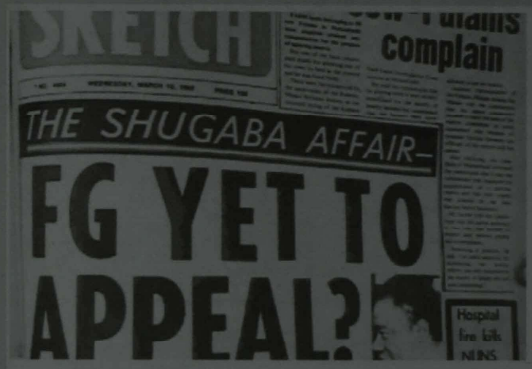


CHAPTER TWO



NOTABLE DECISIONS I

In this chapter, we tell the story of a few landmark decisions made by the Court, in no specific order but based on particular cases in history.


SKETCH

complain

THE SHUGABA AFFAIR–

FG YET TO APPEAL?

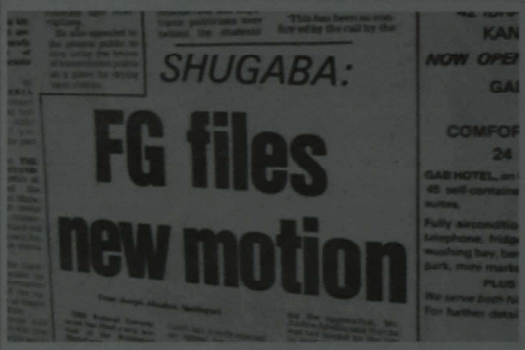
Hospital fire kills NINE


Daily Times

Probe members threatened

'I'M A NIGERIAN'

Shugab swears to an


SHUGABA:

FG files new motion


DAILY SKETCH

'I WAS WRONGLY REMOVED'

GOV MUSA APPEALS


THISDAY

Yar'Adua Floors Buhari, Atiku

...Battle Shifts to Supreme Court

Appeal Court Orders Gov Nyako to Vacate Office


THISDAY

Appeal Court Stops Ngige's Removal

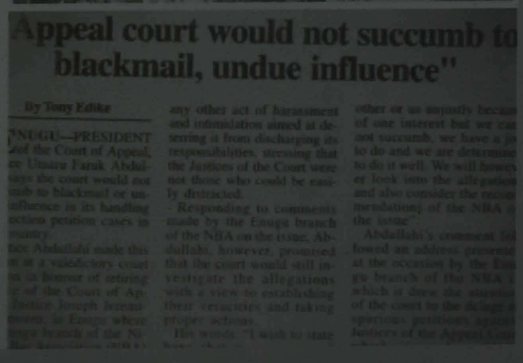
...Ekwueme, Anyaoku, Others to Visit Aso Rock

Shell Acquires Oil Bloc for $210m


THE GUARDIAN

CONSCIENCE, NURTURED BY TRUTH

Appeal Court voids Public Order Act


Appeal court would not succumb to blackmail, undue influence"

By Tony Edike

ENUGU—PRESIDENT of the Court of Appeal, Justice Umaru Faruk Abdullahi said the court would not succumb to blackmail or undue influence in its handling of election petition cases in the country.

Justice Abdullahi made this statement at a valedictory court session in honour of retiring Justice of the Court of Appeal, Justice Joseph Ikechukwu Ayoola, in Enugu where he was a Judge of the Federal High Court, Enugu Judicial Division.

Responding to comments made by the Enugu branch of the NBA on the issue, Abdullahi, however, promised that the court would still investigate the allegations with a view to establishing their veracities and taking proper actions.

He said: "I wish to state that the Court of Appeal will not succumb to any other act of harassment and intimidation aimed at deterring it from discharging its responsibilities, stressing that the Justices of the Court were not those who could be easily distracted.

APPEALS

The journey so far for the Court of Appeal is a good one, especially with the bench loaded with brilliant men and women. The Court has made several landmark pronouncements that have shaped the course of the Nigerian legal system and indeed every facet of the nation's affairs. Its judgment cover a variety of issues ranging from politics to marine, commerce and finance as well as land and chieftaincy matters.

Impacting greatly by helping to guard against arbitrariness and capriciousness, it has aided in determining what the law is with regards to different issues of law. The court may affirm the decision of the lower court where it considers that the court interpreted and applied the law to the particular issue appropriately. Conversely, it may overrule the judgment of the lower court where it finds that the court erred in arriving at its decision by failing to interpret the law correctly or failing to consider the facts that were placed before it. The appellate process is therefore a very significant tool in maintaining institutional sanity, checkmating lower court judges and building consensus on the way the system should work.

In a year, the Court gets about 2000 appeals at the various divisions. The highest are from Lagos and Abuja divisions. On average, there would be close to 300 appeals filed in the list of the divisions per year. Most of the appeals are filed in the divisions and not the headquarters. The President of the Court sits on some appeals and from time to time, might go to any of the divisions to head the panel there.

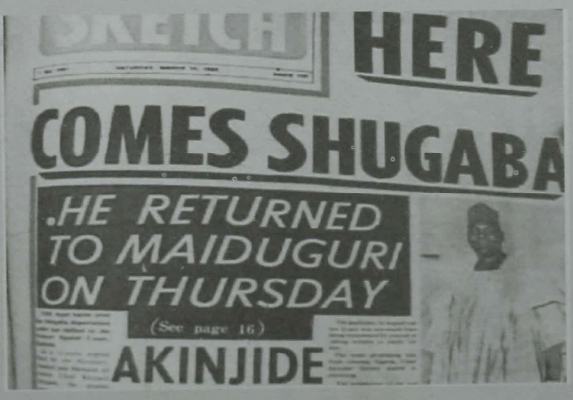
In the past, appeals took so much time before they were disposed of but currently, any appeal filed will be set for hearing and possibly heard in less than a year. Some of the appeals filed early in the year would have been disposed of by the last quarter. These are not just election petitions but regular appeal cases.

SHUGABA DARMAN


DAILY SKETCH

SHUGABA TOPS

• JUDGE ON HIS RUC


SKETCH

HERE COMES SHUGABA

.HE RETURNED TO MAIDUGURI ON THURSDAY

(See page 16)

AKINJIDE

The case of Shugaba Darman v. The Minister of Internal Affairs ([1982] 3NCLLR at Pg.915), a locus classicus on the enforcement of the rights of a Nigerian citizen was one of the matters handled by the Court in its early years. On June 12, 1982, the Court of Appeal, Kaduna division, held that a citizen by birth cannot be deprived of his citizenship.

Prior to the appeal, a High Court of Bornu State presided by Justice Adefila heard the case and found primarily that Alhaji Abdurahman Shugaba Darman was a Nigerian and not an alien from the Republic of Chad. Also, the court stated that Government could not take refuge in the concept of its immunity in matters of state security, as what was in issue was the breach by Government of the fundamental human rights of Shugaba under Section 33 of the 1979 Constitution. Justice Adefila then made an order suspending the deportation, thereby giving liberty to Shugaba to re-enter Nigeria. The Federal Government challenged that decision and it came to the Court of Appeal.

Shugaba Darman tells his story!

> *"During the time of GNPP (Great Nigeria Peoples Party), I was persuaded to decamp to NPN but I rejected all offers made to me by the NPN. As a result of that, they planned this evil against me. In 1978, we started the Nigerian Peoples Party (NPP). From there, we changed to GNPP. It was at that time that they continued to pressurise me to leave GNPP to join NPN (National Party of Nigeria), but I still refused. When we started political campaign in Borno, we won election and formed the government at the state level. We also won the seats of Senate, House of Representatives, State House of Assembly with full majority. NPN (National Party of Nigeria) was not happy with the rejection of their overtures. During the campaign, I lectured our party faithful and they accepted my lectures. The NPN then felt that I was too vocal for their liking and I was seen as a very strong pillar behind the GNPP. They said that I was from Chad and that I would be deported to Chad. But they were so myopic to have forgotten that I was born in Maiduguri and my mother is from Konduga Local Government, 28 km from Maiduguri. The then ruling party, NPN used their federal might to deport me to Chad. They alleged that I was a Chadian and a security threat to Nigeria. They carried out their plans without the knowledge of the then President, Alhaji Shehu Shagari. The then Interior Minister, Alkali Bello Maitama brought a letter on January 25, 1980. Some immigration officials came around 6.00 a.m. and took me to Chad.*
>
> *"Shortly after I was deported, my mother and my brother sued the Federal Government over their action. The court nullified the deportation order and asked me to come back. I came back. The Federal Government had a lawyer and I also had a lawyer. We went on with the case and God gave me victory.*

I won the case on May 25, 1980. The court said that Federal Government was wrong and ordered that I should be paid the sum of N350,000 as compensation. Rather than pay, the Federal Government proceeded to the Federal Court of Appeal in Kaduna. I also won the appeal but the court reduced the compensation to N59,000. I was paid the compensation during the Ibrahim Badamasi Babangida regime."

Hon. Justice Abubakar Bashir Wali, JSC, a retired justice of the Supreme Court who was on the panel that heard the appeal recounted the experience.

"When the matter came to us at the Court of Appeal, the quorum of the Court was, Hon. Justice Maman Nasir, who was President of the Court. He presided. Then, Hon. Justice Coker, myself, Hon. Justices Uche Omo and Karibi Whyte.

"Shugaba, the majority leader in Bornu State House of Assembly under the GNPP, led by Alhaji Waziri Ibrahim was deported by the Minister of Internal Affairs on the alleged ground that he was a foreigner from Chad Republic and that he was a danger to national security. It was also alleged that he wanted to kill Alhaji Kam Salem, Alhaji Mai Deribe, Alhaji Barka and Alhaji Abana. These were very high ranking Nigerians at that time. He denied all the allegations insisting that the allegations being a serious one, he should be heard, as he was entitled to fair hearing in accordance with the Constitution.

"Aside from the assertion that Shugaba was not a Nigerian, the Attorney - General of the Federation who represented Federal Government, argued firstly, that the Constitution had no application where the issue at stake was national security. Secondly, that where the presence of an individual is a danger to the security of the state, it is not a matter for the court to decide but rather it is an executive decision or order. Thirdly, that where national security and the freedom of an individual are at stake, the freedom of an individual must give way... Fourthly, that the President enjoys immunity and therefore has been wrongly joined as a defendant and that the immunity flows to the Minister and other defendants in the suit.

"In the lead judgment written by Justice Coker, we dismissed the appeal and upheld the decision of the High Court of Justice, Borno, State. Justice Nasir however dissented. He did not agree with our decision but the majority decision is the decision of the Court. The Federal Government went on appeal to the Supreme Court and there, the decision of the Court of Appeal was affirmed."

Contributing to the story, Hon. Justice Uthman Mohammed, JSC, a retired justice of the Supreme Court made an observation.

"When Darman was declared to be a Nigerian and the court directed that he should be brought back, the nice thing about it was that President Shehu Shagari did not hesitate. He directed Shugaba Darman to come back to Nigeria and continue to live peacefully. I liked that very much because the best thing for any government is to abide by the rule of law. If that is done, this country will go a long way in remaining peaceful and our progress will be tremendous on the line of security and good government. If a court decides a case and the executive refuses to abide by the decision, that would be very bad and there would be no law and order."

BALARABE MUSA



Kaduna High Court rules—

BALARABE STANDS REMOVED

RAMADAN TIMINGS
See centre page every day

D-Governor ordered to take oath of office

New Nigerian Newspaper

federation.

He said that the time-lag between the submission of draft budgets to the National Assembly and their consideration and adoption by the National Assembly was not a satisfactory state of affair.

lender a note for the NNSC and collect rice only to sell to traders at very high prices in order to make quick money.

Impeachment panel's counter-appeal upheld:

COURT REJECTS MUSA'S APPEAL

From OWEN ANIKWUE
News Staff

THE substantive appeal before the Federal Court of Appeal filed by Alhaji Balarabe Musa against the refusal of the Kaduna High Court Judge to order a stay of proceedings of the impeachment committee, has been rejected by the appeal court.

The Federal Appeal Court, presided over by Mr. Justice Adesakan Adeniola assisted by Mr. Justice U. Maidoreova and Mr. Justice A.G. Karibi-Whyte also upheld a counter

(b)(a) could not be relied upon to grant an application for any of the prerogative orders. He added that in his view, the provision of Section 270 (10) of the Constitution is not in conflict with Section 6 (6) (a) nor was it derogated from it.

Mr. Justice A. Adeniola said he agreed with the submission of Mr G.O.K. Ajayi that the provision read

Mr. Justice Adeniola in support of his judgement cited various Supreme Court of Nigeria decisions including that of May 15, 1981 between Senator A.A. Adesanya and the President, to show that the provisions of Section 132(1) and 170 (10) excluded the jurisdiction of any court in the matters dealt with by those sections.

"The end result of all this is that the appeal of the appellant fails and that of the respondents, succeeds," he added. He awarded no costs to the



DAILY SKETCH

'I WAS WRONGLY REMOVED'

GOV MUSA APPEALS

Alhaji Balarabe Musa was elected governor of Kaduna State in 1979 under the platform of the Peoples Redemption Party (PRP). NPN, which was the dominant party challenged his election unsuccessfully. As a PRP governor, he had problems with the Kaduna State House of Assembly, which was dominated by NPN members. Musa was unable to form a cabinet because he refused to nominate NPN members and as a result, the House refused to ratify his candidates. Eventually the House impeached him in June 1981, making him the first elected state governor to be removed from office via impeachment.

He challenged his removal in the courts on the basis that the process was in contravention of constitutional provisions. The matter eventually came to the Court of Appeal, Kaduna which declined jurisdiction.

Part of the judgment reads:

> *"In Nigeria under Section 170 of the Constitution, the whole exercise is begun by members of the House. Even the Speaker who appoints the committee of seven persons to investigate the allegation against the governor or his deputy must have the approval of members of the House of his nominees. It is only when the committee reports that the allegation has not been proved that members of the House of Assembly were not called to finish the work it has begun. The whole exercise cannot be said to guarantee independence or objectivity and impartiality by the norms of Section 33 (1) of the Constitution. It is a trial by the legislative organs of the state and the law it administers is lex parliament as Section 170 (ii) lays down; such law is hardly the ordinary law the normal courts administer.*
>
> *"The judgment the House gives is a legislative judgment. Does such a judgment come in for a review by the ordinary courts of the land? That is where the true meaning and intendment of Section 170 (10) comes in. "The obvious end that Section 179 of the Constitution was designed to serve is that the governor or his deputy could only be removed by the act and doings of the legislature and subsection (10) of it is put into stop any interference with any proceedings in the House or the committee or any determination by the House. It follows from the premise of this that no court can entertain any proceedings or quash the determination of the House of Committee.*
>
> *"It is a political matter. For the court to enter into the political thicket as the invitation made to it clearly implies would in my view be asking its gates and its walls to be painted with mud; and the throne of justice from where its judgment are delivered polished with mire."*[2]

THE NAFIU RABIU CASE


New NIGERIAN

EDITORIAL

Death of a Statesman

₦100,000 contract raised to ₦245,000

NAFIU RABIU CONVICTED


also a Senior Advocate.

When the judgment was given

See Page 2, Col. 1

NAFIU RABIU

LATE HAJIYA FATI

implementation of the labour laws designed to help them.

Governor Lar said that since workers had a definite role to play in nation-building, they should be rest assured that the government would try to meet their demands within its financial resources, in an effort to create and maintain economic stability in the country.

generality of the public when journalists published shamed half truths and pandered towards politics at the expense of national interest.

Replying, the President of the guild, Chief Chris Okolie pledged that the Nigerian Press would work relentlessly to uphold our constitution.

Nafiu Rabiu jailed 4 years

From Front Page, Col. 1

the evidence adduced by both prosecution and the defence.

He said that the convict did not give evidence on oath in his own defence during the trial and was not cross-examined because he did

leading counsel for the convict, Chief F.R.A. Williams, the president said that the offence committed by the convict was not an offence under section 221 of the Penal Code — culpable homicide punishable with death but that of

involved.

Before passing a sentence of four years on the accused, Mr. Justice Mamman Nasir drew the attention of the convict to the circumstances and the gravity of the offence he had committed.

Quite a number of people were divided on the celebrated 1980 case of Nafiu Rabiu, son of Kano State based billionaire businessman, Isiaku Rabiu, alleged to have murdered his wife, Hajia Fati Mohammadu Nafiu in their Kano residence. The Court of Appeal convicted Rabiu for the offence of culpable homicide not punishable with death and sentenced him to 4 years imprisonment. While many who expected a more severe punishment were appalled by the judgment, others claimed that the Court had by that decision shown that justice was indeed for all.

When the prosecution finished giving evidence at the High Court in Kano, Justice Jones, the Chief Judge of Kano State who presided, held that from the evidence advanced by the prosecution, Rabiu had a case to answer. The accused however, chose not to give evidence. Instead, he called expert medical evidence to challenge the evidence of the witnesses called by the prosecution as to the cause of death. About four highly distinguished pathologists were summoned to give expert medical evidence.

At the end of the trial, the Chief Judge noted that the charge against Rabiu had specified, the death was caused by strangulation. He also added that after careful consideration of the matter, it was clear that the act was not perpetrated by an outside intruder as suggested by Rabiu. However, relying on the expert medical evidence, Justice Jones stated that he could not find it proved beyond reasonable doubt that the death was due to strangulation. He therefore, acquitted and discharged him. Outraged, the State Government through its counsel, Chief Kehinde Sofola, SAN, went on appeal. Chief Rotimi Williams, SAN, who represented Rabiu, challenged the appeal on the basis that the Court had no jurisdiction to hear it.

The hearing was really big according to Mallam Mahmud Abubakar, a foundation staff of the Kaduna division where the appeal was heard and who witnessed the trial. The Court premises and its environs, he recalled, were swarmed by people who had come to witness what would become of the son of a rich man that killed his wife. Not a few thought he would go scot free considering his pedigree. The High Court in his home state Kano had pronounced him free, so the question in the minds of many was, what would the Court of Appeal decide?

