IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY THE 8TH DAY OF MAY, 2026

BEFORE THEIR LORDSHIPS:-

UWANI MUSA ABBA AJI	**JUSTICE, SUPREME COURT**
TIJJANI ABUBAKAR	**JUSTICE, SUPREME COURT**
CHIOMA EGONDU NWOSU-IHEME	**JUSTICE, SUPREME COURT**
OBANDE FESTUS OGBUINYA	**JUSTICE, SUPREME COURT**
JAMILU YAMMAMA TUKUR	**JUSTICE, SUPREME COURT**

SC/CV/638/2025

BETWEEN:

1. **THE GOVERNOR OF KOGI STATE**
2. **THE ATTORNEY GENERAL OF KOGI STATE AND COMMISSIONER FOR JUSTICE** } **APPELLANTS**

V.

ELDER ACHUBA SIMON - - - - - RESPONDENT

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(DELIVERED BY OBANDE FESTUS OGBUINYA, JSC)

I had, in advance, a thorough preview of the leading judgment delivered by my learned brother: **Chioma Egondu Nwosu-Iheme, JSC**. I, with due respect, do not agree with it.

CERTIFIED TRUE COPY
REGISTRAR
Supreme Court of Nigeria
26/05/2026
Official

This appeal probes into the rightness of the decision of the Court of Appeal, Abuja Division (hereinunder labelled as "the lower court"), *coram judice:* J. O. K. Oyewole, P. C. Obiorah and O. E. Abang, JJCA, in Suit No. CA/ABJ/PRE/ROA/1053 MI/2024, delivered on the 25th April, 2025. In its decision (ruling), the lower court granted partly the respondent's application (notice of motion) which was filed on the 19th September, 2024.

The précis of the essential facts of the case, which transfigured into this appeal, are disobedient to wordiness and complexity. The respondent, who was an erstwhile Deputy Governor of Kogi State, sued the appellants in the National Industrial Court of Nigeria (NICN), Abuja Division (the trial court) in Suit No. NICN/ABJ/244/2019, for declaratory and executory/ancillary reliefs. The suit was keenly contested by the parties and the NICN accorded it a full dress determination. In the judgment, delivered on the 4th November, 2020, per O. O. Oyewumi, J., the trial court granted the respondent's claim in part – the two declaratory reliefs and an entitlement to ₦170M security votes. The appellants appealed against the decision to the lower court in Appeal No. CA/ABJ/CV/30/2021. In the same vein, the respondent cross-appealed against it in Appeal No. CA/ABJ/CV/642/2021. In a considered unanimous judgment, delivered on the 29th April, 2024, documented between pages 42 – 109 of the record, the lower court, *coram judice:* M. L. Shuaibu, H. A. Laja-Balogun and J. E. Inyang,

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JJCA allowed the appeal in part by setting aside the ₦170M order of the trial court and dismissed the cross-appeal.

Subsequently, by notice of motion, dated the 16th September, 2024, but filed on the 19th September, 2024, predicated on 7 grounds, the respondent prayed the lower court for:

1. **AN ORDER of this Honourable Court directing the Respondents to pay the applicant His Monthly Salaries, Travel Allowances and Statutory Allocations due to the Applicant *as provided for and approved in the 2017 and 2018 approved Budgets of Kogi State Government* by virtue of the judgment of this Honourable Court CORAM:- Hon. Justice Mohammed Lawal Shaibu, Hon. Justice Hannantu Azumi Laja-Balogun and Hon. Justice jane Esienanwan Inyang delivered on the 29th day of April, 2024 in APPEAL NO:- CA/ABJ/CV/30/2021 BETWEEN THE GOVERNOR OF KOGI STATE & ANOR V ELDER ACHUBA SIMON.**

2. **AN ORDER of this Honourable Court directing the Respondent to pay to the Applicant the sum of** N1,070,860,138.00 (One Billion and **Seventy Million, Eight Hundred and Sixty Thousand, One Hundred and**

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Thirty Naira) as the Applicants Monthly Salaries, Travel Allowances and Statutory Allocations due to the Applicant ***as provided for and approved in the 2017 and 2018 approved Budgets of Kogi State Government.***

3. **AN ORDER of this Honourable Court directing the National Industrial Court Abuja to enforce the judgment of this Court in CORAM:- Hon. Justice Mohammed Lawal Shaibu, Hon. Hannatu Azumi Laja-Balogun and Hon. Justice Jane Esienanwan Inyang delivered on the 29th day of April, 2024 in APPEAL NO:- CA/ABJ/CV/30/2021 BETWEEN THE GOVERNOR OF KOGI STATE & ANOR V ELDER ACHUBA SIMON wherein this Honourable Court ordered that the Applicant is entitled to payment of his monthly salaries, travel allowances and statutory allocations as provided for in the 2017 and 2018 budget of Kogi State amounting to the total sum of N1,070,860,138.00 (One Billion and Seventy Million, Eight Hundred and Sisty Thousand, One Hundred and Thirty Naira) only.**

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4. **AN ORDER OF COURT awarding 10% post judgment interest on the judgment sum.**

5. **AND FOR SUCH FURTHER ORDER (S) as this Honourable Court may deem fit to make in the circumstances of this case.**

As expected, the appellants, upon the service of the application on them, filed a counter-affidavit, alongside a written address, wherein they joined issue with the respondent on the application. The lower court heard it. In a considered unanimous decision (ruling) delivered on the 25th April, 2025, reflected between pages 577 – 602 of the record, the lower court granted majority of the reliefs in the application.

