IN THE COURT OF APPEAL OF NIGERIA

IN THE AKURE JUDICIAL DIVISION

HOLDEN AT AKURE

ON FRIDAY THE 13TH DAY OF JUNE, 2025

BEFORE THEIR LORDSHIPS:

OYEBISI FOLAYEMI OMOLEYE -JUSTICE, COURT OF APPEAL

PETER CHUDI OBIORAH -JUSTICE, COURT OF APPEAL

HADIZA RABIU SHAGARI -JUSTICE, COURT OF APPEAL

APPEAL NO: CA/AK/15/2025

BETWEEN:

1. ALLIED PEOPLE MOVEMENT - 1st APPELLANT/RESPONDENT
2. BABARINDE NURUDEEN IDOWU - 2nd APPELLANT/RESPONDENT
3. ALL PROGRESSIVE CONGRESS (APC)- 3rd APPELLANT/APPLICANT

AND

1. ACTION PEOPLES PARTY (APP)
2. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
3. OSUN STATE INDEPENDENT ELECTORAL COMMISSION (OSSIEC) - RESPONDENTS
4. ALL PROGRESSIVE GRAND ALLIANCE
5. PRINCE ADEGBOYE FAMODUN

pd under RCR No 12975568

COURT OF APPEAL AKURE CASHIER (ABDUL) DATE 19-6-25 SIGN

PAID DATE 19-6-25

CERTIFIED TRUE COPY COURT OF APPEAL, AKURE PRINCIPAL REGISTRAR BELLO HASSAN ESQ. 19/6/2025

RULING

DELIVERED BY PETER CHUDI OBIORAH, JCA

The 3rd Appellant, All Progressive Congress (APC), has approached this Honourable Court with a motion on notice filed on 23rd day of January, 2025 seeking the following reliefs:

1. **LEAVE of this Honourable Court to apply for setting aside the Ruling/Judgment of the Court dated the 13th day of January, 2025 in Appeal No. CA/AK/226M/2024 Between Allied People Movement & Ors v. Action Peoples Party (APP) & Ors.**
2. **AN ORDER of this Honourable Court setting aside the Ruling/Judgment of the Court dated the 13th day of January, 2025 in Appeal No. CA/AK/226M/2024 Between Allied People Movement & Ors v. Action Peoples Party (APP) & Ors.**
3. **AN ORDER of this Honourable Court restoring/relisting Appeal CA/AK/226M/2024 Between Allied People Movement & Ors v. Action Peoples Party (APP) & Ors, dismissed for want of prosecution on the 13th day of January, 2025.**
4. **AN ORDER of this Honourable Court for enlargement of time within which to compile and transmit Record of Appeal in this appeal.**
5. **AN ORDER of this Honourable Court deeming as having been properly compiled and transmitted the Record of Appeal already compiled and transmitted.**

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AND for such further or other order(s) as the Court may deem fit to make in the circumstances.

The grounds for the application are as follows:

1. **This appeal was dismissed by this Honourable Court for want of prosecution on 13th January, 2025.**
2. **The circumstances that led to the delay on the part of the 3rd Appellant/Applicant were due to change in leadership and clerical error of a staff who eventually left without adequate transmission of the Court process served in this matter.**
3. **The 3rd Appellant/Applicant has now compiled and transmitted record of appeal and is desirous of prosecuting this appeal.**
4. **It is in the interest of justice and fair hearing to relist this appeal.**

However, the 3rd Respondent filed a notice of preliminary objection on 10/4/2025 by which seeks to stop the 3rd Appellant/Applicant from proceeding with the hearing of their application to relist their appeal on the ground that they are in contempt of court.

In view of the fact that the said preliminary objection is aimed at the competence of the 3rd Appellant/Applicant to be heard on their motion on notice for relisting the appeal, it is prudent and in accord with established practice that I consider and deal with the

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preliminary objection first. Thereafter, if need, I will consider the substantive application for relisting the appeal.

I shall now proceed with my consideration of the preliminary objection.

NOTICE OF PRELIMINARY OBJECTION

By the notice of preliminary objection filed on 10th April, 2025, the 3rd Respondent contended that the Appellants particularly the 3rd Appellant's are contemnors and are in gross violation of the judgment and order of the court below in Suit No: FHC/OS/CS/103/2022 and that of this court and therefore prayed this Court to refuse them audience and strike out the 3rd Appellants application filed on 23rd January, 2025 until they purge themselves of the contempt.

The preliminary objection was predicated on the following grounds:

(i) **Judgment was delivered at the Federal High Court in Suit No. FHC/OS/SC/103/2022 on 30th November, 2022, declaring that the election into the Local Government Councils across Osun State held on 15th October, 2022 is unconstitutional, invalid, null and void.**

(ii) **The said Judgment of the Federal High Court in FHC/OS/SC/103/2022 also directed that all persons or individuals occupying offices in the State Local Government Councils pursuant to the nullified**

election were accordingly sacked from holding such offices.

(iii) The Appellants herein, who were dissatisfied with the decision of the Federal High Court in Suit No. FHC/OS/SC/103/2022, challenged the aforementioned judgment by initiating an appeal before this Honourable Court vide a Notice of Appeal filed on the 2nd of December, 2022.

(iv) Sequel to the failure of the Appellants to compile and transmit record for over 23 months after they lodged their Notice of Appeal, an application was filed on the 27th day of November, 2024 for the dismissal of the Appeal for want of diligent prosecution, and all the parties herein, including the 3rd Appellant/Applicant, were duly served with the said application.

(v) That the Appellants did not file any opposition whatsoever to the said Application for dismissal of the appeal, neither did they cause any Record of Appeal to be compiled and transmitted to this Honourable Court.

(vi) On the 13th day of January, 2025, the Motion for dismissal of the appeal was heard in the presence of one A. M. Ayodele who held the brief of Muhydeen Adeoye (Counsel to all the Appellants herein) and who had no opposition to the grant of the Application. Consequently, the said Application was granted as prayed by this Honourable Court and the Appeal was accordingly dismissed.

(vii) By the dismissal of the Appeal on 13th January, 2025, the Judgment of the Federal High Court in Suit no. FHC/OS/SC/103/2022 was affirmed.

(viii) In frontal disregard and violation of the Judgment of the Lower Court and upon dismissal of the Appellants Appeal, the Appellants particularly the 3rd Appellant violated the order of this Honourable Court by calling upon the erstwhile sacked Local Government Chairmen and Councillors to resume at their respective Local Government Secretariats.

(ix) The Appellants particularly the 3rd Appellant in violation of the judgment of the Lower Court and this Honourable Court mobilized the sacked Chairmen and Councillors of the various Local Governments and its supporters to occupy their respective Local Government Secretariats and further caused its said supporters to cause chaos in the respective Local Government Councils.

(x) Sequel to the disobedience of the Appellants, particularly the 3rd Appellant of the Judgment of the Lower Court in FHC/OS/103/2022, which appeal against was dismissed by this Honourable Court on 13th January, 2025, the 1st Respondent instituted and commenced contempt proceedings against the 3rd Appellant and the sacked Local Government Chairmen and Councillors at the Federal High Court on 11th March, 2025.

(xi) The 3rd Appellant being a contemnor of both the Judgment of the Lower Court and this Honourable Court does not have a right of audience before this Honourable Court.

(xii) The 3rd Appellant is in contempt of the court and as such is not entitled to any reliefs sought before this Honourable Court.

(xiii) By the gross disobedience of the order of the Lower Court and this Honourable Court by the 3rd

Appellant, the administration of justice is deeply affected.

(xiv) Disobedience of Court order is a serious offence which interferes with the powers of the Court of administer justice, the Court should not entertain any application filed by the contemnor who is in continuous disobedience of the order of the Court.

(xv) The 3rd Respondents shall rely on its Counter Affidavit filed on 21st March, 2025 in support of this Preliminary Objection.

The preliminary objection is supported by an affidavit of eighteen (18) paragraphs deposed to by Sikiru Ayanfe Amoo, who is the Director of Administration of the 3rd Respondent/Objector. In opposition to the preliminary objection, the 3rd Appellant/Respondent (APC) on 22/4/2025 filed a counter affidavit a nine (9) paragraphs counter affidavit deposed to by Chief R. Adegoke Ogunsola who is the State Legal Adviser. Subsequently, the objector filed a further affidavit on 6/5/2025. The said further affidavit has six paragraphs and carried two exhibits. The other parties in the suit were indifferent to the application and filed no process.

The learned counsel for both the 3rd Respondent/Objector and the 3rd Appellant/Respondent proffered arguments in respect of the preliminary objection in their written addresses. In his written address, the objector's senior counsel set down one issue for determination, to wit:

Whether the 3rd Appellant's is worthy of the audience of this Honourable Court vide its application filed on 23rd January, 2025 the 3rd Appellants being contemnors and in grave violation of the Order of the Lower Court and this Honourable Court?

Counsel submitted that contempt is a serious offence which interferes with powers of the court to administer justice and the court is at all times enjoined to invoke its inherent powers to punish any erring party. He stated that disobedience of the court goes straight into the bone marrow of the administration of Justice and cited **EZEKIEL HART v. EZEKIEL HART (1990) 1 NWLR (PT. 126) 276 AT 297 PARAS C-D** and **GOV. OF LAGOS STATE v. OJUKWU (1996) 1 NWLR (PT. 18) 621 at 633**

He argued the Appellants appeal in this instant appeal was dismissed on 13th day of January, 2025 on the failure to compile and transmit their record for over 23 months after they had lodged their Notice of Appeal. He stated that rather than for the Appellants to exert all their energy to bring back to life their appeal, the Appellant, Particularly the 3rd Appellant, through the Minister of Marine and Blue Economy held a meeting with the 3rd Appellants' Stakeholder in Osogbo, Osun State and called in the security agencies to facilitate the return of the sacked 3rd Appellants' Local Government Chairmen and Councilors back to their respective Local Government offices in violation and total disrespect of the Order of the Court below and this Honourable

Court and started causing chaos in the said Local Government Secretariats in a bid to resume their offices as Local Government Chairmen and Councillors.

