

SUPREME COURT OF NIGERIA
FRIDAY 24TH JANUARY, 2003. SC. 228/2002
CORAM:- M. L. UWAI S CJN, S. M. A. BELGORE,
I. L. KUTIGI, A. I. IGUH, A. O. EJIWUNMI,
E. O. AYOOLA, N. TOBI, JJSC

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

2. A-G OF THE FEDERATION APPELLANTS
AND

1. ALHAJI ABDULKADIR
BALARABE MUSA

2. ALHAJI KALLI ALGAZALI

3. ALHAJI M. I. ATTAH RESPONDENTS

4. ALHAJI MUSA BUKAR SANI

5. CHIEF GANI FAWEHINMI

CONSTITUTIONAL LAW - Constitution - Supremacy of - All powers whether legislative, executive or judicial - Must be traced to the Constitution - And legislative powers cannot be exercised inconsistently with the Constitution (H1)

LEGISLATURE - National Assembly - Powers - It makes law for peace and good governance of the federation or any part thereof - With respect to matters in exclusive legislative list - To the exclusion of House of Assembly of States (H2)

LEGISLATURE - National Assembly - Empowerment of INEC - By Constitution s. 228(d) - NA can confer powers on INEC to effectively ensure - That political parties observe the provisions of ss. 221-229 - And to legislate for regulation of parties (H3)

POLITICS - Political parties - Recognition & registration - Difference - Recognition is the fact of acceptance of an association eligible to function as political party - While registration is the recording and certification of that fact (H4)

LEGISLATURE - National Assembly - Political parties - Regulation -

NA acts outside its constitutional authority - Where in exercise of its power over registration and monitoring of parties - It decrees conditions of eligibility to function as parties (H5)

FACTS

Plaintiffs/respondents commenced this action by originating summons filed at the Federal High Court Abuja Division, wherein they sought inter alia, declarations that registration of political parties in Nigeria is governed by the provisions of the Constitution, that Independent National Electoral Commission (INEC) cannot prescribe guidelines for registration of parties outside the conditions stipulated by the Constitution, order invalidating the above listed guidelines and also sections 74(2)(g) and (h), 74(6), 77(b), 78(2)(b) and 79(2)(c) of the Electoral Act, 2001. Respondents had each applied to INEC i.e. 1st defendant/appellant for registration as a political party. Later on, INEC released guidelines for the registration of political parties. Respondents were of the view that the released guidelines 2(c)(d), 3(a), (c), (d)(iv), (e), (f), (g), (h); and 5(b) were inconsistent with the provisions of the 1999 Constitution relating to the registration of political parties and that they should not be made to comply with the guidelines.

The learned trial Judge in his judgment, granted respondents' reliefs Nos. 1, 2, 13 and 16 in full and granted in part reliefs No. 14 in respect of section 74(2)(g) of the Electoral Act, 2001 only and No. 15 in respect of Guidelines Nos. 2(c) and 3(g). The remaining reliefs were not granted. Aggrieved by this decision, respondents appealed to the Court of Appeal, Abuja Division. The court allowed the appeal and set aside part of the judgment of the trial court refusing several of the reliefs sought by respondents. The court declared the guidelines issued by 1st appellant namely, 2(c), 2(d), 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h) and 5(b) unconstitutional, null and void. It also declared sections 74 (2)(g) and (11), 74(6), 77(b), 78(2)(b) and 79(2)(c) of the Electoral Act, 2001 unconstitutional, null and void. The court finally made an order of injunction against 1st appellant restraining it and its agents from basing the registration of political associations as political parties on the aforesaid offending provisions of the Guidelines and the Electoral Act, 2001. Not satisfied, appellants filed appeal in Supreme Court.

ISSUE FOR DETERMINATION

The extent to which the National Assembly could legislate to regulate political parties or by legislation authorize INEC so to do.

HELD (Unanimously allowing 1st – 2nd appellants appeal in part per **AYOOLA JSC**)

Constitution - Supremacy of

1. I take as my starting point some interrelated propositions which flow from the acknowledged supremacy of the Constitution and by which the validity of the impugned provisions will be tested. First, all powers, legislative, executive and judicial must ultimately be traced to the Constitution. Secondly, the legislative powers of the legislature cannot be exercised inconsistently with the Constitution. Where it is so exercised it is invalid to the extent of such inconsistency. Thirdly, where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what the Constitution had enacted must show that it has derived the legislative authority to do so from the Constitution. Fourthly, where the Constitution sets the condition for doing a thing, no legislation of the National Assembly or of a State House of Assembly can alter those Constitution in any way, directly or indirectly, unless, of course the Constitution itself as an attribute of its supremacy expressly so authorised.

Where the Constitution has provided exhaustively for any situation and on any subject, a legislative authority that claims to legislate in addition to what the Constitution had enacted must show that, and how, it has derived its legislative authority to do so from the Constitution itself. In this case, section 222 of the Constitution having set out the conditions upon which an association can function as a political party, the National Assembly could not validly by legislation alter those conditions by addition or subtraction and could not by legislation authorise INEC to do so, unless the Constitution itself has so permitted.
(pp. 389 F/390 G)

National Assembly - Powers

2. The legislative power of the National Assembly consists of the power to make laws for the peace and order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution, to the exclusion of the House of Assembly of States and to make laws with respect to any matter in the Concurrent Legislative List set out in the First Column of Part II of the Second Schedule to the Constitution to the extent prescribed in the Second Column; and with respect to any other matters with respect to which it is empowered to make laws in accordance with the provisions of the Constitution. (p. 390 B)

D National Assembly - Empowerment of INEC

3. The National Assembly has powers: by virtue of section 228(d) of the Constitution, to confer by law powers on INEC as may appear to it to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of sections 221-229 which deal with political parties; and, by virtue of item 56 of the Exclusive Legislative List, to legislate for the regulation of political parties. INEC has direct power granted by the Constitution to register political parties. Any enactment of the National Assembly referable to this purpose cannot be held invalid. By the same reasoning, any guideline or regulation made by the Commission that carries into execution the same purpose cannot be unconstitutional. (p. 391 A)

G Political parties - Recognition & registration - Difference

4. In my judgment, recognition of a political party is not quite the same thing as registration of a political party, while registration of a political party is quite distinct and is not the same thing as eligibility of an association to function as a political party, even though these are all inter-related aspects of the same subject. Registration is the process of recording the existence of a political party and it provides evidence and certification of compliance with section 222 of the Constitu-

tion. It is evident that a political party cannot be registered as being in existence unless the association has satisfied the conditions of eligibility in section 222. It is therefore clear that the power to register is not the same as and does not include the power to declare the conditions of eligibility. Similarly, the power to regulate or monitor political parties relates to associations which have a recognised existence as political parties. Such power does not also imply any power to legislate the conditions of eligibility. Registration of political parties facilitates the exercise of the regulatory and monitoring powers of INEC which are within the purview of the legislative competence of the National Assembly. According to a political party is the fact of acceptance of the existence of an association eligible to function as a political party, while registration is the recording and certification of that fact. (p. 392 A) B
C
D

National Assembly - Political parties - Regulation

5. Where, however, in the exercise of legislative power to make laws to provide for the registration, monitoring and regulation of political parties the National Assembly purports to decree conditions of eligibility of an association to function as a political party the National Assembly would have acted outside its legislative authority as stated in the Constitution. Similarly, INEC acting under such law to prescribe conditions of eligibility would have acted inconsistently with the Constitution. (p. 392 H) E
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NOTABLE POINTS OF INTEREST G

AYOOLA JSC

1. Political parties as essential organs of democratic system

To put the issues in the appeal in proper perspective it is expedient to pause to emphasise that by section 14(1) of the Constitution the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. Political parties are essential organs of the democratic system. They are organs of political discussion and of formulation of ideas, policies and programmes. Plurality of parties H

widens the channel of political discussion and discourse, engenders plurality of political issues, promotes the formulation of competing ideas, policies and programmes and generally provides the citizen with a choice of forum for participation in governance, whether as a member of the party in government or of a party in opposition, thereby ensuring the reality of government by discussion which democracy is all about in the final analysis. Unduly to restrict the formation of political parties or stifle their growth, ultimately, weakens the democratic culture. However, to leave political parties completely unregulated and unmonitored may eventually make the democratic system so unmanageable as to become a hindrance to progress, national unity, good government and the growth of a healthy democratic culture. Between the two apparent extremes over-regulation and complete absence of regulation is the need for balanced regulation. In interpreting the provisions of the Constitution and enactment relating to the formation, regulation and monitoring of political parties the recognition of the need for balanced regulation is essential. (p. 382 H)

