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CASE NOTES

REVISITED: AMAECHI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION*

1.1 Introduction

After many years of being under the sadistic jackboot of military dictatorship, the Federal Republic of Nigeria somehow wobbled unto the path of constitutional democracy on May 29th, 1999. Consequently, party politics and other things incidental thereto took the center stage in the nation's political turf. The year 2007 was to be another election year (the earlier ones being 1999 and 2003), thus ushering in the third transition of democratic rule in the fourth republic. As it is always the case, parties in turn sponsored candidates (as provided by the constitution) for elections in line with the laws of the land - particularly the Electoral Act, 2006 and ultimately the 1999 Constitution of the Federal Republic of Nigeria.

In Rivers and Imo States[1], things went wary. Here, in these states, the names of the candidates who won overwhelmingly at the party's primaries were inelegantly substituted with the name of a total stranger (in Rivers State) and an abysmal loser (in Imo). This generated untoward furore in the polity. Expectedly, this matter was litigated upon. After an unfortunate and time-wasting court case – in the words of the Supreme Court of Nigeria, the Supreme Court unanimously (seven Justices) in a landmark judgment held that the purported substitution was unlawful. The supposed substitution was set aside. So, on the 25th day of October, 2007, the apex court in its judgment, shockingly pronounced the candidate, Rt. Honourable Rotimi Chibuike Amaechi, who was purportedly substituted by his party, Peoples Democratic Party (P.D.P.) and who never contested the election of Governorship of Rivers State of Nigeria, the Governor of Rivers State.

The Judgment, novel in the annals of the nation's political history, sent ripples across the land. One of the nation's newspapers called it a 'judicial coup'. Many other reactions abound. Curiously enough, the court did not give reason for its judgment – it reserved it to 18th day of January, 2008. Happily, the court has lived up to its promise. Now, this paper examines this epic judgment with a view to discovering whether or how far the judgment is in consonance with the law.

The law report relied upon with respect to the judgment in issue was the Nigerian Weekly Law Reports (N.W.L.R.) edited by Chief Gani Fawehinmi, S.A.N.[2] It was reported in (2008)5 N.W.L.R. (part 1080) – Amaechi V. Independent National Electoral Commission.

1.2 Summary of Facts of the Case

The appellant (Rt. Hon. Chibuike Rotimi Amaechi), a member of the Peoples Democratic Party (P.D.P.) was one of the eight candidates who contested the primaries for nomination as P.D.P. candidate for the Rivers State Governorship election scheduled for the 14th day of April, 2007. The result of the primaries shows that the appellant polled 6,527 votes out of a total of 6,575 votes. The second respondent (Celestine Omehia) did not contest at the primaries. Pursuant to the primaries, the P.D.P. (the third respondent) forwarded the appellant's name to the Independent National Electoral Commission (I.N.E.C.) – the first respondent as the Governorship candidate for the State on 14th December, 2006. I.N.E.C. subsequently published the appellant's name as P.D.P. candidate for the State. Soon after rumour became rife that the appellant's name was about to be substituted. The appellant went to court to stop P.D.P. from substituting his

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[1] Two of the States among others that make up the Nigerian Federation. See section 3(i); First schedule, part I, 1999 Constitution.

[2] Senior Advocate of Nigeria.

name or disqualifying him except in accordance with the provision of the Electoral Act, 2006.

Subsequently, on the 2nd of February, 2007, the P.D.P. sent the name of the 2nd respondent Celestine Omehia to the I.N.E.C. as its gubernatorial candidate in substitution for the appellant. I.N.E.C. effected the substitution. The reason for this substitution was that the name of the appellant was submitted in error. The substitution was done during the pendency of the appellant's suit. The appellant as plaintiff approached the Federal High Court Abuja, by writ of summons, and in his amended statement of claim, claimed the following declarations and an order of perpetual injunction: A declaration that the option of changing or substituting a candidate whose name is already submitted to I.N.E.C by a political party is only available

(i) To a political party and/or the I.N.E.C. under the Electoral Act, 2006, only if the candidate is disqualified by a court order.

(ii) A declaration that under section 32(5) of the Electoral Act, 2006, it is only a court of law, by an order that can disqualify a duly nominated candidate of a political party whose name and particulars have been published in accordance with section 32(3) of the Electoral Act, 2006.

(iii) A declaration that under the Electoral Act, 2006, I.N.E.C. had no power to screen, verify or disqualify candidate once the candidate's political party has done its own screening and submitted the name of the plaintiff or any candidate to the Independent National Electoral Commission (I.N.E.C.).

(iv) A declaration that the only way I.N.E.C. can disqualify, change or substitute a duly nominated candidate of a political party is by a court order.

(v) A declaration that under section 32(5) of the Electoral Act, 2006, it is only a court of law, after a law suit, that a candidate can be disqualify (sic) and it is only after a candidate is disqualify (sic) by a court order, that I.N.E.C. can change or substitute a duly nominated candidate.

(vi) A declaration that there are no cogent and verifiable reasons for the defendant to change the name of the plaintiff with that of the 2nd defendant candidate of the P.D.P. for April 14th, 2007 Governorship Election in Rivers State.

(vii) A declaration that it is unconstitutional, illegal and unlawful for the 1st and 3rd defendants to change the name of the plaintiff with that of the 2nd defendant candidate as the Governorship candidate of P.D.P. for Rivers State in the forthcoming Governorship Election in River State, after the plaintiff has been duly nominated and sponsored by the P.D.P. as its candidate and after the 1st defendant has accepted the nomination and sponsorship of the plaintiff and published the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006, the 3rd defendant having failed to give any cogent and verifiable reasons and there being no High court order disqualifying the plaintiff.

