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IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 17TH DAY OF DECEMBER, 2018
BEFORE THEIR LORDSHIPS

ABUBAKAR DATTI YAHAYA	JUSTICE, COURT OF APPEAL
TINUADE AKOMOLAFE-WILSON	JUSTICE, COURT OF APPEAL
PETER OLABISI IGE	JUSTICE, COURT OF APPEAL

APPEAL NO. CA/A/698/2018

BETWEEN:

1. MR. ANTHONY ITANYI
2. MAJ. GENERAL BELLO SARKIN YAKI (RTD) } .....APPELLANTS

AND

1. ALH. ABUBAKAR ATIKU BAGUDU
2. ALL PROGRESSIVE CONGRESS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION } .....RESPONDENTS

JUDGMENT
(DELIVERED BY PETER OLABISI IGE, JCA)

By their further Amended Writ of Summons and FURTHER AMENDED STATEMENT OF CLAIM in Suit No. FHC/ABU/CS/312/2015 commenced at the Federal High Court on 8th day of April, 2015 the Appellants as PLAINTIFFS claimed against the Respondents to this appeal who were 1st,

CTC ₦1000

COURT OF APPEAL CASHIER OFFICE 27/12/18 NIGERIA

pd vide RC2
NO: Z1113924

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BARR CHRIST N. HARUNA
A.G. DEPUTY CHIEF REGISTRAR
COURT OF APPEAL ABUJA
DIVISION
SIGN ... DATE 27-12-18

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2nd and 3rd Defendants at the lower Court the following reliefs:

"(a) A DECLARATION that the information given by the 1st Defendant in the Affidavit of Personal Particulars submitted by him to the 3rd Defendant (i.e. Form C.F.001), particularly at Part E (General), Item No. 2 thereof, to the effect that he is not under a fine for offence involving dishonesty or fraud or any offence, imposed by a Court or Tribunal, is false.

(b) A DECLARATION that by reason of the false information given by the 1st Defendant in the Affidavit of Personal Particulars submitted by him to the 3rd Defendant (i.e. Form C.F.001), particularly at Part E (General), Item No.2 thereof, the 1st Defendant is, by virtue of section 31(6) of the Electoral Act 2010 (As amended) disqualified from contesting the 2015 Governorship election in Kebbi State conducted by the 3rd Respondent on 11th April 2015.

(c) AN ORDER restraining the 3rd Defendant by herself: officers, servants, agents, howsoever called, from recognizing, treating or dealing with the 1st Defendant as a candidate qualified to contest the 2015 Governorship election in Kebbi State held on 11th April 2015, and from conferring on the said 1st Defendant any benefit, right or privilege as a candidate qualified to contest the 2015 Governorship election in Kebbi State held on 11th April 2015.

(d) AN ORDER setting aside, nullifying and voiding all rights,

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benefits or privileges conferred on or accruing to 1st Defendant as a candidate for the 2015 Governorship election in Kebbi State held on 11th April, 2015, or which may have accrued to or be conferred on him by reason of his having contested the said 2015 Governorship election in Kebbi State being that the 1st Defendant was, *ab initio,* not qualified to contest, or disqualified from contesting, the said election.

(e) AN ORDER cancelling as null and void the Certificate of Return issued to the 1st Defendant by the 3rd Defendant."

Parties to said action duly exchanged pleadings and matter later proceeded to trial. The plaintiffs called a witness MR. ANTHONY ITANYI, the 1st Appellant in this appeal. The 1st Respondent learned Counsel crossed examined PW1 extensively and with him the Appellants closed their case. The three Respondents to this appeal did not call witness at the trial. Written Addresses were ordered and exchanged and the Learned Counsel to the parties adopted their respective Written Addresses after which Learned trial Judge gave a considered judgment on 29th June, 2018 wherein the learned trial Judge held:

> *"In view of the above principle of the law, what is the evidence led by the Plaintiffs in support of the declaratory reliefs sought? In particular what is the evidence led by the Plaintiffs in proof of their assertion that the 1st Defendant is under a sentence of fine or imprisonment by a Court of law or Tribunal.*

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In an attempt to discharge that burden, the Plaintiffs tendered exhibits PL1 - PL14 through PW1, who admitted under cross examination that he was not the maker of any of the said exhibits. In view of the admission by PW1 that he was not the maker of any of the exhibits PL1 - PL14, what then is the legal effect of the said exhibits (document) on this case? The answer is not farfetched. As it is readily available in the case of NYESOM vs. PETERSIDE supra at pages 522 - 523 paragraphs G - A, wherein the Supreme Court held as follows:-

> "Where the maker of a document is not called to testify, the document will not be accorded probative value, notwithstanding its status as a certified public document. In this case, though exhibit A9 was admissible, it was not prepared by DW49 who tendered it in evidence".

See also the cases of IKPEAZU VS. OTTI (2016) 8 NWLR PART 1513 page 38 at page 93 paragraphs A - Band BELGORE vs. AHMED (2013) 8 NWLR PART 1355 page 60 at page 100 Paragraphs E - F,D - E and G -. H.

All the above mentioned cases of the Supreme Court are to the effect had no probative value or no weight should be attached to documents that were not tendered by the maker notwithstanding the fact that they are certified.

The end result is that whatever the Plaintiffs purported to prove by tendering exhibits PL1 - PL14 in this case is not achieved.

Having found as above, I have no option but to resolve

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the issue against the Plaintiffs in this case.

In consequence thereof, the Plaintiffs' claims have failed in their entirety.

The result is that the Plaintiffs' suit is hereby dismissed."

The Appellants were dissatisfied and have by NOTICE OF APPEAL dated and filed 29th August, 2018 contained in the Supplementary record, appealed to this Court on seven (7) grounds of appeal which without their particulars are as follows:-

"2. *PART OF THE DECISION COMPLAINED OF:.*

The whole decision, save for the part of the judgment where the lower court refused to countenance Issues 1 - 6 of the 1st Respondent which he canvassed in his final written address, on the basis that the said issues had already been decided by the Supreme Court in Appeal No. SC. 76212016.

3. *GROUNDS OF APPEAL:*

GROUND 1:

The learned trial Judge erred in law when he held at pages 25 the judgment that the onus of proof rests 'squarely on the Appellants.

GROUND 2:

The earned trial Judge erred in law when at pages 25 - 26 of his judgment he held that:

"Upon a careful consideration of the evidence of PW1, I am of the strong opinion that the plaintiffs have failed through their sole witness to prove that the 1st Defendant was under a sentence of fraud or any offence imposed by a Court of Tribunal."

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GROUND 3

The learned trial Judge erred in law when he held that Exhibits PL^5, PL^6 and PL^7 did not show that the 1st Respondent is under a sentence of fine for offence involving dishonesty or fraud imposed by a Court or Tribunal and held at pages 26 - 28 of the judgment as follows:

> "The same goes for exhibit PL5 as there is nothing on it to suggest that the 1st Defendant was under sentence or fine for any offence whatsoever. On the same exhibit PL^5, learned senior counsel for the Plaintiffs submitted that the 1st Defendant has not denied the Forfeiture proceedings and the facts in the said exhibits, and that the 1st Defendant cannot deny being a party to exhibit PL^5 as it clearly indicted him.

In reaction to the above submission, I am of the opinion that the argument is rather porous. There is no burden on the 1st Defendant to prove otherwise. By Section 135(1) of the Evidence Act, 2011, the burden rest squarely on the Plaintiffs who are making criminal allegations against the 1st Defendant to prove same beyond reasonable doubt. On exhibits PL^6 and PL^7, I have no difficulty in rejecting the argument of learned senior counsel for the Plaintiffs for the simple reason that the said exhibits did not state that the 1st Defendant was under a sentence fine imposed by a Court of law or Tribunal. It should be stressed that all the exhibits tendered by the Plaintiffs do not support the pleadings of the Plaintiffs, and the evidence of PW1 to the effect that the 1st Defendant is under sentence or fine imposed to by a Court or Tribunal."

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GROUND 4

The learned trial Judge erred in law when he held at page 26 of the judgment follows:-

"I similarly find the submission of learned senior counsel for the plaintiffs on exhibits PL10 - PL12 not tenable.

GROUND 5

The learned trial Judge erred in law when a pages 28 - 29 of the judgment he held as follows:-

> "Learned senior counsel for the Plaintiffs submitted in paragraph 4.3 7 of final address that forfeiture is a final component of our criminal justice administration and further that forfeiture order by the court is a sentence of fine imposed on the 1st Defendant for an offence involving dishonesty or fraud, consequently, it is senior counsel's further argument that the Court should lift the corporate veil and hold the 1st Defendant who is the alter ego of the companies whose assets were forfeited liable. Let me say that I am not persuaded by the above argument. This is because, as rightly submitted by counsel (or the 2nd Defendant, the above authorities, where the court found the doctrine of lifting of the veil, applicable, the parties held liable went through a trial in consequence of which they are afforded right to fair hearing be(ore being held liable. In any event having found that the Plaintiffs have failed to prove that the Defendant is under sentence or fine imposed by a Court or tribunal, the issue of lifting of the corporate to find the 1st Defendant liable cannot arise. "

GROUND 6

The learned trial Judge erred in law when he refused to attach any

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probative value or weight to exhibits PL1 - PL14 tendered by the PW1, the 1st Appellant, on the basis that he was not the maker of the said documents.

GROUND 7:

The judgment appealed against is against the weight of evidence."

The Appellants' Brief of Argument dated 4th day of September, 2018 was filed on 5th September, 2018 and deemed filed on 30th October, 2018. The 1st Respondent's Brief of Argument was dated and filed on 29th October, 2018 but deemed filed on 30th October, 2018. It is relevant to state here that on the same date the 1st Respondent filed a Notice of Preliminary objection against the hearing of this appeal. The 1st Respondent's argument on the said objection can be found on pages 4 - 5 paragraph 3.0 - 3.2 in 1st Respondent's Brief of Argument aforesaid.

The 2nd Respondent's Brief of Argument was filed also on 29th October, 2018 dated same date but was deemed properly filed on 30th October, 2018 while the 3rd Respondent's Brief of Argument dated 29th October, 2018 was filed on 30th October, 2018.

The Appellant filed Appellants Reply Brief to the 1st Respondent's Brief of Argument on 5th November, 2018 but was dated 4th November, 2018. The 1st Respondent thereafter filed what he called 1st RESPONDENT'S REPLY ON

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POINTS OF LAW TO THE APPELLANTS' PRELIMINARY OBJECTION.

When appeal came up on 11th November, 2018 the 1st Respondent argued his Notice of Preliminary Objection. This is in accordance with ORDER 10 Rule 1 of the Court of Appeal Rules 2016 which provides that:

> *"A Respondent intending to rely upon a preliminary object to the hearing of the appeal; shall give the Appellant three clear days notice thereof before the hearing, setting out the grounds of objection and shall file such notice together with twenty copies thereof with the registry within the same time"*

A preliminary objection to the hearing of an appeal has been described as a preemptive attack initiated to scuttle the hearing of an appeal. It is designed to terminate an incompetent or grossly defective appeal in limine such a preliminary objection will also be viable where it raises fundamental issue of jurisdiction that goes to the root or the competence of this court to entertain the appeal or suit. It prevents this Court from dissipating energy and valuable judicial time in hearing an appeal which will turn out to be an exercise in futility. See:

1. CHIEF UFIKAIRO MONDAY EFET VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2011) 7

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NWLR (PART 1247) 443 H to 444 A per D - T MUHAMMED, JSC.

2. E. B. UKIRI VS FRN (2018) 12 NWLR (PART 1632) 1 at 17 E per PETER ODILI, JSC.
3. SOUTH ATLANTIC PETROLEUM LIMITED VS. THE MINISTER OF PETROLEUM RESOURCES & ORS (2018) 1 SCM 156 at 168 G - H to 169 A per AUGIE, JSC.
4. ALH. M. A. MAGBAGBEOLA & ORS VS. ALH. PRINCE & ORS (2018) 11 NWLR (PART 1629) 177 at 195 E per I.T. MUHAMMAD, JSC who said:

"My Lords, the aim or purpose of a preliminary objection against a suit an application or an appeal, is, if successful, to terminate the hearing of the matter under consideration in limine either partially or in toto. Accordingly, where competence of the matter is challenged, it is always better to determine same first before embarking to consider the said matter. Where the said matter is found to be incompetent that puts an end to it See: Odiase v. Agho (supra); Fadiora v. Gbadebo (supra); Oloriode v. Oyebi 984) 1 SCNLR 390; Ndigwe v. Nwude (1999) 11 NWLR (Pt. 626) 314."

In line with the avowed position of the law and decisions of the apex Court it is always better and neater to deal with preliminary objection first so that this Court will not embark on a labour that may be in vain. See:-

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1. NONYE TWUNZE VS THE FEDERAL REPUBLIC OF NIGERIA (2014) 6 NWLR (PART 1404) 500 AT 596 D - E where the apex Court per OLABODE RHODES-VIVOUR, JSC said:-

   "The Constitution confers on the Court of Appeal jurisdiction to hear and determine appeals. The jurisdiction is statutory and also controlled by the rules of Court. The Court of Appeal would lack jurisdiction to hear an appeal if an Appellant fails to comply with statutory provisions or the relevant rules of the Court."

2. ONONYE FLORENCE ACHONU VS. OLADIPO OKUWOBI (2017) 12 SCM 1 at 16 H - I per GALINJE, JSC who said:

   "The law is settled beyond which there is no argument that where a preliminary objection is issued challenging the competence of an appeal, same shall be resolved before considering the appeal. This is so because the labour of hearing the appeal will be in vain of at the end of the day the appeal is found to be incompetent. See OYUHENA & ORS VS. EGBUCHULAM (1996) 5 NWLR (PART 448) 224"

The said Notice of Preliminary Objection reads:

"TAKE NOTICE that at the hearing of this appeal, the

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1st Respondent shall raise Preliminary Objection to the competence of this appeal and shall in consequence thereof, pray this Honourable Court to decline jurisdiction over the appeal and accordingly strike out same.

FURTHER TAKE NOTICE that the grounds upon which this objection is based are as follows:

1. This appeal is against the Judgment delivered on the 29th day of June, 2018 by Hon. Justice A. R. Mohammed in a pre-election matter in Suit No. FHC/ABJ/CS/312/2015 between ANTHONY ITANYI & ANOR v. ALHAJI ABUBAKAR ATIKU BAGUDU & 2 ORS.
2. The Appellant herein, filed their first Notice of Appeal on the 6th day of July, 2018. This Notice of Appeal is at pages 4815 to 4821 of Volume 7 of the Record of Appeal.
3. The Appellants did not file any Brief of Argument on the Notice of Appeal filed on the 6th day of July, 2018.
4. The Appellants filed a second Notice of Appeal on the 29th of August, 2018, which was transmitted to this Honourable Court by way of a Supplementary Record of Appeal.
5. By Section 285 (11) of the CFRN 1999, (Forth Alteration, No. 21) Act 2017 "An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment

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appealed against."

6. *By Section 285(12) of the CFRN 1999, (Forth Alteration, No. 21) Act 2017 "An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from the date of filing of the appeal."*
7. *The notice of Appeal filed on the 29th of August, 2018 on which the Appellants' Brief of Argument was predicated, was filed more than 14 days from the date of the Judgment which was delivered on the 29th of June, 2018.*
8. *It is now more than 60 days since the two Notices of Appeal were filed on the 6th of July, 2018 and 29th of August, 2018 respectively."*

In his submissions in support of the objection Y. C. MAIKYAU SAN submitted that the failure of Appellants to strictly comply with the provisions of the constitution of the Federal Republic of Nigeria 1999 as amended with respect to time within which to appeal against the decision of the trial Court which arose from a pre-election matter, renders the appeal a nullity. That this Court has no jurisdiction to entertain the Appellant's appeal. That in addition the requirement that the appeal must be filed within 14 days from the date of the decision appealed against, the Appeal, itself must be heard and disposed off within 60 days from the time the appeal was filed. That in this case 60 days from the date of the filing of the Notice of Appeal have elapsed and this

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Court lacks the jurisdiction to entertain the appeal outside the period circumscribed by the constitution. The Learned Silk urges us to strike out this appeal.

