

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY THE 27TH DAY OF JANUARY, 2012

BEFORE THEIR LORDSHIPS

DAHIRU MUSDAPHER

MAGMUD MOHAMMED

WALTER SAMUEL NKANU ONNOGHEN

CHRISTOPHER M. CHUKWUMA-ENEH

MUHAMMAD SAIFULLH MUNTAKI-COOMASSIE

OLUFUNLOLA OYELOLA ADEKEYE

MARY UKAEGO PETER-ODILI

CHIEF JUSTICE OF NIGERIA

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

SC. 141/2011, SC. 266/2011

SC. 267/2011, SC. 282/2011

SC. 356/2011, SC. 357/2011

(CONSOLIDATED)

BETWEEN:

1. CONGRESS FOR PROGRESSIVE CHANGE (CPC)
2. BRIG. GEN. MOHAMMED BUBA MARWA

} APPELLANTS

AND:

1. ADMIRAL MURTALA NYAKO
2. PEOPLES DEMOCRATIC PARTY (PDP)

}

3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

RESPONDENTS

AND:

INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

}

APPELLANT

AND:

- 1. CHIEF TIMIPRE SYLVA
- 2. THE HON. ATTORNEY-GENERAL OF
BAYELSA STATE
- 3. MIENYOIBOFO FAFA STEPHEN-GOW
- 4. THE HON. ATTORNEY-GENERAL OF THE
FEDERATION
- 5. PEOPLES' DEMOCRATIC PARTY (PDP)

}

RESPONDENTS

AND:

INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

}

APPELLANT

VS.

SENATOR LIYEL IMOKE

RESPONDENT

AND:

INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

}

APPELLANT

VS.

- 1. ALH. ALIYU MAGATAKARDA WAMMAKO
- 2. THE PEOPLES DEMOCRATIC PARTY

RESPONDENTS

AND:

INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)



APPELLANT

AND:

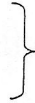
- 1. ADMIRAL MURTALA NYAKO
(GOVERNOR ADAMAWA STATE)
- 2. PEOPLES DEMOCRATIC PARTY (CPC)



RESPONDENTS

AND:

INDEPENDENT NATIONAL ELECTROAL
COMMISSION (INEC)



APPELLANT

AND:

- 1. ALH. IBRAHIM IDRIS
(GOVERNOR KOGI STATE)
- 2. PEOPLES DEMOCRATIC PARTY (CPC)



RESPONDENTS

JUDGMENT

(Delivered by **Dahiru Musdapher, CJN**)

Gubernatorial Elections were held in Adamawa, Bayelsa, Cross-River, Kogi, Sokoto and other states of the Federal Republic of Nigeria on the 14/4/2007. In these mentioned states, Admiral Murtala Nyako, Chief Timipre Sylva, Senator Liyel Imoke, Alhaji Ibrahim Idris and Alhaji Aliyu Wammako were respectively returned as the duly elected

candidates. They each subscribed to the Oaths of allegiance and oaths of office and each began to execute the office of the governor of the respective states aforesaid. But their electoral victories were eventually successfully challenged at the Governorship and Legislative Houses tribunals established in each of the states aforesaid. At divers dates, the Court of Appeal confirmed the annulment of their victories and as the final court, ordered a fresh or re run elections. The fresh elections were held at different dates and the aforesaid persons were also declared the successful candidates and were returned as the elected governors. They, for the second time, took the Oaths of allegiance and Oaths of offices at divers dates.

On the 1/9/2010, the National Electoral Commission caused to be published in National daily newspapers, that it would conduct gubernatorial elections in all the states of the Federation including the aforementioned states in January 2011. That was why the governors of Adamawa, Bayelsa, Cross River, Kogi and Sokoto States commenced personal actions by Originating Summons in the Federal High Court Abuja, seeking among other prayers, declarations that their

various tenures in office as elected governors of the affected states would only expire after 4 years calculated from the time they assumed office after the re run or fresh elections and not 4 years as calculated by the Electoral Body from the time they first assumed office on the 29/5/2007.

