

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

MARY UKAEGO PETER-ODILI

JOHN INYANG OKORO

EJEMBI EKO

MOHAMMED LAWAL GARBA

IBRAHIM MOHAMMED MUSA SAULAWA

TIJJANI ABUBAKAR

EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

JUSTICE, SUPREME COURT

SC/CV/448/2021

BETWEEN:

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

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.. APPELLANTS/CROSS-RESPONDENTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. ALL PROGRESSIES CONGRESS (APC)
3. OLUWAROTIMI ODUNAYO AKEREDOLU
4. LUCKY ORIMISAN AIYEDATIWA

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.. RESPONDENTS/CROSS-APPELLANTS

DISSENTING JUDGMENT
(DELIVERED BY EJEMBI EKO, JSC)

The facts are neither complicated nor convoluted. On 10th October, 2020, the 1st Respondent (Independent National Electoral Commission (INEC) conducted election to the office of the Governor and Deputy Governor of Ondo State. The 3rd and 4th Respondents contested the election on the platform of the 2nd Respondent, All Progressives Congress (APC). The 1st Appellant was the candidate sponsored in the election by the 2nd Appellant, People's Democratic Party (PDP). At the conclusion of the election the 3rd& 4th Respondents were declared and/or returned as the duly elected Governor and Deputy-Governor, respectively, of Ondo State. Aggrieved thereby the Appellants, on 30th October, 2020 (21 days after the election) filed their petition challenging the return of the 3rd and 4th Respondent by INEC (1ST Respondent). In the petition the Respondents, positing that the issue whether: the disputed correlated sponsorship of

the 3rd& 4th Respondents by the 2nd Respondent and their qualification to contest the election constituted a pre-election issue, maintained that the petition filed on 30th October, 2020, having been filed outside 14 days prescribed by Section 285(9) of the Constitution of the Federal Republic of Nigeria (CFRN), as altered, was filed out of time. The lower court had correctly, in my view, dismissed this contention which was brought by way of preliminary objection.

The issue: whether the purported sponsorship of a candidate by a political party followed the due process of law comes neither under Sections 31(5) nor 87(9) of the Electoral Act, 2020, read together with 285(9) & (14) of the CFRN. It is also no longer the internal affairs of the political party who, in obedience to Section 31(1) of the Electoral Act, 2020 had conveyed, submitted or transmitted the names of its duly

nominated candidates to INEC, as the candidates it intended to sponsor for the election. The Appellants, who are also cross-respondents in the cross-appeals, do not need to be members of the political parties sponsoring the other candidates against them in order to have locus standi to challenge the qualification of the other candidate(s) contesting them. The fact that candidates returned were on the ballot against them, the Appellants, and contested the election with them is what clothes or vests in them the right or the standing in law to challenge the return made from the election on the permissible grounds for challenging the return, including the ground that the person returned was not qualified to contest at the election or that his sponsorship to INEC as a candidate did not follow the due process of law.

In the instant petition the Appellants posit that, in view of Section 183 of the CFRN, the sponsorship of the 3rd and 4th Respondents, vide Exhibit P21, did not follow the due of the law and that the 2nd Respondent, that caused the signatories to Exhibit P21 (particularly of Mai Mala Buni, an incumbent Governor of Yobe State) to issue Exhibit P21 to INEC, had acted in violation of the CFRN, particularly Section 183 thereof. The Appellants in their Brief of Argument, by way of analogy, draw attention to Article 17 (iv) of the Constitution of the 2nd Respondent (APC) to the effect that both Section 183 CFRN and Article 17 (iv) of APC Constitution (Exhibit P22) make it unlawful for Mai Mala Buni, a sitting Governor of Yobe State to concurrently serve and act as the acting National Chairman of the APC (2nd Respondent) or the National Chairman of the Caretaker/Extra-ordinary Convention Committee of the