In his response to the above submissions, the Learned Senior Counsel to the Appellant ANTHONY I. ANI, SAN contended that the provisions of Section 285 (11) and 12 of the constitution (Fourth Alteration Act, No. 21 of 2017) to which the preliminary objection was anchored is grossly misconceived because the provisions of the constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act 2017, is inapplicable. The Learned Silk gave two reasons as follows that:

1. The Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act 2017, which further altered the provisions of section 285 of the 1999 constitution was passed into law upon its assent by the president, Muhammadu Buhari GCFR, on 7th June, 2018, subsequent to the accrual of the cause of action in the instant case on 27/1/2015 and the provisions of the Act are not made to apply or operate retroactively or retrospectively
2. By the definition of "pre election matter" in subsection 14 of section 285 of the constitution (fourth Alteration Act, No. 21 of 2017) do not apply to the Appellants' suit and the instant appeal. He submitted

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that the applicable law in respect of a matter or dispute is the law in existence at the time the cause of action arose. That it is also settled law that an appeal is a continuation of hearing of the original suit before the trial Court rather than a beginning of a new suit. That the fact that a matter has proceeded on appeal does not create a new cause of action. He relied on legion of cases including:

(1) OREDOYIN VS. AROWOLO (1989) 4 NWLR (PART 114) 172 and

(2) HOPE DEMOCRATIC PARTY VS. OBI (2011) 18 NWLR (PART 1278) 80 at 102 - 103 per ONNOGHEN, JSC now CJN

That in this appeal the cause of action is false declaration by the 1st Respondent in Form CF001 which he submitted to INEC to the effect that he is not under a sentence of fine for any offence involving dishonesty or fraud or any offence imposed by a Court or Tribunal which cause of action fructified and arose on 27/1/2015. That the date was confirmed by Federal High Court per Ademola J and affirmed by Supreme Court in Appeal No. SC 762/2016 on pages 4726 - 4730 Vol. 7 of the record of Appeal.

That by Section 241(1) (a) of the 1999 Constitution the Appellant has right of appeal to this Court and the time within which to appeal was three months. He relied on the Court of

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Appeal Act, 2004 section 25 (2) (9) thereof. That judgment of lower court was delivered on 29/6/18 while Appellant appealed on 29/8/2018.

On definition "Pre election matter" in subsection 14 of section 285 of the constitution (Fourth Alteration No. 21) Act 2017 the Learned Silk strongly submitted that the definition in the said amendment shows that the instant case falls outside the genre of pre-election matters to which Section 285 (9) to (14) apply. He relied on subsections 9 - 14 of Section 285 to submit that where a word has been defined by statute, the meaning given to it must be adhered to. He relied on the case of ARDO V NYAKO & ORS (2014) 10 NWLR (PART 1416) 591 (SC) per ONNOGHEN, JSC now CJN.

That the Appellants herein are NOT ASPIRANTS as defined in the new alteration to the Constitution. The learned silk then submitted that there are two classes of pre-election rights or causes of action created by Sections 31(5) and 87(9) of the Electoral Act (2010) as (amended). That under Section 31(5) of Electoral Act 2010 as amended any person who has reasonable grounds or believe that any information contained in the Affidavit or any document submitted by a candidate to INEC is false can approach the Court. He relied on the case of PDP V INEC (2014) 17 NWLR (PART 1437) 535 AT 558 and EKEGBARA V IKPEAZU & ORS (2016) 4 NWLR (PT 1503) 411. That ASPIRANT means a person who participated in a primary

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of a Political Party which is being challenged. He urged the Court to dismiss the objection.

In his reply on points of law the learned Senior Counsel to the 1st Respondent submitted that the cases relied upon by the Appellants' learned Senior Counsel are not apposite. That the objection of the 1st Respondent is about the competence of the appeal triggered by the NOTICE OF APPEAL filed on 29/8/2018 outside the time prescribed by the Constitution which came into effect on 7/6/18.

That every appeal in pre election matter from 7/6/2018 came under the regime of the alteration. That the appeal is caught by the said alteration to the Constitution. He relied on the decision of this Court on the Interpretation of Sections 11 and 12 of the Constitution of the Federal Republic of Nigeria 1999 (4th Alteration, No. 21) Act 2017 in the case of SENATOR ATAI AIDOKO VS AIR MARSHALL ISAAC in ALFA CFR delivered on 24th October, 2018 in the Appeal No. CA/A/610/2018 per ADUMEIN, JCA. He therefore urged this Court to hold that Appellants' appeal is incompetent.

On whether the definition of "pre-election matter" by the Constitution of the Federal Republic of Nigeria, 1999 4th Alteration No. 21) Act 2017 has not taken the appellants' appeal out of the hammer of the said alteration, the learned silk to the Respondent urges us to resort to the mischief rule method of interpretation since literal Rule of interpreting the

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law will defeat the real intention of the law makers. He relied on the case of JAMES V INEC (2015) ... NWLR (PT 1474) 538 AT 588 E - G per KEKERE-EKUN, JSC.

That the essence of the 4th Alteration is to cure a certain mischief, that is to prevent a situation where pre-election matters last in Court for a period of up to four years. He relied on WAMBAL V DUNATUS (2014) 14 NWLR (PT. 1427) 223 AT 247 F - G per ONNOGHEN, JSC now CJN.

The learned Silk submitted that a strict compliance with the definition of pre-election matters will defeat the essence of the Amendment and would result in absurdity thereby rendering the meaning of the legislative repugnant. He relied on the case of ABIOYE V YAKUBU (2001) FWLR (PT. 83) 2212 AT 2325 C - E per KARIBI-WHYTE, JSC.

He relied on the title to the Fourth Amendment No 21 Act of 2017 to further submit that the intendment of the amendment is to provide a time frame for determination of pre-election matters. He relied on the case of ABIOYE V YAKUBU (2001) FWLR (PT. 83) 2212 AT 2285 per BELLO, CJN of blessed memory. On the meaning of what a pre-election matter means he relied on the cases of KOLAWOLE V FOLUSHO (2009) 4 NWLR (PT. 1143) 338 and SALIM V CPC (2013) 1 - 2 SC (PT. 4) 105 AT 130 per PETER-ODILI, JSC. That the preamble to the said amendment clearly indicates the essence of the amendment to the Constitution. He urged

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this Court to strike out the appeal for being incompetent and for having been filed out of the time stipulated by the Constitution of the Federal Republic of Nigeria 1999 (4th Alteration, No. 21) Act 2017.

Now the common approach to interpretation of the Constitution or Statute is to adopt the literal rule of interpretation by giving the words in the Constitution or the Statute their ordinary or grammatical meaning in order to bring out the intention of the legislature.

It is also trite law that in the quest to interpret or construe the provisions of a statute or the Constitution the Court or Tribunal must construe or interpret the statute or the Constitution in order to bring out plainly the real intention of the Lawmaker or the framers of the Constitution and thus enhance its purpose. The Court or Tribunal has a bounden duty to consider as a whole the entire provisions of the law or the Constitution involved. The statute or the Constitution in question must not be construed in a manner that will do violence to the provisions being interpreted and must not be interpreted to defeat the ultimate design or purpose of the Constitution or statute that calls for interpretation. See:

1. HON. JAMES ABIODUN FALEKE V INEC & ORS (2016) 18 NWLR (PART 1543) 61 AT 117 F - H per KEKERE-EKUN, JSC who said:

"The settled canons of construction of constitutional provision

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are, inter alia, that the instrument must be considered as a whole, that the language is to be given a reasonable construction and absurd consequences are to be avoided. See: A.-G., Bendel State v. A.-G., Federation (1981) 10 SC 132 - 134, (1982) 3 NCLR 1; Ishola v. Ajiboye (1994) 6 NWLR (Pt.352) 506. It is equally well settled that where words used in the Constitution or in a Statute are clear and unambiguous, they must be given their natural and ordinary meaning, unless to do so would lead to absurdity or inconsistency with the rest of the statute. See: Ojokolobo v. Alamu (1987) 3 NWLR (Pt.61) 377 @ 402, F-H; Adisav Oyinwola & Ors (2000) 6 SC (Pt. II) 47, (2000) 10 NWLR (Pt. 674) 116; Saraki v. F.R.N (2016) LPELR - 40013 SC, (2016) 3 NWLR (Pt. 1500) 531."

2. WIKE EZENWO NYESOM VS HON. (DR) DAKUKU ADOL PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 452 AT 527 F - H per KEKERE-EKUN, JSC.
3. COMPTROLLER ABDULLAHI B. GUSAU (2017) 18 NWLR (PART 1598) 353 AT 385 F - H TO 386 A per EJEMBI, EKO, JSC who said:

"Where the main object and intention of a statute are clear the court, in its interpretative power, must give effect to those main object and intention. The words and language used in the statute to convey its main object and intention shall be given their ordinary meaning. See Unipetrol v. E.S.B.I.R. (2006) All FWLR 413 at 423, (2006) 8 NWLR (Pt. 983) 624; Obuse: v. Obusez. (2007) 30 NSCQR 329, (2007) 10 NWLR (Pt. 1043) 430. The Constitution, in the powers or function it has vested in the Federal

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Civil Service Commission, should be so construed to achieve the purpose and object it is intended to achieve. See F.C.S.C. v. Laoye (Supra). The principle of the interpretation of the Constitution laid down by this Court in Nafiu Rabiu v. Kana State (1980) 8 - 11 SC 130, 148 -149 (1981) 2 NCLR 293 is that the words of the Constitution or statute are not to be read with stultifying narrowness, but are to be read and given the meaning that will effectuate the purpose. See also A.-G., Fed. v. A.-G.Abia State (2001) 7 SC. (Pt. 1) 32, (No.2) (2002) 6 NWLR (Pt. 764) 542."

4. HADI SULE V THE STATE (2018) 10 NWLR (PART 1628) 545 AT 560H TO 561 A - D per BAGE, JSC.

I believe it is hereby apposite and in the interest of justice demands that the entire provision of the CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (FOURTH ALTERATION, NO 21) ACT, 2017 be reproduced in order to decipher the real intention of the National Assembly of Nigeria for the alteration and further amendments to Section 285 of the aforesaid Constitution of the Federal Republic of Nigeria 1999. The amendments read:-

"CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FOURTH ALTERATION, NO. 21) ACT, 2017

ACT NO. 8

An Act to alter the provisions of the Constitution of the Federal Republic of Nigeria, 1999 to provide time for the determination of pre-election matters; and for related

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matters.

ENACTED by the National Assembly of the Federal Republic of Nigeria -

1. The Constitution of the Federal Republic of Nigeria 1999 (in this Act referred to as "the Principal Act") is altered as set out in this Act.

2. Section 285 of the Principal Act is further altered by:-

(a) substituting for the marginal note, a new "marginal note"-

"Time for determination of pre-election matters, establishment of Election Tribunals and time for determination of election petitions",

(b) substituting for subsection (8), a new subsection "(8)"-

"(8) Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre- election matter or on the competence of the petition itself; is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment"; and

(c) inserting after subsection (8), new subsections "(9)" - (14) , 1999.

"(9)Notwithstanding anything to the contrary in this Constitution; everything pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.

(10)A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing

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of the suit.

(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against.

(12) An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from-the date of filing of the appeal.

(13) An election tribunal or court shall not declare any person a winner at an election in which such a person has not fully participated in all stages of tie election.

(14) For the purpose of this section, "pre-election matter" means any suit by-

(a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;

(b) an aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions. of the Electoral Act or any Act of the National Assembly regulating Elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election and;

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*(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission **in** respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of the nomination preparation for an election."*

This Act may be cited as the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21,) Act, 2017."

The learned Senior Counsel to the 1st Respondent had contended that the said amendment has terminated the right of appeal of the Appellants to this Court in that the Appellants only have 14 days from the date of judgment of lower Court to appeal to this Court but they only filed their Notice of Appeal against the judgment on 29th August 2018 well outside the time limited for appeal in Section 285(11) of the said Constitution. They also contend that the jurisdiction of this Court to entertain and adjudicate on the appeal is 60 days from the date of judgment which time had also run out.

In his own response the learned Counsel to the Appellants is of the view that the definition of Section (section 285(14)) now new amendment stated that the amendment is only applicable to an aspirant who took part in a

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Political Party Primaries pursuant to Section 87(9) of the Electoral Act, 2010 (as amended).

In reply on point of law the learned silk to 1st Respondent is of the opinion that the interpretation canvassed by the learned Senior Counsel to the Appellants is acceded to, such interpretation will defeat the real purpose and intention of the amendments introduced. That the literal rule of interpretation will not curb the mischief it is intended to curb. The learned Senior Counsel to the Respondent made the point in paragraph 1.12 of his 1st Respondent's Reply on Points of Law thus:

> *"The real intention of the legislature in making the present amendment to the Constitution is to cure the mischief of the long period of time spent on pre-election matters which are often found to last through the entire tenure of the subject matter, thereby rendering the entire proceedings a mere academic exercise. A good example of such prolonged proceeding is the instant matter which is a 2015 pre-election matter which is being heard 3 months to the 2019 general elections. It is against this backdrop, that the legislature has embarked upon the said amendment in order that matters such as this can be heard and determined within a reasonable stipulated time."*

The next port of call is to examine Sections 31(5) and 87(9) of the Electoral Act 2010 as to the rights given to

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intending litigants within the two sections of Electoral Act 2010 as amended:

> *"Section 31(5) says:*
>
> *"(5) Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or FCT against such person seeking a declaration that the information contained in the affidavit is false."*

Section 87(9) of the same Act provides:

> *"87(9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress."*

To my mind Section 31(5) of the Electoral Act allows any person to challenge the candidacy of a person contesting an election on the platform of any political party for an elective office in a general election or bye-election whereas the only person with locus standi to challenge the nomination of a candidate under section 87 of the Electoral Act is a person who has participated in the Primary Election of a Political Party for the elective office in issue and it must be a primary

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election authorised or conducted by the National Working Committee or National Executive Body of the Political Party concerned. In all of these the bottom line is that where there are litigation(s) as stated in the above two scenario, there can be no argument that the two types of litigation are pre-election matters. The Court's position is that a litigant under Sections 31(5) and Section 87(9) of the Electoral Act 2010 as amended can approach the Court to seek redress or vindicate his or her right in the Federal High Court, High Court of a State or Federal Capital Territory High Court against a candidate who emerges as candidate of a Political Party pursuant Political Party Primaries conducted under Section 87(9) of the Electoral Act 2010. The two types of actions that can be consummated under both Sections of the Electoral Act 2010 are no doubt pre-election matters which ought to have been commenced before the general elections or the envisaged election in which the candidates whose emergence is being challenged under different platform would be elected. This Courts have witnessed an upsurge and awkward situation in which actions or suits pertaining or relating to pre-election matters or issues are pursued with all vigour by the parties concerned and are in most cases elongated into next or new general elections spanning over three years.

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In most cases the elections would have been conducted by Independent National Electoral Commission, won and lost leading to contest before the Election Petition Tribunals and in many cases appeal from Election Petition Tribunal judgment would have been determined in this Court and the loser can appeal to the highest Court in the land and yet pre-election matters would still be pending in Courts.

It is no doubt strange, curious and repugnant to the interest of our nascent democracy to see pre-election matters and suits still being pursued after elections. It is an intolerable situation and does not augur well for good governance.

I am of the solemn view that the above anomalies thrown up by pre-election matters informed the proactive stance of the National Assembly of Nigeria in seeking to curtail and stem the tide or avalanche of litigations on pre-election matters eating up into election period and beyond which in most cases have no utilitarian value, in enacting the CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FOURTH ALTERATION, NO 21) ACT 2017 which was signed into law by the President of the Federal Republic of Nigeria on 7th day of June, 2018.

To the Appellants their appeal is not caught by the further amendments, that is the addition of new sub-sections 9 - 14 to Section 285 of the Constitution of the Federal

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Republic of Nigeria 1999 as amended. Their reason for so contending is that they are not an aspirant envisages in definition of Section 285(14) of the said Constitution as amended.

The settled position of the law is that where the literal rule of interpretation of the provisions of a Constitution or a statute being construed or interpreted will defeat the real purpose of the Constitution, statute or the sections being construed and cause serious damage or injustice to the whole essence of the said Constitution or statute as a whole, then, recourse must be had to the golden Rule or the mischief Rule of Interpretation of the Constitution or the law so as to curb the mischief the law is designed to nip in the bud or prevent and thus bring out clearly the real intention of the makers of the Constitution, Act or law and the amendments thereto such that it is not rendered nugatory or turn into an exercise in futility.

In such a situation the Courts have been called upon to side with the intendment of the Constitution or the statute particularly where the provisions of the law or the Constitution being interpreted is ambiguous and not very clear. The Court must endeavour to eliminate absurdity or inconsistency with the rest of the statute. See:

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1. OCHOLI ONOJO JAMES, SAN V INEC & ORS (2015) 12 NWLR (PART 1474) 538 AT 588 D - G also per KEKERE-EKUN, JSC who had this to say:

"In interpreting the provisions of the Constitution and indeed any statute, one of the important considerations is the intention of the lawmaker.
In addition to giving the words used, their natural and ordinary meaning (unless such construction would lead to absurdity), it is also settled that it is not the duty of the court to construe any of the provisions of the Constitution in such a way as to defeat the obvious ends it was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends. See Muhammed v Olawunmi (1990) 2 NWLR (Pt. 133) 458; Rabiu v. The State (1981) 2 NCLR 293; Adetayo v Ademola (2010) 15 NWLR (supra) @ 190 - 191 G - A; 205 D - F."