Counsel submitted that the 3rd Appellant is laying claim to the decision of this Honourable Court in Appeal No: CA/AK/270/2022: APC & 3 ORS v. PDP & 3 ORS which said judgment did not order the reinstatement of the Local Government Council Chairmen and Councillors in Osun State but only struck out the originating summons of the 1st Respondent for being incompetent as shown in Exhibit OSSIEC 3 attached to the 3rd Respondent's counter affidavit. He contended that the Appellants, who are in continuous disobedience of the order of the court below and this Honourable court, cannot in all good conscience as contemnors in the administration of justice be heard until they halt the act of disobedience of the court below and this Honourable Court. He referred to **AG KADUNA v. AG FEDERATION (2023) 12 NWLR (PT.1899)537 AT 591 PARAS B-F**; **F.A.T.B. v. EZEGBU (1992) 9 NWLR (PT. 264) 132 AT 146-147** and **MOBIL OIL (NIG.) LTD v. ASSAN (1995) 8 NWLR (PT. 412) 129 AT 144 PARAS D-E**.

Learned counsel submitted that the 3rd Appellant has not come with clean hands and so not deserving of the discretion of this Honourable Court to be heard. He contended that it is settled principle of law is that no matter the feeling of a party about an order of court it must be obeyed unless it is set aside by a higher

court, and cited **A.G. ANAMBRA STATE v. A.G. FEDERATION [2005] 9 NWLR (PT 931) AT 608 PARAS C-E.**

In conclusion, counsel urged this Honourable Court to discountenance the 3rd Appellant's application and refuse it audience to relist the appeal, and also make a pronouncement that until it purges itself of the contempt it cannot be heard.

On his part, the 3rd Appellant/Respondent's counsel submitted that a person can only be properly described as a contemnor after having been so adjudged by a competent court. He argued that the steps taken by the Appellant to appeal the judgment in FHC/OS/CS/103/2022 cannot be curtailed by the 3rd Respondent/Applicant's misconstrued submission premised on an imagined contempt of court concocted against the Appellant's reliance on a valid judgment of the Court of Appeal delivered on 10th February, 2025 in Exhibit B. he referred to **ENEYO v. NSA & ANOR (2011) LPELR-4113(CA) (PP. 15-17) paras. F); IN RE: DEDUWA (1975) LPELR-937(SC) (Pp. 23-25 paras. F); ACHELENU v. A.G. BENUE STATE (2011) LPELR-3981(CA) (Pp. 19-25 paras. F)** and **EZEKIEL-HART v. EZEKIEL-HART (1990) 1 NWLR (PT. 126) 276.**

Learned senior counsel referred to Exhibits A, B, C, D, and E, and urged this Court to decline jurisdiction over the 3rd Respondent/Applicant's preliminary objection disingenuously premised on contempt of court as it is an abuse of court process

and that unless the 3rd Respondent/Applicant is admonished, the harassment, intimidation, humiliation and irritation being caused by the 3rd Respondent/Applicant to the 3rd Appellant/Respondent in collaboration with the Osun State Government will continue unabated.

He argued that contempt being a quasi-criminal proceeding must be shown to exist by way of disobedience of an order of court before a party is prevented from exercising its constitutional right and that the Applicant cannot succeed on this application as no proof of contempt is before this Court. He cited **DASUKI v. FRN (2016) LPELR-45731(CA)** and **OLAM v. AG KATSINA STATE & ANOR (2023) LPELR-60045(CA)**.

Senior counsel urged the Court to examine Exhibits A, B, C, D, E and the 3rd Respondent/Applicant's Exhibit OSSIEC PO1 and submitted that this is the same contempt matter resubmitted here without waiting for the determination of same at the lower court. He stated that this is oppressive and a good example of abuse of court process. He cited **AFRICAN REINSURANCE CORPORATION v. JDP CONSTRUCTION NIGERIA LTD (2003) LPELR-215(SC).**

He prayed this Court to dismiss the preliminary objection with costs.

RESOLUTION OF THE PRELIMINARY OBJECTION

My noble lords, I have carefully read and considered the arguments of learned senior counsel for the parties involved in this preliminary objection. There is no doubt that the objection is primarily premised on allegation of committal of contempt of court by the 3rd Appellant/Respondent. It is based on this allegation of being in contempt of court that the 3rd Respondent/Applicant/Objector has called on this Honourable Court to deny audience to the 3rd Appellant/Respondent from moving or being heard on their motion on notice for relisting of their appeal which was dismissed by this Court on 13th January, 2025.

What constitutes contempt of court cannot be exhaustively defined and compartmentalized as it involves any conduct aimed at disrespect to the dignity and authority of the court which is easily manifested in disobedience to the orders of court.

In **SHUGABA v. U.B.N. PLC (1999) LPELR-3068(SC) at page 39 para. E**, Achike, JSC, on purpose of contempt stated thus:

> **"We are only to remind ourselves that the court jealously guards its powers to punish for ridicule or contempt of its orders, whether committed in facie curiae or ex facie curiae."**

Contempt proceedings is quasi-criminal in nature since the liberty of a citizen is at stake and in that circumstance involves a

diligent and categorical proof of the allegation against the alleged contemnor. The Supreme Court laid down this principle in **INEC & ANOR v. OGUEBEGO & ORS (2017) LPELR-42609(SC)** at page 12-13 paras. D-A, where the revered and cerebral, Chima Centus Nweze, JSC (of blessed memory) stated thus:

> **"It is even settled that contempt or committal proceeding no doubt is quasi-criminal proceeding which has the likelihood of affecting the liberty of a citizen. Against this background therefore, the person setting up contempt proceedings must therefore ensure that every step that is necessary is taken and the entire requirements are complied with strictly**, Opobiyi v. Muniru [2008] All FWLR (pt. 408) 380; Nya v Edem [2005] All FWLR (pt. 242) 576; F.C.D.A. v. Koripamo - Agary (2010) 14 NWLR (pt.1213) 377, 391-392; Aina v. Jinadu (1992) 4 NWLR (pt.233) 90; Ogaji v. Igonikon - Digbani [2010] 10 NWLR (pt.1202) 298, 306; and Uhunmwangho v. Okojie [1989] 5 NWLR (pt.122) 471, 487."

In the instant case, the 3rd Respondent/Objector made reference to the disobedience of the judgment and orders of the lower court, being the Federal High Court, made in Suit No. FHC/OS/CS/103/2022. The objector also made a veiled reference to a violation of the judgment and order of this Court.

Reading the preliminary objection and supporting affidavits, in context, it is obvious that the order of this Court which is alleged to be breached is the decision of this Court made on 13th

January, 2025, whereby this Court dismissed the appeal lodged by the 3rd Appellant/Respondent against the judgment in Suit No. FHC/OS/CS/103/2022 for lack of diligent prosecution. It follows, therefore, that searching for what substantive orders the 3rd Appellant/Respondent violated, one must have recourse and pay a visit to the judgment of the Federal High Court in Suit No. FHC/OS/CS/103/2022 delivered on 30th November, 2022.

Incidentally, the 3rd Respondent/Applicant made a point about the state of the alleged contempt of court and its proceedings in court, which this Court cannot overlook. The point is introduced in paragraphs (vii), (viii) and (ix) of the grounds in support of the notice of preliminary objection which read as follows:

> **(vii) By the dismissal of the Appeal on 13th January, 2025, the Judgment of the Federal High Court in Suit no. FHC/OS/SC/103/2022 was affirmed.**
>
> **(viii) In frontal disregard and violation of the Judgment of the Lower Court and upon dismissal of the Appellants Appeal, the Appellants particularly the 3rd Appellant violated the order of this Honourable Court by calling upon the erstwhile sacked Local Government Chairmen and Councillors to resume at their respective Local Government Secretariats.**
>
> **(ix) The Appellants particularly the 3rd Appellant in violation of the judgment of the Lower Court and this Honourable Court mobilized the sacked Chairmen and Councillors of the various Local Governments and its supporters to occupy their respective Local Government Secretariats and**

further caused its said supporters to cause chaos in the respective Local Government Councils.

The above paragraphs constitution a narration of what the 3rd Appellant/Respondent was alleged to have done in violation of the court order.

The question is what did the present 3rd Respondent/Applicant do in the face of the violation of the said court order? Paragraphs (x) and (xi) of the grounds of the preliminary objection provided the answer. It reads:

(x) **Sequel to the disobedience of the Appellants, particularly the 3rd Appellant of the Judgment of the Lower Court in FHC/OS/103/2022, which appeal against was dismissed by this Honourable Court on 13th January, 2025, the 1st Respondent instituted and commenced contempt proceedings against the 3rd Appellant and the sacked Local Government Chairmen and Councillors at the Federal High Court on 11th March, 2025.**

(xi) **The 3rd Appellant being a contemnor of both the Judgment of the Lower Court and this Honourable Court does not have a right of audience before this Honourable Court.**

The above grounds were re-echoed in paragraphs 12 and 13 of the affidavit in support of the preliminary objection. A combined and dispassionate reading and comprehension of the aforesaid grounds and affidavit of the 3rd Respondent/Applicant will readily show an admission that the issue of contempt was primarily committed against the judgment and orders of the Federal High

Court which sacked the candidates of the 3rd Appellant/Respondent as Chairmen and Councillors of the various Local Government Councils in Osun State. The said contempt is not against any direct order of this Court. I say so because the only connection this Court has with the judgment of the lower court is that it dismissed the appeal lodged against the said judgment of the lower court for lack of prosecution on 13/1/2025.

