

In The Supreme Court of Nigeria

On Friday, the 17th day of April 2015

Before Their Lordships

Mahmud Mohammed	.....	Chief Justice of Nigeria
John Afolabi Fabiyi	.....	Justice, Supreme Court
Suleiman Galadima	.....	Justice, Supreme Court
Olabode Rhodes-Vivour	.....	Justice, Supreme Court
Musa Dattijo Muhammad	.....	Justice, Supreme Court
Clara Bata Ogunbiyi	.....	Justice, Supreme Court
Kudirat Motonmori Olatokunbo Kekere-Ekun	.....	Justice, Supreme Court

SC. 643/2014

Between

Hon. Ifedayo Sunday Abegunde Appellant
*(Hon. Member, Representing Akure North/South
Federal Constituency in the House of Representative)*

And

The Ondo State House of Assembly Respondents
The Clerk, Ondo State House of Assembly
The Speaker, Ondo State House of Assembly

Mr. Olu Ogidan
(1st Factional Chairman, Labour Party, Ondo State)

Mr. Kunle Odidi
(2nd Factional Chairman, Labour Party Ondo State)

1st Factional Chairman, Labour Party
Akure North Local Government, Ondo State
*(For himself and on behalf of all Labour Party
Members, Akure North Local Government, Ondo State)*

2nd Factional Chairman, Labour Party
Akure North Local Government, Ondo State

Chairman, Labour Party
Akure South Local Government, Ondo State
*(For himself and on behalf of all Labour Party
Members, Akure South Local Government)*

Labour Party, Ondo State
Chairman, Labour Party
Ward 9, Akure South Local Government

Alhaji Aminu Tambuwal
(Speaker, House of Representatives)

Barrister Dan Nwanyanwu
(National Chairman, Labour Party)

Reasons for Judgment of the Court

Given by

Musa Dattijo Muhammad. JSC

On 19th March, 2015, having found the appeal and the cross-appeal to which this judgment relates unmeritorious, I dismissed the two and promised to give my reasons today. The reasons are provided anon.

The facts which brought about the two appeals are herein under stated.

The appellant contested and won the Akure North/South Federal Constituency seat on the platform of the Labour Party. He abandoned the party and defected to the Action Congress of Nigeria the A.C.N. He asserts that the factionalisation or division in the Ondo State Chapter of the Labour Party accounts for his defection to the Action Congress of Nigeria.

By an originating summons filed on the 26th January, 2012, the appellant as plaintiff commenced Suit No FHC/AK/CS/31/2012 at the Federal High Court, hereinafter referred to as the trial court, seeking the interpretation of Section 68(1) (a) and (g) of the 1999 Constitution as amended and a declaration thereon that by virtue of the proviso to the section he is entitled to remain the elected member for Akure North/South Federal Constituency inspite of his defection from the Labour Party that sponsored him to the Action Congress of Nigeria, A.C.N. Appellant also urges that the defendants, the respondents herein, be restrained from howsoever tampering with his right to the Federal seat. He filed a six paragraph affidavit in support of his originating summons.

The 1st - 3rd respondents not only contested appellant's claim, they counter-claimed against him. They assert that by virtue of the very proviso to Section 68(1) (g) of the 1999 Constitution as amended, the appellant who, on the basis of the factionalisation or division in the Ondo State Chapter of the Labour Party alone, defected to the Action Congress of Nigeria, automatically ceases to be the elected member for the Akure North/South Constituency. It is defendants' prayers that the seat be declared vacant and the Independent National Electoral Commission ordered to conduct a bye election for the vacant seat. The 1st - 3rd respondents filed an eleven paragraph counter-affidavit in opposition to appellant's originating summons. Their counter-claim is supported by an affidavit, a further and better affidavit and written address.

Appellant's claim as contained in his originating summons and the 1st - 3rd respondents' counter-claim were taken together. The trial court in a considered judgment delivered on 30th May, 2012, while dismissing appellant's claim granted 1st - 3rd Respondents' counter-claim.

Dissatisfied with the trial court's decision, the appellant appealed to the Court of Appeal, Akure Division, hereinafter referred to as the court below, on a Notice of Appeal dated and filed on 26th June, 2012 containing (10) ten grounds. The court in a well-considered judgment delivered on 15th September, 2014 dismissed the appeal and affirmed the trial court's decision.

Still aggrieved, the appellant has appealed to this Court vide his Notice of Appeal filed on 17th September, 2014. It is significant to acknowledge the fact that the 5th and 7th Respondents have also cross-appealed against the Lower Court's judgment by their Notice containing three grounds dated and filed on 19th September, 2014. Notwithstanding the fact that the 5th and 7th respondents/cross appellants did not file any brief of argument in respect of either the main appeal or their Cross-Appeal, the court granted them leave pursuant to Order 6 rule 9 of its rules to advance oral arguments regarding the Cross-Appeal. Respondents to the Cross-Appeal were also allowed to similarly respond. Arguments for and against the Cross-Appeal are a rehash of those advanced in the main appeal. The cross appellants like the appellant in the substantive appeal, insist that the appellant is entitled to keep his seat inspite of his defection from the Labour Party that sponsored him. They argue that fragmentation in the Ondo State Chapter of the Labour Party suffices.

At the hearing of the appeal, parties, except the 5th & 7th respondents in the main appeal, on identifying their respective briefs adopted and relied on same as their arguments for or against the appeal.

The sole issue distilled by the appellant in his brief of argument which issue the respondents to the appeal, except the 5th and 7th seem to adopt as having arisen for the determination of the appeal, reads:-

Whether the Lower Court's interpretation and application of Sections 68(1) (a) (g) and 222(a) (e) and (f) of the Constitution of Federal Republic of Nigeria 1999 (as amended) is valid, when it affirmed the trial court's decision, that a dispute at the state level does not warrant the Appellant's defection and consequently arrived at the conclusion that the national leadership of a political party determine the existence or proof of division in a political party.

On their sole issue, learned appellant's counsel contends that the trial court's interpretation of Section 68(1) (a) and (e) of the 1999 Constitution and the Lower Court's affirmation of same are wrong in law. The position of the two courts that it is only a dispute or crisis which consumes the national leadership of a political party that entitles the appellant who had defected from the party that sponsored him because of the crisis to retain his seat, is not what Section 68(1) (a) and (g) of the 1999 Constitution envisages. A political party, it is contended, exists at various levels, to wit, ward, local government, state and national levels. Crisis at any of these levels, not necessarily at the national level of the party alone, submits learned appellant counsel, fits the division Section 68(1) (a) (g) contemplates as justifying a defection from the political party that sponsored the defector as well as the retention by the defector of his seat. The appellant, it is further submitted, is justified to retain his seat having abandoned the Labour Party that sponsored him because the state chapter of the party is factionalised and divided.

Further arguing the issue, learned counsel contends that the erroneous interpretation made by the two courts below stems from their reliance on and application of particularly Section 222(a) (e) and (f) of the Constitution in the exercise of their interpretative jurisdiction. The rules of statutory interpretation require the two courts to ascribe to the words that make up Section 68(1) (a) and (e) they are asked to interpret, their ordinary literal meaning without more. Section 222(a) and (f) of the Constitution which the courts relied upon to interpret Section 68(1) (a) and (g) only outlines conditions for the eligibility of an association to operate as a political party in Nigeria. It does not, as wrongly held by the courts, in any way

help in defining the type of division provided under Section 68(1) (a) and (e). By erroneously imputing the word "faction" at the national level of the political party and cross-referencing the word into Section 222 of the 1999 Constitution, the courts stand liable for reading into the Constitution what the legislature does not intend. Further relying on *Imah v Okogbe (1993) 9 NWLR (Pt.316) 159 at 173*, *AG Federation v AG Lagos State (2013) 16 NWLR (Pt 1380) 249 at 317* and *Agwuna v AG Federation (1995) LPELR -258 (SC)*, learned counsel urges that the Lower Court's circumscribed statutory interpretation rather than the liberal one be discountenanced.

Concluding, learned counsel submits that the Lower Court's wrong resort to the decisions of this Court in *Federal Electoral Commission v Goni (1983) LPELR-1256 (sc)* and *Abubakar v AG Federation (2007) 10 NWLR (Pt 1041) 178* does not save its judgment. Having failed to imbibe the correct principles of statutory interpretation, the decisions of the two courts, learned counsel insists, must be set-aside. He relies inter-alia on *INEC v Musa (2003) 3 NWLR (Pt 806)*, *Awuse v Odili (2003) 18 NWLR (Pt.851) 180*; *AG Abia State v AG Federation (2005) 12 NWLR (Pt.940) 452 at 503* and *I.M.B. v Tinubu (2001) 45 WRN 1 at 19* and urges that the issue be resolved in their favour and the appeal allowed.

