

IN THE SUPREME COURT OF NIGERIA
HOLDING AT ABUJA
ON WEDNESDAY 28TH JULY, 2021
BEFORE THEIR LORDSHIPS

<u>MARY UKAEGO PETER-ODILI</u>	<u>JUSTICE, SUPREME COURT</u>
<u>JOHN INYANG OKORO</u>	<u>JUSTICE, SUPREME COURT</u>
<u>EJEMBI EKO</u>	<u>JUSTICE, SUPREME COURT</u>
<u>MOHAMMED LAWAL GARBA</u>	<u>JUSTICE, SUPREME COURT</u>
<u>IBRAHIM M. M. SAULAWA</u>	<u>JUSTICE, SUPREME COURT</u>
<u>TIJJANI ABUBAKAR</u>	<u>JUSTICE, SUPREME COURT</u>
<u>EMMANUEL AKOMAYE AGIM</u>	<u>JUSTICE, SUPREME COURT</u>

SC/CV/448/2021

BETWEEN:

1. MR. EYITAYO OLAYINKA JEGEDE	1.
2. PEOPLES DEMOCRATIC PARTY (PDP)	2.

APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)	1.
2. ALL PROGRESSIVE CONGRESS (APC)	2.
3. OLUWAROTIMI ODUWAYO AKEREDOLU	3.
4. LUCKY ORIMISAN AYEDATIWA	4.

RESPONDENTS

JUDGMENT

(Delivered by MOHAMMED LAWAL GARBA, JSC)

The lead majority judgment written by the Learned Brother E. A. Agim, JSC, in this appeal was read by me before now and it has substantively presented the views I expressed at the conference of the Hon. Justices on the panel that heard the appeal, as well as my decisions on both the main appeal and the Cross-Appeals.

I wish to add a few words for support and emphasis of the crucial issues that called for decision by the court in the appeal.

Main Appeal:

From the facts pleaded and relied on by the Appellants, as petitioners before the trial tribunal, specifically in paragraphs 29, 30, 31, 32, 33 and 34 of their petition, the pith and substance of their case were predicated; completely, entirely and wholly, on the allegations of the breach, violation, infringement or contravention of the provisions of Section 183 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered and amended) by Governor Mai Mala Buni, the Governor of Yobe State. The averments in the said paragraphs of the Appellants' petition are in the following terms:-

- “29. *The Petitioners contend that contrary to the provision of the constitution of the Federal Republic of Nigeria, 1999 (as amended), the one “His Excellency Mai Mala Buni” and one “Sen. John J. Akpan Udoedehe PhD” who both signed the INEC Form ECPB (Submission of Names of Candidates by Political Parties) as well as the covering letter dated 27th July 2020 as “National Chairman Caretaker/Extra-Ordinary Convention Committed” and national Secretary Caretaker/Extra-Ordinary Convention Committee” and who at all material times were not members of National Executive Committee or National Working Committee Elected by the Convention of the 2nd Respondent superintend over the purported sponsorship of the 3rd and 4th Respondents and forward the names of the 3rd and 4th Respondents to the 1st Respondent.*
30. *Petitioners contend that at all material times in the election of the 10th Otorber, 2020 in Ondo State, the said “Mai Mala Buni” was and is the Governor of Yobe State and a colleague of the 3rd Respondent who was the Governor of Ondo State and both are at all material times members of the 1^N National Council of States.*
31. *Further to and or in the alternative to the above paragraphs, the Petitioners shall contend that the constitution of the 2nd Respondent constitute a bye-law, drawing its legitimacy and strength from the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*
32. *Further to paragraph 31 supra, the signatory to both Form EC9B and the Covering Letter dated 27th July, 2020 acted in contravention of the 2nd Respondent. The Petitioners hereby pleads Form EC9B of the 2nd Respondent. During hearing, the Petitioners shall rely on the said Form EC9B of the 2nd Respondent.*
33. *Further to paragraph 32 supra, the Petitioners contend that to the extent that the letter of 27th July, 2020 and the Form EC9 with which the names of the 3rd and 4th Respondents for the Governorship election of Ondo State were signed by “His Excellency Mai Mala Buni, current Governor of Yobe State of Nigeria as “National Chairman Caretaker/Extra-Ordinary Convention Committee of the 2nd Respondent, contrary to Section 183 of the Constitution of the Federal Republic of Nigeria, 1999,*

as amended, the sponsorship of the 3rd and 4th Respondents are null, void and of no effect.