Of course, the dismissal of the appeal means that there being no existing appeal against the judgment of the lower court, the said judgment stands as the authority defining the state of affairs as it regards the status of the officers of the various Local Government Councils in Osun State. However, the issue of violation of the orders of the lower court and the alleged contempt is the 3rd Respondent/Applicant's interpretation of the action of the 3rd Appellant/Respondent with respect to their treatment of the judgment of the lower court, particularly after the dismissal of their appeal by this Court on 13/1/2025. The said contempt is ex-facie curiae.

In **INEC & ANOR v. OGUEBEGO & ORS (2017) LPELR-42609(SC) (Pp. 10-12 paras. F),** the highly revered and cerebral, Chima Centus Nweze, JSC (of blessed memory) stated thus:

"In cases of contempt ex facie curiae, there may be cases where the offence should be

dealt with summarily, but such hearing must be conducted in accordance with cardinal principles of fair process. Above all, the case must be one the facts surrounding the alleged contempt are so notorious as to be virtually incontestable, where the Judge would have to rely on evidence or testimony of witnesses to events occurring outside his view and outside of his presence in Court, he should not try the case himself.

The matter must be placed before another judge where the usual procedure for the arrest, charge and prosecution of the offender must be followed, Oku v. The State (supra) 68. In other words, in the trial of criminal contempt ex facie curiae, an offender is entitled to the benefit of a full process of a criminal trial. The reason for this is obvious. Firstly, this is to ensure that the accused person receives a fair hearing of the case against him. In the second place, the Judge no doubt would have to rely on evidence or testimony of witnesses to events which did not occur in his presence, Boyo v. Attorney-General of Mid- West (1971) 1 All NLR 353."

In **OMOIJAHE v. UMORU & ORS (1999) LPELR-2645(SC) at pages 10-11 paras. G-A,** Katsina-Alu, JSC (later CJN) stated

"There are two types of contempt - that committed in facie curiae and that committed ex facie curiae. In the case of the second type, a charge and a plea are necessary and the accused is entitled to a fair hearing of the case against him. In both types

> **of contempt, a trial is involved.** See Awosanya v. Board of Customs & Excise (1975) 3 SC. 47. **What separates one from the other is the procedure to be adopted."**

Interestingly, the 3rd Respondent/Applicant has informed this Court in ground (x) and paragraph 12 of the affidavit that the 1st Respondent instituted a "contempt proceedings" against the 3rd Appellant/Respondent and the sacked Local Government Chairmen and Councillors at the Federal High Court on 11th March, 2025. The 3rd Respondent/Applicant did not say one word concerning the outcome of the contempt proceedings. It is therefore safe to presume and conclude that the said proceedings is still pending at the lower court.

The said contempt proceedings is not pending before this Court for determination. The lower court is yet to give a decision, one way or the other, on the contempt proceedings. Yet, the 3rd Respondent/Applicant wants this Court to act on an inchoate proceeding before the lower court to conclude that the 3rd Appellant is a "contemnor" and therefore unfit to have audience before this Honourable Court in respect of their application to relist their dismissed appeal.

Another way of putting it, is that the 3rd Respondent/Applicant obviously wants this Court, to act as a clairvoyant, to look at the issues pending before the lower court in the contempt proceedings and adjudicate on same when the said proceedings

is not before us. I say so because denying the 3rd Appellant/Respondent audience before this Court on the sole ground that they are "contemnors" presupposes that we have found them guilty of the allegation of contempt of court when no application for committal for contempt is before this Court and when the lower court has not determined the contempt proceedings before it.

In the presence of pending contempt proceedings, the 3rd Respondent/Applicant beat the gun and appear to be in unnecessary hurry in asking this Court to treat the 3rd Appellant/Respondent as "contemnors", a fact and badge that can only be established and employed after a determination of the pending contempt proceedings at the lower court.

As was held by Niki Tobi, JSC, in **GROUP DANONE & ANOR v. VOLTIC (NIG) LTD (2008) LPELR-1341(SC) at page 36 para. E,** "*Invocation of contempt proceedings is different from conviction and committal for contempt.*"

In the instant case, the contempt proceedings is pending at the lower court. The matter has not been determined to know if the 3rd Appellant/Respondent and the sacked Local Government Chairmen and Councillors have been convicted or not. Of what end will this preliminary objection serve if the 3rd Appellant/Respondent is denied audience in respect of their application for relisting the dismissed appeal, and it turns out at

the end of trial of the contempt proceedings at the Federal High Court, that the court holds that the contempt was not established, resulting in the dismissal of the contempt charge?

It means that this Honourable Court has acted on speculation and conjecture. It is a truism that a court of law does not act based on speculation, conjecture, or guess work but on empirical facts and evidence provided by the parties.

This Court aptly captured it in the case of **DANGANA v. A.G. & COMMISSIONER FOR JUSTICE, KADUNA STATE & ANOR (2022) LPELR-58295(CA)** at page 37, paras. C-D, Wambai, JCA, said that:

> **"The Court must confine itself to proved facts and not sail on the ocean of speculation howsoever alluring or attractive the voyage seems. The ship will surely sink into the deep ocean."**

See also **ARCHIBONG v. ITA (2004) 2 NWLR (Pt. 858) 590 at 610 – 620; IKENTA BEST (NIG.) LTD v. A.G. RIVERS STATE (2008) 8 NWLR (Pt.1084) 612** and **GOVERNOR OF OYO STATE & ORS v. AJUWON & ORS (2020) LPELR-50471(CA).**

In the light of all I have said in respect of the preliminary objection, it is my firm conviction that the preliminary objection lacks merit. It is an attempt to lure this Honourable Court to usurp the jurisdiction of the Federal High Court handling the contempt proceedings or struggle over jurisdiction with the lower court and thereby conclude that the 3rd Appellant/Respondent is guilty of

contempt when the said contempt proceedings has not been determined by the lower court seised of the matter.

The preliminary objection lacks merit. It is hereby dismissed.

MOTION ON NOTICE

I had earlier set down the reliefs sought by the 3rd Appellant/Applicant vide the motion on notice but for presence of mind and easy reference, I reproduce the reliefs now I am dealing specifically with it.

1. **LEAVE of this Honourable Court to apply for setting aside the Ruling/Judgment of the Court dated the 13th day of January, 2025 in Appeal No. CA/AK/226M/2024 Between Allied People Movement & Ors v. Action Peoples Party (APP) & Ors.**
2. **AN ORDER of this Honourable Court setting aside the Ruling/Judgment of the Court dated the 13th day of January, 2025 in Appeal No. CA/AK/226M/2024 Between Allied People Movement & Ors v. Action Peoples Party (APP) & Ors.**
3. **AN ORDER of this Honourable Court restoring/relisting Appeal CA/AK/226M/2024 Between Allied People Movement & Ors v. Action Peoples Party (APP) & Ors, dismissed for want of prosecution on the 13th day of January, 2025.**
4. **AN ORDER of this Honourable Court for enlargement of time within which to compile and transmit Record of Appeal in this appeal.**

5. **AN ORDER of this Honourable Court deeming as having been properly compiled and transmitted the Record of Appeal already compiled and transmitted.**

AND for such further or other order(s) as the Court may deem fit top make in the circumstances.

The grounds for the application are as follows:

1. **This appeal was dismissed by this Honourable Court for want of prosecution on 13th January, 2025.**
2. **The circumstances that led to the delay on the part of the 3rd Appellant/Applicant were due to change in leadership and clerical error of a staff who eventually left without adequate transmission of the Court process served in this matter.**
3. **The 3rd Appellant/Applicant has now compiled and transmitted record of appeal and is desirous of prosecuting this appeal.**
4. **It is in the interest of justice and fair hearing to relist this appeal.**

The application is supported by an affidavit of twenty (20) paragraphs deposed to by Tajudeen Aremu. The 1st Respondent, in opposition to the application filed a counter affidavit twenty-eight (28) paragraphs deposed to by Odesola Oluseye Titus on 16/4/2025 which was deemed filed on 14/5/2025. The application was also challenged by the 3rd Respondent who filed a counter affidavit of eleven (11) paragraphs deposed to by Sikiru Ayanfe Amoo on 21/3/2025 and was deemed filed on 14/5/2025.

The Applicant in reaction to the counter affidavit of the 3rd Respondent, filed a further affidavit on 24/3/2025. The said further affidavit has thirteen (13) paragraphs and was deposed to by Tajudeen Aremu. Again, the Applicant filed a further affidavit of eleven (11) paragraphs on 2/5/2025 in response to the counter affidavit of the 1st Respondent. The processes were accompanied with the written addresses of learned counsel for the parties.

BRIEF REVIEW OF THE WRITTEN ADDRESSES OF PARTIES

The 3rd Appellant/Applicant (All Progressive Congress) counsel in his written address in support of the motion on notice set down one issue for determination which is:

> **Whether considering the facts deposed to herein in support of the motion, this application has merit.**

Learned counsel relied on Order 6 Rule 10 of the Court of Appeal Rules, 2021 and submitted that the 3rd Appellant/Applicant's failure to compile and transmit the record within the stipulated time until after the dismissal of the appeal was as a result of a serious communication gap occasioned by illness of the person whose duty was to receive such. He urged the Court to exercise the discretion in favour of the Applicant and cited **MICHAEL OKAROH v. THE STATE (1988) 3 NWLR (PT. 81) 214.**

He stated that an application of this nature is not granted as a matter of course as it called for discretion of the court which he urged the court to exercise in favour of the Applicant citing **DOHERTY v. DOHERTY (1964) 1 All NLR 299** and **AKITI v. OYEKUNLE (2018) 8 NWLR (PT. 1620) 182.**

In his further address accompanying the further affidavit filed in response to the counter affidavit of the 3rd Respondent, counsel submitted that by Order 7 Rule 8 of the Court of Appeal Rules, a Notice of Appeal may be amended by or with the leave of Court at any time and that the amendment sought by the Applicant is to ensure complete and effective determination of the appeal. He asked the Court to allow fresh issue of jurisdiction which can be raised at any time even for the first time on appeal and even viva voce. However, the Applicant has brought this application out of abundance of caution. He referred to **UNITYKAPITAL ASSURANCE v. UZOKWU (2020) LPELR-49763(CA) (Pp. 14-15 paras. A); BRONIK MOTORS v. WEMA BANK (1983) 1 SCNLR 296** and other cases.

