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

V

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

V

DR. RAHMAN OLUSEGUN MIMIKO

V

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

1. LABOUR PARTY (LP)
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COURTOFAPPEAL
(AKURE DIVISION)

TIJJANIABDULLAHI *JCA (Presided)*
ALI ABUBAKAR B. GUMEL JCA *(Read the Lead Judgment)*
MASSOUD ABDUL-RAHMAN OREDOL A JCA
UCHECHUKWU ONYEMENAM JCA
CORDELIA IFEOM A JOMBO-OFO JCA

CA/AK/EPT/GO V./01/2013

THURSDAY, 28 MARCH 2013

ACTION - Parties - Misjoinder or nonjoinder of parties - Issue of - Determinant of - Competence of action - Irrelevance of thereto

APPEAL - Discretion of trial court - Exercise of - Appellate court - Altitude of thereto

APPEAL - Extension of time within which to do an act - Discretionary powers of court therefor - Exercise of - Proper approach to - Applicant for - What must establish to warrant - 1st Schedule, paragraph 45 and Order 43, rule 4 of the Federal High Court Rules, 2009 and Court of Appeal Rules, Order 7, rule 10(1) considered

APPEAL - Grounds of appeal - Purport of - Proper nature of - Vagueness of - Impropriety of - When arises - Court of Appeal Rules, 2011, Order 6, rule 2 considered

CRIMINAL IAWAND PROCEDURE - Criminal allegations in a suit - Persons against whom has been made - Mandatoriness of making them parties to the suit

ELECTION PETITIONS - Criminal allegations in - Persons against whom has been made - Mandatoriness of making them parties thereto

PRACTICE AND PROCEDURE - Extension of time within which to do an act - Discretionaiy powers of court therefor - Exercise of - Proper approach to - Applicant for - What must establish to warrant - 1st Schedule, paragraph 45 and Order 43, rule 4 of the Federal High Court Rules, 2009 and Court of Appeal Rules, Order 7, rule 10(1) considered

PRACTICE AND PROCEDURE - Parties - Misjoinder or nonjoinder of parties- Issue o f- Determinant of - Competence of action - Irrelevance of thereto

STATUTE - Court of Appeal Rules, 2011, Order 6, rule 6 - Grounds of appeal - Purport of- Proper nature of - Vagueness of- Impropriety of - When arises

STATUTE - Federal High Court Rules, 2009, paragraph 45 of 1st

Schedule and Order 43, rule 4 thereof and Court of Appeal Rules, Order 9, rule 10(1) - Time within which to do an act -Enlargement of- Discretionary power of court therefor - Exercise of - Proper approach - Applicant for - What must establish to warrant

Issues:

1. Whether having regard to the facts before it, the tribunal was right to have treated appellants' application for enlargement of time and leave to adduce further evidence and call additional witness as one for amendment of the petition.
2. Whether giving the materials before it, the tribunal properly, judicially and judiciously exercised its discretion in refusing the appellants' application for enlargement of time and leave to adduce further evidence and call additional witness and whether the refusal has not occasioned a miscarriage of justice.
3. Whether giving the facts contained in the petition, the tribunal rightly struck out the name of the 2nd petitioner/appellant from the petition.
4. Whether the tribunal correctly resolved the evidence before it concerning the status of Hon. Chris Omotuyi who co-signed the petition on behalf of the 2nd petitioner/appellant.
5. Whether the tribunal was right to have struck out paragraphs 10, 13,35,36,38,39,40,42,43,45,46,47,54,55,56,57,58, 60.61,62,63,64.66,67,68, 71,77,78, 80,84,86,87,88,90, 91, 92, 93(2), 93(6), 93(9), 93(11), 96(2), 96(24), 97(1), 98(l)(xxi). 100(3), 100(18), 103(3) and 103(4) of the petitioners/appellant's petition for being vague, general, speculative, omnibus and nebulous.
6. Whether the learned trial tribunal was right to have struck out paragraphs 81, 91 (2)(d), 92(2) ward 3(e), 92(2) ward 4(i); 92(2) ward 6(a) and (0; 92(3) at page 33; 92(4) also at page 33; 93(10) at page 68; 96(10) - (14) (16) - (25) (31) and (34) - (39); 97(3)(4)(5)(7) and 7(a)(b)(c)(d) and (e). 98(4); 98(1)xxi. xxix on page 173 to 176; 100(6)(8)(11)(13) and (I7)(18)(19)(23)and(24); 103(5)(iii), 104(6) and (7). 106(1)-(7) on pages 260 - 262 of the petitioners/appellants' petition being criminal allegations against persons who are not joined in the petition.
7. Whether the honourable tribunal was not right in refusing to strike out the petition after striking out the name of the 2nd respondent and paragraphs of the petition relating to it.

Facts:

The 1st appellant and the 1st respondent were among the candidates that contested the gubernatorial elections in Ondo State, under the platforms of the 2nd appellant and the 2nd respondent respectively. The 1st respondent was declared and returned as the winner of the election and the petitioners being aggrieved, filed a petition at the Governorship Election Tribunal, sitting **in** Ondo State, challenging the result and return of the 1st respondent. The appellants raised a preliminary objections to some paragraphs of the petition. The 1st respondent also challenged the joinder of the 2nd appellant as a party to the petition. The appellants then filed an application seeking an order of court, extending the time within which they may file and make use of additional witness deposition, leave to call additional witness and to file and rely on further and additional witness statement. Counsel to the parties consented to consolidation of all petitions filed and agreed to the tribunal delivering one ruling on all applications pending before it. lire tribunal in the ruling given, refused the appellants' application to adduce further evidence, struck out many paragraphs challenged in the petition and struck out the 2nd appellant for not being properly joined. The appellants were dissatisfied and riled an appeal to the Court of Appeal contending that the tribunal erred by dismissing their application and striking out the name of the 2nd appellant and some paragraphs of the petition. The respondent filed a preliminary objection to the appeal and also filed a cross-appeal. The appellants filed a preliminary objection to the cross-appeal.

Held: *(Allowing the appeal in part and dismissing the cross-appeal)*

1. *Purport of grounds of appeal, proper nature of, impropriety of vagueness of and when arises, Court of Appeal Rules, 2011, Order 6, rule 2 considered –*

   By the provisions of Order 6, rule 2 of the Court of Appeal Rules, 2011, the aim of grounds of appeal and their particulars is to give a respondent to the appeal, notice of the case he needed to defend and also to narrow down the issues in the appeal. Grounds of appeal must be a complaint against the general or specific findings of a lower court and should be set forth concisely under distinct heads without any arguments or narrative. It should not be vague and must disclose a reasonable ground of appeal. Grounds of appeal are analogous to pleadings in trial court. Vagueness of a ground of appeal may arise where it is couched in a

manner which does not provide any explicit stand for its being understood. It will also be considered vague when the complaint therein is not defined in relation to the subject or is not particularized or that the particulars are clearly irrelevant. Once a ground of appeal clearly states what the appellant was complaining about and there is a compliance with the rules of court, the ground cannot be described as bad and therefore incompetent. The purpose of the rules relating to the formulation of grounds of appeal is to ensure that the respondent is not taken by surprise. *[Addax Petroleum Development (Nig.) Ltd v. Duke* **(2010) All FWLR (Pt. 542) 1636, (2010) 8 NWLR (Pt. 1196) 278 referred to]** *[P. 141, paras. D -F. P. 142, paras. A - F]*

2. *Discretionary powers of court to enlarge lime within which to do an act, proper approach of to exercise of and what applicant must establish to warrant, Federal High Court Rules, 2009, 1st Schedule, paragraph 45 and Order 43, rule 4 and Court of Appeal Rules, Order 7, rule 10(1) considered –*

By the provisions of paragraph 45 of the 1st Schedule to the Federal High Court Rules, 2009, Order 43, rule 4 and Court of Appeal Rules, Order 7, rule 10(1), a court may enlarge the 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 appellant 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 steps were not taken within the time stipulated for the taking of those steps. A party seeking for an 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 case, where the appellants failed to satisfy the condition precedent to the grant of their application, the tribunal rightly refused to exercise its discretion in their favour. *[P. 149, paras. C - E]*