Responding, learned counsel to the 1st - 3rd respondents submits that the facts on the basis of which the appellant sought his reliefs and the 1st - 3rd respondents counter-claimed against him are not in dispute. Appellant contested and won the Akure North/South Federal Constituency seat on the platform of the Labour Party (LP) and that he defected to the Action Congress of Nigeria (A.C.N) following the purported factionalisation of the party. The resolution of the dispute created by these facts, learned counsel submits, requires the communal interpretation and application of Sections 68(1)(g), 221, 222(a)(e) and (f) and 229 of the 1999 Constitution (as amended). The Lower Court in determining whether and how the meaning of these sections relate to these ascertained facts, learned counsel further submits, must be guided by certain rules. Basic among these rules, it is submitted, is the duty on the court to consider the Constitution from which the particular sections emanate as a whole and ascribe to the clear and unambiguous words which make up the sections their ordinary literal meaning. The rules of interpreting provisions of the Constitution, learned counsel contends, are as specially expounded in very many cases. The two courts have dutifully applied the relevant principles correctly and rightly concluded that the type of division envisaged under Section 68(1) (e) of the Constitution is one that affects the entire structure of the political party. The narrow interpretation suggested by learned appellant counsel, it is contended, is legally infeasible. Learned counsel inter-alia relies on *Victor Adegoke Adewunmi Anor v The Attorney General of Ekiti State & 6 Ors (2002) 1 SCNJ 27 at 49*, *Mobil Oil Nigeria Ltd v Federal Board of Internal Revenue (1977) 3535*, *Ogbunyiya v Okudo (1979) 6-9 SC 32* and *Nafiu Rabiu v The State (1980) 8-11 SC 130* in emphasizing that the appellant does not come within the exception created under Section 68(1) (g) of the Constitution. The division at the State level of the Labour Party does not shield him from the consequences of abandoning the political party that sponsored him for another party. Learned counsel argues that both courts having correctly applied the applicable laws to the facts before them, this Court cannot interfere with their decisions. He accordingly urges a resolution of the sole issue on the appeal against the appellant and the dismissal of the appeal.

Learned counsel to all the other respondents, except the 5th and 7th respondents/cross appellants, proffer arguments similar to the foregoing arguments of the 1st - 3rd respondents. Here and there in their respective briefs, reliance have also been placed on the decisions of this Court in *Federal v Goni* (supra) and *Attorney General of the Federation v Abubakar (2007)* (supra) in aid of the principle that the division in the Labour Party, being restricted to Ondo State, does not justify appellant's defection to another party.

Again, it is argued in some of these briefs that the findings of the two courts below being concurrent cannot easily be tempered with by this Court. Counsel support this submission with the cases of *Idufueko v Pfizer Products Ltd (2014) 1 NWLR (Pt.1420) 96 at 113* and *Fedeco v Goni (supra)*. As a whole, they urge that the lone issue be resolved in their favour and the appeal be dismissed.

The question the appeal raises is a very narrow one: whether the Lower Court is right in its affirmation of the trial court's interpretation and application of Section 68(1) (a) and (g) and 222(a) (e) and (f) of the 1999 Constitution as amended to the facts of the instant case.

Also, the facts in relation to which the interpretation and application of the relevant provisions of the law have been made are not in dispute: appellant has defected from the Labour Party on which platform he contested and won his election for the Akure North/South Federal Constituency seat because of the division in the party at the State level. The appellant, from the affidavit in support of his originating summons as well as the counter affidavit in opposition to 1st - 3rd respondents' counter-claim, does admit that the division he claims entitles him to defect to the A.C.N. does not affect the national body and structures of the Labour Party.

The narrow issue to determine in the appeal, therefore, is whether or not the two courts below are right in holding that, by virtue of Section 68(1) (a) and (g) and 222(a) (e) and (f) of the 1999 Constitution as amended, the division at the State level the appellant relies upon indeed entitles him to abandon the party that sponsored him, the Labour Party, for another, the Action Congress of Nigeria, A.C.N. and retain his seat inspite of the defection.

Both courts have answered this overriding question in the negative. They are said to be concurrent in their findings. Given the facts available to the two courts and the law applicable to these facts, it is their decision that appellant's defection to the Action Congress of Nigeria does not come within the purview of the law. Learned counsel to the respondents are correct that this Court remains hesitant to interfere with such concurrent findings of fact and does so only if same are shown, notwithstanding their being concurrent, to be perverse.

In *UBN Plc V. Chimaeze* (2014) LPELR-SC 204/2006 this Court defined what a perverse decision is and how same is treated on appeal thus:

A decision of a court is perverse when it ignores the facts or evidence before it which lapse when considered as a whole constitutes a miscarriage of justice. In such a case an appellate court is bound to interfere with such a decision ... In the case at hand, therefore, the appellant succeeds only if establishes that in its findings in respect of the special, and general damages the Lower Court has ignored the evidence on record and/or wrongly applied a principle to the evidence. The appellant/cross respondent must establish, too, that the lapse has occasioned a miscarriage of justice. See also *Atolagbe v Shorun* (1985) LPELR-SC.14/1984.

It draws from the foregoing principle that the appellant herein succeeds only if he demonstrates that the two courts below have, in arriving at their concurrent decisions, either ignored facts, incorrectly applied any principle to correctly ascertained facts, took into consideration irrelevant matters or excluded such other matters which are relevant to their findings and, in addition, the injustice the concurrent decisions in the circumstance occasion.

In the exercise of their interpretative jurisdiction, both courts have had to apply the relevant provisions of the Constitution to the undisputed facts that ground appellant's claim against the respondents and the 1st - 3rd respondents counter-claim. I agree with counsel on both sides that in interpreting and applying the relevant constitutional provisions the courts must be guided by certain principles.

In the case at hand the 1st - 3rd respondents' counter-claim draws from the complaint that Section 68(1) of the 1999 Constitution has not been complied with by the appellant thereby making the interpretation of the provision an issue. The duty of the two courts in that regard is to examine the conduct of the appellant complained of within the purview of the provision and determine whether the provision in question has indeed been breached or otherwise. Being a constitutional provision, the courts do not discharge their duty by limiting their scrutiny of the conduct of the appellant by reference only to the particular section of the Constitution. Effective exercise of their interpretative jurisdiction requires examining the Constitution as a whole. See *The Governor of Kwara State & 2 Ors v Jerome Oladele Dada* (2011) 6-7 SC (Pt.1) 41 and *Bernard Amasike v The Registrar General Corporate Affairs Commission & anor* (2010) 5-7 SC (Pt.1).

The trial court, see pages 279-281 of Vol. 1 of the record of Appeal, in determining the status of the appellant, having ascertained the facts on which his claim and 1st - 3rd respondents counter-claim rest, considered, beyond Section 68(1) of the 1999 Constitution as amended that is directly in issue, Sections 69, 153, 221, 222, 226 and 229 of the same Constitution and Section 80 of the *Electoral Act 2010* as amended and at page 286 of Vol. 1 of the record concluded its decision thus:

Having held that the interpretation of Section 68(1) (a) and (g) of the Constitution by the plaintiff was myopic in nature and said that the section connotes a national outlook, the originating summons of the plaintiff therefore failed. I so hold and I also hold that all counter-claims herein succeeds (sic).

In the discharge of its appellate jurisdiction regarding the trial court's foregoing decision the Lower Court, per Mshelia. JCA who read the lead judgment, at page 619 of Vol.2 of the Record of Appeal rightly identified not only the task before the court but also how it would accomplish same thus:

The crux or fulcrum of this appeal is the interpretation of section 68(1) (g) of the 1999 Constitution of the Federal Republic of Nigeria as amended, read along with Section 222 of the same Constitution and other relevant provisions of the Constitution referred to by the parties for ease of reference, I will reproduce the said Sections hereunder

.....

The guidelines to be observed in the interpretation of statutes most especially our Constitution are stated by Obaseki. JSC in the case of *AG of Bendel State v AG of the Federation and ors* (1981) 10 SC 1 at 132, 134

The court also availed itself with the further principle of interpretation of the provisions of the Constitutions restated by this Court per Iguh. JSC in *I.M.B. v Tinubu* (2001) 16 NWLR (Pt.740) 690 thus:

In this regard, it will be necessary to recall the general principle of law governing the interpretation of our Constitution. This is that such interpretation as would serve the interest of the Constitution and best carry out its object and purpose should be preferred. Its relevant provisions must be read together and not disjoint and where the words of any section are clear and unambiguous, they must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions of the Constitution.

(Underlining mine for emphasis).