The Court apparently had a different idea. Dismissing the decision of the High Court in Kano, the Federal Court of Appeal as it was then called, allowed the appeal, set aside the order of acquittal and convicted the appellant for the offence of culpable homicide not punishable with death and sentenced him to 4 years' imprisonment. On the issue of jurisdiction, Justice Mamman Nasir, who read the lead judgment had this to say:

> *"It seems quite clear from the provisions of Section 284(2) of the C.P.C.' that a prosecutor in Kano State may appeal to this court as of right against acquittal on any question of law from a decision of High Court sitting at first instance. In my view, that power was given to the prosecutor by virtue of the last portion of section 222(a) of the constitution which enables the person or authority at whose instance an appeal in criminal proceedings can be lodged, subject of course to the powers of the Attorney-General of Kano State under S.191 of the Constitution to take over and or continue or discontinue such proceedings. This power exercisable by the prosecutor under Section 284(2) C.P.C. is in pari materia with the powers contained in sec. 220(1)(b) of the Constitution. Hence in my view, there is no conflict between the powers contained in the two sections.*
>
> *"Consequently, I am of the opinion that a prosecutor may appeal as of right to this court both under the Constitution of this country as well as under the Criminal Procedure Code of Kano State...*
>
> *"The terms 'decision' has been interpreted in Section 277 of the Constitution to mean 'in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or*

recommendation. In view of this definition, the contention of Chief Williams that Section 220(i) (b) of the constitution only permits of an appeal in non-final decisions is untenable.[4]"

Upset by the decision of the Court and his conviction, Rabiu, appealed to the Supreme Court contesting that the Federal Court of Appeal had no jurisdiction to hear the appeal and that it was wrong in law to have entertained the appeal at all and should have dismissed it. The Supreme Court dismissed his appeal and he served his sentence.

FORCEFUL ACQUISITION OF PROPERTY BY GOVERNMENT

The suit arose when a four-storey building situated on a plot of land lying opposite the Specialist Hospital, G.R.A., Benin City was forcefully taken away from the owner by the Military Government of Bendel State. The plaintiff, Mr. Aideyan, had bought the land from one Owono Ogbemudia Asemota, in 1975. Aideyan proceeded to erect a four-storey building on the plot. But by a notice published in the Bendel State Gazette No.219 of April 29, 1976, the Government of Bendel State claimed to have acquired the property for public purposes, i.e: office premises. Despite protests by the plaintiff against the acquisition, the government held on to the property. At a point they offered to pay him N400, 000.00 as compensation for the purported acquisition, but he refused and went to court.

The complaint of Aideyan in the trial court was that no personal or any due notice as prescribed by law was served on him before the State Government wrestled the possession of his property from him. The case of Bendel State Government was that they sent a registered letter to him and then published notices of the acquisition in the Observer Newspaper and the Government Gazette. Nothing was however served on Aideyan before the publications. As a result, he denied receipt of the letter or seeing any notice of the acquisition.

After hearing, Justice Moje Bare who was the trial judge, made important findings of facts. He held that though the land in question was indeed compulsorily acquired by government, the acquisition occurred on April 29, 1976, before the Public Lands Acquisition (Miscellaneous Provisions) Decree, of 1976, was promulgated on July 20, 1976. According to Justice Bare, the Public Lands Acquisitions Law of Bendel State, Cap. 136, could not have been used to acquire what was already State land. Once such a land has been leased to a person, he further explained, possession can only be resumed by the State according to the law, particularly for the limited purposes specified in Section 24 of the Law .

He stressed that the limited purposes specified for in Section 24 of the Law are: *"...roads, railways, canals and tramways"*, but that even if such a land could be acquired compulsorily, on the evidence before him, a notice of the acquisition was not served upon the plaintiff as provided by law, before it was published in the Gazette, the Nigerian Observer Newspaper and by hand bills placed on Oba's Palace in Benin.

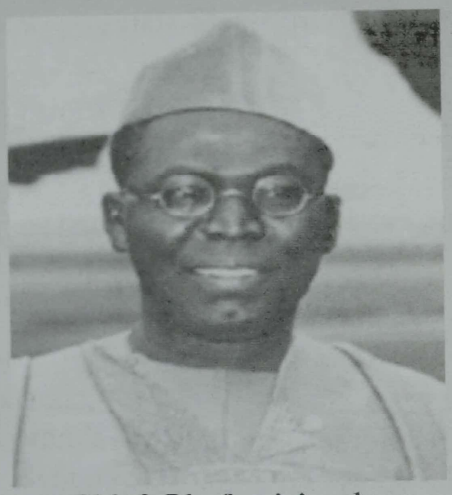
Meanwhile, he pointed out that the registered letter dispatched to the plaintiff was returned unclaimed. Finally, he proclaimed that the property was not compulsorily acquired as required by law and that the purported acquisition was a nullity. Bare then gave judgment in favour of Aideyan and ordered that he be paid what the total value of letting the property to the respondent would have been, calculated from the date of the purported acquisition.

The Court of Appeal, Benin division, in the leading judgment read by Justice Abai Ikwechegh upheld this decision. The Court concurred with the High Court that compulsory acquisition of the land for public use as envisaged by the Land Acquisition Act was not complied with as the property in issue had been acquired for use as office block. Section 24 of the Act, the Court added, describes the amount of the land which could be compulsorily taken by government and for what purposes as: *"...a state land measuring more than 200 acres for specified undertakings - roads, railways, tramways, canals, water channels or trigonometric sections, and similar objects."* Aideyan's land on which the property is situated is only one plot.

On appeal to the Supreme Court, Bendel State Government lost out. The apex court declared that:

> *"...what the Court of Appeal did in the matter was only consistent with the justice of the case and in accordance with the law and rules under which it operates. "This Court has moved far away from strict adherence to mere technicalities at the expense of substantial justice. It does not now stand akimbo to watch helplessly in situation where justice will lie prostrate and be trampled down simply because mere technical rules must be upheld. It will rather lean on the side of the spirit of the rules where to do so will result in real justice to the parties in litigation. I should therefore not allow the appellants to hang on a tenuous twig of technicality and thereby defeat substantial justice."*[6]

12 TWO - THIRD



Chief Obafemi Awolowo



Alhaji Shehu Shagari

There were five presidential candidates during the August 11, 1979 presidential elections. Prominent amongst the five were Alhaji Shehu Shagari and Chief Obafemi Awolowo, SAN. On August 16, the Returning Officer announced that Shagari had been elected as President. Four days later, Awolowo petitioned the election tribunal contending that Shagari had not been duly elected in accordance with Section 34 (a) (i) and (c) (ii) of the Electoral Decree, 1979.[7]

The election results showed that Shagari had received 5,688,857 votes while Awolowo got 4,916,561 votes. While Shagari obtained a quarter of the votes in 12 states, Awolowo got a quarter of the votes cast in six states. In Kano however, Shagari received 243,423 votes, 19.94% of the total votes cast. Had he polled 25% of the votes cast in Kano Sta , he would have had a quarter of the votes cast in 13 states and under , his victory would have been unquestioned.

For want of 5.06% of the votes in Kano State, Shagari narrowly failed to satisfy Section 34 (a) (i). The presidential election required that the winning candidate must have obtained twothird of votes from all the states.

Chief Awolowo's petition for a determination that Shagari had not been duly returned, resulted in the now famous litigation known as the 12 two-third case. At the election tribunal sitting at the Lagos Division of the Court of Appeal, Awolowo contended that Shagari needed to get two-third of 19 states to succeed in the election but got 12 two-third. He then asked the Court to determine whether under of the Electoral Decree, two-third of a state synonymous with two-third of the total votes cast in a state or two-third of votes cast in the territorial or physical areas of the state. Another question was, whether two third of 19 states, was 13 or 12 two third.

It is ironic that the process leading to this election which had a clear, minimum level of support throughout Nigeria raised the awkward question: "In how many states must a

quarter of the votes be received to satisfy the requirement in paragraph (c) (ii) of the Electoral Decree? Is two-third of 19 states for this purpose 13 states or only 12 two third?"

Section 34 (c) (i) and (ii) of the Decree provided that:

"A candidate for an election to the office of the President shall be deemed to have been duly elected to such office where-

(a) ....
(b) ....
(c) There being more than two candidates
(i) he has the highest number of votes cast at the election; and
(ii) 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."

The Court later held that two-third of 19 states was 12 two-third. Among those who heard the petition were, Justices Aseme, Kazeem and Wali. Their thinking was that if Shagari got 12 two -third of votes, he had met the requirement needed to win the election.

Awolowo headed to the Supreme Court where he additionally sought to know what the duty of the court was, where there were two possible meanings conveyed by the words of the statute in question. Upholding the decision of the Appeal Court to the effect that two-third of 19 states was 12 two-third, the Supreme Court in addition stated that it was the duty of the Legislature to interpret the words as used by the Legislature and that even if the words were ambiguous, the liberty of the court to veer outside it was strictly limited.

Justice Kayode Eso, JSC, differed. In his dissenting opinion, Eso held that 12 two-third of 19 states could not possibly be 13. Had Shagari secured votes in 13 instead of 12 two - third of the states, it would have been a clear win. However, he obtained 12 two-third instead of 13 which would have made up/amounted to the two-third he needed to win. In Eso's view, there should have been a re-run of election in Kano State instead of approximating 12 two-third to 13.

For Alex Izinyon, SAN, a dissenting judgement is in order because it could be revisited in the future. His words:

> *"...the dissenting judgment of Kayode Eso on the issue of 12 two-third, didn't agree with the majority. In his view, there was no way 12 two-third could be approximated to 13 as the majority judgment did.*
>
> *But, the lawmakers later decided that if you have a fraction, it should be approximated to the nearest whole number. This shows that dissenting*

judgments are useful to the lawmakers in making a law so as to avoid this kind of scenario."[8]

THE POWER OF *IJBAR*

Kaduna division of the Court on December 11, 1985 handled the first case which showed that under Islamic law, a father could give his daughter out in marriage, even if she does not like the husband.9

It also, declared that once a lawyer has been enrolled in the Supreme Court to practice in Nigeria, no court shall put an additional qualification on him as a prerequisite to his appearance before it. Again the Court stated that, any number of lawyers can appear and represent litigants in any court or tribunal established under the Constitution or any law .

In the Maliki Islamic School of Law, a father has the power of *Ijbar* to force his daughter to marry even if she does not like the suitor. However, if he gave her a choice between suitors A, B, C for instance, and she selected one, the father has no alternative, but to go with the person she selected. The power of *Ijbar* no longer applies.

Uthman Mohammed who was on the panel which heard that appeal narrated an interesting story relating to this case.

Karimatu Yakubu, a 19-year old girl from Niger State was refused by her father, Yakubu Paiko, from marrying her choice suitor, Mahmoud Ndatsu, a Permanent Secretary. He offered her another man. She refused and insisted on her younger suitor. The father was adamant that he did not like her choice. His argument was that the man had not been polite to him. Actually, he wanted her to marry an older man who was his friend but she refused. The question then was why did he give her a choice of suitors? At any rate, the angry father tried forcing her to marry the old man but she ran to Sokoto. Together with her suitor, they met the Late Sultan Abubakar and laid their complaint. The Late Sultan then wrote a letter to the Emir of Minna, telling him the father should allow her marry the person she wanted since he had earlier given her a choice of suitors. But, before they arrived Minna, her father had assembled people and solemnized the marriage between her and the old man. On realizing what had happened, she went straight to court. The Alkali listened to both parties and wrote a judgment against her father. Her father appealed to the Upper Area Court which is the Court above the Area Courts presided by the Alkali and lost there also. Undaunted, he proceeded to the Sharia Court of Appeal where he succeeded. This court in its judgment of May 23, 1985 reversed the decisions of the other courts and directed her to go and observe the nine months waiting period called Istibra, so that it could be ascertained if she was pregnant. Not giving up, she appealed to the *Istibra* Court of Appeal (as it was then called).

When the matter came before the Appeal Court, the Justices decided to first discuss the issue of lawyers' appearances in courts. In the course of this matter, a lawyer who

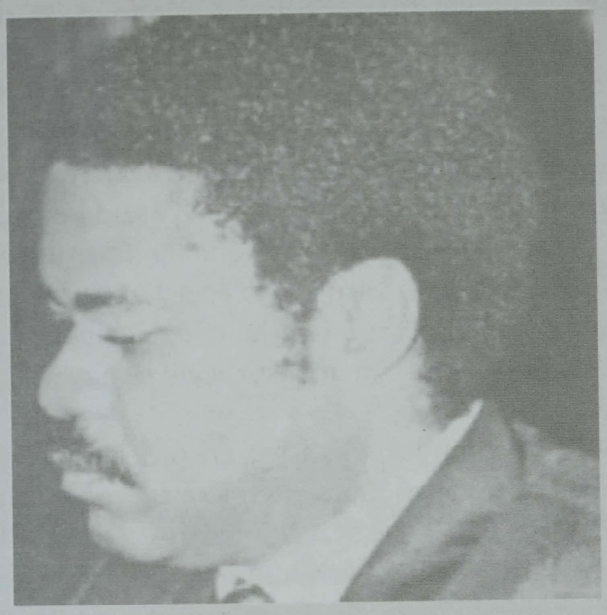
appeared before the Sharia Court of Appeal was sent out. According to the Sharia Court of Appeal, lawyers were not accepted and could not appear before it. The lawyer appealed against this decision. Before the 1979 Constitution came into operation, lawyers were not permitted to appear before Alkali Courts, the Sharia Courts of Appeal and even Customary Courts. The 1979 Constitution was however silent on this subject. It had neither stopped nor said lawyers should appear before the Sharia Courts of Appeal or Area Court. In view of this silence, the Appeal Court held that since there was no prohibition in the 1979 Constitution over counsel appearing in Area/Sharia or Customary Courts, all lawyers could appear before any of the courts. On the exclusion of Karimatu's lawyer, the Court announced that:

> *"...the exclusion by the Sharia Court of Appeal of the legal practitioner representing the appellants from taking part in its proceedings is a serious violation of the provisions of the 1979 Constitution. Its decision and judgment is therefore a nullity."10*

"It became a locus classicus with lawyers from every part of the country requesting for copies of the judgment," Mohammed recalled.

On the substantive issue, the Court gave judgment in favour of Karimatu. It held that her father was wrong and the power of Ijbar to force her to marry was foregone, because he gave her a choice between suitors. Once a man does that, he loses the power to force his daughter into marriage.

DELE GIWA



Dele Giwa

On Sunday, October 19, 1986, Mr. Dele Giwa, a journalist and Editor in-Chief of a Weekly Magazine, NEWSWATCH, was killed in his residence at Ikeja in Lagos State by a parcel bomb. On November 3, 1986, Chief Gani Fawehinmi, Dele Giwa's friend and lawyer presented a 39 page document containing all the details of the investigation he had conducted, as well as an information accusing Colonel Halilu Akilu, the Director of Military Intelligence and Lt. Col. A.K. Togun, Deputy Director, State Security Service (SSS) of Giwa's death to Lagos State Director of Public Prosecution (DPP). Fawehimi on the same day requested the DPP to exercise discretion to either prosecute or decline prosecuting the two army officials. But that should he decline, he should endorse a certificate to that effect on the information he submitted so that he (Fawehinmi) could prosecute them.

On November 6, 1986, the DPP told Fawehinmi that he could not decide on whether or not to prosecute Akilu and Togun for the murder until he received a police report of police investigation. In that event, he filed an application in the High Court of Lagos State for leave to apply for an Order of *Mandamus* to compel the DPP to decide whether or not to prosecute the duo, and if he decided not to prosecute, to endorse the information, admitting that he had seen details of the investigation but had decided not to prosecute at public instance.

An Order of *Mandamus* is a mandatory order made by a court directing a government official or public authority to perform some duty which it ought to perform. *Mandamus* may be a command to do an administrative action or not to take a particular action.

The Chief Judge of Lagos State at that time, Justice Ademola Candide Johnson dismissed the application on grounds that the DPP had not refused to do his duty and that the information before him was limited. The applicant headed for the Appeal Court which dismissed his application on the grounds that he had no *locus standi*, i.e. the competence in law, to bring an application on Dele Giwa's death before it and that the high court was right in refusing his application on the limited materials before it.[11] He appealed to the Supreme Court which on December 18, 1987 said he had *locus standi* to bring the application and that every Nigerian has a personal and private right under the Criminal Procedure Law and the 1979 Constitution to see that a crime is not committed and, if committed, to lay a criminal charge for the offence against anyone committing the offence in his view or whom he reasonably suspects to have committed the offence.[12]

On January 14, 1988, Fawehinmi applied for an order of *mandamus* and on the 25th, Justice Olusola Thomas of a Lagos State High Court granted the application and made the order against the DPP of Lagos State. Thereafter, the DPP who had become the State's Solicitor General informed Fawehinmi in a letter that the Attorney General of Lagos State had decided to prosecute the matter on the information received from him.

The Attorney-General of Lagos State, Mrs. Eniola Fadayomi filed a notice in the High Court indicating her decision to prosecute Col. Akilu and Lt. Col. Togun on the information received from Chief Fawehinmi before Justice R.O. Longe. Immediately, Chief F.R.A. Williams, SAN., filed an application, on behalf of Akilu and Togun, requesting that the information against clients be quashed on the ground that no proofs of evidence had been filed and that the said information was an abuse of the process of court. His other reasons were that as the information related to an indictable offence, not being a misdemeanour, the Attorney-General had to seek the prior consent of a Judge before filing the information.[13] Interestingly, the Attorney General neither objected nor acceded to Chief Williams' submission. On February 23, 1988, Justice Longe upheld that submission and quashed the information. A day after Longe's ruling, the applicant, filed an action before Justice Famakinwa in another High Court of Lagos State. He requested the court to declare that the proceedings before Longe was null and void, and that the conduct of the Attorney-General in the case was an abuse of her powers under Section 191 of the 1979 Constitution, and also an abuse of the order of Justice Thomas on January 21, 1988. Famakinwa dismissed the action and the applicant appealed against that resolution.

Fawehinmi had earlier written a letter to the Attorney-General stating that in view of fresh evidence implicating Akilu and Togun, he would want to prosecute the two men, if the Attorney-General would not prosecute them for the offences of murder, and conspiracy to murder Dele Giwa. That was on February 24, 1988, the same day instituted an action before Justice Famakinwa. He then requested the Attorney-General to let him know by the next day, Thursday, February 25, 1988 and if the answer was in the negative, he should indicate that on the Information attached.