2. COCACOLA NIGERIA LTD & ORS VS MRS TITILAYO AKINSANYA (2017) 17 NWLR (PART 1593) 74 AT 121 E - G per EKO, JSC who said:-

"The courts for a long while now have come to settle on the principle that, if the words of the statute are clear and unambiguous they must be followed even if they lead to manifest absurdity. See Queen v. Judge Of The City Of London (1892) 1 QB 273 AT 290. It was stated further in this decision, in the manner of positivism, that the court has nothing to do with question whether the legislature has committed absurdity. It is only when the words of the

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statute are capable of two interpretations; one leads to absurdity, and the other does not, that the court will conclude that the legislature does not intend the absurdity and will adopt the other interpretation that does not lead to any absurdity. The judex neither makes laws nor does it possess any power to amend any statute."

3. SKYE BANK PLC VS VICTOR A. IWU (2017) 16 NWLR (PART 1590) 24 AT 139 B - D per KEKERE-EKUN, JSC who said:-

"However, where the provisions are not clear, are ambiguous or have become controversial, in order to arrive at a reasonable construction, the court is entitled to consider other provisions of the statute, how the law stood when the statute was passed, what the mischief was for which the old law did not provide and the remedy which the new law has provided to cure that mischief. This is known as the mischief rule. See: Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 365; Wilson v. A.G. Bendel State (1985) 1 NWLR (Pt. 4) 572; Global Excellence Communications Ltd. v. Duke (2007) 16 NWLR (Pt. 1059) 22 @ 47-48 H-C; Agbaje v. Fashola (supra) @ 1338 C-E; A.G. Lagos State v. A.G. Federation (2003) 12 NWLR (Pt. 833) 1. The effect of the various authorities referred to is that it is the duty of the court to certain the intention of the legislature and to give effect to it."

4. HON. HENRY SERIAKE DICKSON VS CHIEF TIMIPRE MARLIN SYLVA & ORS (2017) 8 NWLR (PART 1567) 167 AT 233 D - F per KEKERE-EKUN, JSC who said:

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"The law is settled that in the interpretation of Statutes, where the words are clear and unambiguous, they must be given their natural and ordinary meaning. See: Ibrahim v. Borde (1996) 9 NWLR (Pt. 474) 513 @ 577 B-C; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377 @ 402 F-N. The exception is where to do so would lead to absurdity. See: Toriola v. Williams (1982) 7 SC 27 @ 46; Nnonye v. Anyichie (2005) 1 SCNJ 306 @ 316, (2005) 2 NWLR (Pt.910) 623. Where an interpretation will result in breaching the object of the statute, the court would not lend its weight to such an interpretation. See: Amalgamated Trustees Ltd. v. Associated Discount House Ltd. (2007) 15 NWLR (Pt. 1056) 118."

A conscious reading of Section 285(14) of the said Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No 21) Act 2017, shows that it is capable of giving escape route to the litigants who decide to challenge the eligibility of a candidate to vie for an elective offices created by the Constitution and the law if such litigants decide to utilize the window provided under Section 31(5) of the Electoral Act. This would unwittingly mean that the amendment is only for a litigant who commences his action vide Section 87(9) of the Electoral Act 2010 as amended. This really is not the purpose and intention of the said amendments. What is good for the goose should be equally convenient for the gander. The Constitution of the Federal Republic of Nigeria; 1999 (Fourth Alteration, No 21) Act 2017

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cannot be construed or interpreted discriminately in favour of any of the litigants in pre-election matters just because the person decides to sue a candidate in an election pursuant to Section 31(5) of Electoral Act, 2010. The whole essence of the amendments in the Fourth Alteration will be stultified.

It will defeat the purpose of the amendments and the mischief the law makers set out to curb and terminate. It will lead to palpable injustice. See:

1. WIKE EZENWO NYESOM VS HON. (DR) DAKUKU ADOL PERTERSIDE & ORS (2015) 11 - 112 SCM 139 AT 164 H - I per SANUSI, JSC who said:-

   "It is trite law that provisions of statutes should not be construed in a way as would defeat the intention of the legislature or to defeat the ends it was meant to serve or where it will cause injustice."

The intention of the lawmakers is to make the provisions of the amendments applicable to all classes of pre-election matters whether emanating from Section 31(5) or 87(9) of the Electoral Act 2010 as amended. The long title to the Act is very indicative of this and lends credence to the fact that the two categories of pre-elections matters are amenable to the provisions of the amendments. It says:

"Act to alter the provisions of the Constitution of the Federal Republic of Nigeria 1999 to provide

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time for determination of pre-election matters; and for related matters. (underlined mine)

Section 285 subsection 9 and 11 of the Constitution of Nigeria 1999 as amended also make it clear when it states:

"285(9) Not withstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.

(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against." (underlined mine)

By extension this Court is constitutionally mandated to hear and dispose of appeals from a decision of a Court of first instance in a pre-election matter within 60 days from the date of filing of the appeal.

The definition of Section 285(14) (a)(b)(c) of the aforesaid Constitution must not be allowed to throw spanner into the wheel of progress in administration of justice to circumvent the laudable objectives and intendment of the amendments to the Constitution aforesaid for the mutual benefits of stakeholders in the three arms of government and the general public.

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The Constitution of the Federal Republic of Nigeria (4TH Alteration No. 21) Act 2017 came into effect on 7th June 2018 and the Notice of Appeal filed on 29th August 2018 contained in the Supplementary Record of Appeal transmitted to this Court on 3rd September, 2018 relied upon for the appeal herein is hereby adjudged incompetent for having been filed more than fourteen (14) days from the date of delivery of the judgment of the lower Court appealed against, which judgment was delivered on 29th June, 2018. See the judgment of this Court delivered on 24th October, 2018 in Appeal No. CA/A/610/2018 in SENATOR ATAI AIDOKO V AIR MARSHALL ISAAC M. ALFA (CFR) per ADUMEIN, JCA. The said Notice of Appeal is fundamentally defective and incurable. This Court has no jurisdiction to entertain the Appellants' Appeal herein.

Consequently, the appeal herein which is founded on the NOTICE OF APPEAL dated 29th August, 2018 and filed on 3rd September, 2018 contained in the Supplementary Record of Appeal aforesaid is hereby struck out for being incompetent same having been caught by the provision of the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No.21) Act 2017 particularly Section 285 (12) thereof.

No Order to Costs.

However and in line with the settle position of the highest and the ultimate Court in the land to the effect that

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where this Court finds that it has no jurisdiction to adjudicate on an appeal, it is in the interest of justice that this Penultimate Court should also proceed to consider the merit of the appeal in case this Court is found to be wrong in its conclusion on the issue of jurisdiction to entertain and determine the appeal. It will avail the apex Court of a global view of the issues touching and concerning the jurisdiction of this Court to adjudicate on the appeal and matters pertaining to the merit of the appeal. There would be no need to send the appeal back for a re-hearing if it turns out that this Court is wrong. See:-

1. *ISAAC OBIUWEUBI V. CENTRAL BANK OF NIGERIA (2011) LPELR - 2185 SC AT 23 per RHODES-VIVOUR, JSC who said:*

   "Furthermore when there is an appeal on the substantive matter to the Court of Appeal and issue if jurisdiction is raised, the Court of Appeal should make a finding on jurisdiction and if it finds that it has no jurisdiction it should go ahead and say so and give a considered judgment on the substantive matter. This is so because as the penultimate Court it must make its decision on the substantive appeal known to the Supreme Court since its Ruling on jurisdiction may very well be wrong. See Ebba v. Ogodo & Anor (1984) 1 SCNLR P. 372; Jamgbadi v. Jamgbadi (1963) 2 SCNLR P. 311."

2. ALHAJI JIBRIN ISAH V. INEC & ORS (2014) 12 SCM (PART 2) 297 AT 335 G - I TO 336 A per OLABODE RHODES- VIVOUR, JSC.

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NOW TO THE MERIT OF THE APPEAL

The Learned Senior Counsel to the Appellant ANTHONY I. ANI SAN, nominated three issues for determination of this appeal namely,

1. *"Whether in the entire circumstances of this case and in light of the oral and documentary (especially Exhibits PL5 - PL14) evidence adduced by the Appellants at the trial which evidenced was not rebutted by the Respondents, whether the learned trial Judge correctly appraised the evidence adduced by the Appellants and rightly came to the decision that the Appellants failed to prove their case at the trial? (Ground 1,2,3,4 and 7)*

2. *Whether it is the law that probative value will be accorded a document tendered by a witness as Exhibit at the trial only if such document was made by that witness and therefore whether the learned trial judge was right to have refused to attach any probative value to all the documentary Exhibits (Exhibits PL1 - PL14) tendered at the trial by the 1st Appellant PW1, on the basis that he (PW1) was not the maker of the said documentary Exhibits (Ground 6).*

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3. *Whether the Learned Trial Judge was right in holding that the issue of lifting the Corporate veil to find that the 1st Respondent is the person behind the Corporate entities which assets and funds were forfeited in the forfeiture proceedings (Exhibits PL5 - PL7) cannot arise, notwithstanding that the 1st Respondent was held in the forfeiture proceedings to have misappropriated, defrauded and extorted billions of dollars from the Government of the Nigeria using his companies and bank account named in the forfeiture proceedings (Ground 5)."*

The Learned Senior Counsel for the 1st Respondent Y. C. MAIKYAU, SAN adopted issues 2 and 3 as formulated by the Appellant but formulated his own issue 1 as follows:

"Whether having regards to the state of pleadings and the evidence the learned trial judge was right in holding that the Appellants failed to prove beyond reasonable doubt that the answer "NO" given by the 1st Respondent to the question "Are you under a sentence of death, imprisonment or fine for any offence involving dishonesty or fraud or any offence impose by a Court or Tribunal? (Grounds 1,2,3,4 and &)."

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The Learned Silk to the 2nd Respondents suggested the following as questions for determination in this appeal namely:

i. *Whether the trial Court rightly held that the Appellants had onus to prove the allegation that the 1st Respondent gave false information in the form CF001, which he submitted to the 3rd Respondent and that, having regard to the evidence adduced in the case, the Appellants had failed to prove the allegation (Grounds 1,2,3,4 and 7)*

ii. *Whether in the entire circumstance of this case, the trial court rightly declined to lift the veil of incorporation of any of the entities that were parties to the forfeiture proceedings in exhibits PL4 and PL7 (Ground 5)*

iii. *Whether it was right for the trial court not to ascribe probative value to exhibit PL1 - PL14 which were tendered by PW1, who was not the maker of the exhibits (Ground 6)"*

On her part the Learned Counsel to the 3rd Respondent WENDY KUKU Esq. distilled for determination as follows:

"Whether the trial Court was right in holding that the Appellants failed to prove their case having regard to the oral and documentary evidence

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before it and therefore not entitled to the reliefs sought."

I am of the solemn view that the issues raised by the Appellants' Learned Silk are apposite for consideration and determination of the appeal. I will take them in sequence.

ISSUE 1

"In the entire circumstance of this case and in the light of the oral and documentary (especially Exhibits PL5 - PL14) evidence adduced by the Appellants at the trial which evidence was not rebutted by the Respondents, whether the learned trial judge correctly appraised the evidence adduced by the Appellants and rightly came to the decision that Appellants failed to prove their case at the trial (Grounds 1,2,3,4 and 7)."

The Learned Senior Counsel to the Appellants ANTHONY I. ANI SAN, commenced his submissions by informing the Court what the Appellants case was all about. That the action is based on Sections 31(5) and 6 of Electoral Act 2010 (as amended). That 1st Respondent gave false answer to a question contained in his FORM CF001 (Exhibit PL1) which he submitted to 3rd Respondent when he became the candidate of 2nd Respondent to contest the Gubernatorial Election for KEBBI STATE in 2015. 1st Respondent was asked whether he

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was under a sentence of death, imprisonment, or fine, for any offence involving dishonesty or fraud or any offence imposed by a court or tribunal and the 1st Respondent answered "NO"

That first Appellant who deposed to witness statement on oath stated categorically that he was aware the answer was false. The Learned Silk laid out paragraphs 9 - 24 of the said witness statement on oath of PW1 and stated that PW1 gave evidence and tendered Exhibits PL1 - PL14 to support the pleaded case of the Appellants which Learned Senior Counsel said was not challenged or controverted by the Respondents.

That PW1 gave further evidence in support of Appellant's case in his additional statement on oath on pages 2750 - 2756 vol. 4 of the record of appeal and testified as contained in paragraphs 9 - 21 of the Additional Witness Statement on Oath.

That he was cross examined after his (PW1) examination-in-chief only by 1st Respondent while the 2nd and 3rd Respondents did not cross examine him. That though the Learned Senior Counsel to the 1st Respondent crossed examined PW1 extensively, the cross examination, according to the Learned Silk for Appellants did not challenge the material ipsi-dixit evidence of PW1 contained in his statement on oath and Additional Statement on Oath. That the Respondents admitted material evidence given by the Appellants PW1. He relied on the case of AMADI vs. NWOSU

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(1992) 5 NWLR (PART 241) 273 at 248. He also drew attention to Exhibits PL1 - PL14 and evidence given on Exhibits PL5 and PL6 by the PW1. That by Exhibit PL6 the US District Court found all the uncontested facts and criminal allegations against the 1st Respondent in Exhibit PL5 as proved and established and entered judgment accordingly. That the judgment in Exhibit PL6 forfeited all assets and funds of 1st Respondent in the forfeiture proceedings and did not challenge the forfeiture orders.

That forfeiture is a penal component of our Criminal Justice administration. According to the Learned Silk forfeiture order by the Court is a sentence of fine imposed on the 1st Respondent for an offence involving dishonesty or fraud. He relied on the word "fine" as defined in Briton's Legal Thesaurus, 3rd Edition at page 236. to mean inter alia:-

"Compulsory payment, forfeit forfeiture ..... legal liability"

and relied on the case of AG. BENDEL vs. AGBOFODOH (1999) 3 NWLR (PART 592) 476. That appellant therefore lied when he stated he was not under a sentence of fine and in the same vein the learned trial judge erred in law when he held that Exhibits PL5 and PL6 did not show that the 1st Respondent is under a sentence of fine. He also relied on Exhibits PL13 and 14 as supporting the Appellants' position. He reproduced the two exhibits on page 22 -23 and submitted that:

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> *"The sums being proceeds from fraud returned by the 1st Respondent to the Federal Government of Nigeria and acknowledged by Central Bank of Nigeria for all intents and purposes constitute a fine. A fine is defined by the Black's Law Dictionary 10th Edition at page 750 as "a pecuniary criminal punishment or civil penalty payable to the public treasury."*

He also relied on Exhibit PL9 which comprised of processes from Channel Island. It is reproduced on pages 23 - 24 of Appellants.

The Learned Silk to the Appellants contended that the claims of the Appellants was admitted because he failed to provide evidence to dislodge the oral and documentary evidence adduced by Appellants at the trial by PW1. That having failed to call evidence the onus of proof on Appellants is on minimal evidence relying on NWABUOKU vs. OTTIH (1961) ALL NLR 507 and ATTORNEY- GENERAL OYO STATE VS. FAIRLAKES HOTELS LIMITED NO. 2 (1989) 5 NWLR (PART 121) 255.

That Appellants led credible evidence to prove their case and despite the avalanche of unchallenged evidence and uncontroverted evidence before him, he curiously held that the Appellants did not prove their case and that this is more so where proof in a case like this, according to the Learned

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Senior Counsel for Appellants has by the authority of the decision of the Supreme Court in EKAGBARA & ANOR vs. IKPEAZU & ORS (2016) 4 NWLR (PART 1503) 411 at 434 to the effect that where a candidate is alleged to have provided false information in FORM CF001 submitted to INEC, the burden or onus is on the candidate to prove that his information was genuine and not false. He contended that the case has not been overruled by the Supreme Court till date.

That there was no proper evaluation of evidence placed before the learned trial Judge in his judgment in breach of the principles in the case of MOGAJI & ORS vs. ODOFIN & ORS (1978) 4SC (Reprint) 53 in that the Learned trial Judge has by his holding immediately after setting out respective case of parties he concluded that the Appellants have failed through their sole witness to prove that 1st Defendant was under a sentence of any kind. That the case of Appellants before the trial court was not that the 1st Respondent was under a sentence of death but that lower court totally abdicated its duty to examine and evaluate the material evidence placed before in line with the pleadings. He relied on the cases of:-

(1) ATOLAGBE vs SHORUN (1985) 1 NWLR (PART 2) 360 at 365 per COKER, JSC.

(2) UDENGWU VS. UZUAGBU NUNBIA (1972) 1 ALL NLR (PART 2) 226.

