This is coming after the close of pleading and by whatever name the appellants chose to call the relief sought, its effect is to amend the petition.

In my view, this is a subtle and indirect application to amend the petition. See *Adekeye v. Akin-Olugbade* (1987) 3 NWLR (Pt. 60) 214; *Ibe v. Oimnrah* (1998) 7 NWLR (Pt. 558) 383. The application came at a time the appellants had

lost the right to amend their petition. See paragraph 14(2)(a) and (b) of the P¹ Schedule to the Electoral Act, 2010.

The additional or further witness depositions sought to be allowed is for “a just and fair determination of the petition”, are fresh facts as found by the tribunal and which finding was endorsed by the lower court. This court will not interfere with a concurrent finding of fact of the two lower courts when the appellants have failed to show a special circumstance for this court to do so. Election petitions are time-bound and the court will not allow a party to resort to any sort of subterfuge to frustrate the intention of the Electoral Act that petitions be disposed of expeditiously.

Based on the above and the fuller reasons advanced in the lead judgment, I agree that the appeal ought to be dismissed and I also dismiss it.

I also agree that the cross-appeal is an abstraction short of any semblance of reality. This court does not have the time to indulge in the luxury of academic exercise. On the facts before us, the issue in the cross-appeal is better reserved for the Law Faculties where such abstract issues are taken as a matter of principle.

I agree that the cross-appeal be struck out and I do hereby strike it out. Parties shall bear their respective costs in the appeal and cross-appeal.

Appeal dismissed.

Cross-appeal struck out.

M.D. MUHAMMAD, J.S.C.: I had a preview of the lead judgment of my learned brother, I.T. Muhammad, JSC, just delivered” I adopt his Lordship’s reasoning in equally finding that both the appeal and cross appeal are undeserving of our attention. Both have arisen from the interlocutory decision of the trial tribunal that has since wound-up.

The petition that brought about the two appeals has exceeded the 180 days section 285(6) requires that it be determined. Should we determine the appeals and grant the reliefs the appellants seek, the tribunal would not be there to deliver its judgment as required by law. The issues raised by the two appeals, therefore, are not live issues. They are

hypothetical and academic. Courts don't indulge in them and allow the abuse of their processes.

It is for this reason and the fuller reasons in the lead judgment that I also dismiss both the appeal and the cross appeal. I abide by the consequential orders made in the lead judgment.

OGUNBIYI, J.S.C.: This is an appeal against that part of decision of the Court of Appeal sitting in Akure delivered on the 28th day of March, 2013 wherein the court affirmed the ruling of the trial tribunal refusing the appellants' application for enlargement of time within which to file and use further witness depositions and call additional witness on the ground that the application constituted an attempt to amend the petition.

Specifically and for purpose of better comprehension, the reproduction of the appellants' application which is the subject of contention would be relevant as it sought for the following orders/ reliefs before the trial tribunal:

- “1. An order of this honourable tribunal extending the time within which the petitioners may file and make use of additional or further witness depositions accompanying this application for a just and fair determination of the petition.
2. An order of this honourable tribunal granting leave to petitioners/applicants to call an additional witness, to wit: “A.E.G.” whose statement/deposition on oath accompanies this motion.
3. An order of the honourable tribunal granting leave/ allowing the petitioners/applicants to file, serve and rely on further and additional witness statement on oath in support of this petition which said additional statement accompanies this motion.
4. An order of this honourable tribunal deeming as properly tiled and served the further and additional witness statement on oath accompanying this motion.”

The trial tribunal in its considered ruling while dismissing the application had this to say at page 1,430 of the record:

“In the main, we hereby hold that this application is hereby unmeritorious as:

1. From the grounds of the application the applicants want to introduce fresh facts.

2. The time within which to effect substantial amendment to the petition has passed by effluxion of time.
3. Flection petition being *sui generic* is guided by statute.
4. This application if granted will certainly overreach the respondent. The application is hereby dismissed.”