2nd Respondent. At pages 3812 and 3813 of the Records of appeal, the lower court, in its judgment, found (in agreement with the Appellants) that the National Caretaker Committee, Chaired by Governor Buni, was constituted by the National Executive Committee of the 2nd Respondent. The lower court had, earlier at pages 3808 – 3810 of the Records of Appeal, opined that the said Governor Buni was only appointed by the 2nd Respondent to perform the executive function of the office of the Chairman of the National Caretaker Committee in some temporary capacity. The 1st and 2nd Respondents, respectively in paragraph 4.19, page 9 and 4.41, page 19, of their Briefs of Argument had admitted that Governor Buni merely performed the function of the Chief Executive of the APC (2nd Respondent), a political party as the National Chairman of the Caretaker Committee. I will come anon to the effect of this admission

against interest viz-a-viz Section 183 of CFRN and Article 17 (iv) of APC Constitution (Exhibit P22).

The core issue in the main appeal is; whether the 2nd Respondent, in conveying their sponsorship of 3rd & 4th Respondents to the 1st Respondent (INEC) through Exhibit P21 and INEC, accordingly, accepting 3rd and 4th Respondents as the sponsored candidates of the 2nd Respondent, had not acted in contravention of Section 183 of the CFRN? The Appellants also have made an issue that the improper sponsorship of the 3rd and 4th Respondents tantamounts to their disqualification to contest the election under Section 177(c) of CFRN and Section 138(1)(a) of the Electoral Act. It is an issue raising the violation or contravention of the Constitution of the Federal Republic of Nigeria (CFRN). On this ground I will not hesitate to dismiss

offhand the contention that the Appellants lack the locus standi or reasonable cause of action on which to found their petition.

Because Section 1 of CFRN provides, inter alia:

1. (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria;

and that the country shall be governed only in accordance with the rule of law and the provisions of the Constitution, and further that if any act or law is inconsistent with the provisions of the Constitution such act or law shall, to the extent of inconsistency, be void; I should think, and I so hold, that a cause of action founded on breach of the mandatory provisions of the Constitution, such as Section 183 and 177 (c) thereof, vests locus standi on the petitioners as the instant Appellants. I stated in

CENTRE FOR OIL POLLUTION WATCH v. NNPC (2018) LPELR – 50830 (SC) that “every person including NGO’s, public spirited individuals or associations, have sufficient interest in ensuring that public authorities or corporations submit to the rule of law and that no public authority has power to, arbitrarily or with impunity, break the law or general statute” and that “the right of the citizen or lawful organisation to see that the rule of law is enforced vests in him or the association sufficient standing to request the court to call to order (any person or authority) allegedly violating the law”.

Lord Denning, M. R, in *McWHIRTERS* (1973) QB 649, had re-stated the law to the effect that it is a matter of high constitutional principle that, if there is a good ground for supposing that the law is being transgressed or is about to be transgressed, anyone of those offended or injured thereby can

bring to the attention of the court of law or tribunal established by law that fact and seek to have the law enforced. This is exactly what the Appellants, as the petitioners, have set out to do. That is, to have Section 183 of CFRN enforced against those who, allegedly, had transgressed the said Section 183 CFRN in the matter of the sponsorship of the 3rd and 4th Respondents by the 2nd Respondent to contest the Governorship election in Ondo State on 10th October, 2020. They point accusing fingers largely at the 2nd Respondent (APC) that sponsored 3rd& 4th Respondents vide Exhibit P21.

This Court's decision, in **FAWEHINMI v. AKILU & ANOR (IN RE: ODUNEYE, DPP) (1987) 12 SC 136; (1987) 18 NSCC (pt.2) 1269; (1987) 4 NWLR (pt. 67) 797** to the effect that every Nigerian, being his brother's keeper, has a duty to ensure, bona fide, that the law breakers are sanctioned for their illegalities,

has liberalised locus standi viz-a-viz violation of public law. I think I am on firma terra to opine and hold that the Appellants, as the petitioners, have the standing in law to request, as they did, the adjudication on whether the 2nd Respondent can legitimately violate Section 183 of the CFRN; and also whether the INEC (1st Respondent) can whimsically condone such alleged brazen unconstitutionality in the manner the 2nd Respondent purportedly sponsored 3rd & 4th Respondents to 1st Respondent as its candidate in the 10th October, 2020 election. They have sufficient interest in ensuring that these named Respondents submit to the rule of law, and not to breach the mandatory or prohibitory provision of Section 183 of the national Constitution. The English Court, in REG. v. I.R.C, (Ex parte: **NATIONAL FEDERATION OF SELF-EMPLOYED AND SMALL BUSINESS LTD (1982) A.C. 617**, held that the Plaintiff has the standing to

request adjudication on whether a public authority can condone illegality by abdicating or shierking its statutory responsibility, and ensure that the rule of law prevails.

