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SERIOUS CONSTITUTIONAL ISSUES BEFORE THE SUPREME COURT, ABUJA, NIGERIA.

AMICUS CURIAE BRIEF OF ARGUMENTS:

SERIOUS CONSTITUTIONAL ISSUES.

By

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The **Awards Enforcement Proceedings in London** resulted in three major reported cases:

- **IPCO (Nigeria) Ltd v. NNPC (2005) 2 Lloyd's Law Report 328 (High Court)**
- **IPCO (Nigeria) Ltd v. NNPC (2009) 1 ALL ER (Comm.) 611 (High Court)**
- **IPCO (Nigeria) Ltd v. NNPC (2009) 1 ALL ER (Comm.) 657 (Court of Appeal)** where **new Principles of Law** in **Arbitral Award Enforcement** under the **NEW YORK Convention** were established by the **Court of Appeal, England**.

  Richard Akinjide was one of the Arbitrators.

He represented **Nigeria** as the **Co-Agent** and a **Counsel** in the case **Cameroon v Nigeria** at **The World Court, The Hague** for **about 8 (eight) years** involving **International Boundary Dispute** from **Lake Chad** to **The Atlantic Ocean**. He was a member, for **four (4) years,** of the team of **International Jurists** that drafted **The Law of The Sea-Convention** otherwise known as **"The Constitution of The Sea"** which is the **biggest Convention** ever sponsored by the **United Nations (UN)**. **Chief Richard Akinjide** signed that **Convention** and **The Final Act** on behalf of **Nigeria at Montego-Bay, Jamaica**. **Publications** of **AKINJIDE & CO** series which started with **"Advocacy, Ethics and The Bar"** have now reached **50 (fifty)** issues and circulates world-wide. **Chief Richard Akinjide** established trusts in the **Universities of Ibadan**, **Jos and Cambridge (England) and the Nigerian Law School for Annual Prizes** in **Law**. **Ten**

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48. Do Not Devalue The Naira.

49 Moving Nigeria Forward

50 Amicus Curiae Brief Of Arguments: Serious Constitutional Issues.

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC NO:

SC/141/2011

APPEAL NO:

CA/A/117/2011

SUIT NO:

FHC/ABJ/650/2010

BETWEEN:

1. BRIG. GEN MOHAMED BUBA MARWA
APPELLANTS

2. CONGRESS FOR PROGRESSIVE CHANGE

AND

1. ADMIRAL MURTALA NYAKO (RTD)

2. THE PEOPLES DEMOCRATIC PARTY
RESPONDENTS

3. INDEPENDENT NATIONAL ELECTORAL

COMMISSION (INEC)

AMICUS CURIAE BRIEF OF ARGUMENTS

BY CHIEF RICHARD AKINJIDE, CON, SAN

INVITED BY THE SUPREME COURT

Introduction

1.1 This is a **Brief of Arguments** filed by **Chief Richard Akinjide, CON, SAN** as ***amicus curiae*** in this matter before the **Supreme Court.** Following the invitation to me by the **Supreme Court** as ***amicus curiae*** in this matter, the following processes were made available to me:

a) The 254 page Record of Appeal to the Supreme Court;

b) The 33 page Supplementary Record of Appeal;

c) The Brief of Arguments of the 1st and 2nd Appellants;

d) The Brief of Arguments of the 1st Respondent; and

e) Other processes filed in the matter.

1.2 I have carefully read the processes which are very relevant to the discharge of my duties to the **Supreme Court** as ***amicus curiae.***

My duties as *Amicus Curiae*

1.3 In the discharge of my duties in this matter as Court-appointed ***amicus curiae***, I bear in mind the duty placed on me by law as stated by **Lord Salmon** (as he then was) in **ALLEN** v. **SIR ALFRED McALPINE & SONS LTD (1968) 2 QB 229** at **266 paragraphs F-G** as follows:

> **"I had always understood that the role of an amicus curiae was to help the court by expounding the law impartially, or if one of the parties were unrepresented, by advancing the legal arguments on his behalf"**

1.4 I accept to help the Court**,** in this noble role and will discharge my duties as ***amicus curiae*** impartially and to the best of my **ability and understanding according to the best traditions of the legal profession**.