3. *Determinant of issue relating to misjoinder or nonjoinder of parties and irrelevance of to competence of action –*

The relevant consideration regarding misjoinder or

nonjoinder of parties to an action is whether the presence of the party concerned is essential to the just determination of the issue in controversy between the parties. No cause or matter shall be defeated by reason of the misjoinder of parties and the court may in every cause or matter deal with the matter in controversy in so far as it regards the rights and interests of the parties actually before it. *[Green v. Green* **(1987) 3 NWLR (Pt. 61) 480;** *Peenok Investment Ltd v. Hotel Presidential* **(1982) 13 NSCC 477, (1982) 12 SC 17;** *Bella* u *I.N.E C* **(2010) All FWLR (Pt. 526) 397. (2010) 2 - 3 SC (Pt. II) 128 referred to)** *[P. 154, paras. E - G)*

4. *Mandatoriness of inclusion of persons against whom criminal allegations are made in a petition –*

An election petition must have as parties to it, all such persons against whom certain criminal allegations have been made. *IP. 155, para. B]*

5. *Attitude of appellate court to exercise of discretion by trial court –*

An appellate court will not interfere with the exercise of the discretion by a trial court or substitute its own discretion unless:

a. The exercise of the discretion by the trial court was based on wrong or insufficient material;
b. Where no weight or insufficient weight was given to a relevant consideration;
c. The trial court acted under a misconception of law;
d. The trial court acted under a misconception of fact;
e. Where it is in the interest of justice to do so; and
f. Where the exercise was shown to be perverse or unreasonable.

In the instant case, where the trial tribunal rightly exercised its discretion, the appellate court did not interfere with it. *[Mobil oil (Nig) Ltd v. FBIR* **(1977) 3 SC 53;** *Ukwu v. Btmge* **(1997) 8 NWLR (Pt. 518) 527 referred to]** *IP. 150, paras. A -* **C7**

Nigerian Cases Referred to in the Judgment:

Abdullahi v. Oba (1998) 6 NWLR (Pt. 554) 420 *Ahia State University v. Anyaihe* (1996) 3 NWLR (Pt. 439) 646

*Abubakar v. Yar'*Adua (2008) All FWLR (Pt. 404) 1409, (2008)

12 SC (Pt. 11)1
Adah v. Adah (1998) 6 NWLR (Pt. 552) 97
Addax Petroleum Development (Nig.) Ltd v. Duke (2010) All FWLR (Pt. 542) 1636, (2010) 8 NWLR (Pt. 1196) 278
Amadi v. Chinda (2010) NWLR (Pt. 1148) 107
Bella v. *I.N.E.C* (2010) All FWLR (Pt. 526) 397, (2010) 2 - 3 SC (Pt. IT) 128
Calabar Central Co-operative Thrift & Credit Society Ltd v. Ekpo (2008) All FWLR (Pt. 418) 198, (2008) 6 NWLR (Pt. 1088) 362
Chidiak v. Laguda (1964) NMLR 123, (1964) 1 A11 NLR 160
Etaluku v. N.B.C Pic (2004) 15 NWLR (Pt. 896) 370, (2005) All FWLR (Pt. 261)353
Fay end v. Oni (2009) All FWLR (Pt. 472) 1122, (2009) 7 NWLR (Pt. 1140)223
George v Dominion Flour Mills (1963) 1 SCNLR 117
Green v. Green (1987)3 NWLR (Pt. 61) 480
Ibrahim v. Sheriff (2004) 14 NWLR (Pt. 892)43, (2005) All FWLR (Pt.245) 1098
Inakoju v. Adeleke (2007) All FWLR (Pt. 353) 3, (2007) 4 NWLR (Pt. 1025)427
Jimoh v. Akande (2009) All FWLR (Pt. 468) 209, (2009) 5 NWLR (Pt. 1135)549
Kalu v. Uzor (2004) 12 NWLR (Pt. 886) 1
Mobil oil (Nig) Ltd v. FBIR (1977) 3 SC 53
NICON Hotel Ltd v Nene Dental Clinic Ltd (2007) 13 NWLR (Pt. 1051)237
Nwancho v. Elem (2004) All FWLR (Pt. 225) 93
Ogidi v. State (2005) All FWLR (Pt. 251) 202, (2005) 5 NWLR (Pt. 918) 286
Peenok Investment Ltd v. Hotel Presidential'(1982) 13 NSCC 477, (1982) 12SC17
Saraki v. *Kotoye* (1991) 8 NWLR (Pt. 211) 638
Sosanya v. Onadeko (2000) 11 NWLR (Pt. 677) 34
U.S.A. Pic. v. BTL Industries Ltd (2005) All FWLR (Pt. 263) 611, (2005) 4 SC 40
Udo v. C. S.N. C (2001)14 NWLR (Pt. 732) 116 at 149, (2002) FWLR (Pt. 104) 665
Ukwu v. Bunge (1997) 8 NWLR (Pt. 518) 527

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999, sections 221, 223 and 285(5)

Electoral Act, 2010, as amended, section 134(1)

Nigerian Rules of Court Referred to in the Judgment:

Court of Appeal Rules, Order 7, rule 10(1)

Federal High Court Rules, 2009, Order 43, rules 3,4, paragraphs 41 (1), 45,47 and 54 of the 1st Schedule Supreme Court Rules, Order 6, rule 3; Order 3, rule 2

Counsel:

Mr. P. I. N. Ikwueto, SAN (with him, Mr. Yinka Orokoto, Sikiru Adewoye) - *for the Appellants.*

Chief Wole Olanipekun, SAN (with him. Mr. Rickey Tarfa. SAN. J. O. Baiyeshea, SAN, Mr. A.J. Owonikoko. SAN, Mr. Eyitayo Jegede, SAN, Mr. Aderemi Olatubora, Mr. E. A. IbrahimEffiong, Mr. Kunle Ijalana, Mr. Ayo Adesanmi, Yusuf Dikko) - *for the 1st Respondent/Cross-Appellant.*

Mal. Yusuf Ali, SAN (with him, Mr. A. O. Adelodun, Mr. K. K. Eleja, R. O. Balogun, A. O. Abdulkadir, S. A. Abdullahi) - *for the 2nd Respondent.*

Dr. Onyeachi Ikpeazu. SAN, (with him, Mr. A. A. Raji, SAN, Mr. O. Osaze-Uzzi, Olajide Kumuyi) - *for the 3rd - 5th Respondents.*

GUMEL JCA (Delivering the Lead Judgment): On 20 October 2012, a governorship election was organized and conducted by the 3rd respondent A (INEC) in Ondo State. Thirteen political parties sponsored candidates to contest the election. The 1st appellant was the candidate of the. 2nd appellant (Peoples' Democratic Party - PDP) while the 1st respondent was the candidate of the 2nd respondent (Labour Party - LP). At the end of the election and after the votes collation exercise, the .3rd respondent declared g the 1st respondent as the winner of the election with 260, 199 votes. The 1st appellant scored 155,961 votes.

The appellants were dissatisfied with the declaration of the result of the election and return of the 1st respondent as the winner. They sought to challenge the result and return of the 1st respondent in an election petition number EPT/OD/GOV./04/2012 dated and filed on 10 November 2012 C before the Ondo State Governorship Election Tribunal, Akure. Upon being served with the. petition, the respondents filed their respective replies to it, while the petitioners filed replies to the respondents' replies.

After having fully joined issues with the petitioners/appellant, each of the 3 sets of respondents raised a preliminary objection to a

number of D the paragraphs of the petition. In addition to his challenge of some of the, paragraphs of the petition, the 1st respondent further challenged and objected to the competence of the petition as it affects the joinder of the 2nd appellant as a party to it. Against and added to this background, the respondent filed their respective motions pursuant to paragraph 12(5) of the 1st Schedule to the Electoral Act, 2010, as amended (1st Schedule), for a preliminary of the various objections.

The appellants filed counter-affidavits to each of these motions and also filed their own motion dated 16 January 2013. litis application sought for the following 4 reliefs. They are:

"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: G "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."