It is, therefore, my firm view that the Appellants, as the Petitioners, had genuine locus standi when they initiated the petition, the subject of this appeal; and that their petition was filed in time in accordance with Section 285(5) of CFRN, as altered.

A defective sponsorship denies the qualification to contest an election. It appears that all parties herein are ad idem that a person is, the Constitution and Laws of this Country, qualified to contest an election only if he was duly sponsored as a candidate by a political party. That is why Section 138(a)(a) of the Electoral Act, 2010 provides:

138(1) An election may be questioned on any of the following grounds, that is to say –

- (a) that person whose election is questioned was, at the time of the time of the election, NOT QUALIFIED TO CONTEST THE ELECTION.

Accordingly, the Respondents' insistence that qualification or otherwise to contest the disputed election was purely a pre-election matter totally lacks any foundation to be erected on. I agree with the lower court and the Appellants that the issue: whether the 3rd & 4th Respondents were not qualified to contest the election by the fact of their alleged defective sponsorship was a proper issue raised in the petition of the Appellants to challenge their election.

Now, the main appeal: the crux of the appeal is the unconstitutionality of the 2nd Respondent procuring and/or

causing the two persons, particularly Mai Mala Buni – a sitting Governor of Yobe State to issue Exhibit P21, a letter conveying the sponsorship of 3rd & 4th Respondents to INEC (1st Respondent) as the candidates of the APC (the 2nd Respondents) for the offices respectively of Governor and Deputy Governor of Ondo State. Section 183 of the CFRN provides:

183. The Governor shall not, during his tenure of office hold any other executive office or paid employment in any capacity whatsoever.

The lower court found, at pages 3807 & 383, Vol. 7 of the Records of Appeal, that his Excellency Mai Mala Buni, a serving Governor of Yobe State, was appointed by the 2nd Respondent as the National Chairman of the Caretaker/Extra Ordinary Convention Committee to perform the Executive Office of the

National Chairman of the 2nd Respondent. These crucial findings of fact were not, as adverse to the Respondents' case as they were, appealed by the Respondents. The law is settled that a specific adverse finding of fact or decision not appealed remains subsisting, conclusive and binding on the parties, including the party adversely affected by it: **LEWIS OPARA v. DOWELL SCHLUMBERGER (NIG.) LTD. & ANOR. (2006) 7 SC (pt. iii) 56; ALAKIJA v. ABDULAI (1998) 6 NWLR (pt. 552) 1 at 4; AWOTE v. OWODUNWI(No. 1) (1986) 5 NWLR (pt. 46) 941.**

Accordingly, it is no longer in dispute that Mai Mala Buni, who settled or signed Exhibit P21 as National Chairman of the Caretaker Committee of the 2nd Respondent (a political party) and was in that capacity discharging or performing the political party's executive office while also

being concurrently the Governor of Yobe State. By this, at the instance of the 2nd Respondent, the said Mai Mala Buni had done that expressly prohibited by Section 183 of the CFRN. The lower court was not in any doubt about this. At page 3807 Vol. 7 of the Records the lower court held –

It is clear in the provisions of the 1999 Constitution that a serving Governor of a State is prohibited from holding another executive office –. Also by the 2nd Respondent's constitution, an officer in an executive organ of the party is equally restricted from holding an executive position in government simultaneously. So the Chairman, Secretary or Treasurer of a party and every member of the management committee of a party have been described as people holding executive position in a political

party. By the literal interpretation of Section 183 of the 1999 Constitution, as amended, a current or an existing (sic: sitting) Governor of a State is disqualified, during the period of his office, from holding any other executive office – in any capacity whatsoever. The same thing applies to officers of the 2nd Respondent. They shall not hold executive position in government concurrently. It is clear in the provisions of Section 183 of the said Constitution that it is the Governor of a State who is prohibited and not the political party -.

