

Copy

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA



MOTION NO. _____

APPEAL NO.: SC.1462/2019

CROSS APPEAL NO.: SC.1470/2019

APPEAL NO.: CA/OW/GOV/05/2019

PETITION NO.: EPT/GOV/IM/08/2019

BETWEEN: ABUJA

- | | | |
|---|---|------------------------|
| 1. SENATOR HOPE UZODINMA | } | APPELLANTS/RESPONDENTS |
| 2. ALL PROGRESSIVES CONGRESS | | |
| AND | | |
| 1. RT. HON. EMEKA IHEDIOHA | } | RESPONDENTS/APPLICANTS |
| 2. PEOPLES DEMOCRATIC PARTY | | |
| 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION | } | RESPONDENT |

MOTION ON NOTICE

**BROUGHT PURSUANT TO SECTION 6 (6) OF THE CONSTITUTION
OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED);
SECTION 22 OF THE SUPREME COURT ACT, 2004; AND UNDER THE
INHERENT JURISDICTION OF THIS HONOURABLE COURT.**

TAKE NOTICE that this Honourable Court will be moved on theday of 2020 at the hour of 9 clock in the forenoon or so soon thereafter as the court may be heard on behalf of the Applicants, praying for the following orders:

1. **AN ORDER** setting aside as a nullity the judgment delivered by this Honourable Court on the 14th of January 2020 in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019.
2. **AND** for such other order(s) as this Honourable Court may deem fit or proper to make in the circumstance.

AND TAKE NOTICE that the grounds upon which this Application is brought are as follows:

1. **THE DECISION OF THE COURT BELOW DISMISSING THE PETITION AS INCOMPETENT CONTINUES TO SUBSIST AS THE APPEAL AGAINST THAT DECISION WAS NOT CONSIDERED BY THIS HONOURABLE COURT.**

- a) At the Tribunal, the 2nd Applicant (as 2nd Respondent) applied to have the petition struck out on the ground that it was incompetent. See pages 2068 – 2080 Vol. 3 of the Record.

- b) The application was heard and dismissed by the Tribunal. See **page 2919 particularly at page 2939 Vol. 4 of the Record.**
- c) The 2nd Applicant appealed to the Court of Appeal by way of Cross Appeal. The Cross Appeal was heard and allowed by the Court below. In other words, the Court below struck out the petition as incompetent. In the words of Adah JCA, who delivered the lead judgment in the Cross Appeal at **page 289 Vol. 5 of the Record:**

"The preliminary objection of the 1st Cross Respondent (sic) at the lower court is allowed and I hold that the appropriate order of the trial tribunal would have been to have petition no EPT/GOV/IM/08/2019 struck out for being incompetent. I therefore order the petition struck out. No cost is awarded."

- d) The 1st and 2nd Respondents appealed against the above order of the Court below in ground 18 of their Notice of Appeal but only to the extent of showing that the 1st Appellant was the 1st Cross Respondent at the Court of Appeal. See **page 424 Vol. 5 of the Record.** The Appellants/Respondents Brief of Argument is **Exhibit KGA 10** hereto.
- e) The order of the Court of Appeal striking out the Petition for being incompetent raised a jurisdictional issue which this Honourable Court ought to have resolved first before delving into the merits of the Appeal. Incidentally, Your Lordships neither considered nor resolved this jurisdictional issue. The failure of the Supreme Court to consider and pronounce on this issue amounts to a failure of jurisdiction and completely erodes the jurisdiction of the Supreme Court to consider the appeal on the merits.
- f) Your Lordships neither set aside the decision of the Court of Appeal striking out the Petition for being incompetent nor made any pronouncement on it.
- g) In the absence of any pronouncement by the Supreme Court on this issue, the judgment of the Court of Appeal striking out the Petition for being incompetent subsists. That being so, Your Lordships had no jurisdiction to countenance the Appellants/Respondents' appeal.

2. THE JUDGMENT IS A NULLITY HAVING BEEN DELIVERED WITHOUT JURISDICTION

- a. The judgment was delivered without jurisdiction having regards to the provisions of the Electoral Act as this Honourable Court had no jurisdiction to declare the 1st Appellant/Respondent as the winner of an election branded and stigmatized by him as invalid.

- b. One of the grounds of the petition was that the election was invalid on account of non-compliance with the provisions of the Electoral Act. If the election was invalid, as contended by the Appellants/Respondents, the power of the Court was limited to annulling it upon that ground succeeding. The Court had no power or authority to declare the 1st Appellant/Respondent as the winner of an election he set out to prove was invalid. Having contended that the election was invalid, the Appellants/Respondents proceeded to claim that they had won majority of votes cast at the election. This rendered the petition speculative and therefore incompetent and the Court had no jurisdiction to entertain it since it could not grant any relief under the circumstances.
- c. This Honourable Court had no jurisdiction to declare the 1st Appellant/Respondent as elected in an election petition which was based on two inconsistent and mutually exclusive grounds, to wit, (i) that the 1st Applicant was not duly elected by majority of lawful votes cast at the election, the implication of which is that the majority of votes cast at the election were valid. **See Page 5 of Vol. 1 of the Record of Appeal;** and (ii) that the election was invalid for non-compliance with the Electoral Act, the implication of which is that the election be annulled. **See Page 28 Vol. 1 of the Record of Appeal.**
- d. There was no proof that the votes ascribed to the 1st Appellant/Respondent met the mandatory geographical spread stipulated in section 179 (2) of the 1999 Constitution (as amended).
- e. This Honourable Court did not have the jurisdiction to declare that the 1st Appellant/Respondent met the constitutional geographical spread without providing in its judgment the reason(s) for that conclusion.

