

# A FIGHT BETWEEN LAW AND JUSTICE AT THE SUPREME COURT: THE TENURE ELONGATION CASE REVISITED<sup>1\*</sup>

## Introduction

It was the late Justice Chukwudifu Oputa who once counselled judicial officers to ensure that they leaned on the side of justice in any case of conflict between law and justice. In his immortal words:

*“The judge should appreciate that in the final analysis **the end of law is justice**. He should therefore endeavour to see that the law and the justice of the individual case he is trying go hand in hand... To this end he should be advised that the spirit of justice does not reside in formalities, not in words, nor is the triumph of the administration of justice to be found in successfully picking a way between pitfalls of technicalities. He should know that all said and done, the law is, or ought to be, but a handmaid of justice, and inflexibility which is the most becoming robe of law often serves to render justice grotesque. In any ‘fight’ between law and justice the judge should ensure that justice prevails – that was the very reason for the emergence of equity in the administration of justice. The judge should always ask himself if his decision, though legally impeccable in the end achieved a fair result. ‘That may be law but definitely not justice’ is a sad commentary on any decision.”* Oputa JSC.

Undoubtedly, the Supreme Court would appear to have heeded this counsel of the one who once was part of the court in the case under review (Marwa & Anor. v. Nyako & Ors. otherwise called the Tenure Elongation case or simply The Five Governors’ Case).

## Law and Justice defined

Generally, words have no intrinsic meaning except used in particular contexts. Thus, “When I use a word,” Humpty Dumpty said, ...“it means just what I choose it to mean – neither more nor less.” (see Lewis Carroll, 1960, **Alice’s Adventures in Wonderland and Through the Looking-Glass**, The New American Library of World Literature, Inc.) It becomes necessary therefore, for me to define “Law” and “Justice” in the context in which they are used in this title.

Accordingly, “Law” as used in this title denotes the strict constructionist literal approach adopted by the Respondents’ Counsel especially in the interpretation of “nullity” or “null and void” reminiscent of Lord Simond’s notorious dictum in *Magor and St Mellons Rural District Council v. Newport Corporation (1952) AC. 189 at 191*. “The duty of the court”, said Lord Simonds, “is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited. (see also *Hope V Smith (1963) 6 W.L.R. 464 at 467*) That approach has been faulted for its inability to respond to new legal challenges where surrounding circumstances ought to be considered in order to do substantial justice in a particular case. (*Pepper (Inspector of Taxes) v. Hart (1993) 1 ALL E.R.42*, the House of Lords, England (per Lord Griffiths) . It is submitted that had the Supreme Court adopted that approach in this case it would, inevitably, have led to a miscarriage of justice.

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On the other hand, “Justice” as used here represents the notion of fairness and equity devoid of excessive legalism and unnecessary legal technicalities in deciding each case according to its merit and peculiar circumstances resulting in substantial justice in the case. This is attained through a more flexible approach to interpretation of statutes adopted by the Supreme Court in this case - **The Purposive Approach** which seeks to give effect to the true purpose of the legislation. This approach recognizes the fact that justice is the reason for the law and the end of law is justice. It is noteworthy that the approach has since been embraced in many other jurisdictions in the world including Nigeria. *Nafiu Rabiu v. The State (1981) 2 N.C.L.R.293 @ 326* (per Udo Udoma JSC; *Amaechi v. Omehia (etc.)*)

This approach is the modern approach to the mischief rule, but it is wider in scope than the mischief rule. It has a somewhat chequered history in England. Lord Denning, by far the strongest and the most persistent advocate and exponent of this approach during his time at the Court of Appeal, seized every opportunity to advance the approach. From his “*homely metaphor of ironing out the creases.*” in *Seaford Court Estates Ltd v. Asher (1949) 2 K.B.481* to “*filling in the gaps and making sense of the enactment*” in *Magor and St Mellons Rural District Council v. Newport Corporation(1952) 2 All E.R.839*), until the Law Lord declared the literal method to be completely out of date in *Nothman v. Barnet Council* thus:

*“The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the “purposive approach” .... In all cases now in the interpretation of statutes we adopt such a construction as will “promote the general legislative purpose” underlying the provision”.*