It is supported by a 17 paragraph affidavit deposed to by Mr. Olasupo Ijabadeniyi, a legal practitioner among the team of lawyers appearing for the petitioner/appellants, and a written address. The respondents sought to oppose this application. They each filed counter-affidavits and written addresses respectively. Against the written addresses of the respondents, the petitioners/appellants filed replies on points of law.

After due consultation and with the consent of respective learned counsel in this petition as well as other petitions before the tribunal, all pending applications were consolidated and argued. In a composite ruling delivered on 4 February 2013, and as it affects the within name appellants, the tribunal refused their application for leave to adduce further evidence and to call additional witness. The tribunal also decided in favour of the respondents and against the petitioners/appellants when it stnick out many of the paragraphs of the petition for either being vague, general and generic or having made

criminal allegations against persons who were not parties to it etc. It also decided in favour of the 1st respondent when it held that the 2nd petitioner/appellant was not properly joined in the petition and proceeded to strike out its name.

The petitioners/appellants were dissatisfied with this part of the ruling and appealed in a notice of appeal dated 5 February 2013 containing 19 grounds of appeal with very detailed and copious particulars. The 1st respondent was also dissatisfied with part of the ruling of tire tribunal to the extent that it refused and declined to strike out the entire petition. Against this, he cross-appealed in a notice of cross-appeal dated 18 February 2013 but filed on 19 February 2013. The cross-appeal is predicated on 3 grounds.

To argue the appeal, the appellants filed a brief of argument dated 18 February 2013. From the grounds of appeal, the appellants' brief identified and formulated the following 6 issues for the determination of this appeal.

They are:

"1. Whether having regard to the facts before it, the tribunal was right to have treated appellants' application for enlargement of time and leave to adduce further evidence and call additional witness as one for amendment of the petition. (Grounds 1,2,5 and 8)

2. Whether giving the materials before it, the tribunal properly, judicially and judiciously exercised its discretion in refusing the appellants' application for enlargement of time and leave to adduce further evidence and call additional witness and whether the refusal has not occasioned a miscarriage of justice. (Grounds 3,4,6 and 7)

3. Whether giving the facts contained in the petition, the tribunal A rightly struck out the name of the 2nd petitioner/appellant from the petition. (Grounds 15,16,17,18 and 19)

4. Whether the tribunal correctly resolve the evidence before it concerning the status of Hon. Chris Omotuyi who co-signed the petition on behalf of the 2nd petitioner/appellant (Grounds 9 and 10)

5. Whether the tribunal was right to have struck out paragraphs 10, 13,35,36,38,39,40,42,43,45,46,47,54,55,56,57,58, 60, 61, 62, 63, 64, 66, 67, 68, 71, 77, 78, 80, 84, 86, 87, 88, 90, 91, 92, 93(2), 93(6), 93(9), 93(11), 96(2), 96(24), 97(1), 98(l)(xxi), 100(3), 100(18), 103(3) and 103(4) of the petitioners/appellant's petition for being vague, general,

speculative, omnibus and nebulous. (Grounds 11 and 12)

6. Whether the learned trial tribunal was right to have struck out paragraphs 81, 91(2)(d), 92(2) ward 3(e), 92(2) ward 4(i); 92(2) ward 6(a) and (f); 92(3) at page 33 ; 92(4) also at page D 33; 93(10) at page 68; 96(10) - (14) (16) - (25) (31) and (34) - (39); 97(3)(4)(5)(7) and 7(a)(b)(c)(d) and (e)98(4); 98(l)xxi, xxix on page 173 to 176; 100(6)(8)(11)(13) and (17)(I8)(19)(23) and(24); 103(5)(iii), 104(6) and(7), 106(1)-(7) on pages 260 - 262 of the petitioners/appellants' petition g being criminal allegations against persons who are not joined in the petition. (Grounds 13 and 14)

In his response to the appeal, the 1st respondent filed a brief of argument dated 27 February 2013 on 28 February 2013 which upon his application was deemed properly filed and served on 6 March 2013. To argue against the appeal, the 1st respondent formulated 4 issues for the determination of this appeal. They are:

"i. Having regards to tire *sui generis* nature of an election petition, whether the lower tribunal was not right in refusing the appellants' application to file additional or further witness depositions, which on their own admission contained new facts G that were not available at the time of filing the petition.

ii. In view of the entire facts available to the lower tribunal, particularly the representations made by the Peoples' Democratic Party (PDP), whether the lower tribunal was not right in striking out the name of PDP from the petition. (Ground 9,10,14.15,16,17,18 and 19)

iii. Whether the trial tribunal was not right in striking out paragraphs 10,13, 35, 36, 38, 39, 40, 42, 43, 45, 46, 47, 54, 55, 56, 57, 60, 61, 62, 63, 64, 66, 67, 68, 71, 77, 78, 80, 84, 86, 87, 88, 90, 91, 92, 93(2), 93(6), 93(9), 93(11), 96(2), 96(24). 97(1), 98(l)(xxi), 100(3), 100(18), (103(3) and 103(4) of the appellants' petition having found same to be vague, general, speculative, omnibus and nebulous. (Grounds 11 and 12)

iv. Whether the trial tribunal was not right in striking out paragraphs 81,91 (2)(d) ward 3(e), 92(2) ward 4(i), 92(2) ward 6(a) and (f), 92(3) at page 33, 92(4) at page 33,93(10) at page 68,96(10) - (14) (16) - (25) (31) and (34) - (39), 97(3)(4)(5)(7) and 7(a)(b)(c)(d) and (e), 98(4), 98(1)(xxi), xxix on page 173 to 176, 100(6)(8)(11)(13) and

(17)(18)(19)(23) and (24). 103(5)(iii), 104(6) and (7), 106(1) - (7) on pages 260 - 262, of the appellants' petition which contained allegations against persons who were not joined in the petition. (Ground) 13"

In a preliminary objection dated 1 March 2013 but filed on 4 March 2013, the 1st respondent challenged the competence of this appeal and the Jurisdiction of this court to entertain it. There are 9 grounds in this notice of objection and same were argued at pages 4 to 6 of the 1st respondent's brief of argument.

In its response to the appeal, the 2nd respondent filed a brief of argument dated 28 February 2013 on 1 March 2013 which was deemed properly filed and served on 6 March 2013. Added to this, the 2nd respondent also filed a notice of preliminary objection on 5 March 2013. It is predicated on 4 grounds. The brief of the 2nd respondent formulated and argued 3 issues for the determination of this appeal. They are:

"1. Whether having regard to the materials at its disposal, the tribunal did not exercise its discretion correctly in refusing the. petitioners/appellants application to call additional evidence which was indeed a clever design to effect substantial amendment to the petition long after the expiration of time to effect substantial amendment to the petition has gone by effluxion of time?
2. Whether the tribunal was not right having regard to the state of the law in striking out the paragraphs of the petition that did not comply with the rules of pleadings for being general, vague and nebulous and for containing allegations of commission of crimes against named individuals who were not joined as parties to the petition.
3. Whether the tribunal was not justified in making an order striking out the name of the Peoples' Democratic Party and paragraphs relating thereto from the petition, the face of the palpable lack of authorization for the same by the party?

The four grounds upon which the notice of preliminary objection of the 2nd respondent were founded were argued at pages 6 to 11 of its brief of argument.

The joint brief of the 3rd to 5th respondents is dated 21 February 2013 but filed on 22 February 2013. It identified and argued the following 5 issues for the determination of this appeal and they are:

"1. Whether the tribunal was correct when it refused the appellants' application for extension of time and leave to file and rely on additional or further witness statements

on oath. (Grounds 1,2,3,4,5,6,7 and 8)

2. Whether the tribunal was correct when it struck out the name of the Peoples' Democratic party (PDP) on the ground that it did not authorize or consent to the inclusion of its name in the petition.
3. Whether the tribunal was correct when it struck out certain paragraphs of the petition on the grounds that they are vague general, speculative *omnibus* and *nebulous.* (Grounds 11 and 12)
4. Whether the tribunal was correct when it struck out certain paragraphs of the petition on the ground that diverse allegations of the commission of crimes were made against persons who were not joined in the petition. (Grounds 13 and 14)
5. Whether the tribunal failed to dispassionately consider the appellants' contentions that the 1st respondent lacked the *locus* to challenge the inclusion of PDP as petitioner, and the contention that a respondent is liable to a wrong committed on his instruction. (Ground 18)

To each of the briefs of the respondents, the appellants filed respective reply briefs.