Counsel further contended that the prayer for a deeming order is also meritorious having regard to the fact that same is being sought to ensure no delay is occasioned in respect of the hearing of the appeal and ensure a swift determination of this appeal. He stated that the Applicant would proceed to file its Appellant's Brief of Argument in line with the Amended Notice of Appeal to be filed alongside this Application so that in the likely event that this

application is granted, the Honourable Court can just proceed to hearing the substantive appeal.

He contended that the prayers sought by this Application are meritorious and that the Respondents would not be prejudiced by a grant of the application which seeks to ensure that parties are able to put all their contentions properly before the Court for effective and effectual determination of this appeal on the merit.

Further reacting to the counter affidavit of the 1st Respondent (APP), the 3rd Appellant/Applicant's counsel submitted that paragraphs 7, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25 and 26 of the counter affidavit are legal arguments, conclusions, opinions, hearsay, extraneous and in violation of Section 115 of the Evidence Act, 2011 and are therefore inadmissible. He commended the case of **BAMAIYI v. THE STATE & ORS (2001) LPELR-731(SC).**

He argued that there is a difference between an appeal dismissed for want of compilation and transmission of record and one dismissed for failure of appellant to file a brief. He implored this Court to carefully look at the content of Exhibit OSSIEC 1 attached to the 3rd Respondent's counter-affidavit which dismissed the appeal for want of prosecution and not for a failure of the Appellants to file a brief thus bringing the application under Order 6 Rule 10 of the Court of Appeal Rules 2021. Counsel contended that by Order 8 Rule 18 (4) of the Court of Appeal

Rules 2021, such an appeal can still be relisted as same was not yet decided on the merits and relied on the recent decision of this Honourable Court in **NGENE v. JOHN (2024) LPELR-73394(CA).**

He further argued that assuming without conceding that this application is brought under a wrong law, the law is trite that the fact that an application is brought under a wrong law does not matter and cited **OLUWOLE v. MARGARET [2012] 13 NWLR (Pt. 1318) at 629.** He submitted that the demands of substantial justice require the Court to exercise its inherent powers to grant an application of this nature premised on Section 36 of the 1999 Constitution (As amended) **ABACHA v. STATE [2001] 3 NWLR (Pt. 699) 35.** He prayed the court to grant the application.

For the 1st Respondent, her counsel submitted that the application is a gross abuse of court process as there cannot be a relisting of an appeal where there is no record of appeal and no brief of argument till the day of dismissal. He stated that the purported record of appeal entered as CA/AK/15/2025 was based on non-existent notice of appeal because it came after the notice of appeal has been dismissed. He cited **MACFOY v. UAC (1961) 3 WLR 405** and **CHIEF FATAI ADEWALE & ORS v. CHIEF JOHNSON ADENOPO & ORS (2020) LPELR-51409(CA).**

He argued that the Applicant failed to come under the relevant rule and also failed to seek for extension of time. Counsel submitted that the notice of appeal was filed on 2nd December, 2022 and till the notice of appeal was dismissed more than two years no record of appeal was compiled and served on the Respondents. He stated that the Court has become functus officio and the only option is for the Applicant to go on appeal to the Apex Court. He cited **YOUTH PARTY v. INEC (2022) LPELR-5827(CA) and AG FEDERATION & ORS v. PUNCH (NIG) LTD & ANOR (2019) LPELR-47868(SC).** He argued that the Applicant has not met the conditions for relisting a dismissed case as enunciated in **S & D CONSTRUCTION CO. LTD v. AYOKU & ANOR (2011) LPELR-2965(SC).** He stated that the Applicant has not given any good reason for the two years delay. Counsel urged the Court to decide the application against the Applicant.

On his part, learned counsel for the 3rd Respondent set down for one issue for determination, to wit:

Considering the facts and circumstances of this case as relayed in the Affidavit Evidence before the Court, whether this Application ought not to be dismissed by this Honourable Court?

Learned counsel submitted that the instant Motion on Notice filed by the 3rd Appellant/Applicant is lacking in merit, and ought to be dismissed by this Honourable Court without much ado. He

referred to the provisions of Order 8 Rule 18 (3) and (4) of the Court of Appeal Rules, 2021 and submitted that the 3rd Appellant/Applicant did not comply with the compulsory provisions of the Rules by failure to file this application within the prescribed period without seeking any relief for extension of time and secondly, failure to adduce any cogent and compelling reason why this appeal ought to be relisted. He argued that equity aids the diligent and not the indolent, and that equity cannot avail the Applicant. He cited **INAKOJU v. ADELEKE (2007) 4 NWLR (PT. 1025) 427 AT 627; CIVL DESIGN CONSTRUCTION (NIG) LTD v. SCOA NIG. LTD (2007) LPELR-870 (SC)** and **SALEH v. MONGUNO & ORS (2006) LPELR - 2992 (SC)**.

Furthermore, senior counsel submitted that the 3rd Appellant/Applicant has equally failed to adduce any good cause why this appeal should be relisted and that a holistic reading of the affidavit in support of the motion on notice does not disclose any cogent and/or compelling reason why the discretion of this Honourable Court should be exercised in favour of the Applicant. For purposes of example, he referred to paragraphs 8, 10, 11, 12, 13 and 15 of the Applicant's affidavit which corroborate the contention that the Appellants never accorded any regard to the appeal until same was dismissed on the 13th January, 2025. He stated that to make matters worse, their counsel on record, Muhydeen Adeoye, Esq., wrote a letter to this Honourable Court

(i.e. **Exhibit OSSIEC 2)** decrying the conduct of his clients which means the error in this case is not a mistake or inadvertence of counsel, but that of the parties themselves who cannot now benefit from their own wrong. He cited **A.P. LTD v. OWODUNNI (1991) 8 NWLR (PT. 210) 391 at 421**.

Also, it was argued that the 3rd Appellant/Applicant alluded in their affidavit that part of the reason they failed to prosecute the appeal was because an unnamed Director was sick and this resulted in a communication gap but the deponent did not even disclose the name of who was sick, the nature of his ailment, the time or period of ailment, the hospital that tended to his ailment, when the unnamed sick person recovered, proof of ailment, and/or any other relevant facts to sway this Court to believe them.

He stated that the name of the 3rd Appellant/Applicant is the "All Progressive Congress (APC)" and not an unnamed Director of Administration and is therefore unreasonable and smack of falsehood for them to come before a court of law and equity to state that because an unnamed Director was ill, the entire APC could not diligently prosecute an appeal, more so, when there are other Appellants on record in this appeal who could have compiled and transmitted the record if there was any intent to diligently prosecute the appeal. He stated that equity aids the diligent and not the indolent and that the Applicant has not shown any form of diligence and so equity will not avail the Applicant,

relying on **F.H.A. v. KALEJAIYE (2010) 19 NWLR (PT. 1226) 147 at 169; AMADI v. INEC (2013) 4 NWLR (PT. 1345) 595 at 630-631; IDIAGBON v. APC (2019) 18 NWLR (PT. 1703) 102 at 119.**

Learned counsel contended that from paragraphs 13(i) to (iv) of the Applicant's affidavit and paragraph 6(a) to (j) of their counter affidavit parties joined issues in respect of Exhibit OSSIEC 3 and that although the Applicant attempted to build up a case of an honest mistake but a careful reading of Exhibits OSSIEC 3, 4A and 4B show beyond any iota of doubt that the failure of the Applicant to prosecute this appeal was a deliberate act to avoid the consequence of a dismissal of their appeal on merit.

Furthermore, he argued that the 3rd Appellant/Applicant had brought this application under Order 6 Rule 10 of the Court of Appeal Rules which gives an Applicant a window of 14 days to apply for the setting aside of a judgment or ruling of this Court but that the applicable provision is Order 8 Rule 18 (3) and (4) of the Rules which is specific on when and how an appeal struck out/dismissed for failure to compile and transmit record can be relisted. He submitted that where there is a general provision and a specific provision with respect to a particular matter, the specific provision takes priority over the general provision. He referred to **SCHRODER v. MAJOR (1989) 2 NWLR (PART 101) 1** and **EFCC v. REINL (2020) 9 NWLR (PART 1730) 489.**

He stated that the court has become functus officio and cannot sit on appeal on its own decision. He contended that this application of the 3rd Appellant/Applicant and indeed the entire appeal sought to be relisted, has been overtaken by event and has now become academic as fresh Local Government Council election recently conducted in Osun State on the 22nd day of February, 2025 and new Chairmen and Councillors have been elected and sworn-in to fill the seats in the Local Government Councils, and the relisting of this appeal would serve no utilitarian value. He urged the court not to venture into academic exercises and cited **UZUDA v. EBIGAH (2009) 15 NWLR (PART 1163) 1** and **NATIONAL INSURANCE CORPORATION v. POWER & INDUSTRIAL ENGINEERING CO. LTD. (1986) 1 NWLR (PT. 14) 1.**

He submitted that the Applicant who consented to the dismissal of the said appeal on 13th January, 2025, cannot now turn around to set aside the order after elections have been conducted pursuant to the said order and they are estopped from going back on their consent to dismiss the appeal, relying on **ODUA INVESTMENT CO. LTD v. TALABI (1991) 1 NWLR (PT. 170) 761** and **ONDO STATE UNIVERSITY v. FOLAYAN (1994) 7 NWLR (PT. 354) 1.**

In conclusion, he urged that the application be dismissed.

