

1. MR. PETER GREGORY OBI
2. LABOUR PARTY (LP)

V.

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. SENATOR BOLA AHMED TINUBU
3. SENATOR SHETTIMA KASHIM
4. ALL PROGRESSIVES CONGRESS

SC/CV/937/2023

SUPREME COURT OF NIGERIA

JOHN INYANG OKORO, J.S.C. (*Presided and Read the Leading Judgment*)
 UWANI MUSA ABBA AJI, J.S.C.
 MOHAMMED LAWAL GARBA, J.S.C.
 IBRAHIM MOHAMMED MUSA SAULAWA, J.S.C.
 ADAMU JAURO, J.S.C.
 TIJJANI ABUBAKAR, J.S.C.
 EMMANUEL AKOMAYE AGIM, J.S.C.

THURSDAY, 26TH OCTOBER

2023

*ACTION - Abuse of court process- Litigation of issue already settled-
 Need for end to litigation - Where party seeks to re-litigate issue
 already settled by court Effect.*

ACTION - Academic suit- Meaning and implication of.

ACTION - Litigation of issue litigation - Where party seeks to re-litigate issue already settled by court-Effect

APPEAL - Preliminary objection to appeal – Where raised – On Purport of – When appropriate- When not

CONSTITUTIONAL LAW – Constitutional provisions – Interpretation of – Principles governing.

CONSTITUTIONAL LAW – Election to office of President of Federal Republic of Nigeria – Qualification therefor - Whether candidate required to score 25% of Votes Cast in Federal Capital Territory.

CONSTITUTIONAL LAW – Federal Capital Territory – Status of - Whether has Special status over and above states of the Federation.

COURT- Abuse of court process – Litigation of issue already settled - Need for end to litigation – Where party seeks to re-litigate Issue already settled by court – Effect.

CRIMINAL LAW AND PROCEDURE – Civil forfeiture – Meaning and implication of – Whether amounts to punishment for commission of offence.

CRIMINAL LAW AND PROCEDURE – Proof- Criminal conviction and sentence – How to prove.

ELECTION – Election to office of President of Federal Republic of Nigeria – Qualification therefor – Whether candidate required to score 25% of votes cast in Federal Capital Territory.

EVIDENCE – Proof- Criminal conviction and sentence – How to prove.

INTERPRETATION OF STATUTES – Constitutional provisions – Interpretation of – Principles governing.

PRACTICE AND PROCEDURE – Abuse of court process - Litigation of issue already settled – Need for end to litigation - Where party seeks to re-litigate issue already settled by court - Effect.

PRACTICE AND PROCEDURE - academic suit – Meaning and implication of

PRACTICE AND PROCEDURE - Appeal-Preliminary objection to appeal-Where raised- Purport of-When appropriate -When not.

PRACTICE AND PROCEDURE - Litigation of issue already settled -Need for end to litigation-Where party seeks to re-litigate issue already settled by court -Effect.

PRACTICE AND PROCEDURE - Preliminary objection to appeal - Where raised-On Purport of-When appropriate-When not.

PRINCIPLES OF INTERPRETATION-Constitutional provisions - Interpretation of-Principles governing.

WORDS AND PHRASES – Academic suit – Meaning and implication of.

WORDS AND PHRASES - Civil forfeiture - Meaning and implication of - Whether amounts to punishment for commission of offence.

Issues:

1. Whether, on account of the complaints discernable on the face of grounds 11 and 27 of the Notice of Appeal and the tenor of the claims in reliefs (b) and (c) of the Notice of Appeal, the notice of preliminary objection by the 2nd and 3rd respondents ought to be dismissed.
2. Whether upon a community reading of the appellants' petition and the applicable law, the Court of Appeal was right in striking out/expunging some paragraphs of the petition and the documentary evidence tendered by the appellants for being vague, generic, imprecise, nebulous and inadmissible.
3. Whether upon a careful consideration of the appellants' petition, the respondents' respective replies to the petition and the appellants' replies to the replies of the respondents, the Court of Appeal appellants struck out some paragraphs of the ' replies to the replies of the respondents to the petition
4. Whether having regard to the relevant provisions of The Electoral Act, 2022 as well as s the 1 Schedule Thereto, the Federal High Court (Civil Procedure) Rules 2019, Evidence Act, 2011 and current judicial Pronouncements on the point, the Court of Appeal Was to the evidence of PW3, PW4, PW5, PW6, PW7, PW8. Correct in sustaining the objections of the respondents PW9, PW10, PW11 and PW13 and consequently striking out the evidence of the aforesaid witnesses and all the documents tendered and admitted in evidence along with the petition.
5. Whether having regard to the provisions of sections 131(c). 137(1) (d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Sections 31 and 35 of the Electoral Act, 2022 and the evidence before the court, the Court of Appeal was right when it held that the 2nd and 3rd respondents were qualified to contest the Presidential election of 25 February 2023.
6. Whether having regard to the evidence adduced by the parties, the Court of Appeal was right when it held that the appellants were not able to establish that there was substantial non-compliance with the provisions of the Electoral Act, 2022, which substantially affected the overall result of the election.
7. Whether having regard to the explicit provisions of section 134(2)(b) of the 1999 Constitution and the evidence adduced at the trial, the Court of Appeal was right in coming to the determination that the 2nd respondent was duly elected as the President of the Federal Republic of Nigeria.
8. Whether from the totality of the pleadings and evidence adduced, the Court of Appeal was right when it dismissed the appellants' case.

Facts:

The Independent National Electoral Commission (INEC), Assembly Elections in Nigeria on 25/2/2023. The 1st appellant, who as well as the 2nd and 3rd respondents, who were sponsored by the 4th respondent as its Presidential and Vice-Presidential candidates, At the end of the election, the 1st respondent returned the 2nd respondent as the duly elected President of the Federal Republic of Nigeria, with 8,794,726 votes. The 1st appellant came third with 6,101,533 votes, behind Abubakar Atiku of the People's Democratic Party (PDP), who came second with 6,984,520 votes. Dissatisfied with the result of the election, the appellants filed this petition on the 20th of March, 2023, challenging the outcome of the election on the following three grounds, which are stated in paragraph 20 of the petition:

- (i) The 2nd respondent was at the time of the election not qualified to contest the election
- (ii) The election of the 2nd respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022.
- (iii) The 2nd respondent was not duly elected by majority of the lawful votes cast at the election.

Based on the above grounds, the petitioners then sought for the reliefs stated in paragraph 102 of the petition as follows:

1. First pray as follows:
 - (i) That it be determined that at the time of the Presidential Election held on 25th February, 2023, the 2nd and 3rd respondents were not qualified to contest the election.
 - (ii) That it be determined that all the votes recorded for the 2nd respondent in the election are wasted votes, owing to the non-qualification/disqualifications of the 2nd and 3rd respondents.
 - (iii) That it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd respondent) the 1st petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each of at least 2/ of the States of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25th February, 2023 presidential election
2. That it be determined that the 2nd respondent having failed to score one-quarter of the votes cast at the presidential election in the Federal Capital Territory, Abuja, was not entitled to be declared and returned as the winner of the presidential election held on 25th February, 2023.

In the Alternative to 2 Above:

3. An order cancelling the election and compelling the 1st respondent to conduct a fresh election at which the 2nd, 3rd and 4th respondents shall not participate.

In the Alternative to 1, 2 and 3 Above:

4. (i) That it may be determined that the 2nd respondent was not duly elected by a majority of the lawful votes cast in the election for the office of the president of the Federal Republic of Nigeria held on 25th February, 2023: and therefore, the declaration and return of the 2nd respondent as the winner of the presidential election are unlawful, unconstitutional and of no effect whatsoever.
(ii) That it be determined that based on the valid votes cast at the presidential election of 25th February, 2023, the 1st petitioner scored the highest number of votes cast at the election and not less than one quarter of the votes cast at the election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja, and ought to be declared and returned as the winner of the presidential election.
(iii) An order directing the 1st respondent to issue certificate of return to the 1st petitioner as the duly elected president of the Federal Republic of Nigeria.
(iv) That it be determined that the certificate of return wrongly issued to the 2nd respondent by the 1st respondent is null and void and be set aside.

In the Further Alternative to 1, 2, 3 and 4 Above:

- 5(i) That the presidential election conducted on 25th February, 2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act, 2022 and Constitution of the Federal Republic of Nigeria 1999, as amended.
(ii) An order cancelling the presidential election conducted on 25th February, 2023 and mandating the 1st respondent to conduct a fresh election for the office of president of the Federal Republic of Nigeria.

The appellant in proving their petition called 13 witnesses and tendered over 19,000 documents from 10/5/2023 when the hearing commenced to 5/7/2023 when the respondents closed their case. After adoption of final written addresses of parties, the lower court delivered its judgment on 6/9/2023, dismissing the appellants petition. Miffed

with the judgment, the appellants appealed before this court vide notice of appeal.

Preliminary Objection:

The 2nd and 3rd respondents filed a notice of preliminary objection on 7/10/2023, seeking for:

1. An order of this honourable court, striking out the appellants' appeal before this honourable court. *Further or in the Alternative to Relief 1 (supra)*
2. An order of this honourable court striking our reliefs (b) and (c) sought in the appellants' notice of appeal.
3. An order of this honourable court, striking out grounds 11 and 27 of this appellants' notice of appeal for want of competence.
4. An order of this honourable court, striking out issues 3 and 5 of the appellants' brief of argument filed on 2nd October, 2023.

The grounds upon which this objection is brought are as follows:

- i. Grounds 11 and 27 of the notice of appeal are not complaints against the *ratio decidendi* of the lower court.
- ii. Issues 3 and 5 distilled from grounds 11 and 27, which are incompetent grounds of appeal, are themselves incompetent and liable to be struck out.
- iii. The entire appeal is academic in that:
 - (a) Relief (b) of the notice of appeal which limits itself to the "the perverse judgment of the court below" is ungrantable insofar as there is no direct and specific allegation of perverseness against the judgment of the lower court.
 - (b) As far as the said relief (b) is concerned, this honourable court can only consider same upon a *prima facie* case of perverseness against the judgment of the lower court.