It is instructive to state here that the prayer above is stated verbatim for two reasons. One, as shall be seen later, the jurisdiction of the Supreme Court to entertain this suit on appeal later became an issue. And it is trite law that it is the claim before a trial court that determines the jurisdiction of an appellate court. Secondly, it was contended by the learned senior counsel for the respondents, that having not been asked by the appellant, the Supreme Court should not and cannot give unto a party what was never prayed for.

The trial Federal High Court (Nyako J.) found as a fact that the 3rd respondent (P.D.P.) could by cogent and verifiable reasons substitute the 2nd respondent (Celestine Omehia) for the appellant (Amaechi) and the substitution was made within the 60 days stipulated in section ***34(1) of the Electoral Act, 1006***. Although, the trial court found as a fact that the substitution was done within time and was in fact accepted by the I.N.E.C., it however, set aside the substitution on the ground that it was done during the pendency of the trial.

The appellant (plaintiff in the trial Federal High Court) was dissatisfied with the judgment of the trial court, and appealed to the Court of Appeal while the respondent cross appealed which appeal was dismissed by the court of Appeal and the cross-appeals partially succeeded resulting in the further appeal to the Supreme Court. Omehia and P.D.P. also filed cross-appeals.

1.3 Treatment of Issues on Appeal by the Supreme Court

From a careful reading of all the issues raised for determination by the parties[3] as they related to the appeal and cross-appeals, the central issue to be decided in this appeal is whether or not the trial court and the Court of Appeal were correct in their conclusion that the reason given by the Peoples Democratic Party (P.D.P.) for substituting Amaechi with Omehia satisfied the requirement of section 34 of the Electoral Act, 2006[4]. This is the substratum of the entire case[5]. For ease of reference, the said section provides:

> *"34(1)A political party intending to change any of its candidate for any election shall inform the commission of such change in writing not later than 60 days to the election.*
>
> *(2) Any application made pursuant to subsection(1) of this section shall give cogent and verifiable reasons.*
>
> *(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section."*

In a well-considered judgment, the Supreme Court, on the whole, after a careful examination and construction of the said section, held that the reason "error" given by P.D.P. to I.N.E.C. for the substitution of Omehia for Amaechi was wrong. Oguntade, J.S.C., delivering the lead judgment said:

> *"I observe earlier that Amaechi's case was that Omehia did not contest as a candidate in the P.D.P. primaries. The question is – what 'error' made it possible for a non-candidate at PDP primaries to be named the PDP candidate in the place of eight candidates who contested and of whom Amaechi came first? It seems clear that the reason given by P.D.P. for the substitution of Omehia for Amaechi was patently untrue and certainly unverifiable.[6]"*

It is noteworthy to state that in construing the said section 34, Electoral Act, 2006, the Supreme Court had recourse to its interpretation of same in the similar case of Ugwu v. Ararume[7]. So the court in Ararume considered the issue whether or not the reason 'error' satisfied the requirement of section 34 of the Electoral Act, 2006 in a situation where Engineer Ugwu who came 16th in the P.D.P. primaries for the Governorship of Imo State was substituted for Senator Ifeanyi Ararume who came first. The court per Nikki Tobi examined the section extensively:

> *"Taking section 34(2) in the context of primaries in particular, I have no doubt in my mind that the subsection is not only important but has an imperative content; considering the general object intended to be secured by the 2006 Act. It is certainly not the intention of the Act to gamble with an important aspect of the electoral process, such as primaries in the hands of a political party to*

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[3] See Amaechi V. INEC (2008)5 NWLR(Pt. 1080) p. 288 - 292
[4] per Oguntade, J.S.C. Amaechi V. INEC, supra, p. 292
[5] per Aderemi, J.S.C., Ibidem. P. 434
[6] Ibidem p. 294
[7] (2007)6 S.C. (pt. 1)88; (2007)12 NWLR (pt. 1048) 365

dictate the pace in anyway it likes, without any corresponding exercise of due process on the part of an aggrieved person.

If a section of a statute contains the mandatory, "shall" and it is so construed complying with the provision follows automatically. I do not think I sound clear. Perhaps I will be clearer by taking section 34(2). The subsection provides that there must be cogent and verifiable reasons for the substitution on the part of the 3rd respondent. This places a burden on the 3rd respondent, not only to provide reasons but such reasons must be cogent and verifiable. If no reasons are given, as in this case, not to talk of the cogency and verifiability of the reasons, then the sanction that follows or better that flows automatically is that the subsection was not complied with and therefore interpreted against the 3rd respondent in the way I have done in this judgment. It is as simple as that. It does not need all the jurisprudence of construction of statute. I know of no canon of statutory interpretation which foist on a draftman a drafting duty to provide for sanction in every section of a statute."