RESOLUTION OF THE ISSUE

My noble lords and learned brothers, I have carefully considered the facts of this case and the submissions of learned counsel for the parties. It is clear to me that this application calls for the exercise of the discretion of the Court which must be exercised judicially and judiciously. I think it is necessary for a proper understanding of this application to review the basic and surrounding facts.

The parties locked horns before the Federal High Court, Osogbo in Suit No. FHC/OS/CS/103/2022 which was an action in respect of election into the Local Government councils of Osun State. The lower court delivered its judgment on 30th November, 2022 effectively nullifying the election into the Local Government Councils across Osun State and sacked all individuals occupying offices in the Local Government Councils by virtue of the said election. Three parties, namely Allied People Movement, Babarinde Nurudeen Idowu and All Progressive Congress (APC), were dissatisfied with the judgment and promptly lodged an appeal against same on 2nd December, 2022. The notice of appeal was filed on behalf of the Appellants by Muhydeen Adeoye, Esq. as counsel.

Going by Order 8 Rule 1 of the Court of Appeal Rules, 2021, the Registrar of the lower court is given 60 days from the date of filing of the notice of appeal to compile and transmit the record

of appeal. Where the Registrar has failed or neglected to compile and transmit the record after the expiration of 60 days, then pursuant to Order 8 Rule 4(2) of the Court of Appeal Rules, 2021, the Appellant shall have 30 days to compile and transmit the record of appeal. It follows that the combined period for compilation and transmission of the record of appeal is 90 days.

In the instant case, the Appellants failed to compile and transmit the record of appeal for over two years of the filing of the notice of appeal and the appeal was dismissed on 13th January, 2025 by this Court. It is this dismissal of the appeal that warranted the present application filed by the 3rd Appellant/Applicant to relist the appeal. This application was filed on 23rd January, 2025 which is ten days after the order of dismissal was made by this Court.

The 3rd Appellant/Applicant's counsel has relied on Order 6 Rule 10 of the Court of Appeal Rules, 2021 as anchorage for the application. The said rule provides that:

> **An application to set aside any judgment or ruling shall not be brought unless it is filed within fourteen days from the date of delivery of such judgment or ruling or such longer period as the Court may allow for good cause.**

The learned counsel for the 1st and 3rd Respondents respectively tackled the Applicant on the inappropriateness of the Rules of Court under which the application was argued. Taking this issue

as a first step of resolving this matter, I have considered the submissions of the parties on it and the title of Order 6 is "Applications to Court". What happened in the instant case that led to the dismissal of the appeal is the failure of the Appellants to compile and transmit the record of appeal and it is amply covered under Order 8 of the Court of Appeal Rules which is specifically titled "Compilation and Transmission of Records". It is this Order that stipulated a period of 60 days for compilation of the record of appeal by the Registrar of the lower court and where after the expiration of 60 days the Registrar failed to compile the record, the Appellant shall mandatorily compile and transmit within 30 days, as well as, the fate that will befall the notice of appeal in the event of failure to compile and transmit the record.

Even where there is an application to extend time for the compilation and transmission of the record of appeal and to deem a record of appeal as properly filed, Order 8 Rule 4(2) specially provides thus:

> "4(2) **Upon regularization, records filed out of time shall be deemed to have been filed within the ninety day period as stated in Rule 4(1) of this order and not on the day the application for extension of time was granted."**

I will come back to the import of the above Order 8 Rule 4(2) since it has a bearing on reliefs 4 and 5 on the motion on notice filed by the 3rd Appellant/Applicant.

My lords, I have critically examined Order 6 Rule 10, on one hand, and Order 8 Rule 18, and it is clear in my mind that the appropriate Rules of Court to guide this application should be as stipulated under Order 8. The reason is that Order 6 on applications to court is a general provision whereas Order 8 is a special provision targeted at compilation of records which is a specific event in the practice and procedure of the Court. See **MARTIN SCHROEDER & CO v. MAJOR & CO. (NIG) LTD (1989) LPELR-1843(SC)** (Pp. 22-29 paras. F).

This principle laid down in **MARTIN SCHROEDER & CO v. MAJOR & CO. (NIG) LTD (supra)** has attained a locus classicus and was aptly restated by this Court in **KABO AIR LTD v. THE O'CORPORATION LTD (2022) LPELR-58721(CA) at page 9, paras. A-C**, where Ugo, JCA intoned that:

> **"The rule of interpretation is that where a specific provision is made in a statute or instrument for a specific thing general provisions of that same statute or instrument or even any other instrument/statute on that same subject will not apply; the specific provision will exclusively govern that specific subject. The Latin for that is *generalia non derogant specialibus* - general things do not derogate from special things, or *specialibus derogant generalia* - special things derogate from general things."**

Of course, the fact that an application was brought under a wrong law or non-existent law does not mean that the court will deny

the party a deserved remedy if such application is covered by a known law or rules of court. In **FALOBI v. FALOBI (1976) NSCC 576 at 581** the Supreme Court held thus -

> **"Can a Court make an order under the Infants Law notwithstanding the fact that the application to it was made under another statute which is clearly inapplicable? In our view, if a relief or remedy is provided for by any written law (or by the Common Law or in equity for that matter), that relief or remedy if properly claimed by the party seeking it cannot be denied to the applicant simply because he has applied for it under the wrong law. To do so will be patently unjust".**

See also **OLUWOLE v. MARGARET (2012) 13 NWLR part 1318 at 629; SYLVA v. FRN (2014) LPELR-23964(CA) (Pp. 18 paras. A)** and **ONOKEBHAGBE v. ABUBAKAR (2017) LPELR-42823(CA) (Pp. 2-3 paras. D-D)**

The fact that the 3rd Appellant/Applicant has come under Order 6 Rule 10 of the Court of Appeal Rules is immaterial. This Court will examine the merit of her application but using the provisions dealing specifically with an application for relisting of an appeal struck out or dismissed for failure to compile record of appeal. This is Order 8 Rule 18(3) and (4) which provides:

> **"(3) An application for the relisting of the appeal shall be filed within seven (7) days of the striking out order.**

(4) The Court may relist an appeal that is struck out under this Rule where the Court is satisfied that the Applicant has shown good cause for the relisting of the appeal."

Applying the above rules to the facts of this matter, it is apparent that the application to relist the appeal filed on 23rd January, 2025 which is a period of ten (10) days after its dismissal was filed out of time. Order 8 Rule 18(3) is very clear that such application shall be filed within seven (7) days. In the present application, the 3rd Appellant/Applicant has not prayed for any extension of time. In the absence of a prayer for extension of time to seek the reliefs in this application, it means that the application is incompetent and I so hold.

However, I will still proceed to consider the application on its merit in the event that my conclusion is found to be wrong since this is the penultimate Court.

My first port of call is the contention of the 1st Respondent and 3rd Respondent that this Court has become *functus officio* and cannot relist the appeal which has been dismissed. In reaction, the 3rd Appellant/Applicant' counsel has argued that this court has the power to relist the appeal and relied heavily on the recent authority of this Court in **NGENE & ORS v. JOHN & ORS (2024) LPELR-73394(CA).**

It is not in doubt that this Honourable Court on 13/1/2025 after hearing the application of the 3rd Respondent asking for dismissal of the appeal for want of prosecution, held as follows:

> **"This appeal is dismissed for want of prosecution."**

I have endeavoured to read and comprehend the Rules of this Court and it appears clear to me that there are two scenarios under which the life of an appeal can be terminated without hearing on the merits. The first scenario is as prescribed under Order 8 Rule 18(1) and (2) for failure to compile and transmit the record of appeal. Where this occurs, the Court is empowered to strike out the notice of appeal and there is a window for relisting the appeal under Order 8 Rule 18(3) and (4).

The second scenario is prescribed under Order 19 Rule 10(1) and (2) for failure to file the appellant's brief of argument. The said Order 19 Rules 10(1) and (2) provides as follows:

> **10(1)** **Where an Appellant fails to file his brief within the time provided for in Rule 2 of this Order, or within the time as extended by the Court, the Respondent may apply to the Court for the appeal to be dismissed for want of prosecution. If the Respondent fails to file his brief, he will not be heard in oral argument. Where an appellant fails to file a reply brief within the time specified in Rule 5, he shall be deemed to have conceded all the new**

points or issues arising from the Respondent's brief.

10(2) Where an Appellant fails to file his brief within the time provided for in Rule 2 of this Order, or within the time as extended by the Court, the Court may, suo motu, dismiss the appeal for want of prosecution.

The Rules of Court did not provide any window for relisting an appeal dismissed for failure to file an appellant's brief of argument.

The salient distinction between the two scenarios I have examined is that one deals with failure to compile and transmit the records of appeal, while the other relates to failure to file brief of argument.