Concluding, the Lower Court in its judgment at pages 631 of Vol II of the record of Appeal held as follows:-

A community reading of Sections 221, 222, 229 of the Constitution as well as Section 80 the Electoral Act, clearly shows that, the division envisaged by Section 68(1) of the Constitution refers to division in the party at the top or centre not a division at the State or Local Government level as contended by the appellant The intention of the

law makers is to punish defectors. If the provision of Section 68(1) (g) of the Constitution is interpreted as proffered by the appellant then the purpose for which the section was introduced would be defeated. There will be no end to defection by members ... The case of case of Federal Electoral Commission V Goni (1983) LPELR-1266 (SC) is a classical example of the division envisaged by Section 68(1) (g) of the Constitution I find this case very relevant and instructive ... Appellant cannot therefore take advantage of the proviso to Section 68(1) (g) of the 1999 Constitution Appellant has violated the provisions of Section 68(1) (g) of the 1999 Constitution. The consequence is that appellant has to mandatorily vacate his seat in the House of Representatives

(Underlining mine for emphasis).

It is the foregoing decision of the Lower Court the appellant herein asserts is not only incorrect but such that entitles this Court to interfere with.

The question to answer here is whether the decision is perverse having either not drawn from the evidence on record or consequent upon wrong application of the law to correctly ascertained facts by the court. Or still, whether the decision is bedevilled by the court's consideration of irrelevant facts or the exclusion of relevant facts which lapse results in miscarriage of justice see *Ramonu Atolagbe v Keredede O. Shorun (supra)*, *Akwai Lagga v Audu Yusuf Sarhuma (2008) 6-7 SC (Pt.1) 101* and *Gabriel Iwuoha & Anor v Nigerian Postal Services Ltd & Anor (2003) 5 SCM 104*.

I am unable to agree with learned counsel to the appellant that on the facts and the law as concurrently applied by the two courts below their decisions can be interfered with. One is left in no doubt that the determination of the dispute the trial court is approached to resolve turns decisively on the meaning of the word "division" as used by the framers of the proviso to Section 68(1)(g) of the 1999 Constitution as amended. Whereas learned appellant's counsel contends that "any division," in the political party would entitle a person who contested and won an election on the platform of that party to defect to another party and in spite of the defection to retain his seat, learned counsel to the respondents, except the 5th & 7th on the other hand, argue that the "division" in the State structure of the Labour Party only, does not entitle the appellant to abandon the Labour Party for the A.C.N. Not being the kind of "division" that affects the national structures and therefore the corporate existence of the party, learned counsel insist, appellant's defection does not come within the proviso to Section 68(1) (g) to entitle him to retain his seat in the House of Representatives in spite of his defection to the A.C.N. from the Labour Party on which platform he contested and won the seat. This position of the respondents is unassailable.

In *Fedeco v Goni (supra)* this Court, while interpreting Section 64(1) (g) of the 1979 Constitution which is *pari materia*, that is on all fours, with Section 68(1) (g) of the 1999 Constitution as amended, held at pages 21-22 of the report thus:

Under Section 64(1) (g) of the Constitution where a person whose election to the legislative house was sponsored by a political party, becomes a member of another political party before the expiration of the period for which that house was elected, he would have to lose his seat in that house. But under the proviso to the said Section 64(1)(g), if his membership of the new political party occurred because –

(1) There was a division in the political party which sponsored him and as a result he joined the new political party.... he does not lose his seat.

(Underlining mine for emphasis).

The court at pages 22-23 of the report further held:

A split or division could arise without any fault of the members of a political party resulting in a member rightly or wrongly, finding himself in a minority group which may not be big enough, or strong enough to satisfy the recognition, as a separate political party, of the Federal Electoral Commission. For such a member not to be allowed to join another political party with his faction may be to place him in a position where his right to contest for political office will be lost. Such a situation is entirely different from the fraudulent and malevolent practice of cross-carpeting politicians of yester years who, for financial consideration or otherwise, crossed from one political party to another, without qualms and without conscience. Such a practice had to be discouraged by the framers of our Constitution if political public morality of our country was to be preserved.

(Underlining mine for emphasis).

In *AG Federation v Abubakar (supra)* which the Lower Court further imbibed, this Court per Aderemi. JSC at page 178 of the report held thus:

It is manifest from the above quoted constitutional provisions that the lawmakers intended to and indeed made punishable the defection of an elected member, from the political party that sponsored him, to another political party before the expiration of the period for which the House was elected by declaring his seat vacant. No similar provision was made for the Vice-President or even for the President."

The principles enunciated by this Court in the two cases, *Fedeco v Goni supra* and *AG Federation v Abubakar (supra)*, is to the effect that only such factionalisation, fragmentation, splintering or "division" that makes it impossible or impracticable for a political party to function as such will, by virtue of the proviso to Section 68(1) (g), justify a person's defection to

another party and the retention of his seat for the unexpired term in the house inspite of the defection. Otherwise, as rightly held by the courts below, the defector automatically loses his seat.

In the instant case, the two courts are right that the Labour Party that has continued to function as a political party by meeting the conditions associations by virtue of Section 221 and 222 of the Constitutions must necessarily meet, cannot be said to have been so factionalised, fragmented, split or divided to justify the defection of the appellant to another party and retention of his seat inspite of the defection. This remains the position of this Court on the issue. The interpretation of Section 68(1) (a) and (g) of the 1999 Constitution in relation to sections 221 and 222 of the same constitution to arrive at the same conclusion does not derogate from the position. After all, it is a trite principle of interpretation of the Constitution that its entire provisions be read together as a whole in ensuring the enthronement of the real intention of its framers. Isolated consideration of a particular section is disallowed. The Lower Court must be commended for its consideration of several clauses of the same Constitution and coming out with the harmonious conclusion it has and by so doing enthroneing the real intention of the framers of the Constitution. See *Odubeko v Fowler (1993) 9 SCNJ 185*, *Unilife Dev Co. Ltd v K. Adeshighin & ors (2007) 3 SCM 151* and *Alegbe v Oloyo (1983) NSCC 315*.

Finally and most importantly, by the doctrine of stare decisis or precedent, the two decisions of this Court in *Fedeco v Goni* (supra) and *AG of the Federation v Abubakar* (supra) on the same facts and legislation as those canvassed in the instant matter bind the Lower Court and this Court as well. The concurrent resort to and correct application of the principles enunciated in the two cases by the two courts must persist. I so hold. See *Adetoun Oladeji (Nig) Ltd v Nigeria Breweries Plc (2007) 1 SCNJ 375* and *Cyril O. Osakue v Federal College of Education (Technical) Asaba & 2 Ors (2010) 2-3 SC (Pt III) 158*.

It is for all the foregoing reasons that I found the Appeal and the Cross Appeal unmeritorious on the 19th March, 2015 and dismissed same. The consequential orders I made while dismissing both appeals remain extant.

Reasons for Judgment of the Court

Given by

Mahmud Mohammed. CJN

On Thursday the 19th Day of March, 2015, I delivered my Judgment in this appeal agreeing with my learned brother, Musa Dattijo Muhammad. JSC. in his lead Judgment dismissing the appeal and the Cross-Appeal. I stated on that day that I shall give my reasons for the Judgment today which I now proceed to do.

I have had the advantage before today of reading in draft the reasons given by my learned brother, Musa Dattijo Muhammad, JSC for dismissing this appeal and the Cross-Appeal on 19/3/2015 and I entirely agree with them.

This appeal is against the Judgment of the Court of Appeal Akure Division, delivered on 15/9/2014, dismissing the Appellant's appeal against the Judgment of the Federal High Court Akure of 30/5/2013 refusing the reliefs sought by the Appellant in his Originating Summons while granting the reliefs sought by the 1st, 2nd and 3rd Respondents in their Counter-Claim declaring the seat of the Appellant as a member representing Akure North/South Federal Constituency of Ondo State in the House of Representatives vacant. The Court of Appeal in affirming the Judgment of the trial Court was of the view that the division envisaged by Section 68(1)(g) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), must be a division that affects the entire structure of the national leadership of a political party at the centre and not at State or local Government level. The only issue arising for determination in this appeal as identified in the Appellant's brief of argument and virtually adopted in slightly different wordings by all the Respondents in their respective briefs of argument reads:

Whether the Lower Court's interpretation and application of Sections 68(1) (a) (g) and 222(a) (e) and (f) of the Constitution of Federal Republic of Nigeria 1999 (as amended) is valid, when it affirmed the trial court's decision, that a dispute at the state level does not warrant the Appellant's defection and consequently arrived at the conclusion that the national leadership of a political party determine the existence or proof of division in a political party.

The circumstances giving rise to the dispute between the parties in this appeal, are quite simple. The Appellant was elected to the House of Representatives on the platform of the Labour Party in the April, 2011 general elections in Nigeria as a member representing Akure North/South Federal Constituency in Ondo State. The Appellant after serving in the House of Representatives for a brief period, decided to decamp from the Labour Party under which he was elected, to the Action Congress of Nigeria, ACN (now All Progressives Congress, APC). He then approached the Federal High Court, Akure and sought for declaratory and injunctive reliefs against the Defendants/Respondents to justify his action in defecting to another political party other than the one on which he rode to the House of Representatives.

