

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON MONDAY, THE 20TH DAY OF JANUARY, 2020
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD
NWALI SYLVESTER NGWUTA
OLUKAYODE ARIWOOLA
KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN
AMIRU SANUSI
AMINA ADAMU AUGIE
UWANI MUŞA ABBA AJI

CHIEF JUSTICE OF NIGERIA,
JUSTICE, SUPREME COURT,
JUSTICE, SUPREME COURT,
JUSTICE, SUPREME COURT,
JUSTICE, SUPREME COURT,
JUSTICE, SUPREME COURT,
JUSTICE, SUPREME COURT,
SC. 1450/2019

BETWEEN

- 1. ABBA KABIR YUSUF
- 2. PEOPLE DEMOCRATIC PARTY [PDP]

} APPELLANTS

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION [INEC]
- 2. ABDULLAHI UMAR GANDUJE
- 3. ALL PROGRESSIVES CONGRESS

} RESPONDENTS

JUDGEMENT

(Delivered By Nwali Sylvester Ngwuta, JSC)

The election to the Office of Governor of KANO State was conducted by the Independent National Electoral Commission (INEC) the 1st respondent in this appeal on the 9th Day of March 2019.

The 1st Appellant and 55 others were candidates who participated in the said election. The election was declared inconclusive. Consequently a re-run election in 207 polling units was scheduled for, and conducted on, the 23rd of March, 2019.

The result of the main election of 9/3/2019 and the re-run election held on 23/3/2019 showed that the 2nd Respondent scored a total of 1,033,659 votes and the 1st Appellant had 1,024,713 votes. 2nd Respondent was declared winner of the election and returned as the Governor elect Kano State.

Aggrieved by the declared result of the election, the Appellants challenged same at the Kano State Governorships Election Petition Tribunal. In the petition before the trial Tribunal the appellants predicated their entire case on only one ground of petition that:

“The 2nd Respondent was not duly elected by majority of lawful votes cast at the election”

The trial Tribunal dismissed the petition on the ground that, the case presented by the appellants was inconsistent with the sole ground under section 138 (1) (c) of the Electoral Act 2010 (as amended).

Appellant appealed to the Court of Appeal, Kaduna Division. The Notice of appeal containing 10 grounds of appeal was filed on 30/11/2019.

The lower Court dismissed the appeal on the ground that the facts relied on by the appellants in proof of their petition were inconsistent with the sole ground of the petition.

Also the lower Court found that the appellants, as petitioners, failed to prove that the 1st Appellant and not the 2nd Respondent won the election by a majority of lawful votes.

Appellants appealed to this Court on grounds of appeal from which they distilled 5 issues for determination in their briefs of argument. The 1st Respondent presented three issues for

determination, 2nd Respondent had five issues. In his own brief, 3rd Respondent presented four issues for determination.

In view of the fact that, this appeal arose from the decision of the Court of Appeal affirming the decision of the trial Tribunal in a petition based exclusively on a sole ground of petition that:

“The 2nd Respondent was not duly elected by majority of lawful votes cast at the election.”

I will isolate from the briefs issues relating to the sole ground of the petition.

Of the appellants' five issues the only one that made reference to section 138 (1) (c) of the Electoral Act 2010 upon which the petition was based is issue one.

The 1st respondent issue one is:

“Whether having regards to the solitary ground purportedly relied on by the Appellants was the Court below correct, when it affirmed the conclusion of the trial Tribunal that the

ground upon which the petition is anchored is inconsistent with the Appellant's pleading which is incapable of sustaining a ground alleging that the petitioner won the disputed election by majority of lawful vote." (Distilled for ground one).

The 2nd Respondent's issue one is:

"Whether the Court below was right when they affirmed the finding of trial Tribunal that the facts on which the ground for the petition was based pertained to non-compliance and corrupt practices and were inconsistent with the sole ground on which the petition was brought and incapable of sustaining a ground for majority of votes." (Ground 1 and 5)

In the 3rd Respondents brief the issue dealing with lawful votes is issue 3 reproduced here under:

"Whether the Court of Appeal was right in affirming the findings of the Tribunal in holding that, the Appellants failed to prove that they scored the majority of lawful votes cast at the election." (Ground 6 and 7 of the appeals notice of Appeal).

I want to emphasize that the appellants, as petitioners, relied, in the persecution of the petition, on the sole ground that the 2nd Respondent in the petition and in this appeal:

“Was not duly elected by majority of lawful votes cast at the election”.

That is one of the grounds upon which an election can be questioned. See Section 138 (1) (c) of the Electoral Act 2010 as amended. The trial Tribunal found, and the Court below affirmed, that the facts relied on by the Appellants were inconsistent with the sole ground of the petition.

Appeal is an invitation to a higher Court to review the decision of the lower Court to find out whether on proper consideration of the facts placed before it and the applicable law that Court arrived at a correct decision. See Lawrence Adebola Adedoyin & Ors . O. Arowolo (1989) NWLR (Pt. 114) 172 at 211.