I have painstakingly reviewed the well-reasoned and standing authorities where the Supreme Court held that an appeal dismissed for want of prosecution by this Court cannot be relisted since the Court has become *functus officio*. The authorities are **KRAUS THOMPSON ORGANISATION v. NIPPS (2004) 17 NWLR (PT. 901) 44; ASALU v. DAKAN (2006) LPELER-573(SC); KASHIM v. STATE (2022) LPELR-58064(SC); OGBU v. URUM (1981) 4 SC 1** and **AG OF THE FEDERATION & ORS v. PUNCH (NIG) LTD & ANOR (2019) LPELR-47868(SC).**

In my review of the above authorities, I discovered that the peculiar fact which informed the decision of the Apex Court was the failure to file an appellant's brief. To bring clarity to this point, I will just use the decision in **AG OF THE FEDERATION & ORS v. PUNCH (NIG) LTD & ANOR (supra)** as light to explain the situation and I will reproduce *in extenso*, the dictum of Ariwoola, JSC (later CJN) at pages 18-20, paras. C-D, where His Lordship stated:

> **"There is no doubt, as I earlier noted, that the appellants' appeal was dismissed pursuant to Order 6 Rule 10 of the Rules of the Court below. I must say that the Court was very correct in granting the prayer of the respondents for the dismissal of the appeal for failure to file brief of argument to show their diligence in pursuing their appeal.** In Kraus Thompson Organization Vs. N.I.P.S.S (2004) 17 NWLR (Pt.901) 44 **when the same Order 6 Rule 10 of the Rules of the Court below was considered by this Court, it opined, inter alia, as follows, per Tobi, JSC: "It is clear from the above that failure on the part of an appellant to file brief within time will be visited with the sanction of dismissal of the appeal on the application of the respondent.**
>
> **In** Ogbu Vs. Urum (1981) 4 SC.1, **the Supreme Court held that the failure to file briefs by the appellants within the extended time can be likened to an abandonment of their appeal, particularly when**

such failure is coupled with non-appearance in Court without excuse at the time of hearing.

In Shehu Babayagi Vs. Aihaji Bida (1998) 2 NWLR (Pt.538) 367, **the appellant did not file brief after one year of filing Notice of Appeal. Consequently, the respondent moved the Court of Appeal to dismiss the appeal for want of diligent prosecution. The Court of Appeal acting under Order 6 Rule 10 of the Court of Appeal Rules, acceded to the application and the dismissed appeal. Thereafter the appellant applied to the Court of Appeal under Section 16 of the Court of Appeal Act to relist the appeal. The Court dismissed the appeal on the ground that it had no power under the rules to relist the appeal. On appeal to the Supreme Court, it was held that under Order 6 Rule 10 of the Court of Appeal (Amendment) Rules, 1984 an appeal could be dismissed for failure of the appellant to file his brief within the time provided for in Rule 2 thereof or within the time as extended by the Court; or for non compliance with the conditions of appeal or for want of prosecution. An appeal which is dismissed under Order 6 Rule 10 of the Court of Appeal Rules cannot be relisted. This Court held in** Babayagi Vs. Bida (Supra) **that once an appeal is dismissed under Order 6 Rule 10, the Court of Appeal has no jurisdiction to revive the appeal by re-entering or relisting same.** See also Chukwuka Vs. Ezulike (1986) 2 NWLR (Pt.45) 892. **When an appeal is dismissed under Order 6 Rule 10 of the Court of Appeal Rules, its life terminates and it is**

therefore removed from the cause list. No Court has jurisdiction to revive or resuscitate it."

With every trepidation and respect, I think the above authorities are inapplicable to the instant case for the simple reason that the dismissal of the appeal was not based on the failure of the Appellants to file their brief of argument. In this regard, I do not agree with the submissions of the learned counsel for the 1st Respondent and 3rd Respondent who opposed this application that this Court has become *functus officio*.

It is my firm opinion that to the extent that the basis of the dismissal of this appeal is the failure to compile and transmit the record of appeal, this Court has a window to review its decision pursuant to Order 8 Rule 18(4) of the Court of Appeal Rules.

It is further my opinion that notwithstanding the use of the phrase "***this appeal is dismissed for want of prosecution***" this Court can still entertain the application to relist the appeal. This is for the simple reason that the said order of dismissal was not based on the merit of the appeal and could not have been based on the merit since the appeal has not been entered in this Court by the transmission of the record of appeal.

In this wise, I am bound in obedience to the doctrine of *stare decisis* to follow the decision of this Court in **NGENE & ORS v. JOHN & ORS (2024) LPELR-73394(CA) at pages 10-11,**

paras. A-A, where my learned brother, Georgewill, JCA, intoned as follows:

> **"The only issue for consideration, and which has been admirably considered in the leading ruling, is whether a dismissal of an appeal for lack of diligent prosecution on account of failure to compile and transmit record of appeal within or within such further or extended time as ordered by the Court amounts to a dismissal on the merit to operate as a bar to the relistment of the Appeal.**
>
> **In law, it is where a case has failed or an appeal has been heard and found to be lacking in merit that it can be dismissed on the merit and such a dismissal would operate as a bar to relistment of such a case or an appeal already determined on the merit.**
>
> **However, a case or an appeal was merely struck out and/or even stated to have been dismissed without a hearing for lack of diligent prosecution, such a striking out or dismissal could not be said to have been on the merit. This is so because the right of the parties in such a case or appeal cannot be said have been decided upon by the Court in such circumstances. Thus, for good cause shown, such a case or appeal can be relisted."**

By way of final words on this matter, I must re-state that where an appeal is dismissed, not on the merit, as in the instant appeal where the dismissal is based on failure to compile and transmit the record of appeal, this Court has the discretionary jurisdiction to relist the appeal upon good cause being shown by the defaulting party. See also **OPTIMUM CONSTRUCTION & PROPERTY (DEV) LTD v AKE SHAREHOLDINGS LTD (2021) LPELR-56229(SC); OBASI BROTHERS MERCHANT CO. LTD v. MERCHANT BANK OF AFRICA SECURITIES LTD. (2005) 2 SCNJ 272 at 279; PANALPINA WORLD TRANSPORT (NIG) LTD v J. B. OLANDEEN INTERNATIONAL & ORS (2010) LPELR-2902(SC)**,

This now brings me to the consideration of whether the 3rd Appellant/Applicant has scaled the hurdle placed by Order 8 Rule 18(4) of the Court of Appeal Rules which places a duty on them to show "good cause" for relisting the appeal. This entails that the grant of the application is not automatic upon the filing of the application. It is therefore incumbent on the Applicant to furnish materials that would make the court to exercise its discretion in their favour. In effect, it is expected that in the circumstances of this case the Applicant must give cogent reasons for the delay in compiling the record of appeal which was the basis of dismissal of the appeal. See **OBIKOYA v. WEMA BANK LTD (1989) LPELR-2176(SC).**

For a start, I wish to observe that the Appellants in this matter are three. Interestingly the notice of appeal was filed on behalf of the three Appellants by one counsel, Muhydeen Adeoye on 2nd December, 2022. It is difficult to believe as the 3rd Appellant/Applicant wants to make out that if it failed to compile and transmit the record of appeal on time that the other two Appellants would also go to sleep. No explanation has been given on why the 1st Appellant, a political party, and the 2nd Appellant, a named person, did not compile the record of appeal within time.

Even as the 3rd Appellant/Applicant is free to go alone but her reasons for failure to compile and transmit the record of appeal for over two years needs to be examined. I say this because the 3rd Appellant/Applicant is a political party that fielded candidates in the Local Government elections that was nullified by the lower court. Some of those candidates won the election and were sworn into office as Chairmen and Councillors, and were exercising the functions of their offices until the judgment of the lower court sacking them from office was delivered on 30th November, 2022.

It follows that beyond the 3rd Appellant/Applicant as a party to the suit, there are some of her members who are directly affected by the judgment of the lower court by virtue of their removal from office as Chairmen and Councillors of the Local Government Councils, that naturally would push the 3rd Appellant/Applicant to

pursue the appeal diligently if the 3rd Appellant/Applicant was sincerely desirous of doing so.

After reading the affidavits of the 3rd Appellant/Applicant, it is apparent that their reason can be anchored on two primary grounds. The first is the excuse on "communication gap" and the illness of a Director in the Secretariat. The second excuse is concerning one Mr. Alao Kamorudeen Olabisi who was on sick leave when the motion for dismissal was received in the 3rd Appellant's office on 28th November, 2024.

First, on the alleged "communication gap" and illness of a Director, the 3rd Appellant/Applicant averred in paragraph 15 of the affidavit in support of the motion on notice as follows:

> **15. The 3rd Appellant/Applicant is interested in diligent prosecution of the Appeal and states further that failure to compile and transmit the record within time was not as a sign of disrespect to the Court but same was owing to a major communication gap occasioned by several factors as narrated above and including the illness of the Director in the Secretariat whose duty includes receipt of such process.**

The nature of the communication gap was not disclosed. How long the "gap" existed or lasted was not disclosed. With respect to the Director in the Secretariat, the name of this Director was not given. The nature of his ill health and the duration was not disclosed. It begs the question if the said Director was sick from

the time the 3rd Appellant/Applicant joined the other Appellants to file the notice of appeal on 2nd December, 2022 till the appeal was dismissed after two years on 13th January, 2025? This is for the 3rd Appellant/Applicant to answer or supply the needed information, but they failed to do so.

The other excuse is about one Mr. Alao Kamorudeen Olabisi who was mentioned in paragraphs 8 and 10(i) of the Affidavit in support of the motion on notice, and paragraph 6(d) of the further affidavit of 24/3/2025. In paragraph 8 of the Affidavit in support of the motion, the 3rd Appellant deposed thus:

> **8. I state that on 28th November, 2024, while my boss (Mr. Alao Kamorudeen Olabisi) was on leave on health ground), I received from the Appellants' Counsel a document which was forwarded to us, the 3rd Appellant/Applicant's Party Secretariat with a covering letter and I kept same in the Candidates' Nomination File on my boss' Desk till the time my boss would resume work. A copy of the covering letter is herewith attached and marked Exhibit Appeal 4."**

This averment on Mr. Alao Kamorudeen Olabisi being on health leave is unhelpful because the story around it is during the time when the motion on notice to dismiss the appeal was filed and served. As at that 28th November, 2024, mentioned in the affidavit, the Appellants were already out of time for nearly two years in compiling and transmitting the record of appeal.