2. Repealing of Electoral Act 2001

Before I part with these reasons for judgment, it is expedient to note that the Electoral Act, 2001 has been repealed during the pendency of this appeal by S. 152 of the Electoral Act 2002. The reliefs sought related to the constitutionality of some provisions of the Electoral Act, 2001 which have now been repealed and to some of the guidelines made by INEC under the repealed Act. The declarations made in regard to provisions of the Electoral Act are of use only in so far as they were the source of the impugned guidelines. In the Electoral Act, 2002 several of these impugned provisions have already been removed. (p. 396 B)

REPRESENTATION

A. O. Eghobamien, SAN with D. O. Okoh, Esq., O.O. Uzzi, Esq., N. I. Oghuma [Mrs], A. O. Okeaya-Inneh, Esq., F.B. Abdullahi [Miss], H. O. Mark [Miss], I.J. Obasuyi [Miss] and O. Abanum, Esq. - for the 1st Appellant
 Rotimi Jacobs, Esq. with G. Esegine, Esq. - for the 2nd Appellant
 Chief Gani Fawehinmi, SAN with Alhaji Aliyu Umar, Mohammed

Fawehinmi, Esq. and Adindu Ugwuzor, Esq. - for the Respondents

CASES REFERRED TO

- A.G. Abia State v. A.G. Federation (2002) 6 NWLR (pt. 763) 264
 A.G. Ogun State v. A.G. Federation (1982) NSCC 1
 C. C. B. (Nig.) Plc. v. Samed Invest. Co. Ltd. (2000) 4 NWLR (pt. B
 651) 19
 Sken Consult v. Ukey (1981) 1 SC 6
 Ude v. A-G Rivers State (2002) 4 NWLR (pt. 756) 66
 Madukolu v. Nkemdilim (1962) 1 All NLR (pt. 4) 587 C
 Akegbejo v. Ataga (1998) 1 NWLR (pt. 534) 459
 Petrojessica Enterprises Ltd. v. Leventis Trading Co. Ltd. (1992) 5
 NWLR (pt. 244) 675
 Onyema v. Oputa (1987) 3 NWLR (pt. 60) 259
 Adesanya v. President of the FRN (1981) 2 NCLR 358 D
 A-G Bendel State v. A-G Federation (1982) 3 NCLR 1
 Kalu v. Odili (1992) 5 NWLR (pt. 240) 130
 Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (pt. 91)
 622
 Ishola v. Ajiboye (1994) 6 NWLR (pt. 352) 506 E
 A-G Province of Ontario v. A-G Dominion of Canada (1912) AC
 571

STATUTES & RULES REFERRED TO

- Electoral Act 2001, s. 74(2)(g)(h)(6), 77(b), 78(2)(b) and 79(2)(c), F
 162
 Electoral Act 2002, s. 152
 Constitution of the Federal Republic of Nigeria 1999, ss. 1(3), 14(1),
 40, 45(1)(a), 153(2), 221, 222, 228 G
 Court of Appeal Rules 1981, O. 6 r. 4(1)

LEAD JUDGMENT BY AYOOLA JSC

The respondents in this appeal were the plaintiffs in the Federal High Court Abuja Division (Adah, J.). In the originating summons commencing the action, the plaintiffs asked for the following reliefs:-

“1. *A DECLARATION that the registration of political parties in Nigeria is governed by the provisions of the Constitution of the Fed-*

eral Republic of Nigeria, 1999.

2. A DECLARATION that the 1st defendant, Independent National Electoral Commission (INEC) cannot prescribe guidelines for the registration of political parties outside the conditions stipulated by the Constitution of the Federal Republic of Nigeria, 1999.

B 3. A DECLARATION that guideline No. 3(a) contained in the 1st defendant's Guidelines for the registration of political parties dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as political party must submit "the names, residential addresses and States of origin respectively of the members of its National and State Executive Committees and the records of proceedings of the meeting where these officers were elected" is unconstitutional, and therefore null and void, in so far as it enjoins such association to submit the names, residential addresses and States of origin respectively of the members of its State Executive committees, and the records of proceedings of the meetings where both members of its National and State Executive Committees were elected.

E 4. A DECLARATION that guideline No. 3(c) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "a register showing that its membership is open to every citizen of Nigeria" is unconstitutional and therefore null and void.

G 5. A DECLARATION that guideline No. 3(d) (iv) contained in the 1st defendant's 'Guidelines for the registration of Political Parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must show "a provision that its Constitution and Manifesto conform with the provisions of the 1999 Constitution, the Electoral Act of 2001 and these guidelines" is unconstitutional and therefore null and void in so far as the guideline relates to "the Electoral Act, 2001 and these guidelines".

H 6. A DECLARATION that guideline No. 3(e) contained in the

1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must have "a register showing the names, residential addresses of persons in at least 24 States of the Federation and FCT who are members of the association" is unconstitutional and therefore null and void. ^B

7. A DECLARATION that guideline No.3 (f) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "an affidavit sworn to by the Chairman and Secretary of the association to the effect that no member of the National Executive of the association is a member of any other existing party or existing political association" is unconstitutional and therefore null and void. ^C

8. A DECLARATION that guideline No. 3(g) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "a bank statement indicating the bank account into which all income of the proposed political association has been paid and shall continue to be paid and from which all expenses are paid and shall be paid" is unconstitutional and therefore null and void. ^F

9. A DECLARATION that guideline No.3 (h) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as political party must submit "the addresses of its offices, list of its staff, list of its operational equipment and furniture in at least States of the Federation" is unconstitutional and therefore null and void. ^H

10. A DECLARATION that guideline No. 3(h) contained in the

1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 in so far as it prescribes that a party seeking registration must submit a list of its staff, list of its operational equipment and furniture in its headquarters office at Abuja is unconstitutional and therefore null and void.

11. A DECLARATION that guideline No. 5(b) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2001 which prescribes that "a person shall not be eligible to be registered as a member of political association seeking to be registered as a political party if he/she is in the civil service of the Federation or of a State" is unconstitutional and therefore null and void.

12. A DECLARATION that guideline No.2 (d) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that each association seeking registration as a political party must accompany its application with twenty (20) copies of the Association's Constitution is unconstitutional and therefore null and void.

13. A DECLARATION that guideline No. 2(c) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes payment of N100,000.00(One hundred thousand Naira) by an association, that applies for registration is unconstitutional and therefore null and void.

14. A DECLARATION that sections 74(2)(g) and (h), 74(6), 77(b) and 78(2)(b) of the Electoral Act, 2001 which enlarge and 79(2)(c) of the said Act which curtails the provisions of the 1999 Constitution on the registration of political parties are unconstitutional and therefore null and void and of no effect whatsoever.

15. A PERPETUAL INJUNCTION restraining the 1st defendant, Independent National Electoral Commission (INEC), its agents,

officers, privies from basing the registration of political parties either in whole or in part on guidelines Nos. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 5(b), 2(c) and 2(d) or from acting on the said guidelines in the consideration or process of the registration of political parties.

16. *AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to refund the sum of N100,000.00 (one hundred thousand Naira) paid by each of the associations that applied for the registration as political parties.*

17. *AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to return 19 of the 20 copies of the association's Constitution submitted to the Independent National Electoral Commission (INEC) by the political associations that have applied for registration as a political party."*

The trial Judge granted reliefs Nos. 1, 2, 13 and 16 in full and granted in part reliefs No. 14 in respect of section 74(2)(g) of the Electoral Act, 2001 only and No. 15 in respect of Guidelines Nos. 2(c) and 3(g). The remaining reliefs were not granted by him. The plaintiffs, aggrieved by the decision, appealed to the Court of Appeal, Abuja Division (Mudapher, JCA, (as he then was) Muntaka-Coomassie and Bulkachuwa, JJ.C.A.). The 1st respondent also cross-appealed.