Short Statement of the facts leading to this appeal

1.5 Following the gubernatorial election held on **April 14, 2007** in **Adamawa State,** the **3rd Respondent** (**INEC**) declared the **1st Respondent** (**ADMIRAL MURTALA NYAKO (RTD),** the winner of the said election. The **1st Respondent** was sworn in on **May 29, 2007** as the **Governor of Adamawa State**. The **1st Respondent** held office as the Governor of Adamawa State and continued to do so until **February 26, 2008** on the strength of the **April 14, 2007 election**.

1.6 The victory of the **1st Respondent** at the **April 14, 2007** election was **successfully challenged** at the **Governorship and Legislative Houses Tribunal** for **Adamawa State resulting in the annulment of the said election.** On **February 28, 2008,** the **Court of Appeal** affirmed the decision of the Election Tribunal and **ordered a fresh election (re-run)**. The re-run was held on **April 26, 2008** and the **1st Respondent won the re-run election.** Following the re-run election of **April 26, 2008, the 1st Respondent** was again sworn in and he took the **Oath of Office and the Oath of Allegiance on April 30, 2008** as the **Governor of Adamawa State.**

1.7 Following a notice by the **1st Respondent (INEC)** that the Governorship election for **Adamawa State** would hold in **January, 2011**, the **1st Respondent** commenced this action in the **Federal High Court, Abuja** seeking, among others, declaration that his tenure in office as the **Governor of Adamawa State** would expire in **April 2012** and an order of injunction restraining the **1st Respondent** from conducting any **Governorship election in Adamawa State** as planned.

1.8 The **Federal High Court** gave Judgment in favour of the **1st Respondent** on **February 23, 2011.** The **Court of Appeal** affirmed the Judgment of the Federal High Court on **April 15, 2011.**

1.9 This **Honourable Court,** on **July 8, 2011**, granted leave to the **Appellants** to appeal to this **Honourable Court** against the **Judgment** of the **Court of Appeal** as persons interested.

1.10 The **1st and 2nd Appellants' Brief of Arguments** was filed on **14/7/2011** whereas the **1st Respondent's Brief of Arguments** was filed on **22/9/2011.**

Issues For Determination

1.11 I have read the **Notice of Appeal** in this matter and the **Briefs of Arguments** filed by the **Appellants** and the **1st Respondent**. I distill the following issues as critical for the determination of the appeal, viz:

a) Whether the calculation of the **4 (four) year tenure** of the **1st Respondents** as the **Governor of Adamawa State** ought to be reckoned from **May 29, 2007;** when the **1st Respondent** originally took his **Oath of Office** and **Oath of Allegiance** on the strength of the **April 14, 2007 Governorship election which was nullified by the Election Tribunal and affirmed by the Court of Appeal**; or ought to be reckoned from **April 30, 2008 when the 1st Respondent** took his **Oath of Office** and **Oath of Allegiance** on the strength of the **April 25, 2007 fresh election ordered by the Court of Appeal?**

Put another way:

Which is the extant Oath of Office and **Oath of Allegiance: that of May 29, 2007 or that of April 30, 2008?**

b) Is **Section 180 subsection (2A) of the Constitution of the Federal Republic of Nigeria introduced by Section 18 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010 applicable to the term of Office of the 1st Respondent?**

Arguments on the Issues for Determination

2.1 My Lords, I will argue the two Issues together.

2.2 My **Lords,** it is my submission that the calculation of the **4 (four) year tenure** of the **1st Respondent** as the **Governor of Adamawa State** ought to be reckoned from **April 30, 2008** when the **1st**

Respondent took his **Oath of Office** and **Oath of Allegiance** on the strength of the **April 25, 2008** re-run election ordered by the **Court of Appeal.**

2.3 It is also my submission that **Section 180 subsection (2A) of the Constitution of the Federal Republic of Nigeria** introduced by **Section 18** of the **Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010, effective from July 16, 2010, is not applicable to the term of Office of the 1st Respondent.**

2.4 In this appeal, the following facts are not in dispute:

i) That the original **Oath of Office** and **Oath of Allegiance** taken by the **1st Respondent** on **May 29, 2007** was on the strength and premise of the **April 14, 2007 election.**

ii) That the said **April 14, 2007** Governorship Election by reason of which the **1st Respondent** took the original **Oath of Office** and **Oath of Allegiance** was nullified by the **Election Tribunal** and the nullification was affirmed by the **Court of Appeal on April 15, 2011.**

iii) That the **Judgment of the Court of Appeal** in this matter delivered on

April 15, 2011 is **valid, binding and final**.

