

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:

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 } RESPONDENT
ELECTORAL COMMISSION }

APPLICANTS' WRITTEN ADDRESS IN OPPOSITION TO THE
NOTICE OF PRELIMINARY OBJECTION FILED BY THE
APPELLANTS/RESPONDENTS

1.0 INTRODUCTION:

1.1 By a motion on notice dated 17 February 2020, the Applicants prayed this Honourable Court for an order setting aside as nullity the judgment delivered by this Honourable Court on 14 January 2020 in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019.

1.2 The grounds for bringing the said application, which are stated on the motion paper, include the following (without particulars).

- (i) *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.*
- (ii) *The Judgment is a nullity having been delivered without jurisdiction.*
- (iii) *The judgment sought to be set aside is a nullity having been obtained by fraud or deception.*
- (iv) *The judgment sought to be set aside is a nullity in that it was given per incuriam.*
- (v) *The judgment sought to be set aside is a nullity in that this Honourable Court was misled to enter the judgment.*

1.3 Upon being served the said motion, the Appellants/Respondents filed a notice of preliminary objection challenging the competence of the said motion and a fortiori, the jurisdiction of this Honourable Court to entertain same, contending that the application is statute barred; the decision of the Supreme Court is final; the 1st Appellant/Respondent having been inaugurated, the application is hypothetical and an academic exercise; and the inapplicability of Order 8 Rule 16 of the Rules of this Honourable Court.

1.4 Beyond any shadow of doubt, the preliminary objection derives from the Appellants/Respondents misapprehension of the case of the Applicants in this application. As shall be demonstrated *anon*, this application neither invites this Honourable Court to sit on appeal over its decision nor does it pretend to be a continuation of the appeal already determined by this Honourable Court. Far from that! At the same time, this application is not an invitation to this Court to make an enquiry on some academic or hypothetical issues. On the contrary, it is and remains an application to this Honourable Court to invoke its inherent powers as constitutionally endorsed and recognized in Section 6(6)(a) of the 1999 Constitution (as amended) to set aside as nullity the judgment delivered by this Honourable Court on 14 January 2020 in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019. The application deals with a live issue –the judgment of this Honourable Court delivered on 14 January 2020, which the Applicants contend to be a nullity – and the Applicants' rights, *ex debito justitiae* to have the judgment set aside.

2.0 ISSUE FOR DETERMINATION

2.1 The Applicants submit that the sole issue calling for determination in the preliminary objection is:

Whether this Honourable Court has the jurisdiction to entertain the Applicants' motion seeking to set aside, as nullity, the Judgment of this Honourable Court delivered on 14 January 2020.

3.0 ARGUMENT

3.1 The Supreme Court is imbued with inherent jurisdiction to act under the provisions of **Section 6(6)(a) of the Constitution 1999 (as amended)** and the inherent jurisdiction of this Honourable Court is intrinsic to its very existence. Where an order or judgment of the Honourable Court is invalid, null and void or is vitiated by a fundamental vice, this Honourable Court has inherent jurisdiction to set aside such an order or judgment. Similarly, the party affected by such an order can take necessary

steps by motion to set aside such order that is invalid on the grounds that it is a nullity. **OKOYE V N.C&F CO. LTD (1991) 6 NWLR (Pt.199) 501, SKEN CONSULT V UKEY (1981) 1 SC 6 at 26, DINGYADI V INEC (2011) 10 NWLR (Pt.1255) 347 at 412 – 413, UGBA V SUSWAM (2014) 14 NWLR (Pt. 1427) 264 at 341 – 342.**

- 3.2** This Honourable Court is a court of final resort and under the Constitution, it cannot sit on appeal over its judgment. However, in the exercise of its inherent jurisdiction, this Honourable Court, like every other superior court of record, has the power in exceptional circumstances and or appropriate cases to set aside its own judgment. In the case of **CITEC INTERNATIONAL ESTATES LTD V FRANCIS (2014) 8 NWLR (Pt.1408) 139** where this Honourable Court set aside its own decision, it was held at **pages 159-160 Paras B - C** per Okoro JSC as follows:

“Having said that, may I state that by virtue of section 235 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Supreme Court cannot sit on appeal over its own judgment. The provision gives a stamp of finality to any decision of the Supreme Court. There is no constitutional provision for the review of the judgment of the Supreme Court by itself. See Eleazor Obioha v Innocent Ibero & Anor (1994) 1 NWLR (Pt. 322) 503. However, it has been held by this Court that the Supreme Court possesses inherent power to set aside its judgment in appropriate cases but that such inherent jurisdiction cannot be converted into an appellate jurisdiction as though the matter before it is another appeal, intended to afford the losing litigants yet another opportunity to re-state or re-argue their appeal.

In Chief Kalu Igwe & 2 Ors V Chief Okuwa Kalu & 3 Ors (2002) 14 NWLR (Pt. 787) 435 at 453, paragraphs F – H and P. 454, paras. A – C, this Court per Ogwuegbu, JSC, held as follows:

“I shall state that this Court possesses inherent power to set aside its judgment in appropriate cases. Such cases are as follows:

- (i) When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties. Such a judgment can be impeached or set aside by means of an action which may be brought without leave. See Alaka v Adekunle (1959) LLR 76, Flower v Lloyd (1077) 6 Ch. D. 297; Olufunmise v Falana (1990) 3 NWLR (Pt. 136) 1.*

- (ii) *When the judgment is a nullity. A person affected by an order of court which can properly be described as a nullity is entitled ex debito justitiae to have it set aside. See Skenconsult Ltd. v Ukey (1981) 1 SC 6; Craig V Kanssen (1943) KB 256 and 263; Ojiako & Ors v Ogueze & Ors (1962) 1 SCNLR 112 (1962) 1 All NLR 58, Okafor & Ors v Anambra State & Ors (1991) 6 NWLR (Pt. 200) 6759, 680.*
- (iii) *When it is obvious that the Court was misled into giving judgment under a mistaken belief that the parties consented to it. See Agunbiade v Okwnoga & Co. (1961) All NLR 110 and Obimonure v Erinosho (1966) 1 All NLR 250.*

In Olorunfemi V Asho (Supra) suit No. SC.13/1999, now reported in (2000) 2 NWLR (Pt. 643) 143, this court in its unreported ruling dated 19/3/99 set aside its judgment delivered on 8/1/99 on the ground that it failed to consider the respondents' cross-appeal before allowing the appellant's appeal. It ordered that the appeal be heard de novo by another panel of Justices of this court. See generally Alao v A.C.B. Ltd. (Supra)"

- 3.3 In the instant application, the Applicants are praying the Honourable Court to set aside its judgment on substantial, germane and positive grounds which render the said judgment a nullity. The grounds include inter alia, that there is a subsisting order of the lower Court dismissing the Appellants/Respondents' petition; that the judgment obtained by fraud or deception; that the judgment was given *per incuriam*; that the judgment given without jurisdiction and that this Honourable Court was misled to enter the said judgment.
- 3.4 We submit that the grounds for bringing the instant application to set aside the judgment are strong and duly constitute the exceptional circumstances recognized and or accepted by this Honourable Court under which an application to set aside a judgment for being a nullity may be granted by this Honourable Court. This Honourable Court is imbued with the *vires* or jurisdiction to hear the motion of the Applicants since the said motion is not afflicted by any known and or incurable virus. If this Honourable Court finds the grounds for bringing the application as established, the said judgment will be adjudged a nullity with far reaching legal consequences including the nullification of the certificate of return issued to the 1st Appellant/Respondent and his swearing in as the Governor of Imo State. The setting aside of the judgment would erase, wipe out and obliterate all acts done consequent on the judgment as if they

occurred. See **CITEC INTERNATIONAL ESTATE LTD V FRANCIS (Supra)** at page 164 paras C – E where it was held as follows:

“In sum, I hold firmly that where a judgment of this court or an order thereof is adjudged a nullity, a party affected thereby is entitled to have it set aside ex debito justitiae. The court has inherent jurisdiction or power to set aside its own order or decision made without jurisdiction if such order or decision is in fact a nullity or was obtained by fraud or if the court was misled into granting same by concealing some vital information or facts. See Igwe v Kalu (supra), Vulcan Gases Ltd. v G.F. Ind. A.G. (2001) 9 NWLR (Pt. 719) 610 at 644 – 645, paras. H – A.”