Still on the Ararume's case, Oguntade, J.S.C., supporting Tobi, J.S.C. above, gave reasons why the section must indeed be interpreted thus:

"There are other cases including Dalhatu v. Turaki (2003)7 s.c.1; (2003)15 NWLR (pt. 843) 310 inclining to the same view. My humble view on the decision in Omuoha v. Okafor (supra) is that the same has ceased to be a useful guiding light in view of the present state of our political life. I have no doubt that the reasoning in the case might have been useful at the time the decision was made. It seems to me, however, that in view of the contemporary occurrences in the political scene, the decision needs to be reviewed or somewhat modified. If the political parties; in their wisdom had written into their constitutions that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from the duty to enforce compliance with the provisions of the parties' constitution. The court did not draft the constitution for the political parties. Indeed, the court, in its ordinary duties must enforce compliance with the agreements reached by parties in their contracts. Even if the decision in Onuoha v. Okafor (Supra) might have been acceptable at the time it was made, the contemporary bitterness and acrimony now evident in this country's electoral process dictate that the decision be no longer followed. An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provisions of their constitutions as to the emergence of candidates for elections is one of the major causes of the serious problems hindering the enthronement of a representative government in the country. If a political party was not to be bound by the provisions of its constitution concerning party primaries, why would there be the need to send members of the parties aspiring to be candidates for an electoral offices on a wild goose chase upon which they dissipate their resources and waste time. Would it not have made better sense in that event for the political party to just set out the criteria for the emergence of their candidates for electoral offices and then reserve to

themselves (i.e. the parties) the ultimate power to decide who should contest and who should not."

The above reasoning of the learned law Lord is indeed very true when viewed against the peculiar background of our politics – which someone and his lieutenants regarded unashamedly as a 'do or die affair'. If the courts are disallowed, and may it never happen, to check politicians and their lawless stunts, this country will hastily slip into anarchy, to say the least.

I have quoted (above) the Supreme Court in *extenso* to demonstrate the fact that it gave that section the scrutiny it deserves.

The counsel for the respondents made heavy weather of the argument that political parties have the right to put up as candidates for elective offices any person they deem fit. In driving home their point, they relied on previous decisions of the Supreme Court – ***Dalhatu v. Turaki***[8] ***and P.C. Onuoha v. R.B.K. Okafor***[9] and some other cases. The court rightly resolved this argument:

"Counsel would appear however, to have overlooked the fact that there were no provisions of the Electoral Act similar to section 34(1) of the Electoral Act, 2006 in force at the time these cases they relied upon were decided. Put simply, section 34(2) has altered the law and made those case inapplicable in a case as this. It must be borne in mind that the political parties were a creation of section 221 of the 1999 constitution. The same 1999 constitution in section 222 imposes the duty on parties to file copies of their constitution with Independent National Electoral Commission (INEC). Nothing in a party's Constitution can override or be superior to the constitution of Nigeria and the Laws validly enacted by the authority of the Nigerian constitution.[10]*"*

The reasoning of the Court in the excerpt above is doubtlessly infallible. It is also significant, for purpose of emphasis, to make known that the Electoral Act, 2006 is different, in terms of provisions for substituting candidates, from the 2002 Electoral Act. If parties were not be bound by the result of their party primaries in the nomination of candidates at any level, why would it be necessary for I.N.E.C. representatives to be present at and monitor the proceedings of such congress? It seems that the obligation on the parties to inform INEC of such congress was to ensure that INEC would know and keep a record of candidates who won at primaries.

The Electoral Act, 2006 does not contain what is meant by "cogent and verifiable" reason. This lacuna or oversight on the part of the draftman was filled by the court by looking outside the Act:

"The meaning of the word 'cogent' as given in the shorter Oxford English Dictionary is stated to be "constraining, powerful, forcible, having power to compel assent, convincing." The same dictionary defines "verifiable" as "that can be verified or proved to be true, authentic, accurate or real; capable of verification." In the light of the above, it seems to me that the expression 'cogent and verifiable reason' can only mean a reason self-demonstrating of its truth and which can be checked and found to be true. The truth in the reason given must be self-evident and without any suggestion of untruth. The reason

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8 (2003)7 SC. 1; (2003)15 NWLR (pt. 843)310

9 (1983)2 SCNLR 244

10 Amacchi v. INEC (2008)5 NWLR (pt. 1080)p. 296

given must be demonstrably true on the face of it so as not to admit of any shred of uncertainty[11]"

Another pertinent issue that was resolved was whether the Court of Appeal was right to have allowed fresh evidence on appeal. The Court of Appeal which had decided in the Ararume's case that the reason 'error' did not meet the requirement of section 34 later decided in the present case that the fact that Amaechi had been indicted was good enough a reason for not following the decision of the Supreme Court and its own in the Ararume's case. The Court of Appeal also held that I.N.E.C, based on Amaechi's alleged indictment, was right to allow the substitution sought by P.D.P.

On 10-4-2007, I.N.E.C. brought an application before the Court of Appeal for leave to call fresh evidence on appeal. The evidence sought to be called on appeal was the ruling of Kuewunmi, J. given on 30-3-2007 in a suit in which Amaechi had been challenging his "purported indictment." Kuewunmi, J. did not decide the case on the merit but rather on the narrow ground that the filling of the suit constituted an abuse of the court process. This suit was dismissed but nothing was decided therein as to whether or not Amaechi was indicted. The Supreme Court reasoned (and rightly, too) that the Court of Appeal relied on the judgment of Kuewunmi, J. to arrive at the conclusion that Amaechi was indicted.

The Supreme Court, after referring to a plenitude of judicial authorities wherein such evidence may be admitted, came to the conclusion that the Court of Appeal wrongly and improperly admitted the evidence and so set it aside. Such evidence could be admitted in the following recognized instances:

(i) it must be shown that the evidence could not have been obtained with reasonable diligence for use at trial.

(ii) The evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive.

(iii) the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

Oguntade (J.S.C.) while reading the lead judgment said:

> *"... evidence to be admitted on appeal... should only be one which is apparently credible in the sense that it is capable of being believed. It is in the light of this that I must say that the reliefs sought by Amaechi in a previous suit could not be regarded as credible evidence as to whether or not he had been previously indicted or whether the Federal Government had accepted a report of such indictment*[12].

