

# Anambra Election Saga: Andy Uba at the Supreme Court? Dead on Arrival, Legally

Contributed by Benjamin Anosike, Ph.D  
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## FORGET ANY CELEBRATION FOR ANDY UBA & CO

As an experienced, keen legal analyst and observer of long-standing expertise and exercise in such matters, if I were to advise Mr. Andy Uba and his political camp and handlers about this latest, dare devil political and legal adventure of Mr. Uba, I'll sternly advise them to be sure to leave those expensive champaign bottles they've stacked in the refrigetator in anticipation of some victorious moments at the Nigerian Supreme Court soon, right where they are to keep cooling off. For, those bottles just might be there chilling off for a long time. Indeed, probably for ever! There just isn't going to be anything for Andy Uba and his camp to really be "celebrating" for in the end, on this latest gamble and excursion of his to the Nigerian Supreme Court in the matter of seeking a reversal of the Court's earlier decision on the Peter Obi's tenure in office.

Why do I make this rather categorical assertion? I'd like to avoid making this presentation too technical or legalistic, as much as possible. I will keep it real simple and straightforward for simplicity of comprehension by the ordinary reader and the non-expert. And I'll say, that this strong assertion by me is merely predicated on a few basic issues of law that are directly relevant in this case. It is predicated merely on my objective reading of the merits of Uba's case, or, to put it even more accurately, on its absolute lack of merit whatsoever. In deed, upon even a cursory examination of the case, so ludicrous is Andy Uba's case in terms of the utter paucity of its merits as to raise the question not only about the intelligence and moral compass of one who would bring such a case (aside, of course, from his army of well-paid agents and legal advisers who aid him in filing such application for obvious monetary pay-off reasons), but also about his sheer sanity.

Let us begin with Mr. Andy Uba's Case and his purported legal grounds for this appeal.

### Andy Uba's grounds of Appeal

As best as can be gathered so far, Mr. Uba's basis for appeal against the June 14th 2007 unanimous verdict of the Nigerian Supreme Court which upheld Gov. Peter Obi's appeal case that his tenure in office should be extended till March 2010 thereby quashing Mr. Uba's short-lived pipe dream of serving as "governor" at the Awka State House, can be summarized as follows:

1. That the Supreme Court's "orders made against him (Uba) were without jurisdiction and ought to be set aside." 2. That the panel of 7-man Justices which adjudicated his case at the Supreme Court was "improperly constituted" in that, principally, it included Justice P.O. Aderemi whom he claims was biased against him because he was previously an Appeals Court judge who had sat on the Enugu State Election Tribunal in the previous Peter Obi versus Chris Ngige election court case which had upheld the election of Peter Obi in the case, and that Justice Aderemi therefore "had foreknowledge of the facts of the appellant's [Peter Obi's] case, which did not guarantee a fair hearing [to Andy Uba] and thereby occasioned a miscarriage of justice [against Andy Uba]." 3. "That the procedure and rule of interpretation adopted by this Honorable Court in the construction of the appellant's appeal was such that [it] deprived" the Court's decision or judgment "of the character of a legitimate adjudication" -- that is, that it was not fair, impartial or objective.

Stripped of all the undue verbiage and customary embellishment that accompany such legal presentations and submissions, Andy Uba's central point for this appeal, can more simply be summed up as follows: First, that the Nigerian Supreme Court should reverse itself - that it should overturn it's own prior decision of just over 3 months ago, which was unanimous - because, according to him, the Supreme Court - the same Court - or, at least one or so among the members, was biased, impartial, and unfair against him in its consideration of the facts and evidence involved in his case; secondly, that the Supreme Court lacks jurisdiction by even taking the case and handling it, in that, it claims, the case ought to have been handled by the Election Tribunal, and not taken up by the Supreme Court; and thirdly, that the Court had been wrong and biased in its "construction" (interpretation) of the relevant clauses of the Constitution pertaining to his case.

### Reasons Why Uba's Case Fails Woefully on the Merits

There are several grounds for which the Andy Uba case founders woefully. But here, I'll only limit myself to a few major ones for reasons of constraints of time and simplicity of exposition.