On the 13/10/2010, the five matters were consolidated. After dealing with a number of preliminary issues, the trial court heard the matter and on the 23/11/2011 delivered its judgment in favour of the various plaintiffs governors. It held that the period of four years should be calculated from the period the respective governors took the Oaths a second time. The Independent National Electoral Commission (hereinafter referred to as INEC) felt unhappy with the decision and filed five notices of appeal against the decisions. It was with the agreement of the parties that the five appeals were also consolidated since the subject matter in all the appeals "are substantially the same". At the end of the day, the Court of Appeal dismissed all the appeals by INEC and affirmed the decisions of the trial court. Still INEC remains

unsatisfied and further appealed to this court by filing five notices of appeal.

It was with the leave of this Court, that Congress for Progressive Change and Brigadier-General Muhammad Buba Marwa, (as interested parties) also appealed to this court against the decision in respect of Adamawa State. (That is suit SC. 141/2011). Thus, there are now six appeals before this Court.

Because of the national and constitutional importance of the issues to be decided in these appeals, this court invited as **amici curiae** the following learned Senior Advocates to file briefs and also to appear and present their submissions in court. They are (1) Chief Richard Akinjide SAN, Olukonyinsola Ajayi SAN and Prof. Itse Sagay SAN.

Having gone through the various briefs of arguments filed by the parties including those filed by the amicus curiae, the crucial and core issue arising for the determination of the appeals is in my view the following:-

Whether having regards to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, particularly sections 180 (1) and

(2) and 182 (1) (b) the lower Court was right in holding that the tenure of office of the governors commenced from the date they took the second Oaths in 2008 as against the 29/5/2007 when they took the first Oaths. To put it another way:-

Whether in calculating the 4 year tenure of an affected governor, the period ought to be reckoned from 29/5/2007 when the affected governor first took the Oaths and commenced executing the office of the governor or ought to be reckoned from the date the affected governor re commenced executing the office of the governor after the re run elections.?

There is also a sub-issue that is to say whether section 180 2^A of the 1999 Constitution as amended is applicable to the facts of this case.

The determination of these issues will answer the fundamental questions submitted in all the appeals recited above, I shall therefore confine my self to the consideration of these all important questions without minding myself to other issues bordering on technicalities and objections on unimportant matters. The issues in contention are issues of great public interest which deal with the application and the

interpretation of the constitution which must be dealt with on their merits and not on the technicalities.

I have read before now, the judgment of my lord Onnoghén JSC in this matter with which I entirely agree, I only want to chip in my views on the matter if only for the sake of emphasis.

Now section 180(1) (2) and (3) of the constitution deal with the tenure of the office of governors and relevant to the issue under discussion. It is provided thus:-

- “180(1) Subject to the provisions of this Constitution, a person shall hold the office of a governor of a state until –
- (a) when his successor in office takes the Oath of that office; or
 - (b) he dies whilst holding such office; or
 - (c) the date when his resignation from office takes effect; or
 - (d) he otherwise ceases to hold office in accordance with the provisions of this Constitution.
- (2) Subject to the provisions of sub-section (1)

of this section, the governor shall vacate office at the expiration of a period of four (4) years commencing from the date when:-

- (a) in the case of a person first elected as governor under this Constitution, he took the Oath of allegiance and Oath of office, and
- (b) the person last elected to that office took the Oath of allegiance and the Oath of office or would, but for his death, have taken that Oaths.
- (3) if the Federation is at war in which the territory of Nigeria is physically involved and the president considers it not practicable to hold elections, the National Assembly may by resolution extend the period of four (4) years mentioned in subsection (2) of this section from time to time, but no such extension shall exceed a period of six (6) months at any one time.”

Now, the question that falls for my resolution is when does the four year tenure begin to run, was it from the 29/5/2007 when the affected governors were “first elected as governors” or on the divers dates when they took the second Oaths after the fresh elections? The decisions of the lower court seems to suggest that the nullification of the elections also nullifies the oaths and rendered void any action taken

by the affected persons as governor, and all actions for “all practical purposes had been erased, wiped out and had never, even happened or taken place originally.”

This is the reason why the lower courts held that the months enjoyed by the affected governors executing the gubernatorial offices before the nullification of the elections that brought them to the office were rendered as if it never took place. Could it be true that all the actions taken by an affected governor were null and void as per lord Denning’s statement in **MCFOY VS. UAC (1961) 3 ALL ER 1169 at 1172**. I shall return to this later.