Responding in a letter of February 26, 1988, the Attorney-General drew his attention to the fact that he (Fawehinmi) had filed a suit in the Lagos High Court against him, Akilu, and Togun, seeking an order that the ruling of Justice Longe of the Ikeja High Court be declared null and void. In view of that development, the Attorney-General declined to entertain the request as sub judicc, until the case pending in court is disposed of. A matter is said to be sub judice when it is currently under trial or being considered by a court.

Yet again, the applicant filed a fresh an *ex parte application* or an order of *mandamus nisi* to compel the Attorney-General to prosecute on the fresh evidence she had, or to endorse her refusal on the information attached. An ex parte application is a legal proceeding brought by one person in the absence of and without representation or notification of other parties.

When the ex parte motion came up for hearing before Justice Agoro, on March 2, 1988, Williams sought leave of court to appear for his two clients so that the ex parte application may be treated as one between the parties. He posited that the court had the power to adjourn so that the two persons concerned may be served. Fawehinmi opposed the application on the premise that he sought no relief against the persons represented by the Senior Advocate of Nigeria, but only against the Attorncy-General. Justice Agoro ruled that Williams' application was premature.

After arguing his ex parte motion a satisfied Justice Agoro granted the applicant for an order of *mandamus* against the Attorney-General. Fawehinmi then filed an application for an order of *mandamus* on March 3, 1988 which was heard the 15th On that day Williams, SAN., having filed a notice of preliminary objection to the motion the day before, urged the court to hear the preliminary objection first and thereafter Chief Fawehinmi's application for an order of *mandamus.*

The crux of the Senior advocate's application were that:

i. The application for leave to apply for the order for *mandamus* as well as the substantive application for the same are an abuse of the process of the court because (among other reasons) the above-named "prosecutor/applicant" having elected to treat the proceedings before Longe, J. as a nullity, cannot be permitted thereafter to ask this court to act on the basis that the said proceedings have been regularly concluded so that the Attorney-General can be compelled by an order of *mandamus* to exercise her discretion whether or not to prosecute the accused persons and if she declines to prosecute, to endorse a certificate to that effect as required by law .

ii. In the premises, the court ought not to entertain the application of the abovenamed "prosecutor/applicant" and ought to dismiss the said application or strike it out pursuant to its inherent jurisdiction.

iii. Further and in the alternative, the court ought to strike out the application herein because no court in the land has jurisdiction to make an order compelling the Attorney-General of Lagos State to endorse an information charging the persons accused therein for the offence of murder or for conspiracy to commit the offence of murder so as to enable a private complainant like the "prosecutor/ applicant" herein to sign and file such information.

Agoro adjourned the matter for ruling on April 8, 1988. He eventually granted the order of mandamus the applicant prayed for but overruled the preliminary objection of Chief Williams. William's later filed a motion for stay of further proceedings pending the determination of an appeal on that decision.

Williams' beef amongst others was Agoro's refusal to convert the ex parte application for an order of *mandamus* nisi to one on notice to the appellants. He claimed that they were denied the exercise of their right to a fair hearing under Section 33 of the 1979 Constitution.

Citing a decision of the Supreme Court in *Kotoye v. Central Bank of Nigeria*, the Court of Appeal affirming Williams' position explained that in an ex parte application, if the party to be put on notice applied to the court to be heard, notwithstanding rules of court to the contrary, the court, in view of Section 33(1) of the Constitution, 1979 should grant the request.

On the application for *mandamus* before Justice Agoro and Williams' preliminary objection that it was an abuse of the process of court which was overruled, Chief Williams submitted that on the basis of the Supreme Court decision in Appeal No. SC.215/1989 to the effect that the combined effect of the Lagos State Administration of Justice (Miscellaneous Provisions) Amendment Edicts, 1979, and 1984, as well as Section 340(2) of the Criminal Procedure (Amendment) Edict 1987, which came into force on Agust 14, 1987, a private prosecutor in Lagos State could only now prosecute a person charged with the offence of perjury. Although the applicant argued to the contrary, the Court had a different opinion.

> *"The issue in this appeal is that on the date Agoro, J., ruled that the applicant, Chief Fawehinmi, had competence, and locus standi as a private prosecutor to prosecute for the offences of murder and conspiracy to murder in Lagos State, the legislation cited above, which were enacted, and in force before the date of his decision, had expressly provided that the applicant, Chief Fawehinmi, had no such competence, or locus standi, save for the prosecution of the offence of perjury only. The arguments of Chief Williams in this regard are unassailable. Chief Gani Fawehinmi's arguments are to say the least misconceived."*

That was Justice Joseph D. Ogundere's leading judgment, in agreement with Justices Mamman Nasir and Emmanuel Obioma Ogwuegbu.

In all, the Court conceded that the right of a private prosecutor to initiate prosecution in all other offences has been withdrawn. A private prosecutor can now only initiate prosecution for the offence of perjury.[15]

ADEGOKE MOTORS

This is a case challenging the validity of a writ of summons. The Court of Appeal Lagos division which on December 9, 1987, dismissed the defendant's appeal, had given judgment in favour of Dr. Babatunde Adesanya and Mr. F .O Odesanya, respondents in this appeal. Dissatisfied, Adegoke Motors headed for the Supreme Court which after deliberating over the matter endorsed the verdict of the Appeal Court.

A writ of summons was served on Adegoke Motors. On appearing before the High Court of Justice, Ikeja, Lagos, which issued the writ, they neither challenged nor attacked its validity. They simply disappeared after making an initial appearance, taking no further part in the proceedings. Judgment was then entered against them. However, when an unfavourable judgment was given against them by the High Court, they went on appeal contending that the writ which they had earlier responded to was a nullity and incurably bad. Insisting that the writ in contention was void, they further claimed that "all the subsequent proceedings, judgments and order in relation to the void writ were also affected and infected with the stain of a fundamental vice and were also void". The respondents on the other hand contended that the writ was valid and could therefore support, sustain and give life to the various judgments and orders.

Using the Supreme Court's decision in two cases: *Skenconsult Nigeria Ltd. & anor. v. Ukey,*[16] *Ezomo v. Oyakhire*[17] to buttress their demand, the car company on arriving at the Court of Appeal asked the Court to examine if there was a conflict between these decisions and the one against them at the High Court. Seeing no relationship, the Court threw the Appeal away.

In the leading judgment delivered by Justice Chukwudifu Oputa, on May 19, 1989 the Supreme Court declared that there must be a difference and distinction between the validity of a writ of summons and the validity of the service of this writ. The apex court further explained that if a writ is valid, any defect in service becomes a mere irregularity which may make such a writ voidable but definitely not void.

> *"A writ can only be voided by an intrinsic and substantial defect in the writ itself. If a writ is merely voidable, (but not void for being incurably bad), the entry of an appearance by the defendants may constitute a waiver thus validating an otherwise invalid service."*[18]

Again, the apex court that in trying to justify their arguments, Adegoke Motors misinterpreted its various decisions which they cited in the appeal. Making reference to the judgment in Skenconsult Nigeria Ltd. & Anor. v. Ukey and Ezomo v. Oyakhire, the apex court said the company took no account of the peculiar facts and circumstances of these cases, and that the issues at hand, stand wholly unrelated to the facts of this case.

Moreover, the Supreme Court threw in some word of caution.

> *"It also appeared in rather bold relief that there is now a tendency among our lawyers, and sometimes among some of our Judges, to consider pronouncements made by Justices of the Supreme Court in unnecessary isolation from the facts and surrounding circumstances of those particular cases in which those pronouncements were made.*
>
> *I think it ought to be obvious by now, that it is the facts and circumstances of any given case, that frame the issues for decision in that particular case. Pronouncements of our Justices whether they are rationes decidendi or obiter dicta must therefore be inextricably and intimately related to the facts of the given case.*
>
> *Citing those pronouncements without relating them to the facts that induced them will be citing them out of their proper context, for, without known facts, it is impossible to know the law on those facts."*[19]

Ratio decidendi (plural rationes decidendi) is a Latin phrase meaning "the reason for the decision." Ratio decidendi refers to the legal, moral, political and social principles on which a court's decision rests. It is the rationale for reaching the decision of a case. It is binding on lower courts through the principle of Stare decisis.

http://definitions.uslegal.com/r/ratio-decidendi/

OJUKWU V. MILITARY GOVERNOR OF LAGOS STATE



Chief Odumegwu Ojukwu

After the Nigerian civil war, the house at 29 Queen's Drive Ikoyi, Lagos, inherited by Chief Chukwuemeka Odumegwu Ojukwu from his late father like others belonging to people from Eastern Nigeria, was taken over by the Military Government of Lagos and termed abandoned property. In 1984, Ojukwu moved into the house, after paying N90,000 to agents of Lagos State Government for an unexpired lease on the House. In August 1985, the Lagos State Government wrote Ojukwu, and ordered him to move out of the house or face eviction. When it became obvious that it was no idle threat, he brought an action before the High Court of Lagos State to the effect that the state government be restrained from taking any action with respect to the house pending the determination of the suit. The application was granted. However when the matters came before the court on notice, the court, being dissatisfied with certain aspects of Ojukwu's affidavit refused to continue the restraining order.

He appealed against the ruling to the Court of Appeal. While the appeal was still pending and after the Military Government of Lagos State had been served with the notice of appeal, they (Lagos State Military Government) ignored the notice and forcibly evicted Ojukwu and his family from the house using about 150 armed men.

Ruling on the celebrated case, otherwise known as the executive lawlessness case, on November 13, 1985, Hon. Justice Philip Nnaemeka-Agu, then a Justice of the Appeal Court in a lead judgment ordered that Ojukwu be reinstated into the property. In utter disregard to the Appeal Court's judgment, Lagos State Military Government appealed to the Supreme Court on the ground that the *"remedy of interlocutory injunction is not available for an act which has been carried out and concluded."*

A thoroughly piqued Supreme Court dismissed the appeal. Eso in that pronouncement said:

> *'I think it is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act flouting the order of the court is by the Executive .... The organs wield those powers and one must never exist in sabotage of the other or else there is chaos. Indeed there will be no Federal Government. I think, for one organ and more especially the Executive, which holds all the physical powers to put itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the constitution it is to uphold. Executive lawlessness is tantamount to a deliberate violation of the constitution."*[20]

ADIO V. A. G. OYO STATE

In Talatu Adio v. The Attorney General of Oyo State, the Court of Appeal pronounced on when right to fair hearing could be said to have been breached.[21]

Among the key questions before the Court was whether it was proper for the trial Judge to preside and give an opinion in the matter considering that the essence of Talatu Adio's allegation was made against a government which the trial judge's husband was the Chief Executive at the time of trial. In 1990, the Court in its ruling held that it was a breach of both rule of natural justice and provisions of Section 33(1) of the 1979 Constitution on fair hearing, for the trial judge (Justice Atinuke Ige) to have adjudicated over a matter in which the validity of a document signed by her husband was being challenged.

The Supreme Court however, overruled this decision on the premise that there was no suggestion of any impropriety against Justice Ige who sat and heard the case. The Court noted that since the plaintiff did not accuse Chief Bola Ige of any interest in the Oluwo of Iwo Chieftaincy Declaration and that since all he did was to sign the document in question made by the Chieftaincy Committee of the Iwo Local Government Council into law, it cannot reasonably infer from such circumstance, that if his spouse sat as a judge over the case, a real likelihood of bias would arise. The Supreme Court concluded that to hold otherwise would mean that Justice Ige was disqualified in any case where any legislation signed into law by her husband was in issue.

FEMALE INHERITANCE

A customary norm in some parts of Igboland precluding female children from inheriting their father's estate was in 1997 The Court in 1997 described the law as repugnant to natural equity and good conscience." Finally the custom join some others that have at different times been declared incompetent to withstand modern logic and universal law.

The Oli-Ekpe custom of Nnewi, Anambra State, accords the right of inheritance only to male children such that a man's estate could pass to his brother, and subsequently his nephew, if he had no male children and regardless of whether he had female children.

The customary code specifically states that under the Nnewi native law and custom, if a man dies leaving a male child, the property belongs to the male child. If the deceased has no male child, his brother will inherit his property. If the male child who survives the father dies, leaving no male issue, the father's brother will inherit the property. If on the other hand the deceased's brother dies leaving sons, the sons will inherit the property of the uncle. In particular, the diokpala, that is the eldest son of the uncle, will inherit the property. If a man dies and subsequently his only brother die, if the late brother has sons, the first son of the late brother will inherit all the property. The son of the late brother is called the Oli-Ekpe, meaning he has inherited the property of his relation. The Oli-Ekpe inherits the land, the wives of the deceased, and if the deceased had daughters he will give them in marriage. In other words the Oli-Ekpe inherits the assets and liabilities of the deceased.

However, Justice Niki Tobi in his lead judgment in the matter between Augustine Nwofor Mojekwu v. Caroline Mgbafor Okechukwu Mojekwu, at the Court of Appeal Enugu division said:

> *"We need not travel all the way to Beijing to know that some of our customs, including the Nnewi Oli-Ekpe custom relied upon by the appellant are not consistent with our civilized world in which we live today... in my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the creator of all human beings, is also the final authority of who should be male or female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the Oli-Ekpe custom of Nnewi is repugnant to natural justice, equity and good conscience."*[22]

The Court addressed the customary law in an appeal brought by Augustine Mojekwu in 1994 challenging the decision of a lower Court which dismissed his request that Caroline Mojekwu be stopped from inheriting her husband's estate at No. 61 Venn Road, South Onitsha - Anambra State.

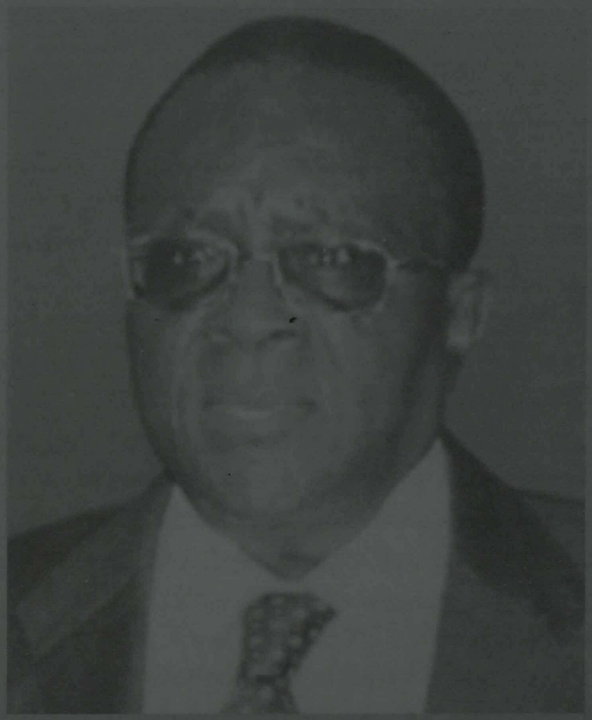
Justice Tobi further noted that:

> *"Day after day, month after month and year after year, we hear of and read about customs which discriminate against the women folk in this country. They are regarded as inferior to the men folk. Why should this be? All human beings male or female are born into a free world and are expected*

to participate freely, without any inhibition on grounds of sex, and that is constitutional. Any form of societal discrimination on grounds of sex apart from being unconstitutional, is antithesis to a society built on the tenets of democracy which we have freely chosen as a people."[23]

THE IMMUNITY CLAUSE

Chief Gani Fawehinmi in 1999, asked a High Court of Lagos State for an order of mandamus compelling the Inspector-General of Police to investigate the complaints of false statement on oath and false declaration made under oath by Mr. Bola Ahmed Tinubu, who at that time was the Governor of Lagos State. He also asked for a declaration that no governor of any State in Nigeria or indeed any other public officer has immunity under the Constitution and other relevant laws in Nigeria, from investigation into any criminal allegation.



Chief Gani Fawehinmi, SAN



Senator Bola Ahmed Tinubu

Fawehinmi particularly wanted the High Court to examine the extent of immunity granted governors under section 308 of the Constitution. His request was refused at the High Court. Examining the provision, Hon. Justice George A. Oguntade, then on the Appeal Court bench disclosed that the provision only enabled the police to investigate and to keep the ftresults of their investigation, so that as soon as such governors le office, they could be confronted for their misdeeds while in office. In other words, the

police could properly investigate but could not prosecute until the governor had left office. The judgment was upheld by the Supreme Court.[24]

BAIL IN CRIMINAL CASES

Another issue the Court of Appeal dealt with while Oguntade was at Enugu Division of the court was the question of granting bails in criminal cases.

> *"I stressed that the essential purpose was to ensure that the accused persons came back to face trial. Therefore, the terms and conditions for granting bail should not be made cumbersome, and almost unobtainable, as we now see. These days, we see High Court judges saying that an accused person must produce house-owners in select areas of the Federal Capital Territory and so on. Certainly, that is not the reason why he should be granted bail. "The main reason is - would this accused person come back to face his trial, if granted bail? And the important thing is - has he sureties that would bring him back? Theaddition of ownership of properties in choice areas in Abuja is irrelevant and unnecessary. It is like red herring."*[25]

The Supreme Court in the case of Adamu Suleman v. Commissioner of Police Plateau State threw more light on this.

> *"The effect of granting bail is not to set the accused free for all times in the criminal process but to release him from the custody of the law and to entrust him to appear at his trial at a specific time and place. The object of bail pending trial is to grant pre-trial freedom.*
>
> *"To an accused whose appearance in court can be compelled by a financial sanction in the form of money bail. The freedom is temporary in the sense that it lasts only for the period of the trial. It stops on conviction of the accused. It also stops on acquittal of the accused. The contractual nature of bail is provided for in Section 345 of the Criminal Procedure Code.*
>
> *"The section provides that before any person is released on bail, he must execute a bond for such sum of money as determined by the police or the court on the condition that such a person must attend at the time and place mentioned therein until otherwise directed. And if the person is released on bail, the sureties must execute the same or another bond or other bonds containing conditions to the same effect.*[26]

MOHAMMED ABACHA

Mohammed Abacha, was charged jointly with others in 1999 for murder and conspiracy to murder. But he was charged alone for being accessory after the fact to murder. The other accused persons were Hamza Al'Mustapha, Mohammed Rabo Lawal and Alhaji Lateef Shofolahan. All the offences related to the gruesome assassination of Mrs Kudirat Abiola, who was gunned down in Lagos on June 4, 1996. The deceased was the wife of Chief M. K. O. Abiola, acclaimed winner of the June 12, 1993 presidential election. At the time of his wife's murder, Abiola was in detention on the orders of late Gen. Sani Abacha, the military Head of State. Mohammed Abacha is the eldest surviving child of the late leader, while Al' Mustapha was the latter's Chief Security Officer. Shofolahan, on the other hand, was Mrs Kudirat Abiola's assistant and the assassins' alleged informant.