The learned Counsel to the Appellant in the Appellant's brief of argument and the Appellant's Reply briefs filed and adopted by him in support of his arguments in this appeal, explained that the appeal is on the question of defection which, according to him, must be supported by a division of a political party. Counsel emphasized that the defection of the Appellant was supported by the provision of the proviso in Section 68(1)(g) of the 1999 Constitution of Nigeria (as amended) and therefore urged this Court to allow the appeal and uphold the defection of the Appellant by allowing him to remain on his seat in the House of Representatives.

However, learned Senior Counsel to the 1st, 2nd and 3rd Respondents, who is also the Attorney-General of Ondo State, has urged this Court, relying on the arguments contained in the joint Respondents brief of argument filed on behalf of his clients, to dismiss this appeal, which he described as against concurrent decisions of the two Lower Courts and not being perverse, he urged this court not to disturb the decisions.

Learned Senior Counsel stressed that the appeal centred on the construction of Section 68(1)(g) of the 1999 Constitution on the effect of defection and that the Appellant having failed to bring himself within the provision of the proviso to Section 68(1)(g) of the Constitution, he must be prepared to face the effect of his action by immediately vacating his seat.

Learned Counsel to the 4th, 9th and 12th Respondents in the joint brief of argument filed on behalf of his clients and oral submission, also urged this Court to dismiss the appeal and order the Appellant to vacate his seat. Learned Counsel pointed out that there was no division in the Labour Party nationwide to justify the defection of the Appellant under Section 68(1)(g) of the 1999 Constitution whose provisions are in *pari-materia* with Section 69 of the 1963 Constitution and Section 64(1)(g) of the 1979 Constitution. Relying on the case of *Fedeco v Goni* Reported in *1983 NSCC Vol. 14 page 481 at 485*, learned Counsel urged this Court to dismiss the appeal.

Learned Counsel to the 5th and 7th Respondents/Cross-Appellants who filed no Respondents/Cross-Appellants' brief of argument was granted leave by this Court under Rule 9 of Order 6 of the Rules of this Court to present oral argument in support of the case of the 5th and 7th Respondents/Cross-Appellants. Learned Counsel, relying on the Notice of the Cross-Appeal of his clients, urged this Court to allow the Cross-Appeal so as to enable the Appellant to remain on his seat in the House of Representatives.

The Counsel to the 6th, 8th and 10th Respondents in the Respondents joint brief and oral submission on behalf of his clients had urged the Court to dismiss the appeal because the defection of the Appellant was in contravention of Section 68(1)(g) of the 1999 Constitution. He pointed out that as the Appellant had failed to bring his conduct in defection within the provision of the proviso to Section 68(1)(g) of the Constitution, the case of the Appellant was rightly dismissed by the trial court as subsequently affirmed on appeal by the Court of Appeal.

Taking into consideration of the sole issue for determination in this appeal earlier quoted in my reasons for Judgment, it is quite plain that the determination of this appeal merely requires the application of the provisions of Section 68(1)(g) of the 1999 Constitution of the Federal Republic of Nigeria to the undisputed facts and circumstances that led to the defection of the Appellant from Labour Party that brought him to the House of Representatives, to the Action Congress of Nigeria ACN (now All Progressives Congress APC). There is no dispute that this Appellant contested the April 2011 election under the platform of the Labour Party and won the election to occupy the seat of the House of Representatives Constituency of Akure North/South of Ondo State in that House. It is also on record that the Appellant defected to another political party, Action Congress of Nigeria ACN, before the expiration of the period of four years for which the House was elected. It is also not in doubt from the Appellant's case placed before the trial Federal High Court for determination, that the Appellant had put very heavy reliance on the provisions of Section 68(1)(g) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which states -

- 68 (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if -
- (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Provided that his membership of the latter Political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political Parties or factions by one of which he was previously sponsored;

The law is trite that in the interpretation of the provisions of the Constitution, the entire provision must be construed together as a whole and not in parts as stated by this Court in several cases including *Nafiu Rabi v The State (1980) 8-11 SC 130*. The general rule of interpretation of statutes has also been laid by this Court in several decisions and the rule is that where the words of a statute are plain, clear and unambiguous, the Court shall give effect to their literal meaning. It is only when the literal meaning may result in ambiguity or injustice that the Court may seek internal aid within the body of the statute itself or external aid from statutes in *pari-materia* in order to resolve the ambiguity or avoid doing injustice. See *Ogbunyiya v Okudo (1976) 6-9 SC 32* and *Ogunmade v Fadairo (1972) 8-9 SC 1*.

The provisions of Section 68(1)(g) of the 1999 Constitution of the Federal Republic of Nigeria which are in contention in this appeal, are quite plain, clear and unambiguous and therefore must be given their ordinary or literal meaning. In fact, what is really in issue in this case is not the interpretation of the affected provisions of the Constitution but the application of the provisions to the undisputed facts in the case. These undisputed facts are that the appellant who was elected under the

platform of the Labour Party to the House of Representatives representing Akure North/South Federal Constituency in Ondo State, defected to another Political party other than the one that brought him to the House before the expiration of the tenure of the House. The question for resolution is whether or not he could retain his seat inspite of his defection. From the evidence contained in the record of appeal, both the trial Court and the Court of Appeal answered this question in the negative. I entirely agree with the two Courts below.

The provisions of Section 68(1)(g) of the Constitution are very clear that the Appellant being a member of the House of Representatives shall vacate his seat in that House when being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected. To escape the hammer of this Section of the Constitution hitting the Appellant on the head, the Appellant must lead credible and cogent evidence to show that his conduct in defecting from his Labour Party to another party, was covered by the proviso to the Section. Did the Appellant succeed in doing that at the trial court? I am afraid, the Appellant had woefully failed to lead evidence showing that there was a division within the Labour Party nationwide to support his defection to another political party as rightly found by the trial court and affirmed by the Court below.

It is for the above reasons and the fuller reasons given by the learned brother, Musa Dattijo Muhammad, JSC, that I also on Thursday the 19th day of March 2015, dismissed the Appeal and the Cross-Appeal and affirmed the order of the trial Federal High Court as affirmed by the Court below that the Appellant must vacate his seat with immediate effect, with no order on costs.

Reasons for Judgment of the Court

Given by

John Afolabi Fabiyi, JSC

On 19th March, 2015 when the appeal was heard, I agreed with my learned brother - M. D. Muhammad. JSC that the main appeal as well as the cross-appeal should be dismissed, I promised to give my reasons today. Same are hereby adduced by me.

I have had a preview in draft of the reasons given by my learned brother, M.D. Muhammad, JSC for dismissing both the main appeal and the cross-appeal. I completely agree.

This appeal is against the judgment of the Court of Appeal, Akure Division (the court below) delivered on 15th September, 2014 wherein the judgment of the Federal High Court, Akure (the trial court) delivered on 30th May, 2013 was affirmed.

The appellant who contested and won the Akure North/South Federal Constituency on the platform of the Labour Party, after a while, defected to Action Congress of Nigeria (ACN). He gave the reason for his defection as a division in the Ondo State Chapter of the Labour Party.

The appellant filed an Originating Summons at the trial court where he sought the interpretation of Section 68(1) (a) and (g) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended. He sought declaration that by virtue of the proviso to the stated section, he is entitled to retain his seat in spite of his defection from the Labour Party to Action Congress of Nigeria. He urged that the respondents be restrained from tampering with his seat.

The 1st - 3rd respondents counter-claimed against the appellant. They contended that by virtue of the proviso to the stated Section 68 (1)(g) of the 1999 CFRN, as amended, the appellant who hinged his defection on the basis of division in the Ondo State Chapter of the Labour Party should cease to be the elected member for the constituency. They prayed that his seat be declared vacant and the Independent National Electoral Commission be ordered to conduct a bye-election for the vacant seat.

The trial court heard the matter. It delivered a considered judgment on 30th May, 2012 in which the appellant's claim was dismissed. The 1st - 3rd respondents' counter-claim was granted.

The appellant felt unhappy with the position taken by the trial court and appealed to the court below. In its own judgment delivered on 15th September, 2014, the court below dismissed the appeal and affirmed the trial court's decision.

The appellant felt irked by the decision of the court below and has further appealed to this court. The 5th and 7th respondents also cross-appealed against the stated decision.

The sole determinant issue decoded by the appellant in his brief of argument reads as follows:

Whether the Lower Court's interpretation and application of Sections 68(1) (a) (g) and 222(a) (e) and (f) of the Constitution of Federal Republic of Nigeria 1999 (as amended) is valid, when it affirmed the trial court's decision, that a dispute at the state level does not warrant the Appellant's defection and consequently arrived at the conclusion that the national leadership of a political party determine the existence or proof of division in a political party.