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(3) KALIO VS WOLUCHEM (1985) 1 NWLR (PART 4) 610 per UWAIFO, JSC.

He urged this Court to resolve this issue in favour of Appellants.

The Learned Counsel to the 1st Respondent MAIKYAU SAN stated that in an action for declaration, the claimant must establish his entitlement to the relief by adducing legally admissible evidence to justify the grant of the declaration relief. He relied on the cases of MOHAMMED VS. WAMAKO (2017) LPELR - 42667 (SC) delivered on 12/7/17 on a case initiated under Section 31 (5) of Electoral Act per KEKERE-EKUN, JSC.; (2) MHHAJA VS. GAIDAM & ORS (2017) 4 NWLR 6 (1610) 454 at 496 F - 14 per KEKERE - EKUN, JSC. He submitted that the lower court was justified in dismissing the case of the Appellants because they failed to discharge the burden of proof under Sections 131, 132 and 135 (1) of the Evidence Act 2011. He stated that the case of the Appellant was hinged paragraph 11 and 12 of the further Amended Statement of Claim on pages 2618 of vol. 4 of the record.

That the Appellants never stated the reasons for their claim, that 1st Respondent gave false answer to question on FORM CF001 which 1st Respondent submitted to INEC. He referred to the piece of evidence given by PW1 and the exhibits tendered. That all PW1 did was to give evidence of

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content of document contrary to section 125 of the Evidence Act. That the deposition of PW1 are documentary hearsay replying on the case of ABADOM vs. THE STATE (1997) 9 NWLR (Part 479) 1 at 24 C - H.

That from the answers given by PW1 under cross-examination on pages 4576 - 4577 vol.7 of the record, evidence of PW1 does not support Appellants case. That from evidence elicited from Pw1 under cross examination, it is clear that Exhibits PL5 - PL14 are no proof that the 1st Respondent was under a sentence of death, imprisonment or fine as according to Learned Silk a person must be put-on trial before conviction relying on the cases of UCHE vs. The State (2012) LPELR - 9705 (CA) and MOHAMMED OLAWUNI (1993) 4 NWLR (PART 287) 254.

That for the Appellants to prove that the 1st Respondent was under any sentence including of a fine outside the Country by virtue of Exhibits PL5 - PL12 then they must satisfy the provision of section 249 of Evidence Act. That evidence adduced by Appellant did not satisfy the said provision of Section 249 of the Evidence Act. That PW1 admitted that there was no form of physical identification on Exhibits PL5 - PL12 by which to identify the person therein. He relied on the case of ACTION CONGRESS VS. INEC (2007) 12 NWLR (PART 1048) 22 at 274 per TABAI, JSC on how to proof and

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establish that a person was convicted outside the country for an offence.

That there is nothing on Exhibits PL1 - PL14 showing that 1st Respondent was ever tried and convicted anywhere either within or outside the Country. He also submitted that the PW1 under cross examination admitted that he was not the maker of Exhibits PL5 - PL14 and did not know how PATRICK OMEKE obtained the documentary hearsay relying on the cases of:

(1) FLASH FIXED ODDS (2001) 9 NWLR (PART 717) 46 at 63 E - G per NIKI TOBI, JCA later JSC Rtd. Of blessed memory and

(2) NYESOM VS. PETERSIDE (2016) 7 NWLR (PART 71512) 452 at 522 & 526 E per KEKERE- EKUN JSC.

That on the strength of Supreme Court decisions just cited Exhibits PL5 - PL14 are inadmissible as they are documentary hearsay. That Appellants have through their Learned Senior Counsel resorted to giving evidence in their Brief of Argument which PW1 cannot even do not being the maker of Exhibits PL5 - PL14. That argument of Learned Counsel no matter how eloquent cannot take the place of evidence relying on the case of THE INCORPORATED TRUSTEES OF THE BROTHERHOOD OF THE CROSS & STAR VS. NKEREUWEM & ORS (2018) LPELR - 44087 CA.

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That the case of AMADI vs. NWOSU supra relied upon by Appellants does not place any obligation on any party in a proceeding to cross examine a witness of an adversary who gave hearsay and inadmissible evidence. That evidence given under cross examination by PW1 was favourable to the 1st Respondent. That there was no material evidence given by PW1 and that all exhibits tendered do not support Appellants case. The Learned Senior Counsel to 1st Respondent also submitted that no reasonable Court or Tribunal will act on the piece of evidence given by PW1 in support of Appellants' case as the evidence is palpably not credible. He relied on the case of AGBI vs. OGBE (2016) 11 NWLR (PART 990) 65 at 116 E per MUSDAPHER, JSC later CJN Rtd. of blessed memory

On evaluation of the evidence, the Learned Counsel to the 1st Respondent submitted that the Learned trial Judge reviewed and evaluated the evidence before dismissing the Appellants suit. He relied on pages 4768 4770 Vol. 7 of the record. That what PW1 did essentially was the dumping of documents tendered before the Court and did nothing about them. That it is not the job of trial court or Counsel to embark on analysis of documents as was done by Appellants Learned Senior Counsel in their Brief of argument. He relied on OMISORE VS. AREGBESOLA (2015) 15 NWLR (PART 1482) 205 at P 276 D - G per NWIZE JSC.

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That contrary to the submission of Appellants that Respondents did not call evidence, that Respondent rested their case on that of Appellant and the answers elicited under cross examination relying on pages 4750 - 4751 vol. 7 of record and the principal of law in the case of AKOMOLAFE VS. GUARDIAN PRESS LIMITED (Printer) 2010 ALL FWLR (PART 577) 773 at 784 D - G per ONNOGHEN, JSC now CJN to the effect that where evidence elicited under cross examination are on facts pleaded by the party concerned it. It cannot be said that no evidence was called in support of pleadings of Respondents. That the evidence elicited under cross-examination of PW1 represents evidence called by the Respondents and so the Appellants cannot discharge onus on them on minimal proof but proof beyond reasonable doubt.

That the case of EKAGBARA IKPEAZU Supra did not decide that when allegation of crime is made against a party, the onus would be on the latter. That the later in cases of Supreme Court in MAIHAJA v GAIDAM Supra and MOHAMMED VS. WAMMAKO Supra have made it clear that any person who initiated a proceeding under section 31 (5) of Electoral Act 2010 as amended must proof the case beyond reasonable doubt and that the onus is on the claimant. That even if there is conflict in the decisions the later of Supreme Court will prevail. That there was proper evaluation of evidence of PW1 and the processes filed by the parties

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relying on pages 4746 - 4747 and 4766 Vol. 7 of the record of appeal. That the Appellant cannot change their case at appellate level. That the only conditions relating to qualification of a candidate have been spelt out in Sections 177 and 182 of the 1999 Constitution as amended relying on the cases of:

(1). SHINKAFI & ANOR VS. YARI & ORS (2016) 7 NWLR (PART 1511) 340 at 376 H to 378 A - H per OKORO, JSC and

(2). FALEKE VS. INEC (2016) 18 NWLR (PART 1543) 61 at 145 B - G per KEKERE-EKUN, JSC.

That the Platform upon which the Appellants case was based cannot be accommodated under Section 182 of the 1999 Constitution. That the Learned Trial Judge properly understood the case put forward by Appellants.

That the Trial Judge did not run foul of the decision and principles in MOGAJI vs. OBOFIN supra. That the judgment of lower court contains the ingredients of a valid judgment on the cases of ONUOHA vs. THE STATE (1988) 3 NWLR (Part 83) 460 at 470 and IMOGIEMHE & ORS vs. ALOKWE & ORS (1998) 7 NWLR (Part 409) 581 at 593 to 594 per ATINUKE IGE, JSC of blessed memory. He urged the Court to resolve issue 1 against the Appellants.

The submissions of the 2nd Respondent's Learned Senior Counsel are virtually on the same page with the arguments of

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the 1st Respondent against the Appellants. I will not repeat most of them suffice to say that the 2nd Respondent's Learned Counsel was taken aback in respect of the submissions by the Appellants that since there was a forfeiture proceedings against some corporations in which the 1st Respondent had some interest in America leading to the forfeiture of the assets and funds of those companies, 1st Respondent should be deemed by the lower Court to have been adjudged guilty and a sentence of fine had thereby been imposed on the 1st Respondent.

He submitted that the truth is that 1st Respondent was never tried and no sentence was imposed upon him. That the lower Court was therefore right in holding that nothing was demonstrated to show that the 1st Respondent was under a sentence of fine. That by their stance the Appellants agreed there was no such sentence. That it is curious for Appellant to still contend that the trial court was wrong in its decision. That the allegations require proof beyond reasonable doubt.

That the onus of proof relied upon by the Appellants as per the case of EKAGBARA & ANOR VS. IKPEAZU & ORS (2016) 4 NWLR (PART 1503) 411 cannot assist the Appellants in view of the latest decisions of the apex Court squarely placing the onus of proof on the Appellants. He relied on the case of MAIHAJA VS. GAIDAM Supra 454 at 496 -499 per KEKERE-EKUN, JSC. That that is the decision to be followed

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in the instant case. His submission is premised on the case of OSAKUE VS. FEDERAL COLLEGE OF EDUCATION (TECH) ASABA & ORS (2010) 10 NWLR (PART 1201) 1 at 34 where Supreme Court firmly held that where you have two of its judgment conflicting, the latest decision from the highest court should be taken as representing the law on a subject matter in dispute.

That contrary to the submission of the Appellant that their case is not whether Appellant was under a sentence of death or imprisonment BUT whether he was under a sentence or fine, the Learned Silk for 2nd Respondent drew attention to paragraphs 11 and 12 of the Further Amended Statement of Claim where it is shown that their case was as stated by the trial Court. That Appellants volte face in this Court is unfathomable.

The Learned Senior Counsel to the 2nd Respondent also submitted that Appellants contention that the 1st Respondent gave false answer in Exhibit PL1 can only be founded on a proven allegation that he was under a sentence. That the Appellants were conscious of this fact and that is the reason for their urging the trial Court to lift the veil of incorporation of entities that were Defendants in Exhibit PL5 - PL7 and ascribe or impute forfeiture orders made against them to the 1st Respondent. That the trial Court confined itself to the pleadings of the parties. He urge the Court to resolve the

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issue against Appellants. The submissions of learned Counsel to 3rd Respondent are on all fours with that of 1st and 2nd Respondents.

The law is settled that an Appellant who complains that the decision of the Court is perverse for lack of adequate or proper evaluation of Oral and documentary evidence, he must prove or establish that the Court of first instance made improper use of opportunity of seeing the witnesses testified before him. He must show that there was misapplication of oral and documentary placed before the lower court. He must endeavour to prove that the lower Court failed to ascribe probative value to the evidence led or that wrong inferences were drawn leading to wrong conclusions or miscarriage of justice making it imperative for the Appellate Court to intervene and reevaluate the oral and documentary evidence.

1. DR. SOGA OGUNDALU VS. CHIEF A.E.O. MACJOB (2015) 3 SCM 113 at 124 per RHODES - VIVOUR, JSC.
2. O. A. AKINBADE & ANOR VS. AYOADE BAABATUNDE (2018) NWLR (PART 1618) 366 at 387 H to 388 A-D per M.D. MUHAMMED, JSC who said:-

"Counsel have alluded to a number of legal principles in urging that they are necessary guide in the determination of the appeal. In this wise one agrees more particularly with learned respondents' counsel that the task of evaluation of evidence and the ascription of value to the evidence led in a matter is the primary duty of the trial court that had the opportunity of

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seeing, hearing and assessing the witnesses who testified in proof or context of the matter. See Adeniji v. Adeniji (1972) 4 SC 10; Woluchem v, Gudi (1981) 5 SC 291 and Congress/or Progressive Change v. INEC & Ors (2011) LPELR 8257 (SC); (20 II) 18 NWLR (Pt.1279) 493.

It is trite as well that for the evidence proffered in a case to be worthy of being evaluated, parties must have joined issues on the facts sought to be established by such evidence in their pleadings. Evidence in respect of unpleaded facts, facts on which parties had not joined issues on in their pleadings must, having gone to no issue, be ignored. See Morohurfola v. Kwara Tech (1990) 4 NWLR (Pt. 145) 506 and Ademeso v. Okoro (2005) 14 NWLR (Pt. 945) 308.

The law is settled, it must be further conceded, that where the trial court that had the advantage of seeing, hearing and assessing the witnesses failed and or refused to draw the benefit of the advantage and wrongly evaluated and/or entirely declined to evaluate the evidence, the appellate court must intervene to correctly evaluate the evidence and arrive at the just decision, the evidence as properly evaluated, warrants.

Thus in its primary role of reviewing a judgment on appeal in a civil case, where the trial court's finding or non finding of facts is questioned, such as is done in the case at hand, the appellate court must avail itself the evidence before the trial court; know whether the evidence was accepted or rejected legally; know whether the evidence of each side was properly assessed and given its appropriate value and put on an imaginary scale side by side with the evidence of the other side before preferring on the basis of its weight, the evidence of the particular side. See Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643; Agbonifo v. Aiwereoba (1988) 1 NWLR (Pt. 70) 325 at 339

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and Mogaji v. Odofin (1978) 4 SC 1."

It must however be borne in mind that it is not every error or slip by the lower Court that will lead to reversal of the lower Court's decision unless the findings of the lower Court are not supported by the oral and documentary evidence on record. See AKINWATA OGBOGU MBANEFO VS. NWAKAIBE MOLOKWU & ORS (2014) 4 SCM 159 at 183 A - H per PETER-ODILI, JSC.

One of the major aspect of the Appellants submissions is that the Respondents particularly 1st Respondent did not lead evidence on their pleadings to challenge or controvert Appellant's evidence hence according to the Appellants' Learned Silk, the Appellants can discharge the onus on them on minimal proof. The high point of the said submissions can be found in paragraph 4. 28 as follows:-

> *"The Respondents failed to provide any evidence to dislodge the oral and documentary evidence adduced by Appellants at the trial. As stated earlier, the 2nd and 3rd Respondent opted not to cross examine PW1 and none of the Respondents' called evidence at the trial. The effect is that the 2nd and 3rd Respondents admitted the claims of the Appellants. We submit that where a defendant or defendants as in the instant case opts or chooses not to call or proffer any*

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evidence, the issue(s) calling for determination in the case will be proved on minimal evidence"

Yes it is true that where a defendant does not call evidence the onus on the Plaintiff will be discharged on minimal proof. I must quickly add a caveat that there exceptions to the rule. The principle will not avail the claimant or a Plaintiff where the oral and documentary evidence led has been patently destroyed, dislodged and rendered valueless under a devastating cross examination of claimant or Plaintiff's Witness or witnesses. The principle will also not avail the Claimant or the Plaintiff and will inure for his benefit where the claimant seeks declaratory reliefs which obviously cannot be granted and will not be decreed even on admission of a Defendant or in the failure of a defendant to call evidence at all.

Another important exception borders on Section 135(1) of the Evidence Act 2011 as amended which provides:-

"135 (1) if the Commission of a Crime by a Party to any proceeding is directly in issue in any proceeding Civil or Criminal, it must be proved beyond reasonable doubt."

The claims of the Appellants are not only declaratory reliefs, they are also laced with serious criminal allegations against the 1st Respondent. Very virulent and direct allegations of sundry crimes were made against the 1st

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Respondent thereby placing onerous and bounding obligations on the Appellant to prove the allegations beyond reasonable doubt notwithstanding the civic nature of the action herein. See:-

1. T. LAWAL OWOSHO & ORS V. M. A. DADA (1984) NSCC 568 AT 577 per ANIAGOLU, JSC who said:-

   "I now deal with (ii) above, namely, the failure of the defence to adduce evidence being one of the factors in this case which I said should be constantly borne in mind. It is an elementary principle in civil proceedings that civil cases are decided on a balance of probabilities based on preponderance of evidence. Where the plaintiff has given evidence and called his witnesses as in this case (the plaintiff called three witnesses) a trial judge would certainly be left with little choice on the issue of the acceptance of the facts adduced in evidence by the plaintiff. Except in a case where the defence has, by vigorous and pin-pointed cross-examination of the plaintiff and his witnesses, manifestly demolished the case of the plaintiff, a defendant obviously takes enormous risk in proceeding on a course of not adducing evidence to counterbalance the evidence of the plaintiff.

2. EDWARD NKULEGU OKEREKE VS NWEZE DAVID OMAHI & ORS (2016) 11 NWLR (PART 1524) 438 AT 489 B - G per KEKERE-EKUN, JSC who said.-

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"It has been settled by a long list of authorities of this court that:

(1) Where a party seeks declaratory reliefs, the burden is on him to establish his claim. He must succeed on the strength of his own case and not on the weakness of the "defence (if any). Such reliefs will not be granted even on the admission of the defendant. See: Emenike v. P.D.P. (2012) LPELR - SC 443/2011 p. 27, O-G, (2012) 12 WLR (Pt. 1315) 556: Dume: Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 119) 361 at 373-374: Omisore v. AregbesoLa (2015) 15 NWLR (Pt. 1482) 205,297 - 298 F - A, Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330.