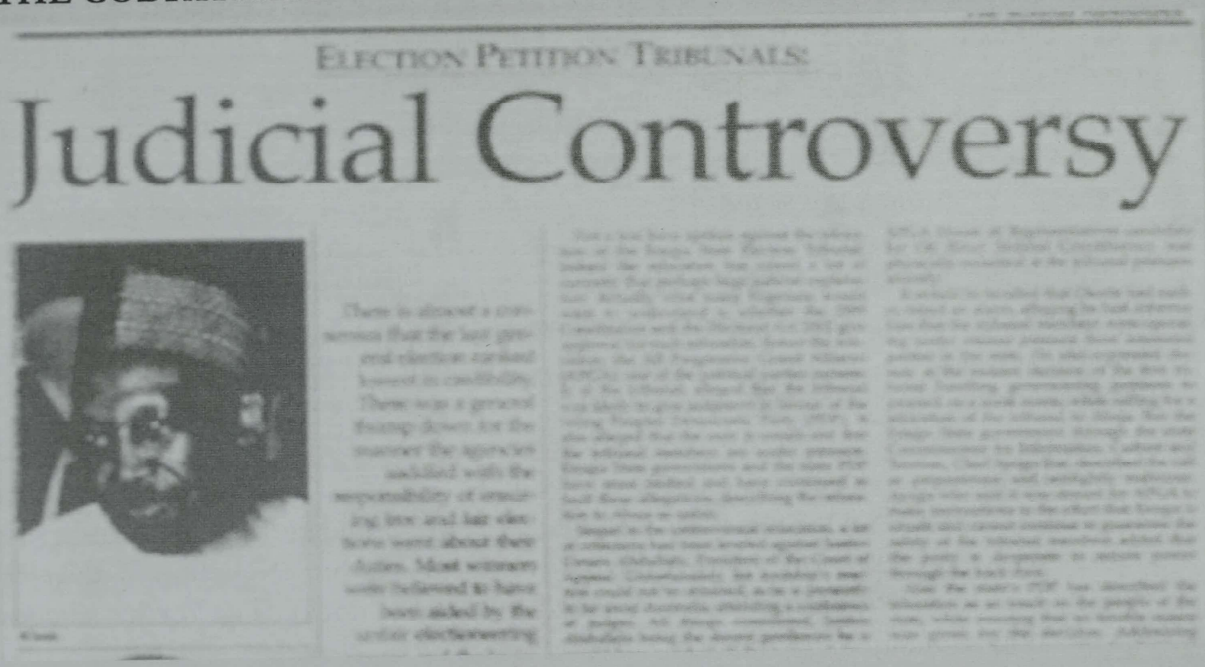


Mohammed Abacha

Before the trial of the accused persons commenced at an Ikeja High Court in Lagos State, Mohammed Abacha's lawyers filed a motion asking that the information upon which he was being charged be quashed as it did not disclose any prima facie case against him. In criminal trials, information refers to a combination of the charges, the supporting proofs of evidence and statements of potential witnesses. The proof of evidence had shown that he arranged the procurement of weapons for those who eventually did the act. On February 1, 2000, the High Court dismissed the application and directed that he stands trial. He appealed to the Court of Appeal, Lagos Division, which reaffirmed the High Court's decision. Again, he appealed to the Supreme Court, which by a majority decision on July 11, 2002 said that no prima facie case had been made against him and should therefore not stand trial.[27]

Justice Akintola O. Ejiwunmi dissented. In his judgment where he described the majority judgment as tyranny of the majority, Ejiwunmi held that Mohammed Abacha had a case to answer. Justice Oguntade who was on the Appeal Court panel that took the appeal also disagreed with the Supreme Court's majority decision. *"I thought the proper thing to do was to let the prosecution call evidence but we were overruled by the Supreme Court."*[28]

THE GODFATHERS



ELECTION PETITION TRIBUNALS:

Judicial Controversy

The heat in the Anambra political climate was at a sizzling point. The Governorship/ Legislative Houses Tribunal as well the Court of Appeal in Enugu were at this point receiving a deluge of petitions and documents. But Anambra soon gained notoriety. Political godfathers threw their weight around with impunity and unscrupulous government officials gave their full backing.

They rode in long motorcades. Hundreds of gun totting, whip wielding, fierce looking mobile policemen and other security operatives were part of their entourage. Many governors and other political office holders could not dream of the kind of powers these godfathers flaunted. They could have a governor kidnapped and removed from office. They ensured their minions got the choicest political positions. Even judges lost their jobs.

Dr. Ugochukwu Uba and Hon. Nicholas Ukachukwu, members of the Peoples Democratic Party (PDP), sought the party's nomination to contest the Anambra South Senatorial District seat. On February 10, 2003, the PDP sent a list of candidates from Anambra state, contesting various offices in the election to the Independent National Electoral Commission (INEC). Dr. Uba's name was in the list termed the original list. However, on March 6, 2003, another list called substitution list was again forwarded

to INEC by the party. This list contained Hon. Ukachukwu's name. On the same day, PDP sent another list titled revalidation list and Uba's name was shown as the party's candidate for Anambra South Senatorial District. Thereafter, there were several court cases before the election and each candidate sought the recognition list containing their names.

The National Assembly election in Anambra South Senatorial district took place on April 12, 2003, but encountered some problems and was later concluded April 16. Ukachukwu contested and was declared winner. He was issued with the Certificate of Return by the Resident Electoral Commissioner. Afterwards, INEC cancelled Ukachukwu's candidature and declared Uba, who was not a candidate at the election, winner. Stunned, Ukachukwu filed a petition at the Election Tribunal, Awka, Anambra State claiming he was the candidate that contested the election and was duly returned as the winner, having secured the highest number of valid votes cast at the election. He insisted that having been issued a Certificate of Return that said he won the elections, INEC had no power to cancel an already declared election and that INEC, its Chairman and Resident Electoral Commissioner, Anambra State had no power to declare any person other than himself as winner. The tribunal favoured Ukachukwu but dissatisfied, Uba went to the Appeal Court.

Uba told the Court that the main issue which Ukachukwu presented to the tribunal was the question of who the PDP nominated as its candidate for the Anambra South Senatorial District election and that the issue was outside the jurisdiction of the election tribunal. Ukachukwu on his part contended that it was not outside the jurisdiction of the election tribunal.

In its judgment, of February 26, 2004, Justices Okwuchukwu Opene and David A. Adeniji said the matter was outside the tribunal's jurisdiction and favoured Uba while Justice Kumai B. Akaahs disagreed with them.

While Opene who was supported by Adeniji said the tribunal erred when it made a finding on who was the candidate of PDP at the election because that issue was entirely the domestic affair of the party, Akaahs held that INEC and its officials abdicated their responsibility of being an umpire by ensuring that all parties complied with the requirements of the law on the election and in this particular instance allowed the PDP to dictate to it the candidates in whose favour the results of the election should be declared.

Opene and Adeniji also concurred that INEC could withdraw a Certificate of Return after it had been issued. They both agreed there was evidence that Uba contested the election and should be returned as winner. But, Akaahs was of the view that once a return has been made even by stealth of the hand, the returning officer can no longer do anything about it, in the same way that a judgment once delivered and the order drawn up, no error in the judgment can be corrected unless on appeal.

'The law envisages only one return to be made and if a returning officer is careless and allows the return he has made on form EC8E to be tampered with, that will still remain the declared result of the election until set aside by the election tribunal upon application by an aggrieved party."[29]

He concluded that INEC violated the Electoral Act 2002 when they nullified the return made in favour of Ukachukwu.[30]

The judgment was fraught with controversies and Ukachukwu brought another application before the Court. Accusing Opene and Adeniji of gross misconduct, Ukachukwu asked the Court to set aside that judgment on the basis that it had been tainted with fraud and impropriety. In addition, he said that it violated section 36(3) of the 1999 Constitution not having been pronounced in public in the manner known to law. The Court on May 4, 2004[31] dismissed the appeal. In that ruling, Salami described the method in which the judgment was delivered as one that *"...should, however be taken as an aberration and not a normal practice of delivering judgment in this court. It should not be seen as a precedent and if it were, it is a dangerous one, which is not binding on the court and would not be followed."*[32]

As a result, Ukachukwu came back to the Court seeking an order to set aside the February 26, 2004 judgment. Justices James Ogebe, Suleiman Galadima, Olufunlola Adekeye, Joseph Umoren and Ja'faru Mikailu sat on this second application. In their judgment of December 2, 2004, they however held that:

"A court can set aside its own judgement including judgments and orders made by colleagues of the same jurisdiction which for any reason is a nullity. However, a court will not allow its power to set aside its own judgment to be abused... A court can set aside its judgment in any of the following five instances and circumstances:

a. When the judgment is obtained by fraud or deceit either in the court, or of one or more parties. Such a judgment can be impeached or set aside by means of an action which may be brought without leave...

b. When the judgment is a nullity, a person affected by an which can properly be described as a nullity is entitled ex debito justitiae to have it set aside...

c. When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it.

d. Where the judgment was given in the absence of jurisdiction.

> *e. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.*
>
> *In the instant case, the applicant's application did not fall within any of the above instances."*[33]

They also announced that the application was premature and that the evidence which showed that Ukachukwu had petitioned the NJC on allegations of fraud against Opene and Adeniji could not amount to proof.

The NJC concluded its investigation and found the two justices guilty as alleged. On its recommendation, Opene and Adeniji were dismissed by the President, Federal Republic of Nigeria in line with section 292 (1)(b) of the 1999 Constitution. In view of the development, Ukachukwu brought yet another application. His contention was, since it has been established that the judgment was obtained by fraud, the Court should set it aside and uphold the verdict of the election tribunal which affirmed him as the actual winner of the Anambra South Senatorial election of April, 2003.

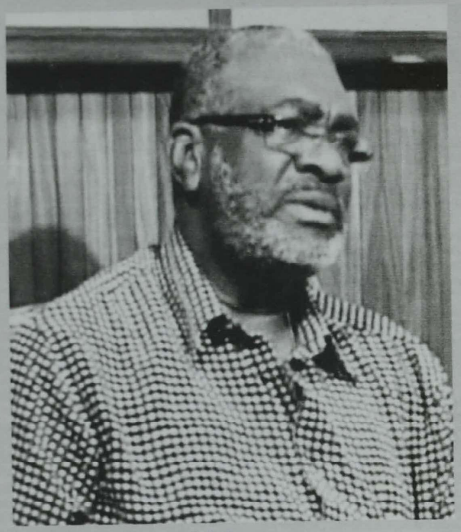
When the matter came up hearing, the Court raised the issues of whether or not it was *functus officio* to hear and determine the application and whether it was not an abuse of court process. The applicant (Ukachukwu) argued that the Court was not funtus officio as the judgment of February 26, 2004 could not be a judgment envisaged by the 1999 Constitution in view of the fraud, bribery and corruption of the two justices out of three who delivered the majority judgment and their dismissal by the President, Federal Republic of Nigeria.

A court is said to be *funtus officio* in respect of a matter if the court has fulfilled or accomplished its function in respect of that matter and it lacks potency to review, re-open or re-visit the matter.

On October 20, 2005, the Court through Ogebe, Galadima and Mika'lu ended the matter. Dismissing the application, they declared that the Court had become functus officio in respect of this matter. The justices stressed that once an issue has been raised and distinctly determined between the parties to a suit, neither party can be allowed to litigate that issue all over again.[34]

SENATOR BEN OBI

He never envisaged that beyond the quest to capture the senatorial seat in his district, he would be embroiled in a litigation that tasked everything he believed in, but that was exactly what happened to Chief Ben Obi. He contested for the Anambra Central Senatorial District seat in 2003, but just as he was about to laugh heartily, an opponent came on the scene and said the victory was not his. How could this be? he asked.



Senator Ben Obi



Appeal Court Confirms Obi Anambra Senator

The Court of Appeal sitting in Enugu yesterday re-affirmed the declaration of Chief Ben Ndi Obi by the first Election Petition Tribunal, sitting in Awka, as the authentic candidate of the Peoples Democratic Party (PDP) for Anambra Central Senatorial district for the April 16, 2003 elections.

The Returning officer for the district had declared Chief Ben Obi winner and issued him with declaration form EC8E. But the Resident Electoral Commissioner (REC) in Anambra, Alhaji Hassan Sulaiman had on April 18, 2003 revoked and invalidated the victory.

From Charles Onyekamuo in Awka

Nabaruma which after going through the plethora of evidence adduced by both Obi and Abana held that Obi was actually the PDP candidate for the said senatorial district who contested and won the election. It also held that the REC, the third respondent in Obi's petition, had no power under the enabling law to issue the April 18, 2003 press statement canceling and invalidating Obi's victory and that Abana should never have been declared winner.

But Abana dissatisfied by the appeal which the court considered along side the line of the briefs filed by the learned counsels and resolved each question at favour of the first respondent (Obi). According to him the appeal lacked merit.

"In sum, I found no merit in the appeal and it is hereby dismissed. I hold that the petitioner at the lower tribunal was the candidate and winner of the election and issued with certificate of return. The first respondent in that petition INEC National Commissioner by himself, privies or agents had no power under the enabling law to invalidate an

Well, that was how the stunned contestant lodged a petition at the National Assembly/ Legislative Houses Election Tribunal in Awka, Anambra State. The Tribunal in a judgment delivered on August 8, 2003 declared him as the duly returned member of Senate for Anambra Central Senatorial District in the election of April 12, 2003 but that was not the end of the story.

The Returning Officer for Anambra Central Senatorial District who had earlier declared, returned and even issued Obi with a Declaration of Result, Form EC8E, on April 16, 2003 suddenly made a u-turn. In a Press release of April 18, 2003, he announced that the said declaration had been cancelled and that Sir Ikechukwu G. Abana had become winner of the Anambra Central Senatorial seat. On July 28, 2003 this Returning Officer issued Ikechukwu Abana a Certificate of Return.

In its judgment of August 8, 2003, the Tribunal noted that both Obi and Abana testified that they were screened and cleared by INEC. While Obi said his name was published on March 15, 2003 after he was cleared, Abana said his name was published after he was screened on Marc h 18, 2003, a period which would have been outside the INEC time table for publication of names, only to change gear during cross examination to say he was screened between March 15 and 18, 2003.

In consequence the Tribunal accepted Obi's evidence, regarding that of Abana "inconsistent."

> *"On the preponderance of evidence... we are satisfied that it was the Petitioner who was sponsored by the P.D.P. as its candidate to contest the election into Anambra Central Senatorial District seat at the National Assembly and not the 5th Respondent (Abana). We also hold that the*

> *Petitioner (Obi) and not the 5th Respondent (Abana) was screened and cleared by INEC and that it was the name of the Petitioner and not the 5th Respondent that was published by INEC as the duly nominated candidate of the P.D.P. for Anambra Central Senatorial District.*[35]

In conclusion it was agreed that Abana neither won nor participated in the said election. But you are wrong! Abana said as he went on appeal. We shall see who blinks first he appeared to have added while asking the Court to determine the following:

1. Did the Tribunal have the jurisdiction to entertain the petition?
2. Who was the candidate of PDP for Anambra Central Senatorial election?
3. Who was returned by INEC as the Senator for the Anambra Central Senatorial District?

The Court in its judgment delivered May 4, 2004 by Justice Saka Adeyemi Ibiyeye, resolved that since the cause of action was based on alleged irregularities in conduct of an election, the action was properly instituted in the National Assembly/Governorship and Legislative Houses Election Tribunal Awka Anambra State, a Tribunal set up specifically to hear and determine election petitions arising in Anambra State.

Also, the Court established that Ben Obi was PDP's candidate for the election; stressing that INEC was wrong to have announced Sir. Abana as the elected member representing Anambra Central Senatorial District after declaring that Obi was the duly elected member representing the Senatorial District.

> *"The 2nd to 5th respondents (INEC, Chief Electoral Officer/ INEC Chairman, Resident Electoral Commissioner, Returning Officer for Anambra South Senatorial District) having discovered any anomaly subsequent to the announcement of the petitioner/ 1st respondent (Obi) as the duly elected member ought not to have cancelled that decision on their own. Such apparent anomaly if any should have been left for the respective election tribunal and not just any tribunal or Court to review it.*
>
> *"I am of the strong view that the 2nd to the 5th respondents were wrong in making a second return after the first. The proper way to question the first return was by way of petition to the election tribunal which has jurisdiction to determine all questions on elections...On who was returned by INEC as the Senator for Anambra Central Senatorial District,.. for the avoidance of doubt it is Chief Ben Obi... I affirm the decision of the trial tribunal and equally declare:*
>
> *i. that the petitioner/1st respondent was validly elected or returned*

as the winner having scored the highest lawful votes cast at the said election and duly declared as winner and issued with Form EC8E by the Returning Officer to wit: Anambra Central Senatorial District of Anambra State,

ii. that the 1st respondent (INEC) by itself, servants or agents have no power under the 1999 Constitution of the Federal Republic of Nigeria, the Electoral Act and the 1st respondent's... guidelines to cancel, withdraw or invalidate an already declared result

iii. That the 1st to 3rd respondents particularly the 3rd respondent (Chief Electoral Officer/INEC Chairman) have no power whatsoever to announce and/or declare anybody else particularly Sir I.G Abana as the winner of Anambra Central Senatorial District election."[36]

Ben Obi told his story:

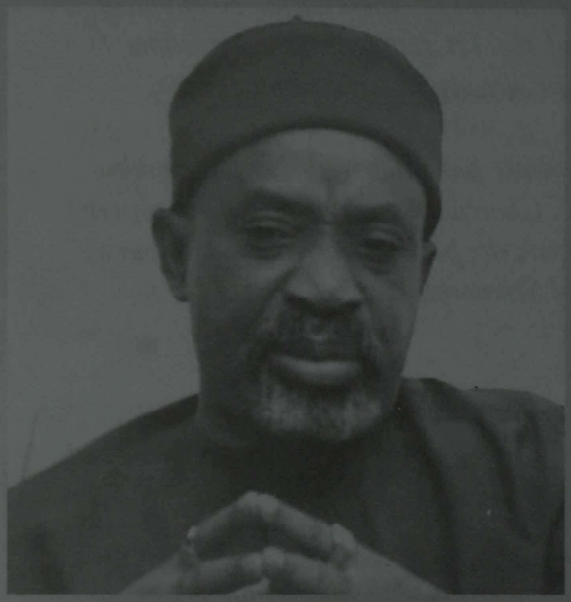
"I decided to go before the Court of Appeal and many people tried to discourage me, thinking it would be a waste of time. 'They will not listen to you, you know it's a federal establishment, it is funded by the federal government, they are all answerable to the President and you don't stand a chance,' they said. I told my friends that I had taken the pain to go to President Obasanjo and to tell him I was going to challenge this injustice meted against me to the last point, and he said to me, tongue-in-cheek, to go ahead. By virtue of the provisions of the electoral act, the last point of call was the Court of Appeal.