Now the question: if the Governor of a State, as Mai Mala Buni of Yobe State is, is prohibited by Section 183 of the CFRN as well as Article 17(iv) of the APC (2nd Respondent's) Constitution – Exhibit P22, from

concurrently holding the offices of the State Governor and any other executive office whatsoever in a political party; will it be right for the political party, as the APC (2nd Respondent) is, to appoint, procure, induce, instigate, aid and abet the Governor (in this case His Excellency, Mai Mala Buni of Yobe State) to do that or the mischief expressly prohibited by the National Constitution and its own constitution?

Equity acts in personam, just as it follows the law. Is the 2nd Respondent, in appointing his Excellency Mai Mala Buni to deliberately flout and breach the National Constitution (Section 183 thereof) and Article 17 (iv) of its own Constitution (Exhibit P22) not in pari delicto, that is

equally guilty of doing the mischief proscribed? According to Black's Law Dictionary 9th ed, at page 862 "in pari delicto, an adverb [Latin: in equal fault] means "equally at fault". I have no doubt, therefore, in holding that 2nd Respondent, in appointing Mai Mala Buni, Governor of Yobe State to concurrently perform and/or discharge the executive office of National Chairman Caretaker Committee concurrently with his office as the Chief Executive Officer of Yobe State was "in equal fault" as His Excellency Mai Mala Buni in the contravention or breach of Section 183 of the CFRN as well as Article 17 (iv) of Exhibit P22, its constitution. It is worthy of note that, at page 3810 Vol. 7 of the Records of Appeal, the lower court

stated the law correctly that the political party (the 2nd Respondent) is bound by its own constitution. That specific holding on point of law, not having been appealed, remains binding and subsisting as between the parties herein. In any case, in a long line of cases, this Court has established the firm principle of law to the effect that the political party, like its members, is bound by its constitution: **ONUOHA v. OKAFOR (1983) 2 SCNLR 244; PDP v. SLYVA (2012) 13 NWLR (pt. 1316) 85 (SC) at 154; LAU v. PDP (2018) 4 NWLR (pt. 1608) 60 (SC) at 123; APC v. KARFI (2018) 6 NWLR (pt. 1616) 479 (SC) at 526; AMEACHI v. INEC & ORS (2008) LPELR 446 (SC) at 103 –**

**104; GANA v. SDP & ORS (2019) LPELR – 47153 (SC) at 15
– 16, etc.**

At pages 3806 and 3807 Vol.7 of the Records, the lower court held, correctly in my view, and the parties herein are also ad idem on this having not challenged the holding, that the mischief Section 183 CFRN, as well as Article 17(iv) of the APC constitution (Exhibit P22) , target to proscribe as a goal “is to prevent corruption by banning Governors from ever benefiting personally from holding other executive offices or being in a paid employment –. The ban helps to purge Governors of the desire for other executive offices like being a Minister or Chairman of a Bank simultaneously.”

The ban, I dare say, is total. The provisions of Section 183 CFRN and Article 17 (iv) of the APC (2nd Respondents) Constitution – Exhibit P22, do not absolutely make any distinction between permanent or temporary performance of “any other executive office”. Section 183 CFRN, to demonstrate the absolute ban, emphasises that the Governor SHALL NOT, during his tenure of office, HOLD ANY OTHER EXECUTIVE OFFICE – IN ANY CAPACITY WHATSOEVER. The framers of the national Constitution did not place the word – WHATSOEVER, as post fix to the provision in Section 183 CFRN for nothing. Nay. It was so placed to emphasise the ban placed on the holder of the Governor of a State from holding any other executive