The Purposive Approach has many advantages for justice. It allows recourse by the courts to extrinsic materials like parliamentary history, official reports or records of proceedings in parliament etc. in order to properly access legislative intention. The approach takes account of the words of the legislation according to their ordinary meaning and also the context in which they are used, the subject matter, the scope, the background, the purpose of the legislation in order to give effect to the true purpose of the legislation. It enables the court to consider not only the letter but also the spirit of the legislation. It promotes attainment of substantial justice as it dispenses with excessive legalism and slavish adherence to the doctrine of judicial precedents. (*see Prof. Ehi Oshio “Changeless Change in Constitutional Interpretation: The Purposive Approach and the Case of the Five Governors” and “The Court of Appeal and the Case of the Five Governors: the Unanswered Question” [www.nigerianlawguru.com](http://www.nigerianlawguru.com).* )

### **Facts of the Case – Marwa & Anor. v. Nyako & Ors. (2012) 6 N.W.L.R. (Part 1296) 199.**

In the April 2007 general elections conducted in Nigeria, the following Respondents in this case contested, won and were duly sworn-in as Governors of their respective States after taking their respective oaths of allegiance and of office on 29<sup>th</sup> May, 2007.

Admiral Muritala Nyako – Adamawa State.

Mr. Timipre Sylva – Bayelsa State.

Mr. Liyel Imoke – Cross River State.

Alhaji Aliyu Wamako – Sokoto State.

Alhaji Ibrahim Idris – Kogi State.

However, in 2008 their elections were successfully challenged and nullified both at the Election Petitions Tribunals and the Court of Appeal the latter of which ordered the National Independent Electoral Commission (INEC) to conduct a re-run election in all these States within ninety (90) days as required by law. The five Governors also won the re-run elections in their respective States and took another set of oaths of allegiance and office and were installed as Governors on the following various dates:

Admiral Muritala Nyako – Adamawa State , 30/4/2008

Mr. Timipre Sylva – Bayelsa State, 29/5/2008

Mr. Liyel Imoke – Cross River State, 28/8/2008

Alhaji Aliyu Wamako – Sokoto State, 28/5/2008

Alhaji Ibrahim Idris – Kogi State, 5/4/2008.

Believing that their respective tenures expired in May 2011, having taken their first Oaths and assumed office as Governors of their respective States on May 29 2007, INEC issued notice of Governorship Elections for these States scheduled for January 2011 in accordance with the 1999 Constitution and the Electoral Act 2010. The five Governors instituted their actions challenging INEC's notice at the Federal High Court seeking a declaration that the notice was premature as their tenures would not expire until 2012 and for orders of injunction restraining INEC from conducting any election in the States. They argued inter alia:

1. That the nullification of their election in 2008 had the legal effect of obliterating their first Oaths of allegiance and of office taken on 29 May 2007 relying on Lord Denning's dictum in *UAC v. Mcfoy* (1961) 3 All E.R. 1169@ 1172.
2. That their four years tenure did not commence or start to run on 29 May 2007 but in 2008 when they took their second respective Oaths of allegiance and of office following their victories in the re-run elections by virtue of the combined effect of section 180(2) (a) and (b) of the 1999 Constitution and the Supreme Court's decision in *Obi v. INEC* (2007) 11 NWLR (pt.1046) 565.
3. That section 180(2)(A) of the amended 1999 Constitution which provides that the time previously spent in office should be taken into account in determining the four years tenure, does not apply to them, not having retrospective effect, the amendment having been made in 2010 which was two years after they took office in 2008.

For the avoidance of doubt, by virtue of Section 17 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010, section 180(2) of the 1999 Constitution was amended before INEC's notice of election being contested in this case was issued by adding a new subsection (2A) as follows:

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

Section 180 of the 1999 Constitution before the above amendment provides as follows:

"(1) 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 while holding that 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.”

“(2) 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, in the case of a person first elected as governor under this Constitution, he took the oath of allegiance and the oath of office; and the person last elected to that office took the oath of allegiance and the oath of office or would, but for his death, have taken such oaths.”