34. *Petitioners avers that "His Excellency Mai Mala Buni, at all material time, has put himself forward as the national chairman or acting national chairman of the 2nd RESPONDENT, which position, is an executive and managerial position within the 2nd Respondent's party."*

Section 183 of the Constitution in respect of which the above weighty allegations of facts are made against Governor Buni, provides that:-

"183. The Governor shall not, during the period when he hold office hold any other executive office, or paid employment in any capacity whatsoever."

These provisions are not only plain, clear and unambiguous, but in simple, ordinary, straight forward, concise and precise words and legislative language such that their evident purport is not left to any difficulty to call for interpretation outside the provisions. The requirement of the law that is now common knowledge, is that the duty of a court of law is to give the words used and employed in the provisions of the Constitution; the ground norm, their natural, literal and ordinary meanings which best embed, reveal and convey the real purpose and intendment of the legislature in making the provisions, for, in effect, there is nothing to interpret.

This Court in *Ekulo Farms Ltd & Anr. v. U.B.N. Plc* (2006) 4SC (pt. II) 1, restated the established position, per Ogbuagu, JSC, that:-

“It is now firmly settled in a line of decided authorities in several different languages or pronouncements, that in the interpretation of statutes and/or Constitution, words therein should be given their ordinary meaning. See Ogokolobo & Ors. v. Alamu & Anr. (1987) 7 SCNJ, 98 or the ordinary meaning of words therein used. See Olanrewaju v. The Governor of Oyo State & Ors. (1992) 11 – 12 SCNJ, 92; or that where words of a statute are clear and not ambiguous, effect should be given to them and that there is the need to avoid an absurdity – See Udoh & Ors. v. Orthopedics Hospital Management Board & Anor. (1993) 7 SCNJ, 436 at 442 and City Engineering Nigeria Ltd v. Nigerian Airport Authority (1990) 6 SCNJ, 262; (1999) 6 SC (pt. II) 41 at 47 or that ordinary or literal meaning is to be given to them and enforce accordingly – See Berliet Nig. Ltd. v. Alhaji Kachalla (1995) 12 SCNJ, 147 or that no more is necessary than to expound those words in their natural and ordinary sense of the words themselves in a best declare the intention of the legislature or that there is need to construe words used in their natural and ordinary sense. Rhein Mass lend & Schiffahos kontor GMBH & Anor v. Rivway Lines Ltd. (1998) 4 SCNJ, 18 at 29 or that there is no room for applying any of the principles of interpretation which are merely presumptuous in cases of ambiguity in the statute. That they ought to receive the construction according to their plain meaning. See National Bank of Nigeria Ltd. v. Weide & Co. Nig. Ltd. & Ors. (1996) 2 NWL (pt. 465, 166 – 7 where the case of Nafiu Rabi v. the State (1980) 8 – 11 SC 139, 149 per Sir Udoma, JSC, was referred to and reproduced.”

See also *Ahmed v. Kassim* (1958) SCNLR 58, *Awolowo v. Shagari* (1979) 6 – 9 SC, 73, *A.G. Bendel State v. A.G. Federation* (1981) 10 SC, 1, (1982) 3 NCLR, 1 on the same principle.

In their proper context, the provisions of Section 183 simply prohibit the holder of the office of the Governor of a State from holding any other executive office or paid employment which involves the exercise of executive authority or power, during the period he holds the office. In other words, a person holding the office of a Governor of a State is constitutionally barred from holding any other executive office or paid employment whatsoever; of whatever nature, type or kind, simultaneously and at the same time with the office or while holding of the Governor of a State. These provisions, very clearly, are specifically provided for, aimed at and meant to apply to and affect the "Person" of the Governor of a State while holding or during the period he holds the office as Governor and the prevent him from accepting or taking any other appointment, position, post or occupying any other executive office of whatever nature that involves the exercise of executive functions, duties and power which are in conflict and direct interference with the exercise of the executive mandate of the office of the Governor of his State, while and during the period he holds that office. The provisions, personally, forbid and prevent the person who holds the office of Governor of a State from agreeing to accept, accepting, taking and holding