- (c) Relief(c) of the notice of appeal which prays this honourable court to grant the reliefs sought in the petition "either on the main or in the alternative" is imprecise, uncertain and liable to be struck out
- (d) Further to (a) - (c) supra, the entire appeal is of no utilitarian value.

iv. It is in the interest of justice for this honourable court to grant the reliefs sought in this notice of preliminary objection.

The 7-paragraph affidavit was deposed to by Adoga Moses. The learned senior counsel formulated this issue for the consideration of the objection.

In view of the circumstances of the appellants' appeal before this honourable court and the settled position of the law on the subject, whether this honourable court will not grant the reliefs sought on the face of this notice of preliminary objection.

In the determination of the various motions, preliminary objections and the merit of the petition, the Court considered various provisions of the 1999 Constitution (as amended) as well as other relevant Legislations as follows: -

Section 134(2)(a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

“134(2) A candidate for an election to the office of President shall be deemed to have been duly elected, where, there being more than two candidates for the election-

(a) he has the highest number of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.”

Section 137(1)(d) of the 1999 Constitution (as amended):

"137(1) A person shall not be qualified for election to the office of President if-

(d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria of a sentence of imprisonment or fine for any offence involving dishonesty or fraud by whatever name called or for any other offence imposed on him by any court tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal."

Section 285(5) of the 1999 Constitution (as amended):

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

Section 299 of the 1999 Constitution (as amended):

"299. The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly -

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution.

(c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be necessary to bring them into conformity with the provisions of this section."

Section 31 of the Electoral Act.2022:

"31. A candidate may withdraw his candidature by notice in candidate to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission not later than 90 days to the election."Section 132(7) of the Electoral Act,2022:

"132(7)An election petition shall be filed within 21 days after the date of the declaration of the result of the elections."

Paragraph 4(5) of the 1st Schedule to the Electoral Act,2022:"4(5) The election petition shall be accompanied by-

- (a) a list of the witnesses that the petitioner intends to call in proof of the petition;
- (b) written statements on oath of the witnesses; and
- (c) copies or list of every document to be relied on at the hearing of the petition."

Paragraph 14(2) of the 1st Schedule to the Electoral Act,2022:"14(2) After the expiration of the time limited by-

- (a) Section 132(7) of this Act for presentation of the election petition, no amendment shall be made-
 - (i) introducing any of the requirements of paragraph 4(1) 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 subparagraph (2)(a)(ii), effecting a substantial alteration of or addition to, the statements of facts relied on to support the ground for, or sustain the prayer in the election petition; and
- (b) paragraph 12 for filing the reply, no amendment shall be made-

- (i) alleging that the claim of the seat or office by the petitioner is correct or false, or
- (ii) except anything which may be done under the provisions of subparagraph (2)(a)(ii), effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply."

Section 249(1) & (2) of the Evidence Act:

- "249(1) A previous conviction in a place outside Nigeria may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the fingerprints of the person or photographs of the fingerprints of the person so convicted together with evidence that the fingerprints of the person so convicted are those of the defendant.
- (2) A certificate given under subsection (1) of this section shall be *prima facie* evidence of all facts set out in it, without proof that the officer purporting to sign it did in fact sign it and was empowered to do so."

Held (Unanimously dismissing the Appeal):

1. *On Proof of criminal conviction and sentence-*

Where there is an allegation that there had been a criminal conviction and sentence, as in this case, the criminal conviction and sentence must be proved by production of the certified true copy of the judgment of court delivered or any admissible way of proving same and the said judgment must reflect all the ingredients of a valid judgment to bind the parties concerned.

In this case, the appellants' challenge to the qualification of the 2nd respondent to contest the Presidential election was that he was "fined the sum of \$460,000.00(Four Hundred and Sixty Thousand

United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division, in case No.93C 4483", and thereby disqualified by virtue of section 137(1)(d) of the 1999 Constitution (as amended) which provides for "sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offences, imposed on him by any court or tribunal or substituted by a competent authority..." What matters in this kind of situation is that there must be proof of such allegation beyond reasonable doubt, which the appellants did not do. PW1 and PW 12, who gave evidence on the US proceedings did not dispute the fact that the 2nd respondent was not at any time charged before any court, caused to make a plea, convicted or sentenced for any offence. On the other hand, RW2, a US Attorney and an associate of the 2nd respondent, testified that the 2nd respondent was never convicted or fined for any criminal offence in the United States. In fact, PW1 confirmed that the proceedings in exhibit PA5 series were civil proceedings. [*PML (Nig.) Ltd. v. F.R.N. (2018) 7 NWLR (Pt. 1619) 448; Jonathan v. F.R.N. (2019) 10 NWLR (Pt.1681) 533 referred.*](Pp. 747-748, paras.H

2. *On Meaning and implication of civil forfeiture and whether amounts to punishment for commission of offence-*

A civil forfeiture is a unique remedy that does not require conviction or even a criminal charge against the owner of the money. A civil forfeiture does not qualify as a fine or punishment for any unlawful activity, and cannot qualify as a fine for an offence involving dishonesty or fraud. In this case, there was nothing to show that the

forfeiture in question of the sum of \$460,000.00 (Four hundred and sixty thousand United States Dollars) by the 2nd respondent was a punishment for the 2nd respondent's conviction for any offence. There was no evidence of any conviction of any sort. It was a civil forfeiture made because the source of the money could not be explained. It was thus a non-conviction based forfeiture. (P.756.paras.D-G)

3. *On Qualification for election to office of president of Federal Republic of Nigeria and whether candidate required to score 25% of votes cast in Federal Capital Territory-*

The constitutional or statutory requirements to be satisfied for a candidate to be declared elected must be the ones expressly and clearly prescribed in the Constitution or statute as the case maybe. A requirement that is not expressly and clearly prescribed cannot be assumed or implied to exist under any guise. Since section 134(2) or any other part of the 1999 Constitution did not expressly and distinctly prescribe that a Presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja as a third requirement additional to the two expressly prescribed, before he or she can be deemed duly elected as President, it is not a requirement for election to that office. Section 134 (2)(b) clearly refers to two-thirds of all the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein as a group. If

section 134(2) of the 1999 Constitution intended that the Federal Capital Territory, Abuja should be distinct from States of the Federation as a distinct entity it would not have listed it together with states of the Federation in section 134 (2)(b). Also, if section 134(2) had intended having one-quarter of the votes cast in the Federal Capital Territory Abuja as a separate requirement additional to the ones enumerated therein, it would have clearly stated so in a separate paragraph numbered (c). Section 134(2) prescribes two requirements that candidate in an election contested by not less than elected President. It prescribes the first requirement in (a) and the second one in (b). It does not impose a third requirement and so there is no (c) therein.(Pp.077-758,paras.D-C)

4. *On Status of Federal Capital Territory and whether has special status over and above states of the Federation-*

The grouping of Federal Capital Territory, Abuja with states of the Federation in section 134(2)(b) of the 1999 Constitution so that the provision can apply to them equally is consistent with the tenor and principle of the 1999 Constitution treating the Federal Capital Territory, Abuja as a State of the Federation. This is in line with the provision of section 299 of the 1999 Constitution. It is obvious that States of the Federation and the Federal Capital Territory, Abuja were lumped together as a group by section 134(2)(b). What differentiates the constituents of the group is their names and nothing more. One of them is called Federal Capital Territory and the rest are called States of the *Federation*. (P.758,paras.C-F)

Per AGIM, J.S.C. at pages 758-759, paras.H-F:

“Even though words are most often prone to different meanings and even very simple words can be differently understood, the words of S. 134(2)(b) cannot accommodate or support or bear what learned SAN for the appellants proposed as its meaning. Such meaning would result in a situation where a Presidential candidate that has the highest votes cast in the election and not less than one-quarter of the votes cast in not less than two-thirds of 36 States of the Federation or in all the States of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the egalitarian principle of equality of persons, votes and the constituent territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional. I think that his said proposition is the result of reading those provisions in isolated patches instead of reading them as a whole and in relation to other parts of the Constitution. Reading and interpreting the relevant provision as a whole and together with other parts of the Constitution as a whole is an interpretation that best reveals the legislative intention in the relevant provision. Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria) in his book Synopsis 2 stated thusly-

'Any document to be rightly understood must be read as whole. According to Lord Coke "It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers..... and this exposition

is *ex visceribus actus*." (from the bowels of the statute). Reading it through helps also in gathering its object. An effort must be made to understand it as a harmonious whole'."

5. *On Principles governing interpretation of Constitutional provisions-*

Courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in the application of constitutional provisions and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the interpretation of statutes differ between statutes according to the subject matter of each statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its *sui generis* nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its *sui generis* nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose. In interpreting the part of the Constitution providing for elections to public offices in a constitutionally established democratic culture, the court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of a democratic society.(Pp.759-760,paras.F-B)

6. *On Meaning and implication of when suit is academic –*

A suit is academic where it is merely theoretical, and of no practical value to the plaintiff even if judgment is given in his favour. An academic issue or question is one which does not require an answer or adjudication by a court of law because it is not necessary to the case on hand. An academic issue of question could be a hypothetical or moot question. An academic issue or question does not relate to the live issue in the litigation because it will not enure any right or benefit on the successful party. In this case, the sister appeal in *Atiku v. INEC* (SC/CV/935/2023) was dismissed for lacking in merits; issues 1,2,3,5,6 and 7 in the instant appeal were the same with issues 1, 2, 3, 5,6, and 7 which were resolved against the appellants in the said sister appeal.