The Court of Appeal allowed the main appeal by the plaintiffs and set aside part of the judgment of the trial court refusing several of the reliefs sought by the plaintiffs. The court below declared the guidelines issued by the defendant, namely, 2(c), 2(d), 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h) and 5(b) unconstitutional, null and void. It also declared sections 74 (2)(g) and (11), 74(6), 77(b), 78(2)(b) and 79(2)(c) of the Electoral Act, 2001 unconstitutional, null and void. The court finally made an order of injunction against the 1st defendant restraining it, its agents, officers, privies "from basing the registration of political associations as political parties on the aforesaid offending provisions of the Guidelines and the Electoral Act, 2001", and dismissed in its entirety the cross-appeal brought by the 1st defendant.

The defendants appealed to this court against the decision of the Court of Appeal. At the conclusion on 29th October, 2002 of the argument by counsel, the court gave its judgment on 8th November 2002 and reserved the reasons for the judgment till 24th January,

2003. The appeals by both the 1st and 2nd defendants succeeded only in part and to the extent only that the court below was in error in granting the 2nd and 12th reliefs and in granting the 14th and 15th reliefs in their entirety. Consequently, the court granted relief Nos. 1,3,4,5,6,7,8,9,10, and 11 but refused relief Nos. 2, 12, 13, 16
 B and 17. Relief Nos. 14 and 15 were granted in part only, respectively as follows: That relief No. 14 is granted in part only, that is, in respect of sections 74 subsection (2)(h) and 79 subsection (2) of the Electoral Act, 2001 but not in respect of the other sections of the Act.
 C That relief No.15 is granted in part only, that is, in respect of Guidelines Nos. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h) and 5(b) but not in respect of Guidelines 2(c) and 2(d).

The plaintiffs were associations seeking registration as political parties. By virtue of section 221 of the Constitution *“No association,
 D other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election”,* and by virtue of section 222 of the Constitution:

E *“No association by whatever name called shall function as a political party, unless -*

(a) *The names and addresses of its national officers are registered with the Independent National Electoral Commission;*

(b) *The membership of the association is open to every citizen
 F of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion and ethnic grouping;*

(c) *A copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission;
 G*

(d) *Any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration;*

(e) *The name of the association, its symbol or logo does not
 H contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and*

(f) *The headquarters of the association is situated in the Federal Capital Territory, Abuja.*

The plaintiffs each applied to the Independent National Electoral Commission (“INEC” or “the Commission”) for registration as a political party. On 17th day of May, 2002 INEC released guidelines for the registration of political parties. Being of the view that guidelines 2(c) and (d), 3(a), (c), (d)(iv), (e), (f), (g), (h); and 5(b) (“the impugned guidelines”) were “inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 relating to the registration of political parties” and that they should not be made to comply with the guidelines, the plaintiffs commenced the proceedings from which this appeal arose by originating summons whereby they sought, among other things, declarations of invalidity of those impugned guidelines and also of sections 74(2)(g) and (h), 74(6), 77(b), 78(2)(b) and 79(2)(c) of the Electoral Act, 2001. B
C

INEC is one of the Federal Executive Bodies established by section 153(1) of the Constitution of the Federal Republic of Nigeria D 1999 (“the Constitution”). Its composition and powers are by virtue of section 153(2) contained in part 1 of the third schedule to the Constitution, paragraph 15(b) of which empowers it to: “register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly”, while paragraph 15(c) and (d), respectively, provided that the Commission shall have power to E “monitor the organization and operation of the political parties, including their finances” and “*carry out such other function as may be conferred upon it by an Act of the National Assembly.*” F

Section 228 of the Constitution empowers the National Assembly to make laws, among other things -

“for the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of this part of this chapter.” G

The phrase “This part of this chapter” is that part dealing with political parties as are contained in sections 221 - 229 of the Constitution. H

Pursuant to its power under section 228 of the Constitution the National Assembly enacted the Electoral Act 2001 (“the Act”), Part 111 of which made provisions for political parties. Section 74(1) of the Act provided that INEC shall have power to register political

parties and regulate their activities from time to time. Subsection 2 of section 74 went on to provide that no association by whatever name called shall function as a political party, unless certain conditions are fulfilled. Therein was listed in (a) - (f) thereof identical conditions of eligibility to function as a political party as have been specified in section 222 of the Constitution. The conditions in section 74(2) of the Act questioned by the plaintiffs were those they regarded as additional conditions prescribed in paragraphs (g) and (h) of that subsection. As earlier stated they also questioned the constitutionality of sections 74(6), 77(b), 78(2)(b) and 79(2)(c) of the Act. The trial court declared the invalidity of section 74(2)(g) but upheld the validity of the other provisions challenged. However, the Court of Appeal held that all the impugned provisions of the Act were unconstitutional and, therefore, null and void.

Section 74(2)(g) and (h) provided, respectively, that no association by whatever name called shall function as a political party, unless it provides evidence of payment of registration fee of N100,000 or as may be fixed from time to time by an Act of the National Assembly; and, it provides the addresses of the offices of the Political Association in at least two-thirds of the total number of the States of the Federation spread among the six geo-political zones. Section 74(6) makes registration of an association as a political party conditional on compliance with the conditions prescribed in subsections 1 and 2 of section 74 and upon payment of the sum of N100,000 administration and processing fees. Section 77(b) provides that once an association is granted registration as a political party by the Commission, that political party shall further submit to the Commission a copy of the party's constitution drawn up in compliance with chapter 11 of the Constitution of the Federal Republic of Nigeria and with the requirement of the relevant guidelines issued by the Commission. Section 78(2)(b) provided that the constitution and manifesto produced by a political party shall at all times, be in compliance with the provisions of the Constitution, the electoral laws and guidelines made by the Commission. Section 79(c) provides that a person shall not be a member of a political party if he is a member of the Public Service of the Federation, a State or Local Government or Area Council as defined by the Constitution.

To put the issues in the appeal in proper perspective it is expected

dient to pause to emphasise that by section 14(1) of the Constitution the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. Political parties are essential organs of the democratic system. They are organs of political discussion and of formulation of ideas, policies and programmes. Plurality of parties widens the channel of political discussion and discourse, engenders plurality of political issues, promotes the formulation of competing ideas, policies and programmes and generally provides the citizen with a choice of forum for participation in governance, whether as a member of the party in government or of a party in opposition, thereby ensuring the reality of government by discussion which democracy is all about in the final analysis. Unduly to restrict the formation of political parties or stifle their growth, ultimately, weakens the democratic culture. However, to leave political parties completely unregulated and unmonitored may eventually make the democratic system so unmanageable as to become a hindrance to progress, national unity, good government and the growth of a healthy democratic culture. Between the two apparent extremes over-regulation and complete absence of regulation is the need for balanced regulation. In interpreting the provisions of the Constitution and enactment relating to the formation, regulation and monitoring of political parties the recognition of the need for balanced regulation is essential.

Section 40 of the Constitution of the Federal Republic of Nigeria 1999 ("the Constitution") provides that:

"Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition."

However, although section 40 of the Constitution entrenched the right of every person to form or belong to a political party, it is clear from the proviso to that section and several other provisions of the Constitution that the makers of the Constitution did not opt to leave political parties unregulated by the State. Regulation of political parties by the State manifests in the fact that the Constitution itself

has set conditions for the existence and recognition of political parties and empowered the National Assembly to legislate for the regulation of political parties that may have already fulfilled the conditions of eligibility to function as political parties as prescribed by section 222 of the Constitution. Regulation of political parties by the State therefore comes in two forms, namely: regulation directly by the Constitution as in section 222 and regulation authorized by the legislature or other agency of the State as may be permitted by the Constitution. It follows that any attempt to regulate political parties not by the Constitution itself or by its authority is invalid.

The main issue that arose in the case was, thus, the extent to which the National Assembly could legislate to regulate political parties or by legislation authorize INEC so to do.

In particular, the question arose whether, as regards the impugned provisions of the Act, the Constitution empowered the National Assembly to set additional conditions of eligibility for the functioning of political associations as political parties and, as regards the guidelines prescribed by INEC, whether the Constitution had also empowered, or had authorized the National Assembly to legislate to empower INEC to set such additional conditions. The subsidiary, but not unimportant question was whether in regard to each of the impugned provisions, any or which of them amounted to such additional conditions beyond those prescribed by the Constitution. Viewed from a broader perspective, the general question as regards the Act was the real ambit of the powers of the National Assembly to legislate for the registration of political parties, while the particular question was as to the competence of the National Assembly to enact the impugned provisions of the Act. Similar questions arose in relation to the powers of INEC in regard to the guidelines and in particular, the competence of INEC to make the impugned guidelines.

Section 162 of the Act provided that:

“The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for administration thereof.”