The appellant maintained that there existed a division in the Labour Party in Ondo State which prompted his defection to Action Congress of Nigeria. He strongly contended that the proviso in Section 68 (1) (g) of the 1999 CFRN (as amended)

supports his position. He therefore urged the court to uphold his defection and allow him to retain his seat in the House of Representatives.

Learned senior counsel to the 1st - 3rd respondents maintained that the appellant failed to bring himself within the provision of the proviso to Section 68(1) (g) of the Constitution and must face the effect of his action and vacate his seat.

Learned counsel to the 4th, 9th and 12th respondents pointed out the fact that there was no division in the Labour Party nationwide to justify defection of the appellant under Section 68 (1) (g) of the 1999 CFRN (as amended) which is in *pari materia* with Section 69 of the 1963 Constitution and Section 64 (1) (g) of the 1999 Constitution. He cited the case of *Fedeco v Goni (1983) NSCC Vol. 14 page 481 at 485*.

Learned counsel to the 5th and 7th respondents/cross-appellant who filed no brief of argument was allowed to address the court orally under Order 6 Rule 9 of the Rules of this court. He urged the court to allow the cross-appeal and urged that the appellant be allowed to retain his seat in the House of Representatives.

The submission of learned counsel to the 6th, 8th and 10th respondents is similar in purport to that of the senior counsel to the 1st - 3rd respondents.

This appeal rests on the interpretation and application to be placed on the provisions of the applicable Section 68(1)(g) of the 1999 CFRN (as amended) which states as follows:-

68 (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if

(f)

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Provided that his membership of the latter Political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political Parties or factions by one of which he was previously sponsored;

It is apt to state briefly the general principles of law governing the interpretation of the Constitution. The first canon of interpretation is referred to as the broad interpretation or liberal approach or the global view. See: *Rabiu v The State (1980) 8-11 SC 130 at 151, 195*. The second canon is that related sections of the Constitution ought to be interpreted together so as to produce a harmonious result. See *Senator Abraham Adesanya v President of the Federal Republic & Anr. (1981) 5 SC. 112 at 134, 321*. Thirdly, where the words of any section are clear and unambiguous, they must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions of the Constitution. This is often referred to as the Literal Rule of interpretation. See *I.M.B. v Tinubu (2001) 16 NWLR (Pt. 740) 690*.

This appeal has to do with the interpretation and application to be placed on Section 68(1) (g) of the 1999 CFRN (as amended). The crucial question is - what then will constitute a division of such magnitude in a political party that will entitle a person who is a member of the party to take umbrage under the proviso to the stated section of the Constitution?

In the case of *Fedeco v Goni* (supra) at page 485, this court had the chance to pronounce on Section 64(1) (g) of the 1979 Constitution which is in *pari-materia* with Section 68(1) (g) 1999 CFRN. The decision therein is to the effect that a division that will justify defection by a person must be one that affects the national structure of the party. A minor division in a Ward or Local Government of a State or a State is not the sort envisaged by the makers of the Constitution. To interpret the law otherwise will lead to confusion in the party and the polity as well. The aim of the law makers would certainly be defeated.

The appellant failed to show that there was division in his party which affected the national structure. The trial court as well as the court below so found. I cannot fault them.

For the above reasons and those clearly adumbrated in the lead reasons given by my learned brother - M. D. Muhammad, JSC, I dismissed the appeal and the cross-appeal for being devoid of merit and confirmed the order of the two Lower Courts that the appellant should vacate his seat with immediate effect. No costs awarded.

Reasons for Judgment of the Court

Given by

Suleiman Galadima, JSC

On the 19th day of March, 2015, in my contribution to the lead judgment of my learned brother Musa Dattijo Muhammad JSC, I agreed that both the appeal and cross-appeal were lacking in merit and I dismissed them and today 17th day of April 2015 was adjourned to give my full reasons. I hereby proffer the reasons.

This is an appeal against the judgment of the Court of Appeal, Akure Division delivered on the 5th day of September, 2014, wherein the court dismissed the appellant's appeal for being unmeritorious and affirmed the judgment of the trial Federal High Court, Akure, delivered on the 30th day of May, 2012.

The facts leading to this appeal are simple. The appellant, who was the plaintiff at the trial Federal High Court, by his Originating Summons dated 25/12/2011 and filed on 26/12/2012, sought the following question for determination:

Whether or not in view of the provisions of Section 68(1) (g) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and the imbroglio, division, crisis, fractionalisation, centrifugal tendencies, hurly burly and the brouhaha bedevilling the Labour Party in Ondo State, the plaintiff/applicant is not entitled to dump the party (Labour Party) for another party.

The appellant herein also sought for declaratory and injunctive reliefs against the respondents herein as follows:-

- (1) A declaration that under and by virtue of the provision to section 68(1) (g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the current imbroglio, division, crisis, factionalisation, centrifugal tendencies, hurly burly and the brouhaha bedevilling the Labour Party in Ondo State the plaintiff/appellant was entitled to dump the Labour Party for another party and as such, is on a *tera firma* to have dumped the Labour Party for the Action Congress of Nigeria.
- (2) A Perpetual Order of Injunction restraining the defendants from taking any steps whatsoever or however described about, concerning or pertaining to the defection of the Plaintiff as honourable member in the Federal House of Representative for Akure North/ South Federal Constituency from the Labour Party (LP) to the Action Congress of Nigeria (ACN).

The appellant supported his Originating Summons with 6 paragraphs Affidavit while the 1st to 3rd respondent filed 11 paragraphs Counter-Affidavit and a counter-claim which is supported by an Affidavit and further and better Affidavit accompanied by a written address.

The 1st - 3rd respondents' counter-claim reads as follows:

- (1) A Declaration that the 1st Defendant to the Counter-Claim has automatically vacated his seat as a member of the House of Representatives having defected to another Political Party and having left the Labour Party which sponsored his election to the House of Representatives.
- (2) A Declaration that the 1st Defendant to the Counter-Claim immediately ceased to be a member of the House of Representatives upon defecting from the Labour Party which sponsored and provided him the platform to contest the seat of Akure North/ South Federal Constituency at the House of Representatives for another Political Party.
- (3) An order of Court directing the 1st Defendant to the Counter-Claim to vacate the House of Representatives seat of Akure North/South Federal Constituency forthwith.
- (4) An order of Court restraining 2nd Defendant, to the Counter-Claim i.e. The Speaker of the House of Representatives, or any other person acting in that office from further recognizing the 1st Defendant to the Counter-Claim as a member of the House of Representatives representing Akure North/South Constituency.
- (5) An Order of Court directing the Independent National Electoral Commission, (the 3rd Defendant to the Counter-Claim) to immediately conduct a bye-election to fill the vacant seat of Akure North/South Federal Constituency at the House of Representatives.

It has to be reiterated here that the Court of Appeal dismissed the appellants' Originating Summons and granted the 1st to 3rd respondent Counter-Claim.

This further appeal is against the decision of the Court of Appeal, which while affirming the judgment of the trial court, held that the division envisaged by Section 68(1)(g) of the 1999 Constitution must be one that affects the entire structure or the National Leadership of a Political Party at the centre and not State or Local Government level as there is only one Political Party represented by its National Leadership.

The sole issue distilled from the two grounds for the determination of this appeal in the appellant's brief of argument prepared by Prof. Yemi Osinbajo, SAN and filed on 23/12/2014 is as follows:

Whether the Lower Court's interpretation and application of Sections 68(1) (a) (g) and 222(a) (e) and (f) of the Constitution of Federal Republic of Nigeria 1999 (as amended) is valid, when it affirmed the trial court's decision, that a dispute at the state level does not warrant the Appellant's defection and consequently arrived at the conclusion that the national leadership of a political party determine the existence or proof of division in a political party.

The sole issue raised in the 1st - 3rd respondents' brief of argument settled by Eytayo Jegede SAN (Hon. Attorney General Ondo State), is similar in content to that of the appellant. It is:

Whether having regard to the provisions of Sections 68(1)(g), 221(a)(e)(f) and 222 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 80 of the Electoral, 2010, the Lower Court was right in affirming the decision of the Trial Court that the Appellant had automatically forfeited his seat in the House of Representatives as a member representing Akure North/South Constituency having defected from the labour party, a political party that sponsored him in the said election to another political party.

In the 4th, 9th and 12th respondents brief of argument settled by Olabode Olanipekun, Esq. and filed on 30/1/2015, the following sole issue was raised for the determination of this appeal thus:

Whether the Lower Court, in dismissing the appeal before it, rightly interpreted and applied the provisions of Section 68 (1)(g) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the Constitution) in conjunction with other constitutional and statutory provisions to reach the conclusion that Appellant's case cannot be justified within the proviso of Section 68 (1)(g) of the Constitution.