Now, the question is: Are there facts in the Appellants' case which prove or even tend to prove the only ground of the petition, that the 2nd **"Respondent was not duly elected by majority of lawful votes"** in the election of 9/3/2019 and the re-run election of 23/3/2019.

It seems that in this appeal Section 138 (1) of the Electoral Act 2010 as amended was misconstrued. Each of the grounds (a) (b) (c) and (d) of section 138 (1) is separate, distinct and stands on its own. The set of facts offered to prove one of the four grounds may not be employed to prove another ground.

The wording of each ground points to facts upon which it can be proved. The cancellation of results in 207 units and the re-run election of 23/3/2019 cannot be used to prove the sole ground of the petition. The Respondents in their respective briefs in issues relating to the sole ground of the petition have argued that the appellants abandoned the

sole ground of the petition and dealt with facts which do not relate to the ground of the petition; and I agree with them. The Appellants did not provide any votes, lawful and/ or unlawful in relation to their sole ground of petition. The evidence they offered went to unpleaded facts and cannot avail them.

In my consideration of the entire processes in this appeal I did not find any fact or facts in proof of the sole ground of the petition. The 2nd Respondent does not have to prove he was duly elected by majority of lawful votes. The Appellants have the burden to prove their ground of petition. They stand to lose if no evidence is led on the issue they raised. See 136 Cap E 14 Laws of Federation 2004 of the Evidence Act.

The Appellants failed to prove the only ground of their petition but dealt with matters not related to the sole ground upon which they relied. Section 138 (1) (c) of the Electoral Act (supra) is not a catch all or a blanket provision which can accommodate every alleged infraction of

the electoral process. It would have been made the only ground upon which an election could be questioned and there would have been no limitation on the facts to prove that said ground.

In my humble opinion the trial Tribunal was right to have concluded that the facts presented by the petitioners to prove their petition did not support the lone ground of the petition and the lower Court was right in affirming the decision of the Tribunal.

Appellants did not demonstrate any perversity or an error in the procedural or substantive law to warrant this Court's interference with the concurrent findings of fact by the trial Tribunal and the Court below. See Adegbite v State (2018) 5 NWLR (Pt 1612) 183 SC, Enukara v Federal Republic of Nigeria (2018) 6 NWLR (Pt 1615) 355 SC.

I find no merit in the appeal. Consequently, I order that the appeal be, and it is hereby, dismissed.

It is further order that parties bear their respective cost.



NWALI SYLVESTER NGWUTA
JUSTICE, SUPREME COURT

APPEARANCES:

Asiwaju Adegboyega Awomolo SAN, A. J. Owonikoko SAN, Mahmud Magaji SAN, Chief (Mrs.) Victoria Awomolo SAN, with them Ibrahim Wangidu, Esq, **for Appellants.**

J.B. Daudu SAN, Ahmed Raji SAN with them: Adebayo Adedeji, Esq, I. L. Badiya Esq. (PRO INEC), David Ogundipe Esq **for 1st Respondent.**

Chief O.E.B Offong SAN with him: Dr. G.O.A Ogunyomi, Chief M.N. Duru KSM Ibrahim A. Nassara Lydia O. Oyewo for **2nd Respondent.**

Dr. Alex Izinyon SAN, with him: C.A.S Oshomogie Esq, F.O. Izinyon Esq., Charity Adah Esq **for 3rd Respondent.**

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON MONDAY THE 20TH DAY OF JANUARY 2020
BEFORE THEIR LORDSHIPS

Ibrahim Tanko Muhammad
Nwali Sylvester Ngwuta
Olukayode Ariwoola
Kudirat Motonmori Olatokunbo Kekere-Ekun
Amiru Sanusi
Amina Adamu Augie
Uwani Musa Abba-Aji

CHIEF JUSTICE OF NIGERIA
JUSTICE, SUPREME COURT
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JUSTICE, SUPREME COURT
SC. 1450/2019

BETWEEN:

1. Abba Kabir Yusuf
2. Peoples Democratic Party [**PDP**]

AND

1. Independent National Electoral Commission [**INEC**]
2. Abdullahi Umar Ganduje
3. All Progressive Congress [**APC**]

APPELLANTS


RESPONDENTS

JUDGMENT

(Delivered by **ADAMU AMINA AUGIE, JSC**)

My learned brother, Ngwuta, JSC, who just delivered the lead Judgment, dealt authoritatively with the Issue for determination in this Appeal, and I agree with his reasoning and conclusion, which aptly captures the decision of this Court.

I adopt his reasoning and conclusion as mine and I dismiss this Appeal.