- 3.5 And in **OKOYE V N.C.F & Co. Ltd (Supra)** at Page 538 paras C – D, it was held thus:

“When a thing is a nullity, it is as if the thing never existed. When a marriage is null and void it is as if the status of matrimony had never been conferred; See Vol. 12 Hals. Laws of England (3rd Edn.) p. 226. Similarly when a judgment or order is a nullity, it is as if it was never given or made. It can be set aside without much ado. But, ex abundantia cautela it is advisable to go to court to set it aside, if for nothing else to have the fact of its being set aside put on the record”

- 3.6 Furthermore, it is now settled that time does not run against a party in relation to a null judgment. For an act to be covered and protected by a statute of limitation such as Section 285 of the Constitution (as amended) it must be such that it is recognized by law as valid. If not, it is void and beyond the scope of the statute of limitation. This is because a void act is a non-event. It is a nullity and it can never be too late to set aside an act that is null and void. **CRAIG V KAMSEEN (1943) 1 All ER 108, R. LAUWER IMPORT-EXPORT V JOZEBSON INDUSTRIES CO. LTD (1988) LPELR-2934(SC).**

- 3.7 Recently, this Honourable Court in its judgment in **Appeal No. SC1384/2019: UGWUMBA UCHE NWOSU V ACTION PEOPLE PARTY** delivered on 20/12/2019 held that the limitation period stipulated in **Section 285(9) of the Constitution** does not bar the hearing and determination of a pre-election matter filed after the time stipulated by the Constitution because the acts in question were null and void. In the said judgment, this Honourable Court, per Augie JSC held as follows:

“It is also his contention that Section 285(9) of the Constitution covers all issues arising from any pre-election

matter and obligatory in nature, whether void or not. That cannot be right; the Appellant cannot say that the Section 285(9) covers all issues arising from any pre-election matter – Whether void or not, because where an act is void, it is void, and a party will not be allowed to use the said Section 285(9) as a shield to cover the illegality or sustain an act that is void – See Oyeneyin v Akinkugbe (Supra), where Adekeye, JSC, said:

A void act is an act, which has no legal effect or consequence. It does not confer any legal right or title whatsoever, and it does not also impose any legal obligation or liability on any one or make any party liable to suffer any penalty or disadvantage”

- 3.8 We submit that having regard to the Applicants’ contention that the said judgment is a nullity and the legal implications of a void or null act, the provisions of **Section 285(7) of Constitution** do not bar the hearing, and determination of the Applicants’ motion.
- 3.9 May we respectfully draw the attention of your Lordships to certain salient questions regarding section 285(7) of the 1999 Constitution (as amended) as the Appellants/Respondents seem to have made a heavy weather of that provision in their preliminary objection. Firstly, what mischief was section 285(7) of the 1999 Constitution intended to solve? Is it intended to extinguish the inherent powers and sanctions of this Honourable Court guaranteed under section 6(6)(a) of the 1999 Constitution? We dare to say no. Can section 285(7) stand in the way of the inherent powers of this Honourable Court when section 6(6)(a) says your Lordships possess the inherent powers “*notwithstanding anything to the contrary in this Constitution*”? That is impossible! Can it ever be sanely suggested that section 285(7) of the Constitution has in any way stripped this Honourable Court of its inherent jurisdiction to set aside null judgments and orders? It cannot! Does it create a defence for a party that has misled the Court – whether fraudulently or recklessly? Impossible! Does it have any potential of transforming a nullity into anything other than a nullity? Not at all! Is it a licence for a party to induce or deceive the court into doing that which is not legally permissible merely because the passage of time will prevent setting aside the court’s decision? It cannot be so! Does it furnish a licence to the court to do as it pleases merely because the passage of time will prevent examination of the court’s decision? That cannot be the intendment! Without any iota of doubt, we submit that the answers are all in the negative!
- 3.10 We submit that all the arguments proffered by the Appellants/Respondents in their preliminary objection were made in

utter disregard of the Supreme Court's inherent jurisdiction to set aside its decisions in deserving circumstances as being sought in our application. The powers exercisable by the Supreme Court under section 6(6)(a) are, by all means and to all intents and purposes, sufficiently wide in scope and cannot in any way whatsoever be circumscribed by any other provision of the Constitution or any rule of law as argued by the Appellants/Respondents including but not limited to the provisions of Order 8 Rule 16 of the Supreme Court Rules as well as sections 235 and 285(7) of the 1999 Constitution (as amended).

- 3.11 The inherent jurisdiction of any court of record inclusive of the Supreme Court is foundational and originates from its creation. See **Moherman v. Nickels 143 A.L.R 1174**. It is the inherent power that enables every court of record to do justice in all matters that are presented before it for adjudication. The Appellants/Respondents' arguments and prayers in paragraphs 3.1, 3.4, 3.5, 3.9, 3.11, 3.12, 3.13, 3.14 3.15, 3.23, 3.28, 3.33, 3.34, 3.35 3.36, 3.37 and 3.38 are entirely misconceived, misplaced and derive from a gross misapprehension of both the character of the Applicants' application and the law.
- 3.12 The provisions of Sections 235 and 285(7) of the 1999 Constitution (as amended) and Order 8 Rule 16 of the Supreme Court Rules cannot vitiate the powers of the Supreme Court in the exercise of its inherent jurisdiction towards setting aside a judgment made in this matter in order to meet the ends of justice. See **Citec Int. Estates Ltd v Francis (2014) 8 NWLR PT 1407 136 @ 159 ratio C – D**
- 3.13 Without equivocation, this application is not an invitation to this Honourable Court to rehear the Appeals in Appeal No: SC. 1462/2019 and Cross – Appeal No: SC.1470/2019 or to correct an error of law in the judgment as erroneously posited by the Appellants/Respondents. The application seeks to set aside a nullity as eminently established by the grounds in support of this application.
- 3.14 At the same time, this application is outside the purview of the “slip rule” as contained in Order 8 Rule 16 of the Supreme Court Rules. It does not seek to correct any clerical error. The Applicants have neither said so nor suggested so. The application says what it says and means what it says. It seeks to set aside as nullity the judgment of this Honourable Court delivered on 14 January 2020.