On their part, in the 6th, 7th, 8th and 10th respondents' brief settled by Olabanjo O. Ayenakin Esq. filed on 25/2/2015 the following lone issue was formulated.

Whether the Lower Court was right in affirming the decision of the trial court by holding that in view of Section 68 (1) (a) (g) and 222 (a) (e) and (f) of the 1999 Constitution of Nigeria; by dumping the party that sponsored him; the appellant has forfeited his seat in the House of Representative.

5th and 7th Respondents/Cross-Appellants filed no brief of argument and accordingly no issues were raised for determination by their counsel. Tolu Babaleye, Esq.

On the 19th March, 2015, learned counsel for the appellant, Dapo Akinosun Esq. drew the attention of this court to the appellant's brief of argument and the two Reply briefs to the 1st, 2nd, 3rd, 4th, 9th and 12th respondents and adopted them. He urged the court to allow the appeal.

Learned Attorney-General of Ondo State Eyitayo Jegede, SAN, leading other counsel adopted and relied on the brief of argument of the 1st to 3rd respondents. He however referred to their counter-claim on pp. 61-67 and the judgment of the Lower Court on pp. 580-587 containing the counter-claim. He submitted that the provision of Section 222(a) of the 1999 Constitution relates to eligibility of an association to operate as a Political Party and not a question that relates to requirement for defection of a member of Political Party to another. That by imputing the word "National Leadership" into the wordings of section 222 of the 1999 Constitution, this violates the basic adjudicatory role of a court of law. Reliance was placed on the case of *Imah v Okogbe (1993) 9 NWLR (Pt. 316) 159 at 173*.

It is further submitted that Sections 68(1) and 69 of the 1999 Constitution support the purposive interpretation that the division or factionalisation of the Labour Party is established; with evidence of such shown at the state and Constituency levels.

On the part of the all learned counsel for the respective respondents in this appeal, they have all submitted that having regard to the provisions of Sections 68 (1) (g), 221 (a) (e) (f) and 222 of the 1999 Constitution and Section 80 of the Electoral Act, 2010 (as amended) the court below was right in affirming the decision of the trial court that the appellant had automatically forfeited his seat in the House of Representatives as a Member representing Akure North/South Constituency having defected from the Labour Party, a Political Party that sponsored him in the said election to another political party.

It is submitted that the reliance of the appellant on the provisions of Section 68(1) (g) of the Constitution to justify his defection from the Labour Party to the Action Congress of Nigeria (now All Progressive Congress APC), is to give a very narrow interpretation of the word "division" contemplated by the said Section of the Constitution.

Further, learned counsel for the 4th, 9th and 12th respondents have urged this court to reject the import of the totality of appellant's submission that any disagreement in any remote part of the country will justify defection, as this will create an absurd situation; and would mean that where there is disagreement in Ondo State will justify a legislator in Jigawa State to decamp. That the court below rightly rejected this argument and held otherwise.

Learned counsel has submitted that it is not in doubt that the provision of S. 63 (1)(g) of the 1999 Constitution did not expressly incorporate S. 222 (a) (e) and (f) of the said 1999 Constitution. Statutes are not to be interpreted disjunctively but conjunctively and holistically. And if this is done, a Political Party will be seen as a single divisible whole, which problem in a part should not be deemed to be one that will lead to division or fractionalisation at the State level of the Labour Party that could have warranted a defection of an elected member to another party.

In this appeal certain facts are undisputed by all the parties. These are as follows:

- (i) The fact that the appellant was a Member of the House of Representatives who secured the ticket of the Labour Party, under which he contested and won the election representing the Akure North/South Federal Constituency.

- (ii) That the appellant defected or abandoned the Labour Party for the Action Congress (ACN) now All Progressives Alliance (APC)
- (iii) That by an Originating Summons filed on 26/1/2012 the appellant approached the Federal High Court Akure, Ondo State seeking a number of declaratory reliefs to validate his act.
- (iv) The 1st to 3rd respondents filed a Counter-Claim against the appellant.
- (v) That the court below, in a unanimous decision dismissed the appellant's appeal and confirmed the decision of the trial court.

The appellant relied on the provision of Section 68(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to justify his defection from the Labour Party. The relevant subsection is set out as follows:

68 (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if

- (f)
- (g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Provided that his membership of the latter Political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political Parties or factions by one of which he was previously sponsored;

Also relevant to this appeal is Section 222(a) (e) and (f) which provides as follow:

222. No association by whatever name called shall function as a Political Party, unless-

- a. The names and addresses of its national officers are registered with the Independent National Electoral Commission;
- e. the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give appearance that the activities of the association are confined to part only of the geographical area of Nigeria; and
- f. the headquarters of the association is situated in the Federal Capital Territory, Abuja.

Section 229 of the Constitution provides:

In this part of this chapter, unless the context otherwise requires

..... 'Political Party' includes any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor or membership of a legislative house or of a local government council.

The contention of the appellant is that the court below erroneously concluded that the division envisaged by the foregoing Section 68(1) (g) of the Constitution refers to a division of the party at the National level and not a division at the State, Local Government or ward levels.

In a plethora of cases decided by this court it has been held that some of the rules and cannons of interpretation which apply to ordinary statutes do not sometimes apply where dealing with the Constitution of a Country. This point has been stressed in the case of *Nafiu Rabiu v Kano State (1980) 8-11. SC 85 at 128* per Udoma, JSC (of blessed memory) thus:

.... a mere technical rules of interpretation of statutes are to some extent inadmissible in a way to defeat the principles of government enshrined in a Constitution.

In a earlier case of *Mobil Oil (Nig) Ltd v Federal Board Of Internal Revenue (1977) 3 SC 35 at page 74*, Bello, JSC (as he then was) re-stated the general rule governing the interpretation of a statutory provision while considering Section 10A of the Companies Income Tax Act thus:

The general rule of constructing a statute has been stated by this court in a number of cases. The rule is: where the words of a statute are clear, the court shall give effect to their literal meaning. It is only when the literal meaning may result in ambiguity or injustice that the court may seek internal aid and within the body of the statute itself or external aid from statutes in *pari materia*, in order to resolve the ambiguity or avoid doing injustice

See further: *Ogunmade v Fadairo (1972) 8-9. SC 1; Ogbunyiya v Okudo (1979) 6-9 SC 32.*

In this case the clear principle upon which our Constitution is established does not admit of reading of the words in most provisions with stultifying narrowness. A cursory reading of Section 80 of the Electoral Act 2011 (amended) recognizes one Political Party registered as one corporate entity. The division envisaged by Section 68(1) (g) of the 1999 Constitution (supra) must be one that affects the entire structure of the Political Party at the centre that is the National Leadership of the party. I do not think the interpretation given by the court below to the Section was narrow. In construing the Section, guided by the decisions of this court in the cases of *A-G Bendel State v A-G Federation & Ors (1981) 10 SC. 1 at 132-134*; *IMB v Tinubu (2001) 16 NWLR (Pt. 740) at 690* the court below held at pages 624 lines 5-20 of the printed Record as follows:

In construing Section 68 (1)(g) in the light of the aforementioned judicial guidelines, it is self-evident that the said Section implies the following:-

- (i) A member of the House of Representatives is sponsored by a political party to that legislative house,
- (ii) A member of the House of Representatives, who is so sponsored, automatically vacates his seat if he becomes a member of another political party before the expiration of the lifespan of the House of Representatives for which was elected.
- (iii) A decampree legislator would escape the consequence in (ii) supra, if his membership of another political party is as a result of division in the sponsoring party or merger of the sponsoring political party or a faction thereof.

Further relying on the case of *NDIC v O'silvawax Int'l (2006) 7 NWLR (Pt. 980) 588 at 611*, inter alia, held on pp. 625-626 thus:

The purport of a proviso whenever same is inserted in any provision is to create an exception and derogation from the intendment of the statutory provision. Since Section 68 (1) (g) of the Constitution contains a proviso, where circumstances envisaged in the said proviso arise, the absolute provision of Section 68 (1) (g) might not operate.

Quite rightly, Section 222 (a) (f) and (e) of the 1999 Constitution made no reference to the "ward" "local government" or "state structure." However, a calm reading of Section 68 (1) (g) of the Constitution will show that no reference is made by the framers of the Constitution to "a state branch" ward level or "unit level" of a Political Party, when the framers of the Constitution repeatedly referred to "Political Party" in that Section. If the framers of the Constitution had really intended that a "division" within a "State branch" "ward level" or "unit level" of a Political Party, as suggested by the learned silk, they would have so expressly stated. Therefore contrary to the argument of the appellant at paragraph 29 of his brief, Section 222 (a) (e) and (f) which referred respectively to "National officers", "geographical area" and "headquarters in the Federal Capital Territory", is to support the argument that a national outlook of a Political Party is intended by the framers of the 1999 Constitution in Construing Section 68 (1) (g) (supra).