office. The authors of the Lexicon Webster Dictionary Vol. 2 of the 1980 Encyclopedic Edition suggest that the word whatsoever, whenever it is used, is used to express “emphatically”. When therefore the lower court, in order to avoid the enforcement of the draconian ban of a Governor simultaneously performing or discharging concurrent executive offices, had erroneously called in aid the foreign authority of DE ALEJANDRO v. HUNTERS 951 S. W. 2D 102, 107 (Tex App – Corpus Christi 1997, no pet) (Texas Dual office Holding Laws Made Easy), that is completely inapposite, in holding that, under the laws of Texas State of U. S. A, “the temporary performance of the Mayor’s duties by a mayor proterm during a period before

a special election to fill the mayor's position did not constitute dual office holding". The law is trite that provisions of a foreign statute, will not be allowed to be used or resorted to in interpreting provisions of a local statute; unless the provisions of the foreign statute and the local statute are in pari materia.

I agree with the Appellants that Section 183 CFRN, like Article 17 (iv) of the APC constitution (Exhibit P22) absolutely prevent a Nigerian Governor of a State, like His Excellency Mai Mala Buni of Yobe State, from holding, during his tenure in office, any other executive office in any capacity whatsoever.

In paragraph 36, at page 2007 of Vol. 4 of the Records, of the Reply of the 2nd Respondent, the appointor of H.E. Mai Mala

Buni, the 2nd Respondent, had clearly admitted that the National Caretaker Committee, over which H.E. Mai Mala Buni was appointed National Chairman of, “has the mandate to perform functions of the National Working Committee, which include to organise primary election of (APC) - Governorship candidates – for election”. And in paragraph 40, page 2010 of Vol. 4 of the same Records, the 2nd Respondent further admits that those who appended their signatures to Form EC93 (Exhibit P21) did so in compliance with the 2nd Respondent’s constitution (Exhibit P22). This averment, reckless as it is, apparently is a direct affront to and contradiction of Article 17(iv) of the APC (2nd Respondents) constitution (Exhibit P22) that provides;

No officer in any organ of the party shall hold executive position in government concurrently

Res ipsa loquitur (the thing speaks for itself), I must say. The law is trite: Facts admitted need no further proof as admitted facts are taken as established. These averments amount to admission against the interest of the 2nd Respondent, the appointor of the said H.E. Mai Mala Buni. Whoever appointed H.E. Mai Mala Buni, Governor of Yobe State, to flout Article 17(iv) of the APC Constitution (Exhibit P22) and Section 183 of CFRN is equally as guilty or at fault in the constitutional breach as H.E. Mai Mala Buni who accepted to do the reprehensible act or conduct. Both are in pari delicto. I am of the firm view, and I hold, that as the National Executive Committee of APC (2nd Respondent) has no power or vires to do, directly, the mischief proscribed by either Section 183 CFRN or Article 17(iv) of the APC Constitution (Exhibit P22); so also it has no power or vires to appoint a proxy to violate or flout the express prohibitory letters of Section 183

CFRN and Article 17(iv) of Exhibit P22. Doing so is clearly ultra vires. That is the substance of the case of the Appellants herein.

Both the lower court and the majority opinion here seem to be ad idem that the 2nd Respondent submitted the offensive instrument or letter, Exhibit P21, to INEC (1st Respondent), through H.E, Mai Mala Buni, Governor of Yobe State, who is expressly prohibited, by Section 183 CFRN and Article 17(iv) of Exhibit P22, during the tenure of his office as Governor of Yobe State, from howsoever performing or holding any executive office in any capacity in the APC, the 2nd Respondent. It is also acknowledged in opinion of the lower court and the majority opinion herein that 2nd Respondent, fully cognisant of the prohibition imposed by Section 183 of the CFRN and Article 17(iv) of Exhibit P22, appointed and allowed H.E. Mai Mala Buni, Governor of Yobe State, to act on its behalf in the execution or

settling of Exhibit P21, the 2nd Respondent's document conveying the sponsorship of the 3rd& 4th Respondents as its candidates to INEC (1st Respondent). By these established facts it does not lie in the mouth of the Respondents to posit or contend that the non-joinder of H.E. Mai Mala Buni in the petition has substantially vitiated the petition of the Appellants. Let it be emphasised, poignantly, that His Excellency Mai Mala Buni, Governor of Yobe State is not, under the laws of the Federal Republic of Nigeria not being a political party himself, empowered to nominate or sponsor any candidate for any election. In this case he merely acted for APC (2nd Respondent) as its representative or agent. The sponsorship is the act of the 2nd Respondent (APC).