iv) The **Court of Appeal** ordered a fresh election when it affirmed the nullification by the **Election Tribunal** of the **April 15, 2007 Governorship election. A re-run election was conducted on April 26, 2008 wherein the 1st Respondent won.**

v) On the strength of the **April 26, 2008 Election ordered by the Court of Appeal, the 1st Respondent took his Oath of Office** and **Oath of Allegiance on April 30, 2008.**

2.5 In the history of Nigeria, the office of Governor of a State was first created by the **1979 Constitution.** It is a creature of the **Presidential**

System of Government introduced by the **1979 Constitution**. By **Section 162 (1) of the 1979 Constitution**, **there shall be for each state of the Federation a Governor**. He is to be the **Chief Executive Officer of the State -** See subsection (2) thereof. **Section 165 (1) and (2)** provided for the tenure of office of the **Governor of a State.** It provided thus:

> **"Subject to the provisions of this Constitution, a person shall hold the office of Governor until-**
>
> - **when his successor in office takes the oath of that office;**
>
> **(2) he dies whilst holding such office;**
>
> **(3) the date when his resignation from office takes effect; or**
>
> **(4) he otherwise ceases to hold office in accordance with the provisions of this Constitution."**
>
> **(2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of 4 years commencing from the date when-**
>
> **(a) he took the Oath of Allegiance and Oath of Office in the case of a person first elected as Governor under this Constitution; and**
>
> **(b) the person last elected to that office took the Oath of Allegiance and Oath of Office or would, but for his death, have taken such oaths"**

2.6 Save for slight re-arrangement, **Sections 162 and 165 of the 1979 Constitution** is in ***pari materia*** with the provisions of **Section 176 and 180** of the **1999** Constitution.

2.7 **Section 180 (1) of the 1999 Constitution** provides:

"**Subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until-**

- **When his successor in office takes the oath of that office; or**
- **He dies whilst holding such office; or**
- **The date when his resignation from office takes effect; or**
- **He otherwise ceases to hold office in accordance with the provisions of this Constitution."**

Section 180 (2) of the 1999 Constitution provides:

"Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when-

(a) In the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and Oath of Office; and

(b) The person last elected to that office took the Oath of Allegiance and Oath of Office or would, but for his death, have taken such oaths"

Section 180 (2A) of the 1999 Constitution (as Amended):

"In the determination of the four year tenure where a re-run election has taken place and the person earlier sworn in wins the re-run, the term earlier spent in office before the day the election was annulled shall be taken into account"

Section 185 (1) of the 1999 Constitution provides:

"A person elected to the office of the Governor of a State shall not begin to perform the function of that office until he has declared his assets and liabilities as prescribed in this

Constitution and has subscribed the Oath of allegiance and Oath of office prescribed in the Seventh Schedule to this Constitution"

The duty of the Court in the interpretation of the Constitution

2.8 My Lords, **Section 6 of the 1999 Constitution** vests **judicial powers** in the Courts established for the Federation. Judicial powers, simply put, relate to the power of the Courts to interpret and apply the law in any given circumstance. The judicial powers conferred on the Courts by the **Constitution** are ***jus dicere*** **and not** ***jus dere.*** Thus, in the **interpretation and application of the law, it is not the business of the Court to make law. That is the special preserve of the legislative arm of Government in accordance with the principle of separation of powers.**

See **Global Excellence Communication Ltd v. Duke (2007) 16 NWLR [Pt 1059] 22**

2.9 In the interpretation of the Constitution, it is the duty of the Court to give effect to the intentions of the framers of the Constitution ***as much as can be gathered from the words of the Constitution*****. That is to say that, in the interpretation of the Constitution, the Court must concern itself with the words used by the Constitution. It is neither the duty of the Court nor within the powers of the court to start looking for the intention of the lawgivers in the abstract. Such legislative intention must exist within the language of the law.**

2.10 Since the business of the Court is to interpret the law and not to make law, the first approach in the interpretation of the **Constitution** is to apply the ordinary grammatical meaning of the words used in the Constitution when the intention of the Constitution is clear and can be captured from the language used. It is only when the meaning of the words used is not readily obvious at the face of the language that the Court will go further to investigate the intention behind the use of the

language and come out with an interpretation or construction that best serves the apparently hidden intention of the lawmakers.