The appellants were dissatisfied with the decision. Hence, on the 29th April, 2025, they launched a 6 – ground notice of appeal, pasted between pages 603 – 609 of the record, wherein they prayed this court for:

I. **AN ORDER ALLOWING THE APPEAL, SETTING ASIDE THE DECISION AND CONSEQUENTIAL ORDERS OF THE COURT OF APPEAL FOR APPARENT WANT OR ABSENCE OF JURISDICTION.**
II. **SUCH ORDERS OR OTHER (CONSEQUENTIAL) ORDERS AS THIS**

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HONORABLE COURT MAY DEEM FIT TO MAKE PURSUANT TO SECTION 22 OF SUPREME COURT ACT AND OTHER ENABLING LEGISLATIONS.

Thereafter, the parties, through their counsel, filed and exchanged their respective briefs of arguments in line with the accepted procedure regulating the hearing of civil appeals in this court. The appeal was heard on the 9th February, 2026.

During its hearing, learned counsel for the appellants, J. B. Daudu, SAN, adopted the appellants' brief of argument, filed on the 28th August, 2025, and the appellants' reply brief, filed on the 28th January, 2025, as representing his arguments for the appeal. He urged the court to allow it. Similarly, learned counsel for the respondents, Femi Falana, SAN, adopted the respondent's brief of argument, filed on the 28th November, 2025 and reply on points of law to the preliminary objection filed on the 6th February, 2026, as constituting his contentions against the appeal. He urged the court to dismiss it.

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Respondent's preliminary objection

The respondents, at the threshold of his respondent's brief of argument, confronted the appeal with a notice of preliminary objection that:

1. **The Appellant's (sic) appeal is incompetent**

2. The Honourable Court lacks the jurisdiction to entertain this appelal.

TAKE FURTHER NOTICE that the grounds upon which the said objections are based are as follows:

GROUND 1

The Appellant's (sic) Appeal is incompetent

PARTICULARS

a. The Appellants have no right of appeal to this Honourable Court in this matter as the appeal relates to the decision of the Court of Appeal from the National Industrial Court.
b. By the provision of section 243(4) of the 1999 Constitution as amended the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

GROUND 2

This Honourable Court lacks the jurisdiction to entertain this appeal.

PARTICULARS

a. The Notice of Appeal filed by the Appellants is invalid and incompetent.

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b. **The Appellants have no right of Appeal to this Honourable Court.**

RELIEF SOUGHT

1. **An order striking out the Notice of Appeal and consequently dismissing this appeal for being incompetent.**

The respondent/objector distilled two issues for determination of the preliminary objection, namely:

a. **Whether by the provision of Section 243(4) of the 1999 Constitution as amended wherein the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final, the Appellant's (sic) appeal is not incompetent.**

b. **Whether this Honourable Court lacks the jurisdiction to entertain this appeal.**

Arguments on the objection

Respondent's submissions

Learned counsel for the respondent, Femi Falana, SAN, submitted that the appeal was incompetent because the ruling of the lower court, appealed against, emanated from its decision in Appeal No. CA/ABJ/CV/30/2021 for which the lower court was the final

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court. He relied on section 243(4) of the Constitution, as amended, ***CBN v. Okpanachi*** (2023) 6 NWLR (Pt. 1881) 425; ***Skye Bank Plc. V. Iwu*** (2017) 16 NWLR (Pt. 1590) 24. He asserted that the incompetence of the appeal rendered any proceedings thereafter a nullity and the appeal liable to be struck out. He cited ***Fort Royal Homes Ltd v. EFCC*** (2021) 8 NWLR (Pt. 1778) 312. He stated that the appellants could not file appeal where there was no right of appeal conferred on them by statute. He referred to ***Macfranklyn Engr. & Ser. v. Daewoo (Nig.) Ltd*** (sic – no citation). He described the appeal as one that intended to create and confer on this court a right of appeal on labour matters which emanated from the NICN in clear contravention of the Constitution. He reasoned that the motion was not an originating motion, but a post-judgment application which the lower court had appellate jurisdiction to determine.

Appellants' contentions.