This line of approach to the construing of the Section will find support from the pronouncements of this court in the case of *Attorney-General Bendel State v Attorney-General Of The Federation & Ors* (supra) to the effect that in construing the provisions of the Constitution, such construction must take into account the other provisions of the Constitution and the construction to be applied should not be that, which would defeat the clear intendment of the Constitution itself. I agree with most learned counsel for the respondents that a Political Party in the eyes of the law and under the Constitution is a corporate legal entity represented by its National Officers not sectional branches or segments which do not qualify as a Political Party.

It is to clear this point that the learned counsel for the 6th, 8th and 9th respondents drew an analogy between a Political Party with other bodies corporate, particularly Companies incorporated under the Companies and Allied Matter Act (CAMA) which upon incorporation become bodies corporate with perpetual succession and the right to sue and be sued in the corporate name. To shed more light on the present issues, he questions thus:-

- (i) firstly can a disagreement in a branch of a Company be classified as a division in that Company when the board of directors of the Company is still intact?
- (ii) Secondly, can the local branch of a Company be wound up or merged with another Company?

He rightly answers the two questions in the negative. This analogical deduction settles the contest between the parties, effulgently and effectually too; for the nature of the division envisaged in the Section 68 (1) (g) (supra) must be the one that affects the total structure of a Political Party.

I cannot interpret this section to a level of absurdity, in such a way as to allow the defecting legislator to escape the punishment or sanction of losing his seat in National Assembly.

I may have said so little but the leading judgment of my learned brother Musa Dattijo Muhammad, JSC speaks volumes. It is an elaborate and perfect illumination of all the issues raised for the determination of this appeal. I entirely agree with him that both this appeal and cross-appeal be dismissed and are hereby dismissed.

Having shown that the appellant failed to prove any division or faction in Labour Party and having agreed with the concurrent findings of the two courts below that the defection of the appellant is unjustifiable, the inevitable conclusion is that the appellant should vacate his seat immediately and I so order. I abide by order made as to costs.

Reasons for Judgment of the Court

Given by
Olabode Rhodes-Vivour, JSC

After hearing this appeal on the 19th day of March, 2015 my learned brother M. D. Muhammad, JSC and all members of the panel that sat to hear the appeal dismissed the appeal and cross-appeal and adjourned to today to enable each Justice give his reasons. I hereby give my reasons.

The appellant was a member of the Labour Party. He was sponsored by the Labour Party at the 2011 General Elections.

At the election he was the candidate of the Labour Party for the Akure North/South Federal Constituency. He won, and was sworn in to the House of Representatives representing the Akure North/South Federal Constituency. While in the House of Representatives he defected to the now defunct Action Congress Party. His reason for defecting was that there was a division in the Ondo State Chapter of the Labour Party, and by the proviso to Section 68(i) (g) of the Constitution he should be allowed to retain his seat.

Both courts below were of the view that the appellant was not entitled to retain his seat. The simple issue for determination is:

What is the correct interpretation of Sections 68(i) (g), 222(a)(e) and (f) of the constitution?

The Constitution is the fundamental law of the country. All rights and obligations are derived from it. The words used are at all times to be given their ordinary meaning without embellishments whatsoever. Any attempts to read into provisions of the Constitution what is not the intention of the makers of the Constitution would amount to judicial legislation and that would be wrong. See *Okumagba v Egbe* 1965 1 All NLR p.62. So, once the words used are clear and free from ambiguity they should be given their ordinary plain meaning. See *N. Rabiu v Kano* 1980 11 SC p.135; *Mobil v E.B.I.R.* 1977 3 SC p. 53.

68 (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if

(f)

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Provided that his membership of the latter Political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political Parties or factions by one of which he was previously sponsored;

There can be no doubt whatsoever after reading subsection (g) of Section 68 of the Constitution that a member of Senate or House of Representatives who becomes a member of another political party must vacate his seat if he becomes a member of another political party before the expiration of the period for which that house was elected. I earlier on alluded to the appellant's argument that he defected because there was a division in the Ondo State chapter of the Labour Party.

The proviso to Section 68 of the Constitution seems to allow for defection. It reads:

Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

The proviso provides an exception to Section 68(g) of the Constitution. The question is what is the exception? And whether the appellant falls within the exception?

Section 222(a), (e) and (f) of the Constitution states that:

222. No association by whatever name called shall function as a Political Party, unless-

a. The names and addresses of its national officers are registered with the Independent National Electoral Commission;

- e. the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give appearance that the activities of the association are confined to part only of the geographical area of Nigeria; and
- f. the headquarters of the association is situated in the Federal Capital Territory, Abuja.

It is manifest that a political party is national in character with its headquarters situated in Abuja, the Federal Capital Territory. Further Section 80 of the Electoral Act States that:

Every political party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

It becomes conclusive from the above that a Political Party is a single corporate entity from which there are several branches or chapters, e.g. State, Ward, and Local Government.

Section 68(g) of the Constitution is to stop carpet crossing. A person elected to Congress on Party A must remain in Party A for the term for which he was elected. If he defects to Party B, that is to say, if he voluntarily decides to change party he must resign and fight a bye-election.

What is the exception? When there is a division in the Party. That is to say when there are two distinct arms in the same Party with two chairmen, etc then there is a division and defection by a disgruntled member is allowed.

Does the appellant fall within the exception? The appellant does not fall within the exception since the division of the party (i.e. the Labour Party) accordingly to him was at the state level. Defections are only allowed if there is a major split resulting in two distinct arms of the same party. The defection by the appellant was wrong and the proviso does not help his case.

It is for these reasons and the more detailed reasons given by my learned brother M. D. Muhammad, JSC that I dismissed this appeal and the cross-appeal on the 19th day of March, 2015. The order of the Federal High Court that the appellant must vacate his immediately, affirmed by the Court of Appeal is hereby affirmed. There shall be no order on costs.

Reasons for Judgment of the Court

Given by

Clara Bata Ogunbiyi, JSC

I participated in this appeal which lead judgment was pronounced on Thursday the 19th day of March, 2015 by my learned brother, Musa Dattijo Muhammad, JSC; I agreed with my brother in his lead judgment that both the appeal and cross appeal were devoid of any merit and were accordingly dismissed while the reasons were deferred to be given today.

My brother has now obliged me in draft the reasons grounding his dismissing this appeal and cross-appeal and I agree and adopt same as mine. For purpose of emphasis I will however put in a word or two of mine.

The facts giving the background genesis of this case are well expounded in the lead judgment. The originating summons taken out by the appellant as the plaintiff at the trial Federal High Court, in summary sought for the determination of the following question:

Whether or not in view of the provisions of Section 68(1) (g) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and the imbroglio, division, crisis, fractionalisation, centrifugal tendencies, hurly burly and the brouhaha bedevilling the Labour Party in Ondo State, the plaintiff/applicant is not entitled to dump the party (Labour Party) for another party.

The appellant therefore sought for declaratory and injunctive reliefs against the Respondents in respect of his claim thereof. The two Lower Courts were concurrent in their judgments against the appellant in dismissing the claim. The entire appeal hinges on the provision of Section 68(1)(g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which relates to defection from one political party to another.

The only lone issue for the determination of this appeal poses the following question:-

Whether having regard to the provisions of Sections 68(1)(g), 221 (a)(e)(f) and 222 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 80 of the Electoral Act 2010, the Lower Court was right in affirming the decision of the Trial Court that the appellant had automatically forfeited his seat in the House of Representatives as a member representing Akure North/South constituency having defected from the Labour Party, a political party that sponsored him in the said election to another political party.

The appellant relied on the provision of Section 68(1)(g) of the Constitution to justify his defection from the Labour Party to the Action Congress of Nigeria (now All Progressives Congress, (APC). The reproduction of Section 68(1)(g) states as follows:-

68 (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if

(f)

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Provided that his membership of the latter Political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political Parties or factions by one of which he was previously sponsored;

The law is trite on the expectation of a judge when faced with the construction, interpretation and application of a statutory provision as succinctly spelt out in the case of *Victor Adegoke Adewunmi & Anr v The Attorney-General of Ekiti State & 6 Ors (2002) 1 SCNJ 27 at 49*. Also the case of *Mobil Oil (Nig) Ltd v Federal Board of Internal Revenue (1977) 3 SC 35 at 74* wherein it was held that:

Where the words of a statute are clear, the court shall give effect to their literal meaning.

It is clear on the onset that there is no ambiguity on the construction of Section 68(1)(g) that on a general note, defection to another political party while being a member on the platform of the party sponsoring the membership will certainly attract a sanction calling for the vacation of the seat in the House of which the membership subsists.