Thus, the six issues in question had become academic and ought to abide the outcome of the decision in the said sister appeal. [Odedo v. I.N.E.C. (2008) 17 NWLR (Pt. 1117) 554; Plateau State v. A.-G., Fed. (2006) 3 NWLR (Pt. 976) 346; Ogbonna v. President FRN (1997) 5 NWLR (Pt.504)281; Uchenna v. P.D.P. (2023)9 NWLR (Pt. 1888) 165 referred to.] (Pp. 752-753, paras. G-B)

7. *On Need for end to litigation and effect where party seeks to re-litigate issue already settled by court -*

It is in the interest of justice that there must be an end to litigation. It is also in the interest of the parties and society. In this case, the issue of the double nomination of the 3rd respondent, Senator Shettima Kashim, had been settled in *P.D.P. v. I.N.E.C. (2023)13 NWLR (Pt. 1900) 89*, and as such it was unnecessary to relitigate the matter again in the Supreme Court, because the appellants were bound by it. In fact, it is an abuse of court process to file an appeal on an issue that had been settled by the court [*Nyame v. F.R.N. (2021)6 NWLR (Pt.1772)289; Saraki v. Kotoye (1992) 9 NWLR (Pt.264)156; C.B.N. v. Ahmed (2001) 11 NWLR (Pt.724) 369; O.S.S.I.E.C. v. N.C.P. (2013) 9 NWLR (Pt. 1360) 451 referred to and applied.*] (Pp. 750, paras. D-F; 753,paras. B-E)

8. *On Purport of preliminary objection to appeal and when inappropriate-*

The purport of a preliminary objection to an appeal is the termination or truncation of the appeal in *limine*. A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal when there are other grounds to sustain the appeal; which purported preliminary objection is, therefore, not capable of truncating the hearing of the appeal. Thus, a preliminary objection to an appeal is only raised to the hearing of the appeal, and not to a few grounds of appeal. In such a situation, a preliminary objection is not the appropriate procedure to deploy against defective grounds of appeal when there are other grounds, not defective, which can sustain the hearing of the appeal, but a motion on notice.

In the instant case, the 2nd and 3rd respondents' preliminary objection challenged only two grounds, grounds 11 and 27 of the notice of appeal filed by the appellants, out of fifty-one grounds. Furthermore, out of three reliefs being claimed in the notice of appeal, the objection challenged only reliefs (b)and (c). Only issues 3 and 5 were also sought to be struck out, out of the appellants' seven issues. The preliminary objection did not ask for a complete and absolute termination of the appeal, and hence it was inappropriate. [*Ajuwon v. Gov., Oyo State (2021) 16 NWLR (Pt. 1803) 485 referred to.*] (Pp.744-745,paras.F-B)

A.C.B. Plc v. Nwodike (1996) 4 NWLR (Pt.443)470
A.P.C. v. Labour Party (Unreported) Appeal No. CA/LAG/CV/1332/2023
Ajuwon v. Gov., Oyo State (2021) 16 NWLR (Pt.1803)485
C.B.N.v. Ahmed (2001) 11 NWLR (Pt.724) 369
Dangana v. Usman (2013) 6 NWLR (Pt. 1349) 50
Emeka v. State (2014) 13 NWLR (Pt. 1425) 614
Emetuma v. Nwagwu (2022) 7 NWLR (Pt. 1828) 71
Fayemi v. Oni (2020) 8 NWLR (Pt. 1726) 222
Ige v. Olunloyo (1984) 1 SCNLR 158
Jonathan v. F.R.N. (2019) 10 NWLR (Pt. 1681)533
Lawson v. Okoronkwo (2019) 3 NWLR (Pt. 1658)66
Nikagbate v. Opuye (2018) 9 NWLR (Pt. 1623) 85
Nwoye v. FAAN (2019) 5 NWLR (Pt. 1665) 193
Nyame v. F.R.N. (2021) 6 NWLR (Pt. 1772)289
O.S.S.I.E.C. v. N.C.P.(2013)9 NWLR (Pt. 1360)451
Odedo v: I.N.E.C. (2008) 17 NWLR (Pt. 1117)554
Ogbonna v: President, F.R.N. (1997) 5 NWLR (Pt.504) 281
Okubule v. Oyagbola (1990)4 NWLR (Pt. 147)723
P.D.P.v. . I.N.E.C. (2023) 13 NWLR (Pt. 1900)89
Plateau State v. A.-G., Fed. (2006) 3 NWLR (Pt.976) 346
PML (Nigg.) Ltd. v. F.R.N. (2018) 7 NWLR (Pt. 1619)448
Saraki v. Kotoye (1992) 9 NWLR (Pt.264)156
Uchenna v.P.D.P. (2023)9 NWLR (Pt. 1888)165
UmaJr v. State (2018) 7 NWLR (Pt. 1612) 72
Uzoukwu v. Ezeonu II (1991) 6 NWLR (Pt. 200) 708
Uzoukwu v. Idika (2022)3 NWLR (Pt.1818) 403
Youth Party v. I.N.E.C. (2023) 7 NWLR (Pt. 1883)249

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended), Ss. 13(c),17(1),131(c),134(2)(b),137(1)(d)(e) and142(1)(2),299(1); 3rd Schedule, Para.15

Electoral Act,2022, Ss. 4(1)(d)(2)(5),16(1)(a),31,35,47(2),60,64,66,132(7),134,135;1st Schedule, paras.4(1)(d)(7),16(1)

Evidence Act,2011,Ss. 135 and 249

Nigerian Rules of Courts Referred to in the Judgment:

Federal High Court (Civil Procedure) Rules 2019, O.13 r.4

Books Referred to in the Judgment:

Regulations and Guidelines for the Conduct of Election, 2022, Paras. 38,48,50,51,53,54,55,91,92,93

Synopsis 2 by Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria)

Appeal:

This was an appeal against the decision of the Court of Appeal sitting in first instance as the Presidential Election Petition Court dismissing the petition of the Appellants challenging the return by the 1st respondent of the 2nd and 3rd respondents as winners of the Presidential election held on 25th February 2023. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: John Inyang Uwani Musa Abba Aji, J.S.C.; Mohammed Lawal Garba,J.S.C.; Ibrahim Mohammed MusaSaulawa, J.S.C.; Adamu Jauro, J.S.C.; Tijjani Abubakar, J.S.C.; Emmanuel Akomaye Agim,J.S.C.

*Appeal No.:*SC/CV/937/2023

Date of Judgment: Thursday,26th October 2023

Names of Counsel: Dr. Livy Uzoukwu,SAN;Awa Kalu,SAN; Alex Ejesieme, SAN;Peter Afuba,SAN (with *them*, Chike A. Obi,*Esq.*)-for the Appellants

A.B. Mahmoud, SAN; Miannaya Essien, SAN;Sir

Stephen Adehi, SAN (*with them*, Musa A. Attah, Esq. and Chukwudi Enebeli, Esq.)- *for the 1st Respondent* Chief Wole Olanipekun, SAN; Yusuf Ali, SAN; Emmanuel Ukala, SAN; Prof. Taiwo Osipitan, SAN (*with them*, Akintola Makinde; Esq)- *for the 2nd & 3rd Respondents*

Chief Akin Olujinmi, SAN; Charles Uwensuji Edosomwan, SAN; Chief Adeniyi Akintola, SAN and Chief Afolabi Fashanu, SAN (*with them*, Olumide Olujinmi, Esq.)- *for the 4th Respondent*

Court of Appeal: Petition No.: CA/PEPC/03/2023

Division of the Court of Appeal from which the appeal was brought: Presidential Election Petition Court, Abuja *Names of Justices that sat on the appeal:* Haruna Simon Tsammani, J.C.A. (*Presided and Read the Leading Judgment*); Stephen Jonah Adah, J.C.A.; Misitura Omodele Bolaji-Yusuff, J.C.A.; Boloukuromo Moses Ugo, J.C.A.; Abba Bello Mohammed, J.C.A.

Date of Judgment: Wednesday, 6th September 2023 *Names of Counsel:* Dr. Livy Uzoukwu, SAN; Awa Kalu, SAN; Dr. Onyechi Ikpeazu, SAN; Chief Ben Anachebe, SAN; Ikechukwu Ezechukwu, SAN; J.S. Okutepe, SAN;

Prof. Paut Ananaba, SAN; Dr. Mrs. Valerie-Janette Azinge, SAN; Emeka Okpoko, SAN; Alex Ejiesime, SAN; Peter Afuba, SAN (*with them*, Emenike Mbanugo; Esq, Chike A. Obi, Esq and Vincent Ottaokpukpu, Esq)-*for the Petitioners*

A.B. Mahmoud, SAN; Miannaya Essien, SAN; Sir Stephen Adehi, SAN; T.M, Inuwa, SAN; Alhassan A. Umar, SAN; Abdulaziz Sani, SAN and S.O. Ibrahim, SAN (*with them*, Nasara H. Auta, Esq; Aminu Sadauki, Esq and Dr. Patricia Obi, Esq) - *for the 1st Respondent* Chief Wole Olanipekun, SAN; Chief Akin Olujinmi, SAN; Yusuf Ali, SAN; Emmanuel Ukala, SAN; Prof. Thiwo Osipitan, SAN; Dele Adesina, SAN; Dr. Hassan Liman, SAN; Olatunde Busari, SAN; A.U. Mustapha, SAN; Kehinde Ogunwumiju, SAN; Bode Olanipekun, SAN; A.A. Malik, SAN; Funmilayo Quadri, SAN; Bubaturunde Ogala, SAN; Dr. Remi Olatubora, SAN and M.O. Adebayo, SAN (*with them*, Emmanuel Uwadoka, Esq. Yinka Ajenifuja, Esq and Akintola Makinde, Esq)-*for the 2nd & 3 Respondents*

L.O. Fagbemi, SAN; Chief Dr. Charles U. Edosomwan, SAN; Chief Adeniyi Akintola, SAN; Afolabi Fashanu, SAN, Chukwuma Ekomani, SAN; Abiodun J. Owonikoko, SAN; Solomon Umoh, SAN; Hakeem O. Afolabi, SAN; Y.H.A. Ruba, SAN, Chief Anthony Adeniyi, SAN; Mumuni Hanafi, SAN (*with them*, Japhat Opawale, Esq, Olanrewaju Akinshola; Esq and Huwaila M. Ibrahim; Esq)-*for the 4th Respondent*