It was pursuant to this provision and the Constitution that INEC issued guidelines, some of which are the subject of this appeal. Guideline 2(c) and (d) of the guidelines stipulated, respectively, that the application for registration as a political party shall be accompanied

by evidence of payment of prescribed fee of N100,000.00 in bank draft; and twenty copies of the Association's Constitution. Guideline 3, in so far as is relevant to this appeal, stipulated that:

"No association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following B

(a) The names, residential addresses and States of origin of the members of its National and State Executive Committees and the records of proceedings of the meeting where these officers were elected. C

(c) A Register showing that its membership is open to every citizen of Nigeria.

(iv) A provision showing that its constitution and manifesto conform with the provisions of the 1999 constitution (sic: Constitution), the Electoral Act of 2001 and these guidelines. D

(e) A register showing the names, residential addresses of persons in at least 24 States of the Federation and F.C.T who are members of the association.

(g) A bank statement indicating the bank account into which all income of the proposed Political Association has been paid and shall continue to be paid and from which all expenses are paid and shall be paid. E

(h) The address of its lawful Headquarters office at Abuja and the address of its offices, list of its staff, list of its operational equipment and furniture in at least 24 States of the Federation. F

Guideline 5(b) stipulated that a person shall not be eligible to be registered as a member of political association seeking to be registered as a political party if he/she is in the civil service of the Federation or of a State. The Court of Appeal held that all these enumerated guidelines were unconstitutional and therefore null and void. G

The Court of Appeal held that all the impugned provisions of the Act and of the guidelines, except one, were unconstitutional. Copious references were made in the leading judgment of the court delivered by Musdapher, JCA (as he then was), to authorities on principles of interpretation of the Constitution which are now well known and about which there was no controversy. For my part, I do not see any issue of interpretation of the Constitution that had arisen in the case. Rather, what was involved was application of clear and H

straight forward provisions of the Constitution. Be that as it may, at the end of the day, it is clear that the appeal to the court below was decided on the main ground that “although the National Assembly has powers under section 228 of the Constitution to make any law in relation to an association wishing to be registered as a political party, it has no power to make any law in relation thereto outside the provisions contained under section 222 and perhaps S. 223 of the Constitution.”

The submission of counsel for the plaintiffs, who were the appellants in the court below, was that the Constitution having made provisions for the registration of political parties, the National Assembly lacked the *“legislative competence and vires to either enlarge, alter and curtail the clear provisions of the Constitution.”* If that was the view that the Court of Appeal had intended to accept in the passage of the leading judgment quoted above, it is evident that the court below stated the position too narrowly than may be acceptable. What is clear is that the National Assembly cannot legislate inconsistently with the provisions of section 222 or 223 of the Constitution, but it can legislate for matters outside the provisions of either section 222 or section 223 provided there is legislative authority derived from other provisions of the Constitution. Being of the view that *“once an association meets the conditions spelt out under s. 222 and s. 223, such an association automatically transforms and becomes a political party capable of sponsoring candidates and canvassing for votes in any constitutional recognized elective offices through out Nigeria”*, the court below struck down all the impugned provisions, both of the Act and of the guidelines, except one. For the sake of completeness, I note the views expressed by the court below as follows: in regard to section 40 of the Constitution, that the only derogation of the right to form or belong to a political party is as contained in the proviso to the section; in regard to section 228 of the Constitution, that the power it confers on INEC is limited to registered parties; in regard to the impugned provisions of the Act, that they were not within the contemplation of that section 228 of the Constitution.

On the 1st defendant’s appeal from the decision of the Court of Appeal, Mr. Eghobamien, SAN, learned counsel for INEC, raised two issues for determination thus: (1) Whether the court below had

jurisdiction to adjudicate in the suit when the 2nd defendant was denied fair hearing, and (2) “Whether the 1st appellant (Independent National Electoral Commission) have powers under the 1999 Constitution and the Electoral Act, 2001 to make guidelines for Political Associations seeking to transform into political parties.” The first issue was unarguably without substance. The 2nd defendant who had not even appealed to the court below was a party to the appeal and had not complained that he was denied an opportunity of a hearing in the court below. It was thus surprising, to say the least, that senior counsel for the 1st defendant had considered the issue worthy not only of canvassing but also of being put at the forefront of his argument in the appeal which raised more serious and important issues. The formulation of the second issue raised by the 1st defendant was unhelpful, it being evident that there was no controversy in the case about the power of INEC to make guidelines. What was in issue was the extent to which such guidelines could be made.

For his part, Mr. Jacobs, learned counsel for the 2nd defendant, raised two issues as follows:

“1. Whether the National Assembly is not competent to enact the impugned provisions of the Act and thereby the same were rendered unconstitutional and void; and

2. Whether the impugned guidelines were not within the provisions of the Constitution with regard to the registration of political parties.”

Although the plaintiffs had formulated issues for determination in different words the substance of the issues formulated by counsel on their behalf was the same as that formulated by the 2nd defendant’s counsel.

In so far as the argument presented by counsel for the 1st defendant was directed at showing that the National Assembly had power to legislate for the registration of political parties and that INEC had power to make guidelines, the argument of the learned counsel was not of much assistance since the general question was not as to the existence of those powers but as regards the extent of the powers which these bodies have in regard to matters already stated. On the particular issue, counsel for the 1st defendant did not proffer any argument whatsoever on the competence of the National Assembly to enact the impugned provisions of the Act other than section 79(2)

in respect of which he asserted, without any argument in support, that *“it cannot be right in fact and in law for a [civil servant] to be a card carrying member of any party, in view of the crucial role he/she plays in the affairs of government.”* On the issue of the guidelines, the argument presented by counsel for the 1st defendant was, largely, B that the guidelines furthered in several respects the purposes of the Constitution and are in consonance with its provisions.

The submissions by counsel for the 2nd defendant were helpful though rather wide-ranging. On the crucial question, it was submitted that the competence of the National Assembly to legislate in C respect of registration of political parties was not taken away by the doctrine of covering the field because sections 222 and 223 of the Constitution have not “completely, exhaustively and exclusively” covered the field of registration of political parties; and that section 222 D of the Constitution did not evince an intention to list out exhaustively the requirements for the registration of political parties, nor did it state the modalities for the registration of the national officers of a political party or of its constitution. As to the ambit of the legislative power of the National Assembly, learned counsel for the 2nd defendant E referred to item 56 of the Exclusive Legislative List in the second schedule to the Constitution where regulation of political parties was placed within the exclusive legislative power of the National Assembly; the proviso to section 40 of the Constitution; section 15(2) and F (3)(d) of the Constitution and paragraph 15(b) of the third schedule, to support the submission, not only that the National Assembly has legislative power to legislate for the registration of political parties but also that the Constitution does not restrict the source of the powers given to INEC to register political parties only to its provisions but G extended it to the provisions of an Act of the National Assembly. He called in aid section 228(d) of the Constitution and submitted that the National Assembly could make laws that may appear to it to be necessary or desirable for the purpose of enabling INEC more effectively ensure that political parties observe the provisions of sections H 222 and 223 of the Constitution. In his submission, most of the impugned provisions struck down by the Court below were designed to fulfill the objectives of the Constitution of promoting national integration as spelt out in section 15(3) of the Constitution.

Chief Fawehinmi, SAN, learned counsel for the respondents,

submitted, on the general issue, that section 222 of the Constitution is exhaustive of the requirements for recognition of a political association as a political party; that no guideline and no Act of the National Assembly can “add to, alter, enlarge, curtail, or repeat the conditions contained in section 222”; that if an Act of the National Assembly duplicates the requirements in section 222 such law is inoperative to the extent of such duplication and if such law adds to, curtails, or alters the said requirements, it is unconstitutional and therefore, null and void; that section 228 of the Constitution merely empowered the National Assembly to make laws with respect to already registered political parties and that, in any event, section 222 had already covered the field in respect of political parties seeking registration; and, relying on the doctrine of covering the field enunciated in *A.G. Abia State and 35 others v. A.G., Federation* (2002) 6 NWLR (Pt.763) 264, that the National Assembly had no power to enact the impugned sections of the Act and INEC had no power to make guidelines on how an association can become a political party in so far as the Constitution has covered the field in section 222. Testing the impugned sections of the Act and guidelines against the background of principles stated by him, he submitted that those impugned provisions were unconstitutional and therefore null and void.