“(3) *“if the Federation of Nigeria is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of four years mentioned in subsection (2) of this section from time to time, but no such extension shall exceed six months at any one time.”*

The Federal High Court delivered its judgment in favour of the five Governors in February, 2011 and granted them the reliefs sought a decision which was affirmed by the Court of Appeal in April 2011. Specifically, Bell J. declared:

“the nullification of the election of the plaintiffs by the Court of Appeal, has the legal effect of nullifying the Oath of Allegiance and Oath of Office which they took on 29<sup>th</sup> May 2007.”

Accordingly, the two courts held that their respective tenures started to count not from 29<sup>th</sup> May, 2007 but from the dates they took their respective second Oaths in 2008. It was also held the Section 180(2)(A) did not apply to the case as it had no retrospective effect.

On a further appeal to the Supreme Court, the main issue for determination was whether the lower Court was right in holding that the Governors’ tenures commenced from the dates they took their respective second Oaths in 2008 as against the first Oaths in 2007 having regard to section 180(1) and (2) and section 182(1)(b) of the 1999 Constitution. The Court also considered the fringe issue of whether section 180(2A) of the 1999 Constitution as amended applied to the case.

The apex Court unanimously allowed the appeal and reversed the decision of the lower courts. It held that the four years tenure of the respective Governors commenced on 29<sup>th</sup> May, 2007 and terminated on 28<sup>th</sup> May, 2011. On the effect of the nullification of their elections in 2008 on their Oaths of allegiance and of office taken in 2007, the Court rejected Lord Denning’s obiter dictum in *UAC v. Mcfoy* (supra) and held that **the elections were voidable and not void** ab initio as held by the lower courts. In a language that clearly suggests that the issue of election was sui generis and the effect of its nullification should be considered in that light Onnoghen JSC declared:

“Generally, a void act is void and nothing can be put on it. However, when one considers the nature and consequences of an election which produced a winner who was sworn-in on the presumption that the election that produced him was regular and legally valid, then when the election is set aside or nullified, the nullification is only limited to the election and does not affect acts done while the person occupied that office...what it all means is that the election that was later nullified was only voidable, not void, because if it is to be taken literally as void

ab initio, it means the country would be plunged into chaos as all acts done by the person must of necessity be null and void and of no effect whatever...since the acts of a Governor whose election is nullified are saved, then the only legal explanation or meaning to be attached to the use of the words "null and void" in describing the election by the court is that the election is "voidable", ab initio."

What follows is a juridical anatomy of this case and a critical analysis of the various cannons, legal tools and principles deployed by the apex Court in arriving at the impeccable decision in this case in pursuit of substantial justice.

### **The Issue of Tenure under the 1999 Constitution**

The Supreme Court held that since section 180 is subject to the provisions of the Constitution, it should not be construed in isolation but must be read together with other provisions of the Constitution as a whole. Adopting the purposive approach, the court held that the purpose of sections 1(2), 180(2), 180(1, (2) and (3), 181(1) and (2) and 182 (1)(b) of the 1999 Constitution are as follows:

- (a) No person shall take control of a State of the Federation except as provided for by the Constitution;
- (b) A person elected to the office of the Governor of a State shall hold office for a period of four years except for reason of his death, resignation, incapacity or impeachment;
- (c) The Constitution does not envisage a vacuum in the office of Governor beyond a maximum period of eight years except where the Federation is at war.

Section 180(1) of the 1999 Constitution provides as follows:

*"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 while holding that 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 Constitution provides as follows:

*"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, in the case of a person first elected as governor under this Constitution, he took the oath of allegiance and the oath of office; and the person last elected to that office took the oath of allegiance and the oath of office or would, but for his death, have taken such oaths."*

Subsection (3) provides that *"if the Federation of Nigeria is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National*

*Assembly may by resolution extend the period of four years mentioned in subsection (2) of this section from time to time, but no such extension shall exceed six months at any one time.”*

It is abundantly clear from the provisions of Section 180(2) above that the Constitution limits the tenure of a Governor to four years. At the end of four years he must vacate office unless he is re-elected for another term of four years and no more. The Constitution does not provide for any extenuating circumstance for the elongation of this tenure except under subsection (3) when the Federation is at war and the President considers that it is impracticable to hold elections, in which case, the National Assembly may, by a resolution extend the period of four years by six months at a time as the exigency of the situation may demand. It is submitted that the *exclusio unius rule* applies to this case, that is, the express mention of a thing precludes that which is not expressly mentioned. Accordingly, no court can read tenure elongation into the Constitution or grant it to anybody by any implication since it is not within the contemplation of the Constitution.