Counsel:

Dr.Livy Uzoukwu, SAN; Awa Kalu, SAN; Alex Ejiesieme,SAN; Peter Afuba,SAN (with them, Chike A. Obi, Esq.)-forthe Appellants

A.B. Mahmoud, SAN; Miannaya Essien, SAN; Sir StephenAdehi,SAN (with them, Musa A. Attah, Esq. and ChukwudiEnebeli,Esq.)-for the 1st Respondent

Chief Wole Olanipekun, SAN;Yusuf Ali,SAN;Emmanuel Ukala,SAN;Prof.Taiwo Osipitan,SAN (with them,Akintola Makinde; Esq)- *for the 2nd & 3rd Respondents*

Chief Akin Olujinmi, SAN; Charles Uwensuji Edosomwan,SAN; Chief Adeniyi Akintola, SAN and Chief Afolabi Fashanu, SAN (with them, Olumide Olujinmi, Esq.) - *for the 4th Respondent*

OKORO, J.S.C. (Delivering the Leading Judgment): In this appeal,issues 1,2,3,5,6 and 7 have been resolved in appeal No.SC/CV/935/2023- *Abubakar Atiku & Anor v. INEC & 2 ors* earlier this morning. Being similar issues in the sister appeal; they shall abide the outcome of Atiku's appeal. They are accordingly resolved against the appellants.

My Lords, as for issue No. 4 which has to do with double nomination of the 3rd respondent, Senator Shettima Kashim, which issue was not in the earlier appeal alluded to above, it is my view that this court having settled the issue in Appeal No. SC/CV/501/2023, - *PDP v. INEC & 3 ors* delivered on 26th May, 2023, reported in (2023) 13 NWLR (Pt. 1900) 89, it is unnecessary to relitigate the matter again in this court. It is in the interest of justice that there must be an end to litigation. It is also in the interest of the parties and society. Thus, the appellants are bound by our decision in SC/CV/501/2023 alluded to above.

On the whole, this appeal lacks merit and is hereby dismissed. I shall make no order as to costs.

Appeal dismissed.

ABBA AJI, J.S.C.: I have read the draft judgment of my learned brother ,John, Inyang Okoro, JSC, just delivered. His reasoning and conclusion are concurred to and I will just want to state my own side in this judgment.

The Independent National Electoral Commission (INEC), the 1st respondent herein, conducted the Presidential and National Assembly Elections in Nigeria on 25/2/2023.The 1st appellant,who was sponsored by the 2nd appellant as its Presidential candidate, as well as the 2nd and 3m respondents, who were sponsored by the 4th respondent as its Presidential and

Vice-Presidential candidates, contested the Presidential election, along with other candidates. At the end of the election, the 1st respondent returned the 2nd respondent as the duly elected President of the Federal Republic of Nigeria, with 8,794,726 votes. The 1st appellant came third with 6,101,533 votes, behind Abubakar Atiku of the Peoples Democratic Party (PDP), who came second with 6,984,520 votes. Dissatisfied with the result of the election, the appellants filed this petition on the 20th of March, 2023, challenging the outcome of the election on the following three grounds, which are stated in paragraph 20 of the petition:

- (i) The 2nd respondent was, at the time of the election, not qualified to contest the election
- (ii) The election of the 2nd respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022.
- (iii) The 2nd respondent was not duly elected by majority of the lawful votes cast at the election.

Based on the above grounds, the petitioners then sought for the reliefs stated in paragraph 102 of the petition as follows:

1. First pray as follows:

- (i) That it be determined that at the time of the Presidential Election held on 25th February, 2023, the 2nd and 3rd respondents were not qualified to contest the election.
- (ii) That it be determined that all the votes recorded for the 2nd respondent in the election are wasted votes, owing to the non-qualification/disqualifications of the 2nd and 3rd respondents.
- (iii) That it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd respondent) the 1st petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each of at least 2 of the 2 States of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25th February, 2023 Presidential election

2. That it be determined that the 2nd respondent having failed to score one-quarter of the votes cast at the Presidential Election in the Federal Capital Territory, Abuja, was not entitled to be declared and returned as the winner of the Presidential Election held on 25th February, 2023.

In the Alternative to 2 Above:

3. An order cancelling the election and compelling the 1st respondent to conduct a fresh election at which the 2nd,3rd and 4th respondents shall not participate.

In the Alternative to 1, 2 and 3 Above:

- (i) That it may be determined that the 2nd respondent was not duly elected by a majority of the lawful votes cast in the election for the office of the president of the Federal Republic of Nigeria held on 25th February,2023; and therefore, the declaration and return of the 2nd respondent as the winner of the Presidential Election are unlawful, unconstitutional and of no effect whatsoever.
- (ii) That it be determined that based on the valid votes cast at the Presidential Election of 25th February, 2023, the 1st petitioner scored the highest number of votes cast at the election and not less than one quarter of the votes cast at the election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja, and ought to be declared and returned as the winner of the Presidential election.
- (iii) An order directing the 1st respondent to issue certificate of return to the 1st petitioner as the duly elected president of the Federal Republic of Nigeria.
- (iv) That it be determined that the certificate of return wrongly issued to the 2nd respondent by the 1st respondent is null and void and be set aside. *In the Further Alternative to 1, 2, 3 and 4 Above:*
- (v) That the Presidential election conducted on 25 February,2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act,2022 and Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- (vi) An order cancelling the presidential election conducted on 25th February,2023 and mandating the 1st respondent to conduct a fresh election for the office of President of the Federal Republic of Nigeria.
An order cancelling the presidential election conducted on 25th February,2023 and mandating the 1st respondent to conduct a fresh election for the office of President of the Federal Republic of Nigeria.

The appellant in proving their petition called 13 witnesses and tendered over 19,000 documents from 10/5/2023 when the hearing commenced to 5/7/2023 when the respondents closed their case. After adoption of final written addresses of parties, the lower court delivered its judgment on 6/9/2023, dismissing the appellants petition. Miffed with the judgment, the appellants appealed before this court vide notice of appeal. The parties filed their respective briefs of argument with the following issues:

Appellants'Issues for Determination:

1. Whether upon a community reading of the appellants' petition and the applicable law, the learned Justice of the Court of Appeal were right in striking out/expunging some paragraphs of the petition and the documentary evidence tendered by the appellants for being vague, generic, imprecise, nebulous and inadmissible. (Grounds 1,2,3, 4, 5, 16, 17 and 50 of the notice of appeal)
2. Whether upon a careful consideration of the appellants' petition, the respondents' respective replies to the petition and the appellants' replies to the replies of the out some paragraphs of the appellants' replies to the replies of the respondents to the petition. (Grounds 6and 20 of the notice of appeal)
3. Whether having regard to the relevant provision of the Electoral Act, 2022 as well as the 1st Schedule thereto, the Federal High Court (Civil Procedure)Rules 2019, Evidence Act,2011 and current judicial pronouncements on the point, the learned Justices of the Court of Appeal, were correct in sustaining the objections of the respondents to the evidence of PW3, PW4 ,PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 and consequently striking out the evidence of the aforesaid witnesses and all the documents tendered and admitted in evidence through them for failure of the appellants to file the written statements on oath of the witnesses along with the petition.(Grounds 10,11,12,13,14 and 15 of the notice of appeal)
4. Whether haiving regard to the provisions of sections 131(c),137(1)(d)and 142(1)and(2)of the Constitution of the Federal Republic of Nigeria,1999(as amended)(herein after 1999 Constitution), sections 31 and 35 B of the Electoral Act,2022 and the evidence before the court,the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd respondents were qualified to contest the presidential election of 25February 2023.(Grounds 33,34,35,36,37,38,39,40,C 41,42,43 and 44 of the notice of appeal)
5. Whether having regard to the provision of paragraph 4(1)(d) and (7) of the First Schedule to the Electoral Act,2022, and facts pleaded in the petition, the court below was not justified in striking out some offending paragraphs of the appellants' petition and in rejecting some of the documents tendered by the appellants? (Distilled from grounds 1-5,16,17 and 50 of the notice of appeal).
6. Whether having regard to the explicit provisions of section 134(2)(b) of the 1999 Constitution and the evidence adduced at the trial, the learned trial Justices of the Court of Appeal were right in coming to the determination that the 2nd respondent was duly elected as the President of the Federal Republic of Nigeria.(Grounds 45,46,47,48 and 49 of the notice of appeal)
7. Whether from the totality of the pleadings and evidence adduced, the court below was right when it dismissed the appellants' case. (Ground 51 of the notice of appeal)

1st Respondent's Issues for Determination:

- (i) Whether having regard to the provision of paragraph 4(1)(d) and (7) of the First Schedule to the Electoral Act, 2022, and facts pleaded in the petition, the court below was not justified in striking out some offending paragraphs of the appellants' petition and in rejecting some of the documents tendered by the appellants? (Distilled from grounds 1-5, 16, 17 and 50 of the notice of appeal).
- (ii) Whether in view of the provision of paragraph 16(1) of the First Schedule to the Electoral Act, 2022, and upon a careful consideration of the appellants' reply to the 1st respondent's reply to the petition, the decision of the court below striking out paragraphs of the appellants' reply which constitute an introduction of new facts and a rehash of the contents of the petition can be faulted? (Distilled from ground 6 and 20 of the notice of appeal).
- (iii) Whether the court below in its decision that the witness statement on oath of appellants' PWs' 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 which were all filed outside the 21 incompetent and in consequently expunging their testimonies and documents tendered through them from its records? (Distilled from grounds 10-15 of the notice of appeal).
- (iv) Whether the court, below was right when it held that the appellants failed to prove their nullification of the Presidential election held on the 25th of February 2023? (Distilled from grounds 7, 8, 9, 21, 22, 23, 24-30 and 31 of the notice of appeal).
- (v) Whether having regard to the provisions of sections 131 and 137 of the 1999 Constitution, the decision of the honourable court in the case of *P.D.P. v. I.N.E.C. & Ors.* (2023) LPELR-60457 (SC); (2023) 13 NWLR (Pt. 1900) 89, and the totality or the evidence adduced at trial, the court below was not justified in its decision that the appellants failed to establish that the 2nd and 3rd respondents were not qualified to contest the election? (Distilled from grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the notice of appeal).
- (vi) Whether upon a proper construction of the provision of section 134(2)(b) or the 1999 Constitution, the court below was not justified in its decision that in a Presidential election, polling one quarter (25%) of total votes cast in the Federal Capital Territory, Abuja is not a separate precondition for a candidate to be deemed as duly elected? (Distilled from grounds 45, 46, 47, 48 and 49 of the notice of appeal).
- (vii) Whether having regard to the pleadings and evidence the appellants' petition is justifiable and sustainable in law? (Distilled from ground 51 of the notice of appeal).