In the final analysis this case is about the supremacy of the Constitution. Section 1(3) of the Constitution provided that:

“If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”

I take as my starting point some interrelated propositions which flow from the acknowledged supremacy of the Constitution and by which the validity of the impugned provisions will be tested. First, all powers, legislative, executive and judicial must ultimately be traced to the Constitution. Secondly, the legislative powers of the legislature cannot be exercised inconsistently with the Constitution. Where it is so exercised it is invalid to the extent of such inconsistency. Thirdly, where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what the Constitution had enacted must show that it has derived the legislative authority to do so

from the Constitution. Fourthly, where the Constitution sets the condition for doing a thing, no legislation of the National Assembly or of a State House of Assembly can alter those Constitution in any way, directly or indirectly, unless, of course the Constitution itself as an attribute of its supremacy expressly
 B *so authorised.*

The legislative power of the National Assembly consists of the power to make laws for the peace and order and good government of the Federation or any part thereof with respect
 C *to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution, to the exclusion of the House of Assembly of States and to make laws with respect to any matter in the Concurrent Legislative List set out in the First Column of Part II of the Second Sched-*
 D *ule to the Constitution to the extent prescribed in the Second Column; and with respect to any other matters with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.*

Although the Constitution does not state that an Act of the
 E National Assembly cannot duplicate the provisions of the Constitution, by judicial interpretation, verging on policy, the consequence of such duplication has been variously described as “inoperative”, “in abeyance”, “suspended”. (See A.G. Ogun State v. A.G., Federation (1982) NSCC 1, at Pp. 11, 27-29, 35); also reported in (1982) 3
 F NCLR 166. Howsoever it is described, where the Constitution has covered the field as to the law governing any conduct, the provision of the Constitution is the authoritative statement of the law on the subject. The Constitution would not have ‘covered the field’ where it
 G had expressly reserved to the National Assembly or any other legislative body the power to expand on or add to its provisions in regard to the particular subject.

Where the Constitution has provided exhaustively for any situation and on any subject, a legislative authority that claims
 H *to legislate in addition to what the Constitution had enacted must show that, and how, it has derived its legislative authority to do so from the Constitution itself. In this case, section 222 of the Constitution having set out the conditions upon which an association can function as a political party, the*

National Assembly could not validly by legislation alter those conditions by addition or subtraction and could not by legislation authorise INEC to do so, unless the Constitution itself has so permitted.

The National Assembly has powers: by virtue of section 228(d) of the Constitution, to confer by law powers on INEC as may appear to it to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of sections 221-229 which deal with political parties; and, by virtue of item 56 of the Exclusive Legislative List, to legislate for the regulation of political parties. INEC has direct power granted by the Constitution to register political parties. Any enactment of the National Assembly referable to this purpose cannot be held invalid. By the same reasoning, any guideline or regulation made by the Commission that carries into execution the same purpose cannot be unconstitutional.

However, does the power to register or regulate political parties include the power to determine eligibility of an association to function as a political party? Consideration of this question makes some prefatory observations pertinent. First, by setting out the conditions upon which an association shall function as a political party in section 222, the Constitution has impliedly withdrawn such matters from the ambit of any regulatory enactment that the National Assembly may make. Secondly, section 229 of the Constitution defines a political party in terms of its activities. A political party starts as and is basically an association. However, for an association to be able to engage in the activities which only a political party is permitted to engage in, that is to say function as a political party, it must comply with the provisions of section 222 of the Constitution. Section 222 is thus about conditions of eligibility of an association to engage in the activities that by virtue of section 221 only political parties can engage in as specified in section 229.

In dealing with provisions of the Constitution concerning political parties the Constitution used different words and phrases which must be clearly understood if confusion is not to be engendered. In the proviso to section 40 the Constitution spoke of recognition; in paragraph 15(b) of the third schedule it spoke of registration by INEC

of political parties; and, in section 222, as has been seen, the provisions are about eligibility to function as a political party.

In my judgment, recognition of a political party is not quite the same thing as registration of a political party, while registration of a political party is quite distinct and is not the same thing as eligibility of an association to function as a political party, even though these are all inter-related aspects of the same subject. Registration is the process of recording the existence of a political party and it provides evidence and certification of compliance with section 222 of the Constitution. It is evident that a political party cannot be registered as being in existence unless the association has satisfied the conditions of eligibility in section 222. It is therefore clear that the power to register is not the same as and does not include the power to declare the conditions of eligibility. Similarly, the power to regulate or monitor political parties relates to associations which have a recognised existence as political parties. Such power does not also imply any power to legislate the conditions of eligibility. Registration of political parties facilitates the exercise of the regulatory and monitoring powers of INEC which are within the purview of the legislative competence of the National Assembly. According recognition to a political party is the fact of acceptance of the existence of an association eligible to function as a political party, while registration is the recording and certification of that fact.

In this context, while the submission made by counsel for the 2nd appellant that section 222 of the Constitution does not evince an intention exhaustively to list out the requirements for registration of parties and that the modalities for registration of the National offices is not stated in that section, cannot be faulted as statements of fact, it is besides the point because section 222 does not deal with registration of parties, there was no doubt that INEC has power to register political parties and the National Assembly can legislate in regard to the exercise of those powers. ***Where, however, in the exercise of legislative power to make laws to provide for the registration, monitoring and regulation of political parties the National Assembly purports to decree conditions of eligibility of an association to function as a political party the National***

Assembly would have acted outside its legislative authority as stated in the Constitution. Similarly, INEC acting under such law to prescribe conditions of eligibility would have acted inconsistently with the Constitution.

Applying the test inherent in the distinction between conditions of eligibility on the one hand, and registration, regulation or monitoring of political parties on the other, it becomes much easier to determine which of the impugned provisions of the Act and the guidelines are outside the competence of the National Assembly or INEC. Before this test is applied, a further distinction should be drawn between guidelines which are administrative or procedural or evidential in nature. Guidelines which are administrative in nature merely relate to the administrative mechanism of the process of registration. Guidelines which are of a procedural nature relate to the procedure to be followed in seeking registration. Evidential guidelines relate to proof of compliance with the conditions of eligibility. Where the requirements for registration stated in any guideline or in the Act are not purely administrative or procedural or evidential, but are substantive conditions for eligibility beyond the conditions prescribed by section 222, such guidelines or provisions would have enlarged the conditions of eligibility in section 222 and be consequently void, notwithstanding that they may have been described as requirements for registration.

Applying this test, I felt no hesitation in holding that guideline 3(a); 3(c); 3(d)(iv); 3(e); 3(f); 3(g); 3(h) and 5(b) are neither related to administration nor to any procedure for seeking registration nor are they evidence of any conditions stated in section 222 as conditions of eligibility. They have no administrative significance in the process of registration. The conclusion was inescapable that as they stand, on their own and unrelated to any of the conditions of eligibility prescribed in section 222, but are conditions of registration which are not procedural or evidential or required for any administrative purpose related to the process of registration, they are, albeit in a disguised form, fresh conditions for eligibility to function as a political party beyond what the Constitution had prescribed.

Guidelines 2(c) which related to evidence of payment of prescribed fee of N100,000.00 is a purely administrative requirement, while guideline 2(d) which provided that twenty copies of the asso-

ciations Constitution and Manifesto shall accompany the application for registration is in furtherance of and is related to section 222 (c) of the Constitution.

I now turn to the impugned provisions of the Act. It was clear enough that section 78(2)(b) of the Act which related to a political party already registered was valid as its provision came within the legislative competence of the National Assembly by virtue of section 4(1) of the Constitution and item 56 of the Exclusive Legislative List - Regulation of Political Parties.

Section 79(2)(c) of the Act was invalid because it was inconsistent with section 40 of the Constitution. In terms of section 45(1)(a) of the Constitution, there is nothing reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health in prohibiting a member of the public Service or Civil Service of the Federation, a State or Local Government or Area Council from eligibility to be registered as a member of a political party. The submission that the restriction is a valid derogation from section 40 by virtue of section 45(1)(a) of the Constitution was erroneous. However, this conclusion is limited to the question of the validity of section 79(2)(c) of the Act and is not related to any question, not now before this court in these proceedings, of the extent to which the activities, as members of a political party, of the category of persons mentioned in that section can be validly restricted by relevant legislation in the interest of the public service. It may well be that the need to ensure objectivity of officers entrusted with the implementation of government programmes, continuity of administration and to foster a public confidence in and a healthy public perception of the public service are factors that may influence and justify some sort of restrictions. But, as earlier stated, that was not an issue in this appeal.