In affirming the view held by the trial tribunal, the Court of Appeal having carefully reviewed the entire proceedings and the reasonings per Gumel, (JCA) delivering the lead judgment also came to the conclusion at pages 1921 - 1922 of the record in the following terms:

“Against this back ground and tribunal saw this application has more to do with the amendment of the petition than for extension of time. The tribunal was entitled to so do. It was quite in its enabling powers. But would the exercise of its discretion to treat the application as it did be said to have been done judicially and judiciously ... In the instant case the tribunal in my view exercised its discretion judicially and judiciously because I believe that it adequately had before it sufficient materials on which it came to the conclusion that the prayer for extension of time was really meant to be for an amendment to the petition. It was also within, the competence of the tribunal to believe as it did that any amendment to the petition would in the circumstance be substantial as to prejudice and overreach the respondent.”

For all intent and purpose, I cannot but firmly agree with he conclusion arrived thereat by the lower court based on the reasons to be given here after with the following facts being well taken and not in dispute:

- (1) That the subject matter of the appeal emanated from an election petition which was duly held in Ondo State on the 20th October, 2012.
- (2) At the conclusion of the result, the F¹ respondent, Dr. Rahman Olusegun Mimiko the candidate of the Labour Party was declared the winner of the election.
- (3) The appellants were dissatisfied with the result of the said election and hence filed a joint

petition dated 10th November, 2012 at the Governorship Election Petition Tribunal, Akure.

- (4) The election tribunal was set up pursuant to section 285 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It is significant to restate that the said tribunal was specifically charged with the power to exercise original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of governor or deputy governor of a State. The power so conferred was also exclusive to the exclusion of any court or tribunal.

By the provision of section 285(5) of the same Constitution, an election petition shall be filed within 21 days after the date of declaration of the results. The application at hand, by its very nature was made after the close of pleadings when issues were fully joined by parties and hence the reason seeking the P' relief, on order for extension of time.

The ground at hand is whether the lower court was right when it affirmed the decision of the trial tribunal which refused the appellants' application to file additional or further witness deposition outside the period provided for in the Electoral Act. The appellants in substantiating their application before the trial tribunal predicated some on six grounds as clearly specified at pages 980-981 of the record. It is obvious and as rightly submitted on behalf of the respondents that the grounds revealed that more facts were obtained after the appellants had filed their petition and hence the reason for extension of time to put in those facts.

In the course of determining the application, it would appear obvious that the exercise of discretion would have taken certain salient factors into serious consideration. In other words, with election matters being of special species and *sui generis* in nature they cannot therefore be treated in the same class like ordinary civil cases. This is trite and settled in view of the constitutional recognition and the putting in place of special legislations specifically aimed at governing its conduct and procedure. See for instance the case of *Abubakar v. Yar'Adua* (2008) 12 SC (Pt. 11) page 1 at 21; (2008) 19 NWLR (Pt. 1120) 1 at p. 82 paras. F-G where this court held and said:

“An election petition is *sui generis*. That is to say it is in a class by itself. Surely, this is no

longer a moot point. It is different from a common law civil action.”

In ordinary civil causes and matters for instance, the granting of application of this nature is subject to the applicants adducing good and substantial reasons why they failed to come within the time prescribed by law. It is also well settled that under the ordinary rules of court, the power to grant an application for extension of time is discretionary.

Specifically and in the matter under consideration, the overriding factor is the reason for and the effect of the application. This is especially where election matters are governed by legislations which are circumscribed and therefore override the rules of court, see *Kalu v. U:nr* (2004) 12 NWLR (Pt. 886) 1 at 20 paras. F-H where it was held that:

“The Electoral Act, 2002 contains mandatory provisions ... thus, election petitions have certain peculiar features which make them *sui generis*. They stand on their own and bound by their rules under the law ... Defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition... a slight default in compliance with a procedural step could result in fatal consequences for the petition.”

In view of delicate nature of election matters, it will not overlook seemingly minor defects or irregularities as would the ordinary civil causes. The rule of the game is not *stricto sensu* the same. It is the enabling statute for instance that determines the jurisdiction of any adjudicatory body as in this case whereof the Electoral Act is the governing legislation that guides and directs all the workings of on Election Petition Tribunal in election matters placed before it. Where the workings of the Act place mandatory compliance, any exercise of discretion will be without jurisdiction and therefore a nullity.

