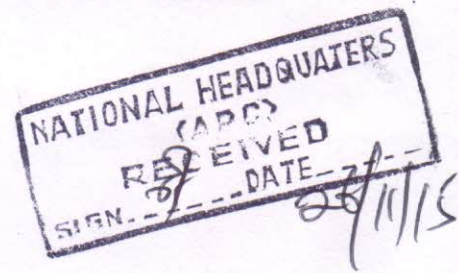


WOC/LG/VOL 04/61/2015
26th November, 2015

VERY URGENT

The National Chairman
All Progressives Congress (APC)
APC National Secretariat
40, Blantyre Street
Wuse II, Abuja



Attention: Chief John Oyegun

Dear Sir,

RE: JUST CONCLUDED GOVERNORSHIP ELECTION IN KOGI STATE

We act as counsel to **Honourable James Abiodun Faleke** ('our client'), the **APC** deputy governorship candidate in the just concluded governorship election in **Kogi State**, and we have his instruction to write the Party (**APC**), through your highly distinguished self, on the above subject as follows:

- (i) The **Independent National Electoral Commission (INEC)** conducted election to the office of **Governor of Kogi State** on **Saturday, 21st November, 2015**. The election was held in all the **21 Local Government Areas** of the **State**; and to the best of our client's knowledge, information and belief, the said election was peaceful, and also in substantial conformity and compliance with the provisions of the **Electoral Act, 2010 (as amended)**.
- (ii) In accordance with the **Electoral Act** and **INEC Guidelines/Regulations**, results of the election were declared, first at the polling unit level, then at the ward level, and later at the **Local Government level**. As the declarations were being made by **INEC**, same were also being relayed and announced on radio and television stations (both private and public), as well as the social media. The necessary **INEC Forms**, including but not limited to **Forms**



EC8A, EC8B, EC8C etc. have also been duly filled, signed and made available to the respective parties who participated at the elections. The front page of each of the **national dailies** (or most of them) of **November 23rd, 2015** highlighted in painstaking details the results of the election, **Local Government Area by Local Government Area**, as released by **INEC**.

- (iii) Despite (i) and (ii) *supra*, **INEC** curiously announced that the election was inconclusive, and that a re-run election would hold in some polling units on a day and date yet to be announced.
- (iv) The election to the office of Governor is regulated by the provisions of **sections 178 and 179** of the **1999 Constitution (as amended)**, while nomination to the office is governed by **section 187** of the same **Constitution**. Our client believes that election to the office of Governor of Kogi State had been conducted and concluded in accordance with the provisions of the **Constitution**. While our client and all well meaning Nigerians are saddened by the sudden death of **Prince Abubakar Audu**, who was the Principal to our client at the election, the fact remains that both of them shared a joint ticket, and by the imperatives of **section 187(1)** of the **Constitution**, the late **Prince Abubakar Audu** could not have been validly nominated as a candidate for the office of Governor on the platform of the **APC** without our client being jointly nominated with him, as his '**associate for the running for the office of Governor**'. Under the same **section 187**, our client was deemed to have been duly elected if his political party qua Principal won the election.
- (v) With very much respect to **INEC**, it had/has no reason whatsoever and howsoever for declaring the election as inconclusive. We dare say that the reasons given by **INEC** are alien to the **Constitution** and, therefore, unconstitutional. Cancellation of election results by **INEC** cannot be a ground for declaring any election as inconclusive. **INEC** also has no constitutional or legal power to order the **APC** to go and conduct a fresh primary election to nominate a candidate for an



already concluded election. **INEC** is advertently or inadvertently instigating a political and legal conundrum, which the **APC** as a party should distance itself from. What the **APC** should do and insist on is to ask **INEC** to obey and comply with the letters, spirit, intention and tenor of the **Constitution**, by not only declaring **APC** as the winner of the election, but by also declaring our client as the Governor-elect. Precedents abound for this proposition and position of our client.

- (vi) In law and logic, no new candidate can inherit or be a beneficiary of the votes already cast, counted and declared by **INEC** before that candidate was nominated and purportedly sponsored. Assuming without conceding that **INEC** is even right to order a supplementary election, the votes already cast, counted and declared on **Saturday, 25th November, 2015** were votes for the joint constitutional ticket of **Prince Abubakar Audu** and our client. Therefore, no new or 'supplementary' candidate can hijack, aggregate, appropriate or inherit the said votes. Assuming further, without conceding, that supplementary election in **91** polling units can hold as being suggested by **INEC**, it is our client who should be the automatic candidate of the party, since **APC** cannot conduct 'supplementary primary election' for the supplementary election in **91** polling units.
- (vii) Needless reminding Mr. Chairman that by the announced results, **APC** scored **240,867** votes, while **PDP** polled **199,514**. The cancelled votes amount to **49,953**. Under **section 61(c) of the Electoral Act, 2010**, once a Returning Officer announces or declares the result of an election, his declaration is final, and can only be reviewed or overturned by an Election Tribunal. In other words, the scores already announced for **APC** remain final and binding. **Section 181(1)** of the **Constitution** again comes into play under the present circumstances, vis-a-vis the death of **Prince Abubakar Audu**. The section is all-embracing, as it covers all situations and reasons. It mandates, in no unmistakable language, that the deputy governor-



elect shall take over and be sworn in. By parity of reasoning, the **APC** shall be declared as the winner of the election by **INEC**, while our client is declared as the governor-elect.

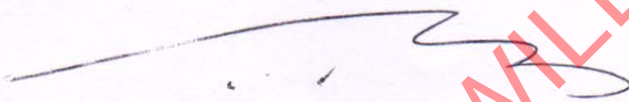
Arising from the foregoing, our client enjoins the **APC** not only to support him at actualizing the mandate already given to the party under the joint ticket of himself and the late **Prince Abubakar Audu**, but to also distance itself from the '**Greek gift**' offer being made by **INEC**, to wit, that it is allowing the **APC** to conduct a fresh primary election to nominate a candidate for a supplementary election in **91** polling units, where only about **25,000 PVCs** are available; whereas the **APC** is already leading, by the announced results, with over **40,000** votes.

In parenthesis, we urge the **APC**, under your able leadership, to speedily look into and act on our client's position as stipulated in this letter.

Mr. Chairman, accept the assurances of our client's highest regards.

Yours faithfully.

PP: Wole Olanipekun & Co.



Chief Wole Olanipekun, OFR, SAN, LL.D, FCI Arb, FNIALS

Cc **The National Secretary**
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