Section 74(2)(h) of the Act was bad because it added to the list of the conditions of eligibility which an association must satisfy before it could be eligible to function as a political party. On the other hand, section 74(2)(g) of the Act was valid because its provisions, relating as they were to production of payment of relevant fees, were purely administrative in relation to the registration process. Section 74(6) was objected to on the ground that it prescribed a requirement for payment of administrative and processing fees. It was argued that the

provision was void because it prescribed an additional condition to those prescribed in section 222 of the Constitution. That argument, however, took an unnecessarily narrow view of the matter. The correct starting point is to consider the purpose of the payment and to relate it to the process of registration which is the essential certification of eligibility of an association to function as a political party. Seen in that context, the provisions of section 74(6) are purely administrative in nature. The provision in section 74(6) that only a political association that met the conditions stipulated in section 74(1) and (2) shall be registered as a political party was innocuous once the invalid provision in section 74(2)(h) is removed. Section 77(b) was valid because it related to a political party already registered and its provisions were within the regulatory and monitoring powers of INEC.

The declaration that the registration of political parties in Nigeria is governed by the provisions of the Constitution of Nigeria, 1999 was granted in the sense that and because the ultimate source of any registration or guideline or exercise of power relating to registration of parties must be traced to the Constitution, but not in the sense that the Constitution itself must make direct provisions relating to registration or its mechanism. It was because of this elucidation of the relevance of the Constitution to the registration of political parties that the second declaration was refused. The Constitution does not by itself expressly stipulate conditions for the registration of political parties. It only empowered INEC to register political parties and the National Assembly to legislate for the regulation of political parties. There were several guidelines made by INEC which though not within the conditions prescribed by the Constitution for eligibility of an association to function as a political party were quite valid because they were incidental and relevant to the registration process and were within the regulatory powers of INEC, the details of which cannot be expected to be set out in a Constitution. It is only those guidelines which were of the nature of conditions of eligibility to function as a political party that were invalid as being made without authority of the Constitution. In the result whether INEC could prescribe guidelines for the registration of political parties outside the conditions stipulated in the Constitution or not must depend on the nature of the guidelines. Procedural, evidential and purely administrative guidelines are “outside the conditions stipulated by the Constitution”, yet they are valid.

When a declaration sought is couched in wide and imprecise terms, as in relief 2 in this case, it should be rejected. To grant such would lead to confusion.

The injunction sought in claims 16 and 17 related respectively to reliefs 12 and 13 which have been refused. Consequentially, they too were refused. The declaratory and injunctive relief granted respectively in claims 14 and 15 reflected those sections of the Act and the guidelines which were considered not to be valid.

Before I part with these reasons for judgment, it is expedient to note that the Electoral Act, 2001 has been repealed during the pendency of this appeal by S. 152 of the Electoral Act 2002. The reliefs sought related to the constitutionality of some provisions of the Electoral Act, 2001 which have now been repealed and to some of the guidelines made by INEC under the repealed Act. The declarations made in regard to provisions of the Electoral Act are of use only in so far as they were the source of the impugned guidelines. In the Electoral Act, 2002 several of these impugned provisions have already been removed.

Be that as it may, it was for the reasons I have stated that I concurred in the orders made by the court on 8th November 2002.

UWAIS CJN

On the 8th day of November, 2002 we delivered judgment in this case allowing the appeals by the 1st and 2nd appellants and reserving our reasons for the judgment until today.

I have had the opportunity of reading in draft the reasons prepared and read by my learned brother Ayoola, JSC. It was for those reasons that I allowed the appeals by the 1st and 2nd defendants/appellants respectively in part with no order as to costs. I adopt the said reasons as mine. However, I wish to comment further on the provisions of guideline No. 5(b) which disqualified civil servants from being members of a political association which seeks to be registered as a political party. Claim No. 11 by the plaintiffs/respondents reads:-

“11. A DECLARATION that guideline No. 5(b) contained in the 1st defendant’s guidelines for the registration of Political Parties dated the 15th day of May, 2002 issued by the 1st defendants, Independent National Electoral Commission (INEC) but released to the

public on the 17th day of May, 2002 which prescribes that "a person shall not be eligible to be registered as a member of political association seeking to be registered as a political party if he/she is in the civil service of the Federation or of a State" is unconstitutional and therefore null and void."

Section 79 subsection (2)(c) of the Electoral Act, 2001 provided:-

"79(2) Subject to subsection (1) of this section, a person shall not be eligible to be registered as a member of a political party if he:-

(c) is a member of the Public Service or Civil Service of the Federation, a State or Local Government or Area Council as defined by the Constitution."

While guideline No. 5(b) for the registration of new Political Parties stated:-

"5. A person shall not be eligible to be registered as a member of political association seeking to be registered as a political party if he/she:-

(b) Is in the civil service of the Federation or of a State."

Now, there is a significant difference between the provisions of section 79 subsection 2(c) of the Electoral Act, 2001 and paragraph 5(b) of the Guidelines. While the former concerned itself with membership of a political party the latter dealt with membership of a political association seeking to be registered as a political party. These bodies are indeed different. This distinction is significant because one is inchoate (i.e political association) while the other is developed or complete (i.e political party).

Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 provides:-

"40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition."

Learned counsel for the 1st defendant/appellant argued that it could not be right both in fact and in law for a civil servant to be a

card carrying member of any party in view of the crucial role he or she played in the affairs of government. I know, and it is a notorious fact that as a rule, the Civil (Public) Service Rules place some restrictions on public office holders, including civil servants, with regard to participation in politics or political activities. For instance the current
 B Federal Government Civil (Public) Service Rules provide in Rules 04421 and 04422 as follows:-

“04421. No officer shall, without express permission of the Government, whether on duty or leave of absence:

C *(a) hold any office, paid or unpaid, permanent or temporary, in any political organization;*

(b) offer himself or nominate anyone else as a candidate for any elective office including membership of a Local Government Council, State or National Assembly;

D *(c) engage in canvassing in support of political candidates. Nothing in this rule shall be deemed to prevent an officer from voting in an election.*

04422. Resignation necessary before seeking elective public office. Howbeit, any officer wishing to engage in partisan political activities or seek elective public office shall resign his appointment forthwith.”
 E

The Civil (Public) Service Rules are not legislation per se as provided by the Constitution nor subsidiary legislation, as they are not made under any enabling Act or Law. These limitations are emphasized by Rule 01001 of the Rules which provides in respect of some
 F categories of public office holders that:-

“... these Rules apply only to the extent that they are not inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria in so far as their conditions of service and any other law applicable to these officers are concerned.”
 G

The provisions of section 40 of the 1999 Constitution are clear. Their import is to allow “every person,” including public office holders and civil servants, the freedom to assemble freely and associate
 H with other persons to form or belong to any political party, or trade union or any association for the protection of his interests. The section has made no exception and there is no proviso therein limiting its application to civil servants or public officers. It is important to mention that the provisions of the Civil (Public) Service Rules have

not been challenged in this case and therefore their validity is not in issue for determination by this court. Reference to the restriction had been made merely in passing by learned counsel for the 1st defendant/appellant in order to canvass the validity of section 79 subsection (2)(c) of the Electoral Act, 2001.

Since section 40 of the 1999 Constitution has specifically allowed every person the right to assemble and associate with any other persons in order to inter alia form or belong to any political party for the protection of his interests I hold that both the provisions of section 79 subsection (2)(c) of the Electoral Act, 2001 and guideline No. 5(b) are inconsistent with the Constitution.

I need to instantly add that the proviso to section 79 subsections 2(c) of the Electoral Act, 2001 has not affected the opinion which I have expressed since we are here concerned with political associations which seek to be registered and not political parties to which the 1st defendant/applicant does not accord recognition. Section 229 of the Constitution defines “association” and “political party” thus:-

“229. In this part of this chapter, unless the context otherwise requires -

“association” means any body of persons corporate or un-incorporate who agree to act together for any common purpose, and includes an association formed for any ethnic, social, cultural, occupational or religious purpose; and “political party” includes any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor or membership of a legislative house or of a Local Government Council.”

Finally, it is for all these and the fuller reasons given by my G learned brother Ayoola, JSC that I allowed both appeals in part on the 8th day of November, 2002 with no order as to costs.