By paragraph 4(1) and (5) of the first schedule to the Electoral Act, a composite analysis of contents of an election petition has been spelt out and also a list of materials which must be accompanied. The use of the word shall in the subsections is very instructive, mandatory and conclusive. In otherwords, the provisions do not allow for additions and hence the procedure adopted by the appellants in seeking for an extension of time is nothing other than

surreptitious attempt to amend the petition. This is obvious from the nature and substance of the application especially where one of the grounds seeks to put in facts which were allegedly not available at the time of filing the petition but only come into their possession after the statutory time limit allowed for the preparation of election petition. Expressly, there is no provision in the legislation which provides for extension of time. What is more, vide paragraph 14(2) of the L' Schedule to the Electoral Act, the appellants by section 134(1) of the Act had been totally foreclosed from any amendment which was infact the hidden agenda promoting the application. The saying is true that even the devil does not know a man's intention; it can only be inferred from the acts exhibiting that which is conceived in the heart and mind. The use of the word shall in paragraph 14(2) (a) of first schedule to the Electoral Act is mandatory and places a complete bar on any form of amendment to a petition filed and does not also allow for on exercise of discretion whatsoever. See *Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) p. 367 at 510 - 511 and *Bamaiyi v. A.-G., Federation* (2001) 12 NWLR (Pt. 727) p. 468.

Further still and on a critical perusal of the application, relief 2 seeks "leave to call an additional witness, to wit A.E.O." It is pertinent to restate that at the close of pleadings, parties had submitted the list of witnesses who were to testify together with their deposition. The idea, purpose and intention of the application is suggestive of nothing more but a clear confirmation seeking on order for an amendment as rightly and ingenuously thought out by the trial tribunal and also affirmed by the lower court. This will certainly violate the provisions of section 285(5) of the Constitution and section 134 of the Electoral Act.

Again and for purpose of re-establishing the point being made, I wish to recall that this petition was filed on 10th November, 2012 at the trial tribunal. By the operation of section 285(6) of the Constitution (1999) as amended, it provides that an election tribunal shall deliver its judgment in writing within 180 days from the date of tiling the petition. By simple calculation, the mandatory 180 days period from 10th November, 2012 had lapsed on 10th May, 2013. I have indicated earlier that relief 2 of the application is seeking to call a witness; A.E.G., in other words an additional witness.

The appropriate and relevant question to pose as rightly observed on behalf of the respondents is: If this court makes an order that the trial tribunal should take the additional evidence, what would be the relevance and effect thereof? The answer simply put is, such pronouncement will be academic as it cannot be effected since the trial cannot be re-opened at the trial tribunal. The entire trial in the circumstance has been caught up by effluxion of time. The law is trite that a court will not make an order in vain and on academic exercise which the appellants are impressing on this court to embark upon will not be entertained.

With the tribunal no longer competent to hear the petition, there is no rule of court that can confer jurisdiction either on the Court of Appeal or this court. In the absence of my life issue, the appeal has become extinct and a mere academic exercise; it is no longer within the jurisdiction of this court. See *P.P.A. v. I.N.E.C.* (2012) 13 NWLR (Pt. 1317) 215 and *Shetrima v. Goal* (2011) 18 NWLR (Pt. 1279) 413. See also *Plateau State v. A.G.F.* (2006) 3 NWLR (Pt. 967) 346 at 419 paras. F-G wherein this court defined an academic suit or petition the following terms:

“A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in its favour. A suit is academic if it is not related to practical situations of human nature and humanity.”

Following from the foregoing authority therefore, I would emphasize that neither the Court of Appeal nor this court is seized of any jurisdiction to entertain the matter under the various legislations of court as wrongly conceived by the learned appellants' counsel. The reference made to sections 15 and 22 of the Court of Appeal Act and also this court respectively can only apply appropriately in situations where there is a live issue at the tribunal. This is not the case at hand. The obvious situation of fact is, constitutionally, the tribunal's tenure had ended and proceedings can no longer by any stretch of imagination be re-opened for fresh evidence to be taken through the witness box. The appeal is therefore dismissed for want of merit.

