

7IN THE AREA COUNCIL ELECTION APPEAL TRIBUNAL
OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

HON. JUSTICE S.B. BELGORE - CHAIRMAN
HON. JUSTICE Y. HALILU - MEMBER I
HON. JUSTICE J.O. ONWUEGBUZIE - MEMBER II

APPEAL NO: FCT/ACEAT/AP/14/2022
PETITION NO: FCT/ACET/EP/03/2022

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) } **APPELLANT**

AND

1. MURTALA USMAN
2. ALL PROGRESSIVE CONGRESS (APC) RESPONDENTS
3. CHRISTOPHER ZAKKA
4. PEOPLE'S DEMOCRATIC PARTY (PDP) }

JUDGMENT

In the matter of Election into the office of Chairman of Abuja Municipal Area Council held on the 12th of February, 2022. The Appellant herein is appealing against the decision of the Area Council Election Tribunal, Abuja.

Being dissatisfied with the judgment of the Trial Tribunal, the Appellant appealed against same vide its Notice of Appeal filed on 25th August, 2022.

In the Notice of Appeal dated the 25th August, 2022 and filed same date, Independent National Electoral Commission (INEC) as Appellant challenged the decision of the Lower Tribunal upturning the election and return of Christopher

Zakka who was 1st Respondent at the Lower Tribunal and 3rd Respondent on Appeal, as the winner of the election into the office of the Chairman Abuja Municipal Area Council (AMAC) held on the 12th February, 2022.

Appellant, Independent National Electoral Commission (INEC) raised eight (8) grounds in their Notice of Appeal.

Brief of argument dated the 9th September, 2022 was filed same date and same was served on the Respondents.

Murtala Usman the 1st Respondent filed his brief of argument and same was adopted by his counsel, Sharafa Yusuff, Esq.

All Progressive Congress (APC) which is the 2nd Respondent filed its brief of argument and banished its Preliminary Objection into the said brief in page 4 of its 2nd Respondent's brief of argument.

Permit me to mention here that both senior counsel for the 3rd Respondent Chief Karina Tunyan, SAN, and KehindeOgunwumiju, SAN conceded to the Appeal filed by Independent National Electoral Commission (INEC).

I am therefore left with the briefs of argument filed by the 1st and 4th Respondents to determine this Appeal.

I am determined to consider the said Preliminary Objection in view of its Fundamental nature to

determine whether or not, Independent National Electoral Commission (INEC) can maintain the Instant Appeal arising from the Judgment of the Trial Tribunal.

The grounds of the objections raised by the 2nd Respondent in its Preliminary Objection are as follows:-

1. That the Appellant Independent National Electoral Commission (INEC) by its Constitutional Mandate is a neutral and independent institution that is not clothed with powers to file an election petition or appeal against the Judgment of an election petition.

2. That the act of the Appellant in filing the Instant Appeal offends its Constitutional Mandate of neutrality.
3. That by filing the instant; Appellant Independent National Electoral Commission (INEC) has sided with the 3rd Respondent & 4th Respondent who are aggrieved with the decision of the Trial Tribunal and have filed separate Appeals challenging same.
4. That by the decision of the Court of Appeal in ***INEC & ORS VS. EJEZIE & ORS (2010) LPELR – 4311 (CA)***, Appellant Independent National Electoral Commission (INEC) lacks the locus standi to file and maintain the Instant Appeal.

5. That the Appeal is liable to be struck-out.

Arguing on the issues afore-raised, Liman, SAN cited Section 133(1) of the Electoral Act, 2022 which is in parimateria with Section 137(1) of the Electoral Act, 2010 (as amended) to say that the said provision identified persons who can file election as follows:-

1. A Candidate in an election
2. A Political Party which participated in the election

It is the argument of Liman, SAN that by the said provision, Independent National Electoral Commission (INEC) cannot file an Election Petition or Appeal as done in this case.

Liman, SAN, further contended that Independent National Electoral Commission (INEC) is involved in an election by virtue of the provision of paragraph 15 of the 2nd Schedule to the Constitution of Federal Republic of Nigeria 1999 (as amended) which saddles Independent National Electoral Commission (INEC) with the responsibility of conducting election.

It is further the argument of senior counsel that Independent National Electoral Commission (INEC) shall remain, always, a Respondent in any election challenged and not an Appellant in this situation.

The authority of ***INEC & ORS VS. EJEZIE & ORS (2010) LPELR 4311 (CA)***;

INEC VS. JIME & ORS (2019) LPELR – 48305 (CA);

INEC VS. YUSUF (2020)4 NWLR (Pt. 1714) 374, 415 B – D were cited to show that Independent National Electoral Commission (INEC) does not have the requisite competence to file Appeal or Election Petition.

Learned senior counsel on the whole urge the Tribunal to strike-out the Appeal filed by Independent National Electoral Commission (INEC).

Independent National Electoral Commission (INEC) in its reply brief as Appellant argued that being a party at the Tribunal, it has the right to file

the Instant Appeal against the decision of the Lower Tribunal being an aggrieved party.

The authority of *P.D.P VS. SHERIFF & ORS L.G.C* unreported but decided on the 12th July, 2017 was cited in aid of this argument.