BELGORE JSC

By originating summons, the plaintiffs/respondents sought the following remedies:

‘1. A DECLARATION that the registration of political parties in Nigeria is governed by the provisions of the Constitution of the Fed-

eral Republic of Nigeria, 1999.

2. A DECLARATION that the 1st defendant, Independent National Electoral Commission (INEC) cannot prescribe guidelines for the registration of political parties outside the conditions stipulated by the Constitution of the Federal Republic of Nigeria, 1991.

B 3. A DECLARATION that guideline No. 3(a) contained in the 1st defendant's guidelines for the registration of political parties dated the 15th day of May, 2002 issued by the 1st defendants, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must submit "the names, residential addresses and states of origin respectively of the members of its National and State Executive Committees, and the records of proceedings of the meeting where these officers were elected" is unconstitutional, and therefore null and void, in so far as it enjoins such association to submit the names, residential addresses and states of origin respectively of the members of its State Executive Committees, and the records of proceedings of the meetings where both members of its National and State Executive Committees were elected.

E 4. A DECLARATION that guideline No. 3(c) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "a register showing that its membership is open to every citizen of Nigeria" is unconstitutional and therefore null and void.

G 5. A DECLARATION that guideline No. 3(d)(iv) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must show a provision that its Constitution and Manifesto conform with the provisions of the 1999 Constitution, the Electoral Act of 2001 and the guidelines" is unconstitutional and therefore null and void in so far as the guideline relates to "the Electoral Act, 2001 and these guidelines."

H 6. A DECLARATION that guideline No. 3(e) contained in the

1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must have "a register showing the names, residential addresses of persons in at least 24 States of the Federation and FCT who are members of the association" is unconstitutional and therefore null and void. ^B

7. A DECLARATION that guideline No. 3(f) contained in the 1st defendant's Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "an affidavit sworn to by the Chairman and Secretary of the association to the effect that no member of the National Executive of the Association is a member of any other existing party or existing Political Association" is unconstitutional and therefore null and void. ^C

8. A DECLARATION that guideline No. 3(g) contained in the 1st defendant's Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 200 which prescribes that an association seeking registration as a political party must present "a bank statement indicating the bank account into which all income of the proposed political association has been paid and shall continue to be paid and from which all expenses are paid and shall be paid" is unconstitutional and therefore null and void. ^E

9. A DECLARATION that guideline No. 3(h) contained in the 1st defendant's Guidelines for the registration of political parties dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must submit "the addresses of its offices, list of its staff, list of its operational equipment and furniture in at least 24 States of the Federation" is unconstitutional and therefore null and void. ^F

10. A DECLARATION that guideline No. 3(h) contained in the ^H

1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 in so far as it prescribes that "a party seeking registration must submit a list of its staff, list of its operational equipment and furniture in its Headquarters Offices at Abuja is unconstitutional and therefore null and void.

11. A DECLARATION that guideline No. 5(b) contained in the 1st defendant's "Guidelines for the registration of political parties" dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that "a person shall not be eligible to be registered as a member of political association seeking to be registered a political if he/she is in the civil service of the Federation or of a State" is unconstitutional and therefore null and void.

12. A DECLARATION that guideline No. 2(d) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that each association seeking registration as a political party must accompany its application with twenty (20) copies of the Association's Constitution is unconstitutional and therefore null and void.

13. A DECLARATION that guideline No. 2(c) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes payment of N100,000.00 (One Hundred Thousand Naira) by an association, that applies for registration is unconstitutional & therefore null & void.

14. A DECLARATION that sections 74(2)(g) and (h), 74(6), neb) and 78(2)(b) of the Electoral Act, 2001 which enlarge and 79(2)(c) of the said Act which curtails the provisions of the 1999 Constitution on the registration of political parties are unconstitutional and therefore null and void and of no effect whatsoever.

15. A PERPETUAL INJUNCTION restraining the 1st defendant, Independent National Electoral Commission (INEC), its agents,

officers, privies from basing the registration of political parties either in whole or in part on guidelines Nos. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 5(b), 2(c) and 2(d) or from acting on the said guidelines in the consideration or process of the registration of political parties.

16. *AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to refund the sum of N100,000.00 (One Hundred Thousand Naira) paid by each of the associations that applied for the registration as political parties.*^B

17. *AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to return 19 of the 20 copies of the Association's Constitution submitted to the Independent National Electoral Commission (INEC) by the Political Associations that have applied for registration as a political party."*^C

The trial Judge, in a reserved judgment granted reliefs 1,2, 13 and 16 in full and reliefs 14 and 15 in part. All other reliefs i.e. 3,4, 5,6,7,8,9,10,11,12, and 17 were refused. The plaintiffs appealed to Court of Appeal, being dissatisfied with trial court's decision. The first defendant also cross-appealed.

After hearing arguments on their briefs, Court of Appeal allowed the appeal of the plaintiffs and granted reliefs 3, 4,5,6,7,8,9, 10, 11, 12, 13, 14 and 15. It dismissed the cross-appeal of Independent National Electoral Commission, the first defendant. This decision led to this appeal. This court heard the appeal on 29th October, 2002 and in view of the urgency of the basis of the suit to the pending elections we reserved judgment to 8th day of November, 2002 and full reasons for the judgment to 24th January, 2003. We gave judgment on 8th November, 2002 and I now give reasons for that judgment.^F

I held on 8th day of November, 2002 that the appeals of 1st and 2nd defendants succeeded in part and made orders as follows:

(1) Reliefs numbers 1,3,4,5,6,7,8,9, 10, 11 are granted.

(2) Relief No. 14 is granted in part in respect of sections 74(2)(h) and 75(2)(c) of the Electoral Act, 2002 but not in respect of other sections of the Act.^H

(3) Relief 15 is granted in part, that is, in respect of Guidelines Nos. 3(a), 3(c), 3(d), 3(d)(iv), 39(e), 3(f), 3(g), 3(h), and 5(b), but without affecting other Guidelines 2(c) and 2(d).

(4) Reliefs 2, 13, 16, and 17 are refused.

These findings are in consonance with the reasons fully adumbrated in the Reasons for Judgment written by my learned brother, Ayoola, JSC., which I had the opportunity of discussing at the court's conference, and after reading, which I fully adopt as my own. I make no order as to costs.

B

KUTIGI JSC

The plaintiffs in the Federal High Court holden at Abuja by originating summons sought for the following reliefs -

C *"1. A DECLARATION that the registration of political parties in Nigeria is governed by the provisions of the Constitution of the Federal Republic of Nigeria, 1999.*

D *2. A DECLARATION that the 1st defendant, Independent National Electoral Commission (INEC) cannot prescribe guidelines for the registration of political parties outside the conditions stipulated by the Constitution of the Federal Republic of Nigeria, 1999.*

E *3. A DECLARATION that guideline No. 3(a) contained in the 1st defendant's Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendants, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must submit "the names, residential addresses and States of origin respectively of the members of its National and State Executive Committees and the records of proceedings of the meeting where these officers were elected is unconstitutional, and therefore null and void, in so far as it enjoins such association to submit the names, residential addresses and States of origin*
F *respectively of the members of its State Executive Committees, and the records of proceedings of the meetings where both members of*
G *its National and State Executive Committees were elected.*

H *4. A DECLARATION that guideline No. 3(c) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "a register showing that its membership is open to every citizen of Nigeria" is unconstitu-*

tional and therefore null and void.

5. A DECLARATION that guideline No. 3(d) (iv) contained in the 1st defendant's Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must show 'a provision that its Constitution and Manifesto conform with the provisions of the 1999 Constitution, the Electoral Act of 2001 and the guidelines' is unconstitutional and therefore null and void in so far as the guidelines relates to "the Electoral Act, 2001 and these guidelines."

6. A DECLARATION that guideline No. 3(e) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must have "a register showing the names, residential addresses of persons in at least 24 States of the Federation and FCT who are members of the association" is unconstitutional and therefore null and void.

7. A DECLARATION that guideline No. 3(f) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "an affidavit sworn to by the Chairman and Secretary of the association to the effect that no member of the National Executive of the Association is a member of any other existing party or existing political association" is unconstitutional and therefore null and void.

8. A DECLARATION that guideline No. 3(g) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present "a blank statement indicating the bank account into which an income of the proposed political association has been paid and shall continue to be paid and

from which all expenses are paid and shall be paid” is unconstitutional and therefore null and void.