2nd and 3rd Respondents' Issues for Determination:

1. Having regard to the appellants' pleadings before the lower Court, vis-à-vis the provisions of paragraphs 4 (1)(d)(2) and 16(1)(a) of the First Schedule to the Electoral Act, 2022 and Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, coupled with consistent judicial authorities on the fundamental nature of pleadings, whether the lower court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the respondents' respective replies. (Grounds 1, 2, 3, 4, 5, 6 and 20)
2. In view of the clear provisions of section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 132(7) of the Electoral Act, 2022,

paragraph 4(5) of the First Schedule to the Electoral Act,2022 and the settled line of judicial authorities on the subject, whether the lower court did not rightly strike out and expunge the witness statements on oath and evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13. (Grounds 10,11,12,13 and 14)

3. Whether the lower court right when it upheld the respondents' objection to the admissibility of the documents tendered by the appellants and struck out the said documents, while discountenancing appellants' objections to relevant and competent documents tendered by the respondents? (Grounds 15,16,17,18,19 and 50)
4. In view of the clear provisions of sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 31 and 134of the Electoral Act, 2022 along with binding judicial authorities on the subject, whether the lower court did not correctly hold that the 2nd respondent was qualified to contest election into the office of the President of the Federal Republic of Nigeria. (Grounds 33,34,35,36,37,38,39,40,41,42,43 and 44)
5. Given the combined provisions of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); sections 47(2),60 and 64 of the Electoral Act,2022;paragraphs 38,48,50,51,53,54,55,91,92,93 of the Regulations and Guidelines for the Conduct of Election,2022:the unappealed judgment of the Federal High Court in FHC/ABJ/CS/1454/2022-Labour Party v. INEC admitted by the lower court as exhibit XI; the judgment of the Court of Appeal in Appeal No. CA/LAG/CV/1332/2023-All Progressives Congress v. Labour Party & 42 Ors., and the preponderance of evidence before the lower court, whether the lower court came to a right decision in its interpretation and conclusion regarding the position of the law, vis-à-vis petitioners/appellants complaints.(Grounds 21,22,23,24,25,29,31 and 32)
6. Considering the clear provision of section 135 of the Electoral Act, pleadings and the reliefs sought by the court, whether the lower court was not right in dismissing the appellants' petition. (Grounds 7, 8,9,26,27,28,30 and 51)
7. Upon a combined reading of the preamble to the Constitution of the Federal Republic of Nigeria)1999 (as amended), section 17(1),134(2)(b),299(1),thereof, section 66 of the Electoral Act,2022 and other relevant statutes, whether the lower court was no right in coming to the conclusion that the 2nd respondent satisfied all constitutional and statutory requirements to be declared winner of the presidential election held on 25th February, 2023, and returned as President of the Federal Republic of Nigeria. (Grounds 45,46,47,48 and 49)

4th Respondent's Issues for Determination:

1. Whether the Court of Appeal was not right in striking out the paragraphs of the petition filed in violation of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act 2022 together with the associated witness statements on oath and the documents in support thereof?(Grounds 1,2,3,4 and 5)

2. Whether the Court of Appeal was not right in striking out the replies and/or paragraphs of the replies of statements on oath as well as the documents in support thereof, filed in violation of paragraph 16(1) of the 1 Schedule to the Electoral Act, 2022? (Grounds 6 and 20)
3. Whether the Court of Appeal was not right to conclude that the appellants/petitioners did not prove allegations of non-compliance and how it substantially affected the outcome of the election, having taken into consideration the failure of the appellants/petitioners to plead and lead qualitative evidence on:
 - (i) particulars of the polling units complained of;
 - (ii) tender and demonstrate necessary documents;
 - (iii) call relevant and
 - (iv) necessary witnesses to testifying support of the allegation(s); and the inadmissibility of exhibit X2 (The Report of the European Union Election Observation Mission in respect of the 2023 Presidential Election)?(Grounds 7,8,9,16,17,18,21,22,23,24,25,26,27,28,29,30,31, 50 and 51)
4. Whether the Court of Appeal rightly discountenanced/struck out the appellants/petitioners' witness statement on oath not filed alongside the petition within the 21 days' constitutional time frame allowed to file petition and also the documents associated with the incompetent witness statements on oaths as well as evidence of witnesses who were also interested in the petition? (Grounds 10,11,12,13,14 and 15)
5. Whether having regard to the state of the law and evidence adduced, the Court of Appeal rightly held that appellants/petitioners did not prove the allegation of corrupt practices in the petition? (Ground 32)
6. Whether having regard to the state of the law, the materials before the court and the subsisting decision of the Supreme Court in P.D.P. v. I.N.E.C. (2023) 13 NWLR (Pt.1900) 89, the Court of Appeal was not right in holding that 3rd respondent was validly nominated to run for the Presidential election with the 2nd respondent and the appellants/petitioners lacked *locus standi*, to challenge the nomination of the 3rd respondent? (Grounds 33,34, and 35)
7. Whether the Court of Appeal having considered the law and the materials placed before it, rightly resolved and dismissed the complaint of the appellants/petitions

that, 2nd respondent was not qualified and/or disqualified from contesting the presidential election?(Grounds 36,37,38,39,40,41,42,43 and 44)

8. Whether having regard to the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999(as amended) the Court of Appeal rightly concluded that,25% of votes cast in the Federal Capital Territory need not be met before a candidate can be declared winner of the presidential election and that petitioners did not prove that they won by a majority of lawful votes cast? (Grounds 45,46,47,48 and 49)

Preliminary Objection:

The 2nd and 3rd respondents filed a notice of preliminary objection on 7/10/2023, seeking for:

1. An order of this honourable court, striking out the appellants' appeal before this honourable court. *Further or in the Alternative to Relief1 (supra)*
2. An order of this honourable court striking our reliefs (b) and (c) sought in the appellants' notice of appeal.
3. An order of this honourable court, striking out grounds 11 and 27 of this appellants' notice of appeal for want of competence.
4. An order of this honourable court, striking out issues 3and 5 of the appellants' brief of argument filed on 2nd October, 2023.

The grounds upon which this objection is brought are as follows:

- i. Grounds 11 and 27 of the notice of appeal are not complaints against the *ratio decidendi* of the lower court.
- ii. Issues 3 and 5 distilled from grounds 11 and 27, which are incompetent grounds of appeal, are themselves incompetent and liable to be struck out.
- iii. The entire appeal is academic in that:
 - (a) Relief(b) of the notice of appeal which limits itself to the "the perverse judgment of the court below" is ungrantable insofar as there is no direct and specific allegation of perverseness against the judgment of the lower court.
 - (b) As far as the said relief (b) is concerned, this honourable court can only consider same upon a prima facie case of perverseness against the judgment of the lower court.
 - (c) Relief (c) of the notice of appeal which prays this honourable court to grant the reliefs sought in the petition "either on the main or in the alternative" is imprecise, uncertain and liable to be struck out.

- (d) Further to (a)- (c) supra, the entire appeal is of (p) no utilitarian value
- iv. It is in the interest of justice for this honourable court to grant the reliefs sought in this notice of preliminary objection.

The 7-paragraph affidavit was deposed to by Adoga Moses. The learned senior counsel formulated this issue for the consideration of the objection:

"In view of the circumstances of the appellants' appeal before this honourable court and the settled position of the law on the subject, whether this honourable court will not grant the reliefs sought on the face of this notice of preliminary objection."

The learned Silk to the appellants opposed same with a 7-paragraph counter affidavit deposed to by Chukwuebuka David, filed on 11/10/2023. In their written address, this issue was distilled for determination:

"Whether on account of the complaints discernable on the face of ground 11 and 27 of the notice of appeal and the tenor of the claim in Reliefs (b) and (c) of the notice of appeal, this notice of preliminary objection ought to be dismissed."

The objectors' issue shall be used in the determination of this objection:

It was submitted by the learned SAN to the 2nd and 3rd respondents that relief (b) as contained in the appellants' notice of appeal, prayed the court to "set aside the perverse judgment of the Court of Appeal". That reliefs are very sacrosanct to the assumption of jurisdiction by a court of law and it is the manner in which the appellant have presented their, reliefs before this honourable court, that will determine what the court will make of the appeal or proceedings as reliance was made to *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (Pt. 200) 708 at 784-785. He therefore argued that this honourable court can only grant the reliefs sought by a party and will not do for the party what he has not asked for. He cited in support *Okubule v. Oyagbola* (1990) 4 NWLR (Pt. 147) 723 at 744, *Ige v. Olunloyo* (1984) 1 SCNLR 162 at 182. Again, that relief (c) is "either in the main or in the alternative", which does not make it clear, specific and unambiguous as held in *A.C.B. Plc v. Nwodike* (1996) 4 NWLR (Pt. 443) 470 at 486. He concluded that the net effect of all of these is that the appellants have not sought any cognizable relief before this honourable, thereby making the entire appeal academic and of no utilitarian value. *Lawson v. Okoronkwo* (2019) 3 NWLR (Pt. 1658) 66 at 78 was relied on. He prayed that the notice of appeal be struck out.