2.11 In **Global Excellence Communication Ltd v. Duke (supra) at 47-48, TOBI JSC** observed:

> **"In the interpretation of the Constitution, the Court is bound by the provisions of the Constitution. Where the provisions of the Constitution are clear and unambiguous, the Court must give a literal interpretation to them without fishing for likely or possible meaning. This is because by clear and unambiguous provisions, the makers of the Constitution do not intend any other likely or possible meaning."**

See **A.G Lagos State v. Eko Hotels Ltd & Anor (2006) 18 NWLR [Pt 1011] 378** at **458 paragraphs B – D, per Tobi JSC –**

> **"Generally, words in a Constitution bear their ordinary grammatical meaning, when the intention of the maker of the Constitution is clear and can be captured at a glance of the language. However, where the meaning is not directly obvious on the face of the language, the court will investigate the intention behind the use of the language and come out with an interpretation or construction that fits the apparently hidden intention. That is one principle of constitutional interpretation. Another principle is that courts are enjoined to give a liberal interpretation to the language of the Constitution in order to achieve the desired purpose of the maker of the Constitution. The court will not embark upon such an exercise where the language is exact, precise and concise and**

therefore not able to admit a liberal interpretation the court will succumb to the clear meaning."

2.12 **Obaseki, JSC** in **A.G BENDEL STATE v A.G FEDERATION (1981) 10 SC 1 at 372**, set out the principles of interpretation of the Constitution into twelve items. Paragraphs 1, 2, 4, 5, 6, 7 and 10 in that succinct categorization are of note and they are:

> **"In the interpretation and construction of our 1979 Constitution, I must bear the following principles of interpretation in mind:**
>
> - **Effect should be given to every word.**
>
> **(2) A construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context**
>
> **(4) The language of the Construction where clear and unambiguous must be given its plain evident meaning.**
>
> **(5) The Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety; a particular provision cannot be dissevered from the rest of the Constitution.**
>
> **(6) While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning.**
>
> **(7) A Constitutional provision should not be construed so as to defeat its evident purpose.**
>
> **(10) Words are the common signs that mankind make use of to declare their intention one to another and when the words of a man express his meaning plainly and distinctly and perfectly, there is no occasion to have recourse to any other means of interpretation."**

2.13 My Lords, the resolution of the issues in this appeal rest mainly on the proper interpretation of the relevant provision of the **Constitution of the Federal Republic of Nigeria**, **particularly Section 180 (2) (a) of the 1999 Constitution.** Both parties agree to this in their respective Briefs of Arguments.

2.14 My Lords, before I come to the interpretation of **Section 180 (2) (a) of the 1999 Constitution,** let me quickly start with **subsection 2A of Section 180 of the 1999 Constitution (as amended).**

2.15 My Lords, **Section 18 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010 introduced a new subsection** into **Section 180 of the 1999 Constitution. I use the word *"new"* advisedly in terms of its language, purpose and effect.** The new **subsection 2A** reads:

> **"In the determination of the four year tenure where a re-run election has taken place and the person earlier sworn in wins the re-run, the term earlier spent in office before the day the election was annulled shall be taken into account"**

2.16 That **new subsection 2A** now provides ***specially*** for the calculation of the four year tenure following a re-run where the person first sworn in wins the re-run. **My Lords,** this subsection is **totally new** to the **1999 Constitution**. My understanding of the above alteration of the **Constitution** is that the new subsection **2A of Section 180** was introduced to deal with a situation which was not dealt with by the Constitution **before that alteration**. Consequently, it is my submission that before the introduction of the new **subsection 2A** of **Section 180 of the 1999 Constitution,** there was no ***special provision*** in the **Nigerian Constitution** dealing with the calculation of the four year tenure following a re-run election.

2.17 My Lords, my understanding of the law is that in the absence of a ***special provision***, the ***general provision*** applies, I submit with respect.