### **Oaths of allegiance and of office**

The Supreme Court rightly held that since the Constitution does not provide for a second oath of office/allegiance for one term, the second oath/swearing-in of the five Governors was unnecessary and superfluous and, therefore, legally ineffectual. In *Balonwu v. Governor of Anambra State (2008) 16 NWLR (Pt. 113) p.236* a decision affirmed by the Supreme Court, the Court of Appeal held that a second Proclamation for the House of Assembly to commence sitting within the same term of four years was unnecessary and without legal force. For the avoidance of any doubt, *Obi v INEC (2007) 11 NWLR (Pt.1046) p.565* does not apply to the case of the five Governors. For one thing, it is distinguishable because it does not involve a re-run election. Secondly, the validity of Dr. Ngige’s Oath of Allegiance and of Office was not an issue for determination in that case. Finally, the Supreme Court limited the decision thereof to the Governor of Anambra State.

Another point to be canvassed with respect to this pronouncement of the lower Courts is that it is even unconstitutional. In the first instance, there cannot be a nullification of these oaths and tenure by implication. Nullification must be express if the court is so empowered to do so and not by mere implication. Secondly, it amounts to constitutional inconsistency to hold that the decision of the Court of Appeal voiding an election under the Electoral Act 2006, a mere statute, has the effect of nullifying the oath of office duly taken under the Constitution which is the Supreme Law of the Land and, that, by mere implication. (see section 1(3) of the Constitution.)

The pronouncement is also surprising because the Electoral Act 2006 does not even empower the Court of Appeal to nullify any oath of office or tenure of a Governor. In *Balonwu v Governor of Anambra State (supra)* the Court of Appeal also held that the Court only nullified the election of Governor Ngige but not his tenure since he was returned elected by INEC and duly sworn-in by the Chief Judge of the State as Governor. All his acts as Governor were validated since there was no vacuum in government. It is submitted that since the five Governors were returned by INEC as elected and duly sworn-in as Governors, their tenure subsisted and could not be nullified by implication.

Furthermore, the decision of the lower Courts that their tenure from the time of their first swearing-in had been extinguished by implication seems to me to amount to an attempt to wrongly rewrite the political history of these States. To the question: who were the respective Governors of KOGI, SOKOTO, ADAMAWA, CROSS RIVER and BAYELSA States during the period under consideration, even a Primary School pupil would readily answer IDRIS, WAMAKO, NYAKO, IMOKE and SYLVA. It is rather amazing that the lower courts failed to provide a correct answer to this question in this case.

### **The Nature of a re-run election.**

The 1999 Constitution does not make provision for a re-run election. Indeed, Paragraph 27(2) of the Rules of Procedure made pursuant to the Electoral Act provides for **“a new election”**. Thus, the term re-run election is unknown to the Constitution and the Electoral Act.

However, a re-run election is similar to a run-off election under sections 134 (3), (4) and (5) and section 179(3), (4) and (5) of the 1999 Constitution but differs from it in some other respects. Again, the Constitution does not use the term **“run-off election”**, preferring instead the terms: **“a second election”**, **“an election”** and **“another election”**.

- (a) A Re-run election is ordered by the Tribunal or Court when an election is inconclusive. An election is inconclusive when it fails to produce a winner. This is also true of a run-off election under the Constitution. But in the case of a run-off election, it is the INEC that orders it.
- (b) Following the above, it seems that neither a re-run election nor a run-off election is entirely a new election since it is conducted to complete the inconclusive election. This has some implications for the tenure and status of a Governor who wins a re-run election following nullification of his earlier election as will soon be demonstrated.