On the incompetence of grounds 11 and 27 of the appellants' notice of appeal, it was submitted that the said grounds of appeal have not appealed against the *ratios decidendi* of the lower court, but rather, are mere complaints against *obiter dicta* of the lower court; and appeals can only lie against a *ratio decidendi* and not an *obiter dictum*. He called for support *Uzoukwu v. Idika* (2022) 3 NWLR (Pt. 1818) 403 at 468, paras. E-F. He urged that issues 3 and 4 therefrom be struck out.

Contrarily, the learned SAN to the appellants submitted that a notice of preliminary objection is only competent in an appeal, where it goes to the root of the appeal, or challenges all the

grounds in a notice of appeal. In the instant case, the present objection challenges only two grounds of appeal out of fifty-one grounds. Furthermore, out of three reliefs being claimed in the notice of appeal, the objection merely challenges two of the grounds. He urged this honourable court to strike out the notice of preliminary objection on the grounds that it is incompetent. *Dangana & Anor v. Usman & Ors* (2012) LPELR-25012(SC) (Pp. 50-50 paras. B-E); (2013) 6 NWLR (Pt. 1349) 50 was cited in support.

He argued that in *Emeka v. State* (2014) 13 NWLR (Pt.1425) 614 at 632 SC, this court defined "perverse" to literally mean unacceptable or unreasonable, implying that its decision is "unacceptable" to them or is "unreasonable" in their perception and understanding of it *vis-à-vis* the facts and the law! On relief (c) of the notice of appeal, learned SAN questioned, "did the appellants not claim mean and alternative reliefs in their petition, and are courts of law not allowed to grant alternative reliefs?" Relying on *Nwoye v. FAAN* (2019) 5 NWLR (Pt. 1665) 193 SC, he submitted that the Supreme Court can grant alternative reliefs claimed.

He further submitted that ground 11 of the notice of appeal complains of an error in law and lack of jurisdiction to strike out the evidence of 10 out of the 13 witnesses called by the appellants, while ground 27 of the notice of appeal complains against the misapprehension of the lower court of the submission of appellant's counsel. Further, that ground 27 challenged the interpretation of the lower court of the Final written address settled by the appellants' counsel. He relied on *Youth Party v. INEC* (2023) 7 NWLR (Pt.1883)249 at 311H-312A SC; *Emetuma v. Nwagwu* (2022)7 NWLR (Pt. 1828) 71 at 96H SC; *Nikagbate v. Opuye* (2018) 9 NWLR (Pt.1623) 85 at 109H SC. The appellants' learned SAN asked for the dismissal of the preliminary objection with substantial costs.

Resolution of Preliminary Objection

Glaring and obvious is that the 2nd and 3rd respondents' preliminary objection challenges only two grounds, grounds 11 and 27 of the notice of appeal filed by the appellants, out of fifty-one grounds. Furthermore, out of three reliefs being claimed in the notice of appeal, the objection merely challenges only reliefs (b) and (c). Only issues 3 and 5 are also sought to be struck out, out of the appellants' seven issues. There is no objection that has asked for a complete and absolute thing to be done that will terminate this appeal. Hence, a preliminary objection is inappropriate, but a motion on notice.

A preliminary objection is only raised to the hearing or the appeal, and not to a few grounds of appeal. The purport of preliminary objection is the termination or truncation of the appeal in *limine*. A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal when there are other grounds to sustaining the appeal; which purported preliminary objection is, therefore, not capable of truncating the hearing of the appeal. In such a situation, a preliminary objection is not the appropriate procedure to deploy against defective grounds of appeal when there are other grounds, not defective, which can sustain the hearing of the appeal. See Per Eko, JSC, in *Ajuwon & Ors v. Governor of Oyo State & Ors* (2021) LPELR-55339(SC) (PP. 4-5 paras. D); (2021) 16 NWLR (Pt. 1803) 485.

I will therefore restrain and recuse myself from entertaining the 2nd and 3rd respondents' preliminary objection and consider the appeal on the merit.

Main Appeal:

I shall first consider the appellant's issue four.

Issue Four:

Whether having regard to the provisions of sections 131(c),137(1)(d)and 142(1)and(2) of the Constitution of the Federal Republic of Nigeria,1999 (as amended)(hereinafter 1999 Constitution), sections 31 and 35 of the Electoral Act, 2022 and the evidence before the court,the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd respondents were qualified to contest the Presidential Election of 25 February 2023.(Grounds 33,34,35,36,37,38,39,40,41,42,43 and 44 of the notice of appeal).

It was submitted by the learned SAN to the appellants that one or the grounds upon which the appellants challenged the qualification of the 2nd respondent to contest the presidential election is that he was "fined the sum of \$460,000.00 (Four Hundred and Sixty Thousand United States Dollars) for an offence involving dishonesty) namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division, in Case No. 93C 4483"; and therefore, disqualified by section 137(1)(d) of the 1999 Constitution (as amended), and the proceedings and decision/order of the US District Court in this connection was tendered and rightly admitted in evidence by the court below as exhibit PA5.However,that the lower court referring to *Umar v. State* (2018) LPELR-23190(SC); (2018) 7 NWLR (Pt. 1612) 72 concluded that the appellants failed to show evidence that the 2nd respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence. He contended that the court below refused to abide by the earlier dictum in *Jonathan v. F.R.N.* (2019)10 NWLR (Pt. 1681) 533 that a "civil forfeiture is a unique remedy which does not require conviction or even a criminal charge against the owner. Again, that the lower court was wrong to find that the orders made in exhibit PA5 were not in person am against the 2m4respondent.Furthermore, that the court below was in error to place reliance on the evidence of RW2 and exhibits RA8 and RA9 to water down the sting and potency of exhibit PA5, as against the express pronouncements of the US District Court, which is a court of law. Similarly, that the court below misdirected itself when it held that the appellants' case came under the provisions of section 137(1)(e) of the Constitution, which has placed a 10-year limitation on proof of conviction!

It was submitted on double nomination of the 3rd respondent that Court below was wrong to rely on *P.D.P. v. I.N.E.C.* (2023) LPELR-60457;(2023) 13 NWLR (Pt. 1900) 89 to hold that since the appellants belong to a different political party, they have no *locus standi* to complain. He contended that the issue of qualification/disqualification can be competently instituted as a post-election matter by a political party/candidate that contested election with the political party/candidate in default, hence the appellants have *locus standi*. He cited in

support *Dangana v. Usman* (2013) 6 NWLR(Pt.1349)50 SC;*Fayemi v.Oni* (2019)LPELR-49291 (SC) at 19-24D-A;(2020) 8 NWLR (Pt. 1726) 222.

Again, that by section 31 of the Electoral Act, 2022, the appellants established that the 3rd respondent did not withdraw his candidacy. Further, that by exhibits PA2 and PA3,the 3rd respondent was the nominated candidate for Borno Central Senatorial District for the 2023 general election. That by the said exhibits, there was nothing to show that the nomination of the 3rd respondent as Senatorial Candidate for Borno Central was withdrawn as required by law before he knowingly accepted his nomination as Vice Presidential candidate. He urged that this issue be resolved in favour of the appellants.

The 1st respondent, 2nd and 3rd respondents and 4th respondents respectively submitted contrarily that the evidence of PW1 and PW12, and RW2 on the other hand, who gave evidence on the US proceedings did not dispute the fact that the 2nd respondent was not at any time, charged before any court, caused to make a plea, convicted or sentenced for any offence. Also, that a non-conviction based forfeiture does not translate to a conviction. He relied on *Jonathan v Federal Republic of Nigeria* (2019) 10 NWLR (Pt.1681) 533. Further, that exhibit RA9 tendered before the lower court established that the 2nd respondent maintains a clean record in the US archives.

On dual-nomination, it was maintained that this honourable court vide exhibit X2 and RA23, being certified true copies of the Supreme Court unanimous judgment in SC/CV/501/2023 -*PDP v. INEC & 3 Ors* delivered on 6/5/2023; reported (2023) 13NWLR(Pt. 1900) 89, had not only determined that the petitioners in that case had no *locus standi* to question the nomination of the 3rd respondent herein, the court proceeded to determine with finality that there was no double nomination on the part of the 3rd respondent. In the same vein, that the 3rd respondent who was ab initio,a senatorial candidate of the 4th respondent for Borno Central Senatorial District, had earlier on 6" July, 2022, vide a latter delivered to the 4th respondent on the same date (exhibit RA22),notified the party or his withdrawal from the election as the latter's senatorial candidate for the 2023 general election. They asked this court to resolve this issue in favour of the respondents.

Resolution of Issue Four:

The appellants' challenge of the qualification of the 2nd respondent to contest the presidential election is that he was "fined the sum of \$460,000.00 (Four Hundred and Sixty Thousand United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern

Division, in case No.93C 4483”; and therefore, disqualified by section 137(1)(d) of the 1999 Constitution (as amended). This seems to intersect with the provision of section 137(1)(d) of the Constitution (as amended) providing for "sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offences, imposed on him by any court or tribunal or substituted by a competent authority..."

What matters always in this kind of situation is that there must be proof of such a sentence. A criminal conviction and sentence must be proved by the CTC of the judgment of court delivered or any admissible way of proving same and the said judgement must reflect all the ingredients of a valid judgment to bind the parties proceed further or substantiate the sentence of fine against the 2nd respondent.