**DISTINGUISHING APPELLANTS/RESPONDENTS' CITED
AUTHORITIES FROM THE PRESENT APPLICATION**

- 3.15 The Appellants/Respondents cited and relied heavily on the case of **Bello V Damisa (2017) 2 NWLR (Pt. 1550) @ 455** in their argument. In that case, the respondents/objectors premised their objections on the grounds that the “appeal” was an abuse of court process by reason of the existence of other cases in various courts involving the same parties and **the lack of jurisdiction of the Supreme Court to hear the “appeal” due to the provisions of S.246(3) of the 1999 Constitution** with regards to the finality of the decisions of the Court of Appeal on National and State House of Assembly Election Petition disputes. Thus, at the heart of the case of Bello v. Damisa (supra) was the question of whether the Supreme Court had the jurisdiction to entertain an appeal arising from the National Assembly election, having regard to section 246(3) of the 1999 Constitution which makes the Court of Appeal the final court for National Assembly election disputes.
- 3.16 The Supreme Court therefore dismissed the matter partly for want of jurisdiction in the sense that the Supreme Court considered S.246(3) of the 1999 Constitution and decided the case on the finality of the decisions of the Court of Appeal with respect to National and State House of Assembly Election Petition Matters.
- 3.17 Admittedly, the Supreme Court equally made pronouncements on the effect of S. 285(7) of the 1999 Constitution on matters relating to election petitions having to be disposed of within the 60 days allotted time limit. However, the instant application, even though arising out of an election dispute, is not a continuation of the process. The Applicants are not inviting the Supreme Court to revisit its decisions or sit on appeal over its earlier decision in the election dispute. Our present application cannot be held back and/or circumscribed by the restrictive provisions of S.285(7) of the 1999 Constitution or indeed any other enactment as to time limit, as time cannot run against an illegality or a null judgment.
- 3.18 The instant application is respectfully drawing your Lordships’ attention to the nullity of the Court’s decision arising from the latent jurisdictional defects and deformities on the face of the judgment, which have been demonstrated by all the five grounds of the application. As such, the 60-day limitation period provided in S. 285(7) of the 1999 Constitution is inapplicable to this application.
- 3.19 The point being made is that the facts and the legal issues thrown up and resolved by the Supreme Court in *Bello v Damisa* are at variance with the facts and circumstances of our present application. Thus, the decision in that case is unhelpful in the resolution of this present application to set aside the judgment

delivered by the Supreme Court in Appeal No. SC.1462/2019 and Cross – Appeal No. SC. 1470/2019.

3.20 Similarly, while the case of **ANPP v. GONI (2012) All FWLR (Pt. 623) page 1821 @ 1830** dealt with the time within which the Supreme Court is to hear and deliver its final judgment in an election petition appeal, it did not deal with the power or jurisdiction of the Supreme Court to entertain an application to set aside its judgment which is the fulcrum of our present application. We submit that there is a distinction in law between an appeal or the hearing of an appeal and an application to set aside a judgment. The latter is extrinsic to the hearing of the appeal itself. The law is trite that the hearing of an appeal or indeed any court proceedings terminates with the judgment. If therefore, power is vested in the court to revisit and set aside that judgment, it is clear that the court can proceed to review or set aside the judgment even after the expiration of time allowed by law or the Constitution to do so.

3.21 The case of **Ugba v. Suswan (2014) 14 NWLR (Pt. 1427) 264** dealt with the time limit within which this Honourable Court can deliver its final judgment in a substantive appeal. In that judgment the Supreme Court agreed that it can set aside its judgment in exercise of its inherent powers when the judgment is later found to be a nullity or obtained by fraud, provided that the exercise will not be used as if the Supreme Court was re-hearing the appeal. In the instant case, the Applicants are not asking for a re-hearing of the appeal. This application is not even brought under Order 8 Rule 16 as it does not necessarily ask for a review of the judgment. It is rather asking that the judgment which had been shown to constitute nullity be set aside.

3.22 At pages 306 – 307, paragraphs F – E of **Ugba v. Suswan (supra)**, Your Lordships stated thus:

*“Following from the foregoing deductions, the principle is well established that this court has no jurisdiction to set aside its ruling or judgment if properly made in the exercise of its powers and jurisdiction. However and that notwithstanding, there is also a rider or a caveat which holds secure that in appropriate cases, it is expedient that the court, in the exercise of its inherent powers, can set aside its ruling; or judgment provided the circumstance calling for such order has satisfied the stringent conditions that the judgment or ruling is a nullity, that such decision was obtained by fraud; and that the court was misled in delivering the said judgment or ruling. This was the decision of this court in **Igwe v. Kalu (Supra)** wherein **Ogwuegbu, JSC** again held at pages 453 – 454*

paras F – B and said “I shall state that this court possesses inherent power to set aside its judgment in appropriate cases. Such cases are as follows:

- i. When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties. Such a judgment can be impeached or set aside by means of an action which may be brought without leave. See Alaka v. Adekunle (1959) LLR 76; Flower v. Lloyd (1877) 6 Ch. D. 297; Olufunmise v. Falana (1990) 3 NWLR (Pt. 136).*
- ii. When the judgment is a nullity. A person affected by an order of court which can properly be described as a nullity is entitled ex debito justitiae to have it set aside. See Skenconsult Ltd. Ukey (1981) 1 SC 6; Craig v. Kanseen (1943) KB 256, 262 and 263; Ojiako & Ors v. Ogueze & Ors (1962) 1 SCNLR 112, (1962) 1 All NLR 58; Okafor & Ors v. A.G. Anambra State & Ors (1991) 6 NWLR (Pt. 200) 659, 680.*
- iii. When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it. See Agunbiade v. Okunoga & Co. (1961) All NLR 110 and Obimonure v. Erinsho (1966) 1 All NLR 250”*

3.23 As is manifest in the instant application, the Applicants have neither asked for extension or enlargement of the 60-day period fixed by the Constitution nor have they asked for a rehearing of the appeal. Accordingly, the cases of *ANPP V Goni (supra)*, *Bello V Damisa (supra)*, *Egbharevba V Eribo (supra)* and *Adigun v. AG Oyo State (1987) 2 NWLR (Pt. 56) 197* relied upon by the Appellants/Respondents are irrelevant to the application before this Honourable Court for the following reasons as clearly stated in the Applicants’ written address in support of the motion to set aside the judgment:

- (a) Appeal Nos. SC. 1462/2019 and SC 1470/2019 were both heard and determined within the stipulated period of 60 days, and as such there was no violation of Section 285 (7) of CFRN.
- (b) The present application is not for the determination of the disposed Appeal Nos. SC 1462/2019 and SC. 1470/2019; because if that were to be so, it should have been brought and heard within the period of 60 days stipulated by the Constitution.

- (c) The present application is extrinsic and posterior to the determination and disposal of Appeal Nos. SC. 1462/2019 and SC. 1470/2019.
- (d) The present application is seeking to set aside the judgment in Appeal Nos. SC. 1462/2019 and SC.1470/2019 on the basis that even though the appeals were concluded within the 60 days period stipulated by Constitution, the entire proceeding was vitiated by jurisdictional vices which renders same a nullity. Time does not run against nullities,
- (e) Consequently the present application is not subject to the 60 days limitation period in section 285(7) of the Constitution because an application to set aside a null judgment or order is not circumscribed by statutes of limitation, and section 285 (7) of the Constitution is, to all intents and purposes, a statute of limitation.