"I went to Court and it was a long battle, in fact twice, there was a change in the panel of Judges that sat over the case. Normally, they were five Judges. These five were reshuffled and the second panel brought in.

"At the end of the day, the last panel gave a unanimous judgment in my favour. It was what finally landed me in the Senate. In fact, that was the 'intro' of Nigerian politicians in seeking justice when their mandates are stolen. Mine was the first and most prominent and most outstanding, particularly since it was clear that I was faced by the government of the day, who couldn't be bothered about what the rule of law said. I took my place as the rightful Senator for Anambra Senatorial District."[37]

Justices Isa Ayo Salami, Victor Aimepomo O. Omage, Musa Dattijo Muhammad, Amiru Sanusi were on the panel.

THE NGIGE SAGA



Dr. Chris Ngige



Appeal court restrains IG from removing Ngige

The Appeal court yesterday granted an interim injunction, restraining the Inspector General of Police from

In the celebrated abduction saga of Dr. Chris Ngige, then a Governor of Anambra State, the Court of Appeal Enugu division held that, it was unconstitutional for the Inspector General of the Police, to withdraw the security aides of a Governor. After the 2003 general election, Dr. Chris Nwabueze Ngige was sworn-in as Governor on April 19, 2003. Shortly after the election and swearing-in, Governor Ngige allegedly started having problems with his 'godfathers' led by multi-billionaire businessman, Chief Chris Uba. Ngige eventually broke ranks with them, turned populist and cleverly connected with the masses through massive construction of roads. For that, he was abducted from his office on July 10, 2003 and taken to an unknown destination. When he was eventually released, he revealed that his abduction was masterminded by Chris Uba and others, over his failure to open the treasury of Anambra State Government to them.

The struggle between these warring parties resulted in instability in Anambra State, destruction of many properties, including arson, various sorts of violence, non-conduct of local government elections, retardation of democratization process, destruction of social and business development and growth. During that period, the whole state was held hostage by the marauding 'godfathers' to the point that even the Governor was no longer free and safe. As a result, he was in and out of hiding. Only the godfathers and their associates moved about freely, accompanied by heavy police security.

In the process, Uba and his group trumped up a resignation letter purportedly signed by Ngige wherein he allegedly informed the State House of Assembly of his resignation from office as Governor. Thereafter, former Speaker of the Anambra State House of Assembly, Chief Eucharia Azodo and former State Chairman of the PDP, Chief Ifeatu Obi Okoye went to a Federal High Court in Abuja and urged it to restrain Ngige from functioning as Governor having forwarded his resignation letter to the State House of Assembly on July 9, 2003. Granting the requests amongst many others, Justice Samuel Wilson Egbo-Egbo also made an order that Dr. Okey Udeh, Ngige's deputy should hold office pending the determination of the suit. The order was eventually vacated but undaunted, the Uba group got Justice Stanley Nnaji of a High Court in Enugu state to make an order for Ngige's security aides to be withdrawn.

On appeal to the Court of Appeal Enugu, the Court on January 12, 2004, ordered the reinstatement of the Governor's aides. It also granted an interim order restraining the police from removing the Governor from office.

In a unanimous decision read by Justice Mahmud Mohammed then a Justice of the Appeal Court, the Court restrained the Inspector-General of Police, his agents, servants and privies from preventing or obstructing the Governor from performing his duties pending the determination of the appellant's application before the Court.[38]

The five-man panel of the Appeal Court headed by Justice James Ogebe, now a retired Justice of the Supreme Court, allowed the appeal filed by Ngige on the grounds that the Enugu High Court had no jurisdiction to entertain the suit. Finally, the Court on November 30, 2004 after nearly 11 months adjudication on the matter concluded that there was no basis for the removal of Governor Ngige's aides.

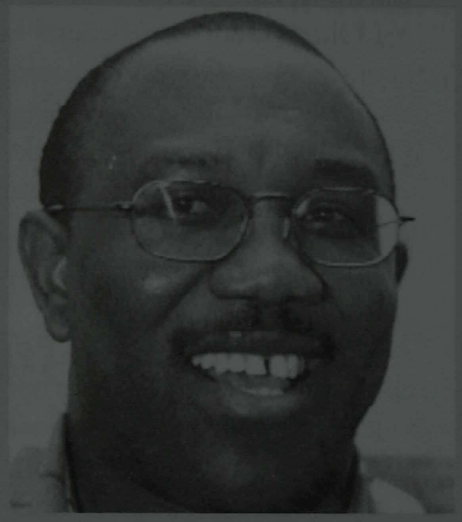
> *"...I am of the firm view that the trial court had no jurisdiction to entertain the suit before it and make the order for the removal of the 1st Appellant (the governor). Byvirtue of section 285(1) of the Constitution of the Federal Republic of Nigeria, 1999, the High Court of a State lacks jurisdiction to entertain any suit for the determination of the question whether the term of office of a Governor of a State has ceased. Thus, the High Court of Enugu State clearly lacked the jurisdiction to entertain any suit for the determination of the question whether the term of office of the Governor of AnambraState had ceased."*[39]

But then Anambra was far from any calm as it witnessed the most contentious election petition in 2003. Justice Garuba Nabaruwa, who at that time was Chairman of the Governorship and Legislative Houses Elections Tribunal in Awka, Anambra State recalled that while presiding over the tribunal, a petitioner on an occasion called 45 witnesses with the respondent bringing about 420 and each one was heard! But that was not all. They came with almost a lorry load of documents that the justices had to peruse

one after the other! At that time, there was no limit to the time hearing in a petition could last. That tribunal sat for two years and three months and it was the tribunal which ushered in the Peter Obi era.[40]

PETER OBI

Dr. Peter Obi of Anambra State, having contested in the gubernatorial elections, under the All Progressives Grand Alliance (APGA) went to the Elections Tribunal, asked it to declare him the duly elected Governor of Anambra State and nullify the election of Dr. Chris Ngige. Obi's request granted, Ngige headed for the Appeal Court Enugu.



Peter Obi

Obi Returns As Anambra Governor

By Larry Ogwuda, Awka

Following the unanimous ruling of the Appeal Court sitting in Enugu which upheld an earlier ruling of the Awka High Court nullifying the impeachment by the State House of Assembly, Mr. Peter Obi has finally reclaimed his seat by taking over from Dame Virgy Etiaba, who has served as Governor of the state, since his controversial removal from office.

The takeover attracted the presence of personalities in the state who arrived Government House Awka at about 2.20pm with Peter Obi in the company of party faithfuls and chieftains, including the leader of the party, Chief Emeka Odumegwu Ojukwu, and the National Chairman of All Progressives Grand Alliance (APGA), Chief Victor Umeh.

...for close to one hour before the emotion-laden handover ceremony started at the Executive Council Chambers Awka Anambra State.

Umeh, the National Chairman of APGA, recalled the controversial event that led to Obi's sudden removal from office by a faction of the State House of Assembly during his opening speech, according to him that it led the party hierarchy to meet and prevailed on Obi's then deputy, Etiaba to allow herself to be sworn-in as governor, so as not to allow vacuum in governance of the state, as also to allow Obi elbow room to seek a redress of the matter in the law court.

Umeh, therefore expressed gratitude that Obi's controversial impeachment has been nullified by the Court, and expressed gratitude that Etiaba had fulfilled their expectations by holding fort as a party faithful, adding that as a party faithful, adding that since the obstacle on Obi's way

...as expressed in the law of the land. We are here to obey that court [Appeal Court] order which directed that Obi should be reinstated to office as governor without delay. We had since been working with Governor Etiaba through proper agreement and she has not breached any of our agreements. And now without any pressure, she is willingly going to hand over the mantle of leadership of the state to Governor Obi whom she had always referred to as her boss. We commend her for all her effort, on piloting the affairs of the state creditably", Umeh stressed.

Etiaba, who remained calm and solemn throughout the ceremony had while performing the handover expressed her gratitude to God, the people of the state, her APGA and the entire workforce of the state for the cooperation she had received from them while the impasse of Obi's impeachment saga lasted.

She maintained that "following...

...28th of December 2006, as well as today's court of Appeal judgment in Enugu, the circumstance that brought us this government is no longer in existence. So once more, I take the back seat. May God continue to bless Anambra State".

Obi, on his part however called for a sober reflection to society despite the say the Appeal court judgment had brought, stressing that the court verdict should be seen as "an opportunity for all of us to join hands together and continue the process of rebuilding our dear state, especially in terms of repairing the negative perception it has in the eyes of Nigerians and the world".

"As I did when the High Court gave its judgment in December, I still maintain that all those things that happened to our state are part and parcel of nation-building. I therefore hold no...

...grudges against anybody. Rather,

The Court of Appeal on March 15, 2006 overturned Ngige's victory and declared Obi the duly elected governor of Anambra State in the governorship election of April 19, 2003. As a result of his court victory, he was sworn in as governor on March 17, 2006.

After nullifying the election of Dr. Chris Nwabueze Ngige on Wednesday, March 15, 2006, the Court gave INEC a ticking off. Justice Rabiu Danlami Muhammad who read the lead judgment stated that a party in an appeal is confined to his case as pleaded in the lower Court and is not allowed to make a new and different case on appeal.

"On appeal, INEC made a volte face. It is now asking us to hold that in the April 19, 2003 Gubernatorial election in Anambra State was marred by widespread irregularities and malpractice and for this reason, was conducted in substantial non-compliance with Electoral Act 2002... At the tribunal, INEC asked it to uphold the election because it was conducted in substantial compliance with the provisions of the Electoral Act. It is manifest that INEC is making a new and different case before us as opposed to the case they espoused at the Tribunal. This they cannot be allowed to do. Justice is not a game of hide and seek. A party must be consistent in stating his case...[41]

OBI'S IMPEACHMENT

Being an APGA governor in a PDP controlled state, Obi was impeached by the State House of Assembly in October 2006. Again he went to the court. He succeeded at the High Court and the Court of Appeal on February 9, 2007 established that his impeachment was unconstitutional.

As part of the process to remove the governor and his deputy from office, the Speaker of Anambra State House of Assembly, Hon. Mike Balonwu and other members of the House issued a notice of allegation of gross misconduct against Obi and his deputy and published it in the Daily Sun Newspapers of Friday October 20, 2006. This notice was directed to the Secretary to the State Government, Office of Secretary to the State Government, Awka. It requested the Secretary to cause the resolution to be placed before Obi and his deputy respectively. However, the notice neither got to Obi nor was it served on all members of the House. This irritated a number of them. Those who were not satisfied with the impeachment notice instituted a suit and obtained an order from Justice Amechi of the High Court of Anambra State, restraining Balonwu and his cronies in the House from taking further steps on the impeachment proceedings until the matter was settled by court.

Yet, appellants (Balonwu and others) requested the Chief Judge of Anambra State to set up a 7-man Panel to investigate the said allegations against the governor and his deputy.

Eventually, Obi was removed from office as governor and he headed for court to challenge his removal. The High Court at Awka held that Obi was wrongly impeached and the appellants promptly appealed to the Court of Appeal.

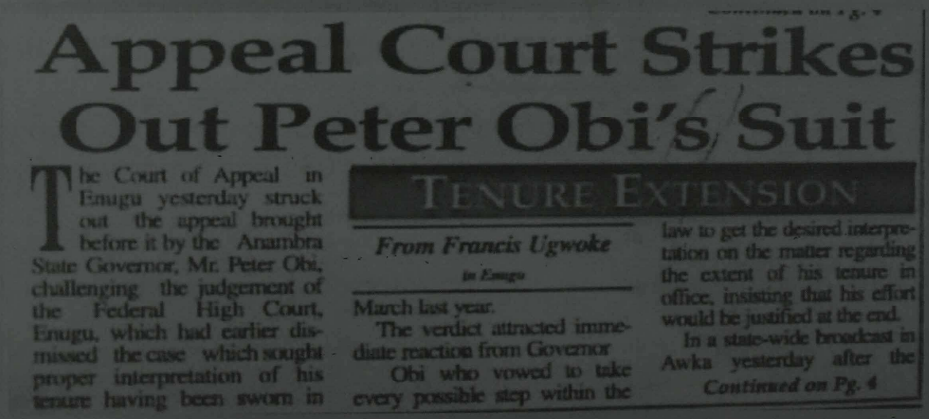
In its judgment, the Court in a unanimous decision resolved the issue in favour of Obi.

> *'There is nowhere in the appellant's counter-affidavit where it was deposed that the 1st respondent (Obi) was personally served with a notice of allegation of gross misconduct. The service of the process in any proceeding affecting the rights of the parties is very fundamental. Section 36 of the 1999 Constitution of the Federal Republic of Nigeria guarantees every Nigerian fair hearing in the determination of his rights and obligations...There is nowhere in the counter-affidavit where the appellants deposed that they served the 1st respondent with a notice of allegation of gross misconduct. In other words, there is no proof of service.*
>
> *'In the circumstance, it is my view that the purported notice of gross misconduct published in the Daily Sun Newspaper of 20/10/06 fell short of what is required under section 188(2) of the 1999 Constitution of the Federal Republic of Nigeria and this is enough to set aside the entire process taken by the appellants... Consequently, for the avoidance of doubt, I uphold the judgment of the lower court that the removal of the plaintiff/1st respondent, Mr. Peter Obi by the appellants is unconstitutional, null and void and of no effect whatsoever. Accordingly, the removal of Mr. Peter Obi by the appellants is hereby set aside, and he should be reinstated immediately ...*[42]

That was the verdict of Justice Jimi Olukayode Bada supported by Justices James Ogenyi Ogebe, Kudirat Motonmori O. Kekere-Ekun, Mohammed Ladan Tsamiya and Sotonye Denton-West.

On further appeal by the appellants to the Supreme Court, the apex court upheld the judgment of Appeal Court.

TENURE EXTENSION



Appeal Court Strikes Out Peter Obi's Suit

TENURE EXTENSION

From Francis Ugwoke
in Enugu

The Court of Appeal in Enugu yesterday struck out the appeal brought before it by the Anambra State Governor, Mr. Peter Obi, challenging the judgement of the Federal High Court, Enugu, which had earlier dismissed the case which sought proper interpretation of his tenure having been sworn in March last year.

The verdict attracted immediate reaction from Governor Obi who vowed to take every possible step within the law to get the desired interpretation on the matter regarding the extent of his tenure in office, insisting that his effort would be justified at the end.

In a state-wide broadcast in Awka yesterday after the

Continued on Pg. 4

Peter Obi took the oath of allegiance and oath of office on March 17, 2006 as Governor of Anambra state. When the 2007 elections were about to start, INEC included Anambra as one of the states where gubernatorial election would hold. For this reason, Obi on February 12, 2007 commenced an action at the Federal High Court Enugu asking the court to hold that his four year tenure of office had not expired having assumed office on March 17, 2006. The trial court on March 30, 2007 said it had no jurisdiction to entertain the matter and struck out. On appeal to the Court of Appeal, Obi asked Court to explain the following:

> *"Can the defendant (INEC) lawfully abridge the tenure of 4 years prescribed by the Constitution of the Federal Republic of Nigeria, 1999 for a person such as the plaintiff elected as Governor of a State in the middle of the plaintiff's (Obi) tenure? In other words, can the defendant lawfully conduct a Governorship Election in Anambra State in April 2007 notwithstanding the fact that the plaintiff took the oath of allegiance and oath of office only on the 17th of March 2006?"*

The Court on May 22, 2007, held that the help sought by the applicant were mainly election matters which were within the exclusive jurisdiction of the Election Tribunal in which case the Federal High Court lacked the jurisdiction to entertain it. Having made it clear that it was the Election Tribunal vested with the power to hear the application, the Court of Appeal said it cannot entertain the appeal. [43]Undeterred, Obi went to the Supreme Court. In its judgment, the apex court said the Appeal Court was wrong to hold that this was an election matter under section 285 of the 1999 Constitution. Finally, The Supreme Court on July 13, 2007, admitted that Obi's tenure started running from March 17, 2006 and had not expired.[44]

Section 180(2) of the 1999 Constitution reads:

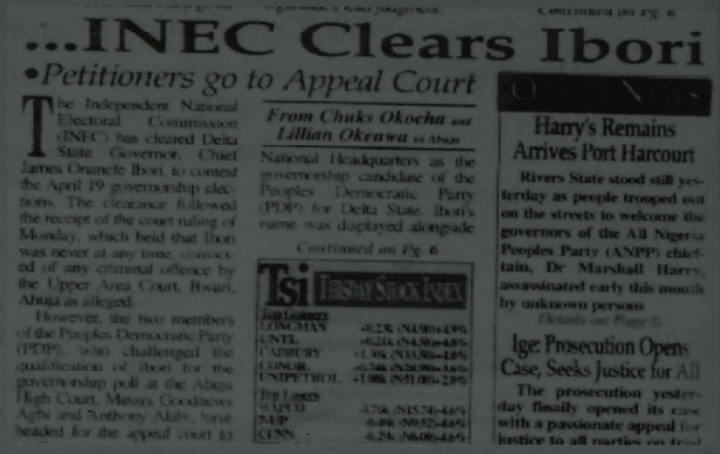
> *Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when*
>
> *(a) in the case of a person first elected as Governor under this Constitution, he took the oath of allegiance and oath of office.*

In line with the Constitution, the apex court said that since Obi took his oath of allegiance and oath of office on March 17, 2006, his term of office would expire on March 17, 2010.