Documentary evidence relied upon by a party must be specifically linked to the aspect of his case to which it relates. A party cannot dump a bundle of documentary evidence on a court or Tribunal and expect the court to conduct an independent enquiry to provide the link in the recess of its chambers. This would no doubt amount to breach of the principle of fair hearing See: Ucha v. Elechi (supra): Iniama v. Akpabio (2008) 17 NWLR (Pt. 1116) 225 at 299 O - F: Awuse v. Odili (2005) 16 WLR (Pt.952) 416: AN.P.P. v. INE.C. (2010) 13 WLR (Pt. 1212) 549.

Hearsay evidence, oral or documentary, is inadmissible and lacks probative value. See section 37 of the Evidence Act, 2011 particularly sub-section: (b) See: Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 317: Doma v. INE.C. (2012) All FWLR (Pt. 28) 813 at 829; (2012) 13 NWLR (Pt. 1317) 297." (underlined mine)

2. UDOM GABRIEL EMMANUEL VS UMANA & ORS (2016) 12 NWLR

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(PART 1526) 179 AT 216 E - H TO 217 A per NWEZE. JSC who said.-

"In one word, the lower court, relying on an opinion in a Newspaper article, purported to abrogate section 135(1) of the Evidence Act, 2011 by judicial fiat. That section provides that:

"135(1) If the commission of a cri me by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. In my humble view, it is difficult to see how the lower court could have, legitimately, wished away the position of this court which, interpreting the above section, has maintained that a petitioner who makes an allegation of the commission of a crime the basis of challenging the election of a candidate who was returned, must prove that allegation beyond reasonable doubt. Buhari v. Obasanjo (2005) SCNJ 147; (2005) 13 NWLR (Pt. 941) 1; Nwobodo v. Onoh (1984) 1 SCNLR 1 at 28.

Now, as pointed out above, the allegations of violence, voter intimidation, hijacking and snatching of electoral materials, kidnapping, and others, (in paragraphs 27, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 54, 61(i-iv), 61(x), (xi), 72(ii), 26 - 43, 76, 77, 78,' 82, 83, 88 and particularly paragraph 15(1) of the first and second respondent's petition are criminal in nature and ought to be proved beyond reasonable doubt"

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PW1 who gave evidence on behalf of Appellants was clearly unable to lead any credible or admissible evidence to establish and sustain the declaratory reliefs and the injunctive reliefs claimed against the Respondents all and singular. He testified on matters he had no knowledge as all the pieces of evidence given by him are shown to be outside his personal knowledge. He tendered documents upon which he could not give evidence or answered questions under cross-examination. He tendered documents that were not made by him and upon which he failed to demonstrate how or in what way or manner the Court could utilize them to grant their prayers. PW1 cannot and is highly incompetent to give any evidence on Exhibits P1 - PL14 which he tendered and dumped at the Court. They are all documentary hearsay since the PW1 knows nothing about them. The evaluation of the oral and documentary evidence carried out by the learned trial Judge to the effect that they lacked probative value and weight cannot be faulted. See:-

1. IKPEAZU V. OTTI (2016) 8 NWLR (PT. 1513) 38 AT 93 B per GALADIMA, JSC who said:-

   "It is settled law that a party who did not make a document is not competent, to give any evidence on it. This is the situation here PW19 did not make Exhibit PWC2, she cannot competently tender it. The maker must be called to testify to credibility and veracity."

The fact that the PW1 is not conversant with the facts and allegations made both in their Further Amended Statement of Claim and Witness Statement on Oath can be found in paragraphs 29 and 30 of the Further Amended Statement of Claim which are as follows:-

"29. The Plaintiffs aver that the 2nd Plaintiff engaged the services of a US based legal practitioner, Mr. Patrick Omeke, to apply to the US District Court and obtain certified copies of the following documents already pleaded herein, namely:

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1. Certified copy of Verified Complaint for Forfeiture in Rem together with Attachment A thereto.
2. Certified copy of Memorandum Opinion & Order of the US District_Court given on 6th August 2014. Court given on 6th August 2014.
3. Certified copy of Memorandum Opinion of the US District Court given on March 15, 2015.
4. Certified copy of Order of the US District Court given on March 15, 2015.

30. Mr. Patrick Omeke, duly applied to the US District Court and obtained certified copies of the aforesaid documents and was issued with a receipt of payment for the certification by the Court. The said receipt dated May 18, 2015 issued to Mr. Patrick Omeke by the US District Court is hereby pleaded and will be relied upon at the trial."

Paragraphs 30, 31 and 32 of the 1st Appellant (PW1) - STATEMENT ON OATH OF THE PLAINTIFFS WITNESS - MR. ANTHONY ITANYI are also as follows:-

"30. Subsequently, the 2nd Plaintiff engaged the services of a US based legal practitioner, Mr. Patrick Omeke, to apply to the US District Court and obtain certified copies of the following documents namely:-

5. Certified copy of Verified Complaint For Forfeiture in Rem together with Attachment A thereto.
6. Certified Copy of Memorandum Opinion & Order of the US District Court on 6th August 2014
7. Certified Copy of Memorandum Opinion of the US District Court given on March 15, 2015.

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8. Certified Copy of Order of the US District Court given on March 15, 2015.

31. Mr Patrick Omeke, duly applied to the US District Court and obtained certified copies of the aforesaid documents and was issued with a receipt of payment for the certification by the Court.

32. By reason of the 1st Defendant's disqualification from contesting the Governorship election in Kebbi State held on 11th April 2015, all the votes garnered or purportedly garnered by him at the said election are wasted votes."

Now under cross-examination by the learned Senior Counsel to the 1st Respondent, PW1 who is also the 1st Appellant answered as follows:-

On pages 4572 - 4573 PW1 said under cross examination that:-

"General S. Y. Bello (2nd Plaintiff) didn't make me to file this case. Both of us filed the case.

By the original writ of summons filed on 8/4/15, the name of General Sarkin Yaki Bello was not on the writ as a Plaintiff.

General Sarkin Yaki Bello did not give me all the materials that I needed to file this case.

I got all the materials in filling this case myself. I got the services of a lawyer who provided the ... materials:-

For Form CF001, we applied to INEC and they gave it to us. On the other documents, we employed services of Patrick Omeke, a legal practitioner who obtained the other documents from America.

It was myself and General Sarkin Yaki Bello that engaged the services of the lawyer to obtain the documents for us in America."

On pages 4776 - 4777 of the record Vol. 4 PW1 answered thus:-

"I was in Abuja when the instructions was given to the Lawyer and the 2nd Plaintiff was together with- me in Abuja.

The lawyer I am talking about is Patrick Omeke. We called the lawyer by telephone and gave him the information.

The lawyer complied with the instructions and sent us the document with

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which we filed this case.

All the document that we got from abroad were received through Patrick Omeke.

Witness asked to look at exhibits PL5 - PL12 and asked whether they are the documents he got from Patrick Omeke and PW1 said they are the documents he received from Patrick Omeke.

I didn't make of exhibits PL5 - PL12.

I was not there when Patrick Omeke was collecting exhibits PL5 - PL12.

Patrick Omeke sent exhibits PL5 - PL12 to us by mails. Patrick Omeke sent exhibits PL5 -PL12 by E-fax.

There is no photograph of Patrick Omeke or anyone affixed on any of exhibits PL5 - PL12.

There is no form of physical identification of either myself, the 2nd Plaintiff or the 1st Defendant on any of the exhibits PL5 - PL12.

I didn't call Patrick Omeke to confirm if all he got were all he brought to me, but I accepted them.

I did not bother to check whether the documents Patrick Omeke sent to me were complete or some of them were removed because there was no need for that.

I believe that everything that was given to Patrick Omeke he gave them to me.

I did not remove anything from the documents before I came to Court.

Witness shown exhibit PL9 and asked if there is photograph attached, Drivers license attached and" Nigerian Passport attached to exhibit PL9 in exhibit C attached, PW1 said there is no Photograph, Drivers license attached and Nigerian Passport attached to the documents i.e. exhibit PL9 to which exhibit C was attached.

I did not remove the documents that were attached to exhibit PL9 to which exhibit C was attached.

I don't know whether the 2nd Plaintiff has removed them before he gave

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them to me to come to Court.

I did not agree that it was Patrick Omeke that removed the attached documents."

On pages 4578 - 4580 PW1 said under further cross examination as follows:-

"I do not agree that the documents are not complete because I don't know the process and I am not a lawyer.

It is correct that I don't know the process of getting the documents because I am not a lawyer.

Witness again shown exhibit PL9 especially the cover page and asked if the exhibit is a photocopy. PW1 said exhibit PL9 is a photocopy.

At the foot of the face of exhibit PL 9 is a photocopy of a stamp with the inscription "true copy certified attest", there is "by" then signature.

Under the signature is typed "Deputy Clerk".

The name of the person who signed exhibit PL9 around the stamp, signature and attestation is not written on the document.

There is no date written on the attestation area of exhibit PL9.

The stamp on the top right hand corner of exhibit states when it was filed as 5/23/03.

Witness asked to refer to the fifth page from the cover page and he said the documents were sworn to on 23/5/2003.

Witness asked to look at exhibit B attached to exhibit PL9 and asked to state who signed exhibit B attached to exhibit PL9 and PW 1 there is no signature, no date and no name on the exhibit B attached to exhibit PL9.

Witness shown a document titled "complaint in support of

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provisional Arrest and Extradition which is part of exhibit C attached to exhibit PL 9 and PW1 said the document was dated May 7th, 2003, and it was subscribed on 6th day of May, 2003.

Between 6th May, 2003 and 11th April, 2015, there are twelve (12) years.

After the stamp on the cover of exhibit PL9, there are two other pages in which the stamp appeared.

The Election into the office of Governor of Kebbi State was held on 11th of April, 2015.

In paragraph 30 of the witness statement on oath filed on 5/1/18, PW1 said he outlined the documents Patrick Omeke was instructed to get.

The first three documents that I mentioned in my witness statement on oath are exhibits PL5, PL6 and PL7.

In paragraph 30 of my witness statement on oath, there are four documents listed.

Witness shown exhibit PL8 and he said it was the receipt Patrick Omeke sent to them as for the certification he was instructed to do,

In exhibit PL8 the number of copies certified as 169 copies.

Exhibit PL8 was issued on 18th of May, 2015.

I confirm that exhibit PL5 have 42 pages.

I confirm that exhibit PL6 have 4 pages.

I confirm that exhibit PL7 have 30 pages.

Between exhibits PL5, PL6 and PL7 made a total of 76 pages.

The difference between 169 pages and 76 is 93 pages.

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Like I said, I did not bother to check if Patrick Omeke sent all the documents.

I brought to Court what Patrick Omeke sent to us.

I don't know if Patrick Omeke has sent all the documents as stated in exhibit PL8.

In the witness statement on oath, I stated that it was subsequent to the issuance of certificate to 1st Defendant that Patrick Omeke was instructed to get the documents i.e. exhibits PL5, PL6 and PL7.

I can't remember when the certificate of Return was issued."

On page 4583 - 4584 PW1 continued:-

"I confirm that in paragraph 30 of my witness statement on oath filed 5/1/18 that it was the 2nd Plaintiff that engaged the services of Patrick Omeke and not the two of us.

I confirm that in paragraph 30 of my witness statement on oath the documents Patrick Omeke was instructed to obtain C.T.CO of were specifically listed.

I confirm that the first three documents listed in paragraph 30 of my witness statement on oath are exhibits PLS, PL6 and PL7.

Exhibits PL9 - PL12 were not part of the documents listed in paragraph 30 of my witness statement on oath for which Patrick Omeke was instructed to obtain Certified True Copy.

Witness shown to look at the additional witness statement on oath of 26 paragraphs in support of the Amended Plaintiff's Reply to the 1st Defendant's Amended statement of Defence and he said it was in paragraph 10, that he mentioned the documents that comprised exhibit PL 9.

I did not in paragraph 10 of my additional witness statement oath state who obtained the documents comprised in exhibit

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PL9.

It was Patrick Omeke that got the documents comprised in exhibit PL9.

Exhibits PL5, PL6 and PL7 are the documents I said Patrick Omeke duly applied and obtained.

When Patrick Omeke made the application for exhibits PL5, PL6 and PL7, I was not there.
I was not there when the stamp E bearing the inscription ECF document was placed on Exhibits PL5, PL6 and PL7."

There is no doubt that the pieces of evidence given by the PW1 including the documentary evidence proffered are all caught by Section 37 of the Evidence Act which provides:-

"37. Hearsay means a statement-

(a) oral or written made otherwise than by a witness in a proceeding; or

(b) contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it."

The reliefs sought by the Appellants cannot be granted on the thoroughly discredited evidence of PW1 and on hearsay evidence irrespective of whether Exhibits PL5 - PL7 are certified True Copies of documents which the makers were not called; not even the 3rd party one PATRICK OMEKE alleged to have helped Appellants obtained the documents was called. Courts of law cannot act on moribund pieces of evidence led through PW1 by the Appellants. See WIKE EZENWO NYESOM VS HON. (DR) DAKUKU ADOL PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 452 AT 522 where KEKERE-EKUN, JSC, who said:-

"In Belgore v. Ahmed (supra) this court emphasised the

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fact that where the maker of a document is not called to testify, the document would not be accorded probative value, notwithstanding its status as a certified public document. Furthermore, in Buhari v. INEC (supra) at 391, it was held that in estimating the value to be attached to a statement rendered admissible by the Evidence Act, regard must be had, inter alia, to all the circumstances from which any inference can reasonably be drawn to the accuracy or otherwise of the statement."

The damming allegations of crime made all through the Further Amended Statement of Claim and Witness Statement cannot be established by the highly undulating, porous and hearsay evidence of the PW1 in this case. See NYESOM V PETERSIDE supra Page 533 F - G per KEKERE-EKUN, JSC who said:-

"It is also the law that where the commission of a crime by a party to a proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. See: section 135(1) of the Evidence Act, 2011. The burden of proof is on the person who asserts it. See: section 135(1) of the Evidence Act 2011. See also: Abubakar v. Yar 'Adua (2008) 19 NWLR (Pt.1120) 1 at 143, D; 144, B; Buhari v. Obasanjo (supra) Omoboriowo v. Ajasin (1984) 1 SCNLR 108; Kakih v. PD.? (2014) 15 NWLR (Pt. 1430) 374 at 422 - 423, B-C."

My Lord KEKERE-EKUN, JSC also said on page 536 para. C - E thus:-

"Furthermore, serious allegations of crime were made throughout the length and breadth of the petition, such as hijacking and diversion of election materials, illegal thumb-printing of ballot papers, falsification of results, violent attacks on voters, kidnapping, etc. The 1st and 2nd respondents had the burden of proving the allegations beyond reasonable doubt.

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Where crimes are alleged, the ingredients of the offences must be proved. This they failed to."

The same is true in this case. None of the allegations made and the reliefs claimed by the Appellant was proved or established.

I am not unmindful of the submission of the Appellants' learned Senior Counsel to the Appellants where he said on page 26 of his Appellant's Brief on onus of proof as follows:-

"This is moreso where onus of proof in a case like this has by the authority of the decision of Supreme Court in EKEGBARA & ANOR V IKPEAZU & ORS (2016) 4 NWLR (PART 1503) 411 AT 434 that where a candidate is alleged to have provided false information in FORM CF001 submitted to INEC the burden or onus is on the candidate to prove that his information was genuine and not false. We contend that the decision in EKAGBARA & ANOR V IKPEAZU & ORS (supra) has not been overruled by the Supreme Court till date."

The same argument was thrown up at the Supreme Court of Nigeria in the case of DR. SAMPSON UCHECHUKWU OGAH VS DR OKEZIE VICTOR IKPEAZU (2017) 17 NWLR (PART 1594) 299. The learned Counsel to the Appellant in that case made strong submission that on the case of EKEGBARA & ANOR V IKPEAZU (supra) the onus was on Respondent to discharge the allegation that he made false statement in FORM CF001.

The Supreme Court disagreed with learned Senior Counsel to the Appellant and held on pages 336 G - H TO 337A of OGAH V IKPEAZU (supra) per M. D. MUHAMMED, JSC who held:-

"I agree I agree with learned senior counsel to both respondents that the appellant having asserted that 1st

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respondent's tax declaration in Form CF001 is false has the burden of proving what he asserts. Addedly, the reliefs the appellant seeks being declaratory, he succeeds on the strength of his case alone and not on the weakness of the case of the respondents. The appellant has the burden of proof to establish the declaratory reliefs to the satisfaction of the Court. Being declaratory, the reliefs are not granted even on the admission of the respondents. See Dume: (Nig.) Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361 and Senator Iyiola Omisore & Anor v. Ogbeni Rauf Adesoji Aregbesola & Ors (2015) LPELR; (2015) 15 NWLR (Pt. 1482) 205.