#### 1. UBA'S CASE FAILS ON CLAIM OF IMPROPER INTERPRETATION OF THE CONSTITUTION

A central, in deed, the core, of Andy Uba's appeal is the claim, most of which arguments had been made as well, at the hearing before the 7-judge panel that rendered the current original decision, centers around the contention by the Uba team that the Court, or, at least, just one of the Justices, namely Justice Aderemi, "adopt[ed] a very narrow approach and literal rules of interpretation and deliberately refused to interpret Section 180 [2] [a] of the 1999 Constitution" in a "proper" manner, as well as some other relevant constitutional provisions. Briefly stated, Uba's line of contention is that, according to Uba, had the Court panel that decided his case not been "biased" against him, and had interpreted the relevant clauses of the Nigerian Constitution, especially Sections 180 [2] [a], "properly," as they should have, the Court would not have ruled as they did to have he himself vacate the governor's office at Awka.. But here's why and where Uba's argument founders almost completely. Whose judgment and opinion of what is, and what is not, the "proper" interpretation of the Nigerian Constitution, is valid, or to be accepted as the "proper" or correct one -- the Supreme Court's or Andy Uba? A unanimous Supreme Court's view of what is the "proper" interpretation of the Constitution, or merely the view of Mr. Andy Uba's hired legal team? The applicable provision which Uba says is misinterpreted by the Supreme Court, reads as follows: "180(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 &dash; (a) in the case of a person first elected as Governor under this Constitution, he took the oath of allegiance and oath of office."

The well financed, hired Uba's legal team claims that the Court had "misinterpreted" this (the above) clause when it said in its Judgment that it applies, and should be applied, to the Peter Obi case. However, the Court, on its own part, vehemently holds the opposite view, emphatically asserting that, being that it is it, and NOT Mr. Andy Uba or his lawyers or anyone else, that is the Supreme Court which has the jurisdiction and the final say in constitutional interpretation matters, it is its (the 7-man Supreme Court's) interpretation and application of the respective Constitutional provisions that is right and applicable. As the lead judgment rendered by Justice Aloysius Iyorgyer Katsina-Alu made it unmistakably clear: "It is my firm view that what plaintiff/appellant [Peter Obi] had sought by his claim was the true interpretation of section 180 (2)(a) of the 1999 Constitution. The Court under the 1999 Constitution and in particular section 251(l)(q) and (r) has the jurisdiction to interpret any provision of the Constitution or the law. It is therefore my view that the court below [the Court of Appeals that had earlier passed on the case] was wrong to hold that this was an election matter under section 285 of the 1999 Constitution. I therefore allow the appeal on jurisdiction."

In deed, as the Court sees it, "Happily the said provision is very clear and explicit and all I need do is to apply it." And hence, the Court had promptly held that "There being no dispute on the fact that plaintiff/appellant [Peter Obi] took his oath of allegiance and oath of office on 17th March 2006, his term of office will expire on 17th March 2010." The Supreme Court's Supremacy in Interpretation of the Constitution In deed, there is absolutely no question whatsoever as to the FACT, which is absolutely uncontested and incontestable by almost every Constitutional scholar, that in any case or instance at all, it is the Supreme Court of Nigeria that is the final arbiter and interpreter of the meaning of any constitutional clause or provision. The Nigerian Constitution is replete with such grant of authority directly to the Supreme Court (and/or to the High Court or the Appeals Court, and through it, to the Supreme Court). Section 233 (2)(b) or (c) of the Constitution, which the Supreme Court Justices cite in the instant case, provides as follows: 233. (1) The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal. (2) An appeal shall lie from [from] decisions of the Court of Appeal to the Supreme Court as of right in the following cases - (a) where the ground of appeal involves questions of law alone (b) (b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this constitution (c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person; (Underlining is mine). While the sub-sections at 251(1) (q) & (r) of the Constitution, also cited by the Justices in their decision, further provides: 251. (1) Notwithstanding anything to the [contrary] contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters - (q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; (r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and