Accordingly, the alleged absence of Mr. Alao Kamorudeen Olabisi and the receipt of the document annexed as Exhibit Appeal 4, remain unhelpful since they are events that occurred after the time to compile the record has expired. That reason cannot be used retrospectively to justify the failure to compile the record of appeal within time.

Like I earlier observed, the 3rd Appellant/Applicant is a political party in Nigeria with members across all the States in Nigeria. In particular, the 3rd Appellant/Applicant has her executive officers and members in Osun State, particularly her members who were sacked as Chairmen and Councillors as a result of the judgment of the lower court, and are personally aggrieved by the judgment. The inference from all these facts is that the 3rd Appellant/Applicant has enough and sufficient persons to pursue this appeal vigorously and diligently if they had intended to do so. This is more so, when the case is about the conduct of election and occupation of political offices of Chairmen and Councillors in the Local Government Councils in Osun State which has a specific term of three years.

If the 3rd Appellant/Applicant and her members who were elected as Chairmen and Councillors, and subsequently sacked by the lower court, knew that the term of office they were elected to serve was three years, then it is inconceivable that they will go to slumber for two years. Having slept for two years within their supposed term of three years and by now the term is almost

gone, one wonders what is the usefulness and utilitarian value of the appeal if restored?

Again, if the appeal is restored and relisted for hearing, the parties will now take their statutory time to file their briefs of argument and thereafter, the hearing of the appeal will take. It is obvious that the court may only be embarking on academic exercise as the delay by the 3rd Appellant/Applicant has made the pursuit of their appeal moot. Whatever that made the 3rd Appellant/Applicant and her sacked members to go to sleep for two years without worry and suddenly wake up after two years cannot be based on motives that are altruistic and in conformity with expeditious determination of the appeal, for even a right to fair hearing is expected to be exercised within a reasonable time as clearly stated in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999.

Therefore, I find the reasons for the delay in compilation of the record of appeal which were hinged on "communication gap" and illness of a Director, and health leave of Mr. Alao Kamorudeen Olabisi, unsatisfactory and unconvincing. Such excuses cannot justify the delay of over two years to compile and transmit the record of appeal.

Perhaps, the last and major reason which the 3rd Appellant/Applicant threw up was on the activity of her counsel, Muhydeen Adeoye. The 3rd Appellant/Applicant had averred in

paragraph 10(iii) and (iv) of the affidavit in support of the motion on notice that Muhydeen Adeoye had no instruction to continue to act for the Applicant and that the said counsel wrote a letter to the Court on 13/1/2025.

Because this assertion has a clear bearing on the professional relationship of counsel and client, and extent of representation in court, I intend to examine same and make necessary comments thereon. I have therefore totally read all the averments and exhibits presented by the 3rd Appellant/Applicant, and those of the 1st Respondent and 3rd Respondent respectively.

These are my findings. The first is that whatever role Muhydeen Adeoye, Esq. played in the alleged withdrawal as counsel for the Appellants and writing the Court on 13th January, 2025 to request that all processes should be served directly on the 3rd Appellant/Applicant since he had no instructions to act for them are irrelevant and has not diminished the fact that the Appellants failed to compile and transmit the record of appeal within 90 days from the 2nd December, 2022 when they filed the notice of appeal.

All the references to Muhydeen Adeoye, Esq. not having the instructions of the Appellants to represent them relate to events surrounding the service and receipt of the motion on notice of the 3rd Respondent to dismiss the appeal for want of prosecution. As at that the time, the 3rd Appellant and her co-appellants have

already failed to compile and transmit the record of appeal. This means that the claim of having no instruction to represent the 3rd Appellant/Applicant purportedly made by Muhydeen Adeoye, Esq. is of no meaning and does not salvage the fact that no record of appeal has been compiled by the 3rd Appellant hence the appeal was dismissed. More over, it is the same Muhydeen Adeoye, Esq. who also represents the 1st and 2nd Appellants by virtue of signing the notice of appeal as their counsel. He did not say why his other clients also failed to compile and transmit the record of appeal.

Secondly, what is the truth in the effort by the 3rd Appellant to use Muhydeen Adeoye, Esq. of counsel as excuse? I think the greatest reference material in ascertaining what the truth is should be the solemn record of this Court. This matter was heard on 13th January, 2025, and graciously, the 3rd Appellant/Applicant attached the record of proceedings as Exhibit Appeal 5 to the application to relist the appeal. I have studied the process. On the said day, one A. M. Ayodele was recorded as "***holding the brief of Muhydeen Adeoye for the Appellants/Respondents***." The record showed that A. M. Ayodele made this submission to this Court:

> **"We have earlier on written to the Court on 10/1/2025 that we haven't heard from our Client since the Notice of Appeal in this appeal was filed, that is, on 2/12/2022. This is our position in this matter."**

Again, Mr Ayodele, repeated thus:

> **"As stated earlier on, our client has not contacted us since December, 2022."**

I also note that Mr. Ayodele did not oppose the application to dismiss the appeal. He did not make any plea to the Court to starve off the immediate consequence of hearing the motion for dismissal. Though, Muhydeen Adeoye, Esq., was not the counsel who appeared in court but it is trite that a counsel who instructed another counsel to hold his brief is bound by the actions of the person holding the brief. In this wise, A. M. Ayodele spoke on behalf of, and on the instructions of Muhydeen Adeoye, Esq.

If the Appellants did not bother to contact their counsel since December 2022 after the notice of appeal was filed, then it is a case of *volenti non fit injuria* (voluntary assumption of risk) and they cannot be heard to place the blame or the result of their deliberate action on counsel. After all, a counsel is not a party to the suit and cannot cry more than the bereaved. Where the Appellants are the ones, who for whatever reason, chose to go to sleep for two years, then they should enjoy the consequences of their slumber and cannot benefit from their own wrong. See **A.P. LTD v. OWODUNNI (1991) 8 NWLR (PART 210) 391.**

Thirdly, the 3rd Appellant/Applicant deposed that their counsel wrote this Court a letter on 13th January, 2025 declining service

of court processes. While I wish to refrain from making a remark on the integrity of counsel who wrote the said letter but I must say three things on it.

The first is that the letter was written on 13th January, 2025, which is the same day that this Court dismissed the appeal and there is no evidence that the letter was received in Court before the order of dismissal of the appeal was made.

Secondly, if the letter was intended to recuse Muhydeen Adeoye, Esq. from the case, then the said counsel could not have sent A. M. Ayodele to hold his brief and give such devastating submission to the Court on the nonchalant and unserious attitude of the Appellants in prosecuting the appeal. The submission of A. M. Ayodele belies whatever excuse the 3rd Appellant is giving for the situation it found itself and makes such excuse an after thought. The law is trite that equity aids the diligent and not the indolent. See: **F.H.A. v. KALEJAIYE (2010) 19 NWLR (PT.1226)147 AT 169 PARAS B-C; AMADI v. INEC (2013) 4 NWLR (PT. 1345) 595.**

Thirdly, the claim that Muhydeen Adeoye, Esq. has not "**heard from our client since the Notice of Appeal in this appeal was filed, that is, on 2/12/2022"** is blatantly untrue. I say so because Exhibits OSSIEC PO2 and OSSIEC PO3 attached to the counter affidavit of the 3rd Respondent show that Muhydeen Adeoye, Esq. is still acting as counsel for the Appellants in other cases. I

can only advise counsel to know the limit and extent he will make false statements in the misguided bid to defend a client. The professional ethics and integrity of counsel should always guide his actions. I say no more.

The 3rd Appellant/Applicant in reliefs 4 and 5 on the motion paper, prayed for enlargement of time to compile and transmit record of appeal and also prayed the Court to deem as properly filed the record of appeal already filed. I have checked the record of this Court and I see the record of appeal referred to. The said record of appeal was stamped as received by this Court on 21/1/2025. It has a fresh appeal number as CA/AK/15/2025. This is quite strange and unknown to the practice and procedure of this Court. A record of appeal is not the originating process of an appeal. The originating process is the notice of appeal. It is only on a valid notice of appeal that a record of appeal and other court processes like the briefs of argument are anchored and predicated.

It follows that where a notice of appeal is not in existence or competent having been dismissed, as in the instant case, the appeal ceases to exist. To that extent, there is nothing to hang any purported record of appeal, like the one compiled and filed by the 3rd Appellant/Applicant. It is only after this application has been heard and probably granted by restoring back the notice of appeal filed on 2/12/2022, that the issue of entering the record of appeal will arise. To give such purported record of appeal, now

compiled by the 3rd Appellant an Appeal Number, when there is no existing appeal, does not cure the fundamental defect that its filing amounts to an exercise in futility since you cannot place something on noting and expect it to stand. See **MCFOY v. UAC (1962) AC 152.**

Again, I had earlier talked about the provisions of Order 8 Rule 4(2) of the Court of Appeal Rules which states that upon regularisation of a record of appeal filed out of time it shall be deemed filed within the period of 90 days stipulated under Rule 4(1). The implication of this Rule is that even if reliefs 4 and 5 on the motion on notice are granted, the record of appeal which the 3rd Appellant filed on 21/1/2025 will be deemed as filed within 90 days from 2/12/2022 when the notice of appeal was filed. The said 90 days will not cross beyond March, 2023.

In effect, assuming that the prayers are granted, the 3rd Appellant/Applicant would still be out of time to file its brief of argument thereby bringing the court to the scenario of failure to file its brief of argument within time and the consequences of Order 19 Rule 10(1) and (2) which is dismissal. This will necessarily warrant that after this application, the 3rd Appellant would still bring another application for extension of time to file the brief of argument for this appeal to be heard.