The court still trying to justify it decision, cited and relied on its previous decision - Action Congress v. Independent National Electoral Commission[13] where Katsina - Alu, J.S.C. observed (on the provision of section 137[14] (1) (i) of the Electoral Act, 2006 bordering on disqualification of a candidate) that that provision must be read together with other relevant sections of the Constitution in particular section 36(i)[15] as well as the provision in subsection (5) of section 36 that

> *"every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty"*

According to the court, the trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offence of embezzlement or

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[11] Ugwu v. Ararume (supra) per Oguntade, J.S.C. cited in Amaechi v. INEC (supra) p. 297.
[12] Amaechi v. INEC (Supra) p. 303
[13] (2007)6 S.C. (pt. II) 212
[14] See the Electoral Act, 2006, s.137(1)(i)
[15] Section 36(1)of C.F.R.N., 1999 provides for fair hearing

fraud clearly, the imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for these offences by an administrative panel of enquiry implies a presumption of guilt, contrary to section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999. Convictions for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power.[16] An indictment is no more than an accusation, and an accusation cannot amount to guilt. Only a court establish by law can try a person accused of a criminal offence.

The Court examines section 182(1)(i)[17] which borders on the disqualification of a candidate (on indictment) aspiring to the office of a Governor. The provision of this section was inserted in order to :

> *" ensure that only persons of impeccable character and integrity are eligible for the office of a Governor of a state. It is to ensure transparency and high standard of probity in governance "*[18]

However, according to the court, the provision is not:

> *" to be used as an instrument by politicians to hinder the emergence of their opponents or adversaries as Governors. "*[19]

then, the court lamented:

> *" Regrettably, the said provision has been used to witch-hunt and victimize. "*[20]

The court held that in applying the provision of section 182 (1) (i), it must be read and construed with other provisions of the constitution in section 36 (1), (2), (3) (4) and (5). The court finally on this issue of wrongful admission of fresh evidence concluded:

> *" I am satisfied that the court below wrongly and improperly admitted in evidence the ruling of Kuewunmi, J ... as further evidence on appeal. The said ruling proves nothing to show that Amaechi was ever indicted. "*[21]

However, the court was bewildered:

> *"It is difficult for me to understand how the court of Appeal could slip into such error. If one may ask - what was the offence for which the court below held that Amaechi was indicted? "*[22]

Katsina -Alu, J.S.C. was understandable piqued:

> *" the court of Appeal regrettably busied itself with irrelevant issues, such as the EFCC indictment of the appellant and section 308 of the 1999 constitution. "*[23]

Again,:

> *" It is to be observed that both the alleged EFCC report and the government white paper were not before the court of Appeal. So, what informed the court of Appeal's decision that the appellant was indicted. It is a matter of great concern. I say no more except to hold that there was no indictment known to law against the appellant. "*[24]

The learned Law Lord was not done with the court of Appeal :

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16 Amaechi v. INEC (supra) p. 304
17 See S. 182(1)(i) 1999 C.F.R.N.
18 Amaechi v. INEC p. 305
19 Ibidem p. 305
20 Ibidem p. 305
21 Ibidem p. 308
22 Ibidem p. 308
23 Ibidem p. 330
24 per Katsina-Alu, J.D.C., Amaechi v. INEC (supra)p. 330-331

" I am trouble by the fact that the court of Appeal behaved as if it was not bound by the decisions of this court. It proceeded non - chalantly and came to the conclusion that the appellant was indicted by the E.F.C.C. "[25]

One of the issues raised in this appeal by way of cross -appeal by Omehia and PDP is that by virtue of section 308[26], Amaechi suit against Omehia should abate and be discontinued following the swearing - in of Omehia as Governor of Rivers state. The court of Appeal, on this issue, after distinguishing this appeal from judicial authorities cited by counsel for Omehia and P.D.P, came down on the side of law and justice and rightly held that in an election related matter where the status of Omehia as Governor is being challenged, the immunity conferred on him by the constitution is equally in question. Omehia does not enjoy any immunity from being sued in this suit. Affirming the position of the court of Appeal on this point, the Supreme Court helds:

"Section 308 above is not meant to deny a citizen of this country his right of access to the court. It is a provision put in place to enable a Governor, while in office, to conduct the affairs of governance free from hindrance, embarrassment and the difficulty which may arise if he is being constantly pursued and harassed with court processes of a civil or criminal nature while in office. It is a provision designed to protect the dignity of the office.

Section 308 cannot be relied upon where the nature of the suit is such that the res in dispute will be destroyed permanently with the effluxion of time. To hold that section 308 can be involved in a matter relating to the eligibility for a political office where the tenure of such office has been set out in the constitution will translate into denying to a plaintiff his right of access to the court. It is only in a case where a deferment of plaintiff's right of action is not likely to destroy the res in the suit that section 308 can be invoked. In this case, to ask Amaechi to wait till the end of Omehia's tenure of office as Governor before pursuing his suit is to destroy forever his right of action."[27]

This is indeed an ingenious exposition of section 308.

In Omehia's cross-appeal, the issue was raised and argued tenaciously that the Court of Appeal having held that Amaechi's suit was hinged on nomination and sponsorship of a candidate for election by a political party should have held that Amaechi's suit was not justiciable. The Supreme Court in holding that the matter was not an election matter, and hence justiciable:

"The simple answer is that even if Amaechi's suit related to nomination and sponsorship of a candidate for an election, it is still not an election matter. This is a pre-election matter premised on the breach of Amaechi's right derived from under the constitution of Nigeria and section 34 of the Electoral Act, 2006. The court has a duty to enforce the provisions of the laws validly enacted by the National Assembly pursuant to powers derived from the

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[25] Ibidem p. 333

[26] See S. 308, C.F.R.N., 1999 on immunity clause against legal proceedings.