any other office by which he would exercise executive powers, perform executive functions and discharge executive duties or any other paid employment in any capacity whatsoever, during the period when he holds the office of the Governor. The deliberate use of the word "shall not" in the provisions shows the mandatory nature and purpose intended by the legislature in enacting them, see *Mokelu v. Fed. Comm. For Works and Housing* (1976 3 SC, 35, *Kato v. CBN* (1991) 9 NWLR (pt. 214) 126, *Enochie v. Odogwu* (2006) 2 SCNJ, 96 at 114, (2006) 6 NWLR (pt. 975) 367 at 441, *Nwankwo v. Yar'adua* (2010) 12 NWLR (pt. 1209) 578 at 589, i.e. to personally, legally and constitutionally, disable and ban a person holding the office Governor of a State from taking up and holding another executive office or any paid appointment, position, post, job or employment of whatever nature whilst he occupies and holds the office of Governor of a State. In our constitutional democracy, the Governor of a State, represents the entire people of the state; without qualification, is vested with and exercises the executive powers of the State by dint of the provisions of Section 5 (2) of the 1999 Constitution (as altered and amended) which provides thus:-

“(2) Subject to the provisions of this Constitution, the executive powers of a State:

- (a) Shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and*
- (b) Shall extend to the executive and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for time being power to make laws.”*

Apparently, the executive powers vested in the Governor of a State by these provisions of the Constitution are enormous, very huge and large and to be effectively exercised in line with the intendment of the Constitution and expectations of the electorates who elected the Governor, thereby giving him the mandate to assume and hold the office, the Governor must devote himself, all his time and efforts during the time he holds the office, to the discharge and performance of the duties and functions involved in the exercise of the powers. The Governor's energy and loyalty shall be invested in the faithful exercise of the executive powers vested in and conferred to him by the constitution, courtesy of the electorates who voted him into the office. It is to personally prevent, bar and stop the Governor of a State from neglecting, disregarding and even failure to effectively exercise the executive

powers vested in him as the person who holds the office, that the constitution, in the wide wisdom of the legislature, prescribed the provisions of Section 183 thereof. Since the provisions are directed; specifically and frontally, at the “person” of the Governor who holds the office, it is beyond reasonable arguments that it is the “person” of the Governor, exclusively, whilst he holds the office, that can; factually, be capable and able of omitting, failing, neglecting or refusing to obey or comply and thereby disobey, breach or violate the provisions. Perhaps, I should point out that the provisions do not mention or envisage any other person other than the Governor as the subject therein. The law is elementary, that the courts cannot import into or export out of the clear, unambiguous and plain words of a statute and/or constitution in the construction and application of the provisions. See *Awolowo v. Shagari* (supra) *Okotie-Oboh v. Manager* (2004) 11 – 12 SC, 184, *Amaechi v. INEC* (2008) 5 NWLR (pt. 1080) 5 NWLR (pt. 1080) 227 at 437.

In addition, another established rule of construction of clear, unambiguous and plain words of a statute or/and Constitution, is to exclude what is not specifically stated in the provisions, which, in latin, is “*expressio unius exclusio alterus*”; ie. the express mention of one thing automatically

excludes any other which otherwise would have been included by implication. See *Ogbunyiya v. Okudo* (1979) 6 – 9 SC, 32, *Udoh v. O. H. M. Bd* (1993) 7 SCNJ, 244, (1993) 1 NWLR (pt. 304) 139, *Buhari v. Yusuf* (2003) 14 NWLR (pt. 841) 446, *PDP v. INEC* (1999) 11 NWLR (pt. 626) 200, *Awoye v. Obasanjo* (2006) All FWLR (pt. 334) 1967 at 1979 *Obi v. INEC* (2007) 11 NWLR (pt. 1046) 436, *Ojukwu v. Yar'Adua* (2008) 4 NWLR (pt. 1078) 435 at 461. Because the person of the Governor is exclusively the only subject of the provisions and no other person, they can only be disobeyed, breached, violated or contravened by the Governor in person directly and not otherwise by any other person or party not mentioned therein. It was in apparent recognition of position of the provisions that the Appellants in paragraph 29 – 34 of their petition, (set out earlier) made the very specific and weighty allegations of the contravention, violation and breach of the provisions by “His Excellency Mai Mala Buni, the current Governor of Yobe State ...” The allegations and assertions of facts made in the paragraphs are personally against Mai Mala Buni, the person who currently holds the office of the Governor of Yobe State and no other person, as provided for and envisaged by the provisions of Section 183. The facts

alleged are wholly and completely based on the acts, actions or steps personally said to have been done or taken by Mai Mala Buni, the Governor of Yobe State and considered by the Appellants to constitute or amount to holding “any other executive office or paid employment in any capacity, whatsoever” in violation, breach or contravention of the Section.