## 2. UBA'S CASE FAILS BASED ON ISSUE OF THE COURT'S JURISDICTION

Uba's appeal claims that the Supreme Court's "orders made against him (Uba) were without jurisdiction." In simple layman's language, Uba means, by this, that the Peter Obi Case at issue is a matter which should have been handled and treated at the Election Tribunal at Awka, rather than at the Supreme Court, where it was adjudicated. In making this claim, the Uba team bases this position on its own "interpretation" of two principal relevant provisions of the Constitution, namely, Sections 184 and 285(2), as it claims that these provisions clearly gives jurisdiction of the matter involved in the Peter Obi case solely and exclusively to the Election Tribunals to handle, and not to the Supreme Court or to any other court or tribunal. But do they, really? The said Section 285 (2), provides as follows: Election Tribunals 285. (2) There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of

Governor or Deputy Governor or as a member of any legislative house. And Section 184 of the Constitution, which was invoked by the Uba camp and the two lower courts in rejecting jurisdiction on the case and reserving it only for the Election Tribunal, provides as follows: Section 184. The National Assembly shall make provisions in respect of - (a) persons who may apply to an election tribunal for the determination of any question as to whether: (i) any person has been validly elected to the office of Governor or Deputy Governor, (ii) the term of office of a Governor or Deputy Governor has ceased, or (iii) the office of Deputy Governor has become vacant; (b) circumstances and manner in which, and the conditions upon which such application may be made; and (c) powers, practice and procedure of the election tribunal in relation to any such application

As can be seen from the two provisions of the Constitution cited above, neither of the two Sections (Sections 285 (2) & 184) which are variously invoked by Andy Uba and the two lower courts that refused hearing the case before the Supreme Court took and heard it, is really directly applicable to the issues involved in the Peter Obi case. Neither of them specifically states, or even fairly implies, that anything tangential which is related to or has to do with the life and term of office of an elected political office holder is reserved, exclusively or otherwise, for the Election Tribunal. For example, Section 285(2) [see above] merely provides that the Election Tribunals "shall have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house." But it does NOT provide anything about the kind of issue brought by Gov. Peter Obi - the length of time for his tenure in office as governor. And Section 184, on the other hand, is only really prospective - that is, it only enunciates the nature and kinds of issues and matters about which the "National Assembly shall make provisions [laws] in respect of" elections, but does not outline any specific laws or rules about elections, or about the handling of post-election issues or related matters by candidates or political office holders, or about which specific Court, if any, exactly has jurisdiction over such issues. In sum, those two provisions of the Constitution, though often cited and relied upon by Andy Uba as his basis for purported meritorious appeal, and relied upon by the lower courts in refusing to hear the Peter Obi case, are patently irrelevant and inapplicable to the Peter Obi case and the special, specific issues it raises -- namely the issue of the tenure or time of service in office to which a governor or an elected office holder shall be entitled.

In consequence, it is no wonder that one of the 7 Supreme Court Justices who ruled on the case, essentially disparaged the stance of the two lower courts that had refused to hear the case as totally lacking in any merits, summing it up this way: "The two courts below patently fell in error, because they misunderstood and in consequence misinterpreted the provisions of sections 184 and 285 of the 1999 Constitution. This error led them to conclude that the suit by the plaintiff/appellant could only be heard by an election tribunal."