Learned counsel for the appellants, J. B. Daudu, SAN, contended that the notice of motion, which claimed an unawarded sum of ₦1.7B, was not an appeal, but a fresh suit seeking for new reliefs and the lower court was not reviewing the decision of the NICN, but exercising original jurisdiction in entertaining it. He explained that this court had the power to intervene when the lower court usurped the jurisdiction of a trial court. He posited that where a court acts without jurisdiction, its proceedings are a nullity and it is

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not a decision to which finality clause of section 243(4) of the Constitution, as amended, can attach. He relied on ***Dangana v. Usman*** (2012) LPELR – 25012 (SC). He noted that the lower court had no jurisdiction to entertain the application based on the provisions of section 287(2) of the Constitution, as amended, and section 19(1) of the Sheriffs and Civil Process Act (SCPA), Cap S6 Laws of the Federation of Nigeria (LFN), 2004. He opined that the reliefs in the application did not flow from the earlier decision of the lower court. He stated that a court cannot exercise jurisdiction that is not conferred on it by the Constitution or any valid law. He described the case of ***CBN v. Okpanachi*** (supra) as inapplicable to the case whilst ***Skye Bank Plc v. Iwu*** (supra) does not immunise the lower court from the supervision of this court when it acts *ultra vires.* He took the view that the respondent's stand would lead to judicial anarchy as against guarding jurisdiction of court jealously. He cited ***Agbakoba v. INEC*** (2008) 18 NWLR (Pt. 1119) 489. He maintained that this court has exclusive jurisdiction to hear appeals from the lower court. He referred to ***Anyanwu v. Emmanuel*** (2025) 14 NWLR (Pt. 2006) 531.

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Points of law

Learned Silk for the respondent argued that the lower court had the power to entertain and grant the motion as a post-judgment application under sections 15 and 23 of the Court of Appeal Act and

order 23 rule 5 of the Court of Appeal Rules, 2021. He relied on ***Ezeigwe v. Nwawulu*** (2010) LPELR – 1201 (SC); ***Ramoni v. Oganyomi*** (sic-no citation); ***Jima Properties Ltd. v. Starucci Interiors Ltd.*** (2022) LPELR – 59078 (CA).

Resolution of the preliminary objection

It cannot be gainsaid that the respondent (the objector) *qua* counsel, greeted the competence of the appellants' appeal with a vehement opposition on the footing of a preliminary objection which was erected on binary grounds as displayed supra. Indisputably, the preliminary objection parades a mono mission, *id est,* to abort the life of the appellants' appeal *in limine*. In this wise, it is important to comprehend the purport and *locus* of a preliminary objection in our adversarial system of administration of justice which Nigeria, a legatee of common law principles, imported from the Angolo-American legal system.

A preliminary objection, a pre-emptive strike that has the potency to pierce the heart of a matter, is a specie of objection which, if sustained or upheld by a court, will render further proceeding or determination in a matter unnecessary and put an end to it, see ***Abe v. Unillorin*** (2013) 16 NWLR (Pt. 1379) 183; ***APC v. INEC*** (2015) 8 NWLR (Pt. 1462) 531; ***Jim-Jaja v. C.P, Rivers State*** (2013) 6 NWLR (Pt. 1350) 225; ***Petgas Resources Ltd. v. Mbanefo*** (2018) 1 NWLR (Pt. 1601) 442; ***Ekemezie v. Ifeanacho*** (2019) 6 NWLR

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(Pt. 1668) 356; ***Ebebi v. Ozobo*** (2022) 1 NWLR (Pt. 1810) 165. It is for this reason, possible truncation of a matter in its infancy on its success, that the law commands the court to first handle a preliminary objection, by according it a premier attention, whenever it is raised in any judicial proceeding before any court in Nigeria, see ***Uwazurike v. A.-G., Fed.*** (2007) 8 NWLR (Pt. 1035)1; ***SPDCN Ltd v4'madi*** (2011)14 NWLR (Pt. 1266) 157; ***FBN Plc v. T.S.A. md. Ltd*** (2010) 15 NWLR (Pt. 1216) 247; ***Okereke v. James*** (2012) 16 NWLR (Pt. 1326) 339; ***Ogboru v. Uduaghan*** (2013) 1 NWLR (Pt. 1311) 357; ***Efet v. INEC*** (2011) 7 NWLR (Pt. 1247) 423; ***Sa'eed v. Yakowa*** (2013) 7 NWLR (Pt. 1352) 133; ***Daniel v. INEC*** (2015) 9 NWLR (Pt. 1463) 113; ***SPDCN Ltd. v. Agbara*** (2016) 2 NWLR (Pt. 1496) 353; ***Agbaje v. INEC*** (2016) 4 NWLR (Pt. 1501) 151; ***Allanah v. Kpolokwu*** (2016) 6 NWLR (Pt. 1057) 1; ***Umanah (Jnr.) v. NDIC*** (2016) 14 NWLR (Pt. 1533) 458; ***Esuwoye v. Bosere*** (2017) 1 NWLR (Pt. 1546) 256; ***Achonu v. Okuwobi*** (2017) 14 NWLR (Pt. 1584) 142; ***Solumade v. Kuti*** (2022) 1 NWLR (Pt. 1810) 31. On this score, I have an abiding obligation to pay due respect to this legal commandment, giving the preliminary objection a prime consideration, in order not to insult the law.