3.24 Also, all the decisions relied upon by the Appellants/Respondents were on the time within which to hear and determine appeals in an election matter. The decisions were not on the time within which to apply to set aside as null and void any judgment or order made without jurisdiction. Very respectfully, we submit that a void 'act is a non- event. It creates or yields nothing because *ex nihilo nihil fit*. Consequently, it can never be too late to bring an action or an application to declare a void act a nullity and to have it set aside. This point was brought out clearly in the judgment of this Supreme Court in ***Mustapher V. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539*** where Oputa, JSC held that:

"It can never be too late to admit and give effect to the plea that the judgment or orders was a nullity,"

3.25 Again In ***R. Lauwers Import-Export v. Jozebson Industries Co. Ltd. (1988) LPELR-2934(SC)*** at 54 paras D-F this Honourable Court held, per Nnamani, JSC, that:

"It is of course settled that if the proceedings were null and void, the question of extension of time to appeal which is now engaging this court, would not have arisen, since time does not run against an appellant in relation to null judgment" (Emphasis supplied).

NULLITY OF FINAL JUDGMENT BASED ON WANT OF GEOGRAPHICAL SPREAD AS REQUIRED BY SECTION 174(2) OF THE 1999 CONSTITUTION AS A REASON TO SET ASIDE A JUDGMENT

- 3.26 In the case of **Barr. Oriker Jev v. Iyorton (2015) 15 NWLR (Pt. 1483) 484** relied upon by the Appellants/Respondents in paragraph 3.20 of their preliminary objection, the Supreme Court allowed the application setting aside its earlier judgment delivered on the 30th of May, 2014 in Appeal No.: SC.164/2012.
- 3.27 In that judgment, the Supreme Court had on the 30th of May, 2014 delivered its final judgment in the election appeal wherein it ordered for fresh election to be conducted in the Buruku Federal Constituency of Benue State. As can be seen on pages 500 – 501 of the judgment that order was made because the Supreme Court was under the impression that by reason of Section 141 of the Electoral Act which stipulates that the court cannot declare a person as elected unless he has participated in all the stages of the election, the applicant could not be declared to have won the election.
- 3.28 After the judgment of the Supreme Court on 30th May, 2014, the Applicants' counsel later discovered that by a judgment of the Federal High Court Abuja in Suit No.: FHC/ABJ/Ch/399/2011 delivered on 21st July, 2011, the provision of Section 141 of the Electoral Act 2010 (as amended) was struck out and that the judgment of the Supreme Court which ordered a fresh election was based on the annulled provision of the Electoral Act. Consequently, the Supreme Court invoked its powers under Section 22 of the Supreme Court Act and Order 8 Rule 24 of the Supreme Court Rules as amended, granted the application and on the 27th of February 2015, set aside its earlier judgment.
- 3.29 At page 506 of the judgment, the Supreme Court stated thus:
- “On the whole, it is my well considered opinion that this application is meritorious and is hereby granted as prayed. Accordingly, the consequential Order No. 2 made in the judgment of this court in Appeal No.: SC.164/2012 delivered on 30th May, 2014 which ordered the Independent National Electoral Commission (INEC) to conduct fresh election into the Buruku Federal Constituency of Benue State in the House of Representatives is hereby set aside”***
- 3.30 It is instructive that this decision to set aside was given nine months after the final judgment of the Supreme Court. At pages 509 – 510

from paragraphs D – D, the Supreme Court per Bello CJN stated the matter thus:

“Furthermore, this court in the case of Alao v. African Continental Bank Ltd. (2009) 9 NWLR (Pt. 672) 264 had given five conditions for setting aside or reviewing its judgment as follows:

- a. When the judgment was obtained by fraud.*
- b. When the judgment was a nullity such as when the court itself was not competent.*
- c. When the court was misled into giving judgment under a mistaken belief that the parties have consented to it.*
- d. Where the judgment was given without jurisdiction.*
- e. Where the procedure adopted was such as to deprive the decision or judgment of the character of legitimate adjudication.*

- 3.31 Of course, these conditions are not exclusive. However, see also **Skenconcult v. Okey (1981) 1 SC 6**, **Ojiako v. Ogoeze (1962) 1 All NLR 58**, reported as **Ogoeze v. Orjiako (1962) 1 SCNLR 112** and **Igwe v. Kalu (2002) 14 NWLR (Pt. 787) 435 @ 453 – 454**.
- 3.32 In the recent unreported case of **SC.1384/2019** between **Ugwumba Uche Nwosu v. Action People Party & Ors**, this Honourable Court stated emphatically that where an act constitutes a nullity, statute of limitation does not apply. In that case, your Lordships admitted that it is indeed a pre-election matter which ought to have been filed or commenced within fourteen (14) days from the date of the occurrence of the cause of action as stipulated in Section 289 of the constitution. Notwithstanding that it was a pre-election matter and the constitutionally stipulated time for initiating the action elapsed, your lordships held that because what is involved is an allegation of nullity, limitation of time – either statutory or constitutional – will not apply to aid the appellant evade justice with the illegality.
- 3.33 As stated earlier, the grounds for this present application includes that the judgment was given without jurisdiction, in that this honourable court had no jurisdiction to return as winner somebody who did not satisfy Section 174(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). To that extent, the judgment being in conflict with the provisions of the Constitution is null and void *ab initio* and ought not to be allowed to stand. The Appellants/Respondents cannot thus by shadow boxing in the name of preliminary objection prevent this Honourable Court from setting aside that judgment.

STATUTE OF LIMITATION CANNOT ROB THE SUPREME COURT OF ITS INHERENT POWERS TO SET ASIDE A JUDGMENT OBTAINED BY FRAUD

3.34 The Applicants also complained that the judgment sought to be set aside was obtained by fraud. The law is now settled that fraud where established constitutes an exception to the applicability of statute of limitation or constitutional limitation. See *Duzu v. Yunosa* (2010) 10 NWLR (Pt. 1201) 80 @ 118 para A – C; and *A.T. Ltd. v. ADH Ltd.* (2007) 15 NWLR (Pt. 1056) 118.

3.35 In *Sani v. Okene Local Government* (2005) 14 NWLR (Pt. 944) 60 @ page 74 – 75 para H – A, Rhodes-Vivour JCA (as he then was) stated thus:

“A party would not be allowed to take advantage of limitation law where there is compelling evidence of disability, mistake, fraud, and in certain cases involving personal injury, death etc.”

3.36 The same position was taken by this Honourable Court in *Adejomo v. Olawaye* (2014) 12 NWLR (Pt. 1421) 252 @ 281 paras B – C. See also *Ejuara v. Idris* (2006) 4 NWLR (Pt. 971) 536 @ 566 para A. In *Bessy Ltd. V. Oni Legion Nig. Ltd* (2010) 4 NWLR (Pt. 1184) 300

3.37 In *Nkos v. NPA* (2007) 13 NWLR (Pt. 1051) 392 at 427 – 428, paras H-A, this Court defined fraud in the following terms:

“Fraud is an intentional pervasion of truth for the purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It is a false representation of a matter or fact whether by words or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed, deceives or intends to deceive another so that he can act on it to his legal injury.”