The law is trite that when and where there is a disclosed principal the agent incurs no liability; **NIGER PROGRESS LTD v.**

NEL CORPORATION (1989) 3 NWLR (pt. 107) 68 (SC) at 84 per Obaseki, JSC; UKOANAH v. AYAYA (2011) 1NWLR (pt. 1227) 61 (CA). In law vicarious liability for wrongful acts means the case of one person taking the place of another in so far as liability is concerned: **LAUNHBURY v. MORGAN (1971) 2 QB. 245 at 252 cited with approval in IFEANYI CHUKWU (OSUNDU) Co. LTD v. SOLEL BONEH (NIG) LTD (2000) 5 NWLR (pt. 656) 322 (SC).** The law, on the principle of vicarious liability recognising the fact, inter alia, that a company (as the instant 2nd Respondent is), not being a natural person or human being, can only act through its human agents or servants, proceeds thus: where an agent or servant has committed an act, the company may rightly be said to have committed the act since in law, by the principle of vicarious responsibility the act of the agent or servant is the act

of the company: per ONU, JSC in IFEANYI CHUKWU (OSUNDU) CO LTD v. SOLEL BONEH (supra).

On the principle of vicarious responsibility I find it rather bizarre, spurious or preposterous the contention that the non-joinder of H.E. Mai Mala Buni, Governor Yobe State whose immunity, under Section 308 of the CFRN, insulates him and prohibits his joinder in any civil proceedings during his period in office as Governor of Yobe State; had vitiated the petition; even when his appointor/principal had been made a party. Reading together Sections 183 and 308 of the CFRN reinforces my stance, on the basis of ubi Jus Ibi remedium, that the petition of the Appellants was well grounded even without the said H.E. Mai Mala Buni since his appointor the principal, for the purpose of the signing or settling the offensive Exhibit P21, has been joined as a necessary party. Clearly Exhibit P21 is an act of the 2nd

Respondent, just as the 3rd& 4th Respondents were purportedly intended thereby to be candidates sponsored by the 2nd Respondent. Governor Mai Mala Buni of Yobe State, apparently in his vaulting ambition to administer his party, APC, at the national level as its Chief Executive, may have been most reckless and irresponsible in thought in the rash decision to serve and act as the high ranking agent of the 2nd Respondent in the settling or signing of Exhibit P21 in gross violation of both the national Constitution and his party constitution. He, however, remains the agent of the 2nd Respondent for his offensive act. The 2nd Respondent remains vicariously responsible for his act. Accordingly, his non-joinder does not, in my firm view, materially affect the petition.

Exhibit P21 was an invidious and egregious act of the 2nd Respondent done with the most outrageous impunity to flout

and in violation of the express letters of Section 183 CFRN as well as Article 17(iv) of APC constitution Exhibit P22. It was also done in violation of paragraph 17(a) of INEC regulation Exhibit P24, a subsidiary legislation, made pursuant to Section 153 of the Electoral Act, 2010. I find it most unsettling that INEC lawyers who should be protecting the efficacy of Exhibit P24 seemed to be comfortably denigrating their own legal instrument violated with impunity by the 2nd Respondent. INEC, as its name implies, should at all times be seen to be independent and impartial in electoral disputes. It should not, through the unbridled active exuberance or sentiment of its legal attorneys, condone the impunity and crass illegalities of political parties.

The totality of all I have been trying to convey is that H.E. Mai Mala Buni, Governor of Yobe State, being an agent of the 2nd Respondent as regards Exhibit P21 was not a necessary party to

be joined, and his non joinder will not occasion any substantial miscarriage of justice. Conversely, in view of Section 308 of the CFRN his joinder would occasion injustice to the Appellants. I should place on record that the Respondents herein having actively and capriciously condoned the crass illegalities by which the 2nd Respondent had appointed, instigated and procured H.E. Mai Mala Buni, Governor of Yobe State to flout and breach express prohibitory provisions of Section 183 CFRN as well as Article 17(iv) of the APC (2nd Respondent's) constitution cannot be heard, albeit pretentiously, to say that the non-joinder of H.E. Mai Mala Buni was fatal to the Appellant's petition. I find this reasoning, albeit a dangerous and faulty neo jurisprudence, on the unsound pretext that the right to fair hearing of H. E. Mai Mala Buni an agent, will be breached when his principal is undeniably and indubitably the necessary party very unavailing.