### 3. UBA'S CASE FAILS BASED ON THE REMEDY & RELIEF SOUGHT BY UBA

A very interesting aspect of the Uba case, is the nature and kind of relief sought by Andy Uba from the Supreme Court. In fact, in my own conception, this is quite interesting and should be noted, for that too, tells us volumes about the merits or strength, if any, of the Uba case before that Court. Interestingly enough, Uba does not seek an outright reversal or overturn of the standing Supreme Court's decision. Rather, he seeks and asks the Court to set the prior verdict aside, and then to constitute another panel different from the one which adjudicated his case, to hear his application anew. In other words, Uba is asking the Supreme Court to hand-pick some other members of the Supreme Court to decide, all over again, what their colleagues in the same Court had already considered and decided upon, even unanimously, only some three months ago -- with all the disrepute, shame, damage and ridicule, that such a strange action will bring upon that whole hallowed Court as an institution, were it ever to do any such thing! And Uba is expecting this newly selected Court panel of his dream, to come up with another decision contradicting and going directly against the prior one by their colleagues! And why? For no real or concrete reason of egregious impropriety, or of reversible error, or gross miscarriage of justice, on the part of the original 7-man Court, other than the unsubstantiated claim, according to Andy Uba, at least, that their colleagues of 7 persons on the same Court who had already ruled on the case were "biased" and unfair, or did not conform to Uba's personal "interpretation" of the Constitution, or were not quite objective in their treatment of Andy Uba in the case

Clearly, even as a long-term legal analyst and observer of such matters, I dare say that nothing could be more ludicrous even in the checkered annals of the Nigerian judicial experience. So ludicrous that it is virtually inconceivable to me that the Uba appeal will even pass through the first main hurdle, namely, acceptance of his application by the Supreme Court for a hearing (or, rather, a re-hearing), much less being ruled upon or reversed, or getting a modification of the original judgment of the Court.

### 4. UBA'S CASE FAILS ON LACK OF PRECEDENCE OR ANY REALISTIC EXPECTATION OF THE COURT REVERSING ITSELF

Finally, I want to conclude with this categorical assertion: After all is said and done, I firmly submit and wager that the Court verdict being contested by the Uba formidable political machine, has only one chance in a trillion (yes, the reported mountain of the dollar amount of his ill-gotten personal treasury) of being nullified or reversed by the Nigerian Supreme Court. And that's all! In short, it has virtually NO chance whatsoever even in the treacherous arena of the judicial adjudication that is Nigeria, of being reversed or overturned.

In recent past, one American-based Andy Uba handler and mouthpiece who I understand is a lawyer practicing out of Dallas U.S., has made some customarily over exaggerated claims about this latest Andy Uba adventure, claiming that the "decision of the (Nigerian) Supreme Court can be reviewed and reverse" - his clear implication, being that the Nigerian Supreme Court would, or might, reverse itself in the instant case in favor of Andy Uba. Claiming that there is "no case that is not reviewable" and that the "[American} Courts understand that an error could occur even in the Supreme Court," this gentleman, who apparently knows much mainly about the American law and procedures since his legal practice is apparently limited to the Texas jurisdiction, asserts that events such as "newly discovered evidence" and "newly available evidence" could be solid basis for the Supreme Court (in America) to review cases that it had earlier decided upon and possibly reverse itself.

### Nigeria is Far From Being America

As had been my own long-standing position on matters concerning this gentleman, I would not for the life of me engage this so-called "Loya Eziokwu" on this issue. I'd rather reserve my strength and efforts for dealing with real people of personal principle, and of clear credibility and integrity on issues. I would only make a few comments on this proposition. This sort of argument is simply badly flawed, even cynical and intellectually dishonest, in that the circumstances cited are vastly different from, and inapplicable to, Nigeria. First, this argument (and those who make it) fail(s) to make mention, much less make distinction, of the fact that the cases and circumstances that are cited are merely American-based, and largely do not apply in the Nigerian arena. (In deed, if they were to have been applicable in the Nigerian legal environment, there wouldn't be this case today involving Andy Uba, in deed, there wouldn't even be an Andy Uba today, as we know it!). Secondly, this argument patently fails to make mention of the fact that there has never been any case, even one in the history of Nigeria, where the SAME Supreme Court had to turn around in Nigeria and reverse itself in a decision it had previously handed down, and that the fact that no such thing has happened ever with the Nigerian Courts, is no mere accident or happenstance -- it simply is not the way or the system there. Thirdly, the fact of the matter -- which these Andy Uba paid mouthpieces would rather that it not be known -- is that the structure and functionality of the Supreme Court of Nigeria are vastly different from those of the United State in a countless number of ways. For one thing, while the U.S. Supreme Court is comprised of just 9 Justices all of whom, as a whole, have to sit in and hear or decide on a case, the Nigerian Supreme Court, on the other hand, is constitutionally comprised of a total of 17 Justices, but they hear cases in "panels" of 5 Justices (7 in special cases, such as Constitutional or major electoral issues), which make then a "duly constituted" Court to rule and finalize any matters before them. Fourthly, sure, the claim by the exponents of the "American" Supreme Court system is certainly true that the U.S. Supreme Courts have, from time to time in its long history, "reversed" itself in decisions that the Court had previously made. But, with the following vital differences, though: it has almost never been on the same case dealing with the same issues, and brought before the SAME Court having the same cast of members; it has almost never been at the SAME time as the time when the original case had been decided upon (as in the instant case), but at least decades, or even centuries later, long after the original case had been decided upon [as in the case of Plessy v. Ferguson (1896), for example, which resurfaced some 50 years later and was reversed by the Supreme Court in the Brown v. the Board of Education in 1954]. And, most importantly, those instances involving U.S. Supreme Court reversals, which are very rare even in the United State Supreme Court situation, almost never occurs as between the same persons who were involved in the original case (as is the case in the current Uba appeal case in Nigeria).