3.38 Much earlier, the quintessential jurist, Oputa JSC (OBD) put it succinctly in *ADIMORA V. AJUFO & ORS* (1988) LPELR-82(SC) thus:

“Fraud implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means of what he is entitled to. Fraud for the purposes of the civil law includes acts, omissions and concealments by which an undue and unconscientious advantage is taken of another: Green v. Nixon (1857) 23 Beav 530 at p.535”

- (c) The present application is extrinsic and posterior to the determination and disposal of Appeal Nos. SC. 1462/2019 and SC. 1470/2019.
- (d) The present application is seeking to set aside the judgment in Appeal Nos. SC. 1462/2019 and SC.1470/2019 on the basis that even though the appeals were concluded within the 60 days period stipulated by Constitution, the entire proceeding was vitiated by jurisdictional vices which renders same a nullity. Time does not run against nullities,
- (e) Consequently the present application is not subject to the 60 days limitation period in section 285(7) of the Constitution because an application to set aside a null judgment or order is not circumscribed by statutes of limitation, and section 285 (7) of the Constitution is, to all intents and purposes, a statute of limitation.

3.24 Also, all the decisions relied upon by the Appellants/Respondents were on the time within which to hear and determine appeals in an election matter. The decisions were not on the time within which to apply to set aside as null and void any judgment or order made without jurisdiction. Very respectfully, we submit that a void 'act is a non- event. It creates or yields nothing because *ex nihilo nihil fit*. Consequently, it can never be too late to bring an action or an application to declare a void act a nullity and to have it set aside. This point was brought out clearly in the judgment of this Supreme Court in *Mustapher V. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539* where Oputa, JSC held that:

"It can never be too late to admit and give effect to the plea that the judgment or orders was a nullity,"

3.25 Again In *R. Lauwers Import-Export v. Jozebson Industries Co. Ltd. (1988) LPELR-2934(SC)* at 54 paras D-F this Honourable Court held, per Nnamani, JSC, that:

"It is of course settled that if the proceedings were null and void, the question of extension of time to appeal which is now engaging this court, would not have arisen, since time does not run against an appellant in relation to null judgment" (Emphasis supplied).

NULLITY OF FINAL JUDGMENT BASED ON WANT OF GEOGRAPHICAL SPREAD AS REQUIRED BY SECTION 174(2) OF THE 1999 CONSTITUTION AS A REASON TO SET ASIDE A JUDGMENT

- 3.26 In the case of **Barr. Oriker Jev v. Iyorton (2015) 15 NWLR (Pt. 1483) 484** relied upon by the Appellants/Respondents in paragraph 3.20 of their preliminary objection, the Supreme Court allowed the application setting aside its earlier judgment delivered on the 30th of May, 2014 in Appeal No.: SC.164/2012.
- 3.27 In that judgment, the Supreme Court had on the 30th of May, 2014 delivered its final judgment in the election appeal wherein it ordered for fresh election to be conducted in the Buruku Federal Constituency of Benue State. As can be seen on pages 500 – 501 of the judgment that order was made because the Supreme Court was under the impression that by reason of Section 141 of the Electoral Act which stipulates that the court cannot declare a person as elected unless he has participated in all the stages of the election, the applicant could not be declared to have won the election.
- 3.28 After the judgment of the Supreme Court on 30th May, 2014, the Applicants' counsel later discovered that by a judgment of the Federal High Court Abuja in Suit No.: FHC/ABJ/Ch/399/2011 delivered on 21st July, 2011, the provision of Section 141 of the Electoral Act 2010 (as amended) was struck out and that the judgment of the Supreme Court which ordered a fresh election was based on the annulled provision of the Electoral Act. Consequently, the Supreme Court invoked its powers under Section 22 of the Supreme Court Act and Order 8 Rule 24 of the Supreme Court Rules as amended, granted the application and on the 27th of February 2015, set aside its earlier judgment.
- 3.29 At page 506 of the judgment, the Supreme Court stated thus:
- “On the whole, it is my well considered opinion that this application is meritorious and is hereby granted as prayed. Accordingly, the consequential Order No. 2 made in the judgment of this court in Appeal No.: SC.164/2012 delivered on 30th May, 2014 which ordered the Independent National Electoral Commission (INEC) to conduct fresh election into the Buruku Federal Constituency of Benue State in the House of Representatives is hereby set aside”*
- 3.30 It is instructive that this decision to set aside was given nine months after the final judgment of the Supreme Court. At pages 509 – 510

from paragraphs D – D, the Supreme Court per Bello CJN stated the matter thus:

“Furthermore, this court in the case of Alao v. African Continental Bank Ltd. (2009) 9 NWLR (Pt. 672) 264 had given five conditions for setting aside or reviewing its judgment as follows:

- a. When the judgment was obtained by fraud.*
- b. When the judgment was a nullity such as when the court itself was not competent.*
- c. When the court was misled into giving judgment under a mistaken belief that the parties have consented to it.*
- d. Where the judgment was given without jurisdiction.*
- e. Where the procedure adopted was such as to deprive the decision or judgment of the character of legitimate adjudication.*

- 3.31 Of course, these conditions are not exclusive. However, see also *Skenconcult v. Okey* (1981) 1 SC 6, *Ojiako v. Ogoeze* (1962) 1 All NLR 58, reported as *Ogoeze v. Orjiako* (1962) 1 SCNLR 112 and *Igwe v. Kalu* (2002) 14 NWLR (Pt. 787) 435 @ 453 – 454.
- 3.32 In the recent unreported case of **SC.1384/2019** between **Ugwumba Uche Nwosu v. Action People Party & Ors**, this Honourable Court stated emphatically that where an act constitutes a nullity, statute of limitation does not apply. In that case, your Lordships admitted that it is indeed a pre-election matter which ought to have been filed or commenced within fourteen (14) days from the date of the occurrence of the cause of action as stipulated in Section 289 of the constitution. Notwithstanding that it was a pre-election matter and the constitutionally stipulated time for initiating the action elapsed, your lordships held that because what is involved is an allegation of nullity, limitation of time – either statutory or constitutional – will not apply to aid the appellant evade justice with the illegality.
- 3.33 As stated earlier, the grounds for this present application includes that the judgment was given without jurisdiction, in that this honourable court had no jurisdiction to return as winner somebody who did not satisfy Section 174(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). To that extent, the judgment being in conflict with the provisions of the Constitution is null and void *ab initio* and ought not to be allowed to stand. The Appellants/Respondents cannot thus by shadow boxing in the name of preliminary objection prevent this Honourable Court from setting aside that judgment.

STATUTE OF LIMITATION CANNOT ROB THE SUPREME COURT OF ITS INHERENT POWERS TO SET ASIDE A JUDGMENT OBTAINED BY FRAUD

3.34 The Applicants also complained that the judgment sought to be set aside was obtained by fraud. The law is now settled that fraud where established constitutes an exception to the applicability of statute of limitation or constitutional limitation. See *Duzu v. Yunosa* (2010) 10 NWLR (Pt. 1201) 80 @ 118 para A – C; and *A.T. Ltd. v. ADH Ltd.* (2007) 15 NWLR (Pt. 1056) 118.

3.35 In *Sani v. Okene Local Government* (2005) 14 NWLR (Pt. 944) 60 @ page 74 – 75 para H – A, Rhodes-Vivour JCA (as he then was) stated thus:

“A party would not be allowed to take advantage of limitation law where there is compelling evidence of disability, mistake, fraud, and in certain cases involving personal injury, death etc.”

3.36 The same position was taken by this Honourable Court in *Adejomo v. Olawaye* (2014) 12 NWLR (Pt. 1421) 252 @ 281 paras B – C. See also *Ejuara v. Idris* (2006) 4 NWLR (Pt. 971) 536 @ 566 para A. In *Bessy Ltd. V. Oni Legion Nig. Ltd* (2010) 4 NWLR (Pt. 1184) 300

3.37 In *Nkos v. NPA* (2007) 13 NWLR (Pt. 1051) 392 at 427 – 428, paras H-A, this Court defined fraud in the following terms:

“Fraud is an intentional pervasion of truth for the purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It is a false representation of a matter or fact whether by words or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed, deceives or intends to deceive another so that he can act on it to his legal injury.”