At page 3228 (vol.5) of the record, PW1 and PW12, who gave evidence on the US proceedings did not dispute the fact that the 2nd respondent was not at any time, charged before any court, caused to make a plea, convicted or sentenced for any offence. Similarly, at page 3464 (vol. 5) of the record, RW2, a US attorney and an associate of the 2nd respondent, testified that the 2nd respondent was never convicted or fined for any criminal offence in the United States. In fact, PW1 confirmed that the proceedings in exhibit PA5series are civil proceedings, while equally admitting that he never mentioned anything about charge in the proceedings and that he never had one. By virtue of section 135 of the Evidence Act, it is beyond peradventure that the proof of this allegation ought to be beyond reasonable doubt. Section 249 of the Evidence Act clearly prescribes the manner of discharging this proof, by the provision of "certificate purporting to be given under the hand of a police officer" from the US, "containing a copy of the sentence or order and the finger prints of the 2nd respondent or photographs of the finger prints of the said 2nd respondent, together with evidence that the finger prints of the person so convicted are those of the 2nd respondent. See: *PML (Nig.) Ltd. v. F.R.N. (2018) 7 NWLR (Pt.1619)448 at 493.*

More so, exhibit RA9 tendered before the lower court, is a document proceeding from the US authorities to the Nigerian authorities, upon a thorough combing of the Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC). Therein, it is established that the 2nd respondent maintains a clean record in the US archives. The said exhibit further stated that “the NCIC is a centralized information center that maintains the record of every criminal arrest and conviction within the United States and its territories”.PW2 corroborated this content in exhibit RA9.

On the allegation of sentence of fine against the 2nd respondent, which a this honourable court in Jonathan v. Federal Republic of Nigeria Preside (2019) 10 NWLR (Pt.1681) 533, held that

"there is no need to prove any crime in forfeiture of property under section 17 of the Advanced Fee Fraud & Other Related Offences Act, as civil forfeiture is a unique remedy which rests on the legal fiction that the property, not the owner is the target".

This of course was the basis of the lower court's finding that the orders made in exhibit PA5 were not in *personam* against the 2nd respondent. There is no prove or preponderance of evidence to allow this arm of the appellants' issue.

On dual or double nomination, there is no need to go on any judicial expedition. This honourable court vide exhibit X2 and RA23 being certified true copies of the Supreme Court unanimous judgment - SC/CV/501/2023 - *PDP v. INEC & Ors*, delivered on 6/5/2023, reported in (2023) 13 NWLR (Pt. 1900) 89, had not only determined that the petitioners in that case had no *locus standi* to question the nomination of the 3rd respondent herein, the court proceeded to determine with finality that there was no double nomination on the part of the 3rd respondent.

Evidently, exhibit RA22 clearly shows that the 3rd respondent who was a senatorial candidate of the 4th respondent for Borno Central Senatorial District, had earlier on 6/7/2022, vide a letter delivered to the 4th respondent on the same date, notified the party of his withdrawal from the election as the latter's senatorial candidate for the 2023 general election.

I have not seen any reason or perverseness to tamper with the lower court finding on this issue. The issue is therefore resolved against the appellants.

Issues 1,2,3,5,6, and 7 in SC/CV/935/2023, which facts and decisions considered therein are in all fours with this appeal, shall abide this appeal.

On the whole, this appeal lacks merit and is hereby dismissed. Parties are to bear their respective costs.

GARBA, J.S.C.: This is a sister appeal to the appeal No. SC/CV/935/2023: *Abubakar Atiku & Anor: v. I.N.E.C. & 2 Ors*, both of which are from the decisions of the Court of Appeal; sitting as the Presidential Election Petition trial court, dismissing the separate Presidential election petitions filed by the appellants on ground of failure to prove same as required by the law.

The seven (7) issues raised and canvassed by each of the two (2) appellants in their respective briefs of argument, are not only identical, but materially, substantially and essentially the same.

All the issues argued in this appeal have been comprehensively, totally, effectively and conclusively considered and resolved in the judgment in the appeal No. SC/CV/935/2023, such that the repetition of the reasonings and conclusions of the court on the said issues in this appeal will serve no practical and useful purpose. It was on that ground and for that reason that at the hearing of the two (2) appeals, the court stated that the decision in the Appeal No. SC/CV/935/2023 shall bind and this appeal shall abide by the said decision.

I have read the lead judgment written by my learned brother, Hon. Justice J. I. Okoro, JSC, in this appeal and agree, entirely, that the issues 1, 2, 3, 5, 6 and 7 in this appeal, like in the sister appeal, are devoid of merit and resolved against the appellant here, for all the reasons set out in that appeal.

On the issue four (4) of the appeal, it has been conclusively and decisively determined and pronounced upon with finality by the court in the judgment delivered on the 26th of May, 2023 in appeal No. SC/CV/501/2023; P.D.P. v. *INEC & 3 Ors.*, (Reported in (2023) 13 NWLR (Pt. 1900) 89) which is an extant and binding decision on the appellants in this appeal. The issue cannot be relitigated before this court whilst the decision subsists. In fact, it is an abuse of the court process to bring an appeal on an issue that has been settled by the court. *Nyame v. F.R.N.* (2021) 6 NWLR (Pt.1772) 289 (SC).

In the above premises, the appeal stands unmeritorious and I join the lead judgment in dismissing same in all the terms set out therein.

SAULAWA, J.S.C.: It's trite, that on October 23, when the instant appeal came up for hearing, the learned senior counsel were accorded the opportunity of addressing the court and adopting the submissions contained in the respective briefs of argument thereof, thereby warranting the court to reserve judgment to today.

Most particularly, the appellants' brief of argument, settled by Dr. Livy Uzoukwu, SAN on 02/10/2023, spans a total of 40 pages.

At page 2-4 of that brief, a total of seven issues have been canvassed for determination:

1. Whether upon a community reading of the appellants' petition and the applicable law, the learned Justice of the Court of Appeal were right in striking out/expunging some paragraphs of the petition and the documentary evidence tendered by the appellants for being vague, generic, imprecise, nebulous and inadmissible. (Grounds 1,2,3,4,5, 16,17 and 50 of the notice of appeal)
2. Whether upon a careful consideration of the appellants' petition, the respondents' respective replies of the petition and the appellants' replies to the replies of the respondents, the learned Justice of the Court of Appeal were right when they struck out some paragraphs of the appellants' replies to the replies of the respondents to the petition (Grounds 6 and 20 of the notice of appeal).

3. Whether having regard to the relevant provisions of the Electoral Act, 2022 as well as the 1st Schedule thereto, the Federal High Court (Civil Procedure) Rules, 2019, Evidence Act, 2011 and current judicial pronouncements on the point, the learned Justices of the Court of Appeal, were correct in sustaining the objectives of the respondents to the evidence of PW3, PW4, PW5, PW6, P7, PW8, PW9, PW10, PW11 and PW13 and consequently striking out the evidence of the aforesaid witnesses and all the documents tendered and admitted in evidence through them for failure of the appellants to file the written statement on oath of the witnesses along with the petition. (Grounds 10,11,12,13,14 and 15 of the notice of appeal).
4. Whether having regard to the provisions of sections 13(c),137(1)(d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (herein after 1999 Constitution), section 31 and 35 of the Electoral Act, 2022 and the evidence before the court, the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd respondents were qualified to contest the Presidential election of 25th February 2023.(Ground 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of the notice of appeal)
5. Whether having regard to the evidence adduced by the parties, the learned Justices of the Court of Appeal were right when they held that the appellants were not able to establish that there was substantial non-compliance with the provisions of the Electoral Act, 2022, which substantially affected the overall result of the election (Grounds 7,8,9,18,21,22,23,24,25,26,27,28,29,30 ad 31 of the notice of appeal)
6. Whether having regard to the explicit provisions of section 134(2)(b) of the 1999 Constitution and the evidence adduced at the trial, the learned Justices of the Court of Appeal were right in coming to the determination that the 2d respondent was duly elected as the President of the Federal Republic of Nigeria (Grounds 45,46,47,48 and 49 of the notice of appeal)
7. Whether from the totality of the pleadings and evidence adduced, the court below was right when it dismissed the appellants' case. (Ground 51 of the notice of appeal)

Now, it's important to bear in mind, that the sister appeal (SC/CV/935/2023: *Abubakar Atiku & P.D.P. v. I.N.E.C. & 2 Ors.* has just a moment ago been dismissed for lack of merits. Incidentally, with the issues 1,2,3,5,6, and 7 which have been resolved against the appellant in the said sister appeal. The six issues in question have become rather academic, thus, ought to abide the outcome of court aptly held: LPELR-2204 (SC); (2008) 17 NWLR (Pt.1117)554, wherein this court aptly held:

A suit is academic where is merely theoretical, makes empty sound, and of no practical value to the plaintiff even if judgment

is given in his favour. An academic issue or question is one which does not require answer or adjudication by a court of law because it is not necessary to the case on hand. An academic issue of question could be a hypothetical or moot question. An academic issue or question does not relate to the live issue in the litigation because it is as it will not enure an if right or benefit on the successful party.

Per Niki Tobi, JSC @ 35 paragraphs D-H. *Plateau State v. A.-G., Federation* (2006) 3 NWLR (Pt. 976) 346; *Ogbonna v. President, P.D.P. & Ors* - SC/CV/148/2023; judgment delivered on 03/3/2023 (unreported), now reported in (2023) 9 NWLR (Pt. 1888) 165.

What's more, with regard to the issue No.4 (which has neither been canvassed nor resolved in the said sister appeal), there is not controversy that the earlier appeal No. SC/CV/501/2023: *P.D.P. v. INEC & 3 Ors*, reported in (2023) 13 NWLR (Pt. 1900) 89 has settled the issue of the 3rd respondents' nomination in the judgment of this court delivered on 26/05/2023. Thus, it unnecessary and sheer abuse of the judicial process of relitigate the issue once again in this court. Undoubtedly, the appellants are undoubtedly bound by the decision of this court in the said appeal No. SC/CV/501/2023. There should be an end to litigation! See: *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156; *C.B.N. v. Ahmed* (2001) 11 NWLR (Pt. 724) 369 @ 409; *Osun State, I.E.C. v. National Conscience Party* (2013) LPELR-20134 (SC) @ 15 paragraphs C-F; (2013) 9 NWLR (Pt. 1360) 451.