For the appellant to come under the cover of the proviso to Section 68(1)(g), is not a matter of course but strictly on proof of evidence. In other words, the proof that the division envisaged by Section 68(1)(g) must be one that affects the entire structure of the political party at the centre, that is to say the national leadership of the party. See *Fedeco v Goni (1983) LPELR-1266 SC* also *A-G of Federation v Abubakar (supra)*. The purport of a proviso whenever same is inserted is to create an exception and derogation from the intendment of the statutory provision. For the appellant to take advantage of the proviso therefore, there must be the evidence of crisis within the Labour Party in the manner envisaged by the Constitution to warrant the appellant's defection to another political party away from the political party that sponsored and provided him the platform to contest the seat of Akure North/South Federal Constituency at the House of Representatives.

The framers of the Constitution by putting the proviso in place have rightly envisaged the shopping nature of human behaviour which can only be clamped down in the face of a sanction. The appellant did take advantage of his membership in the Labour Party and was elected into the House of Representatives. Subsequently and for reasons best known to him, he defected to another political party while his membership subsists on the platform of the Labour Party. The appellant from all indication wants to eat his cake and at the same time also have it. He had the benefit of the Labour Party while the goodies lasts and is also seeking for a greener pasture without letting go that which he has. In order to sustain his dual position the appellant sought leverage under the proviso to Section 68(1)(g) of the Constitution (*supra*). This he cannot do as rightly held by the Lower Court in affirming the decision of the trial court in declaring the appellant's seat in the House of Representatives vacant having defected to another party in the manner not contemplated by the 1999 Constitution.

Contrary to the contention held by the appellant's counsel, the Lower Court properly reviewed the relevant facts and the law which were also evaluated appropriately by the trial court. The decisions are neither perverse nor do they amount to a miscarriage of justice. I see no reason to interfere with the findings which are also endorsed by me.

Based on the foregoing reasons and particularly for the comprehensive reasoning of my learned brother Dattijo Muhammad, JSC I also dismissed both the appeal and cross appeal as lacking in merit. I abide by all orders made in the lead judgment.

Reasons for Judgment of the Court

Given by

Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC

On Thursday 19th March, 2015, I delivered my judgment in this appeal in which I agreed with my learned brother, M. D. Muhammad, JSC in dismissing the appeal and cross-appeal and deferred my reasons for doing so till today. My reasons are stated hereunder.

The appellant herein was a member of the House of Representatives representing Akure North/South Federal Constituency having been sponsored by and elected on the platform of the Labour Party. He subsequently defected from the Labour Party to the now defunct Action Congress of Nigeria (ACN) before the expiration of the period for which the House was elected. By an originating summons filed on 26/1/2012 before the Federal High Court, Akure, Ondo State he sought various declaratory and injunctive reliefs in an attempt to validate his defection and avoid the consequences of Section 68 (1)(g) of

the 1999 Constitution. The 1st, 2nd and 3rd respondents filed a counterclaim seeking in the main a declaration that the appellant had automatically vacated his seat in the House of Representatives as a result of his defection and praying for an order directing INEC to conduct a bye-election to fill the vacant seat. It was the appellant's contention that his defection was as a result of a division within the Labour party. That in the circumstances his defection was covered by the proviso to Section 68(1)(g) and he was entitled to retain his seat. In a considered judgment delivered on 30/5/2012 the trial court disagreed with him and dismissed the suit but granted the counter claim. His appeal to the Lower Court was dismissed on 15/9/2014 hence the further appeal to this court. The 5th and 7th respondents have also filed a cross-appeal, urging the court to allow the appeal and set aside the judgments of the two Lower Courts. All the respondents except the 5th and 7th respondents urge the court to dismiss the appeal.

The parties all agree that the narrow issue for determination in this appeal, as evidenced by the sole issue formulated by the appellant, is the interpretation of Section 68 (1)(g) of the 1999 Constitution and the proviso thereto, which provides:

68 (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if

(f)

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Provided that his membership of the latter Political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political Parties or factions by one of which he was previously sponsored;

It was held in: *A-G Ondo State v A.G. Federation (2002) 9 NWLR (Pt.772) 222; (2002) 6 SC (Pt.1) 1 @ 28* that provisions of the Constitution, which is our organic law or grundnorm, must be given a broad rather than a narrow interpretation. A narrow interpretation which would do violence to the provisions and fail to achieve the goal set by the Constitution must be avoided. It has also been held by this court that where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which the Constitution read as a whole has set out to regulate, is to be preferred. This is based on the principle that the legislature would legislate only for the purpose of bringing about an effective result. In other words the courts are enjoined to apply the Latin maxim: *ut res magis quam pereat*. See: *Nafiu Rabiu v The State (1980) 8-9 SC 130; Ifezue v Mbaduoha & Anr (1984) Vol. 15 NSCC 314; (1984) All NLR 256; Aqua Ltd v Ondo State Sports Council (1985) 4 NWLR (Pt. 91) 622; Tukur v Government of Gongola State (1989) 4 NWIR (Pt. 117) 517 @ 579 G-H; I.M.B. v Tinubu (2001) 45 WRN 1 @ 19; (2001) 16 NWLR (Pt. 740) 690.*

The critical issue to be determined in this appeal is what is the nature of the division within a political party that would bring a defector within the proviso to Section 68 (1)(g) of the Constitution? From the authorities referred to earlier, in order to resolve the issue, recourse must be had to other sections of the Constitution in order to get a clear picture of the intention of the framers of the Constitution. It is necessary to appreciate the attributes of a political party to determine what would constitute a division therein.

Section 222 (a), (e) and (f) of the Constitution provides thus:

222. No association by whatever name called shall function as a Political Party, unless-

- a. The names and addresses of its national officers are registered with the Independent National Electoral Commission;
- e. the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give appearance that the activities of the association are confined to part only of the geographical area of Nigeria; and
- f. the headquarters of the association is situated in the Federal Capital Territory, Abuja.

Section 80 of the Electoral Act 2010 (as amended) is also relevant. It provides:

80. Every Political Party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

It is significant that subsection (a) of Section 222 of the Constitution refers to the national officers of the party, while subsection (e) makes it clear that no political party may give the impression that its activities are confined to a specific geographical area of Nigeria. This suggests that the structure of a political party must be national and negates the argument of learned Senior Counsel for the appellants that a division at any level of the party, whether at ward, local government or state level, would enable a defector to benefit from the proviso to Section 68 (1)(g). Section 80 of the Electoral Act affirms the position of a political party as a single corporate entity.

The provision of Section 68 (1) (g) is punitive. The mischief it is meant to address is the previously rampant practice of "carpet crossing" where a person elected to the House of Representatives on the platform of a political party, for financial

consideration or otherwise, switches allegiance midterm, discards the party that sponsored him and joins another political party before the expiration of the lifespan of the House of Representatives for which he was elected. Subsection (g) and the proviso thereto were enacted to preserve the political public morality of the country. See: *Federal Electoral Commission v Goni (1983) 14 NSCC 481*. I agree entirely with the Lower Court that if the proviso to Section 68 (1)(g) of the Constitution were to be interpreted in the narrow parameters suggested by learned Senior Counsel for the appellant, the purpose for which the section was enacted would be defeated and there would be no end to defection by members. For the appellant to take refuge under the proviso, the division in the party must be such that affects its entire structure. He was unable to establish this fact in the instant case. I therefore agree with my learned brother, M. D. Muhammad, JSC in the lead judgment that the alleged division in the Ondo State branch of the Labour Party was not shown to have affected the entire structure of the Party at the centre or nationally. The appellant was therefore not covered by the proviso to Section 68(1)(g) of the Constitution. He has failed to advance any cogent reason to warrant interference with the concurrent findings of the two Lower Courts, which have not been shown to be perverse.

For these and the more detailed reasons advanced in the lead judgment, I also found no merit in the appeal and dismissed it along with the cross appeal on Thursday 19th March, 2015. I abide by the consequential orders contained in the lead judgment including the order for costs.

Counsel

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Eyitayo Jegede (SAN) Hon. Attorney-General of Ondo State <i>with him</i> C. K. Akinrinsola (D.C.L.) F. S. Akinibosun (D.D.C.L.) H. M. Falawo (P.L.O)	For the 1 st - 3 rd Respondents
Olabode Olanipekun <i>with him</i> Bukola Araromi (Mrs.) Bolarinwa Awujoola Aisah Aliyu (Mrs.)	.....	For the 4 th , 9 th and 12 th Respondents
A. A. Malik <i>with him</i> L. A. Ikhuorih C.O. Onumonu (Mrs) M.O. Akinsanya M.L. Atsemude (Miss)	.....	For the 6 th , 8 th , and 10 th Respondents
Tolu Babaleye <i>with him</i> Oluwakemi Yemi Makinde (Mrs) Akinola Apanisile F. O. Amama	.....	For the 5 th and 7 th Respondents/Cross Appellants
	.....	11 th Respondent absent and not represented