3.38 Much earlier, the quintessential jurist, Oputa JSC (OBD) put it succinctly in *ADIMORA V. AJUFO & ORS* (1988) LPELR-82(SC) thus:

“Fraud implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means of what he is entitled to. Fraud for the purposes of the civil law includes acts, omissions and concealments by which an undue and unconscientious advantage is taken of another: Green v. Nixon (1857) 23 Beav 530 at p.535”

- 3.39 Any kind of artifice employed by one person to deceive another suffices. Elements of a cause of action by fraud include false representation of a present or past fact made by a defendant, action in reliance thereupon by plaintiff and damage resulting from such misrepresentation.
- 3.40 In the case of **Chieke v. Olusoga & Anor. (1997) LPELR-845(SC)** at Pp. 16-17, para D, per **Ogwuegbu J.S.C.**, this revered apex Court emphasized that the Court will not allow parties to use legislations as instruments of fraud or to make fraudulent use of a legislation and take advantage of his own fraud. See also the case of **SIFAX (Nig.) Ltd. & Ors. v. Migfo (Nig.) Ltd. & Anor. (2015) LPELR-24655(CA)** where the court of appeal relied on the Supreme Court decision in the case of **Adekeye v. Akin-Olugbade (1987) 3 NWLR (Pt. 60) 214 at 228** and held that statute of limitation does not apply to allegations of fraud.
- 3.41 Furthermore, in the case of **Arowolo v. Ifabiyi (2002) LPELR-562(SC) Pp.18 – 19, paras. F-G, per Iguh, JSC**, the apex court held as follows,

"It seems to me clear under such circumstance that in equity, no length of time can be a bar to a relief particularly in a case, such as the present, where concealed fraud is involved and no laches on the part of the person defrauded, in this case, the respondent, is established. The above position of law was succinctly laid down in the case of Bulli Coal Mining Co.v. Patrick Hill Osborne and Another (1899) A.C. 351 at 363 (P.C.) where Lord James of Herford delivering the judgment of Her Majesty's Privy Council in England put the matter thus:- "Now it has always been a principle of equity that no length of time is a bar to relief in the case of fraud, in the absence of laches on the part of the person defrauded. There is therefore no room for the application of the Statute (of Limitation) in the case of concealed fraud, so long as the party defrauded remains in ignorance without any fault of his".

- 3.42 In the instant case, the records of this Honourable Court will show that there were seventy (70) candidates sponsored by seventy different political parties who contested the governorship election in Imo State held on March 9th, 2019. The records of this court as per Exhibit A1 transmitted along with the records (i.e. Form EC8D) shows that though a total number of 2,221,008 voters registered for the election, there were 714, 355 valid votes and 25, 130 rejected or invalid votes. Total number of accredited voters in the election was 823,743, while the total votes cast was 739,485, showing a poor

turn out for the election. The records of this Honourable Court also shows that there are 27 Local Governments in Imo State, 305 Electoral Wards and 3523 polling units throughout Imo State.

- 3.43 It is elementary that to satisfy the provisions of Section 179(2) of the Constitution, the person declared winner must have scored the highest number of lawful votes and garnered at least 25% of $\frac{2}{3}$ of Local Governments in the State, in this case 18 Local Governments.
- 3.44 The Record before this honourable court does not show how the Appellants/Respondents met the requirements of Section 179(2) of the Constitution but he deceived the court by making that claim.
- 3.45 The 1st Appellant/Respondent in his testimony under cross-examination admitted being the author of the table of scores contained both in his petition and written deposition using his own calculator. See pages 2372 – 2404 of the records. The 1st Appellant/Respondent and his witnesses each confessed that the polling units results they tendered as emanating from the disputed 388 units which were tendered in bulk from the bar are unclear, illegible and unreadable. All these are borne out by the Record before this Honourable Court.
- 3.46 The cross-examination of the 1st Appellant/Respondent as PW11, the maker of the table discredited the said results showing manifest over voting in several polling units. The evidence of the 1st Appellant/Respondent can be seen on page 2372 - 2404 of the records.
- 3.47 The Record before this Honourable Court on the evidence of the 1st Appellant and his witnesses also show that the purported results or disputed result sheets he tendered contain neither the names nor signatures of the presiding officers who were said to have made them; they do not contain the names and signatures of other party candidates. They also did not show issued, used and unused or invalid ballot papers, neither do they contain the score of other political parties except that allocated to the Appellants/Respondents.
- 3.48 The tabulation of the result wherein the 1st Appellant/Respondent claimed he earned the score that enabled him to overtake the 1st – 3rd candidates in the election (he having come fourth), did not contain the number of accredited voters in each polling unit or total number of votes cast in any of the polling units or even in the entire 388 polling units.
- 3.49 Again, the 3rd Respondent who conducted the election had disowned those purported results, stating very clearly that those

results were suborned by the Appellants as they were not results generated from those 388 polling units.

- 3.50 The DW5 being the INEC official witness who testified on subpoena, one Victor Obieze, clearly told the Court that those results did not emanate from the election. He tendered INEC incident forms also known as Form EC40 G which were admitted in evidence as 63 RD (1) – 63 RD(19).
- 3.51 These oral and documentary evidence from this INEC witness who was on subpoena was conclusive on the point that the alleged results in the 388 polling units dumped on the court through the bar by the Appellants/Respondents were not products of that election but were fraudulently manufactured by the Appellants/Respondents as they did not emanate from the election.
- 3.52 Exhibits 63(RD1) – 63 (RD – 19) show that election in the affected polling units were cancelled either as a result of violence, over-voting, snatching of election materials etc. These documents were clearly tendered in evidence to demonstrate the fraud being complained of in this application.
- 3.53 By the addition of the votes as deceitfully tabulated by the 1st Appellant/Respondent, the number of votes in the election exceeded the number of accredited voters by over a hundred thousand votes, a miracle the Appellants have not explained how that came to be.
- 3.54 It is therefore submitted without much ado that the declaration of the 1st Appellant by this Honourable Court as winner of the election and as having satisfied the requirements of Section 179(2) of the Constitution was obtained by fraud and was also made *per incuriam*.
- 3.55 It is again submitted that the declaration of the 1st Appellant as winner when he did not satisfy the requirements of Section 179(2) of the Constitution is unconstitutional and therefore a nullity.
- 3.56 It is finally submitted that the votes cast being more than the number of accredited voters, constitutes an illegality that has deprived the judgment of this Honourable Court of the character of a legitimate adjudication.
- 3.57 On the issue of onus of proof, it is submitted that the law is now settled that a party seeking a declaratory relief must establish it by credible evidence and cannot succeed on the basis of the weakness of the defence or even on admission.