To succeed in his claim, therefore, the appellant must, in the final analysis establish that the 1st respondent never paid the tax he declared in Form CF001, exhibit D, to have paid as evidenced by exhibits A, B and C the tax receipts and tax clearance certificate respectively."

In the same case KEKERE-EKUN, JSC had this to say on pages 348 H to 349 A:-

"By the assertion that the documents submitted are false, there is an inherent allegation of dishonesty. It is implied that the documents submitted were concocted or that the originals were altered for the purpose of allowing the 1st respondent to contest the election under false pretences i.e. that he had complied fully with the requirements of the law and the PDP Guidelines. In other words, a crime is being imputed to the 1st respondent. In such circumstances, the appellant has

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the additional burden of proving his allegations beyond reasonable doubt. See section 135(1) of the Evidence Act, 2011."

In the same report on page 350 F - H thereof EKO, JSC said:-

"I wish to merely add that either under section 31 (5) & (6) of the Electoral Act, 2010 (as amended), or section 182 (1)(j) of the 1999 Constitution, as altered, the burden of proof imposed by sections 131 - 139 of the Evidence Act, 2011 is not displaced. Whoever asserts under section 31(5) of the Electoral Act that "any information given by a candidate in the affidavit or any document submitted by that candidate is false" has the burden of proving his assertion in order to be entitled to judgment under section 31 (6) of the Electoral Act, 2010.

Similarly, whoever asserts that the candidate in an election had "presented forged certificate to the Independent National Electoral Commission" has the onus of proving beyond reasonable doubt that the candidate had in fact presented a forged certificate. In any proceeding where commission of crime by a party is directly in issue the proof beyond reasonable doubt is the standard of proof. See Nwobodo v. Onoh (1984) 1 SCNLR 1; Tort v. Ukpabi (1984) 1 NSCC 141 at 145, (1984) I SCNLR 214."

The same position was taken by the Supreme Court in two other recent matters namely; JOE ODEY AGI, SAN VS PDP & ORS (2017) 17 NWLR (PART 1595) 386 AT 454 B - H TO 455 A - G per OGUNBIYI,

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JSC. (2) ENGR. M. Y. MAIHAJA VS ALHAJI IBRAHIM & ORS (2018) 4 NWLR (PART 1610) 454 AT 496 F - H per KEKERE-EKUN, JSC.

The settled position of the law is that when this Court is faced with two apparent conflicting decisions of the apex Court on a principle or on a point of law or an issue, this Court is bound to follow the latest decision on the point or an issue. See OSAKUE V FEDERAL COLLEGE OF EDUCATION (2010) 3 SCNJ 529 AT 546 per OGBUAGU, JSC of blessed memory. The decision relied upon in EKAGBARA's case is quite unhelpful to the Appellants.

In any event, an appellate Court is only concerned as to whether a judgment is right or wrong. Where the judgment of the lower Court as in this case is right and supported by facts in the printed record as in this case the reasons given for the judgment will not matter. See ALHAJI UMARU SANDA NDAYAKO & ORS V ALHAJI HALIRU DATORO & ORS (2004) 13 NWLR (PT. 889) 187 AT 220 F - G per EDOZIE, JSC.

The learned trial Judge correctly appraised the evidence led by the Appellant and rightly came to the decision that Appellants failed to prove their case at the trial.

Issue 1 is resolved against the Appellants.

ISSUE NO. 2

Whether it is the law that probative value will be accorded to a document tendered by a witness as Exhibit at the trial only if such document was made by that witness and therefore whether the learned trial Judge was right to have refused to attach any probative value to all the documentary Exhibits (Exhibits PL1 - PL14) tendered at the trial by 1st Appellant, PW1, on the basis that he (PW1) was not the maker of the said documentary Exhibits (Ground 6).

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The learned silk for the Appellants referred to the findings of the learned trial Judge on pages 4772 - 4773 Vol. 7 of the record of appeal to the effect that he would not attach any probative value to the documents tendered by the PW1 as Exhibits PL1 - PL14 relying on the cases of NYESOM PETERSIDE (2016) 7 NWLR (PT. 1572) 452 AT 533.; IKPEAZU V OTTI (2016) 8 NWLR (PT. 1513) 36 AT 93 and BELGORE V AHMED (2013) 8 NWLR (PT. 355) 60 AT 100.

The learned senior Counsel to the Appellants stated that the probative value or weight to be attached to a document not tendered by the maker will depend on the nature of the document. That Exhibits PL1 - PL4 are INEC documents made by 1st Respondent, 3rd Respondent and 2nd Appellant respectively. That the contents of the said exhibits were admitted as true and correct by the parties who authored them. That 1st Respondent authored Exhibit PL1 which is Form CF001 submitted to INEC.

He relied on Section 83(1) and 2 of the Evidence Act that the presence of a maker of document may be excused if he is dead, or unfit by reason of mental condition to attend as witness or if he is outside the country and it is not reasonably practicable to secure his attendance or where all reasonable efforts made to find the maker have been made without success, then in order to avoid delay the document can be admitted without the maker. That the learned trial Judge was wrong in holding that because the makers of Exhibits PL1 - PL4 were not called he could not attach probative value to the exhibits.

That Exhibits PL5 - PL12 are certified True Copies of foreign judgments, orders and judicial proceedings which learned senior Counsel to Appellants, stated were admitted in evidence under Section 106(h)(ii) of the Evidence Act 2011 and that they are conclusive

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evidence of facts contained in them under Section 128(1) of the Evidence Act 2011. That it is not the law that the Judge who delivered the judgment or who presided over the proceedings must be called.

That Exhibit P13 is a letter written by 1st Respondent to the Governor of Central Bank of Nigeria requesting for the account details of the Federal Government of Nigeria to enable him return some money to the Federal Government and that Exhibit PL14 is a letter of acknowledgement of the refund of the sum of money issued to the 1st Respondent by the Director of Foreign Operation, Central Bank of Nigeria dated 21/9/1998. That these are letters authored by, and addressed to the 1st Respondent, who is a party to the proceedings and who did not deny authorizing Exhibit PL13 or deny receiving Exhibit PL14.

The learned Silk to the Appellant expressed his surprise thus:-

> ***"It therefore beats imagination as to why the learned trial Judge refused to accord probative value to these Exhibits on the basis that PW1 did not author them."***

He concluded his submissions that Exhibits PL1 - PL14 are public documents and PW1 need not be the maker of Exhibits PL1 - PL14 for the Court to ascribe probative value to them. He urge this Court to resolve Issue 2 in Appellants' favour.

In response to the submissions of learned silk to the Appellants, the learned senior counsel to the 1st Respondent submitted that the learned trial Judge was on firma terra, when he refused to attach any probative value to Exhibits P41 - PL14 on the authority of Supreme Court in the case of NYESOM V PETERSIDE (2016) 7 NWLR (PT. 1512) 452. That under cross examination the 1st Appellant (PW1) admitted that he was not the maker of the documents. That he did not know how the documents were even procured for the institution of the

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action. He relied on pages 4576 - 4579 Vol. 7 of the record of Appeal for the evidence of PW1 under cross examination. That is was one Patrick Omeke that PW1 informed the Court held the Appellants obtained Exhibits PL5 - PL12 and the said PATRICK OMEKE was not even called as a witness even though the said Patrick Omeke was listed a witness to be called by the Appellant. He also relied on the cases of IKPEAZU V OTTI (2016) 8 NWLR (PT. 1513) 36 per GALADINMA, JSC and OKEREKE V UMAHI (2016) 11 NWLR (PT. 1524) 438 AT 470 - 473. That the bottom line is that the law has since been settled that where a person who did not make a document tenders it, the trial Judge should not attach probative value on the document because such a person cannot be cross examined on the document since he was not the maker. That the lower Court is bound by the decisions of apex Court.

On reliance placed on the Section 83(1) and (20 of the Evidence Act, MAKYAU, SAN for the 1st Respondent submitted that Section 83(1) (2) of Evidence is of no value to Appellants' case as the Appellants tendered the exhibits with a view to establishing the truth of the contents of the documents. That Appellants' case does not fall within the purview of Section 83. That for the documents to come under Section 83(2) the Court must be satisfied that undue delay will be accessioned if the makers of the documents were to be called. He also submitted that Section 128(1) of the Evidence Act cannot assist the Appellants. That for any judicial proceedings of a foreign Court to be admissible for purpose of showing that any person is under a conviction and sentence by a foreign Court Sections 102, 104, 106 and 249 of the Evidence Act 2011 must be complied with to be receivable in evidence subject to the decisions of the Supreme Court in NYESOM V PETERSIDE (supra); IKPEAZU V OTTI (supra) and OKEREKE V

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UMAHI (supra). That the Appellants merely dumped the exhibits at the Court. That PW1 was not the maker and did not make any attempt to relate the Exhibits to their pleaded case. He relied on OMISORE V AREGBE SOLA supra A at 276 per NWEZE, JSC. He urged this Court to resolve Issue 2 against the Appellants.

On his own part of learned Senior Advocate of Nigeria for the 2nd Respondent WOLE AGUNBIADE, SAN stated that the Appellants have not told this Court that the learned trial Judge was wrong in following the Supreme Court decisions. That Appellants did not even say that the facts of their case are distinguishable fro m the Supreme Court decisions. That what the lower Court did was to follow judicial precedent and cannot be faulted.

That the Appellants have also not shown how ascribing probative value to the exhibits would have altered the ultimate decision of the trial Court in respect of the Appellants' claims in that the learned trial Judge had found on page 4770 of Vol. 7 of the record that all the exhibits tendered by the Appellants did not support their pleaded case to the effect that 1st Defendant is under a sentence or fine imposed by a Court or Tribunal. The learned Senior Counsel submitted that even if there was an error, which he did not concede, the error has not occasioned a miscarriage of justice. He therefore urged this Court to uphold the ultimate decision of the lower Court. He placed reliance on the case of SPASCO VEHICLE AND PLANT HIRE CO LTD VS ALRAINE (NIGERIA) LIMITED (1995) 9 SCNJ 288 AT 306 per IGUH, JSC. He urged the Court to resolve the issue against the Appellants.

The learned Counsel to the 3rd Respondent WENDY KUKU, ESQ submitted that it was erroneous for the Appellants to argue that a document whether or not tendered by its maker enjoys ascription of

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value or weight. That the Appellant failed to make a distinction between admissibility of documents and ascription of probative value to same. He relied on the cases of:-

1. D.P.K. TALLEN & ORS V DAVID JONAH JANG & ORS (2011) LPELR - 9231 CA per OGUNBIYI, JCA later JSC.;
2. TRADE BANK PLC V DELE MORENIKEJI (NIG) LTD & ANOR (1988) 3 NWLR (PT. 13) 404.

That the Appellants have failed to advance any cogent and credible reasons for the Court to ascribe probative value to Exhibits PL1 - PL14. The learned Senior Counsel to the Appellant in his reply brief filed on behalf of the Appellants in reply to the contention of 1st Respondent argument that the PW1 did not demonstrate the relationship between the documents tendered in relation to the pleadings but that it was dumped at the Court.

The Appellants learned Silk stated the argument was misconceived and relied on Order 20 Rule (1)(2) and (3) of the Federal High Court (Civil Procedure) Rules as providing that:

> *"Subject to these rules and to any enactment relating to evidence, any fact required to be proved at the trial of any action shall be proved by written deposition and oral examination of witnesses in open Court..."*

That the Appellants followed the procedure laid down for giving evidence at the trial.

Now the zenith of the Appellant's submission is that the learned trial Judge was wrong in holding that once a document has been tendered in evidence by a person who did not make the document, no probative value or weight should be accorded to such evidence.

The law is firmly settled that admissibility of a document or its admission in evidence is quite different or distinct from the value or

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weight to be accorded the document so admitted. I call in aid the following decisions of the ultimate Court in the land viz:-

1. U.T.C. NIGERIA PLC VS ALHAJI JIAWAHAB LAWAL (2014) 5 NWLR (PART 1400) 221 AT 244 F - G where my Lord KEKERE-EKUN, JSC said:-

   "It is also important to note that the admissibility of a document is quite different from the probative value to be attached to it... while admissibility is based on relevance, probative value, depends not only on relevance but also on proof."

The same point was made by my Lord in the case of IFEANYI CHIYENUM BLESSING V FRN (2015) 13 NWLR (PART 1475) 1 AT 346 - E per KEKERE-EKUN, JSC.

A document will only be accorded probative value when proved and it tends to establish an issue duly submitted for adjudication. See A.C.N vs SULE LAMIDO & ORS (2012) 8 NWLR (PART 1303) 560 AT 592D per FABIYI, JSC who said:-

> *"This is so as there is a dichotomy between admissibility of documents and the probative value to be placed on them. While admissibility is based on relevance, probative value depends not only on relevance but also on proof. Evidence has probative value if it tends to prove as issue."*

That is not all. The only person who can testify positively about a document is a person who has knowledge of facts therein contained and not a person who is ignorant of the contents of the document which may be tendered from the bar or through a person who is not the maker if proper foundation is laid or where the adversary does not oppose the admission of such documents in evidence BUT the maker of

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the document must be called to testify on it and give live to the document otherwise the document remains a dead letter. Failure to call a person conversant with the contents of the document, that is the maker of the document will render the document valueless. In other words, the Courts will not accord such documents any probative value.

In effect what the lower Court said is the correct position of the law based on the decisions of the apex Court in the land. For ease of reference the lower Court said on pages 4772 - 4773 as follows:-

> *"In an attempt to discharge that burden, the Plaintiffs tendered Exhibits PL1 - PL14 through PW1, who admitted under cross examination that he was not the maker of any of the said exhibits. In view of the admission by PW1 that he was not the maker of any of the exhibits PL1 - PL14, what then is the legal effect of the said exhibits (document) on this case? The answer is not farfetched. As it is readily available in the case of NYESOM VS PETERSIDE supra at pages 522 - 523 paragraphs G - H, wherein the Supreme Court held as follows:-*
>
> > *"Where the maker of a document is not called to testify, the document will not be accorded probative value, notwithstanding its status as a certified public document. In this case, though exhibit A9 was admissible, it was not prepared by DW49 who tendered it in evidence."*
>
> *See also the case of IKPEAZU VS OTTI (2016) 8 NWLR (PART 1513) Page 38 at Page 93 Paragraphs A - B and BELGORE VS. AHMED (2013) 8 NWLR (PART 1355) Page 60 at Page 100 Paragraphs E - F, D - E and G - H.*

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All the above mentioned cases of the Supreme Court are to the effect that no probative value or no weight should be attached to documents that were not tendered by the maker notwithstanding the fact that they are certified."

The consistent and immutable position of the law now is that the maker of a document(s) (private or public) must be called to testify on such documents before the Court can accord the documents any probative value. The trial Judge stated the portion correctly; See:-

1. SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA A. AJUMOBI & ORS (2016) 10 NWLR (PT. 1519) 87 AT 146 F - H TO A - B per OGUNBIYI, JSC who said:-

"This Court in the case of Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 323,332 drove home the point when it held "Documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating its existence."

At page 6146 of the record, the lower court found that PW1, not being the maker of exhibits 1-192, 201 and 203-216 was not competent to lead evidence on the contents of those documents. It is also held that PW 1, not being a polling unit or ward agent for the appellant was not privy to the making of any of the electoral forms or documents neither was he

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present when they were made. This was how their Lordships concluded on PW1.

> *"Any evidence so adduced by him as to the contents of those documents would be hearsay and therefore inadmissible."*

The view taken by the lower court cannot be faulted, moreso where the appellant has not presented any cogent argument to the contrary upon which this court may be invited to interfere with the well reasoned finding of the lower court. Premised on the unassailable and the detailed review, of the evidence of PW1 by the lower court therefore, it was proper that it upheld the decision of the trial Tribunal in rejecting the report/analysis qua opinion of PW1."

2. E. N. OKEREKE VS NWEZE DAVID UMAHI & ORS (2016) 1 NWLR (PART 1524) 438 AT 472 A - H per NWEZE, JSC who said:-

"Surely, since the witness (PW I), was not "in any polling unit in Ebonyi State on the day of election"; "had never worked at INEC office"; "did not participate in the off-loading of information from the Card Reader Machine to the INEC Data base" and "was not part of the team that came to Abakaliki for the exercise", the lower court, rightly, affirmed the position of the trial Tribunal that no weight could be attached to his evidence for he was "ignorant of

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(their) content".

As this court explained in Buhari v. I.N.E.C (2008) 18 NWLR (Pt. 1120) 246, 391 - 392, paras H-A.