The reply brief to the respective briefs of the 1st and 2nd respondents arc dated and filed on 8 March 2013 while that to the joint brief of the 3rd to 5th respondents is dated and filed on 26 February 2013. Added to these reply briefs, the appellants also filed a reply brief to the 2nd respondent's brief and written address in support of its notice of preliminary objection. It is dated and filed on 15 March 2013.

To argue the cross appeal, the 1st respondent/cross-appellant filed a brief of argument dated 27 February 2013 on 28 February 2013 and same was deemed properly filed and served on 6 March 2013. It identified and argued a single issue from the 3 grounds of appeal for the determination of the cross-appeal. This issue is:

> "Having rightly struck out the name of the cross-respondent (PDP) from the petition, as well as all the paragraphs of the petition relating to it, whether the lower tribunal was not wrong in its failure to strike out the entire petition."

In responding to the cross-appeal, the appellants/cross-respondents filed a brief of argument dated 8 March 2013. At pages 4 to 9 of this brief, (he. appellants/cross-respondents raised and argued a notice of preliminary objection predicated on 5 grounds. Also, at page 9, they identified and argued the following lone issue for the determination of

this cross-appeal thus:

> "Whether tire honourable tribunal was not right in refusing to strike out the petition after striking out the name of the 2nd respondent and paragraphs of the petition relating to it."

The cross-appellant filed a response to the appellants/cross-respondents' brief in a reply brief dated and filed on 13 March 2013. The 2nd and 3rd - 5th respondents did not file a brief to the cross-appeal.

At the hearing of the appeal on 19 March 2013, the learned counsel Chief Wole Olanipekun, SAN for the 1st respondent informed the court that he had filed and argued a notice of preliminary objection challenging the competence of the appeal. Also, the learned counsel. Mallam Yusuf Ali SAN told the court that he had raised and argued a notice of preliminary objection on behalf of the 2nd respondent.

Without much ado, respective learned senior counsel to the parties herein, adopted and relied on all the above identified briefs of argument. While acknowledging the respective notices of preliminary objection of the 1st and 2nd respondents, the learned counsel, Mr. Ikwueto, SAN leading 2 other counsel for the appellants urged on this court to discountenance and dismiss them for being devoid of any merit. He further urged on the court to allow the appeal and set aside the part of the ruling of the tribunal that refused its application of 16 January 2013 and granted the application of the respondents wherefor it struck out the name of the 2nd appellant at the behest of the 1st respondent and also struck out certain paragraphs of the petition.

For the 1st respondent, Chief Wole Olanipekun, SAN, leading four other senior counsels and six junior counsels, urged on the court to dismiss the appeal and affirm the ruling and orders of the tribunal as it affects the appellants. Learned senior counsel, Mallam Yusuf Ali, leading six junior counsels, for the 2nd respondent also urged on the court to dismiss the appeal and affirm the ruling of the tribunal delivered on 4 February 2013. Dr. Onyeachi Ikpeazu SAN. leading Mr. Ahmed Raji, SAN and 2 junior counsel, for the 3rd - 5th respondents, urged on the court to dismiss the appeal and affirm the ruling of the tribunal.

For the cross-appeal, Mr. Ikwueto, SAN recalled his notice of A preliminary objection and urged on the court to uphold it and dismiss the cross-appeal for lacking in merit, while Chief Olanipekun SAN, after relying and adopting his brief, urged on the court to allow the cross-appeal and set aside the ruling of the tribunal where it refused to strike out the entire petition of the appellants/cross-respondents. Mr. Ikwueto SAN urged on g the court to dismiss the cross-appeal and

affirm the ruling of the tribunal where it refused to strike out their entire petition.

Before going into arguments and submissions on the merits of this appeal, let me tarry a while to consider and resolve the issues that arose from the grounds of the respective notices of preliminary objection argued each by the 1st and 2nd respondents. While the notice of objection of the 1st respondent has nine grounds that of the 2nd respondent has only four grounds. I wish to however observe that the first four grounds in the notice of the 1st respondent and those on the notice of the 2nd respondent, though different in terms of phraseology, but are essentially not too dissimilar in terms of subject matter and effect. Indeed, both pertain to and are connected D with the position and status of the 2nd appellant in the circumstances of this appeal, and its competence to appeal in a matter in which its name had been struck out. Grounds five to nine in the notice filed and argued by the 1st respondent seek to challenge the competence of the grounds of appeal for having failed to satisfy the definition of valid grounds of appeal, thereby g depriving this court the jurisdiction and competence of this appeal.

Because these grounds of the notice of objection are direct challenge to the jurisdiction of this court to entertain this appeal, I wish to start by resolving this crucial question. In arguing these grounds in paragraphs 3.4 to 3.6 at pages 6 to 7 of his brief, the learned senior counsel, Chief Olanipekun, referred to Order 6, rule 3 of the rules of this court and pointed out that it prohibits the use of vague grounds of appeal. After isolating and earmarking ground four of the grounds of appeal for specific attack, Chief Olanipekun, SAN, went all out to characterize the entire grounds as vague, generic, nebulous and at large and lacking in specificity. He added also that they are a duplication of each other and unnecessarily prolix. Against this G background, and while describing the ruling of the tribunal leading to this appeal as specific in every material particular, Chief Olanipekun, SAN, submitted that because of the use of the word "shall" in Order 6, rule 3 *(supra),* it does not allow for any discretion about the issue of complete prohibition of vague grounds of appeal. He referred to the case of *Ogidi v. State* (2005) All FWLR (Pt. H 251) 202, (2005) 5 NWLR (Pt. 918) 286 on the clear effect of the word "shall", being the complete opposite of the principle of discretion. He concluded with the decision of this court in *Uda v. C.S.N.C* (2001) 14 NWLR(Pt.732) 116 at 149. (2002) FWLR (Pt. 104)665 where it was held against argumentative grounds of appeal. He urged the court to strike out all the grounds of appeal and the entire notice of appeal for being

incompetent.

In his response, particularly at pages 9 to 10 gf the reply brief to the brief of the 1st respondent, the learned counsel to the appellants wondered how a single notice of appeal can be duplicative and profix. He further submitted that the grounds of appeal and their particulars are clear, concise, distinct and not in general terms. He argued that to the extent that they are clear and disclose reasonable grounds of appeal, they do not offend Order 6, rule 3 *(supra)* and are therefore competent. Further to this, the learned counsel, Mr. Ikwueto, SAN referred to the case of *NICON Hotel Ltd v. Nene Dental Clinic Ltd* (2007) 13 NWLR (Pt. 1051) 237 at 259 and pointed out that once the complaint of an appellant is discernible from the grounds of appeal and they give a sufficient notice of the complaints and do not in any way mislead a respondent, even if inelegantly drafted, they ought to be deemed to have passed the test of acceptability and competence. He urged this court to so hold. In conclusion, the learned senior counsel reminded the 1st respondent, and I believe, the court that the era of technicality in the administration of justice is long gone while the modern trend is a movement towards substantial justice.

It is settled law that the aim of grounds of appeal and their particulars is to give a respondent to the appeal, notice of the case he needed to defend and also to narrow down the issue(s) in the appeal. The provisions of Order 6, rule 2 of the current Court of Appeal Rules and its predecessor provisions in Order 3, rule 2 of the 2002 Court of Appeal Rules have been the subject of judicial attention and discourse in a number of decided cases of this court and the Supreme Court. In all these decisions, the courts have preponderantly emphasized that grounds of appeal must be a complaint against tire general or specific findings of a lower court and should be set forth concisely under distinct heads without any arguments or narrative. The courts have also maintained that a ground of appeal should not be vague and must disclose a reasonable ground of appeal. Ground of appeal have been held to be analogous to pleadings in trial courts. See *Saraki v. Kotoye* (1991) 8 NWLR (Pt. 211) 638 and *Abdullahi v. Oba* (1998) 6 NWLR (Pt. 554) 420.