In interpreting a constitution a judge extracts the legal meaning along the range of the text’s various semantic meanings. One should not give the constitution a meaning that its express or implied language cannot sustain. The implied language is a language written in invisible ink, between the lines and derived from the entire structure of the constitution. See **LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 3rd ed 2000**. A Constitution is a unique

legal document, it enshrines special kind of norms and stands at the top of the normative pyramid.

In the case of **HUNTER VS. SOUTHAM INC. (1984) 2 S.C.R. 145 at 146**. Chief Justice Dickson of the Supreme Court of Canada noted:

“The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations
 XXX
 a constitution by contrast is drafted with an eye to the future. Its function is to provide a continuing frame work for the legitimate exercise of govermental power, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 it must therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must in interpreting its provisions, bear these considerations in mind.”

See also the case of **ATTORNEY-GENERAL OF BENDEL STATE VS. THE ATTORNEY-GENERAL OF THE FEDERATION. (1981) 10 SC 1**, and **ISHOLA VS. AJIBOYE (1994) 7 – 8 SC NJ (Pt. 1) 1**.

Every legal document including the constitution has a purpose without which it is meaningless. This purpose, or ratio legit, is made up of the objectives, the goals, the interests, the values, the policy and the function that by law it is designed to actualize. It is the duty of the judge to give the meaning of the words that best realizes its purpose and intent and intendment.

It is clear, in my view, that by section 180 of the Constitution, the intention is that a governor shall have a tenure of 4 years from the date he took Oath of allegiance and Oath of Office and no more, in all a governor shall have a maximum of eight years. The tenure of four years can only be reckoned from "when the person is first elected" under the Constitution, and takes the Oaths from the date when the person "is first elected" and commenced to act as governor, see section 180 (2). It has been stressed and argued that the period of 4 years should be a single and unbroken term, but clearly this overlooks the definitive period of 4 years and the intendment of section 180 (2) which does not extend to any term of over 4 years.

The five governors herein commenced to operate as governors on the 29/5/2007. They exercised full powers as governors under the Constitution, the judgment of the lower court merely annulled their elections as governors, but said nothing about their actions as governors. In the case of **BOLONWU VS. GOVERNOR OF ANAMBRA STATE (2010) 37 WRN 1 2**, this court held that all acts of a governor whose election were nullified remained valid. This included the issuance of a proclamation for the first session of the House of Assembly and that the tenure of the members remained 4 years from the date of their first sitting, as provided by section 105 of the Constitution. M. Mohammed JSC stated:-

“In dealing with these provisions of the Constitution in his judgment delivered on 17/9/2007, the learned trial judge Nweke, J. has this to say at page 235-238 of the record:

“The Constitution of Nigeria authorized the National Assembly to regulate elections in Nigeria. See section 184 of the Constitution. The National Assembly enacted the Electoral Act, 2002 and Electoral Act, 2006. In section 138 and 149 there in respectively it was enacted that where the tribunal or court as the case may

be, determines that a returned as elected was not validly elected, the person elected should remain in office pending the determination of his appeal. These provisions are not inconsistent with section 105 (3) of the Constitution xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx my view is that if a person is asked to remain in office by law while his fate is determined by the Electoral Tribunal, the law can not turn round to nullify his action while he held forth as the defacto office holder. xxxxxxxx xxx

Having dealt with section 105 (3), I shall now touch in section 105 (1) of the Constitution which regulates the sitting and the dissolution of the House of Assembly. It is that subsection that is mandatory that the house of Assembly shall stand dissolved at the expiration of a period of 4 years commencing from the date of the first sitting of the House. The plaintiffs had their first sitting on the 9/6/2003. So their tenure expired by effluxion of time. The plaintiffs do not have any right to go back to the House of Assembly of Anambra State under any guise.”