In a spirited bid to impregnate the objection with success, the objector's counsel, Femi Falana, SAN, crafted bipartite issues for its determination. A clinical audit of the duo issues, nominated by the objector, flowing from the scintillating arguments proffered thereon,

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amply discloses that they are intertwined judicially and share a common target: to disrobe this court of the jurisdiction to entertain the appeal. Given this interwoven judicial relationship, especially as regards their confluence point on their goals, I will, in order to conserve the drought juridical time and space, fuse them and amalgamate their considerations without neither of them compromising its purpose or losing its identity. Interestingly, the marrow of the conjoined issues is circumscribed within the perimeter of a narrow compass. They chastise the competence of the appellants' appeal on the premises that the appellants are not clothed with the constitutional right to appeal the decision of the lower court which midwifed this appeal. In other words, the nucleus of the objector's *coup de main*, which doubles as his trump card and the thrust of the objection, is that this court is divested of the jurisdiction to hear the appeal because it germinated from the lower court's decision on post-judgment application and devoid of any existing right of appeal as same is proscribed by the provision of section 243(4) of the Constitution, as amended. In a nutshell, the pith of the objector's agitation is that the appeal is plagued by incompetence since it is an offspring of a non-existent right of appeal. As expected, the appellants disowned the objector's stand and took a diametrically opposed stance them to. The main plank of their contention is that the lower court's decision was a progeny of a fresh suit instituted by the objector before it as a court of first

instance, under its original jurisdiction, and *ipso facto* equipped them with the right of appeal against the decision.

At this juncture, it is apropos, perforce, to harvest from the vineyard of the case law, the significances and characteristics of certain foremost terms that will aid and lubricate a seamless determination of the joined stubborn issues. To start with, an appeal is an invitation to a higher appellate court to review the decision of a lower court. It is an elementary law that right of appeal is statutorily allotted to a citizen, government or authority who is peeved by a judgment of a court other than a final court. Put simply, a right of appeal is a statutory right. It does not enure to an aggrieved party by dint of personal investure thereto or via donation by any individual, authority or government. It cannot be harnessed *aliunde* – from another source. It must be bequeathed to a party by the Constitution and other legislations/laws enacted by the bicameral National Assembly or unicameral House of Assembly. The Constitution, as amended, the *fons et origo* of all laws, creates categories of rights of appeal from the trial superior courts of record to the Court of Appeal and from the latter to the Supreme Court, to wit: appeal as of right and appeal with leave of court. They are located in sections 241, 242 and 233 of the Constitution, as amended, see ***Tukur v. Govt., of Gongola State*** (1988) 1 NWLR (Pt. 68) 39; ***FRN v. Dairo*** (2015) 6 NWLR (Pt. 1454) 141; ***Kakih v. PDP*** (2014) 15 NWLR (Pt. 1430) 374; ***Ugo v. Ugo*** (2017) 18 NWLR (Pt. 1597) 218; ***Shittu v.***

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P.A.N. Ltd. (2018) 15 NWLR (Pt. 1642) 195; ***Boko v. Nungwu*** (2019) 1 NWLR (Pt. 1654) 395; ***Dankofa v. FRN*** (2019) 9 NWLR (Pt. 1678) 468; ***Garuba v. Omokhodion*** (2011) 14 NWLR (Pt. 1269) 145; ***Omeh v. Utyo*** (2025) 14 NWLR (Pt. 2004) 1.

Then, a suit, which is co-terminous and *in pari materia* with an action, which embraces a counterclaim or set-off, connotes any proceeding by a party or parties against another in a court of law that will terminate at a judgment/determination, see Bryan A. Garner, *Black's Law Dictionary,* ninth edition (USA, West Publishing Co. 2004) pages 32 and 1572. A fresh action denotes the institution of a new suit before a court of law to seek redress/relief in respect of a dispute. It is usually commenced by filing a new originating process, for instance, a writ of summons, where there is a new cause of action. It is divorced from continuing or reopening an existing matter. The court treats a new action as an entirely separate and different matter. A fresh action must not disrespect the principles of abuse of court process or *res judicata. Per contra,* a post-judgment application means/refers to a motion/request made to the court after it has delivered judgment in a matter seeking further judicial action relating to that judgment. There are an army of species of post-judgment applications, *videlicet:* application for stay of execution of judgment, application to set aside judgment, application for review or reconsideration of judgment, application for correction of clerical errors, application to enforce judgment, application to vary or

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interpret judgment. In essence, a post-judgment application constitutes a continuation of judicial supervision of the judgment process. It is a posthumous process that polices and superintends the propriety and enforcement of judgment of a court.