It is therefore obvious to me that the 3rd Appellant is not serious about the diligent prosecution of this appeal and wants to

Court in the sister appeal (Appeal No. CA/AK/270/2022) may only lead to confusion and this Court will resist such attempt to lure it to unwittingly sit on appeal or review its decision in Appeal No. CA/AK/270/2022.

Everything in this application shows that the 3rd Appellant has not shown good cause why this application should be granted. The fate that has befallen them is self-inflicted. It is therefore my conclusion that the application lacks merit. It is accordingly dismissed.

PETER CHUDI OBIORAH
JUSTICE COURT OF APPEAL

APPEARANCES

Dr. Muritala Abdul-Rasheed SAN with A. W. Salimon, Esq. and Ayodeji Boyede, Eq. for the 3rd Appellant/Applicant.

K. A. Adebisi, Esq. for the 1st Appellant/Respondent.

I. T. Tewogbade, Esq. with E. A. Gbadegesin, Esq. for the 1st Respondent.

Musibau Adetumbi, SAN with J. A. Lukman, Esq. and A. A. Abass, Esq. for the 3rd Respondent.

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BELLO HASSAN ESQ.
17/6/25

CA/AK/15/2025

I had the privilege of reading the draft of the leading Ruling on this application just delivered by my learned Brother, **Peter Chudi Obiorah, JCA**.

I am in total agreement with His Lordship's line of reasoning and conclusions, which I adopt as mine. Indeed, the Ruling though intent is a calm consideration of all the issues pertaining to the matter of this application as previously conferenced by all three panelists.

Regarding the preliminary objection of the 3rd Respondent which is predicated on an allegation of contempt of this Court leveled against the 3rd Appellant, I consider it necessary to add a few remarks of mine, not to depart from but to reinforce the basis for the leading decision.

The 3rd Respondent's preliminary objection rests squarely on the argument that the 3rd Appellant is in contempt of the subsisting judgment of the Federal High Court in Suit No. FHC/OS/CS/103/2022 and that of this Court by implication, following the dismissal of the 3rd Appellant's appeal on 13th January 2025. While there is no disputing the seriousness with which any court must treat an allegation of contempt particularly one that implicates the sanctity and enforceability of judicial orders, it is equally true that such an allegation must be properly and conclusively established before punitive or prejudicial consequences, such as denial of audience, can be imposed on a party.

In the present case, I find no evidence that the 3rd Appellant has been adjudged guilty of contempt by any competent court. Indeed, and this is material, the 3rd Respondent itself concedes that contempt proceedings have only just been initiated at the Federal High Court and remain pending as of the time of the hearing of this application. Those proceedings have not yet been determined, and no finding has been made as to whether the 3rd Appellant or the Local Government Chairmen and Councillors allegedly mobilised by it have been held in contempt or convicted thereof. This fact fundamentally undercuts the foundation upon which the 3rd Respondent's objection is built.

A contempt proceeding, it must be emphasised, is quasi-criminal in nature and must be proven with clear and convincing evidence. Until a court of competent jurisdiction makes a pronouncement convicting the alleged contemnor, such person is presumed innocent and entitled to all procedural protections, including the right to be heard before any court. See the cases of: **DASUKI V. FRN (2016)**

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LPELR-45731(CA) AND OLAM V. A.G. KATSINA STATE (2023) LPELR-60045(CA).

The courts have long recognised that a party in contempt may, in appropriate circumstances, be denied audience. But that principle is not without its limits. It cannot operate on the basis of an untested allegation or a yet-to-be-determined application before a different court. In the cases of: **EZEKIEL-HART V. EZEKIEL-HART (1990) 1 NWLR (PT. 126) 276 AND GOVERNOR OF LAGOS STATE V. OJUKWU (1986) 1 NWLR (PT. 18) 621**, the courts upheld the need for parties to obey court orders, but they did not permit a party to be stripped of their access to justice based on mere accusation.

Furthermore, there is a need for consistency and clarity in the application of judicial sanctions. To hold otherwise would imply that a litigant may be denied access to court on the strength of an accusation alone an approach that would violate not only the Constitution's guarantees of fair hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, but also the fundamental safeguards inherent in the rule of law. The proper course, and indeed the only lawful one, is for the trial court to fully and fairly adjudicate the contempt proceedings it has been seised of. Until that process is complete, this Court must refrain from acting on an assumption of guilt.

I also note the 3rd Appellant's contention that it acted in reliance on the judgment of this Court in *CA/AK/270/2022: APC & Ors v. PDP & Ors*, which it construed rightly or wrongly as authorising or justifying its conduct. Whether that reliance was valid is not the point here. What matters is that there is no demonstrable evidence of wilful, contumacious disobedience of the judgment of the Federal High Court that has been judicially evaluated and pronounced upon.

As such, the argument of the 3rd Respondent urging this Court to refuse to hear the 3rd Appellant's pending application until it purges itself of contempt is, with respect, premature and legally unsustainable. The invocation of this Court's inherent jurisdiction must be anchored in an actual state of contempt not merely on allegations which remain under the scrutiny of another court.

In conclusion, I find no merits in the preliminary objection. It is, in substance and form, premature and predicated on unproven allegations. I therefore, for these reasons and those ably set out in the leading decision, also dismiss the preliminary objection of the 3rd Respondent in its entirety.

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On the substantive application of the 3rd Appellant, it is without any equivocation that I hold that the Appellant has woefully failed to adduce any significant material in line with the provision of Order 8 Rule 18(4) of the Court of Appeal Rules, 2021. It is well settled that the burden lies squarely on the Applicant to satisfy this Court, not merely that there was an excusable reason for the default, but that the application was made promptly, in good faith, and with demonstrable diligence. See the case of: **IBRAHIM V. USMAN & ORS. (2023) LPELR-60315 (SC),** where the Supreme Court reiterated that judicial discretion is not exercised in a vacuum, but is triggered only by persuasive and credible materials placed before the Court.

Judicial discretion, as aptly defined in **Black's Law Dictionary (8th Ed.) at page 497,** is **"the exercise of judgment by a Judge or Court based on what is fair under the circumstances and guided by the rules and principles of law: a Court's power to act or not to act when a litigant is not entitled to demand the act as a matter of right."** It must be exercised *judicially and judiciously*, not whimsically. In the case of: **PEOPLES DEMOCRATIC PARTY (PDP) V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & ORS. (2022) 18 NWLR (PT. 1863) 653**, the Court warned against allowing political actors to cloak indolence in the garment of judicial indulgence.

In this instance, the Appellant's justification that an unnamed director was ill and that internal communication had broken down, is not only vague and speculative but entirely lacking in probative value. As was held in the case of: **APC V. MARAFA (2019) 2 NWLR (PT. 1650) 510,** courts are not sympathetic to litigants who sleep on their rights. A political party with well-established institutional structures cannot plausibly feign ignorance or helplessness over a two-year procedural default.

The record further reveals that the Applicant, through counsel, had been duly served with the motion for dismissal and offered no opposition when the motion was heard. Their subsequent volte-face amounts to acquiescence. As reaffirmed in the case of: **Adigun v. AG Oyo State (1987) 1 NWLR (Pt. 53) 678,** a party who fails to assert rights at the opportune moment cannot later cry foul.

Moreover, the invocation of Order 6 Rule 10 is clearly misplaced. The proper procedural avenue for relisting an appeal dismissed for failure to compile and transmit records remains Order 8 Rule 18(3) and (4), which imposes strict conditions and timelines. These conditions were not met, and no relief was sought

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to regularize the delay. The procedural defect, therefore, is fatal. See the case of: **Okere v. Nwachukwu (2020) LPELR-50807(CA).**

Critically, this Court had earlier delivered judgment on 10th February 2025 in Appeal No. CA/AK/270/2022, involving basically the same parties and addressing substantially the same issues. The said appeal has been dismissed. What is more, the fresh Local Government elections conducted on 22nd February 2025 and the swearing-in of new Chairmen and Councillors have overtaken the substratum of this dispute. Relisting the appeal at this stage would serve no practical purpose. As settled in the case of: **BAKER MARINE NIGERIA LIMITED V. CHEVRON NIGERIA LIMITED SCER (2006) S.C. 374/2001** per Achike, JSC (of blessed memory):

> **"This Court, as I know it, does not concern itself with academic discussions or matters. In fact, all Courts of law, are enjoined to adjudicate between parties in relation to their compelling legal interests and never to engage in mere academic questions, or arguments or discourse, no matter how erudite or beneficial it may be to the public at large. So said this Court."**

See also the cases of: **ADELAJA & 2 ORS. V. ALADE & ANOR. (1999) 4 SCNJ. 225 AT 245; UNION BANK V. EDIONSERI (1988) 2 NWLR (PT.74) 93 AND JULIUS BERGER (NIG.) LTD. V. FEMI (1993) 5 NWLR (PT. 295) 612.**

In sum, this application is not only procedurally incompetent and factually unsupported, it is also one rendered otiose by subsequent events. There is no longer any live controversy. The matter is, in every material sense, *a fait accompli*.

I therefore also dismiss the application.

OYEBISI FOLAYEMI OMOLEYE
JUSTICE, COURT OF APPEAL

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APPEAL NO: CA/AK/15/2025
HADIZA RABIU SHAGARI, JCA

I had the privilege to read the draft judgment just delivered by my learned brother **PETER CHUDI OBIORAH, JCA,** I agree with the reasoning therein and the conclusion arrived at that the 3rd Appellant had shown no good cause why their application should be granted they went to slumber and they should remain therein. The law aids the vigilant and not the indolent.

The application is devoid of merit and it is dismissed by me.

HADIZA RABIU SHAGARI
JUSTICE, COURT OF APPEAL

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