For a start, the 5th to 9th grounds of the preliminary objection of the 1st respondent are in the following terms, *viz:*

(5). The grounds of appeal are prolix, repetitive and unnecessarily proliferated;

(6) All the grounds of appeal are vague;

(7) Ground four is at large;

(8) Tire grounds are argumentative; and

(9) The notice of appeal does not vest any jurisdiction on this honourable court.

Vagueness of a ground of appeal may arise where it is couched in a manner which does not provide any explicit stand for its being understood. It will also be considered vague when the complaint therein is not defined in relation to the subject or is not particularized or that the. particulars are clearly irrelevant. See *Soxanya v. Onadeko* (2000) 11 NWLR (PL 677) 34 and *Etahtku* v. *N.B.C Plc* (2004) 15 NWLR (Pt. 896) 370, (2005)All FWLR (Pt.261) 353.

Against these grounds and all the well settled principles of law on the aim and essence of grounds of appeal in a notice of appeal, I have focused and x-rayed each of the 19 grounds of appeal in this appeal. While some of them are indeed repetitive, I do not believe or subscribe to the opinion of the learned counsel, Chief Olanipekun, SAN that they are all vague or argumentative. Eventhough, there are instances of repetitiveness in some of the grounds which could have engendered some overlapping, I am of the view that the appellants are fully entitled to so do in view of the fact that issues for the determination of the appeal were distilled out of several grounds. To that extent, I am unable to see any prolixity in the grounds of appeal or proliferation of issues. The grounds of appeal are sufficiently succinct and concise.

Once a ground of appeal clearly states what the appellant was complaining about and there is compliance with the rules of court, the ground cannot be described as bad and therefore incompetent. The purpose of the rules relating to the formulation of grounds of appeal is to ensure that the respondent is not taken by surprise: *Addax Petroleum Development (Nig.) Ltd v. Duke* (2010) All FWLR (Pt. 542) 1636, (2010) 8 NWLR (Pt. 1196) 278 at 295, paragraphs F - H.

With respect to the facts and circumstances of this appeal, the 1st respondent did not complain that he was embarrassed, misled or prejudiced by the nature and manner of the complaints in any of the grounds of appeal. Is it not surprising that the 1st respondent formulated and argued four issues for the determination of this appeal. These four issues were distilled from all the 19 grounds of appeal. One would definitely be bold to say that each of the 19 grounds of appeal had evinced one genuine complaint or the other against the ruling of the tribunal. Repetitive as some of them may definitely be, none of them, in my view, failed to satisfy what the law defines as a good ground of appeal. Without any much ado or hesitation, I hereby hold and decide in favour of all lite grounds of appeal in this appeal and maintain that this

court has the necessary competence and jurisdiction to entertain this appeal

The other grounds of objection argued by the 1st respondent, as pointed out above, are not totally dissimilar with those argued by the 2nd respondent. I wish to observe and point out that issue No. 3 in the issues formulated and argued by the appellants on the one hand are not totally unrelated with issue No. 2 formulated and argued by4he 1st respondent as well as issue No. 3 formulated by the 2nd respondent, it will therefore, in my view, be prejudicial and premature if these issues are surreptitiously considered and decided in a preliminary objection rather than when the merits of the appeal are considered after a full consideration of arguments on issues in that behalf. From the foregoing, 1 do not see. any merits in the two notices of preliminary objection. They are bereft of any merit and are accordingly dismissed.

In arguing the appeal proper, learned counsel to the appellants opted to start his submissions by taking issues 1 and 2 together. Against this background, the. learned senior counsel set out all the four reliefs sought in the application of 16 January 2013 and juxtaposed them with what he considered as the reasons why the tribunal refused them. In his effort to highlight the real essence of that application, Mr. Ikwueto, SAN pointed out that paragraphs 3, 4, 5, 6, 8. 9, 11 and 12 of the affidavit in support of the motion and paragraphs 4, 5, and 6 of the further affidavit both deposed to facts explaining the reason for not filing the evidence contained in the accompanied depositions along with the petition and the nature of the evidence sought to he adduced. Learned senior counsel went further to reproduce in full the averments in paragraphs 3. 4, 5, 6, 7, 9 and 10 of the supporting affidavit and argued that it is clear from those averments that what was sought in prayer one on the motion paper was extension of time within which to file and make use of additional or further witness depositions and added that it was erroneous for the tribunal to go off target and decide that the time within which to effect substantial amendment to the petition has passed by effluxion of time. With this on his mind, he maintained that the tribunal was on its own when it considered and dealt with an issue that was not submitted to it for determination. In addition to all the foregoing. Mr. Ikwueto, SAN recalled that the application was brought pursuant to Order 43, rule 3 of the Federal High Court Rules. 2009. paragraphs 41 (1), 45,47 and 54 of the 1st Schedule and all these provisions give the tribunal power to enlarge time for doing any act or taking any proceedings on such terms as the justice of the case may require.

In an effort to contrast 2 mutually exclusive situations, the learned

counsel referred to the provisions of paragraphs 4(1), 5(a). (h), (c) and 14 (2) (a) (i) and (ii) of the 1st schedule and pointed out that these provisions provide and deal with the subject of amendment of a petition after the time allowed for filing. He added that these provisions were not applicable to prayer one on the motion paper. On the stand of the tribunal that if prayer one was granted, it would have the effect of overreaching or prejudicing the respondents, the learned counsel pointed out that this erroneous disposition derived from the wrongful approach it gave to the application.

While referring to a number of decided cases to buttress his observations and remarks, tire learned SAN argued that the tribunal violated the appellants' right to fair hearing. He also specifically recalled the decision in the old case of *Chidiak v. Uiguda* (1964) NMLR 123; (1964) 1 All NLR 160 which was considered and applied in the case of *Adah* v. *Adah* (1998) 6 NWLR (Pt. 552) 97, where this court held that where a court misconceives an application before it and on the basis of such misconception proceeds to apply a wrong law to the facts of the case, the resultant decision would be perverse and liable to he set aside.

In arguing another leg of this issue, the learned senior counsel explained and maintained that the additional evidence sought to be adduced did not constitute new facts as erroneously held by the tribunal. He then D went on to refer to series of paragraphs of the petition and emphasized that they are replete with averments alleging and detailing incidences of corrupt practices and pervasive non-compliance with well known election procedures. He thereupon maintained that the refusal of the tribunal to grant the application has occasioned a miscarriage of justice and had deprived the £ appellants of the relevant material evidence to prove their case. He urged the court to so hold and resolve these two issues against the respondents.

These two issues argued by the learned counsel to the appellants were distilled from grounds 1, 2. 5, 8. 3, 4, 6 and 7 respectively of the grounds of appeal, therefore the first issue formulated by the 1st respondent appears to be nearest response to these two issues. 1 would therefore proceed accordingly. In setting the ball rolling, the learned counsel, Chief Olanipekun, SAN referred to the cases of *Ahubakar* v. *Yar'Adua* (2008) All FWLR (Pt. 404) 1409, (2008) 12 SC (Pt. 11) I at 21 and *Kalu v. Uzor* (2004) 12 NWLR (Pt. 886)1, where the *sui generis* status of election matters was underscored and highlighted. Another feature of these decisions is the observation that election matters are in a class of their own and governed by special rules and stipulations against which a slight default in compliance with could result in fatal

consequences. In a kind of an explanation, Chief Olanipekun. SAN referred to and reproduced the provisions of paragraphs 4(l)(c) and 14(2) (a)(ii) of the 1st Schedule and pointed out that the word "shall" used in these provisions signifies and is consistent with compulsion. He added further that the logical consequence of the use of the word "shall" in paragraph 14 *(2)(a)(supra)* completely disallows, without any room for discretion, every form of direct or indirect amendment of an election petition in circumstances where the said paragraph apply.