It is submitted that a re-run (new) election within the Act is not entirely new: there are no new party primaries, no new candidates and the election is limited to the same contestants or just some of them! Accordingly, a re-run election is merely the conclusion of the election which was inconclusive. The purpose of an election is to produce a winner. An election is not conclusive when it has not produced a winner. That is why a re-run can only be ordered where the Court of Appeal doubts the verdict of the electorate as to the true winner. An election is not validly concluded or conclusive where a winner has not emerged or the election fails to produce a winner. Accordingly, an order for a re-run is an admission by the Court of Appeal that the election is inconclusive. Adopting the purposive approach therefore, **nullification of the election followed by an order for a re-run in this context means no more than a declaration by the Court that the election is inconclusive with an order to conclude the election and produce a winner.**

Accordingly, where a candidate who had earlier been declared the winner and sworn-in as the Governor wins in a re-run election, his victory is the confirmation or ratification by the electorate of its earlier verdict which the Appeal Court had doubted and had failed to uphold. By this same reasoning the first oaths taken by the Governor remained valid and effectual and any second set of oaths is

superfluous. Such a Governor is reinstated by the electorate and the argument of the five Governors' Counsel that the period of a re-run election breaks the tenure of the Governor is unsustainable. **(Ladoja's Case)**

Perhaps, for a better understanding, let's consider the relevant provisions of the Electoral Act 2006 on this score follows:

*"Section 147(1) Subject to subsection (2) of this section, if the Tribunal or the Court as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground, the Tribunal or the Court shall **nullify** the election.*

*(2) If the Tribunal or the Court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the Court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this Act."*

The relevant paragraphs of the Rules of Procedure for Election Petitions contained in the First Schedule to the Act are as follows:

*27(1) At the conclusion of the hearing, the Tribunal shall determine whether a person whose election or return is complained of or any other person, and what person, was validly returned or elected, or whether the election was void, and shall certify the determination to the Resident Electoral Commissioner or the Commission.*

*(2) If the Tribunal or Court has determined that the election is invalid then, subject to Section 147 of this Act, where there is, an appeal and the appeal fails, **a new election** shall be held by the Commission*

*(3) Where a new election is to be held under the provisions of this paragraph, the Commission shall appoint a date for the election which shall not be later than 3 months from the date of the determination."*

The two issues would appear to arise from these provisions namely:

(1) the determination of **the effect of nullification** under section 147(1) of the Act of the election of a Governor who had already been sworn-in; and

(2) the correct interpretation of a **new election** under paragraph 27(2) of the Rules of Procedure for Election Petitions contained in the First Schedule to the Act

On the issue of nullification by the Court of Appeal, two positions are distinguishable. First, by the combined effect of section 147(2) of the Electoral Act 2006 and paragraph 27(1) of the Rules, where the Tribunal or the Court determines that a candidate who was returned as elected and sworn-in as Governor on the ground that he did not score the majority of valid votes cast at the election, the

Tribunal or the Court shall declare as elected the opponent of the Governor who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and the Electoral Act. In this situation the election is conclusive having produced a winner. In such a situation, the victorious opponent must be duly sworn-in as the new Governor and his tenure would begin to run from the date he takes the Oaths of allegiance and of office. (e.g. Governors Obi, Oshiomhole, Mimiko, Aregbesola etc. cases fall within this category.) It must be noted here that the election is not nullified but only the wrong return of the “Governor” as elected was declared invalid. Accordingly, the issue and implications of a re-run election do not apply here.

However, where the election is nullified and a new election (which is a re-run election) is ordered by the Court of Appeal by the combined effect of section 147(1) of the Act and paragraph 27(2) and (3) of the Rules, a different legal situation would arise which has a far-reaching implication for the correct interpretation of the word **nullify** in section 147(1) of the Act. This is because by the combined effect of Section 147(1) of the Act and paragraph 27(2) and (3) of the Rules in the First Schedule to the Act an order for a re-run election is an exhibition of judicial doubt and it is tantamount to a reference or transfer of the case to the electorate for final determination. The electorate is the legitimate authority which will decide whether or not the Governor had been validly elected. The verdict of the electorate would confirm or reject the earlier victory at the polls since it is the electorate that elects a candidate and not the Courts. Neither the 1999 Constitution nor the Electoral Act has empowered any Court to do so. The lower courts would appear to have lost sight of this implication in construing “nullify” under the section as null and void ab initio.

The Supreme Court rightly interpreted the effect of 149 of the Electoral Act on the “nullity” of the election. Under that provisions if the governor whose election was nullified by the Tribunal files notice of appeal within 21 days the law allows him to remain in office as governor pending the determination of his appeal. As the law allows him to remain as governor and all his acts during this period are lawful and saved by the law, such nullity could not be one ab initio as was the case under the principle in UAC v. Mcfoy. This also means that all his acts as governor were lawful and valid up to the time the Court of Appeal pronounced his election null and void as such pronouncement could not have retrospective effect. It is therefore clear that the election was not void ab initio.