Amina Adamu Augie,
Justice, Supreme Court

Appearances

Asiwaju Adegboyega Awomola, SAN, **AND**

A.J. Owonikoko, SAN,

Mahmud Magaji, SAN,

Chief (Mrs) Victoria Awomolo, SAN, **with**

Ibrahim Wangidu, Esq.,

For the **Appellants**

Ahmed Raji, SAN, with

Adebayo Adedeji, Esq.,

I. L. Badiya, Esq., and

David Ogundipe, Esq.,

For the **First Respondent**

Chief O.E.B. Offiong, SAN, **with**

Dr. G.O.A. Ogunyomi, Esq.,

Chief M. N. Duru, Esq.,

Ibrahim A. Nassar, Esq. **and**

Lydia O. Oyewo, Esq.,

For the **Second Respondent**

Dr. Alex Izinyon, SAN, **with**

C.A.S. Oshomogie, Esq.,

F. O. Izinyon, Esq., **and**

Charity Adah, Esq.,

For the **Third Respondent**

THE SUPREME COURT OF NIGERIA
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BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD

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AMIRU SANUSTI

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SC. 1450/2019

BETWEEN

1. ABBA KABIR YUSUF
2. PEOPLES DEMOCRATIC PARTY (PDP)

APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. ABDULLAHI UMAR GANDUJE
3. ALL PROGRESSIVES CONGRESS (APC)

RESPONDENTS

JUDGMENT
(DELIVERED BY KUDIRAT MOTONMORI
OLATOKUNBO KEKERE-EKUN, JSC)

I agree entirely with the reasoning and conclusion of my learned brother, Nwali Sylvester Ngwuta, JSC, just delivered to the effect that having predicated their

petition on the sole ground that the 2nd respondent was not elected by majority of lawful votes cast at the election, all the evidence led at the trial relating to non-compliance with the provisions of the Electoral Act, went to no issue, as they did not support the sole ground. I agree with my learned brother that the concurrent findings of the two lower courts have not been shown to be perverse to warrant interference by this court. I also find no merit in the appeal. It is hereby dismissed.

The parties shall bear their respective costs.



**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN
JUSTICE, SUPREME COURT**

ADEGBOYEGA AWOMOLO, SAN, D.J. OWONIKOKO, SAN, MAHMUD MAGAJI, SAN, CHIEF (MRS). VICTORIA AWOMOLO, SAN for the Appellants with IBRAHIM UWANGIDA ESQ.

AHMED RAJI, SAN for the 1st Respondent with ADEDAYO ADEDEJI ESQ., I.L. BADIYA ESQ., (Principal Legal Officer, INEC) & DAVID OGUNDIPE ESQ.

CHIEF O.E.B. OFFIONG, SAN for 2nd Respondent with Chief M.N. DURU, IBRAHIM ALIYI NASSARAWA ESQ., LYDIA OLUWAKEMI OYEWO ESQ. & MARYAM JIBRIL ESQ.

DR. ALEX IZINYON, SAN for the 3rd Respondent with C.A.S. OSHOMEGIE ESQ., F.O. IZINYON ESQ., ALEX IZINYON II, ESQ & CHARITY ADAH ESQ.

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SC. 1450/2019 & 1498/2019

BETWEEN:

1. ABBA KABIR YUSUF

2. PEOPLES DEMOCRATIC PARTY (PDP) } APPELLANTS

AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)


2. ABDULLAHI GANDUJE

3. ALL PROGRESSIVES CONGRES(APC) } RESPONDENTS

J U D G M E N T
(DELIVERED BY UWANI MUSA ABBA AJI, JSC)

I have had a preview of the reasons for judgment given by my learned brother, **Justice Ngwuta, JSC** in the lead judgment. I agree entirely with the reasoning and conclusions reached therein that the main appeal be dismissed while the cross appeal be struck out.

Having not spotted any error or perversity in the judgments of the trial tribunal and the lower court, I must restrain myself not to do otherwise since the law prohibits it. I equally abide with the order as to costs.


UWANI MUSA ABBA AJI
JUSTICE, SUPREME COURT

COUNSEL:

ASIWAJU ADEGBOYEGA AWOMOLO, SAN, A. J. OWONIKORO, SAN, MAHMUD MAGAJI, SAN, CHIEF (MRS.) VICTORIA AWOMOLO, SAN, WITH IBRAHIM WANGIDA, ESQ, FOR THE APPELLANTS.

J. B. DAUDU, SAN, AHMED RAJI, SAN, WITH ADEBAYO ADEDEJI, ESQ, I. L. BADIYA, ESQ, (PRO INEC), DAVID OGUNDIPE, ESQ, FOR THE 1ST RESPONDENT.

CHIEF O.E.B. OFFIONG, SAN, WITH DR. G.O.A. OGUNYOMI, CHIEF M.N. DURU, KSM IBBRAHIM A., NASARA LYDIA, O. OYEWU, FOR THE 2ND RESPONDENT.

DR. ALEX IZINYON, SAN, WITH C.A.S. OSHOMOGIE, ESQ, F.O. IZINYON, ESQ, CHARITY ADAH, ESQ, FOR THE 3RD RESPONDENT.