3. **THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY HAVING BEEN OBTAINED BY FRAUD OR DECEPTION IN THAT:**

- a. The Appellants/Respondents misled this court into holding that a total of 213,695 votes were unlawfully excluded from the votes scored by the 1st Appellant/Respondent in the gubernatorial election of 9th March 2019 in Imo State.
- b. The 1st Appellant/Respondent admitted under cross-examination that it was him and not the 3rd Respondent [INEC] or any of its officials, who computed the result that allotted to him the 213,695 votes alleged to have been excluded from his total votes in the election. He said:

"I did the computation in my deposition myself using a calculation from the original result sheets that was brought to me." See Page 2403 Vol. 4 of the Record of Appeal.

- c. The total votes cast as shown in the 1st Appellant/Respondent's computation was more than the total number of voters accredited for the election and in some polling units more than the total number of registered voters.
- d. The result computed by the 1st Appellant/Respondent showed only the votes of the 1st Applicant and the 1st Appellant/Respondent without specifying the votes scored by the other 68 candidates who participated in the election.
- e. Exhibits 63RD1 to 63RD19 (INEC Forms EC40G) show that there were no valid elections in the 388 polling units where the additional 213,695 votes claimed by the 1st Appellant/Respondent were allegedly generated.

4. **THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT IT WAS GIVEN PER INCURIAM BY REASON OF THE FACT THAT:**

- a. By Exhibit A1 (Form EC8D) the total number of voters accredited for the election was 823,743 while the total valid votes cast was 739,485.
- b. With the inclusion of 213,695 votes for the 1st Appellant/Respondent and 1,903 to the votes of the 1st Applicant, as ordered by this court, the total number of votes cast at the election now stands at 955,083 (i.e. 739,485 + 213,695 + 1,903) making the total number of votes cast at the election to be far in excess of the total number of voters accredited for the election by 131,340 votes.
- c. It amounts to an illegality under our electoral law for the total number of votes cast in an election to exceed the number of accredited voters.
- d. The Appellants/Respondents pleaded in paragraph 39 of their petition that a supplementary election should be conducted in the 388 polling units where the additional votes that created the illegality were alleged to have been cast and that pleading was binding on the Appellants/Respondents and the court.

5. **THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT THIS HONOURABLE COURT WAS MISLED TO ENTER THE JUDGMENT BY REASON OF THE FACT THAT:**

- a. The 1st Appellant/Respondent alleged that votes from 388 polling units were unlawfully excluded or cancelled and

urged the court to include the alleged votes from those polling units. At the same time the 1st Appellant/Respondent prayed that fresh elections be conducted in the said polling units thus rendering the petition speculative.

- b. The Appellants/Respondents failed to plead the votes scored by all the parties in the 388 affected polling units. Only the votes allegedly scored by the 1st Appellant/Respondent and the 1st Applicant were pleaded – an omission which rendered the petition incompetent.
- c. This Honourable Court was consequently misled into making a vague order directing the inclusion of votes from the 388 polling units without stating or specifying the particular number of votes to be included from those polling units for all the parties.
- d. Without computing the votes for all the parties from the 388 polling units, this Honourable Court was misled into making a declaration that the 1st Appellant/Respondent was the winner of the gubernatorial election in Imo State – an election that the Appellants/Respondents branded or stigmatized as invalid on account of non-compliance.

FURTHER TAKE NOTICE that at the hearing of this application the Applicant shall rely on the record of this Honourable Court and on all processes filed by the parties herein, including the record of appeal used at the hearing of Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019

DATED THIS 17TH DAY OF FEBRUARY 2020.



KANU G. AGABI (CON), SAN
CHRIS UCHE, SAN
S. I. AMEH, SAN
K.C.O. NJEMANZE, SAN
DR. USMAN TETENGI, SAN
EMEKA ETIABA, SAN
CHIEF UMEH KALU, SAN
EMEKA OKPOKO, SAN
DR. J.Y. MUSA, SAN
L. M. ALOZIE, SAN
ESSIEN H. ANDREW, SAN
PAUL HARRIS OGBOLE, SAN
JERRY EGEMBA, ESQ
S. A. ANYALEWECHI, ESQ
A. S. OGUJIOFOR, ESQ
CHARLES NDUKWE, ESQ₅

UCHENNA NJOKU, ESQ
DR. CHUKWUEMEKA NNAWUCHI, ESQ
(Applicants' Counsel)

Kanu G. Agabi & Associates,
Trinity House,
Plot 943, Cadastral Zone B06,
Behind Federal Ministry of Works,
Mabushi,
FCT-Abuja.

kanugodwinagabi@nigerianbar.ng
kanugodwinagabi@yahoo.com

FOR SERVICE ON:

1. **The 1st Appellant/Respondent**
Governor's Office
Government House,
Owerri, Imo State.
2. **2nd Appellant/Respondent**
APC National Secretariat
40 Blantyre Street, Off Adetokunbo Ademola Street,
Wuse 2, Abuja, FCT.
3. **The 3rd Respondent**
INEC Headquarters
436 Zambezi Crescent
Maitama, Abuja.