> *"Weight can hardly be attached to a document tendered in evidence by a witness who cannot or is not in a position to answer questions on the document. One such person the law identifies is the one who did not make the document. Such a person is adjudged in the eyes of the law as ignorant of the content of the document"*

3. UDOM GABRIEL EMMANUEL VS UMANA OKON UMANA & ORS (2016) 12 NWLR (PART 1526) 270 AT 286 G - H TO A - B per NWEZE, JSC who said:-

"However, I wish to further emphasize on the rather reckless behavior of the court below in refusing to be guided by the decision of this court but relied on its own decision to decide that it was unnecessary to call the makers of documents exhibits 317 and 322 to testify in this case. The law is well settled that documents produced by parties in evidence in course of hearing are to be tested in open court before the court can evaluate them to determine their relevance in the determination of the case upon which the documents are relied upon. For this reason, any document tendered from the bar without calling the maker thereof attracts no probative value in the absence of opportunity given to the other party to cross-examine for the purpose of testing its veracity. See Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 322-323 which the court below refused to apply in place of its own decision in Aregbesola v. Oyinlola (2011) 9 NWLR (Pt.

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1253) 458. See also the cases of Sa'eed v. Yakowa (2013) 7 NWLR (Pt.1352) 124 at 149-150 and Osigwelem v. INE.C. (2011) 9 NWLR (Pt. 1253) 425 at 451."

3. BASHIRU POPOOLA V THE STATE (2018) 10 NWLR (PART 1628) 485 AT 498 H TO 497 A - B per RHODES-VIVOUR, JSC.

I am not unmindful of the Appellants submission that Exhibits PL1 - PL4 are INEC documents made by 1st Respondent, 3rd Respondent and 2nd Respondent respectively and that the contents were admitted as true and correct.

The fact remains that the makers did not tender Exhibits PL1 - PL4 and indeed Exhibits PL5 - PL14 and were not called to give evidence on them. The position of the parties on the pleadings are that Appellants are insisting that 1st Respondent's answer to a question in Form CF001 is false while the 1st Respondent maintains that he was not under any sentence of fine from any Court either within or outside Nigeria. The parties were never ad idem on the Appellant's allegations and claims against the Respondents.

The learned Counsel to the Appellants also relied on Section 83(1) and (2) of the Evidence Act to justify the non calling of the makers of the documents Exhibits PL1 - PL14. I am certain in my mind that Section 83(1) and (2) cannot avail the Appellants in that no case was made for application of Section 83 before the lower Court. The documents were not tendered under Section 83(1) and (2) of the Evidence Act. The Appellants did not even bother to call the person who helped them obtained the certified true copies from a Court outside Nigeria, one Patrick Omeke. No reasons were advanced for failure to call officials of the Court where the alleged forfeiture proceedings and other allegations raised were entertained.

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Under cross-examination on pages 4580 - 4581 PW1 admitted that Exhibits PL5, PL6 and PL7 which are the bedrock of their suit were issued after the certificate of return was issued in 2015. He confirmed under cross examination also that in paragraph 30 of his witness statement he stated that it was 2nd Plaintiff that engaged Patrick Omeke and not the two Appellants. See page 4583 of the record.

I am also mindful of the reliance placed on Section 128(1) of the Evidence Act that the judgment of foreign Court is admissible without the need to call the learned trial Judge or judicial officers who made Exhibits PL5 - PL12.

The submission, with profound respect is misconceived. The reasons are not farfetched.

1. The Appellants instituted this action claiming that 1st Respondent lied when in his answer on Form CF001 that he was not under a sentence of fine for offence of dishonesty or fraud or any offence imposed by a Court or Tribunal.
2. The Appellants procured Exhibits PL1 - PL14 in order to sustain the suit against 1st Respondent and 2nd and 3rd Respondents, through one Patrick Omeke.
3. The Appellants were bound to comply with Section 249 of the Evidence Act (2011) as amended to enable them prove the allegations contained in their claims and reliefs sought at the Court below. They did not comply with the said Section 249 of the Evidence Act which provides:-

   "249(1) A previous conviction in a place outside Nigeria may be proved by the production of a certificate purporting to be given under the hand of a police

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officer in the country where the conviction was had, containing a copy of the sentence or order and the finger prints, of the person or photographs of the finger prints of the person so convicted together with evidence that the finger prints of the person so convicted are those of the defendant.

(2) A certificate given under subsection (1) of this section shall be prima facie evidence all facts set out in its, without proof that the officer purporting to sign it did in fact sign it and was empowered to do so."

All the elements of proof contained in the said Section were not proved or established. There is nothing on record to show that the Exhibits particularly Exhibits PL6 - PL14 contained a certificate given under the hand of Police officer in the Country where the purported conviction of 1st Respondent took place; the copy of sentence; or order and finger prints of the person convicted or photographs of the finger prints of the person so convicted and attestation that the finger prints of the person so convicted are those of the Defendant in this suit instituted against the Respondents by the Appellants.

PW1 who is not the maker of any of the documents so confidently relied upon by the Appellants did not produce any certificate of conviction or photograph of finger prints of the 1st Respondent from any foreign Country showing any sentence of fine imposed on the 1st Respondent. None. One is not surprised that the learned trial Judge held on page 4770 of Vol. 7 as follows:-

"Exhibits PL6 and PL7, I have no difficulty in rejecting the argument of learned senior counsel for the Plaintiffs for the simple reason that the said exhibits did not

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state that the 1st Defendant was under a sentence or fine imposed by a Court of law or Tribunal.

It should be stressed that all the exhibits tendered by the Plaintiffs do not support the pleadings of the Plaintiffs and the evidence of PW1 to the effect that the 1st Defendant is under sentence or fine imposed by a Court or Tribunal. The position of the law is that documentary evidence serves as a hanger from which to assess oral testimony. See the case of UDO VS STATE (2018) 8 NWLR (PART 1622) PAGE 462 AT 479 PARAGRAPHS C - E."

I have examined the exhibits tendered (Exhibits PL1 - PL14) critically and my finding is that there is no scintilla of evidence in those documents (which their makers were not called) to link the 1st Respondent with <u>any sentence</u> or fine of a Court or Tribunal. No such sentence of a Court or Tribunal in all the exhibits tendered by the Appellants as PL1 - PL14.

In the result the learned trial Judge stated the law correctly and he was right in holding that in the absence or failure of Appellants to call the makers of Exhibits PL1 - PL14 to testify, no probative value can be accorded Exhibits PL1 - PL14.

Issue 2 is thus resolved against the Appellants.

ISSUE 3

"Whether the Learned Trial Judge was right in holding that the issue of lifting the corporate veil to find that the 1st Respondent is the person behind the corporate entities which assets and funds were forfeited in the

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forfeiture proceedings (Exhibits PL5 - PL7) cannot arise, notwithstanding that the 1st Respondent was held in the forfeiture proceedings to have misappropriated, defrauded; and extorted billions of dollar from the Government of Nigeria using his companies and bank accounts named in the forfeiture proceedings? (Ground 5)".

The Learned silk for the Appellants submitted that this is a case in which the lower Court ought to have lifted the Corporate veil to find that the 1st Respondent is person behind the corporate entities which assets and funds were forfeiture proceedings Exhibits PL5 - PL7 where according to the Appellants the 1st Respondent was expressly held to have misappropriated, defrauded and extorted billions of dollars from the Government of Nigeria using the very companies and bank accounts named in the forfeiture proceeding. That 1st Respondent cannot hide under the cloak of corporate veil to escaped liability "for his fraudulent acts." That Exhibit PL5 clearly indicted the 1st Respondent and the verified facts on oath which were accepted by the Court in Exhibits PL5 and Exhibit PL7 shows, according to Learned Senior Counsel to Appellants, the 1st Respondent was at the centre of the theft, conversion, fraud; extortion and misappropriation and embezzlement of public funds and was instrumental to the fraudulent transfers of the funds to offshore accounts in Switzerland, Paris, London etc.

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That this Court will lift the veil of an incorporated company to find out who was behind the fraudulent and improper conduct of the company where according to Learned silk the canopy of legal entity is being used to defeat public convenience to justify wrong and perpetuate fraud and crime. He relied on the case of AMINU MUSA OYEBANJI VS. STATE (2015) 14 NWLR (PART 1479) 270 at 291 - 292 per GALADIMA JSC.

That in order to obviate the monumental fraud being perpetrated by individuals who masquerade under the toga of artificial legal personalities our legislature rose to the occasion and passed Advanced Fee Fraud and other Related offences Act Cap A6 Laws of the Federation. He relied on Section 10(1) of the Act and Section 18 (1) of Money Laundering (Prohibition) Act of Nigeria Cap M18 Laws of the Federation of Nigeria.

To the Learned Senior Advocate of Nigeria "a finding of guilt of the company is attributable to the directing mind".
That the forfeiture Order Exhibit PL6, according to the Learned silk to the Appellants:-

> *"Which is in form of a fine made against the corporate entities owned by the 1st Respondent for the offences of theft; conversion; fraud; extortion; misappropriation, embezzlement of Public Funds and money laundering is deemed to have been made against the 1st Respondent who*

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is the man behind the mask the purpose of this is in the interest of the public policy and public decency to ensure that only persons of sound pedigree and prescriptive quality aspire to and occupy elective political offices and that persons of questionable character do not occupy such crucial political and political and public offices."

He urged the Court to resolve the issue against the respondents.

In response to the above submissions, the Learned Senior Counsel to the 1st Respondent supported the finding of the trial Court on the issue of doctrine of lifting the veil and that the trail judge was right. He referred to page 4771 of vol. 7 of the record whereat the trail Judge in his judgment rejected the submissions of Appellant's Learned Senior Counsel. That under cross examination PW1 categorically stated that there is no form of physical identification on Exhibits PL5 - PL17 (SLC). He relied on page 4577 vol.7 of the record and part of the evidence of PW1 under cross examination on page 4593 - 4594 of vol. 7 of the record of appeal.

That the Appellants did not demonstrate before the trail Court that the person mentioned in Exhibits PL5 to PL7 was the 1st Respondent that Appellants admitted that the 1st Respondent was not a party to any of the proceedings in

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Exhibits PL5 - PL7. That this alone distinguished Exhibits PL5 - PL7 from the cases relied upon by the Appellants in asking the trial Court to lift the veil of incorporation of the corporate entities listed as Defendants in the proceedings in Exhibits PL5 - PL7. He opined that before a person could be held responsible for the commission of any offence, such a person must be made a party to the proceedings.

That where it is alleged that an offence has been committed or perpetrated by or through a corporate entity, the alter ego of such an entity must be tried either along with the corporate entity or alone and it is only in such circumstances that the veil of the corporation will be lifted in order to hold the human agents responsible for running of the company culpable. He relied on the cases cited and relied upon by Appellant's Learned Senior Counsel.

That none of the corporation listed in Exhibits PL5 to PL7 whose veil of incorporation the Appellants urged the Court to lift, was a party in the proceedings that gave rise to this appeal. That the trial Court could not lift the veil of incorporation of a Company that was not a party before it and that this Court will not accede to request by the Appellants to do what the trail Court did not have the powers to do.

That provisions of Section 10(1) of the Advanced Feed Fraud and Other Related Act and Section 18(1) of the Money Laundering (prohibition) Act relied upon by Appellants show

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that the body Corporate which veil is sought to be lift, the human agents alleged to have instigated or connived in the commission of the alleged offence must be present in the proceeding and that the person must be proceeded against and punished in a Court of law so as to determine the culpability of the human agent or directing mind.

That it is not part of our jurisprudence or even that United States of America, where Exhibits PL5 to PL7 were reportedly made to subject one person to trial only to attribute or impute the punishment on another. The Learned Silk also submitted that it is not proper in order to lift the veil of incorporation of incorporated companies listed in Exhibits PL5 - PL7 when none of them was party to those proceedings and it would amount to an attempt to shave the head of a person in his or her absence. He urged this Court to resolve this issue against the Appellants.

In his own submission the Learned Counsel to the 2nd Respondent stated that the trial court rightly declined to lift the veil of incorporation of any entities that were parties to the forfeiture proceedings in Exhibit PL5 - PL7. That the case before the lower court as presented by Appellants is certainly not one in which veil of incorporation of the entities that were Defendants in the forfeiture proceedings could be lifted. That the scope of the Appellant's case is clear - that the 1st Respondent gave false answer to a question in Exhibit

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PL1. That there are no issues joined on the lifting of the veil of the incorporation of any of those entities. That the trite law is that parties are bound by pleadings and judgment of trial court must be based on the evidence in support of the pleadings. He relied on the case of IKEANYI VS. ACB LIMITED & ANR (1997) 2 NWLR (PART 489) 509 at 523 -524 per IGUH, JSC. that the lower court was right in holding that cases cited by Appellants are inapposite.

That the submissions of Appellants in paragraphs 14 - 18 of their Briefs and reliance placed on Advanced Fee Fraud and Other Related Offences Act and Money Laundering (Prohibition) Act relied upon by Appellant are not relevant in that none of the entities mentioned in the forfeiture procedures and 1st Respondent were not tried under those statutes. That the two legislations provide that both the company and the Directors are to be tried in a Court of law and punished accordingly. That it is curious for Appellants to be pressing that 1st Respondent be found guilty of an offence under the two legislations. That there cannot be any ascription or imputation of the guilt or sentence passed on one person to another. He relied on the case of AC & ANOR vs. INEC (2007) 6 SC (Part 1) 212 at 228 and AMAECHI vs. INEC & ORS (2008) 5 NWLR (Part 1080) 227 C. per OGUNTADE, JSC.

He urged this Court to uphold the decision of the trial Court not to embark on lifting the veil of incorporation of any

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entity or person that was a Defendant to the forfeiture proceedings in Exhibits PL5 - PL7.

Learned Counsel to the 3rd Respondent did not make any submission on issue 3.

The Learned silk to Appellant in reply stated that identity of person named as Abubakar Atiku Bagudu in Exhibits PL5 - 14 is not in doubt and that parties are bound by their pleadings. That the 1st Respondent did not expressly traverse paragraph 21 of the Further Amended Statement of Claim at page 2622 of vol. 4 of the record in the 1st Respondent's Amended Statement of Defence in that he did not disclaim relationship with persons who have interest in the assets forfeited. That they are members of 1st Respondents family.

He relied on the case of GBARUKO VS. GBARUKO (2017 LPERLR 41749 and further states that;

> *"It is without a doubt that the individual referred to in exhibits PL5 - PL14 as Abubakar Atiku Bagudu, the principal party in executing the fraudulent scheme mentioned therein, is the 1st Respondent herein."*

He finally urged this Court to allow the Appellants' appeal and grant the reliefs sought in the Notice of Appeal.

Now parties are bound by their pleadings as much as the Court seised of the matter. The parties are severely limited to their

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respective pleading and cannot be allowed under any guise to deviate from their pleaded case.

I have carefully read the Appellants FURTHER AMENDED STATEMENT OF CLAIM containing 32 paragraphs and the STATEMENT ON OATH OF THE PLAINTIFFS WITNESS - MR ANTHONY ITANYI consisting of 33 paragraphs at pages 2614 - 2741 Vol. 4 of the record of appeal, I cannot find any claim(s) or reliefs touching and concerning or pertaining to Appellants quest to have the veil of those companies they alluded to in paragraphs 16 - 21 of the Further Amended Statement of Claim. The reliefs sought from the lower Court had earlier been reproduced. There is no prayer for lifting of the veil of the said companies which are in any event not parties to this proceedings.

There is no doubt that an action in rem is quite different from an action in personam. Conversely a judgment in rem is also not the same as a judgment in personam. The distinction between the two types of action and judgment are well defined in the Black's Law Dictionary 10th Edition pages 36, 971, 972 - 973 as follows:-

"Judgment in rem-

A judgment that determines the status or condition of property and that operates directly on the property itself. The phrase denotes a judgment that affects not only interests in a thing but also all persons' interest in the thing. Also termed in rem judgment.