- 3.58 It is not correct as suggested by the Appellants/Respondents that the Applicants and 3rd Respondent who each denied the appellants claim that results in 388 polling units were excluded and stated that the results tendered were fake or fraudulently procured has by so pleading assumed, a higher burden of establishing the allegation of fraud beyond reasonable doubt.
- 3.59 Even at that, the evidence of the DW5 (the INEC official witness) established beyond reasonable doubt that the purported results claimed by the Appellants/Respondents with their inherent contradictions both on the fact of the document and evidence under cross examination clearly established that allegation.
- 3.60 The Applicants adopt paragraphs 4.57-4.58 (pages 30-35) of their written address in support of the motion to set aside the judgment which detailed the particulars showing that the results presented by the Appellants/Respondents and upheld by this Honourable Court contained obvious frauds and illegalities on the face of the record before this Honourable Court. Examined one after the other, they contain obvious and deliberate concealment of relevant facts and illegalities. Respectfully, it is submitted that no limitation can stop a court from setting aside its decision obtained by obvious concealment and illegalities on the face of its records. In *Mulima & Anor V Usman & 3 Ors* [2014] 16 NWLR (pt 1432) 160, 207 (paras. D-E) and 208 (paras C-D), this Honourable Court restated that when there is concealment and/or fraud, the limitation law does not apply. See also, *Sheldon & Ors V RHM Outhwaita (Underwriting Agencies) Ltd & Ors* [1995] 2 All E.R 558, 567 (the English House of Lords).

FUNDAMENTAL OMISSION IN THE JUDGMENT WHICH MAKES IT A NULLITY

- 3.61 At pages 44-45 of the Lead Judgment by Kudirat M.O Kekere-Ekun, JSC, this Honourable Court held thus:
- (1) *It is hereby declared that votes due to the Appellants (ie. Sen. Hope Uzodinma & All Progressive Congress) from 388 polling units were wrongly excluded from the score ascribed to them.*
 - (2) *It is hereby ordered that the Appellants' votes from the 388 polling units unlawfully excluded from the Appellants' score shall be added to the results declared by the 3rd respondent.*
 - (3) ...

- (4) *It is hereby declared that the 1st Appellant, Sen. Hope Uzodinma polled a majority of lawful votes cast at the Governorship Election held in Imo State on 9th march 2019 and satisfied the mandatorily Constitutional threshold and spread across the state.*

3.62 With the greatest respect to His Lordship, this Honourable Court omitted to state or calculate how those votes it accepted from the pleadings of the Appellants/Respondents as excluded from 388 polling units met the constitutional requirement of section 179(2)(b) of the 1999 Constitution (as amended) which stipulate that:

'A candidate for an election to the office of Governor of a state shall be deemed to have been duly elected where, there being two or more candidates –

(b) he has not less than one – quarter of all the votes cast in each of at least two – thirds of all the local government areas in the state.

3.63 The above omission in the Judgment of this Honourable Court made on 14 January 2020 is fatalistic as it nullified the Judgment and no time limit can be a bar against setting aside the Judgment.

3.64 In *Machael & 759 Ors V Bank of the North (2015) 5 S.C (pt 1) 1*, (Lead Judgment of K.B. Aka'ahs, JSC), this Honourable Court held, at p.37 (lines 2-10),

"Where the steps taken by a court in the course of its proceeding amount to serious procedural irregularity, the mistake or error will render the proceedings a nullity and accordingly its judgment in that respect will be of no legal effect and the inherent power of the court to set aside a judgment that is palpably a nullity could be invoked by a motion or an application by the party affected by the order. See: Okafor & Ors. V Nwude (1999) 7S.C. (Pt. I) 106; Ezeokafor v. Ezeilo (1999) 9 (Pt. 619) 513 at 530.

3.65 We submit that the failure or omission to show how the alleged votes from 388 polling units translated to the constitutional 'not less than one quarter of all the votes cast in each of the at least two-thirds of all the local governments areas in the state' is very fundamental. Accordingly, the cases of *Adigun & Ors V AG, Oyo State & Ors (2) (1987) 2 NWLR (pt 56) 197, 214-215, Obioha V Ibero [1994] 1 NWLR (pt 322) 503, 520, Kamu V Kassim (2012) LPELR 15528(SC) 34-35, Ministry of Lagos Affairs, Mines & Power & Anor V Chief Akin-Olugbade (1974) 11 S.C 9, 14, Ugba V Suswan and Integrated Reality Ltd V Odofin [2018] 3 NWLR (pt 1600) 301, 316* relied upon by the learned counsel to the

(4) *It is hereby declared that the 1st Appellant, Sen. Hope Uzodinma polled a majority of lawful votes cast at the Governorship Election held in Imo State on 9th march 2019 and satisfied the mandatorily Constitutional threshold and spread across the state.*

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Appellants/Respondents in their preliminary objection do not apply to the facts and circumstances of this case in the face of the above fundamental omission evident in the judgment of this Honourable Court delivered on 14 January 2020.

3.66 Also, at p.44 of the lead Judgment, your Lordships held that:

'It is hereby ordered that the Appellants' votes from the 388 polling units unlawfully excluded from the Appellant's score shall be added to the results declared by the 3rd respondent.'

3.67 By this pronouncement, this Honourable Court gave effect to the addition of votes from 388 polling units whereas PW54 (a deputy Commissioner of Police who, at p.37 of the Judgment of this Honourable Court, was stated to have testified on the basis of a *subpoena duces tecum et testificandum* issued to him by the court), testified that the bag he brought contained results from 366 polling units, not 388 polling units. We refer my Lords to Vol. 4 pages 2598-2599 of the Record wherein the following was recorded:

"Tribunal: - The learned counsel for the Petitioners sought to tender 366 Forms EC8A brought to the court by the witness on the basis of a subpoena served on him by this Tribunal.

All the Learned Senior Counsel for the Respondents objected to the admissibility of these documents in evidence and resolved their reasons for doing so till final address.

However, the said 366 Forms EC8A brought by the witness are hereby admitted in evidence and marked as exhibits PPP1 to PPP366 respectively.

When I was subpoenaed through D.I.G Zone 4, I proceeded to Owerri who gave the authority to the D.C in charge of operations to provide these documents and these documents were provided by the authority of the Commissioner of Police Imo State.

Cross-Examination

There could be Presiding Officers but I don't know them. In respect of these 366 polling units there could be Presiding Officers but I don't know them. I did not receive any of these Forms from any Presiding Officer. I don't know all the polling units these 366 Forms relate to. The ones I know are Central Primary School Obolo, Central Primary School

Nkem these are the ones I can remember for now I have the list of these witness deployed. Is not part of the documents I am subpoenaed to produce and therefore I don't have the documents. There is an officer in the I.G's of Police Office that received processes including subpoena. Documents served on the police are received stamped and dated. On exhibit NNN1 there is no stamp of I.G. I got exhibit NNN1 from the petitioner's lawyer. It is not correct that I got exhibits PPP to PPP 366. I was posted to the INEC office on the authority of the C.P. I did not visit any ward collation centre. The police post officers to collation centres. I instructed the officer to deliver the results direct to the operation officer. I did not personally collect any of these exhibits PPP1 to PPP166. The said exhibits were received by our administrative officers and all of them are still alive. They are the ones to testify as to who brought the said documents and when they were brought. I did not tabulate the

scores in exhibit PPP1 to PPP166. I did not observe the entries in any of them. I was the one who sorted the documents out exhibit PPP1 to PPP166 one by one. I did not go through exhibits PPP1 to PPP166 because police are not interested in the scores of the parties. Exhibit PPP1 to PPP166 were bolded by me for the purpose of delivery. Officers do not sign before they collect results sheets.