It admits of no argument that the casus belli *inter partes*, which cries for its resolution by this court in the objection, is whether the proceeding upon which the lower court exercised jurisdiction, which birthed its decision that parented this appeal, was a fresh action or a post-judgment application. In other words, the objection centres on whether the lower court exercised its original or appellate jurisdiction *vis-à-vis* the proceeding as to vest or deprive the appellants of the right of appeal over its decision thereon.

In hunting for a dispassionate legal solution to the legal impasse, I have, in pacification of the expectation of the law, consulted the record – the bedrock of the appeal. My port of call is at the residence of the application (notice of motion) which colonises pages 1 – 478 of the record. The application warehouses the reliefs therein (five of them) at pages 1 and 2 of the record. I had, at the cradle of this judgment, catalogued the reliefs, *ipsissima verba* of the objector who was the applicant therein. A relief/remedy is the redress or benefit that a party asks from a court. It is anything court can do for a litigant who has been wronged or about to be wronged- *quia timet.* A relief, which is usually domiciled at *terminus ad quem*

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or dawn of the appropriate court process, *exempli gratia*, summons, statement of claim, motion or petition, occupies an olympian position in the pyramid of adjudication. Every statement of claim, which usually supercedes a writ of summons, terminates with a prayer/relief. Ditto for an application which commences with reliefs. Hence, its absence in the right process renders it incompetent and amenable to the reserved penalty of striking out, see ***Stowe v. Benstowe*** (2012) 9 NWLR (Pt. 136) 450; ***Oyeyemi v. Owoeye*** (2017) 12 NWLR (Pt. 1580) 364); ***Olleye v. Tunji*** (2013) 10 NWLR (Pt. 1362) 275.

There is no gainsaying the fact that relief, *inter alia*, is one of the determinants of jurisdiction of court. In other words, relief is one of the barometer which a court uses in measuring the presence or absence of jurisdiction over an action, see ***Onwudiwe v. FRN*** (2006) 10 NWLR (Pt. 988) 382; ***Garba v. Mohammed*** (2016) 16 NWLR (Pt. 1537) 114; ***PDP v. Oranezi*** (2018) 7 NWLR (Pt. 1618) 245; ***Gbileve v. Addingi*** (2014) 16 NWLR (Pt. 1433) 394; ***Wamabai v. Donatus*** (2014) 14 NWLR (Pt. 1427) 223; ***Emeka v. Chuba-Ikpeazu*** (2017) 15 NWLR (Pt. 1589) 345; ***Cocacola (Nig) Ltd. v. Akinsanya*** (2017) 17 NWLR (Pt. 1593) 74; ***Dec Oil & Gas Ltd. v. Shell (Nig) Gas Ltd.*** (2019) 14 NWLR (Pt. 1692) 273. A suit which is destitute of a relief is akin to an empty prayer to the Providence for an assistance.

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It deserves to be placed on record, pronto, that the of quintet reliefs, which the objector solicited from the lower court, which beg for the interpretative jurisdiction of this court, fall within the sphere of documents because they are "expressed or described upon any substance by means of letters, figures or marks", as decreed by the provision of section 258 of the Evidence Act, 2011. *Nota bene*, the law grants to the courts unbridled licence to read a document holistically so as to reach and garner a harmonious result of its content, see ***Ojokolobo v. Aremu*** (1987) 3 NWLR (Pt. 61) 377/ (1987) SCNJ 98; ***Unilife Dev. Co. Ltd. v. Adeshigbin*** (2001) 4 NWLR (Pt. 707) 482; ***ACB v. Apubo*** (2001) 5 NWLR (Pt. 707) 482; ***Mbani v. Bosi*** (2006) 11 NWLR (Pt. 991) 400; ***Bunge v. Gov. Rivers State*** (2006) 12 NWLR (Pt. 995) 573; ***Agbareh v. Minra*** (2008) 2 NWLR (Pt. 1071) 378; ***Nigerian Army v. Aminu Kano*** (2010) 5 NWLR (Pt. 1188) 429; ***BFI Group v. BPE*** (2012) 18 NWLR (Pt. 1332) 209; ***Julius Berger Nig. Plc v. T.R.C.B Ltd.*** (2019) 5 NWLR (Pt. 1665) 219. In addition, in construing a document, the court is enjoined by law to apply the literal rule as a canon of interpretation, *id est,* to accord the words employed therein their ordinary grammatical meaning without any tincture of lexical embellishments, see ***UBN v. Ozigi*** (1994) 3 NWLR (Pt. 333) 385; ***UBN Ltd. v. Sax (Nig.) Ltd.*** (1994) 8 NWLR (Pt. 361) 150; ***Enilolobo v. N.P.D.C Ltd.*** (2019) 18 NWLR (Pt. 1703) 168. I will pay due obeisance to these hallowed principles, canons of

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interpretation of documents, so as not to disfigure and irritate the law.