2.18 It is not in dispute that the **general provision** under the **1999 Constitution** regarding the **calculation of the tenure of office of a State Governor** is **Section 180 (2) of the 1999 Constitution. I will now examine Section 180 (2) of the 1999 Constitution in accordance with the principles set out above in Global *Excellence Communication Ltd v. Duke* (supra) and *A.G Bendel State v A.G Federation* (supra). That section** provides:

> **"Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when-**
>
> **(a) In the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and Oath of Office; and**
>
> **(b) The person last elected to that office took the Oath of Allegiance and Oath of Office would, but for his death, have taken such oaths"**

2.19 My Lords, **subsection (b)** above is irrelevant and inapplicable to the facts of the present appeal. The relevant provision is **Section 180 (2) (a) of the 1999 Constitution.** I will now examine same.

2.20 My Lords, the relevant **Oath of Allegiance and Oath of Office** contemplated by **Section 180 (2) (a) of the 1999 Constitution** is that of "**a person first elected as Governor under this Constitution". That *noun phrase* is clear and unambiguous.** My Lords, the **1st Respondent is not a person elected as Governor under the Constitution** vide the **April 15, 2007 Governorship Election. That election of April 15, 2007** was unarguably annulled by the **Election Tribunal and the Court of Appeal affirmed the Judgment of the Tribunal. The 1st Respondent now occupies the office of the Governor of Adamawa State not on the strength of the nullified election but on the strength of the re-run election and the Oath of Office and allegiance based thereon.**

2.21 **The Judgment of the Court of Appeal** copied in the **Record of Appeal is extant, valid, subsisting and final. An election which is annulled by a Court of competent jurisdiction is incapable, in law, of producing** "**a person first elected as Governor under this Constitution".** This point was pointedly determined by the **Supreme Court** in **PETER OBI v INEC (2007) 11 NWLR [1046] 565 at 644 A-G thus:**

> **"When the verdict of the Court of Appeal (Enugu Division) declaring the present Appellant as the rightful person to have won the gubernatorial election of April 2003, was handed down, the effect is that the return of Dr. Chris Ngige as the person who won the election was null and void and of no legal consequences. So, Ngige's oath taking at that time cannot be a point of reference for calculating the four-year term of the Appellants. Ngige was not and cannot be a person first elected as Governor under this Constitution; his election having been declared null and void."**
>
> (emphasis supplied)

2.22 The **Court of Appeal** having nullified the election of the **1st Respondent** in the **April 2007 election,** the **1st Respondent** is not a **person first elected as Governor under this Constitution** on the strength of the nullified election of **April 2007. Another** consequence is that **the Oath of Allegiance** and **Oath of Office** taken by the **1st Respondent** on **May 29, 2007** based on the nullified election **cannot be a valid reference point for the calculation of the four-year term of office**.

2.23 The valid reference point for the calculation of the **four-year term** under the Constitution is a **valid election i.e. the re-run election**. Consequently, the relevant **Oath of Allegiance** and **Oath of Office of the 1st Respondent for purposes of calculating the four year** term

are the **Oath of Allegiance** and **Oath of Office** taken by the **1st Respondent** on **April 30, 2008 pursuant to a valid re-run election.**

2.24 I agree with the **Appellants** that the intendment of the **Constitution** is that a Governor serves a **four-year term** following a valid gubernatorial election or a total of **eight year term, in case of re-election. This is totally different from the question when the four year term starts to run**. **Section 180 (2) (a) of the 1999 Constitution, the four year term started to run only from April 30, 2008 and not otherwise.**

2.25 The fact that the **National Assembly,** in the exercise of its **Constitutional power,** considered it necessary to introduce a new law vide **subsection 2A** of **Section 180** of the Constitution, to make the period spent by a person to be taken into account, in the case of a re-run, where the person earlier sworn in wins the re-run, vindicates the fact that prior to that amendment, such period is not and cannot be reckoned with. **To hold otherwise is to say that the alteration is needless, I submit with respect.**

2.26 The Appellants dwelt so much on the application of the **purposive rule** of interpretation. **To my mind, that approach is faulty**. This is because where the provision of the Constitution is clear and unambiguous; no recourse could validly be made to other norms of interpretation including the purposive approach. See generally:

F.R.N v DARIYE (2011) 13 NWLR [Pt 1265] 521 at 548 B-H.

Item (10) of JSC Obaseki's categorization set out above.