Emeka

Movements of all are documented. The results sheets as I collected them I put them in a safe and nobody can have access to them without the authority of the Commissioner of Police. The authority in the subpoena was directed to the Commissioner of Police and the Commissioner of Police directed the Duty Commissioner to render the documents. I did not mutilate the subpoena that was served on me. I wrote something on exhibit NNN3 to NNN18. I am surprised that the number of Forms I tendered are not up to the number I told the Hon. Tribunal. Exhibits PPP1 to PPP166 were not directly submitted to me.

I cannot mention the name of the officers and the polling units they work. I cannot know whether there mutilations or tempering in exhibit PPP1 to PPP366. I did not file any document before produced exhibits NNN1 to NNN366.

- 3.68 The question that the judgment did not and indeed cannot answer is where did your Lordships see the evidence of results from 388 polling units which this Honourable Court ordered to be added to the Appellants/Respondents. PW54, whose evidence your Lordships

relied upon, testified that he came to tender results of only 366 polling units. Even under cross-examination, he admitted that the result he tendered was even less than the number (366) he alleged he had come to tender. Even going by his stated number of 366 polling units, nothing in the Judgment explained the difference, particularly the number of votes in 22 polling units that were inadvertently added by your Lordships to 366 to make up the 388 polling units. While the Appellants/Respondents in their pleadings claimed that votes from 388 polling units were excluded, the Police Officer, PW54 who tendered the purported excluded results testified that he had and was producing results of only 366 polling units and not 388. Curiously, the Judgment of this Honourable Court upheld results from 388 polling units instead of 366 polling units thereby mistakenly inflating the votes in favour of the Appellants/Respondents.

3.69 Accordingly, the cases of **Okorocha V PDP [2014] 7 NWLR (pt 1400) 213, 279** and **Integrated Reality Limited V Odofin [2018] 3 NWLR (Pt. 1606) 301** canvassed by the Appellants/Respondents to the effect that this Court has become *funtus officio* are of no application in the circumstances of this case.

3.70 In **RASHIDI ADEWOLU LADOJA V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2007) LPELR-1738(SC)**, this apex Court further stated:

"It is settled law, that when an act is declared null and void, the position is that from the angle of the law, the act never took place. It is completely wiped off and considered as extinct and deemed never to have existed. In Adefulu v. Okulaja (1996) 9 NWLR (Pt. 475) 668 at 693, cited by 4th respondent's counsel, this court Per Ogundare, JSC, restated the position in these words:

"Much consideration was given by the trial judge to the fact that the 1st defendant/appellant occupied the throne of Olofin at Ilishan-Remo de facto from March 1981 up to 7 December, 1989'. With profound respect to the learned trial judge, I think he was, without realizing it swimming in a deep sea. When an appointment is declared null and void, all it means is that the appointment was never made and all acts of the purported appointee when he de facto held the appointment are unlawful, null and void and of no effect. 'The result of a decree of nullity of marriage is that not only are the parties not now married but they never were - Per Russell, J. In Re Wombwell's Settlement (1922) 2 CD 298 at P. 305 as it was put in an

3.71 On the strength of the foregoing submissions, we respectfully urge your Lordships to resolve this issue against the Appellants/Respondents and accordingly dismiss this preliminary objection.

4.0 CONCLUSION

4.1 The totality of our submissions in this application puts it beyond conjecture that the preliminary objection of the Appellants/Respondents lacks merit and should be dismissed.

4.2 All the arguments proffered by the Appellants/Respondents in their preliminary objection were made in utter disregard of the Supreme Court's inherent jurisdiction to set aside its decisions in deserving circumstances as being sought in our application. The powers exercisable by the Supreme Court under section 6(6)(a) are, by all means and to all intents and purposes, sufficiently wide in scope and cannot in any way whatsoever be circumscribed by any other provision of the Constitution or any rule of law as argued by the Appellants/Respondents including but not limited to the provisions of Order 8 Rule 16 of the Supreme Court Rules as well as sections 235 and 285(7) of the 1999 Constitution (as amended).

4.3 Accordingly, we urge your Lordships to dismiss the preliminary objection and grant the reliefs sought in the Applicants' application dated 17 February 2020.

DATED THIS 28TH 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
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LIST OF STATUTES

1. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED).
2. ELECTORAL ACT (AS AMENDED)

LIST OF CASES

1. OKOYE V N.C&F CO. LTD (1991) 6 NWLR (PT.199) 501,
2. SKEN CONSULT V UKEY (1981) 1 SC 6 AT 26,
3. DINGYADI V INEC (2011) 10 NWLR (PT.1255) 347 AT 412 – 413,
4. UGBA V SUSWAM (2014) 14 NWLR (PT. 1427) 264 AT 341 – 342.
5. CITEC INTERNATIONAL ESTATES LTD V FRANCIS (2014) 8 NWLR (PT.1408) 139
6. CITEC INTERNATIONAL ESTATE LTD V FRANCIS (SUPRA) AT PAGE 164 PARAS C – E
7. OKOYE V N.C.F & CO. LTD (SUPRA) AT PAGE 538 PARAS C – D
8. CRAIG V KAMSEEN (1943) 1 ALL ER 108, R.
9. LAUWER IMPORT-EXPORT V JOZEBSON INDUSTRIES CO. LTD (1988) LPELR-2934(SC).
10. UGWUMBA UCHE NWOSU V ACTION PEOPLE PARTY IN SC1384/2019: DELIVERED ON 20/12/2019.
11. MUSTAPHER V. GOVERNOR OF LAGOS STATE (1987) 2 NWLR (PT. 58) 539
12. R. LAUWERS IMPORT-EXPORT V. JOZEBSON INDUSTRIES CO. LTD. (1988) LPELR-2934(SC) AT 54 PARAS D-F
13. SKENCONCULT V. OKEY (1981) 1 SC 6,
14. OJIAKO V. OGOEZE (1962) 1 ALL NLR 58,
15. OGOEZE V. ORJIAKO (1962) 1 SCNLR 112
16. IGWE V. KALU (2002) 14 NWLR (PT. 787) 435 @ 453 – 454.
17. DUZU V. YUNOSA (2010) 10 NWLR (PT. 1201) 80 @ 118 PARA A – C; AND A.T. LTD. V. ADH LTD. (2007) 15 NWLR (PT. 1056) 118.
18. SANI V. OKENE LOCAL GOVERNMENT (2005) 14 NWLR (PT. 944) 60 @ PAGE 74 – 75 PARA H – A.
19. ADEJOMO V. OLAWAYE (2014) 12 NWLR (PT. 1421) 252 @ 281 PARAS B – C.
20. EJUARA V. IDRIS (2006) 4 NWLR (PT. 971) 536 @ 566 PARA A.
21. BESSY LTD. V. ONI LEGION NIG. LTD (2010) 4 NWLR (PT. 1184) 300
22. NKOS V. NPA (2007) 13 NWLR (PT. 1051) 392 AT 427 – 428, PARAS H-A
23. ADIMORA V. AJUFO & ORS (1988) LPELR-82(SC)
24. AROWOLO V. IFABIYI (2002) LPELR-562(SC) PP.18 – 19, PARAS. F-G
25. SHELDON & ORS V RHM OUTHWAITA (UNDERWRITING AGENCIES) LTD & ORS [1995] 2 ALL E.R 558, 567
26. MACHAEL & 759 ORS V BANK OF THE NORTH (2015) 5 S.C (PT 1) 1,
27. RASHIDI ADEWOLU LADOJA V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2007) LPELR-1738(SC)

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