In due fidelity to the desire of the law, I have given a panoramic examination to the quinary reliefs which were chronicled at the *terminus a quo* of this judgment. Interestingly, though some of them suffer from verbosity, they are rebellious to woolliness. A communal construction of the reliefs *in solidum,* as a whole, as enjoined by law supra, clearly reveals their conjoined mission. They orbit around the universe of supplication tailored towards the enforcement of the lower court's decision rendered on the 29th April, 2024 in Appeal No. CA/ABJ/CV/30/2021 between the appellants and the respondent. Put the other way round, the reliefs trace their paternity to the said decision of the lower court. They are staked and parasitic on the enforcement of that decision. In the glaring presence of the nexus between the reliefs in the application and the lower court's decision, I hold the, humble, view that the application comes squarely within the wide landscape of post-judgment application. Indeed, it was a classic exemplification of post-judgment application and bereft of any particle of affinity to a fresh action as pontificated by the appellants. The domino effect comes to this. The lower court acted within the ambit of its limited appellate jurisdiction when it entertained the objector's application, a post-judgment application par excellence. It was *intra vires* its powers to adjudicate over the

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application because it was/is showered with the limited appellate jurisdiction to hear post-judgment application.

In a frantic effort to emasculate the terminal objection, the appellants mounted the defence that the application was a new suit wherein the lower court exercised its original jurisdiction as a court of first instance as it had become *fuctus officio* over the appeal against the decision of the NICN – CA/ABJ/CV/30/2021. In the first place, the foregoing legal anatomy of post-judgment application, conducted in due consultation with the law, clearly castrates the appellants' contention which characterised the application as a new/fresh suit. The juridical survey is an ample demonstration that it (the application) fell outside the hemisphere of a new suit. Indeed, I dare say, it was/is a *pessimi exempli* of a new action. Hence, the lower courts invocation of its original jurisdiction – a court's power to hear and decide a matter before any other court can review the matter- became a *non sequitur* and enveloped in the fog of insignificance. By the same token, the categorisation of the lower court as a court of first instance *vis-à-vis* the determination of the application becomes a footnote. A court of first instance signifies a court of original jurisdiction where evidence is first received and considered, see ***Omeh v. Utyo*** (2025) 14 NWLR (Pt. 2004) 1. The appellants starved this court of any concrete evidence which demonstrated the reception of *viva voce* testimony throughout the gestation period of the application in the lower court.

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My noble Lords, for sake of completeness on the defence, the ancient doctrine of *functus officio,* which owes its ancestry to the Latin Language, implies "having performed his or her office". In the province of judicial function, it translates to the fact that the duty, which the *Judex* is charged by law to perform, has been wholly accomplished without any further authority or legal competence to revisit the controversy between the feuding parties, see ***Alor v. Ngene*** (2007) 17 NWLR (Pt. 1062) 163; ***Dingyadi v. INEC*** (No. 1) (2010) 18 NWLR (Pt. 1224) 1; ***Mohammed v. Husseni*** (1998) 11/12 SCNJ 136/(1998) 14 NWLR (Pt. 584) 108; ***Olowu v. Abore*** (1993) 6 SCNJ (Pt. 1)/(1993) 5 NWLE (Pt. 293) 255; ***Inakoju v. Adeleke*** (2007) 4 NWLR (Pt. 1025) 423; ***Ihedioha v. Okorocha*** (2016) 1 NWLR (Pt. 1492) 147; ***Ngere v. Okuruket 'XIV'*** (2017) 5 NWLR (Pt. 1559) 440; ***Akahall & Sons Ltd.v. NDIC*** (2017) 7 NWLR (Pt. 1564) 194; ***Integrated Realty Ltd v. Odofin*** (2017) LPELR – 48358 (SC). In ***Olowu v. Abolore*** (1993) 6 SCNJ (Pt, 1) 1, at 10 and 11, Karibi-Whyte, JSC, incisively, proclaimed:

> **It is well settled and it is unnecessary citing of decided cases that after finally deciding a matter before it, the Court of Appeal becomes *functus officio*, and lacks jurisdiction to deal with the matter. This is essentially because the court cannot sit on appeal on its own decisions, having**

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> **not ben vested with any power so to do. The constitutional and statutory jurisdiction of the Court of Appeal is to hear appeals from its own decisions. Thus, having finally decided a case before it, it becomes *functus officio* as to that case.**