The reported recent reaction of the Nigerian activist lawyer, Prof. Itse Sagay, to the subject is absolutely on the mark with respect to the Supreme Courts, whether it be in the United States or in Nigeria, or anywhere: "It is a settled principle in law that you cannot go to the Supreme Court to review its judgement, except a similar case comes up in future on the basis of which you can now ask the court to review the earlier case."

### CONCLUSION

In light of the foregoing facts and evidence adduced above, clearly, I wouldn't quite begin yet to "celebrate" if I were Andy Uba or his agents. His case confronts quite an almost insurmountable mountain of hurdles before it. His case, for one, is a legal and judicial oddity and enigma: is it an "appellate court" case, where, generally speaking, the Court (in this case the Supreme Court), if the matter were ever to come before it for a hearing, would have to examine the record of EVIDENCE presented in the trial court (there never was one in this case), as well as examine the LAW that the lower court applied, in order to be able to decide whether that present decision of the Court was legally sound or not? Or, is it, on the other hand, going to be merely a case needing a "trial" and the direct examination of the raw evidence and fact, as in a High Court case? (It can hardly be this, since it'll be hard to envisage the spectacle of a case being sent down directly from the Supreme Court to a High Court to be tried.) Further more, in any event, if the case is to be treated (if ever at all a case develops here) as an "appellate court" case, then we'll expect this added element: in that case, the Court is likely typically to be deferential to the Court's original findings of fact (such as whether Peter Obi is entitled to the remedies already granted it by the Court), unless clearly erroneous, and so will focus on the Court's original application of the law to those facts (such as whether the act found by the court to have occurred fits the legal and Constitutional definition at issue)? In either case, which ever way you slice it, Uba's case at the Nigerian Supreme Court confronts a grueling and almost insurmountable obstacles, in deed almost impossible ones.

We should all remember this. As of this minute, all that has happened is that Andy Uba has "filed" his application Motion with the Supreme Court's registrar at Abuja praying for his case to be accepted by the Court for it to be heard -- that is, for the Court to accept it for consideration, and for it to be actually considered on its merits or lack of it. There is no gainsaying that the Court will grant that application even to accept the application, or to hear the case. In deed, I humbly submit that Andy Uba's application will be examined in the privacy of the Justices in Chambers, and that it will be summarily dismissed and tossed into the waste paper basket, "with costs," that is, with punitive charges levied against Andy Uba and his legal team of mercenaries, including disbarment for the lawyers, and heavy fines for Andy Uba, to teach them an august lesson for such tendentious trampling of the Court's processes and prized reputation and precious time. The Justices who sit on that esteemed and respected judicial body called the Supreme Court of Nigerian, are not about to allow Andy Uba and his likes, to make a sham and mockery of them, and of the judicial process and the Court by allowing them to abuse and demean the age-long internal integrity of the Court. It will be a harsh, rude and shocking awakening for Andy Uba, never, ever to be forgotten. They will show Andy Uba the door - once and for all.