The allegations are not directed or specifically made against any other person or party, for whom Mai Mala Buni is to have acted as an agent, but against him personally. I have said before now, that the allegations against Mai Mala Buni; the Governor of Yobe State, are weighty and this is because, Mai Mala Buni, as Governor of Yobe State, before assuming and holding the office of Governor, had, in compliance and accordance with the prescription in Section 185 (1) of the Constitution, subscribed to the Oath of office of Governor of a State set out in the 7th Schedule to the Constitution. For our purpose here, the relevant parts of the Oath and Solemn Affirmation subscribed to by Mai Mala Buni, as Governor of Yobe State are:-

“I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, ... That I will to the best of my ability preserve, protect and defend the Constitution of the Federal

Republic of Nigeria; and that I will devote myself to the service and wellbeing of the people of Nigeria.

So help me God."

It is very grievous and serious for the Governor of a State who had subscribed to the above Oath and solemn affirmation prescribed as a condition precedent to the assumption, holding and exercise of the powers vested by the Constitution in him as the holder of the office of Governor, to be accused of the deliberate violation, breach, contravention of or non-compliance with any provisions of the Constitution which he swore to preserve, protect and defend in the discharge of the duties and performance of the function of the office. Section 188 (1) and 2 (a) and (b) of the Constitution provide for the consequence of deliberate violation, breach or contravention of the provisions of the Constitution by any Governor of a State in Nigeria. It provides thus:-

"188 (1) The Governor or Deputy Governor of a State may be removed from office in accordance with the provisions of this Section.

(2) Whenever a notice of any allegation in writing signed by not less than one – third of the members of the House of Assembly –

(a) is presented to the Speaker of the House of Assembly of the State,

(b) *Stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office*
...

Subsection (11) says:-

"In this Section:-

"gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amount in the opinion of the House of Assembly, to gross misconduct."

As can clearly be seen, violation, breach and contravention of the provisions of the Constitution by any Governor of a State constitute and amount to gross misconduct on his part which is a ground, if proved, that will warrant his removal from the office of Governor. So, as much as the breach, violation or contravention of the provisions of Section 183 can only be committed by the person who holds the office of the Governor of a State, the constitutional and legal consequence of such infraction or noncompliance with the provisions, is strictly and unavoidably personal to the Governor, ie, removal from the office of Governor.

All the above said, the question that will necessarily arise and agitate itself is:-

whether the allegations and assertions of facts against Mai Mala Buni, the Governor of Yobe State, made and relied on by the Appellants as the foundation and pivot of their petition against the election of the 3rd and 4th Respondents, on the ground that he had breached, violated and contravened the provisions of Section 183 of the Constitution can be heard and determined in the absence of Mai Mala Buni, the Governor of Yobe State and without joining him as a necessary party to the petition?

I would have no difficulty in answering the question in the negative and also state that Mai Mala Buni; the Governor of Yobe against whom the allegations and assertions of facts were made by the Appellants and relied upon or on to challenge the validity of the sponsorship of the 3rd and 4th Respondents by the 2nd Respondents for the questioned election, is not only a necessary party, but a “mandatory party” in a trial by any court of law or tribunal established by or under the constitution or any law, where such allegations and assertions are to be judicially determined and finally decided. I would define a “mandatory party” in a case as the person/s or party/parties whose civil rights and obligations are to be determined in the judicial proceedings of a court of law or other tribunal established by or under or pursuant to the provisions of

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the constitution. In the absence of such parties/persons, their civil rights and obligations cannot properly and validly be determined and decided by a court or tribunal no matter the nature of the allegations or assertions of facts against them in a case. A “mandatory party” in a case, is not only a necessary party without whom the proceedings of a matter, case or action could not be dealt with fairly, effectively and completely by a court, but one in whose absence, a matter or case becomes incompetent for lack or want of proper constitution as to competent parties thereby depriving the court or tribunal, the requisite jurisdiction to adjudicate on the rights and obligations of such parties. Therefore, a claimant/plaintiff/petitioner in a matter/case/petition, has the legal duty to bring any or all mandatory party/parties whose presence is not only crucial and fundamental, but a condition precedent to the determination of and resolution of all material questions or issues raised, by the facts pleaded and relied on by him in the case/matter/petition. Failure to do so, as was/is the case in the petition of the Appellants, the action is liable to be struck out for being incompetent. See *Adisa v. Oyinwola* (2000) 6 SC (pt. II) 47, *Amuda v. ASjobo* (1995) 7 NWLR (pt. 406) 170, *Tafida v. Bafarawa* (1999) 4 NWLR (pt. 597) 70, *Ayoola v. Baruiwa* (1999) 11 NWLR (pt. 628)