2.27 I would have had recourse to other canons of construction if and when I am of the view that **Section 180 (2) of the 1999 Constitution is unclear and ambiguous. Importantly, the Appellant's did not also indicate in what way Section 180 (2) of the 1999 Constitution is ambiguous to justify the invocation of the purposive rule. The Appellants** did not state how or why **Section 180 (2) of the 1999**

Constitution is susceptible to double or multiple interpretation. They did not even allege so.

2.28 The arguments of the **Appellants** in their **Brief of Arguments** combined the interpretation of both **Section 180 (2) of the 1999 Constitution** and that of **subsection 2A** of **Section 180 of the 1999 Constitution (the new alteration). That is wrong, with respect. Section subsection 2A** of **Section 180 of the 1999 Constitution** was not intended to explain or clarify **Section 180 (2) of the 1999 Constitution. It is distinct in its effect and purpose. Both the new alteration (i.e subsection 2A** of **Section 180 of the 1999 Constitution) and the original Section 180 (2) (a) & (b) of the 1999 Constitution are all clear and unambiguous.**

2.29 It is my opinion and I so submit that if **subsection 2A** of **Section 180 of the 1999 Constitution** was intended to explain or clarify **Section 180 (2) (a) & (b) of the 1999 Constitution,** the **National Assembly** would have said so. But it did not say so. Thus, if **subsection 2A** of **Section 180 of the 1999 Constitution** had provided like:

> **"<u>For the purposes of interpreting subsection 2 (a) of this Section</u>, in the determination of the four year tenure where a re-run election has taken place and the person earlier sworn in wins the re-run, the term earlier spent in office before the day the election was annulled shall be taken into account"**

then the result would definitely be different. **Subsection 2A** of **Section 180 of the 1999 Constitution is separate and distinct in its terms and effects.**

2.30 The question whether **subsection 2A** of **Section 180 of the 1999 Constitution is applicable to the instant appeal is totally different (and I intend to deal with that later) and must not be used to confuse the clear meaning of Section 180 (2) (a) & (b) of the 1999 Constitution.**

2.31 There is nothing in **Section 180 (2) of the 1999 Constitution** suggesting that the period spent in office by the **1st Respondent** before the annulment of his election should be taken into account in calculating the duration of the **four year tenure**. **A Court is not entitled to read into a law what it does not contain. See**

LADOJA v INEC (2007) 12 NWLR [1047] 119 at 243 lines 9 -20.

EHIRIM v I.S.I.E.C (2008) 15 NWLR [Pt 1111] 443 at 475 paragraph E.

<u>The Relevance of PETER OBI v INEC (2007) 11 NWLR [1046] 565</u>

2.32 Reading through the **Briefs of Arguments** filed on both sides, both sides placed heavy reliance on the decision of this Honourable Court in **OBI v INEC (supra). I am minded to say, as *amicus curiae*, that OBI v INEC supra is <u>relevant but limited</u> in its application to the facts of this case. Therefore, care must be taken in its application in this appeal. I want to make this point to put the record and the law straight for future references.**

2.33 Factually speaking, **OBI v INEC** (supra) is **distinguishable from the instant appeal.** The decision in **OBI v INEC is only relevant to this appeal as regards the broad principle of law it laid down i.e that the four year tenure of a State Governor** is to be calculated from the date the **v<u>alidly elected</u> Governor takes his Oath of Office and Allegiance. That is the much OBI v INEC can go. That decision has nothing to do with the calculation of a Governor's four year term of office following a re-run, which is the heart of the present appeal.**

2.34 In **OBI v INEC,** the **Supreme Court** was dealing with the issue whether the tenure of a person who was **<u>wrongly denied of rightful mandate</u>** as Governor of a State should be limited to the unexpired residue of the term left by the **wrongdoer,** i.e the person who has wrongly been enjoying the benefit of the office. The facts of the

present appeal are not on all fours with **OBI v INEC.** In the present appeal, the **1st Respondent who was wrongly in Office** vide **the April 2007 election, also won in the re-run election.**

2.35 It should be noted that if the new **subsection 2A of Section 180** of the Constitution (as amended) was applied in **OBI v INEC, it would make no difference because the facts of OBI v INEC are totally different from the instant appeal.**