According to Chief Olanipekun, SAN, the real essence of the application of the appellants at the tribunal shows that it was not simply for extension of time to bring additional evidence. He then referred to a ground of the application, though without any specificity, to show that the real purpose and substance of the application was to adduce evidence on facts that were not available to the petitioners/appellants at the time of filing the petition. He added that it was because of the need to go for the real thing that the tribunal unmasked the application and exposed it for what it really was. Further to this, the learned senior counsel volunteered to say that the application was a ploy to amend the petition through the back door, which was rightly disallowed by the tribunal. He maintained that this approach of the tribunal cannot be faulted.

To re-inforce his support for the approach and decision of the tribunal, Chief Olanipekun, SAN referred to and reproduced part of the tribunal's ruling at pages 1429 - 1430 of the record of appeal and submitted that the tribunal properly considered the appellants' application on its merits and based on information supplied by them. With this re-inforcement in view, Chief Olanipekun, SAN argued that all the arguments and submissions of the learned counsel to the appellants on miscarriage of justice, denial of fair £ hearing and misconception of their application etc. go to no issue as the treatment the tribunal gave to the application cannot be impeached on any basis.

Chief Olanipekun, SAN continued his emphasis on the findings of the tribunal as contained at page 1430 of the record. He reproduced the part of it where the tribunal found that the appellants wanted to introduce fresh facts and do a substantial amendment to the petition thereby certainly overreaching the respondents. Against this background, he pointed out that these findings have so far remained intact as the petitioners did not appeal against them. He cited the cases of *Calabar Central Co-operative Thrift & Credit Society Ltd v. Ekpo* (2008) All FWLR (Pt. 418) 198, (2008) 6 NWLR (Pt. 1088) 362 at 388 and *Jimoh v. Akande* (2009) All FWLR (Pt. 468) 209, (2009) 5 NWLR (Pt. 1135) 549, paragraphs E-G where the well defined principle of law

was re-stated that a finding of a court not appealed against is deemed accepted by the party against whom it was made, fie added that to the extent that the appellants have admitted and accepted the fact that their application was capable of prejudicing and overreaching the respondents, the issue of denial of fair hearing would not arise.

At paragraph 5.11 on page 15 of his brief, the learned counsel to the 1st respondent highlighted some of the steps taken by the 1st respondent after the petition was served on him which includes filing a reply and witness statements as well as documentary evidence. Against this setting, the learned counsel maintained that it would certainly be overreaching if the appellants would at that stage be allowed to introduce new facts that the 1st respondent would not have in contemplation whilst taking all the steps he took to defend the allegations in the petition, fie remarked that the appellants should not be g allowed the liberty to keep on filing processes *ad infinitum*. He cited the case of *U.B.A. Pic*. v. *BTL Industries Ltd (2005) All FWLR (Pt*. 263)611, (2005) 4 SC 40 at 49 to illustrate the principle that the courts have always been steadfast in holding that there should and must be an end to litigation.

With respect to the complaint of the appellants on denial of fair hearing to them in the course of (he determination of the application by the tribunal, ^ learned counsel argued that the doctrine of fair hearing does not allow a party to surprise an opponent in the course of litigation. He referred to the Supreme Court decisions in *Amadi v. Chinda* (2010) NWLR (Pt. 1148) 107 at 121 - 122, paragraphs H-A and *George* v. *Dominion Flour Mills* (1967) 1 SCNLR 117 at 123, paragraphs D-E to support this argument. In conclusion. Chief Olanipekun, SAN submitted that the ruling of the tribunal cannot be faulted and urged on the court to so hold and resolve these issues against the appellants.

On behalf of the 2nd respondent, the learned senior counsel, Mr. Yusuf Ali after reproducing the 4 reliefs on the appellants' application of 16 £ January 2013 and its grounds 1 and 3 as well as its other supporting processes went on to point out (hat it is very clear and unmistakable that the main purpose of the application was to enable the appellants to make use of relevant facts which came to their knowledge after filing the petition. And

after referring to some decided cases, the learned counsel to the 2nd respondent pointed out that a clear reading of the proposed written statement on oath of the 1st petitioner would clearly show that its contents are not evidence hut facts that ought to have been pleaded in the petition.

On the nature and competence of the application of the appellants,

the learned SAN. Yusuf Ali observed that the petitioners/applicants did not place enough materials before the tribunal to justify a favourable exercise of G discretion in their favour because they failed to be candid. He added further that all the arguments of the appellants and their erroneous belief that in deciding as it did, the tribunal abdicated its responsibility to do justice to the appellants must remain a total misconception, misplaced and unfounded. He urged this court to so hold and resolve his issue one against the appellants.

In his reaction, the learned counsel to the 3rd to 5th respondents, O. Ikpeazu. SAN contended that the learned judges of the tribunal acted on sound legal principles when they dismissed the appellants' application for enlargement of time and leave to file and rely on additional statement on oath. Against this background, he referred to and reproduced grounds 1, 2, 3 and 6 of the grounds for the application and while emphasizing these grounds submitted that they categorically show that not only were the facts sought to be introduced belated, the application was tin invitation to the tribunal to violate the provisions of paragraph 14(2) of the 1st .Schedule, more particularly subparagraphs (a) (i) and (iii) thereof.

After referring to series of decided cases. Dr. Ikpeazu, SAN also referred to paragraph 45(1) of the 1st Schedule, section 134 of the Electoral Act, 2010, as amended and section 285(5) of the 1999 Constitution of the Federal Republic of Nigeria and argued that paragraph 45 is subject to paragraph 14 (2) to the extent that after the time provided in section 134(1) *(supra)* and section 285(5) *(supra)*, no new facts may be introduced into an election petition. Learned counsel, Dr. Ikpeazu, SAN also recalled the earlier explanation of Mr. Tkwueto, SAN on the various statutory provisions pursuant to which the application was brought. He went on to put all those provisions under focus. After his examination of them, he added that paragraph 41 (1) of the 1st Schedule bears no relevance to the issue of enlargement of time as it simply requires facts to be proved by written deposition and oral examination of witnesses. According to the learned SAN, the stage of proof was yet to be attained and therefore the material sought to be introduced must initially be legally admissible before that issue will arise. On paragraph 47 of the 1st Schedule, Dr. Ikpeazu, SAN explained that it pertains to the time and procedure for filing and arguing of motions before the tribunal and being merely procedural, it does not have anything to do with the power and competence of the tribunal to grant enlargement of time.

With respect to Order 43, rule 4 of the FHCCPP 2009, the learned counsel, Dr. Ikpeazu, SAN argued that it must be read with such

modifications as may be necessary and upon the combined effect of the provisions of section 134(1) of the Electoral Act, paragraphs 14 of the 1st Schedule and section 285(5) of the constitution, no substantial addition should be made to a petition by way of an amendment after the time stipulated for its presentation had elapsed. Added to this, the learned SAN referred to paragraphs 76,77 and 109 of the petition and emphasized that paragraph 76 cannot be correct because if the facts, as it says, were already "set out in the schedule to (the) petition, why would the appellants be introducing additional facts. In conclusion, Dr. Ikpeazu, SAN remarked that no miscarriage of justice was occasioned by the decision of the tribunal refusing the application of the appellants. He urged the court to so hold and resolve the issues against the appellants.

In their reply brief to the 1st respondent's brief, the appellants sought to set the records straight or at least as they want it to be understood when A^5 learned senior counsel clarified that the various processes attached to the application were not pleadings but further evidence in support of existing pleadings. On the submissions of Chief Olanipekun that the appellants did not challenge the findings of the tribunal that the application of the appellants, if granted was capable of overreaching the respondents, by way of an appeal, it was argued and submitted on behalf of the appellants that grounds 7 and 8 are indeed an appeal against all those findings. With respect to the arguments of the 2nd respondent, the appellant's reply brief maintained that what the appellants put before the tribunal were a compendium of evidence in proof of diverse pleadings in the petition and pointed out that neither the respondents nor the tribunal pointed out any of the evidence sought to be adduced that was not related to an already pleaded fact. Against the arguments of the 3rd to 5th respondents, the appellants referred to section 1 and 7 of tire Evidence Act and submitted that the dichotomy drawn between fact and evidence by Dr. Ikpeazu, SAN cannot be justified in the circumstance of this matter. Learned counsel added further that section D 134 of the Electoral Act, 2010 and section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 were wrongly cited as they do not apply to the facts and circumstances in the application of the appellants. Also, according to the appellants, it was erroneous for Dr. Ikpeazu, SAN to argue that there is a conflict between the provisions of section 285(5), section 134 g and paragraphs 41(1), 45 and 47 of the 1st Schedule. He referred to the case of *Fayemi v. Qui* (2009) All FWLR (Pt. 472) 1122, (2009) 7 NWLR (Pt. 1140) 223 where this court interpreted and applied the said provisions under similar circumstances to the instant appeal. He urged the court to

discountenance all the various submissions of the respondents and grant their four reliefs as set out on the motion paper.