595. In the case of Council, Federal Poly Mubi v. Yusuf (1998) 1 NWLR (pt. 533) 343, (1998) 1 – 2 SC, 11, this Court per Belgore, JSC, (in the lead judgment), had emphatically stated the law that:-

“In all trials, whether judicial or administrative, the person against whom a complaint is laid must be heard in compliance with the principle of audi alteram partem. This is the crux of Section 33 of the Constitution of the Federal Republic of Nigeria, 1979 and always reflected in statutes where persons could be put on trial or investigated with possible consequence of reprimand and/or punishment. For every accusation, there must be the right to be heard.” (underline provided).

This is prevised on, first, the common law principle and rule of natural justice which require and prescribe that before a court or tribunal hands down a decision in a case which materially and prejudicially affects the rights and/or obligation of a person, he must be afforded or given a reasonable opportunity to be heard in the case. The rule is expressed in latin as “Audi Alteram Partem” i.e hear the other side. Second, and more fundamentally, is the constitutional provision in Section 36(1) of the 1999 Constitution (as altered and amended) which provides that:-

“36.(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal

established by law and constituted in such manner as to secure its independence and impartiality.”

Both the common law principle and rule on natural justice as well as the above constitutional provisions can only be given effect to, complied with and applied in a case where the person to be materially and prejudicially affected by the decision of a court or tribunal is formally brought before the court or tribunal by being made a party against whom allegations of facts are made which the court or tribunal is called upon to determine and decide by the persons/parties making them. In the absence of such other persons in the trials of allegations against them, they could not be said to have been afforded or given reasonable opportunity to be heard as mandatorily and I dare say, sacrosanctly, stipulated and prescribed by the provisions of Section 36 (1).

Section 33 of the 1999 Constitution dealt with by the court in that case, is now Section 36 (1) of the 1999 Constitution (as altered).

The position was restated and affirmed by the court in a legion of decisions, including the later case of *Victino Fixed Odds Ltd v. Ojo* (2000) 8 NWLR (pt. 1197) 486 where Fabiyi, JSC, in the leading judgment, emphasized that:-

“Let me say it straight away that the right to fair hearing is a cardinal principle that is provided in Section 36(1) of the 199 Constitution of the Federal Republic of Nigeria. It is certain that fair hearing by a court or other tribunal under Section 36(1) of the 1999 Constitution – The grundnorm, incorporates the audi alteram partem rule. It is that a man can never have a verdict entered against him on a matter relation to his civil rights or obligations before such a court or tribunal without being given an opportunity of being heard. The rule is one of the essential cornerstones of our judicial process.”

See also Deduwa v. Okorodudu (1976) 9 – 10 SC, 329, Otapo v. Sunmonu (1987) 2 NWLR (pt. 58) 587, Amadi v. Thomas Aplin Co. Ltd. (1972) SC, 228, Kano N.A. v. Obiora (1959) SCNLR, 577. The law is known that the right to fair hearing provided for in Section 36(1) of the Constitution is one which cannot be waived, ignored, disregarded or taken away even by statute, in the conduct of the judicial proceedings of a court or tribunal in which the rights and obligations of a person were to be determined. Kotoye v. CBN (1989) 1 NWLR (pt. 98) 419, (2001) FWLR (pt. 490) 1567, Osasona v. Ajayi (2004) 14 NWLR (pt. 894) 527, Bangboye v. Univ. of Ilorin (1999) 10 NWLR (pt. 622) 290, Awomiyi v. Reg. Trustees of the Rosicrucian Order Amore Nig. (2000) 6 SC, (pt. 1) 103.

In the above premises, the lower court is on “terra firma” (firm terrain) of the law when it affirmed the decision by the trial tribunal that Mai Mala Buni, the

Governor of Yobe State, was/is a necessary party without or in the absence of whom, the Appellants' allegations of violation, breach or contravention of the provisions of Section 183 of the Constitution against him personally, could not be properly, competently and validly be determined by the Tribunal as a basis for challenging the constitutional qualification of the 3rd and 4th Respondents to contest the election in question on ground of lack of valid sponsorship by the 2nd Respondent.