[27] Ibidem p. 310

constitution. The Electoral Atc, 2006 is one of such laws."[28]

Notable was the argument put up for Omehia by his counsel, that the proceeding was void *ab initio* on the ground that oral evidence was not taken in a suit commenced by writ of summons and statement of claim. The court, stating that it is trite law that the court does not make declarations of right either on admission or in default of defense without hearing evidence, went on to examine the record of the trial Federal High Court. From the record, it is clear that all the parties including I.N.E.C., Omehia and P.D.P agreed that exhibits (all documents) be put in evidence by consent. None of them afterwards disputed the contents of the said documents. The judgment of the trial High Court was based on the said exhibits not on the admission made by any of the parties. Conclusively, the court held that the parties had chosen to follow a procedure which was not the usual practice but which nevertheless satisfied the requirement of fair hearing.

It was also contended that arising from the fact that an election has been conducted in Rivers State, all courts have lost their jurisdiction to hear this case. Counsel for Omehia predicated this submission on Section 140 (1) of the Electoral Act, 2006 and section 285(2) of the 1999 constitution.

Section 140(1) of the Electoral Act, 2006:

> *"(1) No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the constitution or of this Act and in which the person elected or returned is joined as a party."*

Section 285(2), 1999 constitution:

> *"(2) There shall be established in each state of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunals which shall, to the exclusion of any court or tribunal have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house."*

At the commencement of this paper I reproduced *seriatim* the substance of the reliefs which Amaechi had sought from the trial Federal High Court sitting in Abuja presided by Nyako, J. Amaechi's suit was not an election petition - he was not challenging the validity of Omehia's election to the office of the Governor. Amaechi's suit was filed on 26/01/2007. The Governorship elections for Rivers State were not held until 14/04/2007. Amaechi's suit did not and could not have questioned anything about the election yet to be held. The Supreme Court reasoned that Amaechi as a citizen had simply exercised his right of access to the court as guaranteed him under section 36 of the 1999 constitution. The court referred to section 178(1) and (2)[29]

According to the court, section 178 (which deals with election of Governor generally) is a provision of the 1999 constitution intended to ensure a smooth transition from one administration to another. It is not a provision to destroy the right of access to the court granted to a citizen under section 36 of the same constitution. In the same way, section 285(2) relied upon by counsel cannot be construed to destroy the jurisdiction which the ordinary courts in Nigeria have in pre-election matters. According to the court, were the court to construe section 285(2) as having the effect of ousting the jurisdiction of the ordinary court in pre-election matters, all that a defendant would need to do to

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[28] Ibidem p. 311

[29] 1999 Constitution, F.R.N., see this section.

frustrate a plaintiff is to stall for time and obtain adjournment to ensure that a plaintiff's case is "killed" once an election is held. On how a court should interprete the constitution, the court said:

> *"It is settled law, that the court in interpreting the provision of a statute or constitution, must read together related provision of the constitution in order to discover the meaning of the provisions. The court ought not to interprete related provisions of a statute or constitution in isolation and then destroy in the process the true meaning and effect of particular provisions"*[30]

So, the Supreme Court is of the view, and rightly too, that the jurisdiction of the ordinary courts to adjudicate in pre-election matters remain intact and unimpaired by sections 178(2) and 285(2) of the 1999 Constitution.

1.4 What Relief Ought the Court Grant?

Having resolved all the issues including preliminary objections (by INEC and P.D.P) in all the parties briefs, the court unavoidably came to the most significant part of the appeal - what relief ought the court grant? The Court allowed the appeal of Amaechi and dismissed the cross-appeals of Omehia and P.D.P. No order was made as to costs. Again, the question - but what is the nature of the relief to be granted Amaechi given the circumstances of this case? The court pondered greatly on this too:

> "I now consider the relief to be granted in this case even if elections to the office of Governor of Rivers State had been held. As I stated earlier, there is no doubt that the intention of Amaechi, garnered from the nature of the reliefs he sought from the court of trial, was that he be pronounced the Governorship candidate of the P.D.P for the April, 2007 elections in Rivers State. He could not have asked to be declared Governor"[31].

The court observed that the election to the office of the Governor of Rivers State was held while Amaechi's case was in court. Now, the court asked the mother of all questions:

> *"Am I now to say that, although Amaechi has won his case, he should go home empty-handed because elections had been conducted into the office?"*[32]

The court reasoned that to merely declare Amaechi the P.D.P candidate (and nothing more) will amount to Pyrrhic victory:

> *"It is futile to merely declare that it was Amaechi and not Omehia that was the candidate of the P.D.P. What benefit will such declaration confer on Amaechi?"*[33]

The court rightly and wisely saw the utmost need for obviating hindrances, constraints and or technicalities in the dispensation of substantial justice. The court went on a meaningful voyage and approvingly cited the sage of English jurisprudence, Lord Alfred Denning, M. R. in Packer v. Packer[34]:

> *"What is the argument on the other side? only this, that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst*

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30 Amaechi v. INEC, supra, p. 314
31 per Oguntade, J.S.C., Amaechi v. INEC, p. 215
32 Ibidem
33 Ibidem
34 (1954) p. 15

the rest of the world goes on and that will be bad for both."