I have carefully considered all the foregoing erudite arguments and submissions of respective senior counsel on behalf of the respective parties. I have also read all the processes in the application of the appellants and the replies of the respondents as contained at pages 979 to 1378 of volume 2 of the record of appeal together with the decision on it in the ruling of the G tribunal delivered on 4 February 2013.1 also laid my hands on and read some of the decided cases.

Out of the four reliefs on the application of the appellants, one is for extension of time and two are for leave and the other main relief is for a deeming order, and if they were to be granted, the appellants would have p| 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 filing the petition. 1 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 the 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 a step in appropriate and deserving circumstances. Order 7, rule 10(1) of the Court of Appeal Rules with paragraph 45 of the 1st Schedule also allow for extension of time to be granted. A court may enlarge the 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, while those steps 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 tire delay in filing tire 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 the paragraphs of the affidavit have generously set out why 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 allow for such a fundamental and monumental endeavour. The tribunal was of the further view that granting the application as prayed would certainly 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 1 fully agree with the learned counsel to the petitioners/applicants, that there were enough materials to consider in deciding whether or not to grant the 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 rather 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.

It is a settled and well defined law that an appellate court will not interfere with the exercise of discretion by a trial court or substitute its own discretion unless:

a. the exercise of the discretion by the trial court was based on wrong or insufficient material;
b. where no weight or insufficient weight was given to a relevant consideration;
c. the trial court acted under a misconception of law;
d. the trial court acted under a misapprehension of fact;
e. where it is in the interest of justice to do so; and
f. where the exercise was shown to be perverse or unreasonable.

See *Mobil oil (Nig) Ltd* v. *FBIR* (1977) 3 SC. 53 and *Ukwu* v. *Bunge* (1997) 8 NWLR (Pt. 518) 527.

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 g prejudice and overreach the respondents. I have taken time to consider and review the entire circumstance of this matter and 1 found 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. Issues one and two in the appellants' issues for determination are therefore hereby resolved in favour of the respondents.

While arguing his issues 3 and 4 together, the learned counsel, Mr. Ikwueto, SAN began with a submission that it was a misconception for the 1st respondent to argue that the petition of the appellants was incompetent because a national officer of the 2nd appellant did not sign it, and the tribunal was wrong to have upheld this erroneous submission of the 1st respondent. Further to this, the learned senior counsel referred to certain undisputed features of the extant petition and sought to know from the 1st respondent if it was necessary that all the petitioners/appellants must sign the petition. He referred to paragraph 4 of the 1st Schedule and submitted that the answer to this question must definitely be in the negative.

Referring to page 312 of the record, Mr. Ikwueto, SAN, pointed out that the petition was signed by Mr. Yinka Orokoto, of counsel in full compliance with paragraph 4(3)(b) of the 1st Schedule He anchored his argument by referring and quoting extensively from the decision of this court in *Ibrahim* v. *Sheriff* (2004) 14 NWLR (Pt. 892) 43 at 66 - 67, paragraphs *D-G,* (2005) All FWLR (Pt. 245) 1098, per Alkintan, JCA (as he then was). He accordingly submitted that the signature of the appellants' counsel alone suffices for the purpose of complying with paragraph 4(3)(b) *(supra)* and same must constitute sufficient evidence of authorization and presentation of the petition by the 2nd appellant jointly with the 1st appellant. He cited *Abia State University* v. *Anyaibe* (1996) 3 NWLR (Pt. 439) 646 at 661 and *Inakoju* v. *Adeleke* (2007) All FWLR (Pt. 353) 3, (2007) 4 NWLR (Pt. 1025) 427.

After taking some time to clarify the status and position of Mr. Chris Omotuyi and his relationship with the 2nd appellant, the learned counsel, Mr. Ikwueto, SAN referred to paragraphs 8 -13 of the appellants' counter-affidavit to the 1st respondent's preliminary objection at the tribunal, and forcefully argued that the 1st respondent cannot hold brief for the 2nd petitioner/appellant because it is the 2nd appellant who needs to come to the tribunal to complain that it was not challenging the election and seek for its name to be struck out, as it did in another Governorship Election Petition in another state. He then submitted that the tribunal erroneously struck out the name of the 2nd appellant and urged on this court to so find and resolve issues 3 and 4 against the respondents.

The 3rd and 4th issues argued on behalf of the appellants were

distilled out of grounds 9 to 10 and 15 to 19 of the grounds of appeal. Therefore, the 2nd issue formulated and argued by the 1st respondent which was distilled out of grounds 9,10, 14, 15, 16, 17, 18and 19 appears to be a good response to the submissions and arguments on issues 3 and 4 of the appellants' issues for determination of this appeal.

In arguing his issue 2, the learned counsel. Chief Olanipekun, SAN, sought to clarify some facts that he believed were erroneously presented in the arguments and submissions of Mr. Ikwueto, SAN. Upon the clarification, he proceeded to reproduce part of the ruling of the tribunal at page 1471 of the record, leading up to where it found and held that the 1st petitioner/appellant had demonstrated to its satisfaction that the national body of the PDP did not authorize Chris Omotuyi to file or sign any petition on its behalf. Against this background, the learned counsel, Chief Olanipekun, SAN suggested that his finding has not been challenged in this appeal and it ought ***Yi*** to be deemed as fully binding and valid.

Upon this foundation, the learned counsel focused on page 1 of the petition and did some analysis of some words and phrases therein and invoked some of the guiding principles governing the interpretation of satutes and documents by the courts and submitted that page 1 told a lie of its contents. A He then set out what he considered as the 5 reasons why it must be believed by the court that all parties are *ad idem* that the petition did not have the input of the National Secretariat of the PDP at Abuja.

Further to this, Chief Olanipekun took centre stage to discredit all the facts that tended to show the existence of authority for Mr. Omotuyi to sign the petition on behalf of the 2nd appellant. And while referring to paragraph 4(3)(b) of the 1st Schedule, and the case of *Nwancho v. Elem* (2004) All FWLR (Pt. 225) 93 at 107, the learned senior counsel pointed out that the non-signing of an election petition vitiates it and renders it a nullity. He then invited the court to take a look at the signature columns on the petition. He pointed out, what he considered as inadequacies and urged the court to draw the same inferences and conclusions.

Chief Olanipekun, SAN did not stop at that, he went to question the validity and genuineness of whatever endeavour of Mr. Omotuyi with respect to the petition in this appeal. Learned counsel went as far as to suggest that the 2nd appellant was fraudulently joined to the petition in this appeal. In going as far as he went. Chief Olanipekun found refuge in his understanding of the provisions of Article 13.6 of the constitution of the PDP read together with the provisions of sections 221 to 223 of the Constitution of the Federal Republic of Nigeria, 1999.

In conclusion, the learned counsel pointed out that the case *of Ibrahim v. Sheriff heavily* relied on by the learned counsel, Mr. Ikwueto. SAN is not applicable to the extent that was suggested as there was an unauthorized signature in that case while there is a strong suspicion that Mr. Omotuyi lacked the requisite authority to sign this petition on behalf of the 2nd appellant. He urged on this court to resolve these issues against the appellants.