It is the submission of learned counsel for the Appellant that the allegation against Independent National Electoral Commission (INEC) (Appellant) were weighty hence the need to say its side of the story to put the record straight.

It is further the contention of learned counsel for the Appellant that the Instant Appeal has its peculiarity hence not same with the case of *INEC & ORS VS. EJEZIE & ORS (Supra)* cited by Liman, SAN.

On the whole, the Tribunal was urged to dismiss the Preliminary Objection.

TRIBUNAL:-

As stated from the outset, we are determined to consider the locus of the Independent National Electoral Commission (INEC) in filing the Instant Appeal as Appellant, to avoid getting involved in an academic exercise.

This is so because locus standi of a party goes to the root of jurisdiction.

See *ACHONYE & ANOR VS. EZE & ANOR (2014) LPELR – 23782 (CA)*, where it was held that where there is no locus standi there is no jurisdiction in the Court to entertain the action/suit of the Plaintiff cum Claimant.

Similarly, where an action is improperly constituted either on the part of Claimant and or Defendant, the action is incompetent and no adjudication can validly be undertaken on the Suit by a Court.

We have carefully read the argument of both parties i.e APC (2nd Respondent) and Independent National Electoral Commission (INEC) (Appellant) with respect to the Preliminary Objection challenging the competence of the Appeal filed by Independent National Electoral Commission (INEC) arising from the decision of the Trial Tribunal which approved the election and return of Christopher Zakka as the duly elected Chairman of Abuja Municipal Area Council (AMAC).

We have also read with interest the provisions of paragraph 15 of the 2nd Schedule to the Constitution of Federal Republic of Nigeria 1999 (as amended) which has clearly spelt out the duty and responsibility of Independent National Electoral Commission (INEC) to include conducting elections.

We have further looked at the provision of Section 133(1) of the Electoral Act, 2022 which is in parimateria with Section 137(1) of the Electoral Act, 2010 (as amended).

The said provision does not contemplate Independent National Electoral Commission (INEC) as part of those who can maintain an election petition challenging outcome of an election.

In ***INEC & ORS VS. EJEZIE & ORS (2010) LPELR 4311 (CA)*** the Court of Appeal has stated the fact that Independent National Electoral Commission (INEC) is always supposed to play an impartial role in the conduct of election.

Permit us to also mention here that Independent National Electoral Commission (INEC), always, is a necessary party in any election petition, being a statutory Respondent by virtue of its duties and responsibilities as an umpire.

See ***AMRP & ANOR VS. FAROUK & ORS (2008) LPELR – 3783 (CA)***.

Above position was amplified by the Court of Appeal in ***INEC VS. JIME & ORS (2019) LPELR – 48305 (CA)*** in the following words:-

“Independent National Electoral Commission (INEC) is expected to be and must be seen as an impartial umpire. Impartial means not supporting one person or group more than another unbiased. They are necessary parties and must therefore be joined as Respondents to the Petition, but that doesn’t mean that they should go as far as they did in this Petition to indulge in filing objection to the Petition and filing Appeals against the Ruling and Judgment of the Tribunal.”

Similarly, Abba Aji (JSC) in the case of ***INEC VS. YUSUF (2020)4 NWLR (Pt. 1714)*** had this to say:-

“This appeal by the Appellant is making a mountain out of a molehill. It is more surprising that it is the Appellant that is and ought to be a neutral party in this contest that has forwarded itself in this inconsequential Appeal. It appears to me that it is acting well as a paid piper that is desperate to dictate the tone by all means possible.”

Even though Appellant’s counsel seemed bent on arguing his grounds and issues raised therein by insisting to be a necessary party in this appeal, we are left in a complete state of consternation as to how and umpire can turn around to become an Appellant in this situation more so that the law

establishing Independent National Electoral Commission (INEC) as a body is clear.

The law, we must say, cannot command an impossibility. The essence of justice is to do what is true and correct.

The Independent National Electoral Commission (INEC) in this Appeal being an umpire, made a mountain out of a molehill when it decided to file the Instant Appeal in an election it conducted thereby tainting its neutrality. Liman, SAN, has said it all. We agree no less with him.

Learned senior counsel's argument represents truly the position of the law. We so hold.

On the authority *MADUKOLU VS. NKEMDILIM (1962) SC*, this Appeal Tribunal

cannot jurisdictionally speaking consider the Instant Appeal, same having been filed by the Appellant without the necessary locus hence robbing this Tribunal of the necessary jurisdiction.

Same is liable to be struck – out.

Of small things, the law knows no cure... this is expressed in the latin maxim Dennis – non – juratles. We say no more.

Every other brief of argument filed in response to the Appellant brief of argument shall go with the wind.

You cannot put something on nothing and expect it to stand. ***UAC VS.MCFOY.***

On the whole therefore, Appeal No. **FCT/ACEAT/AP/14/2022** filed by Independent National Electoral Commission (INEC) is hereby struck-out for above reasons.

HON. JUSTICE S.B. BELGORE
(CHAIRMAN)
1ST OCTOBER, 2022

HON. JUSTICE Y. HALILU HON. JUSTICE J.O. ONWUEGBUZIE
(MEMBER I) (MEMBER II)
1ST OCTOBER, 2022 1ST OCTOBER, 2022