

## **SUMMARY OF THE CASE OF RT. HON. EMEKA IHEDIOHA VS SEN. HOPE UZODINMA FOR REVIEW IN THE SUPREME COURT**

On 5th February 2020, Rt. Hon. Emeka Ihedioha, CON filed an application in the Supreme Court asking the Court for: **"An Order setting aside as a nullity the judgement delivered by the Court on the 14th of January, 2020 in Appeal No. SC.1462/2019"**.

Emeka Ihedioha founded his application on the following grounds:

1. That the Court of Appeal had earlier dismissed the petition of Senator Hope Uzodinma as incompetent and struck it out. However, the Supreme Court did not consider the appeal of Hope Uzodinma on this point and **so the judgement of the Court of Appeal dismissing the petition still stands or subsists**. There was therefore no basis for the Supreme Court to pronounce on the Appeal and declare Hope Uzodinma, elected.
2. That the judgement was delivered without jurisdiction in that by virtue of S.140(2) of the Electoral Act, **once the Court says that the election was invalid, the only possible judgement the Court is allowed to give is a nullification of the election**, and not to declare Hope Uzodinma, winner.
3. That there was no proof before the Court nor did the **Supreme Court state how it arrived at the declaration that Hope Uzodinma met the constitutionally required geographical spread**. To meet this requirement, the Supreme Court ought to state the scores and percentages of all the 70 candidates that contested the election, Local Government by Local Government. This was not done by the Supreme Court and therefore had no basis and jurisdiction to declare Hope Uzodinma winner of the election.
4. That the judgement was a nullity **having been obtained by fraud or deceit** in that Hope Uzodinma fraudulently misled the Supreme Court into holding that a total of 213,495 were unlawfully excluded from his votes. The fraud was further orchestrated by the fact that the total votes cast was more than the number of voters accredited to vote. The fraud was further demonstrated by the document tendered by INEC (FORM EC40G) which clearly showed that there were no valid elections in the disputed 388 polling units.
5. That the judgement was a nullity because **it was given *per incuriam*, which means that the Supreme Court did not advert its attention to some existing laws and facts even on the face of the proceedings**. For instance;

- a) By Exhibit A1 (Form EC8D) the total number of voters accredited for the Governorship Election held on 9<sup>th</sup> March 2019 in Imo State was 823,743, while the total valid votes cast was 731,485. Note that the Petitioner did not plead or lead evidence of a different accreditation figure from the 388 disputed polling units.
  - b) With the inclusion of 213,695 votes for Hope Uzodinma and 1,903 to the votes of Emeka Ihedioha, as ordered by the Supreme Court, the total number of votes cast at the election now stands at 953,083 (i.e. 731,485 + 213,695 + 1,903) making the total number of votes cast at the election to be far in excess of the total number of voters accredited for the election, 129,340.
  - c) It is unlawful for the total number of votes cast in an election to exceed the number of accredited voters and that illegality rendered the judgment sought to be set aside null and void.
- 6.
- a. The present application is seeking to set aside the judgment in Appeal Nos. SC. 1462/2019 and SC.1470/2019 on the basis that even though the appeals were concluded within the 60 days period stipulated by Constitution, the entire proceeding was vitiated by jurisdictional vices which renders same a nullity. Time does not run against nullities.
  - b. Consequently, the present application is not subject to the 60 days limitation period in section 285(7) of the Constitution because an application to set aside a null judgment or order is not circumscribed by statutes of limitation, and section 285 (7) of the Constitution is, to all intents and purposes, a statute of limitation.
7. The rationale behind the inherent power of this court to set aside its judgments in appropriate cases was graphically and beautifully stated by Oputa JSC in the case of **ADEGOKE MOTORS LTD. v. ADESANYA (1986) 3 NWLR (Pt. 109) 250 at 274** as follows:

***“Justices of this court are human beings capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court***

**can do incalculable harm through its mistakes. When therefore it appears to learned Counsel that any decision of this Court has been given per incuriam, such Counsel should have the boldness and courage to ask that such decision shall be overruled. This Court has the power to overrule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to preserve an error.”**

8. a. That the judgement was a nullity in that the Supreme Court was misled into making a vague order directing the inclusion of votes from the 388 polling units without stating or specifying the particular number of votes to be included from those polling units for all the parties.
- b. Without computing the votes for all these parties from the 388 polling units, the Supreme Court was misled into declaring Hope Uzodinma the winner of the gubernatorial election in Imo State.

#### **CONCLUSION:**

There is no denying that this is a time of crises in our country. At this, of all times, our Supreme Court has been afforded this unique opportunity of allaying the fears of those who cast aspersions on the credibility of our courts. Those who mean well for the nation will agree that we have here an opportunity for the Supreme Court to mitigate public misgiving of our courts and to rehabilitate her reputation and restore the good name of the judiciary by setting aside this judgment which seems to us to be a nullity. Your verdict in this matter should match the solemn oath you have taken. Remember that every decision of the Supreme Court involves the good name of the judiciary. Prove to the world that the Supreme Court is sacred. Let your verdict help to retain the good graces of our people.