The court equally alluded to the opinion of our own Eso, J.S.C (as he then was):

"One stream that permeates through all these decisions, and I hold the view that this is good sign for the administration of justice in this country, is the clear, unadulterated water filled with great concern for the justice of the case. The signs are now clear that the time has arrived that the concern for justice must be the overriding force, and action of the court. I am not saying that ex debito justiciae, by itself is a cause of action, it is to be the basis for the operation of the court, whether in the interpretative jurisdiction or basic attitude towards the examination of a case."[35]

The court observed that the sum total of its recent decisions is that the court must move away from the era when adjudicatory power of the court was hindered by a constraining adherence to technicalities.[36]

The court noted the following points:

1. Omehia never argued that he took part in the primaries of P.D.P and so did not manifest a desire for the office of Governor of Rivers State. It was Amacchi who vied in the primaries, and won overwhelmingly.
2. There is no doubt that the P.D.P having previously sent Amaechi's name to INEC by letter on 26/12/2006 could only validly remove the name or withdraw it if it complied section 34(2) of the Electoral Act, 2006. The cogency or the verifiability of the reason for the withdrawal of a candidate's name has to be considered against the background that INEC officials, pursuant to section 85 of the Electoral Act, 2006, would have been present at a meeting or congress of a party called for the nomination of a candidate for an elective office I.N.E.C would thus know the result of such party primaries.

(3) When a political party later asks to substitute a candidate, it does so against the background of the result of the primary election. If there is a problem with a candidate who came first, then the party will opt for the 2nd and later 3rd etc in that order. There is simply no room for a candidate who never contested a primary election in such setting to emerge a party candidate.

The court considered the provision of section 221[37]:

"No association, other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election."

This section is very crucial to this case. The court after a thorough perusal of it, made this exposition:

"The above provision effectually removes the possibility of independent candidacy in our elections; and places emphasis and responsibility in elections on political parties. Without a political party a candidate cannot contest for elective offices is therefore between parties. If as provided in section 221 above, it is only a party that canvasses for votes, it follows that it is a party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party in winning but at the end of the day, it is the party that wins or loses an

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[35] Engineering Enterprises Contractor Company of Nigeria v. Attorney General of Kaduna State (1987)1 N.S.C.C. 60 at 613; (1987)2 NWLR (pt. 57) 381

[36] Amaechi v. INEC (supra) p. 316

[37] 1999 constitution

election. I think that the failure of respondents' counsel to appreciate the overriding importance of the political party rather than the candidate has made them lose sight of the fact that whereas candidate may change in an election but the parties do not."[38]

The court reasoned that the purported removal of Amaechi, having being declared unlawful by the court for being in breach of section 34(2), Electoral Act, 2006, therefore Amaechi was never removed as P.D.P candidates. If the law prescribes a method by which an act could be validly done, and such method is not followed, it means that the act could not be accomplished. What P.D.P did was merely a purported attempt to effect a change of candidate. But as it did not comply with the only method laid down by law to effect the change, the consequence in law is that the said change was never effected. So, it was in fact Amaechi who contested the election and not Omehia! The court saw Omehia no more than a pretender to the office. The only unchanging feature is that P.D.P. was the sponsoring party.

The counsel for P.D.P. argued that Amaechi who had not contested the election could not be declared the winner. The court responded thus:

"With respect to counsel, I think he missed the central issue which is that it was in fact Amaechi and not Omehia who contested the election. Omehia remained no more than a pretender to the office. The one unchanging feature is that P.D.P. was the sponsoring party"[39]

As to the argument that it is a negation of democracy to declare Amaechi a winner, the court said:

"... It must be borne in mind that this suit was brought to court as an intra-party dispute. At the time it was brought, the question concerning which party or candidate would win the Governorship election in Rivers state was irrelevant and not an issue. It simply had to do with question which candidate would run for P.D.P. I ought not to allow my approach to this case to be influenced by a consideration of the fact that P.D.P. eventually won the election."[40]

Like the dog in the manger and like one of the harlots appearing before the court of King Solomon[41], Omehia seeing that he cannot longer reap from his own wrong, urged the court to annual the election and then order a new election. The court wisely refused to accede to this argument and expressed the disaster that would arise if it so does:

"The argument that a new election ought to be ordered, overlooks the fact that this was not an election petition appeal before this court but rather an appeal on a simple dispute between two members of the same party. If this court falls into the trap of ordering a new election, a dangerous precedent would have been created that whenever a candidate is improperly substituted by a political party, the court must order a fresh election even if the candidate put up by the party does not win the election."

For the umpteenth time the court stated what its duty ought to be:

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38 Amaechi v. INEC (Supra)p. 317-318
39 Ibidem p. 318
40 Ibidem
41 1 King 3 : 16 - 28

"The court must shut its mind to the fact that a party wins or loses the election. The duty of the court is to answer the question which of two contending candidates was the validly nominated candidate for the election. It is a purely an irrelevant matter whether the candidate in the election who was improperly allowed to contest wins or loses. The candidate that wins the case on the judgment of the court simply steps into the shoes of his invalidly nominated opponent whether as loser or winner."[42]

The court eventually placed reliance on the combined effect of section 147[43] and paragraph 27 of the first schedule[44] and held that the Supreme Court has no jurisdiction to nullify and order a fresh one.