This therefore means that the consequences of the annulled election is different from a null and void proceeding or act which is usually described as being incurably bad and of no effect whatsoever. Thus, the nullity which allows the validity of the acts of a Governor prior to the nullification of his election is much closer to the concept of a voidable act which is usually legally valid until challenged and subsequently set aside. Accordingly, “nullity” in an election petition case is *sui generis* and does not have the effect of null and void ab initio generally. In this kind of situation, having regard to the applicable law, the facts and other surrounding circumstances, the phrase: “shall nullify the election” under Section 147(1) of the Electoral Act 2006 simply means “shall declare the election inconclusive.” This further supports the Supreme Court holding that the election is voidable and not void ab initio.

### **Effect of victory in re-run election on the de jure and de facto status of the governor.**

A re-run victory by the erstwhile governor is a confirmation of the earlier election by the electorate and therefore has a retrospective effect. This is why the unbroken tenure principle cannot apply to the governor's tenure. Accordingly, the implication of confirmation of his earlier victory by the electorate has the effect of clothing the Governor with a de jure status retrospectively even for the period he was effectively away from office. This would be especially so when it is noted that the Speaker was appointed only as acting Governor in his place pending the outcome of the re-run election to avoid any vacuum in the office of the governor.

Accordingly, it is submitted that the Supreme Court having taken a new position in this case, ought to have expressly overruled its earlier position taken in *Obi v. INEC (2007) 11 NWLR (pt.1046) 565* cited by the Respondents' Counsel that:

"The Oath taken by Dr. Chris Ngige as Governor of Anambra State was nullified. The effect of this nullification is that Dr. Chris Ngige was never elected and sworn-in as Governor of Anambra State."

This dictum would appear to have been too widely drawn. It is submitted that Ngige was a de jure governor during the period of his office before his election was nullified having been returned as elected by INEC and duly sworn-in by the Chief Judge of the State in accordance with the enabling laws. He was not a usurper to be accorded a de facto status. His case squarely falls within section 147(2) of the Electoral Act 2006 and paragraph 27(1) of the Rules of Procedure for Election Petitions which does not involve nullification of the entire election. Since in *Balonwu'* his acts as governor before the nullification were declared valid and lawful, the Oath taken by him and his Tenure could not be validly regarded as nullified. Who was the Governor of Anambra State in the period under reference? Was there a legal vacuum in the office of the Governor of Anambra State? (*Buhari v Obasanjo (2003) 17 NWLR. (pt. 850) 587 @ 664-665*).

### **The Three months absence from office**

On the question what to do with the few months in which the five Governors were effectively out of office before the re-run election took place, the case of *Ladoja v. INEC (2007) 12 NWLR (Pt. 1047) p.119* aptly supplies the answer. In that case, Governor Ladoja was effectively out of office for eleven months as a result of impeachment by the State House of Assembly which was later nullified. The Court rightly refused to grant him tenure elongation to compensate him for the eleven months even though another person was sworn-in and exercised full powers as Governor for those months but only reinstated him with full benefits as Governor for the eleven months. It is submitted that adopting the purposive approach to interpretation and having regard to all the surrounding circumstances, the case of the five Governors is a simple case of reinstatement (by the electorate) with full benefits for the period they were effectively out of office in preparation for the re-run election. At best this period may simply be treated as a period of leave with full benefits. To hold otherwise is to indulge in excessive legalism and undue technicalities which is tantamount to an attempt to defeat the purpose and intent of the 1999 Constitution of Nigeria!

## **Conclusion**

A critical and unbiased analysis of the decision of the Supreme Court's decision in this case just undertaken has obviously revealed the efficacy of the Court's doctrine on substantial justice. This is another case where a contrary decision could not have promoted the cause of justice. There was no ground on which such contrary decision would have been justified in law, justice or even logic. Indeed, it is submitted that the decision is laudable in one important respect – it incredibly satisfies the demands of law and justice simultaneously. It is also logically sound!