The Relevance of LADOJA v INEC (2007) 12 NWLR [1047] 119

2.36 Both sides also placed reliance on **LADOJA v INEC** (supra). The germane issue in **Ladoja's case** was as to whether the period within which **Ladoja's** purported impeachment lasted (11 months) ought to be taken out in the calculation of his four year tenure. **Ladoja's case has nothing to do with when the four year term of a Governor starts to run after a re-run election where the person first sworn in wins the re-run, which is the critical issue in this matter.** In **LADOJA'S Case**, **Ladoja was validly in office** and his four year term was already running before the purported impeachment. I therefore submit that care must be taken in applying the decision in **Ladoja's case** to the fact of the present case. **The decision of the Supreme Court in Ladoja's case was to the effect that, having been validly sworn in, Ladoja's four year term started and continued to run, and that the purported impeachment of Ladoja did not stop the four year term from running.**

Subsection 2A of Section 180 of the Constitution (as amended)

2.37 I submit that **subsection 2A of Section 180** of the Constitution (as amended) does not apply to the present appeal.

2.38 It is not in dispute that the commencement of the **Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010** is **July 16, 2010.** When the **1st Respondent took Oath of Office and Oath of Allegiance on April 30, 2008 following the re-run election, Section**

180 (1) and (2) (a) of the 1999 Constitution conferred on him, as at that date, the right to hold the office of the Governor of Adamawa State for four years counting from April 30, 2008. There is nothing **in subsection 2A of Section 180** of the **Constitution (as amended)** to suggest that it was intended to have retrospective effect.

2.39 If **subsection 2A of Section 180** of the **Constitution** (as amended) is given retrospective effect and to apply to the tenure of the **1st Respondent, it will retrospectively validate an action which the Court of Appeal declared invalid. The Laws of this country abhor legislative judgment.** See **LAKANMI v A.G (WEST) & ORS (1970) 6 NSCC 143.**

2.40 If the **National Assembly** intended **subsection 2A of Section 180** of the **Constitution** (as amended) to have retrospective effect, the **National Assembly** ought to have specifically stated so. **Again,** the said amendment did not claim to be retrospective.

2.41 It is trite law that the Court will strictly construe against the maker any law which has the tendency to take away or abridge the Constitutional right of individuals. See **Peenok Investment Ltd v Hotel Presidential Ltd (1982) 13 NSCC 477.**

2.42 I submit, respectfully, that **subsection 2A of Section 180** of the **Constitution** (as amended) is totally inapplicable to this case.

CONCLUSION

3.1 It is my view and I so submit that **the Oath of Allegiance** and **Oath of Office** taken by the **1st Respondent** on **May 29, 2007** based on the nullified election **cannot be a valid reference point for the calculation of the four-year term of office**. **His four year tenure started to run, in law, following the April 30, 2008 Oath of Allegiance and oath of office taken pursuant to the re-run election as ordered by the Court of Appeal.**

3.2 S**ubsection 2A of Section 180** of the **Constitution** (as amended) is totally inapplicable to this case. **Subsection 2A of Section 180** of the

Constitution (as amended) has no retrospective application and **is only applicable to the tenure of offices in respect of elections conducted *post* July 16, 2010.**

3.3 I commend, with respect, my views and submissions in this my ***amicus curiae*** **Brief and I urge this Honourable Court to** determine this appeal accordingly.

LIST OF AUTHORITIES

1. **ALLEN** v. **SIR ALFRED McALPINE & SONS LTD (1968) 2 QB 229**
2. **GLOBAL EXCELLENCE COMMUNICATION LTD V. DUKE (2007) 16 NWLR [PT 1059] 22**
3. **A.G LAGOS STATE V. EKO HOTELS LTD & ANOR (2006) 18 NWLR [PT 1011] 378**
4. **A.G BENDEL STATE v A.G FEDERATION (1981) 10 SC 1**
5. **PETER OBI v INEC (2007) 11 NWLR [1046] 565**
6. **F.R.N v DARIYE (2011) 13 NWLR [Pt 1265] 521**
7. **LADOJA v INEC (2007) 12 NWLR [1047] 119**
8. **EHIRIM v I.S.I.E.C (2008) 15 NWLR [Pt 1111] 443**
9. **LAKANMI v A.G (WEST) & ORS (1970) 6 NSCC 143.**

November 28 and 29, 2011