CHIEF JAMES IBORI



James Ibori



...INEC Clears Ibori

•Petitioners go to Appeal Court

The Independent National Electoral Commission (INEC) has cleared Delta State Governor, Chief James Onanefe Ibori, to contest the April 19 governorship elections. The clearance followed the receipt of the court ruling of Monday, which held that Ibori was never at any time, convicted of any criminal offence by the Upper Area Court, Bwari, Abuja as alleged.

However, the two members of the Peoples Democratic Party (PDP), who challenged the qualification of Ibori for the governorship poll at the Abuja High Court, Messrs Goodnews Agbi and Anthony Alabi, have headed for the appeal court to

From Chuks Okocha and Lillian Okenwa in Abuja

National Headquarters as the governorship candidate of the Peoples Democratic Party (PDP) for Delta State. Ibori's name was displayed alongside

Continued on Pg. 6

Tsi Tuesday Stock Index

LONGMAN	+0.2% (N1.98+1.9%
UNTL	+0.21% (N4.50+4.8%
CADBURY	+1.3% (N13.50+1.0%
UNICEM	+0.2% (N20.00+1.0%
UNPETROL	+1.0% (N51.00+2.9%
Top Losers	
WAPCO	-0.7% (N15.74+4.6%
PAINT	-0.4% (N9.52+4.6%
CUNS	-0.2% (N6.00+4.6%

Harry's Remains Arrives Port Harcourt

Rivers State stood still yesterday as people trooped out on the streets to welcome the governors of the All Nigeria Peoples Party (ANPP) chieftain, Dr Marshall Harry, assassinated early this month by unknown persons

Details on Page 6

Ige: Prosecution Opens Case, Seeks Justice for All

The prosecution yesterday finally opened its case with a passionate appeal for justice to all parties on trial

Goodnews Agbi and Anthony Alabi went to a High Court of the FCT to challenge the eligibility of James Ibori to contest the gubernatorial election in Delta State. Ibori had been allegedly convicted by a Bwari Upper Area Court, in the FCT in 1995. Justice Hussein Baba Yusuf on March 24, 2003, ruled that Ibori was eligible to contest the poll. The duo appealed the judgment and the case went up to the Supreme Court which ordered a retrial in a different Court at the High Court of Justice, in the FCT. The Court presided by Justice Hussein Mukhtar held that the plaintiffs were unable to prove their case beyond reasonable doubt. Both the Appeal and Supreme Courts upheld that judgment.[45]

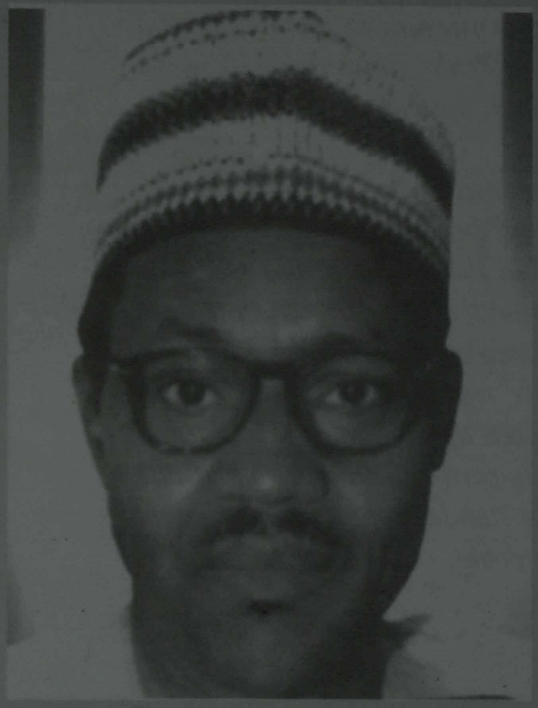
Now a Justice of the Court of Appeal, Hon. Justice Hussein Mukhtar, trial Judge in the exconvict saga suit involving James Ibori also tells his story:

> *"From the antecedent or the history of that case and the decisions of the two appellate courts, that is, the Court of Appeal and the Supreme Court, it goes without saying that if, I were, where I am now, and the appeal came up, I would have upheld the decision of the lower court. This is because every good judgment must contain its reasons. In that case, reasons were given for that decision. Reasons based squarely on the evidence adduced before the court. What we did was trial for purposes of identification. It was not a criminal matter. It was a civil matter with a criminal aspect in respect of which we said the standard of proof should be beyond reasonable doubt. That is, in respect of identifying the person convicted. In an allegation of crime, the standard of proof must be beyond any reasonable doubt. Although this case was brought in as a civil matter, the identification aspect involved identifying*

a person convicted of a criminal offence. It was because of that, we said the standard should be beyond reasonable doubt, which the lead counsel for the plaintiffs, Chief Gani Fawehinmi, did not agree with.

'The plaintiffs' evidence was full of inconsistencies and contradictions and the only documentary evidence laid before the court had to do with the opinion of those who produced them. Those opinions could not be held as an evidence to identify a person who was alleged to have committed a criminal offence. The laws were there. In the Evidence Act, once an allegation involved a crime, the standard was, proof beyond reasonable doubt. The laws must be given their ordinary and natural meaning. You don't start imputing or importing foreign meanings into the words of a statute. According to the standard of proof in criminal cases, that is proof beyond reasonable doubt, and they were unable to prove it."[46]

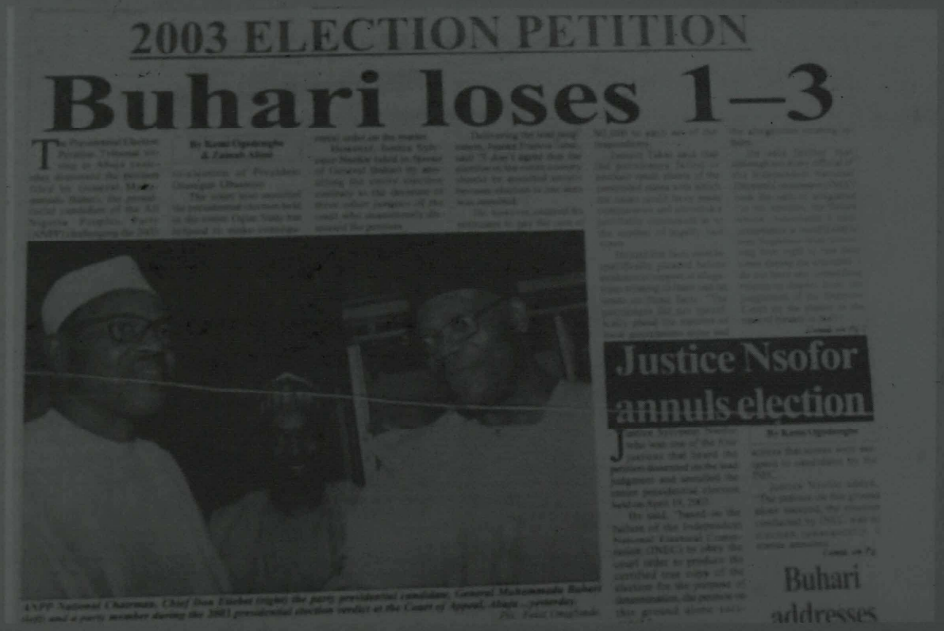
BUHARI V. OBASANJO



General Muhammadu Buhari



Chief Olusegun Obasanjo



2003 ELECTION PETITION

Buhari loses 1–3

Justice Nsofor annuls election

Buhari addresses

After the April 19, 2003 Presidential elections, Chief Olusegun Obasanjo was declared winner. Aggrieved, Muhammadu Buhari (rtd.), who also contested in the election, went to the Presidential Election Petitions Tribunal, sitting at the Court of Appeal, Abuja to challenge Obasanjo's re-election as President of the Federal Republic of Nigeria.

He wanted the Court to hold that there was no election in April 2003. His appeal was dismissed by a majority judgment read by Justice Francis F. Tabai on December 20, 2004, but Justice Sylvanus Nsofor dissented.[47]

According to Nsofor, Buhari who contested under the All Nigeria Peoples Party (ANPP) along with his running mate, Dr. Chuba Okadigbo and their party, ANPP filed a petition containing what they called material facts upon which the petition was founded. President Olusegun Obasanjo, the Independent National Electoral Commission (INEC), PDP and the other respondents filed their own reply, denying most of the allegations. In other words according to Nsofor, an issue had been joined. He said:

> *"Paragraph 4 of the petition alleged that all the votes allegedly scored by the Parties of the contestants in the fight were allotted. The 1st and 2nd respondent, i.e. the President, Chief Olusegun Obasanjo, the Vice President, Alhaji Atiku Abubakar and the other respondents; the Peoples Democratic Party (PDP), INEC, the electoral officers and so on denied this fact. It was now an issue of fact, and an issue in an appeal is such that once pronounced and decided in your favour, you win. That is the basis upon which appeals or issues are contested or agitated for in any Court.*
>
> *Now, when Buhari said that the votes were allotted, and the respondents denied. Buhari's counsel led evidence to show that the votes were allotted. Buhari, as the law permitted him, gave a notice to produce the results showing what every candidate scored. This was additional to the notice to produce a letter served on INEC by the leading counsel to the petitioner. The respondent, particularly the INEC, who had custody of all the election materials, the results inclusive and of whom the Constitution and the Electoral Act appointed as custodian of these materials for a period of time (which I doubt had expired), refused to produce it. Now there was a Court order that they produce the results.*
>
> *"What is the import if that document which they were asked to produce, would be the only document, the only evidence that would resolve the issue of whether the scores were allotted or not and they withheld it? The document was in their custody. There was no allegation that the document was either burnt or lost and they withheld it. Now in my view as the law is, and I think the law is what it says, Section 149 (d) of the Evidence Act provides that, if a party withholds a piece of evidence, which if produced, would be against him, the law would presume that he withheld it because it was against him. So on that score only, when they failed to produce that master result showing what every candidate scored, state by state, and so on, they were withholding evidence.*

"Section 149(d) empowered me or any tribunal to presume that if it was produced it would show that the result of the scores were forged, were allotted and that Obasanjo did not score the scores they claimed. On that ground alone, I said that the petition must succeed and the respondents must fail. The presidential election failed on that ground and Buhari succeeded on that ground. You do not need to break the Ten Commandments before you go to hell.

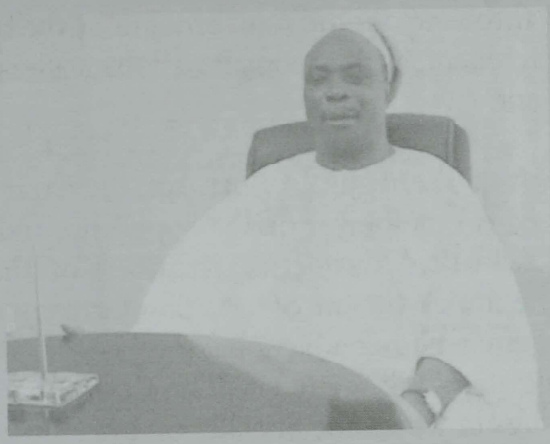
If you break one, you have broken all. It was agreed among all of us, both the majority and minority judgements that there was no election in one state. That was a common ground. The record showed that. So if there was no election in one state, could you say that there was an election in Nigeria? The Constitution provides that in order to become the President of Nigeria, a candidate has to score two-third of the votes from 36 states including the Federal Capital Territory Abuja."[48]

Justice Abdullahi had a different view.

"Ordinarily, this would have been left to history, but history also makes reference to what happened. The Supreme Court has taken a final decision on the substance of this decision. The Supreme Court ruled that the majority decision is the Court's decision, not the minority decision. As a matter of fact, the Supreme Court said we were wrong to have cancelled the election in Ogun State.

Justice Nsofor claims that since we have cancelled election in that state, the entire election, all over the country, should have been cancelled. Now that the Supreme Court has given its verdict, what can anybody say? The Supreme Court has decided that the panel with the majority decision is the correct one. The minority one is not correct. This ends the matter. The rest is history." [49]

THE LADOJA CASE



Senator Rasheed Ladoja

From left, Mr. Chuka Ezeka, MD, Vetiva Management Ltd, Mr. Jim Ovia, MD Zenith Bank Plc and Alhaji Aliko Dangote, Chairy Dangote Sugar Refinery Plc, at the completion board meeting of the company in Lagos... yesterday.

Court nullifies Ladoja's impeachmer

Ten months after the purported impeachment of Senator Rashidi Ladoja as the governor of Oyo state, the Court of Appeal sitting in Ibadan, yesterday nullified the whole processes leading

From Samson Ojo, *Ibadan*

to the episode, describing the entire exercise as "illegal, null and void."

Ladoja was impeached by 18 pro-Lamidi Adedibu lawmakers in the 32-member state House of Assembly, in January.

But in a five-man unanimous ruling delivered by Justice J. O. Ogbebe, the Court of Appeal also set aside the decision of the lower court because that court had no jurisdiction on the issue of impeachment of a state

governor or deputy gover
The four other justices
Justices K.B. Akaolu,
Chukwuma-Eneh,
Ogunbiyi and J. Mikailu.

Reading out the ru
amidst tight security, Ju
Ogbebe declared that th

Cont. on

It is the opinion of many that the Court's decision on the Ladoja case set a standard. Senator Rasheed Ladoja was Governor of Oyo State between 2003 and 2007. On January 12, 2006, he was impeached as Governor by 18 pro Lamidi Adedibu Lawmakers in the 32 member State House of Assembly. Lamidi Adedibu was a PDP chieftain in Ibadan, Oyo State.

A High Court of Oyo State had earlier declined jurisdiction to hear the matter saying it was incompetent to hear impeachment matters. However, after over 10 months of litigation, the Court of Appeal, Ibadan Division, voided his impeachment. The Court ruled that all the proceeding leading to the impeachment of Ladoja were in contravention of the provisions of the 1999 Constitution. In a unanimous judgment delivered on November 1, 2006, by a panel led by Justice James Ogenyi Ogebe, the Court also threw out the December 23, 2005 ruling of Justice John Olagoke Ige, which declined jurisdiction to entertain the suit. The matter was instituted by the then Speaker and Deputy-Speaker of the state House of Assembly, Hons. Adeolu Adeleke and Dauda Titilola, challenging the processes of Ladoja's impeachment while stressing that the Judge erred in refusing to ensure that the House complied with provisions of the constitution.

Amidst tight security, Justice Ogebe, Justices K. B. Akaahs, Christopher Chukwuma-Eneh, Clara Ogunbiyi and Ja'afaru Mikailu, held that the trial court had "serious questions to consider before hastily throwing out the suit" brought by the two lawmakers to challenge the controversial impeachment, as they constituted the leadership of the House as at the time of the impeachment.

Acting under Section 16 of the Appeal Court Act, the Court assumed the jurisdiction of the lower court based on the prayer of the appellants and faulted the sitting of the 18 proimpeachment Lawmakers outside the chambers of the House, to deliberate on a sensitive issue like the impeachment of a sitting Governor. The Court pointed out that it had a duty to inquire whether a factional meeting of 18 members constituted the required two-third majority of all members. The Court also had to consider whether impeachment proceedings in which the Speaker of the House of Assembly is excluded from his leading role as provided for in the Section 188 of the Constitution can amount to proper proceedings of impeachment.

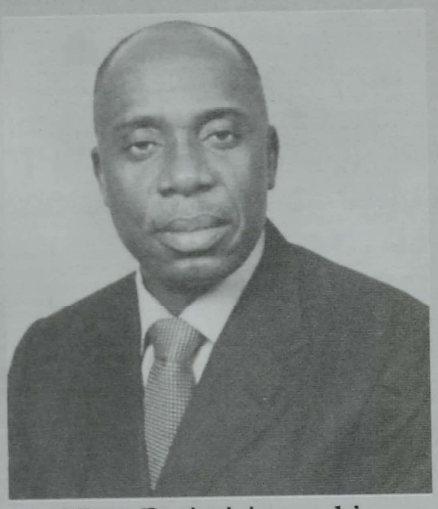
Speaking on whether the plaintiffs/appellants had locus standi to institute a legal action against the impeachment, the Court ruled that the constitution itself "gave prominent role to the Speaker of the House in the matter of the impeachment of a Governor or a Deputy Governor", adding that there was evidence before the Court that either the Speaker or his deputy was suspended or vacated their office before or during the impeachment.

Ogebe ruled, while declaring Ladoja's impeachment through the activities of the 18 Lawmakers as a contravention of Section 188 of the constitution and "null, void and of no effect whatsoever." He said:

> *'It is my view that no factional meeting of any members of a state House of Assembly can amount to a constitutional meeting of the whole House of Assembly as envisaged and provided for in the constitution. There was no counter-affidavit before the lower Court to prove that any member of the House of Assembly of Oyo State was suspended or that the plaintiffs/appellants were removed as Speaker and Deputy Speaker in accordance with the provisions of the Constitution. It follows therefore, that all the steps taken by the faction of the defendants/respondents purporting to initiate impeachment of Senator Ladoja as Governor of Oyo State were not actions of the Oyo State House of Assembly under Section 188 of the 1999 constitution. Consequently, I allow the appeals of the plaintiffs/appellants and the interested/party appellant and set aside the ruling of the trial court declining jurisdiction."*[50]

The Court concluded that the nation's nascent democracy could only survive on "the rule of law and not rule of the jungle." When the matter reached the Supreme Court, Oguntade dissented but the unanimous decision was that the act was illegal.

AMAECHI AND OMEHIA



Hon. Rotimi Amaechi

the FIRS. An inspection visit to FIRS revealed that they were not aware of their payments because I was told

of funds, particularly at the last days of the past administration.

It was learnt that the

Appeal Court declines to hear Amaechi's case

By Ruby Rabiu

The Court of Appeal, yesterday still refused to hear a case filed by Hon. Rotimi Amaechi, the former Speaker of River state House of Assembly, INEC and Governor Celectine Omehia, whegein Amaechi had sought to find out between him and the governor, who is rightly the

substantive matter expeditiously, then the order has to be reversed.