On the cross-appeal filed by the respondent/cross-appellant I also find same as serving no useful purpose and is hereby struck out.

On the totality of the appeals and in the same terms as the lead judgment of my learned brother Ibrahim Tanko

Muhammad, JSC, while the main appeal is dismissed as lacking in merit, the cross appeal is hereby struck out and I also abide by the order made as to costs.

ALAGOA, J.S.C.: This is a further appeal to this court against that part of the decision of the Court of Appeal Akure Division (hereinafter referred to as the lower court or the court below) delivered on the 28th March, 2013 in which the lower court affirmed the decision of the Governorship Election Tribunal (hereinafter simply referred to as the tribunal). The tribunal had referred the appellants' application for enlargement of time within which to file and use further witness deposition and call additional witness on the ground that the said application was an attempt to amend the petition after the expiration of the time prescribed by the Electoral Act to do so.

The prayers sought for and the grounds for the application are contained at pages 980 - 981 volume II of the record of appeal and are reproduced hereunder as follows:

1. An order of this honourable tribunal extending the time within which the petitioners may file and make use of additional or further witness depositions accompanying this application for a just and fair determination of the petition.
2. An order of this honourable tribunal granting leave to the petitioners/applicants to call an additional witness, to wit: "A.E.O." whose statement/ deposition on oath accompanies this motion.
3. An order of this honourable tribunal granting leave/ allowing the petitioners/applicants to file, serve and rely on further and additional witnesses statement on oath in support of this petition which said additional statement accompanies this motion.
4. An order of this honourable tribunal deeming as properly filed and served the further and additional witness' statement on oath accompanying this motion.

And for such further or other orders the honourable tribunal may deem fit to make in the circumstance.

Grounds for the Application

1. Some of the documents and other relevant facts needed in proof of the petition were not available to the petitioners at the time of filing.
2. The 3rd respondent who has custody of the documents relevant to the petition has recently made certified true copies of some of them available to the petitioners.
3. Other relevant facts relevant to the pleadings of the petitioners have also come to the knowledge and possession of the petitioners after the filing of this petition.
4. All the documents and facts referred to above would assist the honourable tribunal in the fair and just determination of the petition and the petitioners in ventilating their grievances.
5. That by the time the 3rd respondent made a comprehensive documents which the applicants applied for and which the applicants needed to prepare a comprehensive statement on oath, the time to file this statement on oath along with petitioners' reply had lapsed.
6. The final report of the expert commissioned to scientifically examine the register of voters used for the election in order to determine if there was any unauthorized injection was recently received after the close of pleadings.
7. The honourable tribunal has the power to grant any application that might aid a just determination of the petition.

Take notice that at the hearing, the petitioners will rely on all processes filed in this petition, particularly the petition and the replies.

Dated this 16th day of January, 2013.

Section 14(2) of the First Schedule to the FTEcloral Act provides as follows:

“After the expiration of the time limited by –

- (a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made –
 - i. introducing any of the requirements of subparagraph I of paragraph 4 of this Schedule 7 not contained in the original election filer! ...”

- ii. section 285(5) of the Constitution also provides that:

“An election petition shall be filed within 21 days after the date of the declaration of result of the election.”

It will be seen from the above that the word “*shall*” is used. The word “*shall*” or “*must*” connotes a command. See *Alhaji Ibrahim fbdullahi v. The Military Administrator Kaduna State & ors* (2009) 15 NWLR (Pt. 1165) 417; *Chief Ifezue v. Mbadugha* (1984) 5 SC 79; (1984) 1 SCNLR 427; *Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) 367; *Onochie v. Odogwu* (2006) 2 SCNJ 96 at 114; (2006) 6 NWLR (Pt. 975) 65; *Bamaiyi v. Attorney General of the Federation* (2001) 12 NWLR (Pt. 727) page 468 at 497. It will be seen from a careful reading of the grounds of the application that the applicant (now appellant) wanted to inject in new facts which he obtained after the 21 day period allowed for the filing of the petition. Recourse must be had to ground 3 which reads as follows;

“Other relevant facts relevant to the pleadings of the petitioners have also come to the knowledge and possession of the petitioners after the filing of this petition.”