This court in the judgment under reference agreed with the statement of the law by the learned trial judge and as affirmed by the Court of Appeal. The learned Justice of this Court concluded

”xxxxxxxxxxx being a serving governor of the State who issued the same immediately after

his being sworn in as governor of Anambra State. The fact that he had to vacate office at the end of the Court proceedings challenging his election in accordance with the provisions of the Constitution and the Electoral Act cannot invalidate any powers or duties exercised or performed by him while in office. This is in line with the provisions of section 138 of the Electoral Act 2002 which allows the governor to remain in office and perform the functions of the office pending the determination of his appeal against the decision of the Election Tribunal by the Court of Appeal. The fact that this period lasted for over 35 months is of no moment having been effectively covered by the law”

Therefore the **obiter dicta** of Denning Mcfoy’s case supra cannot apply since the action of a governor while sitting pending an appeal cannot be termed illegal or null and void. Akin to this is the recognition of a government as “**DE JURE**” or **DE FACTO**”. It is now established that a de facto authority in a territory under its control are virtually identical with those of a **de jure** authority. See **LUTHER VS. SAGOR (1921) 1 K. B. 456, BANCO DE BILBAO VS. SANCHA (1938) 2 K B 176.**

In the instant case, the key to determining the tenure is time. That is 4 years, no more, it could be less. The Constitution goes to a great length to set a commencement time by use of words, rather than as in the case of United States of America a specific date and indeed time. It is this that section 180 seeks to do, and it is that intention that must be given to it. It is also to be appreciated that in the interpretation of the Constitution, the court should always bear in mind the whole Constitution and by the consideration of all the related sections. See for example **A.T. LTD VS. A.D.H. LTD (2007) 15 NWLR (Pt 1056) 118 at 166**. Guided by the above propositions, it is clear to me that section 180 (2) of the Constitution does not admit an interpretation of unbroken four years. In the case **LADOJA VS. INEC (2007) 12 NWLR (Pt 1047) 119 at 167**. This Court held that the tenure of a governor cannot be extended to accommodate the period of time he lost through impeachment. In the case of **OBI VS. INEC (2007) 11 NWLR (Pt. 1046) 565 at 670**. OGUNTADE JSC stated.

“Section 180 (2) above is to be read subject to the the provisions of section 180 (1) which itself is to

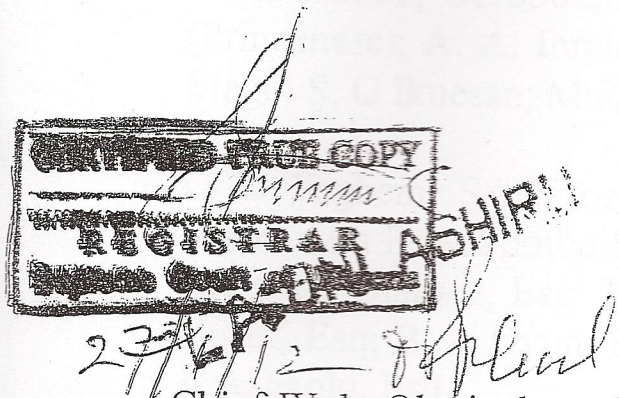
be read subject to other provisions of the Constitution. There is no doubt that the intendment of the Constitution is to grant a tenure of 4 years to all elective offices under the Constitution. However, a few occurrences may prematurely terminate the tenure. These include death while in office of an office holder, resignation xxxxxxxx.”

See also **MUSA VS. INEC & others (2002) 11 NWLR (Pt. 777) 223 at 291.** To interpret section 180 (2) differently will obviously create a brazen bizarre situation not envisaged by the Constitution. If I may briefly explain supposing like Dr. Chris Ngige a person elected as governor holds office for 3 years before the election is nullified, he contests the re run election and wins it and resumes office for another 2 years, when the electoral tribunals again nullified the election and again ordered a fresh election which he wins again, it would mean that the person would have spent 3, 2, plus another 4 years thus making it 9 or to take it a step further it may mean he could continue ad infinitum. Clearly this is not the situation the Constitution has intended. It has only created a tenure of 4 years and no more. It must be not be forgotten that the person who won both elections is the same person, there was no handing over from any predecessor to a successor,

whatever has caused the election to be annulled, a party shall not be allowed to profit from an illegality i.e having an extension of time of a term of office by the use of the second set of oaths. That since there was no change in the party that won the election, then the term of office ought to be seen as a continuation of the annulled election. In consequence I resolve the core issue in favour of the appellants