In addition, I also endorse the finding and decision by the lower court in its judgment, at page 3806, vol. 7 of the Record of Appeal that:-

"It is clear in paragraph 33 that the allegation of signing those documents contrary to section 183 of the Constitution as amended was specifically made against Governor Buni and certainly not against the 2nd Respondent. It is settled that a breach of the Constitution is so fundamental and which cannot be remedied. In so far as section 183 of the 1999 Constitution as amended is concerned, there is nothing like issue of principal and agent emerging therefrom contended by the Appellants. Section 183 specifically prohibited a Governor during the period he holds office, from holding any other executive office or paid employment in any capacity whatsoever. The only human or person that can breach that constitutional provision is the Governor of a State. The said section is not applicable to the 2nd Respondent nor to the 3rd and 4th Respondents. It is only the said Governor Buni that the said provisions can be invoked against. It imposed a disability on the Governor, not on a political party and in particular, the 2nd Respondent, All progressives Congress (APC)."

and at pages 3809 that:

“By the above provisions, it clear that only the Governor can breach the constitutional provision and not a political party, and, any breach of the same by a Governor cannot be imputed to some other person nor a political party. So for there to be a successful argument on section 183 of the 1999 Constitution of the Federal Republic of Nigeria, it is the person who flouted the provision or caused such an infringement that will be held responsible and no other person. It is distinct that the intended purpose of the section is to prevent a sitting Governor of a State from holding another executive office or being in paid employment in any capacity, apparently to avoid conflict of interest. This section, obviously, was not inserted for the purpose of checking the activities of any political party but to prohibit dual office holding of a serving Executive Governor of a State.”

As regards the issue of agency between the 2nd Respondent and Mai Mala Buni; the Governor of Yobe State against whom allegations of the breach of the provisions of Section 183 were personally made, it is rather Mai Mala Buni, as Governor of Yobe and the only subject of and person mentioned and named therein who can personally and directly violate, breach and contravene the provision, is the principal who may and could be said to have done so himself or by or through authorized and acknowledged agent, if that was possible within the proper context of the section. It would therefore be a misconception to say and argue that Mai Mala Buni, the Governor of Yobe State was the agent or acted as the agent of the 2nd Respondent for the purpose of the breach, violation, or contravention of the provision of Section

183 which did not mention and in law, does envisage or even contemplate the 2nd Respondent in its very clear, unambiguous, precise, concise, straight forward and simply words and language.

But, assuming there was any agency relationship between the 2nd Respondent and Mai Mala Buni, the Governor of Yobe State, from the facts alleged by the Appellants in their petition and that he acted as an agent for the 2nd Respondent; said to be a disclosed principal by the Appellants, I need to point out that the allegations of the breach, violation or contravention of the provisions of Section 183 were not made and directed at the 2nd Respondent; the alleged disclosed principal, but, once more and for umpteenth time, were made personally against Mai Mala Buni; the Governor of Yobe State as the only subject and person specifically mentioned and named therein. For that reason, the general principle that the agent of disclosed principal needs not be joined in an action when the principal is made a party, does not apply to Mai Mala Buni; the Governor of Yobe State, since the allegations of the Appellants were personally made against him in his name and the office he holds as Governor and so is the principal rather than the agent against who the allegations were made.

In addition, both the 2nd Respondent and Mai Mala Buni; Governor of Yobe State were alleged to be wrong doers by the Appellants in the violation, breach or contravention of the provisions of Section 183 and so the general principle that the agent of a disclosed principal incurs no liability is inapplicable and would not apply to Mai Mala Buni in the case presented by the Appellants, so as to make him not a necessary party in the case. In the case of PDP & Ogembe Ahmed Salau v. INEC (2008) LPELR – 8597 (CA), the law was restated in the leading judgment by His Lordship, Mary U. Peter-Odili, JCA (now JSC), relying on the cases of B.B. Apugo & Sons Ltd v. O. H. M. B. (2005) 17 NWLR (pt. 954) 305 at 340, Rickett v. B.W.A. Ltd. (1960) SCNLR, 227, West African Shipping Agency Nig. Ltd. v. Kalla (1978) 3 SC, 21, Asafa Foods v. Alrairie Nig. Ltd. (2002) 12 NWLR (pt. 781) 353, that:-

“The principle, that an agent of a disclosed principal is not liable is not inflexible. There is no agency in the case of a wrong doer. A person who is himself a wrongdoer cannot be the principal of another who is also a wrongdoer. The relationship of agent and principal has no application in the case of the wrongdoer.”