The judge who explained that the order directing that the appeal court hear the matter did not come from the sitting of the apex court but from an administrative one, which

Rt. Hon. Rotimi Amaechi in December, 2006, contested the PDP primaries alongside eight other aspirants and won based on the verdict of the party's returning officer. His name was submitted to INEC as the party's candidate for the governorship election in the April 14, 2007 poll. When the national leadership of the party held its zonal convention where it distributed flags to its candidates in the South-South zone, former President Obasanjo said that the Rivers State ticket won by Amaechi was questionable and would be revisited. On February 2, 2008 the party wrote to INEC, seeking to effect a change in the name of the candidate it earlier submitted. It was then that Amaechi's name was dropped, and replaced with that of Sir Celestine Omehia.

Faced with what he considered a violation of his fundamental rights, Amaechi approached a Federal High Court Abuja, presided over by Justice Binta Nyako, seeking an order to restrain the PDP from replacing his name with that of Omehia. This was before April 14, 2008. He argued that he remained the rightful governorship candidate of the party and should be allowed to fly the party's flag at the poll. He challenged the substitution of his name with that of Omehia. As he was grappling with the issue of wrongful substitution, the Economic and Financial Crimes Commission (EFCC) on February 20, 2008 sent an advisory to INEC containing a list of indicted politicians. His name was included in the list. His attempt to challenge the alleged indictment failed when Justice Babs Kuewumi of another Abuja Federal High Court struck out the suit he filed on the matter. When the court ruled on the case on March 15, 2008 Nyako concluded that the PDP's error was neither cogent nor verifiable. She however noted that Amaechi's substitution was the prerogative of the political party that sponsored him. The court set aside Amaechi's substitution on the ground that it was carried out while the was case still pending in the court. She said the matter of indictment was for another time, in other words, she did not consider the matter of indictment.

Not satisfied with the ruling, the parties to the case went to the Court of Appeal few days to the election and sought to upturn the decision of the lower court. On July 20, the Appeal Court ruled on the matter. In its lead judgment read by Justice Olufunlola Adekeye, the Court held that the PDP complied with the provisions of Section 34 (1) and (2) of the 2006 Electoral Act, which required a party making substitution to give cogent and verifiable reasons. Though the Court admitted that the PDP did not give any cogent and verifiable reasons for making the substitution in its letter to INEC, it however, said that the indictment of Amaechi by a Federal Government panel based on a report by the EFCC constituted cogent and verifiable reasons.

Adekeye said:

> *'It is, however, noteworthy that the appellant was not disqualified by INEC based on the list captioned 'Investigated and Indicted' but it was the party which substituted his name under the provisions of section 34 (1) and (2) of the Electoral Act. The published list of the appellant's indictment supplied the link, which made the reason verifiable. At that period of our electoral history, it would have been contra publico prono (against public policy) for INEC or the PDP that sponsored and nominated the appellant to shy away from the list and dump the same in the archives of political documents ."*[51]

The Judge averred that the error that necessitated the substitution was verified from the surrounding circumstance of the information, which was already at the disposal of the electoral body. The Court also ruled that the case was different from the one that involved an expelled former PDP governorship aspirant in Imo State, Senator Ifeanyi Ararume, and INEC. In addition, the Court said that INEC should not have closed its eye to the published list, which indicted Amaechi.

To this, Adekeye said:

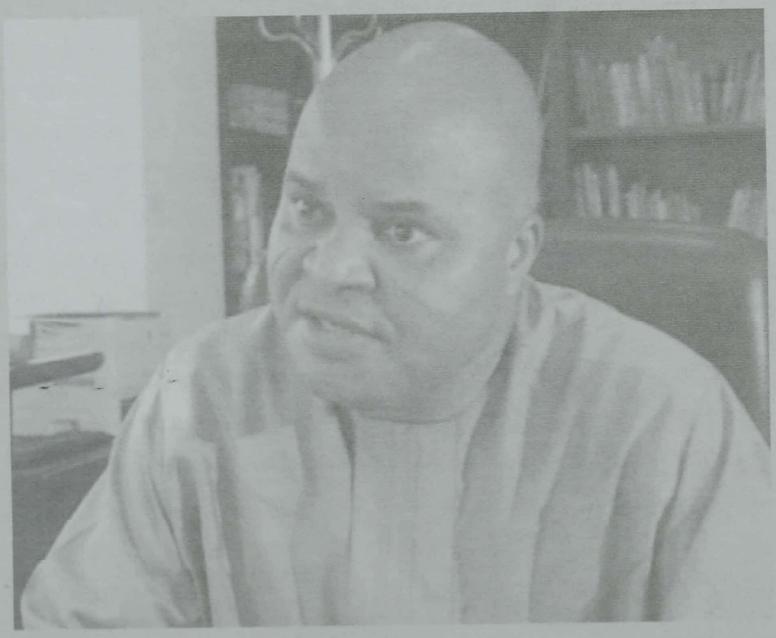
> *"The veracity of the contents of the published list captioned 'Investigated and Indicted' is a matter for the Court. The fact remains that at the time of screening, the list was available to bodies interested in the electoral process. The published list, being a public document, is a document at large."*[52]

Amaechi immediately filed another suit at the Supreme Court to challenge the decision of the Appeal Court. The apex Court consequently declared that in the face of the law, he remained the PDP's candidate and the winner of the gubernatorial poll in Rivers state.[53]This decision led the amendment of the Electoral Act 2010 wherein section 137 of the Act says that an election petition can only be presented by a candidate in the election or a Political Party which participated in the election on the grounds stated in section 138 of the Act.

This section provides that the petition must state the grounds on which the election is being challenged and the facts relied on. An election can be challenged on the following grounds:

- That the person whose election is questioned was, at the time of the election not qualified to be elected.
- That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the electoral law under which the election was held.
- That the respondent was at the time of the election not duly elected by majority of lawful votes
- That the petitioner was validly nominated but was unlawfully excluded from the election.

ARARUME AND INEC



Senator Ifeanyi Ararume

Senator Ifeanyi Ararume was one of the gubernatorial candidates for Imo State during the PDP primaries on December 14, 2006. He won at the primaries scoring 2,061 votes as against the 36 votes scored by Chief Charles Ugwu. But when he fell out with the party, it opted to substitute his name with that of Charles Ugwuh at INEC.

The matter came before a Federal High Court sitting in Abuja. It ruled that Charles Ugwu was the party's governorship candidate in the state since he (Ugwu) had been chosen by the party to contest for the election.

The Court of Appeal in Abuja, delivered a judgment in which it nullified the substitution of Senator Ifeanyi Araraume's name with that of Chief Charles Ugwuh as the Governorship candidate of the PDP for Imo State. In the judgment,[54] Justices Olufunmilola Adekeye, Abdu Aboki and Chidi Uwa, unanimously ruled that the decision of the PDP to withdraw Senator Araraume's name after it had been submitted to the Independent National Electoral Commission (INEC) did not meet the demands of section 34 (1) and (2) of the Electoral Act 2006.

The section states that:

> *"a political party intending to change any of its candidates for any election shall inform the commission of such change in writing not later than 60 days to election. (2) that"any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons."*

"I wrote the lead judgment in that matter," said Justice Adekeye.

> *"From the fact before me, PDP said that they were changing Ararume; they did it within time, within the sixty (60) days, but they were changing Ararume on the issue of the reason being error. That was the letter to INEC. So we said, 'you cannot do that kind of thing, once you've sent the name of a candidate who scaled all the hurdles of your screening and all, and you forward the name to INEC, then suddenly write a letter to INEC to say that you are changing that party nominated by you, there must be cogent and verifiable reason'. In the circumstances, particularly documents forwarded by the party to INEC, I said the reason of error could not fit because, looking at the document, this candidate Ararume scored the highest mark in the primaries than the person they wanted to use as the substitute. There was no way they could allege that error was the reason because the documents before the Court were very clear. I said they could not substitute and, the matter went to the Supreme Court."*[55]

UNILORIN 49

Unilorin 49, as some sum it up, is the case of the forty-nine sacked lecturers of the University of Ilorin. These lecturers were (Academic Staff Union of Universities) activists of the University of Ilorin branch who were battling the then Vice-Chancellor, Professor S. Oba Abdulraheem and the institution's authority over delay in the payment of salaries, allowances and other sundry welfare issues. They were so vociferous in their demands that the authorities considered them as cogs in the wheel of its plans for the institution. The allegations against the institution's authorities were still pending when the parent ASUU commenced a national strike in April 2001. At the end of the day and consequent upon negotiations between the Federal Government and the ASUU leadership, the strike was called off following an agreement to be implemented by both parties. ASUU reportedly ensured the insertion of a "no victimization clause" into the agreement. The essence of this was to guarantee that none of its members who partook in the strike would be persecuted because of their involvement in it.

However, the University terminated the appointment of some lecturers perceived to have played a prominent role in ensuring the success of the strike. In spite of public outcry, the authorities of Unilorin refused to reverse itself. One hundred and three of its lecturers were given sack letters that did not state reasons behind the decision. Consequent upon this sack, the Banjo-Committee was set up to look into the crisis.

The committee report did not find any of the sacked lecturers guilty. Notwithstanding, while several others were pardoned and re-absorbed into the system, 49 lecturers out of the whole 103 that were initially sacked were not recalled.

When the University of Ilorin authorities remained recalcitrant in their resolve not to reabsorb the 49 now christened by the media as 'Unilorin 49', several external bodies, acting as pressure groups intervened, pleading with the institution's authorities to reconsider their position. At this point, five of the Unilorin 49 approached the Federal High Court, Ilorin, to seek redress on behalf of their other colleagues.

On July 26, 2005, the Federal High Court, Ilorin presided over by Justice Peter Olayiwola, ruled that the termination of the appointment of the affected lecturers on account of participation in the strike without fair hearing was "illegal and unconstitutional." He declared the action of the University "null and void," and ordered their reinstatement.

However, the institution went on appeal by challenging the judgment at the Court of Appeal. On July 12, 2006, the Court of Appeal sitting in Ilorin, Kwara State upturned the judgment of the Federal High Court by declaring that the University was in order by sacking the 49 lecturers. Out of the three Justices that sat over the case, two Justices, Muntaka Coomasie and T. Abdullahi ruled against the lecturers while Justice Helen Ogunwumiju ruled in favour of the lecturers.[56]

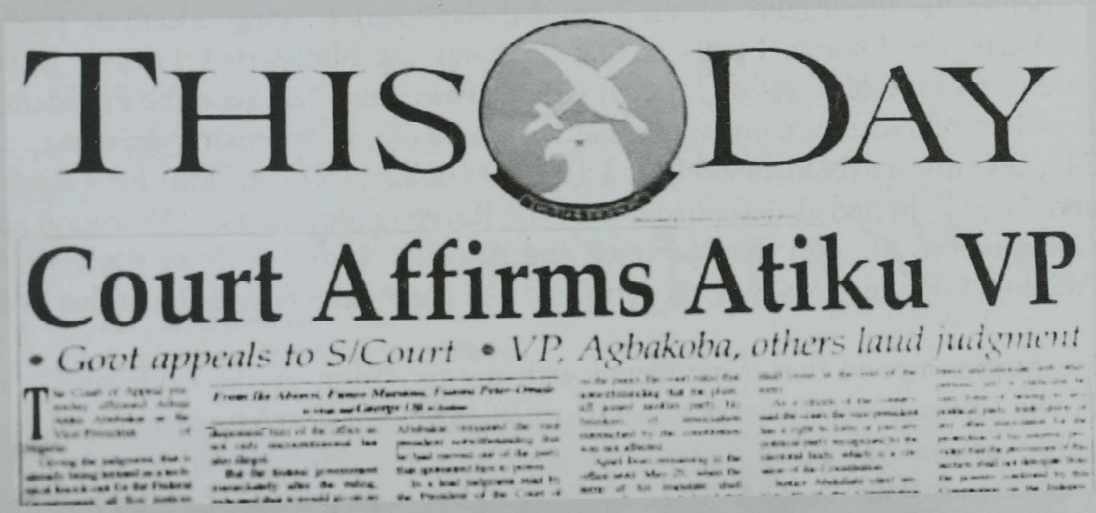
The majority judgment of the Court of Appeal held that the lecturers should have taken their case to the National Industrial Court being a trade dispute matter as Union leaders. The Court proclaimed that the lecturers were not sacked for their role in the strike and that since they were not sacked for any offence, the issue of fair hearing did not arise. At another point, the Court upheld the university's claim that the lecturers were given an opportunity for fair hearing while observing in another part that the lecturers were not sacked for any offence.

This judgment was challenged by the lecturers at the Supreme Court. After about eight years and 10 months of a tortuous legal battle, the 49 sacked lecturers of Unilorin in Kwara State were ordered to be reinstated by the Supreme Court on December 11, 2009. The apex Court ordered their immediate reinstatement and the payment of all their entitlements from February 2001, the date of their illegal disengagement, to date.

NO VACANCY IN ASO ROCK



Alhaji Atiku Abubakar & Chief Olusegun Obasanjo



THIS DAY

Court Affirms Atiku VP

• *Govt appeals to S/Court* • *VP, Agbakoba, others laud judgment*

The case of Alhaji Atiku Abubakar, and the Attorney General of the Federation and five others was one that shook the country. On Tuesday, February 20, 2007, the Court of Appeal unanimously decided that Alhaji Atiku Abubakar remain in office as the Nation's Vice 57President despite the fact that he had joined another political party. Chief Olusegun Obasanjo who at that time was President of the country, had declared the office of the VicePresident vacant following a protracted face-off between him and his vice-president. Atiku Abubakar ran to the court.

So many issues came up but key was, whether the President had powers under the 1999 constitution to declare the office of the Vice-President vacant.

In that landmark judgment, Justice Abdullahi who read the lead judgment declared that the President had no power under the 1999 constitution or any other law to declare the

office of the Vice-President vacant. Another issue was the question of loyalty, where the Court held that the loyalty of the Vice- President and the President is to the country, not to any other person. The judgment restored normalcy to the political scene of the country at that time. The Supreme Court upheld this decision on April 20, 2007.

DOLLAR SALARIES

The Court of Appeal, on July 20, 2007, voided the payment of salaries of two former ministers in the Obasanjo government in dollars, and ordered the duo - Dr. Ngozi OkonjoIweala and Chief Olu Adeniji to refund N205, 647, 320 (two hundred and five million, six hundred and forty thousand, three hundred and twenty naira) to the Federal Government. The Court said the payment of ministers in foreign currency violated the Certain Political, Public and Judicial Office Holders (Salaries and Allowances, etc) Act, (CPPJOH) 2002.[58]

In February 2004, Chief Gani Fawehinmi, SAN, asked a Federal High Court in Abuja to determine the legality of the jumbo dollar salaries, being selectively paid the two ministers. Dr. Okonjo-Iweala at that time was the Minister of Finance while, Chief Adeniji was the Minister of Foreign Affairs. Fawehinmi had sued the President, Federal Republic of Nigeria, contending that he was wrong in approving the annual salary of 247, 000 dollars (N36 million) and 120, 000 dollars (N17 million) for Okonjo-Iweala and Adeniji. Joined as defendants were the Revenue Mobilization Allocation and Fiscal Commission, the two ministers and the Attorney General of the Federation. Chief Akinlolu Olujimi, SAN, was the Attorney General of the Federation at that time.

He further argued that it conflicted with the provision of the Code of Conduct for Public Officers which frowns against maintenance of foreign accounts while holding public office. According to him, the approval of a different salary scale for the two ministers also offended an Act of the National Assembly called Certain Political, Public and Judicial Office Holders (CPPJOH), (Salaries and Allowances, etc) Act No 6 of 2002, which prescribes a yearly salary of N794,085 for every minister of the Federal Republic of Nigeria.

The Federal High Court, struck out the case on the grounds that Fawehinmi lacked the *locus standi* to institute it.

Following the court's refusal to grant his requests, the human rights activist headed for the Court of Appeal, Abuja division. In the lead judgment read by Justice Abdu Aboki, the Court held that the ministers were not entitled to have their salaries paid in foreign currencies.

It also held that former President Olusegun Obasanjo abused his power when he authorised the payment of the former ministers in a foreign currency. The court further held that Okonjo-Iweala and Adeniji were not entitled to earn salaries above those

prescribed by the CPPJOH Act.

It consequently declared that Fawehinmi had locus standi to challenge any infraction of the constitution. Among the orders made by the Court of Appeal were:

- That Okonjo-Iweala and Adeniji, who were public officers were not entitled to earn salaries above those prescribed by the CPPJOH Act 6 of 2002;
- That the yearly salary of $247,000 (about N36m) paid to Okonjo-Iweala was a flagrant violation of the CPPJOH Act which prescribes a yearly salary of N794,085 for every minister.
- That the yearly salary of $120,000 (about N17m) paid to the Adeniji was a flagrant violation of the CPPJOH Act; and
- That Okonjo-Iweala and Adeniji be made to refund to the Federal Government any amount in excess of the prescribed salary CPPJOH Act.

PUBLIC ORDER ACT



THE GUARDIAN

CONSCIENCE, NURTURED BY TRUTH

VOL. 25, NO. 10,577 WEDNESDAY, DECEMBER 12, 2007 N150

That banks may keep to the rules

Striving to make e-govt a reality

Lifeline for the cotton industry?

Appeal Court voids Public Order Act

Fuel shortage hits Egbin power station

On Tuesday, December 11, 2007, the Court affirmed that Nigerians and associations can hold rallies without police permit. It upheld the judgment of a Federal High Court in Abuja which had in June 2005, declared the Public Order Act (Cap. 382) Laws of the Federation of Nigeria, 1990, illegal and unconstitutional.

The Act requires Nigerians to obtain police permit before holding public rallies but the Court of Appeal held that such approval infringed on the fundamental human rights of

individuals and groups as provided for in the 1999 Constitution.
In the leading judgment read by Justice Adekeye, then of the Abuja Division, the Court said that:

> *"The Police Order Act, relating to the issuance of police permit cannot be used as a camouflage to stifle the citizen's fundamental rights in the course of maintaining law and order... The right to demonstrate and the right to protest on matters of public concern are rights which are in the public interest and that which individuals must possess, and which they should exercise without impediment as long as no wrongful act is done."*[59]

In a suit commenced by 12 political parties under the auspices of the Conference of All Nigerian Political Parties (CNPP), Justice Anwuri Chikere of Federal High Court Abuja who had voided the Act, also issued an order of perpetual injunction restraining the Inspector-General of Police from preventing aggrieved citizens of Nigeria, including the plaintiffs from organizing or convening peaceful assemblies, meetings and rallies against unpopular government policies. She declared that, the provisions of the Public Order Act were in conflict with the provision of Section 40 of the 1999 Constitution.