On the subsidiary issue of the applicability of the new section 180 2^A to the facts of this case, having regards to what I have stated in the interpretation of section 180 (2), I do not see the need for me to discuss it. Suffice it for me to state that I allow the appeals of all the appellants in these matters and set aside the decisions of the lower courts. I hold that the tenure of all the affected governors in these six matters commenced on 29/5/2007 and terminated on the 28/5/2011. The 5 governors are accordingly ordered to vacate office forthwith. Appeals are accordingly allowed and I make no order as to costs. Before I part with this judgment, I have to thank all counsel who not only filed briefs in these appeals, but also appeared and made oral submission before this court. My special thanks go to Amicus Curia

namely, Chief Richard Akinjide SAN, Chief Olukonyinsola Ajayi SAN, and Professor Itse Sagay SAN for their appearances in court and for their all embracing written briefs and oral submissions which have greatly assisted the court in reaching its decisions.



**DAHIRU MUSDAPHER, CJN
CHIEF JUSTICE OF NIGERIA**

Chief Wole Olanipekun, SAN for appeals in SC/141/2011 with him I. A Abedire SAN; O. Adeyemi; Dr. O. Olanipekun; O. Jimi-Bada; B. Araromi (Mrs); K. Azie; Aisha Ali (Miss); S. Abbah and A. Oniyangi.

Kanu Agabi SAN for 1st respondent in SC/141/2011 and SC/356/2011 with him are messrs Ayo Akam; Out Michael; A. N Eke; H Arome; K. S Kakaan; E. O Usungurua; G. Njar (Miss); C. Uzuegbunam (Miss); U. Owie; O. Morphy and P. Obi (Mrs.).

Chief Richard Akinjide SAN as Amicus Curie with him Chief (Mrs) Abimbola Akinjide SAN; Chief Bolaji Ayorinde SAN; F. Oshunwusi (Mrs.); C. Uwandu.

Dr. O. Ajayi SAN as Amicus Curie with him Dr. K.U.K Ekwueme; O. Balogun and K. Yusuf (Mrs).

Chief A. S Awomolo SAN for 3rd respondent in SC/141/2011; SC/266/2011; SC/267/2011; SC/282/2011; SC/356/2011; SC/357/2011 with him A. B Mahmoud SAN; Dr. O. Ikpeazu SAN; H. M. Liman SAN; I. K Bawa, Esq; A. Raji, Esq; B. Abdullahi; Marcus Abu; Aminu

Sadauki; I. M Dikko, Esq; Funmi Quadri (Mrs); Ozoilesike Prisca (Miss); A. D Auta; Mary Ekpere (Miss); Fatimah Bukar (Miss); Ileogbunam Oge (Miss); Nwabeze Ifeiyinwa (Miss); Tosin Oke (Miss); Mavis Ekwechi; Ben Osaka; Yewande Quadir (Miss); Ayotunde Ogunleye; Anulika Osuigwe (Miss); Tobeckukwu Nweke; Rahims Aminu (Mrs); D. E Daniel.

Chief Olusola Oke for 1st respondent in SC/141/2011; SC/267/2011; SC/282/2011; SC/356/2011; SC/357/2011 with him Olivia Agbajoh (Princeness); A. A. Ibrahim; J. O Adesina (Mrs.); Olusola Oke; J. O. Mago; S. G Ikuesan; Mulikat Kilani (Miss).

L. O Fagbemi SAN for appellant in SC..... and respondent in others with P. A. Akubo SAN; H. T Fajimite, Esq; A. Y Kekendi, Esq; Dr. J. O. Olatoke, Esq; H. O Afolabi, Esq; A. O Popoola, Esq; A. F Yusuf, Esq; B. A Oyun, Esq; S. Y Tsok, Esq; J. O Nkwota (Miss); G. A Ashaolu, Esq.

Prof. I. Sagay SAN as Amicus Curie with him Prof. P. E Oshio. Chief Ladi Rotimi-Williams SAN for 1st – 3rd respondents with him are M. B. Ganiyu, Esq; Uche V. Obi, Esq; A. O Olori-Aje, Esq; Honesty Eguridu, Esq; Obeide Kingsley Ukumhen, Esq; M. J Numa, Esq.

Mrs. A. O Mbamali SAN for A-G Federation with her Mrs. M. V Agada; Mrs. O. V. Nwachukwu; Mrs. C. I. Nebo; Mr. L. Aligbe; Mr. O. Amagwula; Mr. Maurice Asielue.