Be that as it may, the doctrine of *functus officio,* which disables and dethrones the court from sitting on appeal over its own decision, is a flexible principle of law. Its elasticity is located and judicially recgonised in the realm of post-judgment application, *videlicet*: application to set aside default judgments, see ***Mohammed v. Hussein*** (supra); ***A.D.H. Ltd. v. Min., F.C.T.*** (2013) 8 NWLR (Pt. 1357) 493; application for stay of execution, proceedings or injunction, see ***Shodeinde v. Reg. Trustees of Ahmadiya. Movements-in-Islam*** (1980) 19 NSCC 70; application for instalmental payments, see ***A.C.B. Ltd v. Ehiemua*** (1978) 11 NSCC 55; application for correction of clerical errors, see ***A. T. Ltd. v. A.D.H. Ltd.*** (2007) 15 NWLR (Pt. 1056) 118; ***Dingyadi v. INEC*** (supra); ***Famu v. Kassim*** (2013) 7 NWLR (Pt. 1352) 166; ***Citec Int'l Estates Ltd. v. Francis*** (2014) 8 NWLR (1408)139; ***Aroso v. Enterprise Bank Ltd***. (2015) 13 NWLR (Pt. 1476) 306; ***A.-G, Kwara State v. Lawal*** (2018) 3 NWLR (Pt. 1606) 266; application to set aside judgment, see ***Alao v. A. B. Ltd.*** (2000) 9 NWLR (Pt. 672) 264; ***Ede v. Mba*** (2011) 18 NWLR (Pt. 1278) 236; ***TSA Ind. Ltd. v.***

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FBN Plc (2012) 14 NWLR (Pt. 1320) 326; ***Adebayo v. PDP*** (2013) 17 NWLR (Pt. 1382) 1; ***Adeyemi – Bero v. LSDPC*** (2013) 8 NWLR (Pt. 1356) 238; ***Aroso v. Enterprise Bank Ltd*** (2015) 13 NWLR (Pt. 1476) 306; ***APC v. Nduul*** (2018) 2 NWLR (Pt. 1602) 1. Thus, the doctrine of *functus officio*, which drains the court of the *vires* to sit on appeal over its own decision, takes to flight and lies prostrate on confrontation with a post-judgment application. In other words, a court of law, trial or appellate, is imbued with the jurisdiction to entertain a post judgment application even when it has become *functus officio* over a matter. To this end, the lower court acted within the confines of its appellate jurisdiction, albeit a limited jurisdiction in the eyes of the law, when it entertained the objector's application which generated the appeal. It stems from the foregoing legal digestion that the defence of classification of the application with the underserved toga of a new suit, alongside its accompanying side defences, which the appellant invented, paraded and brandished, like the sword of Damocles, to puncture the objection, is a weak-kneed, friable, feeble and moonshine defence which flies in the face of the law as dissected supra. I am, therefore, armed strong in law to crown the application with the deserved insignia of a post-judgment application which the lower court was endowed with its limited jurisdiction to entertain as part and parcel of its appellate jurisdiction *vis-à-vis* its determination of Appeal No. CA/ABJ/CV/30/2021 – an offshoot of the decision of the NICN.

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Having dismantled all the legal roadblocks on the route to the hub of the objection, the coast is now clear to determine the fortune of the appellants' appeal. By sheer happenstance, the feuding parties placed high premium on the provision of section 243(4) of the Constitution, as amended, in the prosecution of their respective cases. In this wise, the provision is the cynosure and pivot of the determination of the knotty objection. Owingly to this kingly status in the objection, it is germane to pluck it out, *verbatim ac litteratim,* whence it is ingrained quietly in the Constitution, as amended, thusly:

> **243(4) Without prejudice to the provisions of section 254 C (5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.**

Indisputably, this comprehension-friendly provision, though a budding one, had fallen for judicial interpretation before this court in a galaxy of cases. In ***Skye Bank Plc. v. Iwu*** (2017) 16 NWLR (Pt. 1590) 24, at 93 and 94, the oracular Newze, JSC, of the blessed memory, insightfully, proclaimed:

> **In other words, for the purpose of the hierarchy of Courts under the Constitution, the trial Court is now a**

Court of coordinate jurisdiction with the said High Courts. As such, the lower Court [Court of Appeal] has jurisdiction, to the exclusion of any other Court in Nigeria, "to hear and determine appeals from [them]", section 240 (supra).

The only difference is that, unlike the Federal High Court and the other categories of High Courts, its [National Industrial Court] decisions are, deliberately, made appealable only to the Lower Court, the Court of Appeal; there being no further appeal beyond that court, section 243 (4). In fact, by the most thoughtful insertion of Section 243 (4) (supra), the draftsperson achieved two things.