The CNPP had on April 2, 2004, written the Commissioner of Police, Federal Capital Territory, Mr. Emmanuel Adebayo, asking for a permit, in line with the provisions of the Public Order Act, which requires the issuance of police permit to any group wishing to embark on a rally. They wrote the letter following a proposed mass rally by the parties in protest against the 2003 general elections. Section 1 of the Act makes it mandatory for a police permit to be obtained before embarking on a rally. After the controversial Kano rally, which was linked to the death of a former Senate President, Dr. Chuba Okadigbo, the CNPP filed a suit at a Federal High Court in Abuja challenging the constitutionality of the Act. The parties, through their lawyer, Mr Femi Falana, asked the court to restrain Federal Government from preventing their members and any aggrieved citizen from holding rallies in any part of Nigeria. They equally asked the court to declare that the requirement of police permit for the holding of rallies was illegal and unconstitutional.

The following questions were posed for the court to answer:

- Whether police permit or any authority was required for holding rally or procession in any part of the Federal Republic.

- Whether the provisions of the Public Order Act which prohibit the holding of rallies or processions without a police permit are not illegal and unconstitutional by virtue of Article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria, 1990.

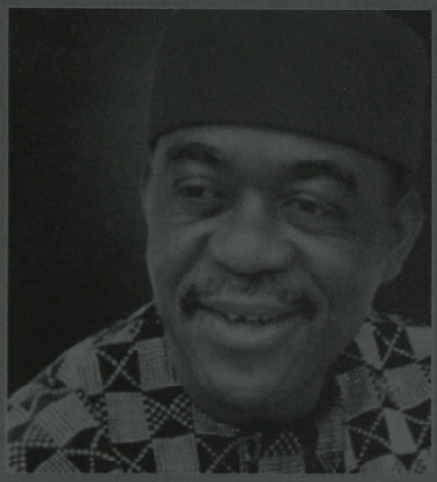
The group then urged the court to declare that the provisions of the Act which require police permit or any other authority for the holding of rallies or processions in any part of Nigeria, were illegal and unconstitutional while also seeking a declaration that the Inspector-General of Police was not competent under the Public Order Act or under any law whatsoever, to issue or grant permit for the holding of rallies in any part of Nigeria.

In its verdict, the Federal High Court said they contravened section 40 of the 1999 Constitution and Article 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act.) Government, in defending the suit, filed no counter-affidavit, as its representatives came to court asking that the entire suit be dismissed.

The Federal High Court refused the application and the Court of Appeal in agreement added:

> *"If speculated by law enforcement agents that breach of the peace would occur, our criminal code has made adequate provisions for sanctions against breakdown of law and order so that the requirement of permit as a conditionality to holding meetings and rallies can no longer be justified in a democratic society.*
>
> *Finally freedom of speech and freedom of assembly are part of democratic rights of every citizen of the Republic; our legislature must guard these rights jealously as they are part of the foundation upon which the government itself mrests..."*[60]

OKIJA SHRINE IS NO SECRET CULT - APPEAL COURT



Chief Theodore Orji

On Wednesday February 11, 2009, the Court of Appeal Port Harcourt division declared Chief Theodore Orji of the Progressive Peoples Alliance(PPA) the winner of the April 2007 governorship election in Abia State. The Court, in a unanimous decision by its five-member panel of Judges, criticized the Abia State Election Petitions Tribunal, which ruled that the PDP candidate, Chief Onyema Ugochukwu, won the April 2007 poll in the state.

The lower tribunal had in February 2008, held that as public servants, Orji and his deputy, Mr. Chris Akomas, did not resign 30 days before the April 2007 election as stipulated by law. It also agreed with Ugochukwu's claim that Orji belonged to a secret cult, called the Okija shrine. Based on these, the tribunal nullified Orji's election and ordered that Ugochukwu be inaugurated as the Governor of the state. It also held that the Governor and his Deputy failed to prove that they resigned before the election and that the Governor failed to prove that he was not a member of a secret cult.

The Court of Appeal said the Justice Yusuf Abdullahi-led lower tribunal's judgment was "chameleonic," and "somersaulting." Reading the lead judgment, Justice Saka Ibiyeye rejected the grounds on which the lower Court annulled the Governor's victory. Ibiyeye noted with disappointment that the lower tribunal acknowledged the victory of Orji in the election but turned a blind eye to it and declared Ugochukwu who ranked second as the winner. On the issue of resignation, he held that Orji and Akomas who were then commissioner and chief press secretary in the Orji Kalu administration were not public servants but political office holders. Justice Ibiyeye further explained that the two officers did not fall within the provisions of Section 182 of the 1999 Constitution as interpreted in Section 318 of the same Constitution. In view of these, the Court held that the two men were not bound by the 30 days minimum resignation period before election.

Addressing the question of membership to a secret cult, the Court stated that Okija shrine was not a secret cult but an arbitration shrine recognized in the South-Eastern part of the country. It was held that if the shrine was a secret cult, the Anambra State Government would have proscribed it. The Court also condemned the lower Court's acceptance of the evidences provided by the petitioner, which it said were inadmissible. It maintained that the evidences were not tendered along with the petition and that the maker of the video did not testify before the lower tribunal."[61]

OTHER NOTABLE PRINCIPLES OF LAW

Some other principles of law laid down by the Court of Appeal include:

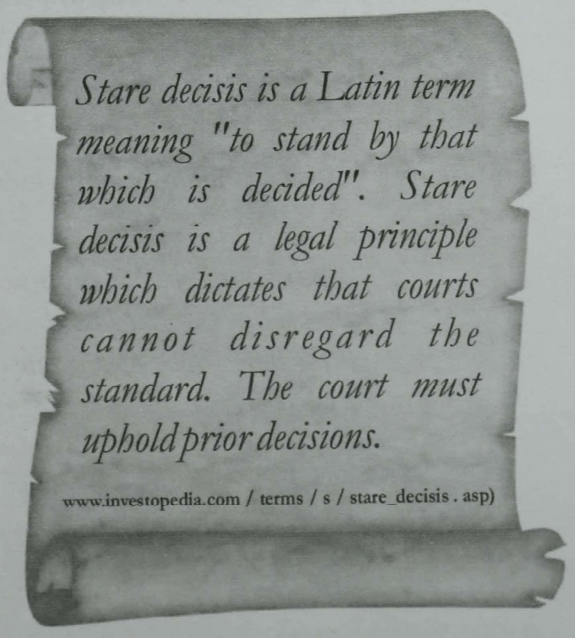
Senate President v. Nzeribe

The Court in this appeal enjoined trial Courts to take originating summons together with preliminary objection challenging its jurisdiction. This principle was affirmed by the Supreme Court in *Inakoju v. Adeleke (2007) NWLR (Pt.1025).*

The Court of Appeal has original jurisdiction on presidential election petitions. Its notable pronouncements on the term of office of a President who had hitherto served as a Military Head of State was affirmed by the Supreme Court in *Ojukwu v. Obasanjo (2004) 12 NWLR (Pt.886) 169.*

NO/INADEQUATE JUDICIAL ACTIVISM?

Judicial activism presages that in determining a case the court may modify or change the law if the law as it stands or its principles appear flawed, irregular or incongruous. It envisages that a judge may decline to apply the law as it is traditionally done in relation to the principle of *stare decisis* and the application of judicial precedents in arriving at a decision. Courts often resort to judicial activism in order to achieve substantive justice, regardless what the particular law dictates.
Court



At the Court of Appeal, many of the judges apply the law as it is expressly provided and do not desire to challenge laws that are outdated or that create manifestly unjust situations where applied. Judicial activism is often associated with younger judges and judges at the lower courts. Judges at this level are more prepared to take radical decisions with the hope that the decisions will be affirmed on appeal.

At the Appeal Court level, there is more pressure to maintain status quo. The challenge to go against established norm and precedent is limited. Additionally, the workload at the higher courts can also be one of the reasons for limited judicial activism at the Court of Appeal because the desire to think outside of the box and challenge an established norm requires much deliberation.

It is important to point out that adequate judicial activism is dependent on the caliber of the judge in the first place as this will determine if such decision will survive the scrutiny of the higher courts if the decision is appealed against.

Though some legal minds have insisted on the need for judicial activism, others maintain that judicial activism by the courts should be limited. They have supported their argument by pointing out the importance of applying judicial precedent in order to ensure predictable and uniform development of court practice. Though this concern is valid, judicial activism must be encouraged at all stages of the judicial process (from trial to appeal). Justice Oputa JSC in supporting this view opined that:

> *"...in a progressing world, the law and the administration of justice cannot afford to be static and retrogressive. The only option open to our jurisprudence is intelligent, mature and progressive activism. We are not to fold our hands and do nothing. No. Our judges have to so interpret the law such that it makes sense to our citizens in distress ..."*[62]

Chukwuma Chinwo a legal practitioner opined that:

> *"There is no better definition of judicial activism than the judges interpreting laws to meet the demands of substantive justice, irrespective of the bare letters of the law and the Constitution."*[63]

NOTES

1. Ola, Timothy. "I've forgiven Shagari … For deporting me in 1983." The Sun Newspaper, January 18, 2009. Print.
2. *Alhaji Abdulkadir Balarabe Musa v. Auta Hamza* (1982) 3 NCLR (Volume3) 229.
3. C.P.C. here means *Criminal Procedure Code.*
4. *Nafiu Rabiu v The State* (1981) 2 NCLR (pt.293) at p. 326.
5. *A.G. of Bendel v. Aideyan* (1989) 4 NWLR (pt 118).
6. Ibid.
7. *Awolowo v. Shagari & Others* (1979) NSCC 87.
8. Ibid.
9. *Yakubu v. Paiko, Sharia Law Reports of Nigeria*, vol. 1.126.
10. Ibid.
11. *Akilu v. Fawehinmi (1987) 1NWLR* (pt.51) 554.
12. *Fawehinmi v. Akilu (1987) 4NWLR* (pt.67)797.
13. *Criminal Procedure Law.* Sections 77. 275 and 340(2) (b).
14. *Criminal Procedure Amendment Edict* No.7, 1987.
15. *Fawehinmi v. Akilu (1989) 3NWLR* (pt. 112) 643.
16. *Skenconsult (Nig) Ltd.* & *Anor. v. Ukey* (1981) 1 S.C. 6.
17. *Ezomo v. Oyakhire (1985) 1NWLR* (pt. 2) 195.
18. *Adegoke Motors v. Adesanya* (1989) 3 NWLR (pt. 109) 250.
19. Ibid.
20. *Ojukwu V Military Governor of Lagos State* (1986) I NWLR (Pt. 18) 621.
21. *Adio v. A. G. Oyo State & Ors* (1990 7 NWLR (pt. 163) 448.
22. *Mojekwu v. Mojekwu* (1997) 7 NWLR (pt. 283).
23. Ibid.
24. *Chief Gani Fawehinmi v. Inspector-General of Police* & *2 Ors* (2002) 7NWLR (pt.767) 682.
25. Okenwa, L.N. (producer). (2008). *The Court of Appeal, 30 & 2 Years, The journey So Far. [DVD]. Fiduciare Media Productions.*
26. *Adamu Suleman v. Commissioner of Police Plateau State.* S.C. 19/2005.
27. *Mohammed Abacha v. The State* (2002)7 SC (Pt 1) 1.
28. Oguntade, G.A. Oral Interview. May, 2007.
29. *Ukachukwu v. Uba* (2004) 10 NWLR (pt. 881) 224.
30. Ibid.294.
31. Ibid.
32. *Ukachukwu v. Uba* (2005) 9 NWLR (pt. 930) 375-379.
33. *Ukachukwu v. Uba,* Loc. Cit.
34. *Ukachukwu v. Uba* (2005) 18 NWLR (pt. 956) 1-79.
35. *Senator (Sir) I.G. Abana v. Chief Ben Obi* & *Ors* (2004) 10 NWLR (pt. 881) 319.
36. Ibid.
37. Okenwa, Loc. Cit.
38. *Dr. Chris Nwabueze Ngige* & *Anor v. Hon. Nelson Achukwu & Ors* (2004) 8 NWLR (pt. 875) 356-362.
39. *Dr. Chris Nwabueze Ngige* & *Anor v. Hon. Nelson Achukwu & Anor* (2005) 2 NWLR (pt. 909) 123.

40. Nabaruwa, G. Oral Interview. August 2007.
41. *Ngige v. Obi* (2006) 14 NWLR (pt. 999) 1.
42. *Hon. Mike Balonwu v. Mr. Peter Obi* (2007) 5 NWLR (Pt.1028) 488 C.A.
43. Court of Appeal Act, Section 15.
44. *Obi v. INEC* (2007) 11NWLR (pt. 1046) 565.
45. *Ibori v. Agbi* (2004) 6 NWLR (pt. 868).
46. Okenwa, Supra.
47. *Buhari v. Obasanjo* (2005) 2 NWLR (Pt. 910) 241.
48. Okenwa, Supra.
49. Ibid.
50. *Inakoju v. Adeleke* (2007) 4 NWLR (pt.1025) 423.
51. *Amaechi v. INEC* (2008) 5 NWLR (pt.1080) 227.
52. Ibid.
53. Ibid.
54. *Ugwu v. Ararume* (2007) 12 NWLR (pt.1048) p.367.
55. Okenwa, Supra.
56. *Fajimolu v. Unilorin* (Unreported Appeal No. CA/IL/49/2003J of s2006).
57. *Attorney-General of the Federation & Ors v. Alhaji Atiku Abubakar* & *Ors* (2007) 4 NILR (pt. 202).
58. *Dr. Ngozi Okonjo-Iweala and Chief Olu Adeniji. Fawehinmi v. President* FRN (2007) 14 NWLR (pt. 1054) 275.

59. *ANPP v. IGP* (2007) 18 NWLR (pt. 1066) 457.
60. Ibid.
61. *Orji v. PDP* (2009) 14 NWLR (pt. 1161) 310.
62. C.A Oputa *Human Rights in the Political and Legal Culture of Nigeria.* Lagos: Nigeria, Law Publications, 1989, p. 38
63. Chinwo, Chukwuma. "Amaechi: Admirable Judicial Activism, But..." Daily Independent Newspapers (Daily Independent Law), Page 1, November 1, 2007. Print.

CHAPTER 2

List of Cases

Reported:

1. Alhaji Abdulkadir Balarabe Musa v. Auta Hamza (1982) 3NCLR (volume3) 229
2. Adegoke Motors v. Adesanya (1989) 3NWLR (pt. 109) 250
3. Adio v. A.G. Oyo State & ors. (1990) 7NWLR (pt. 163) 448
4. A.G. of Bendel v. Aideyan (1989) 4NWLR (pt. 118)
5. Akilu v. Fawehinmi (1987) 1NWLR (pt.51) 554
6. Amaechi v. INEC (2008) 5NWLR (pt. 1080) 227
7. ANPP v. IGP (2007) 18NWLR(pt. 1066) 457
8. Awolowo v. Shagari & ors (1979) NSCC 8
9. Attorney-General of the Federation & ors. V. Alhaji Atiku Abubakar & ors (2007) 4NILR (pt. 202)
10. Buhari v. Obasanjo (2005) 2NWLR (pt. 910)241
11. Chief Gani Fawehinmi v. Inspector- General of Police & 2ors. (2002) NWLR (pt. 767)682
12. Dr. Chris Nwabueze Ngige & Anor. v. Hon. Nelson Achukwu & ors. (2004) 8NWLR (pt.875) 356-362
13. Dr. Ngozi Okonjo- Iweala & Chief Olu Adeniji fawehinmi v. President FRN (2007) 4NWLR (pt. 1054) 275
14. Ezomo v. Oyakhire (1985) 1NWLR (pt. 2) 195
15. Fawehinmi v. Akilu (1987) 4NWLR (pt. 67) 797
16. Hon. Mike Balonwu v. Mr Peter Obi (2007) 5NWLR (pt. 1028) 488 C.A
17. Ibori v. Agbi (2004) 6NWLR (pt. 868)
18. Inakoju v. Adeleke (2007) 4NWLR (pt. 1025) 423
19. Mojekwu v. Mojekwu (1997) 7NWLR (pt. 283)
20. Mohammed Abacha v. The State (2002)
21. Nafiu Rabiu v. The State (1981) 2NCLR (pt. 293) @ 326
22. Ngige v. Obi (2006) 14 NWLR (pt.999) 1
23. Obi v. INEC (2007) 11NWLR (pt. 1046) 565
24. Ojukwu v Obasanjo (2004) 12NWLR (pt. 886) 169
25. Ojukwu v. Military Governor of Lagos State (1986) 1NWLR (pt. 18) 621
26. Orji v.v PDP (2009) 14NWLR (pt. 1161) 310
27. Senator (Sir) I.G. Abana v. Chief Ben Obi &ors (2004) 10NWLR (pt. 881) 319
28. Skenconsult (Nig) Ltd. & Anor v. Ukey (1981) 1S.C. 6
29. Shugaba Darman v. The minister of internal Affairs (1982)3NCLLR; 915
30. Ukachkwu v. Uba (2004) 10NWLR (pt. 881) 224
31. Ugwu v. Ararume (2007) 12NWLR (pt. 1048) 367
32. Yakubu v. Paiko , Sharia Law Reports of Nigeria, Vol. 1. 126

Unreported:

1. Adamu Suliman v. Commissioner of Police Plateau State S.C 19/2005
2. Fajimolu v. Unilorin (Unreported Appeal No. CA/IL/49/2003 of S2006)

Table of Statute

1. Section 33 of the 1979 constitution.
2. Bendel Gazette No.219 of April 29, (1976).
3. The electoral Act 2002.
4. Section 180(2) of the (1999 constitution as amended).
5. Section 149 Evidence Act.
6. Section 34 of the Electoral Act (2006).
7. Certain Political, Public and judicial office Holders Act (2002).
8. Public Order Act, Laws of the Federation of Nigeria (1990) Cap.382.
9. Article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement), Laws of the Federation of Nigeria (1990) Cap.10.
10. Section 318 of the Constitution (1999 as amended).