Personal Judgment-

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1. *A judgment that imposes personal liability on a defendant and that may therefore be satisfied out of any of the defendant's property within judicial reach.*
2. *A judgment resulting from an action in which a Court has personal jurisdiction over parties.*
3. *A judgment against a person as distinguished from a judgment against a thing, right or status- Also termed judgment in personam: in personam judgment: judgment inter parties."*

The apex Court in the land had cause in numerous cases to make the distinctions defined above very long time ago. Suffice to refer to:-

1. IKENYE DIKE & ORS V OBI NZEKA II (1986) 4 NWLR (PT. 34) 144 AT 253 E - H to 154 per OPUTA, JSC of blessed memory who said:-

   "It is therefore necessary to have a clear idea of the distinction between a judgment in rem and a judgment in personam. A judgment is said to be in rem when it is an adjudication pronounced upon the status of some particular thing or subject matter by a tribunal having the jurisdiction and the competence to pronounce on that status. Such a judgment is usually and invariably founded on proceedings instituted against or on something or subject-matter whose status or condition is to be determined. It is thus a solemn declaration on the status of some persons or thing. It is therefore binding on all persons in so far as their interests in the status of

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the property or person are concerned. That is why a Judgment in rem is a judgment contra mundum - binding on the whole world - parties as well as non-parties. A judgment in personam, on the other hand, is on an entirely different footing. It is a judgment against a particular person as distinguished from a judgment declaring the status of a particular person or thing. A judgment in personam will be more accurately called a judgment inter partes. A judgment in personam usually creates a personal obligation as it determines the rights of parties inter se to, or in the subject-matter in dispute whether it be land or other corporeal property or a liquidated or unliquidated demand, but does not affect the status of either the persons to the dispute or the thing in dispute. As I observed in Sosan's case (supra):-

> "A judgment in a land case is sequel to an action filed not for the purpose of determining the status of the contesting parties (Plaintiffs and Defendants) nor for the purpose of determining the status of the land in dispute but for the purpose of determining the rights or interest of either the Plaintiffs or the Defendants in the land the subject- matter of the dispute. It simply decrees that as between the plaintiffs and the defendants then before the court the land belongs to one party or the other."

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2. ALHAJI SURAKATU AMIDA & ORS V TAIYE OSHOBOJA (1984) LPELR - 463 SC 1 AT 39 where OBASEKI, JSC who said:-

   "A judgment inter parties or in personam raises an estoppel only against the parties to the proceedings in which it is given and their privies; (1) privies in blood (2) privies in law; and (3) privies in estate. As against all other parties it is res inter alios acta, and with certain exceptions although conclusive of the facts that the judgment was obtained and of its terms, is not admissible evidence of the facts established by it."

3. MRS AKINFELA FRANK COLE VS ADIM JIBUNOH & ANOR (2016) 4 NWLR (PART 1503) 499 AT 531H· TO 532A-D per KEKERE-EKUN, JSC.

The 1st Respondent has not been shown to be a party to all the proceedings the processes of which were tendered as Exhibits PL5, PL6 and PL7. There is clearly no nexus between those cases and the cause of action in this matter now on appeal. The clamour for the lifting of the veil of those companies is totally alien and at variance with the pleadings of the Appellants in this case. A trial Court must strictly keep to the pleadings of the parties. It has no jurisdiction to adjudicate on matters or issues that are not well defined on the pleading. Court or Tribunal cannot and must not indulge in the habit of granting reliefs not sought from the Court or Tribunal. See:-

1. AFRICAN CONTINENTAL SEAWAYS LTD VS NDRGW LTD (1977) 5 SC 235 AT 249 - 250 per IRIKEFE, JSC who said:-

   "Before bringing our commentary on pleadings to a

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close awe should like to recall the following statement by the learned authors of BULLEN & LEAKE on PRECENDENTS OF PLEADING 12TH Edition p.8.

The function of pleadings has been described as a reflection of the role of the court and as an aspect of the adversary system of civil proceedings:

As the parties are adversaries it is left to each of them to formulate his case in his own way, subject to the basic rules of pleading... For the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without (due amendment properly made). Each party that knows the case he has to meet and cannot be taken by surprise at the trial.

The court itself is as much bound by the pleadings of the parties as they are themselves. It is no part of the duty or function of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. To do so would be to enter the realms of speculation Moreover, in such event, the parties themselves or at any rate one of them, might well feel aggrieved: for a decision given on a claim or

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defence not made, or raised, by -or against a party is equivalent to not hearing him at all and may thus be a denial of justice.

2. AGIP VS AGIP (2010) 5 NWLR (part 1187) 346 AT 427 B-C per FABIYI J.S.C. who held:-

   "It is pertinent at this point to express it clearly that a court should not grant a prayer that is not contained in a motion paper. See Chief R.A. Okoya vs Santilli & Ors (1990)s 2 NWLR (Pt 131)s 172 at 205. By extension a court should not award that which was not claimed. This is because a court is not a charitable organization."

3. HON. CHIEF OGUEFI OZOMGBACHI V MR DENNIS AMADI & OS LPELR - 45152 (SC) 1 AT 53 per PETER-ODILI, JSC who said:-

   "It needs be reiterated that parties are bound by their pleadings and no party is allowed to make a case different from what it set out from inception and so for the Appellant to seek to depart from their pleadings and embark on a fresh or brand new case different from the very beginning is an act in futility. The obvious reason is that a case retains its original nature from the commencement and the colour would not change because it is on appeal since an appeal or appeals are merely a continuum of that matter that entered from the very first time at the Court of first instance. It follows that the brilliant address of Counsel would not scratch the surface in the apparent quest or a change of nature of the case. See Effiom v C.R.S.I.E.C (2010) 14 NWLR (PT. 1213)

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106; Alhasan v. Ishaku supra at 286 per Ogunbiyi, JSC; Ogunsanya v The State (2011) LPELR - 2349 SC 44 - 54 per RHODES-VIVOUR, JSC."

Exhibits PL5, PL6 and PL7 have not been shown to be a criminal trial or prosecution against the 1st Respondent. The desperate move by the Appellants for lifting of veil of the companies mentioned in paragraph 16 of their Further Amended Statement of Claim is an admission on the part of the Appellants that there is nothing in Exhibits PL1 - PL14 to establish any of the declaratory reliefs and injunctive reliefs being sought against the 1st Respondent and the Co-Respondents in this appeal.

Another snag in the case of the Appellants is that they are asking lower Court, a court in Nigeria to lift the veil of corporate entities domiciled in foreign countries, which are not at all parties to this proceeding. It is like asking in this 21st Century that Birnam Wood should come or move to Dunsinane as it happened satirically in Shakespeare's Macbeth.

No order or judgment can be made against a person or party that is not before the Court as a party. A person must of necessity be given a hearing before his rights and obligations are determined. See the cases of:-

1. PRINCE BIYI POROYE & ORS VS SENATOR A. M. MARKARFI & ORS LPELR - 42738 SC 1 per ARIWOOLA, JSC.
2. CHIEF MAXI OKWU & ANOR VS CHIEF VICTOR UMEH & ORS (2016) 4 NWLR (PART 1501) 120 AT 143H TO 144 A - E per OKORO, JSC.

The 1st Respondent was not and is not on trial with or without any incorporated companies under any of the laws cited by the learned Senior Counsel to the Appellants namely Advanced Fee Fraud and

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Other Related Offences Act Cap. A6 Laws of the Federation Section 10(1) thereof or Money Laundering (Prohibition) Act Cap. M18 LFN Section 18 thereof. There is no vicarious liability under the Penal Laws. The facts of forfeiture of funds and assets of some foreign companies outside the shores of Nigeria cannot amount to trial of the 1st Respondent for corrupt practices related offences under the Nigerian law. There are procedures in this country for bringing offenders to book. The cases relied upon in support of submissions for lifting of veil of corporate entities are grossly inapplicable to the facts of this case on appeal.

The facts remain that even if as suggested by the Appellants the veil is lifted off the said corporate entities which assets were forfeited how would that translate into prove of a sentence of fine imposed by a Court or Tribunal. To my mind it is quite unhelpful to the Appellants case as the onus on them is proved beyond reasonable doubt and the Appellants evidence through their sole witness and all the exhibits tendered only helped to disprove the case set up by the Appellants against the 1st Respondent.

All the complaints of the Appellants under this issue 3 constitute a voyage away from the real meat and substance of their case. Their position is grossly inconsistent with the case they set out for themselves. It is "much ado about nothing." Parties to litigation have been told time and time again that they must be consistent in the presentation of their case(s) both at the lower Court and at the Appellate Courts. This Court cannot in the circumstance accede to the request of the Appellants. A Court or Tribunal cannot grant reliefs on facts not proved or substantiated by the Appellants. See:

1. ABUBAKAR VS. YAR'ADUA (2008) 19 NWLR (PART 1120) 1 AT 154 A - B per NIKI TOBI, JSC who said:

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"A party must be sure of his case and he must present it in one lung-breath not in two-lung breath. If a party makes a case bearing two opposing positions, which positions affect the substance or merit of the issue, it crumbles. A Court of law is not competent to make a choice or repair the case and give the party in default judgment."

2. MRS MARGAREY OKADIGBO VS. PRINCE J. O. EMEKA & ORS (2012) 1 SCM 202 AT 214 A - C per CHUKWUMA-ENEH, JSC who said:-

"It is settled law that a party ought to be consistent in the case he pursues and not as it were, spring surprises on the opposite party from one stage to another. This is so as an appeal is regarded as a continuation of the original action rather than as an inception of a new suit. And so in appeals parties are normally confined to their case as pleaded in the Court of first instance (in this case the trial tribunal) See: the case of JUMBO V. BRYLANKO INTERNATIONAL LTD. (1995) 6 NWLR (PT. 403) 545 AT 555-536 F - H; and AJIDE V. KELANI supra. The Court is bound in this instance to reject the Appellants case and dismiss the appeal in its entirety even solely on the ground against its peculiar circumstances and as the saying goes "can't change horses midstream."

The lower Court was right in holding that the issue of lifting corporate veil of corporate entities mentioned cannot in fact and law arise. Issue 3 is resolved against the Appellants.

Consequently, the Appellants' appeal is quite unmeritorious. The Appellants' appeal is hereby dismissed in its entirety.

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The judgment of the Federal High Court, Abuja Division delivered by Hon. Justice A. R. MOHAMMED in Suit No. FHC/ABJ/CS/312/2015 BETWEEN: ANTHONY ITANYI & ANOTHER VS ALHAJI ABUBAKAR ATIKU BAGUDU & ORS on 29th June, 2018 IS HEREBY AFFIRMED.

However, since this Court has found that the Notice of Appeal founding the Appeal herein is incompetent for having been filed outside the 14 days period prescribed by Section 285(11) of the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration No. 21) Act, 2017 the entire appeal of the Appellants is hereby struck out for want of jurisdiction on the part of this Court.

There will be no Order as to Costs.

PETER OLABISI IGE
JUSTICE, COURT OF APPEAL

APPEARANCES:

ANTHONY I. ANI, SAN with EROMOSELE EHIANE, ESQ and J. E. OMEH, ESQ for APPELLANTS.

Y. C. MAIKYAU, SAN with J. O. ODUBELA, SAN, OLUSEGUN O. JOLAAWO, ESQ; T. R. AGBANYI, ESQ and T. A. RAPU, ESQ. for 1ST RESPONDENT.

WOLE AGUNBIADE, SAN with AUSTIN J. OTAH, ESQ and TOLUWANI ONIFADE (MISS) for 2ND RESPONDENT.

WENDY KUKU, ESQ. for 3RD RESPONDENT.

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BARR CHRIST N. MAKUNA
A.G. DEPUTY CHIEF REGISTRAR
COURT OF APPEAL ABUJA
DIVISION
SIGN ... DATE 27-12-18

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ABUBAKAR DATTI YAHAYA, JCA

I have read in advance, the leading judgment of my learned brother **Ige JCA** just delivered and I am totally in agreement with his reasoning and conclusion.

In respect of the Preliminary Objection, it is clear that the judgment of the trial court was delivered on the 29th of June 2018. The appellants filed the first Notice of Appeal on the 6th of July 2018. By section 285(II) of the Constitution of the Federal Republic of Nigeria 1999 (fourth Alteration) No. 21 Act of 2017, an appeal from a decision in a pre-election matter (which is what was before the trial court) must be filed within 14 days from the delivery of the judgment appealed against. So that first Notice of Appeal was filed within time. Unfortunately, the appellants did not file any brief of argument on that first Notice of Appeal, filed on the 6th July 2018. By Order 19 rule 2 of the Court of Appeal Rules, 2016 an appellant has 45 days to file a brief of argument after transmission of record. The brief is where the issues distilled from the grounds of appeal are identified and argued. Once an appellant fails to file a brief within the time stipulated or at all, as in this appeal, it simply means the appeal has been abandoned since no arguments are proffered in respect of same. By Order 19 rule 10(2), in recognition of the failure of an appellant to file a brief within

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time, or at all the court may suo motu dismiss the appeal for want of prosecution. In the instant appeal, since no brief has been filed in respect of the Notice of Appeal filed within time that Notice of Appeal is hereby dismissed.

The appellants filed a second Notice of Appeal on the 29th of August 2018, transmitted to this Court by way of a Supplementary Record of appeal. That Notice is what predicated the Appellant's brief of argument. However, the said Notice having been filed outside the 14 days prescribed, is incompetent and no competent brief can be filed on an incompetent appeal. On that score, the Notice of Appeal is struck out. The Preliminary Objection therefore succeeds and I sustain it.

Being a penultimate court, the appeal was considered. The appellants totally failed to establish their allegation that the 1st respondent is under a fine for offence involving dishonesty or fraud or any offence imposed by a Court or Tribunal. No warrant or judgment of any competent court or tribunal had been tendered, apart from some sham documents which are hearsay. All the reliefs claimed are virtually dependent upon this allegation. It is unfortunate and it is sad that politics is raised to a ridiculous height to destroy, but not to build. The appeal lacks any merit and it is dismissed in its entirety. The judgment of the trial court in Suit No. FHC/ABJ/CS/212/2015 delivered on the 29th of June 2018 is hereby affirmed in that

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vein. However, since the Preliminary Objection was sustained, the appeal is struck out in that vein.

I abide by the Order on costs.

ABUBAKAR DATTI YAHAYA
JUSTICE, COURT OF APPEAL

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BARR. MRS. M. HASSUMA
A.G. DEPUTY CHIEF REGISTRAR
COURT OF APPEAL ABUJA
DIVISION
SIGN ..... DATE 27-12-18

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CA/A/698/2018

(TINUADE AKOMOLAFE-WILSON, JCA)

I had the preview of the judgment just delivered **PETER OLABISI IGE, JCA.**

The 1st Respondent has filed a Notice of Preliminary Objection contending that this Court lacks the jurisdiction to entertain this appeal having been filed outside the period prescribed by the Constitution.

What is being called for determination is the purport of Section 285 (II) of the Constitution of Federal Republic of Nigeria 1999 as amended by the Fourth Alteration Act, 2017 (No. 21 of 2017), which provides:

> **"285 (9) Not withstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 day days from the date of the occurrence of the event, decision or action complained of in the suit.**
>
> **(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against". (underlining for emphasis)**

By the provisions of Section 285(11) of the 1999 Constitution, an appeal in respect of a pre-election matter must

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be filed within 14 days from the date of the delivery of judgment. This amendment came into force on the 7th June, 2018. The learned Senior Counsel for the Appellant has argued vigorously that the preliminary objection is misconceived because the provisions of Section 285 (11) is inapplicable to the Appellant's suit on the ground that the cause of action in the suit arose on 27/1/2015, when the suit which triggered this appeal was instituted; therefore the constitution cannot be made to have retrospective effect.

Let me state clearly that the cause of action concerning this appeal, with regard to the time within which to file an appeal arose from the date the Notice of Appeal was filed in this court. The objection of the 1st Respondent is therefore not in respect of the cause of action at the trial court as construed by the learned senior counsel for the Appellant.

By virtue of Section 285 (11) of the Constitution of Federal Republic of Nigeria, 1999 as amended by the Fourth Alteration, No 21) Act, 2017, an appeal in respect of a decision in a pre-election matter shall be filed within 14 days from the date of the judgment appealed against.

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The judgment upon which this appeal was activated was delivered on 29th June, 2018; after the amendment of the constitution came into effect on 7th June, 2018. This shows that the cause of action arose after the amendment to the Constitution came with force. The law in existence which governs the filing of this appeal, being a pre-election matter is therefore Section 285 (11) of the Constitution as amended. The extant Notice of Appeal upon which the Appellant's brief of argument was predicated was filed on the 29th of August, 2018. This is clearly after the 14 days period prescribed by the Constitution. This appeal, having been filed after the Constitutional prescribed period to file an appeal pertaining to pre-election matter has lapsed is incompetent. This Honourable Court has no jurisdiction to entertain the appeal.

It is hereby struck out. See Appeal No. CA/A/610/2018, **Senator Atai Aidoko v. Air Marshall Isaac M. Alfa (CFR)** delivered on the 29th October, 2018, and Appeal No: CA/PH/281M/2018 **Tonye Patrick Cole & 49 Ors and Ibrahim Umah & 22 Ors v. APC** delivered on 2/12/2018.

For this reason and more detailed reasons adumbrated by my learned brother, this appeal is hereby struck out.

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For this reason and more detailed reasons adumbrated by my learned brother, this appeal is hereby struck out.

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There shall be no order as to costs.

TINUADE AKOMOLAFE-WILSON

Justice, Court of Appeal

27-12-18