Leaning in favour of the above, Aderemi, J.S.C., who also heard the appeal, anchored his judgment on equity:

"To now order a fresh election will be most unjust. The political parties that contested the election against peoples Democratic Party and lost out will now have an unmerited second bite... To now order a fresh election in the circumstances of this case will negate all notions of equitable principle and of course, true justice. This is why I have had resort to equitable principle for one purpose alone and that is to assist law. After all, equity does not make law, it is only there to assist law"[45]

As Onnoghen, JSC, who also heard the appeal, observed, that the appellant's senior counsel does not deny the fact that the relief (declaring Amaechi Governor) was being prayed for the first time in this court (Supreme Court) but argued that the said relief is a necessary consequence flowing from a declaration of the nullity of the purported substitution or change of the appellant as the nominated candidate of the P.D.P. for the River State Governorship election which the Supreme Court is empowered to grant by virtue of Order 8 Rule 12 (2) and (5) of the rules of the Court.[46]

Order 8 Rule 12 (2):

"The court shall have power to draw inferences of fact and to give any judgment and make any order, which ought to have been given or made, and to make such further or other order as the case may require, including any order as to cost."

The court relied on section 22 of the Supreme Court Act which provides:

"The supreme court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the supreme court thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and

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42 Amaechi v. INEC, Supra, P. 319
43 See the provision of section 147, Electoral Act, 2006
44 See the provision of paragraph 27, First Schedule, Electoral Act, 2006
45 Amaechi v. INEC, supra, p. 453
46 Ibidem p. 393

prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court."

It is indeed evident from this provision that, there is a plenitude of powers available to the Court to do which the justice of the case demands. With this provision, no doubt, the court can grant consequential reliefs even where such have not been specifically prayed for. Conclusively, the court accordingly declared Amaechi the person entitled to be the Governor of River State.

The facts and circumstances of this case, particularly and peculiarly the behaviour and conduct of the respondents - Independent National Electoral Commission (INEC), Celestine Omehia, People Democratic Party (P.D.P) calls for more to be desired. The truth is that the conduct of the three-some fell short of standard and expectation, to say the least. With all sense of humility and respect, the court of Appeal's attitude in this matter, put conservatively, was not good enough.

The Supreme Court in its characteristic manner took a swipe on the *dramatis personae* whose conducts were bereft of expectations. The court did this most conservatively:

"I go further to say that it is now gradually becoming a cardinal feature of judiciary impartiality in this country that judges serving on the bench should be and indeed, are generally political eunuchs. But sight must never be lost of the fact that Judges do decide political matters daily. They are human beings like the rest of members of our larger society. When restraint in passing harsh comments in their judgment on matters of monumental importance to our society and they (Judges) subtly send across wise counseling in the most temperate language, which is often ignored, a Judge must then realize that a just decision is more likely to rear its head if he (the judex) recognizes the responsibility to be very frank and pungent in his advice. It is in the true realization of this highly valued judicial responsibility that I shall approach this case that produces a sour taste in the mouth"[47]

The ignoble role played by the P.D.P did not escape the vigilance of the court:

"The political parties in Nigeria are the creation of the constitution. They therefore have an important stake in flying high and loftily the banner of the rule of law. In this case, the PDP did not live up to the standard. It did everything possible to subvert the rule of law, frustrate Amaechi and hold the court supine and irrelevant. Sadly, INEC and Omehia also did the same."[48]

The judicial sarcasm of the court in this case and that of Ararume[49] on the attitude of P.D.P demonstrates the brashness that permeated the whole gamut of Chief Olusegun Obasanjo's government.[50] It is quite appropriate to state that the erstwhile president did tell the nation that the 2007 election was a do or die affair for P.D.P, the ruling party! This explains the tricks, intrigues and hanky-panky employed by the party in the Ararume's and Amaechi's case, to mention just a few. It was a regime that was

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47 Amaechi v. INEC (supra) per Adeyemi (JSC) p. 449

48 Ibidem per Oguntade, J.S.C., p. 321

49 Ugwu v. Ararume (2007)12 NWLR (pt. 1048)

50 Obasanjo ruled Nigeria between May 29, 1999 - May 29, 2007

characterized by much disrespect for the law - particularly disobedience to court order. The refusal to release funds of Lagos State Government (over the creation of local government) in the face of a court order, is still fresh in the memories of many a Nigerian. The party expelled senator Ifeanyi Ararume and Rt. Hon. Rotimi Amaechi for daring to take it to court:

> *"When however, the court below and this court gave the judgment in the Ararume's case, whatever uncertainties there might have been, in relation to the interpretation of section 34 of the Electoral Act were removed. This is more so when parties to the case had given an indication to the court below to abide with the judgment of this court in the Ararume's case. The said judgment was given on 5/10/2007 when the elections were still 9 days away. But P.D.P. on 10/4/2007 put out a publication exhibit 'F', expelling Ararume and Amaechi from P.D.P. At the time of the expulsion, Ararume had shortly been declared by this court to be the validly nominated candidate of the P.D.P. Amaechi's appeal was still pending before the court below"*[51]

When P.D.P expelled Ararume upon his victory in the court, what perception would the public have of the court? The Supreme Court remarked on the unwholesome effect of P.D.P brashness:

> *"In relation to Ararume, the message sent to the general public translated into saying that the P.D.P. was not bound to obey the judgment of the court. The P.D.P. by publicly announcing that it had no candidate for Imo State Governorship election, clearly destroys the efficacy of the judgment in favour of Ararume given by this court in order to destroy his chances at the election..."*[52]

In relation to Amaechi, the court Observed:

> *"In relation to the Amaechi's case, the message to the public was that whatever judgment the court gave was irrelevant. Worse still, P.D.P. went before the court below to ask that the appeal in Amaechi's case be struck out on the ground that with his expulsion, the court had lost the jurisdiction to hear the case. Let me say for the avoidance of doubt that the expulsion of Amaechi from P.D.P. at the time when his appeal was pending before the court below was unlawful and amounts to a calculated attempt to undermine judicial authority"*[53]