In the circumstances, I am in full concurrence with the reasoning and conclusion reached in the lead judgment just delivered by my learned brother, Okoro, JSC to the effect that the instant appeal ought to abide the judgment in the sister appeal No. SC/CV/935/2023: *Atiku Abubakar & P.D.P. v. I.N.E.C. & 2 Ors* delivered a moment ago.

Appeal dismissed.

No order as to costs.

JAURO, J.S.C.: I had the advantage of reading a draft copy of the judgment just delivered by my learned brother, John Inyang Okoro, JSC. I entirely agree with the reasoning and conclusion contained therein, that the appeal is devoid of merit and ought to be dismissed. I also agree that issues 1, 2, 3, 5, 6 and 7 formulated in this appeal have been resolved in appeal

No.SC/CV/935/2023 between: *Abubakar Atiku & Anor v. Independent National Electoral Commission (INEC) & 2 Ors*, earlier delivered this morning. The issues shall abide the outcome of the said appeal. For the sake of emphasis, I wish to add this short contribution.

This appeal is against the judgment of the Court of Appeal delivered on 6th September, 2023 which dismissed the appellants' petition and affirmed the 1st respondent's declaration of the 2nd respondent as the winner of the presidential election conducted on 25th February, 2023 and the duly elected President of the Federal Republic of Nigeria. The election was contested by 18 candidates sponsored by their respective political parties. As per the results declared by INEC, the 2nd respondent sponsored by the 4th respondent won the election by polling 8,794,726 votes; Peoples Democratic Party (PDP) and its candidate, Alhaji Atiku Abubakar came second with 6,984,520 votes; while the appellants finished third with 6,101,533 votes. The appellants were displeased by the outcome of the election; hence they filed a petition challenging same before the lower court.

After hearing the witnesses called by parties to the petition and considering the addresses of their respective counsel, the lower court dismissed the petition. The appellants were miffed with the judgment of the lower court and they therefore instituted the instant appeal via a notice of appeal predicated on 51 grounds.

One of the complaints of the appellants in this appeal, is against the decision of the lower court to the effect that the 2nd respondent was qualified to contest the election. Their complaint against the qualification of the 2nd respondent in the petition had two limbs. Firstly, it was contended that the 2nd respondent was not qualified to contest, having been "fined" the sum of \$460,000 for an offence involving dishonesty, that is trafficking in, narcotics. Secondly, they argued that 3rd respondent was caught by double/multiple nomination contrary to section 35 of the Electoral Act, 2022, which soiled the joint ticket on which the 2nd and 3rd respondents contested the election.

On the issue of the alleged fine of \$460,000.00 supposedly imposed on the appellant by a court in the United States of America, the appellants relied on section 137(1)(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) which provides thus:

“(1) A person shall not be qualified for election to the office of President if-

he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any whatever name called) or for any other offence, imposed on him by any court or tribunal or

substituted by a competent authority for any other sentence imposed on him by such a court or tribunal).”

There is no gainsaying that the above provision will only serve to disqualify a person on whom a sentence of fine was imposed after conviction resulting from a criminal trial. The appellants themselves agree that the case referred to by them only involved a civil forfeiture, without an arraignment or trial. Furthermore, the appellants have not been able to show that the forfeiture or "fine" as they put it, was a criminal sentence. "A candida

From the foregoing, it is clear to all that the disqualifying provision of section 137(1)(d) of the Constitution cannot apply to disqualify the 2nd respondent.

On the alleged double nomination of the 3rd respondent, all I have to say is that the issue has been fully, effectively and finally resolved and laid to rest in the decision of this court now reported in *P.D.P. v. I.N.E.C. & Ors* (2023) LPELR-60457 (SC); (2023) 13NWLR (Pt. 1900) 89. It is not open to this court to reconsider same.

Consequent upon the foregoing and the reasons contained in the lead judgment, which I am fully in agreement with and adopt as mine, the appeal is hereby dismissed by me. I affirm the judgment of the lower court and abide by all consequential orders made in the lead judgment.

ABUBAKAR, J.S.C.: My Lord and brother, Okoro, JSC, granted me the privilege of having a preview of the leading judgment rendered in this appeal. I entirely agree that issues 1,2,3,5,6, and 7 have been dealt with in detail in the leading judgment in appeal number SC/CV/935/2023, *Abubakar Atiku & Anor v. INEC & Ors*, delivered by this panel. This is therefore an off shoot of the same judgment dealing with the nomination of Senator Kashim Shettima as this issue has been dealt with by this court in *P.D.P. v. I.N.E.C.* & In my view too, NWLR (Pt. 1900) 89. Appellants appeal on this point amounts to an this certainly offends the settled position of the law that there must court. The appellant will not be allowed to relitigate this issue, it is therefore needless and totally unnecessary, parties are bound by our decision of 26th May, 2023 in appeal number SC/CV/501/2023.

This appeal therefore lacks merit it is hereby dismissed.

Appeal dismissed

AGIM,J.S.C.: I had a preview of the judgment delivered by my learned brother, Lord Justice, John Inyang Okoro,JSC. I completely agree with the reasoning, conclusions, decisions and orders therein. Let me however contribute my views on some of the issues

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Let me consider the issue of the Order of the United States District Court, Northern District of Illinois that the sum of 460,000 USD in the account of the 2nd respondent be forfeited to the State. It not in dispute that this is a non-conviction based forfeiture. There is nothing to show that the forfeiture was a punishment for the 2nd respondent's conviction for any offence. There is no evidence of any conviction of any sort. It is a civil forfeiture made because the imaginative and in source of the money could not be explained. It is trite law that a provision cannot b civil forfeiture is a unique remedy that does not require conviction or even a criminal charge against the owner of the money. A civil forfeiture does not qualify as a fine or punishment for any unlawful a distinct group it activity so the argument that it qualifies as a fine for an offence involving dishonesty or fraud is not correct.

Let me also consider the question of whether S. 134(2) of the Constitution of the Federal Republic of Nigeria 1999(the 1999 Constitution) requires that a candidate for an election to the office of President who has the highest number of votes cast at the election and not less than one-quarter of the votes cast at the election in each of at least two thirds of all the 36 States in the Federation must additionally have one-quarter of the votes cast in the election in the

Federal Capital Territory, Abuja before he can be deemed to have been duly elected as President.

S.134(2) of the 1999 Constitution provides that-

"A candidate for an election to the office of President shall be deemed to have been duly elected where,there being more than two candidates for the election

(a) he has the highest number of votes cast at the election, and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

It is obvious that States of the Federal Capital Territory, Abuja were lumped together as a group by subsection (2)(b) above. What differentiates the constituents of the group is their D names and nothing more. One of them is called Federal Capital Territory and the rest called States of the Federation. Subsection (2)(b) clearly refers to two-thirds of all the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein as a group. The argument of learned SAN that the provision by using the word "and" to conclude the listing of the areas to which it applies has created two groups to which it applies differently is, with due respects, a very imaginative and ingenious proposition that the wordings of that provision cannot by any stretch accommodate or reasonably bear. If S.134(2) of the 1999 Constitution intended that the Federal Capital Territory, Abuja should be distinct from States of the Federation as a distinct group it would not have listed it together with states of the Federation in (b). Also, if S. 134(2) had intended having one-quarter of the votes cast in the Federal Capital Territory Abuja as a separate requirement additional to the ones enumerated therein, it would have clearly stated so in a separate paragraph numbered (c). It is glaring that S. 134(2) prescribed two requirements that must be cumulatively satisfied by a Presidential candidate in an election contested by not less than two candidates, before he or she can be deemed duly elected President. It prescribed the first requirement in (a) and the second one in (b). It did not impose a third requirement and so there is no (c) therein.

The constitutional or statutory requirements to be satisfied for candidate to be declared elected must be the ones expressly and clearly prescribed in the Constitution or statute as the case may be. A requirement that is not expressly and clearly prescribed cannot be assumed or implied to exist under any guise. Since S.134(2) or any other part of the 1999 Constitution did not expressly and distinctly prescribe that a Presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja as a third requirement additional to the two expressly prescribed, before he or she can be deemed duly elected as President, it is not a requirement for election to that office.

The grouping of Federal Capital Territory, Abuja with states of the Federation in S. 134(2)(b) of the 1999 Constitution so that the provision can apply to them equally is consistent with the tenor and principle of the 1999 Constitution treating the Federal Capital Territory, Abuja as a State of the Federation. This is clearly stated D in S.299 of the 1999 Constitution thusly-

"The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly –

- (a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;
- (b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and
- (c) the provisions of this Constitution pertaining to the aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section."

Even though words are most often prone to different meanings and even very simple words can be differently understood, the words of S. 134(2)(b) cannot accommodate or support or bear what learned SAN for the appellants proposed as its meaning. Such meaning would result in a situation where a Presidential candidate that has the highest votes cast in the election and not less than one-quarter of the votes cast in not less than two-thirds of 36 States of the Federation or in all the States of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the egalitarian principle of equality of persons, votes and the constituent territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional. I think that his said proposition is the result of reading those provisions in isolated patches instead of reading them as a whole interpreting the relevant provision as a whole and together with other parts of the Constitution as a whole is an interpretation that best reveals the legislative intention in the relevant provision. Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria) in his book Synopsis 2 stated thusly –

"Any document to be rightly understood must be read as whole. According to Lord Coke "It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers.....and this exposition is *ex visceribus actus*." (from the bowels of the statute). Reading it through helps also in gathering its object. An effort must be made to understand it as a harmonious whole."

Courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in the application of constitutional provisions and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the interpretation of statutes differ between statutes according to the subject matter of each statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its *sui generis* nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its *sui generis* nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose. In interpreting the part of the Constitution providing for elections to public offices in a constitutionally established democratic culture, the court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of a democratic society.

For the above reasons and the more detailed ones brilliantly stated in the lead judgment, I dismiss this appeal.

Appeal dismissed.