Similarly, it has been argued by the Appellants that even if allegations were made against persons/parties who are not joined in an election petition, that

fact alone would not render the petition incompetent for the non-joinder and the affected paragraphs of the petition would merely be struck out by a tribunal. This general position of the law is correct to the extent only that there are other facts after the excision of the allegations against the absent persons/parties, that are capable of sustaining the substance of the petition against the parties that have been joined. A careful and calm reading of the facts in the petition of the Appellants, but particularly, paragraphs 29 – 34 set out earlier in this judgment, reveals that the Appellants' case was centred and completely based on the allegations of breach of the provisions of Section 183 by Mai Mala Buni; the Governor of Yobe State. This position is clearly and manifestly shown in the fact that Eighteen (18) out of the Nineteen (19) grounds of this appeal contained on the Notice of Appeal dated and filed on the 23rd of June, 2021, which is at pages 3835 of vol. 7 of the Record of Appeal, are complaints against the decision by the lower court on the issue of whether the allegations that Mai Mala Buni; Governor of Yobe State violated, breached or contravened the provisions of Section 183 of the Constitution could be heard and determined without him and in his absence in the petition.

Again, of the Six (6) issues raised from the grounds of appeal and submitted to this Court for determination in the appeal, as set out at page 4 of the Appellants' Brief filed on the 5th of July, 2021, Four (4) of them are on the allegations of the violation, breach or contravention of the provisions of Section 183 of the Constitution by Mai Mala Buni; Governor of Yobe State.

In the above circumstances, if the allegations made by the Appellants personally against Mai Mala Buni; the Governor of Yobe State in their petition were to be struck out, the petition would automatically, as a matter of course, crumble and collapse for being rendered hollow and barren and so incompetent for lacking a valid ground in law to sustain it since the Appellants had ignored and abandoned the only other ground of the 3rd and 4th Respondents not being duly elected by majority of lawful votes cast at the election.

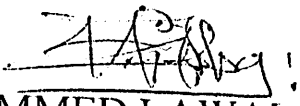
On the whole, since the Appellants' petition was/is incompetent and due to the peculiar nature of election petitions that have fixed lifespans under the Constitution, a discuss or consideration of all other issues raised and canvassed in the appeal and cross appeals would merely be academic and of

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no legal value or worth. Courts loathe an exercise in futility. A. G. Plateau v. A.G. Federation (2006) All FWLR (pt. 305) 590, (2006) 1 SC (pt. 1) 1, Adeogun v. Fashogbon (2008) 5 – 6 SC (pt. 1) 23, (2008) 17 NWLR (pt. 1115) 149, Adelaja v. Alade (1999) 6 NWLR (pt. 608) 544, Okulate v. Awosanya (2000) 2 NWLR (pt. 646) 530, A. G. Federation v. A. N. P. P. (2003) 12 SC (pt. II) 146, (2003) 18 NWLR (pt. 851) 182.

In the final result, for the above and the fuller reasons set out in the leading majority judgment, I join in dismissing both main appeal and cross appeals in the terms stated therein.

In line with the agreement by all the parties, the Appeals No. SC/CV507/2021, No. SC/CV/508/2021 and SC/CV/509/2021, shall abide by the decisions in this appeal and the cross-appeals.


MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

APPEARANCES:

Dr. Onyechi Ikpeazu, SAN, Chief Ifedayo Adedipe, SAN, A. T. Kehinde, SAN, O. Jolaawo, SAN and D. A. Awosika, SAN for the Appellants.

Charles Uwensuyi Edosomwan, SAN, I. K. Bawa, SAN, with Chris Onwugbonu, Esq., Sarafa Yusuf, Esq. and O. F. Ejeh, Esq. for the 1st Respondent/Cross Appellant.

L. O. Fagbemi, SAN, H.O. Afolabi, SAN, Chief Olusola Oke, SAN, Chief Abdulkadir Ajana, SAN, with Omosanya A. Popoola Esq. for 2nd Respondent/Cross Appellant.

Chief Akin Olujinmi, SAN, Remi Olatubora, SAN, Chief Adeniyi Akintola, SAN, with Yinka Orokoto, Esq. and Olumide Olujinmi, Esq. for 3rd and 4th Respondents/Cross Appellants.