Firstly, the apex Court was insulated or shielded from the armada of appeals it would have, without this ouster provision in section 243 (4) (supra), been inundated with having regard to the range of persons under the trial court's jurisdiction (*rationae personae*) and the range and diversity of the subject matters over which it exercises jurisdiction (*rationae*

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> ***materiae***) **in Section 254C(1) – (5) of the 1999 Constitution (as amended).**
>
> **Secondly, the said Section 243 (4) (supra) spares the litigants before the trial Court the forensic drudgery and weariness associated with agitating matters from trial courts to the apex court, often spanning decades, *UBN Plc v. Astra Builders* (W/A) Ltd (2010) 5 NWLR (Pt. 1186) 1.**

In ***Cocacola (Nig.) Ltd. v. Akinsanya*** (2017) 17 NWLR (Pt. 1593) 74 at 127, Eko, JSC, confirmed:

> **My Lords, sections 243 (4) and 243 (6) of the Constitution, as amended, are in *pari materia*. On *stare decis* (sic), I have not seen any basis why we should depart from the earlier decisions of this court which had interpreted the similar or identical provisions. When therefore the Constitution in section 243 (4) thereof directs that "*the decision* of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court SHALL BE FINAL" it means a "point never to be revisited" by a further appeal and that the decision of the Court of Appeal is conclusive and terminal.**

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On this note, I hold that the objection is well taken. It is hereby sustained. It appears to me, as rightly pointed out by the respondent, that the decision of the Court of Appeal delivered on 4th July, 2014 is unappealable to this court by virtue of section 243 (4) of the Constitution. This appeal is clearly an abuse of court's process. It has no law supporting it. See *R-Benkay (Nig.) Ltd. v. Cadbury Nig. Plc.* (2012) LPELR – 7820 (SC), (2012) 9 NWLR (Pt. 1306) 596.

This court has neither appellate nor supervisory jurisdiction to entertain the complaint of the appellants in this purported appeal. The condition precedent for this court to entertain this appeal is the jurisdiction it must have in the first place to entertain it. The jurisdiction is extrinsic to the appeal. Without it, this court cannot competently assume jurisdiction.

No court can render judgment in any incompetent action. The judgment will be a nullity no matter how well conducted. See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341.

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Recently, in ***CBN v. Okpanachi*** (2023) 6 NWLR (Pt. 1881) 425, at page 439, Tijjani Abubakar, JSC, re-echoed the proclamation succinctly:

> **From the provision of section 243 (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) therefore it is very clear to me that appeals emanating from the National Industrial Court cannot find their way to this court under any guise, this is therefore so as rightly found by this court in several decisions rendered on this point.**

The current and inelastic posture of the law, *a priori* this common magisterial pronouncement, warehoused in these *ex cathedra* authorities, which, *proprio vigore,* enjoy finality under section 235 of the Constitution, as amended, is that the penultimate Court of Appeal's (the lower court's) appellate decision in respect of any appeal which germinates from the civil jurisdiction of the National Industrial Court of Nigeria is final, *id est,* not submissive to further judicial review by another court – the apex court. In other words, any appeal which emanates from the lower court under the categorised sanctuary of civil jurisdiction/causes/matters supra is offensive to the letters and spirit of the sacrosanct provision of section 243 (4) of the Constitution, as amended, and *de jure* not amenable to entertainment by this court. Put simply, this court is not

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vested with the requisite jurisdiction and it is *ultra vires* the power of this court to adjudicate over such appeal on the footing of *quo warranto.* The import is that such a decision qualifies as a credible candidate of an unappealable decision and an aggrieved party is destitute of any ounce of right to interrogate its propriety *vel non* by dint of an appeal before this court. It follows that the appellants' appeal, which derives its progeniture from the appellate decision of the lower court, is a flagrant defilement of the law as dissected above. It has fractured one of the inviolable ingredients of jurisdiction invented by this court in ***Madukolu v. Nkemdilim*** (supra) because it exhibits a feature that undermines the jurisdiction of this court to hear it. The destiny of the appeal is obvious. It is marooned in the murky ocean of incompetence. Indeed, in the eyes of the law, it is smeared and corrupted by an indelible incompetence that is incurable in law. The net effect, in the legal district, is that this court is not cloaked with the *vires* to assume jurisdiction to entertain it. Alas, it is a quintessence of stillborn appeal. In the end, I have no choice than to resolve the conflated issues in favour of the respondent/objector and against the appellants.

Having resolved the conjunctive issues in favour of the respondent/objector, the fate of the preliminary objection, which the objector contrived to snuff life out of the appeal in its embryo, is meritorious. Consequently, I uphold the preliminary objection. Accordingly, the appellants' appeal, SC/CV/638/2025, be and is

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hereby struck out for being incompetent. The parties shall bear the respective costs which they expended in the prosecution and defence of the doomed appeal.

Appeal struck out.

OBANDE FESTUS OGBUINYA,
JUSTICE, SUPREME COURT

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CERTIFIED TRUE COPY
Yusuf Ibrahim
REGISTRAR
Supreme Court of Nigeria
26/05/2026
Official

COUNSEL:

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Femi Falana, SAN (with him, Samuel Ogala, Esq. and Efe Iyonu, Esq.) for the respondent.

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