Learned counsel to the 2nd respondent, Yusuf Ali, SAN, responded to the arguments of the appellants on issues 3 and 4, in his issue 3. The fulcrum of his response is principally predicated in his answer to the question; - whether or not Mr. Chris Omotuyi has any legal capacity to sign this petition on behalf of the PDP. Learned counsel, Yusuf Ali, SAN, followed the same style like Chief Olanipekun, SAN by discountenancing any G purported authority Mr. Omotuyi believed that he had in signing the petition on behalf of the PDP. Learned counsel to the 2nd respondent went a step further than Chief Olanipekun, SAN when he touched on the signing of the petition by Mr Yinka Orokoto, when he argued that the signature of the solicitor can only be valid if there was express authority to that effect. In conclusion. Yusuf Ali, SAN submitted that the position of the appellants is more precarious and tenuous because the respondents do not have any dispute with (he PDP. He urged on the court to resolve this issue against the appellants and in favour of the respondent.

The position of the 3rd to 5th respondents on the Alleged mis-joinder of the PDP is contained in their arguments on the 2nd issue formulated in that behalf and argued at pages 14 to 19 paragraphs 6.00 to 6 12 of their brief of argument. The position of this set of respondents does not differ with that of the others. Learned counsel, Dr. Ikpeazu, SAN also discountenanced the signature of both Mr. Orokoto and Omotuyi on the petition and maintained that neither of them can validly be said to have signed the petition on behalf of the PDP. Learned counsel added that because the 1st respondent, upon being declared winner of the election, received congratulatory messages from the PDP and the President of the Federal Republic of Nigeria, amongst many others, and which are now in exhibits 1 - 10 and 11 and 12, there was no way the PDP would now turn round to challenge the result of the election. He emphasized that the PDP had before and after the inception of the petition categorically declared that it had inclination towards challenging the result of the election. He urged this court to resolve this issue against the appellants.

In his reply brief to the brief of the 1st respondent learned counsel to the appellant, Mr. Ikwueto, SAN pointed out in paragraph 4.12 at

page 14 that the lower court did not base its decision to strike out the name of the 2nd appellant based on exhibits 11 and 12 and remarked further that the pleadings in the petition, being the most critical and relevant factor, show-very clearly that there is a dispute between the 2nd appellant and the respondents. Learned counsel went on to argue that Article 13.22 of the PDP confers the same functions on the state legal adviser with those conferred on the national legal adviser by Article 13.6. He then added that to the extent that Mr. Omotuyi was authorized and instructed by the Ondo State Legal Adviser, Mr. Akinfemiwa to sign the petition, it was validly signed and he urged this court to so hold and resolve these issues against the respondents.

Learned counsel, Chief Olanipekun, SAN urged on this court to consider this petition as; make believe, a charade, a sham or even a fraud. I feel unable to accede to this invitation because I am of the view that it is the PDP as an entity or any of its designated national officers, such as the national legal adviser that are in the best position to apply for its name to be struck out in the circumstances of this appeal. This approach is not without some precedence. Learned counsel to the appellants had drawn the attention of this court to the approach the same PDP adopted when it was faced with a similar situation to the one in the instant appeal in one of the slates in which a governorship election was held recently.

Also, I do not see how the learned counsel, Yusuf Ali, SAN can correctly maintain that the respondents have no dispute with the PDP in the circumstances of this appeal, just because of the various congratulatory messages and messages of goodwill as well as other public statements, the 1st and 2nd respondents received from the President of Nigeria and PDP Chieftains. I see all these as no more than a fulfillment of self righteousness Nigerian politics and politicians are in a special class of their own. My observation is that if the respondents do not have any dispute with the PDP, the 1st appellant definitely has an issue to sort out with them. This issue that needed sorting out pertained to governorship election held in Ondo State. To the extent that it is settled beyond per adventure that the 1st appellant remains the candidate of the PDP in that election and was apparently duly sponsored by it, it goes without saying that somehow, there are issues to sort out between the PDP and the respondents.

While respective learned counsel to each set of respondent did a good job of "finishing" Mr. Chris Omotuyi to the extent of characterizing him as an imposter, they failed to adequately and sufficiently address the real status of Mr. Yinka Orokoto, of counsel and his signature on the so much maligned petition as well as his

representation for the PDP as counsel in the proceedings before the tribunal. While, I agree with Dr. Ikpeazu, SAN that these issues are not about legal representation for the PDP in this appeal and at the tribunal, I strongly believe that the filing of court processes on behalf of the PDP and the receipt of service of court process in that behalf by Mr. Orokoto cannot totally be overlooked or dismissed with the wave of a hand.

The relevant consideration regarding mis-joinder or non-joinder of parties to an action has long been settled by the courts. According to the Supreme Court's decision in *Green v. Green* (1987) 3 NWLR (Pt. 61) 480, it is whether the presence of the party concerned is essential to the just determination of the issue in controversy between the parties. It is also settled that no cause or matter shall be defeated by reason of the misjoinder of parties and the court may in every cause or matter deal with the matter in controversy in so far as it regards the rights and interests of the parties actually before it: *Peenok Investment Ltd v. Hotel Presidential* (1982) 13 NSCC 477, (1982)12 SC 17 *and Bella v. I.N.E.C* (2010) All FWLR (Pt. 326) 397, (2010) 2 - 3 SC (Pt. II) 128.

Against the foregoing background, I am unable to see any basis why the respondents should worry themselves with a problem that squarely belongs to the PDP. They should not take a panadol for somebody's headache. I therefore do not see any basis for the tribunal to strike out the name of the, PDP from this petition. That decision is unreasonable and unwarranted in the circumstance and it is hereby set aside. Issues 3 and 4 are resolved in favour of the appellants against the respondents.

With respect to issues 5 and 6 in the appellants' issues for determination, I considered all the eloquent and brilliant submissions of respective learned counsel against the very well settled position of the law that pleadings must be succinct, concise and not vague or imprecise etc.

With respect to election matters, paragraphs of a petition are by law required not to be speculative, generic, omnibus or nebulous etc.

It is also settled that an election petition must have as parties to it all such persons against whom certain criminal allegations have been made.

Against this background, 1 undertook a very painstaking exercise through each of the paragraphs of the petition with a view to determining the acceptability and competence of them. In the course of this exercise, I found that the tribunal rightly struck out the following paragraphs namely:

10, 13, 35, 36, 39, 40, 42, 43, 55, 57, 61, 62, 63, 77, 78, 80, 81, 84, 86, 87, 88, 93(2), 93(9), 96 (24), 100 (3), 100 (18),

103(3), 81,92(2), ward 3(e), 92(2), ward 4(1), 92(2), ward 6(9)(f), 92(3), 92(4), 93(10), 96(12), 96(13), 96(14), 96(18), 96(19), 96(20), 96(21), 96(22), 96(23), 96(25), 96(34), 96(36), 96(39), 98(4), 98(1)(xxix), 100(6), 100(11), 100(17), 100(19), 100(23), 100(24), 103(5)(iii), 104(6), 104(7) and 106(1) to (7).

Also in the course of this exercise, I found and now hold that the following paragraphs were erroneously struck out. They are paragraphs:

38, 45, 46, 47, 54, 56, 58, 60, 64, 66, 67, 68, 71, 90, 91, 92k, 93 (6), 93 (11), 96 (2), 97 (1), 98 (1), 98 (xxi), 103 (4), 92 (2), 96 (10), 96 (11), 96 (16), 96 (17), 96(24), 96 (31), 96 (35), 96 (37), 96(38), 97(3), 97(4), 97(5), 97(7), 100(8), 100 (13) and 100 (18)

Having concluded this exercise and the result turning out as highlighted above, issues 5 and 6 are partly resolved against the respondents and therefore all the paragraphs of the petition that were found to have been erroneously struck out are hereby restored to the petition. The order striking out all the paragraphs I found to have been correctly struck out is hereby affirmed.

This appeal is hereby allowed in part. In consequence of allowing this appeal in part, the order of the tribunal refusing to grant the appellants' application for extension of time etc. is affirmed. The order of the tribunal striking out the name of the PDP as a party to the petition is hereby set aside.

The cross-appeal is devoid of any merit and it is accordingly dismissed. I make no order for costs.

ABDULLAHI JCA: I agree.
OREDOLA JCA: I agree.
ONYEMENAM JCA: I agree
JOMBO-OFO JCA: I agree.

Appeal allowed; cross-appeal dismissed