In ground 5, the appellants said they “needed to prepare comprehensive statement on oath.” These are clearly fresh facts not permissible after the 21-day period prescribed by the Electoral Act for filing a petition. The power of a court to grant or refuse grant an application for extension of time is discretionary and an appellate court will not interfere with a lower court’s discretion except such a discretion has not been judicially and judiciously exercised.

See *Mobil Oil Nigeria Ltd. V. Nabsons Ltd.* (1995) 7 NWLR (Pt. 407)254; *Chief James Ntukidem & Ors v. Oke* 5 NWLR (Pt. 45)909; *Omadide v. Aajeroh & ors* (1976) 12 SC 87 at 96; *Beck v. Value Capital Ltd.* (1976) 2 All ER 102. The court below to my mind was right to have held that the discretion of the tribunal to refuse the application purportedly to extend time had not been wrongly exercised. Election matters are “*sui generis*” would be allowed in ordinary civil suits may not be at election matter.

This court per Onnoghen, JSC in *Alhaji Jibrin Haiti Hassan v. Dr. Mu’azu Babangida Aliyu & Ors* (2010) 17

NWLR (Pt. 1223) 547 at p. 599 paras. B-C put it succinctly thus;

“It is settled law that in an election or election related matter time is of the essence. I will add that the same applies to pre-election matters, Election matters are *sui generis*, very much unlike ordinary civil or criminal proceedings.”

See also *Egharevba v. Eribo & Ors* (2020) 9 SCM 1121. It is not true as the appellant has alleged that both the tribunal and the court below failed to give reasons for refusing the appellants’ application. At Page 1430 Volume II of the record of appeal the tribunal clearly gave reason for refusing the application.

It stated as follows:

“In the main we hereby hold that this application is hereby unmeritorious as:

1. From the grounds of the application the Applicants want to introduce fresh facts.
2. The time within which to effect substantial amendment to the petition has passed by affluxion of time
3. Election petition being *ii generis* is guided by statute.
4. This application, if granted will certainly overreach the respondents. The application is hereby dismissed.”

In coming to its finding in support of the stand taken by the tribunal, the court below at pages 1921-1922 Volume III of the record of appeal stated as follows;

“In the instant case the tribunal in my view exercised its discretion judicially and judiciously because I believe that it adequately had before it sufficient materials on which it came to the conclusion that the prayer for extension of time was really meant to be for an amendment to the petition. It was also within the competence of the tribunal to believe as it did that any amendment to the petition would in the circumstance be substantial as to prejudice and overreach the respondents.

I have taken time to consider and review the entire circumstance of this matter and I find no reason to see the decision of the tribunal as being perverse or unreasonable. I therefore cannot fault the steps taken by the tribunal on the application. I am also unable to interfere with the exercise of the discretion of the tribunal ...”

This decision written by one of the Justices of the court below was affirmed by all the other Justices on the panel. It can thus be seen that good and adequate reasons were given by the tribunal which the lower court reasoned was sufficient why the application should be refused. The lower court found as a fact that the appellants’ application will overreach the respondent and the appellant has not appealed against this ruling. It is settled on the authorities that the Supreme Court does not make it a habit to disturb concurrent findings of facts of courts below it. Exceptions abound for example where such findings are perverse or there is a substantial error either of law or fact on the record which has occasioned a miscarriage of justice.

See *Oyibo Iri & ors v. Eseroraye Erhurobara & tutor*. (1991) 2 NWLR (Pt. 173) 252; *Obi hediuno Ezewani v. Obi Omvordi* (1986) 4 NWLR (Pt. 33) 27; *Nigerian Bottling Co. Ltd. v. Constance O.Ngonadi* (1985) 5 SC 317 at 319; (1985) 1 NWLR (Pt. 4) 739; *Woluchem v. Gudi* (1981) 5 SC 291.

It is for these reasons and the fuller reasons advanced by my learned brother, I. T. Muhammad, JSC, that I too find no merit in the appeal. By the same token the cross appeal has no basis and both the appeal and cross appeal are hereby dismissed with no order made as to costs.

Appeal dismissed.

Cross-appeal struck out.