After all equity frowns at those who poison and contaminate its fresh flowing waters. He who comes to equity must therefore come with clean hearts, hands and conscience. The 2nd Respondent (APC) cannot be heard, in all honesty and good conscience that they never presented the 3rd & 4th Respondents to INEC (1st Respondent) as their sponsored candidates through Exhibit P21 and that it is not their instrument done in compliance with Exhibit P24.

The lower court failed, erroneously, to construe Section 183 CFRN purposefully, as this Court enjoined all courts to do while interpreting any provision of the Constitution: **NAFIU RABIU v. KANO STATE (1980) LPELR – 2936 (SC)**. Having identified the mischief the Constitution, through its Section 183, intended to proscribe the lower court ought to have courageously given effect to it and enforced it. The lower court, in my firm view,

failed to see that the Constitution, as the grund norm, is the legal instrument giving rise to the legal rights the respective parties herein had to enforce. The courts cannot play ostrich when a political party has clearly breached not only its own constitution but also the national Constitution.

The Courts must stand out strongly to protect the Constitution from the vagaries and impunity of those clamouring for power at all costs. The Constitution, in its Section 1, says so loudly that its provisions are Supreme and binding on all persons and authorities throughout the realm of the Federal Republic of Nigeria. It proclaims the rule of law as the norm and insists that governance must be in accordance with its provisions. Accordingly, every act or action like Exhibit P21 of the 2nd Respondent made in violation of its provisions, including Section

183 thereof, shall be null and void and of no effect. I so hold. Exhibit P21, ultra vires, was null and of no effect.

I allow the appeal since Exhibit P21 is a nullity abi initio. It is not capable of conveying the sponsorship of the 3rd and 4th Respondents to the INEC (1st Respondent) as the candidates of the 2nd Respondent for the Governorship election in Ondo State. Being a nullity, the 3rd and 4th Respondents, in my judgment, were not in law candidates at the 10th October, 2020 Governorship election and all votes accredited to them shall accordingly be thrown away having been wasted. Consistent with **APC v. KARFI (2018) 6 NWLR (pt. 1616) 526 (SC); APC v. MARAFA (2020) 6 NWLR (pt. 1721 383 (SC)** (the two cases in which the 2nd Respondent had exhibited rascality, outlawry and impunity); I hereby order that 2nd Appellant's candidates, including the 1st Appellant, be and are hereby declared winners

of the election, having scored the majority of lawful votes at the election. The Appellants had earned the right to be granted, in their favour, the reliefs they sought in their petition. I so order.

The cross-appeals, lacking in substance, are hereby dismissed. By consensus of all parties herein through their respective counsel; appeals Nos. SC/CV/507/2021, SC/CV/508/2021 and SC/CV/509/2021 shall abide the outcome of this appeal.

I made no order as to costs.

EJEMBI EKO
JUSTICE, SUPREME COURT

APPEARANCES:

Dr. Onyechi Ikpeazu, SAN; Chief Ifedayo Adedipe, SAN; A. T. Kehinde, SAN; Olusegun Jolawo, SAN with B. A. Awosika, Esq., for the Appellants/Cross-Respondents

Chief Charles Umensuyi Edosomwan, SAN; Ibrahim K. Bawa, SAN with Chief Chris Onwugbonu, Sarafa Yusuff, Esq., and O. T. Ejeh, Esq., for the 1st Respondent/Cross-Appellant

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

Chief Akin Olujinmi, SAN; Chief Adeniyi Akintola, SAN; Remi Olatubora, SAN with Yinka Orokota Esq., and olumide Olujinmi Esq., for the 3rd and 4th Respondents/Cross Appellants