

**IN THE FCT AREA COUNCIL APPEAL TRIBUNAL
HOLDEN AT ABUJA
BEFORE THEIR LORDSHIPS**

**HON. JUSTICE SULEIMAN BELGORE
HON. JUSTICE YUSUF HALILU
HON. JUSTICE JUDE O. ONWUEGBUZIE**

**CHAIRMAN
MEMBER I
MEMBER II**

**PETITION NO: FCT/ACET/EP/31/2022
APPEAL NO: FCT/ACEAT/AP/12/2022**

BETWEEN:

ALL PROGRESSIVES CONGRESS (APC)

} **APPELLANT**

AND

- 1. PEOPLES DEMOCRATIC PARTY (PDP)**
- 2. HON. YAHAYA GARBA**
- 3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**
- 4. RESIDENT ELECTORAL COMMISIONER
FCT, ABUJA.**
- 5. THE RETURNING OFFICER, ABAJI AREA
COUNCIL.**

} **RESPONDENTS**

JUDGMENT

This Judgment covers Appeal Number **FCT/ACEAT/AP/12/2022**.
The Appeal is at the instance of the All Progressive Congress

(APC) and was considered with Appeal Number **FCT/ACEAT/AP/11/2022**. They were both argued on the 7th September 2022.

The Respondents in this appeal are:

- (1) Peoples Democratic Party (PDP)
- (2) Hon. Yahaya Garuba
- (3) Independent National Electoral Commission (INEC)
- (4) Resident Electoral Commissioner FCT, Abuja.
- (5) The Returning Officer, Abaji Area Council.

At the lower tribunal, it was the 1st petitioner that was filed on 23-3-22. The Petitioner then sought an order nullifying the result of the election and the Tribunal granted the order sought.

Chief Ologunorisa SAN, who argued the appeal for the Appellant referred to their Brief of Argument filed on 8-9-22 and adopted it as their arguments in this appeal. The learned Silk specifically referred to S. 285(5) of the 1999 Constitution (as amended) and submitted as follows:

"The Petitioners must file their petition within 21 days of the declaration of

result. This is constitutional and not Electoral Act.

In law, these two petitions cannot co-exist. The later one must be an abuse of the former. For the later one to be valid, the former one must be withdrawn. This later petition was filed 63 days after declaration of result. This is an abuse of Court Process".

The learned SAN then referred to page 432 of the Lower Tribunal Judgment and queried the rationale for granting the reliefs in the 2nd petition when they themselves had held there was no cause of action.

On the Supreme Court Judgment that the Lower Tribunal blatantly ignored, Mr. Ologunorisa SAN cited the case of **IDRIS VS. ANPP (2000) 8 NWLR (PT. 1088) 1**, where it was held that courts are entitled to take Judicial Notice of any court's Judgment including that of Supreme Court.

Learned Silk finally urged us to allow this appeal.

Chief Karina Tunyan SAN appeared for the 1st and 2nd Respondents. He adopted their Brief of Arguments filed in respect of the earlier appeal number **FCT/ACEAT/AP/11/2022** as their arguments in this 2nd appeal.

The learned SAN said the parties are not the same in the two petitions and therefore no abuse of court process. And that the prayers are even different in them.

On the Supreme Court Judgment that was delivered after the election of 12-2-2022, Chief Tunyan SAN submitted that any party relying on any court judgment must produce it in court.

Finally, the learned Silk urged us to dismiss this appeal.

As for Mr. Mohammed Esq. of counsel to the 3rd, 4th and 5th Respondents, they conceded to the appeal, hence no Brief of Argument was filed.

We have considered this appeal vis-a vis the issues involved. There are two basic issues involved. They are issues of abuse of court process as regards or in relation to the two Petitions filed at the Lower Tribunal on 23-3-22 and 21-4-22. While the 2nd germane issue is the implication of the Supreme Court Judgment that held that the Federal High Court and Court of Appeal had no jurisdiction to entertain the pre-election matter involved same having been filed outside the prescribed 21 days.

The arguments of both Chief Ogunorisa SAN for the appellant and Chief Karina Tunyan for 1st and 2nd Respondents are fully on record as can be gleaned from the record of appeal. And the treatment of the two issues and our resolutions of same are also in the Judgment on FCT/ACEAT/AP/11/2022 just delivered

a few minutes ago. Those findings and pronouncements and decisions are therefore made applicable to this appeal **FCT/ACEAT/AP/12/2022**.

In effect therefore, the two main issues in this appeal are resolved in favour of the appellants. The Judgment of the Lower Tribunal is hereby set-aside.

**HON. JUSTICE SULEIMAN BELGORE
CHAIRMAN**

**HON. JUSTICE YUSUF HALILU
MEMBER**

**HON. JUSTICE JUDE O. ONWUEGBUZIE
MEMBER**