The court further berated P.D.P.:

> *"The reliance on the plainly contemptuous conduct of P.D.P. in expelling Amaechi as a basis to deny the court below the jurisdiction to hear his appeal is particularly alarming"*[54]

Aderemi, J.S.C. puts it pungently:

> *"Despite the fact that he (appellant) was in court, the 1st respondent (INEC) went ahead to conduct the gubernatorial election and later swore-in the 2nd respondent 1st cross-appellant as the Governor of Rivers State. The conduct of the 1st respondent, to say the least,*

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51 Amaechi v. INEC, supra p.321-322
52 Ibidem p. 322
53 Ibidem 322
54 Ibidem p. 322

is a brazen disrespect to the institution called "The judiciary", it is a terrible slap on the face of the law. Must the court of law fold its arms and allow this brazen lawlessness go unchecked? I think not. While the case was still pending before the trial court, the 3rd respondent (P.D.P.) went ahead to dismiss the appellant as a member of its party, in my view, to foist a situation of fait accompli. I still repeat that the primary duty of the court is to do justice to all manner of men who are in all matters before it."[55]

The way the court of Appeal behaved in its handling of this appeal makes one perturbed, to say the least. Take for instance, how could the court have struck out Amaechi's appeal on the flimsy (pardon my language) ground that he had been expelled by the P.D.P.? Again, when the Supreme Court ordered the court of Appeal to hear the appeal quickly, the court of Appeal ruled that the Supreme Court's order needed further clarification before it could be obeyed!

Yet again, how can one rationalize the distinguishing made by the court of Appeal between the Ugwu V. Ararume case and Amaechi V. I NEC with regend to section 34 (2) of the Electoral Act, 2006? With respect, the Court of Appeal merely split hair in its feeble and unimpressive attempt to differentiate between six and half a dozen. The Supreme Court made an incisive comment on this:

"Remarkably and perhaps unexpectedly, the court below (the court of Appeal) did not react as it should in punishing this behaviour of the P.DP. More shocking, the court below struck out Amaechi's appeal on the ground that he had been expelled from P.D.P. during the pendency of his appeal. And when this court, following an appeal by Amaechi against the order striking out his appeal, ordered that the appeal be heard expeditiously, the court below at the behest of Omehia's counsel, supported by INEC's and P.D.P.'s counsel, concluded that the judgment of this court which ordered that the appeal be heard expeditiously needed further clarification before it could be obeyed."[56]

The presiding Law Lord, Katsina-Alu, J.S.C., puts it more graphically:

""The court of Appeal regrettably busied itself with irrelevant issues, such as the E.F.C.C indictment of the appellant and section 308 of the 1999 Constitution. It is to be observed that both the alleged EFCC report and the Government white paper were not before the Court of Appeal. So, what informed the Court of Appeal's decision that the appellant was indicted. It is a matter of great concern."[57]

This attitude of the Court of Appeal was not without its monumental ugly effect:

"These occurrences needlessly brought the administration of justice to disrepute and I am greatly alarmed by these development. The result of this calculated and improper behaviour was that the respondents ensured that the elections for the Governorship office in Rivers State were held and Omehia sworn in as Governor before Amaechi's appeal was heard. Before us in this appeal, the respondents who had improperly prevented the

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55 Ibidem p. 451
56 Amaechi v. INEC (Supra)p.323
57 Ibidem p. 330-331

expeditions hearing of the appeal, argued that this court has no jurisdiction on the ground that elections had been held and further that because Omehia has been sworn in as Governor of River State, he now enjoys immunity from civil suits. In other wards, they relied on their own wrong doing to oust the jurisdiction of this court"[58]

1.5 Conclusion

The writer has painstakingly, blow by blow, examined the judgment of the Supreme Court in this case review. Copious excerpts have been brought out from the judgment itself in order to convey (and convince) to the readers the reasoning of the court.

Going by the analysis herein and more particularly from the sutured passages from the judgment, the writer holds the view that, aside from the fact that the judgment will serve as lighthouse to practitioners of our democracy, now and in future, much erudition has been shown by the Supreme Court. The brave displayed of wits sprinkled with courage by the apex Court is hereby commended to other courts, particularly the Court of Appeal.

The courts (all the courts) should and must realize that they have the duty of telling our leaders (and those vying for elective offices) that, in the wise words of Muhammed, J.S.C:., "politics is not anarchy; it is not disorderliness. It must be punctuated by justice, fairness and orderliness"[59] and the writer hasten to add, not a 'do or die affair'.

Finally, the writer urges all Nigerians, notwithstanding the sour taste of this case and what it appears to portend, to repose hope in the soothing balm of the Supreme Court:

"This court and indeed all the courts in Nigeria have a duty which flows from a power granted by the constitution of Nigeria to ensure that citizens of Nigeria, high and low get the justice which their case deserves. The powers of the courts are derived from the constitution not at the sufferance or generosity of any other arm of the Government of Nigeria. The judiciary like all citizens of this country cannot be a passive on-looker when any person attempts to subvert the administration of justice and will not hesitate to use the powers available to it to do justice in the cases before it."[60]

In all, of this sagacious judgment, let it be said all over the land:

"And all Israel heard of the judgment which the king had judged; and they feared the king: for they saw that the wisdom of God was in him, to do judgment."[61]

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[58] Per Oguntade, J.S.C., Amaechi v. INEC (supra)p. 323
[59] Amaechi v. INEC (supra) p. 419
[60] Per Oguntade (J.S.C.) Amaechi v. INEC (supra)p.324
[61] The Bible, 1 Kings 3 : 28 (King James Version)