9. A DECLARATION that guideline No. 3(h) contained in the 1st defendant’s ‘Guidelines for the registration of political parties dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must submit “the addresses of its offices, list of its staff, list of its operational equipment and furniture in at least 24 States of the Federation” is unconstitutional and therefore null and void.

10. A DECLARATION that guideline No. 3(h) contained in the 1st defendant’s ‘Guidelines for the registration of political parties’ dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 in so far as it prescribes that “a party seeking registration must submit a list of its staff, list of its operational equipment and furniture in its Headquarters Offices at Abuja” is unconstitutional and therefore null and void.

11. A DECLARATION that guideline No. 5(b) contained in the 1st defendant’s “Guidelines for the registration of political parties” dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that “a person shall not be eligible to be registered as a member of political association seeking to be registered as a political party if he/she is in the civil service of the Federation or of a State” is unconstitutional and therefore null and void.

12. A DECLARATION that guideline No. 2(d) contained in the 1st defendant’s ‘Guidelines for the registration of political parties’ dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that each association seeking registration as a political party must accompany its application with twenty (20) copies of the Association’s Constitution is unconstitutional and therefore null and void.

13. A DECLARATION that guideline No. 2(c) contained in the 1st defendant’s ‘Guidelines for registration of political parties’ dated

the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes payment of N100,000.00 (One Hundred Thousand Naira) by an association, that applies for registration is unconstitutional and therefore null and void.

14. *A DECLARATION that sections 74(2)(g) and (h), 74(6), 77(b) and 78(2)(b) of the Electoral Act, 2001 which enlarge and 79(2)(c) of the said Act which curtails the provisions of the 1999 Constitution on the registration of political parties are unconstitutional and therefore null and void and of no effect whatsoever.*

15. *A PERPETUAL INJUNCTION restraining the 1st defendant, Independent National Electoral Commission (INEC), its agents, officers, privies from basing the registration of political parties either in whole or in part on guidelines Nos. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 5(b), 2(c) and 2(d) or from acting on the said guidelines in the consideration or process of the registration of political parties.*

16. *AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to refund the sum of N100,000.00 (One Hundred Thousand Naira) paid by each of the associations that applied for the registration as political parties.*

17. *AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to return 19 of the 20 copies of the Association's Constitution submitted to the Independent National Electoral Commission (INEC) by the political Associations that have applied for registration as a political party."*

The learned trial Judge in a reserved judgment granted reliefs 1, 2, 13 & 16 above in full and reliefs 14 & 15 in parts only. The remaining reliefs were refused.

Dissatisfied with the judgment of the trial court, the plaintiffs appealed to the Court of Appeal Holden at Abuja. The 1st defendant also cross-appealed. In its judgment, the Court of Appeal allowed the plaintiff's appeal and granted reliefs 3,4,5,6,7,8,9, 10, 11, 12, 13, 14 & 15. The 1st defendant's cross-appeal was dismissed.

Aggrieved by the decision of the Court of Appeal the 1st and 2nd defendants have appealed to this court. The appeal was heard on 29th October, 2002, in view of the urgency and importance of the case we then decided to give our judgment on 8th November, 2002 (which we did), and the reasons for the judgment to be given

today the 24th day of January, 2003. On the said 8th November, 2002, I held that the appeals of both the 1st and 2nd defendants had succeeded in part and the following orders were made-

1. That relief No.1 is granted.
 2. That relief No.2 is refused.
 - B 3. That relief No.3 is granted.
 4. That relief No.4 is granted.
 5. That relief No.5 is granted.
 6. That relief No.6 is granted.
 - C 7. That relief No.7 is granted.
 8. That relief No.8 is granted.
 9. That relief No.9 is granted.
 10. That relief No. 10 is granted.
 11. That relief No.11 is granted.
 - D 12. That relief No.12 is refused.
 13. That relief No.13 is refused.
 14. That relief No.14 is granted in part only, that is, in respect of sections 74 subsection (2)(h) and 79 subsection (2)(c) of the Electoral Act, 2001 but not in respect of the other sections of the Act.
 - E 15. That relief No. 15 is granted in part only, that is, in respect of Guidelines Nos. 3(a), 3(c), 3(d)(iv), 39(e), 3(f), 3(g), 3(h) and 5(b) but not in respect of Guidelines 2(c) and 2(d).
 16. That relief No. 16 is refused.
 - F 17. That relief No. 17 is refused.
- There were no orders as to costs.

I shall now proceed to give my reasons for the judgment referred to above.

I have before now read the Reasons for Judgment just rendered by my learned brother Ayoola, JSC. I agree with him that those were the reasons for which I allowed in part the 1st - 2nd defendants' appeal and made the orders of 8th November, 2002 reproduced above. I adopt the reasons as mine and have nothing more to add.

H

IGUH JSC

On the 8th day of November, 2002, I concurred in the orders made by this court in this appeal and then indicated that I would give

my reasons for so doing today.

I have since had the privilege of reading in draft the reasons for judgment just delivered by my learned brother, Ayoola, J.S.C., and I agree entirely with the reasoning and conclusions therein. I need only state that it is for those reasons which I adopt as mine that I concurred in all the orders made by the court on the 8th November, 2002 as aforementioned.

EJIWUNMI JSC

At the conclusion of the hearing of argument of counsel for the parties on 29th October 2002, the matter was adjourned to the 8th of November, 2002 for judgment. On that day, I delivered my judgment in which I held that the appeals of both the 1st and 2nd defendants/appellants had succeeded in part and the following orders were made:-

1. That relief No.1 is granted.
 2. That relief No.2 is refused.
 3. That relief No.3 is granted.
 4. That relief No.4 is granted. E
 5. That relief No.5 is granted.
 6. That relief No.6 is granted.
 7. That relief No.7 is granted.
 8. That relief No.8 is granted. F
 9. That relief No.9 is granted.
 10. That relief No.10 is granted.
 11. That relief No.11 is granted,
 12. That relief No. 12 is refused.
 13. That relief No. 13 is refused. G
 14. That relief No. 14 is granted in part only, that is, in respect of sections 74 subsection (2)(h) and 79 subsection (2)(c) of the Electoral Act, 2001 but not in respect of the other sections of the Act.
 15. That relief No. 15 is granted in part only, that is, in respect of Guidelines Nos. 3(a), 3(c), 3(d)(iv), 39(e), 3(f), 3(g), 3(h) and 5(b) but not in respect of Guidelines 2(c) and 2(d). H
 16. That relief No. 16 is refused
 17. That relief No. 17 is refused.
- There were no orders as to costs.

I will now give my reasons for the judgment I delivered on the 8th November, 2002. This action was commenced by an originating summons against the defendants, wherein the following questions were raised for determination by this court. The questions read thus:

B (a) Whether the 1st defendant, Independent National Electoral Commission (INEC) established under section 153 of the Constitution of the Federal Republic of Nigeria, 1999 is bound to observe the conditions stipulated under sections 222-229 of the 1999 Constitution relating to registration of political parties.

C (b) Whether the 1st defendant, Independent National Electoral Commission (INEC) can by its guidelines enlarge, curtail or amend the provisions stipulated in the Constitution of the Federal Republic of Nigeria, 1999 for the registration of political parties.

D (c) Whether the guidelines released by the 1st defendant, Independent National Electoral Commission (INEC) on 17th May 2002, wholly or partly conflict with or violate the provisions of the Constitution of the Federal Republic of Nigeria, 1999 relating to the registration of political parties.

E (d) Whether the National Assembly is competent to enact sections 74(2)(g) & (h), 74(6), 77(b) 78(2)(b) and 79(2)(c) of the Electoral Act, 2001 in relation to the registration of political parties when the Constitution of the Federal Republic of Nigeria 1999, has made provisions covering the field in those areas. The above questions were preceded with the following reliefs: -

"1. A DECLARATION that the registration of political parties in Nigeria is governed by the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

G *2. A DECLARATION that the 1st defendant, Independent National Electoral Commission (INEC) cannot prescribe guidelines for the registration of political parties outside the conditions stipulated by the Constitution of the Federal Republic of Nigeria, 1999.*

H *3. A DECLARATION that guideline No. 3(a) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must submit "the names, residen-*

tial addresses and States of origin respectively of the members of its National and State Executive Committees and the records of proceedings of the meeting where these officers were elected” is unconstitutional and therefore null and void, in so far as it enjoins such association to submit the names, residential addresses and States of origin respectively of the members of its State Executive Committees and the records or proceedings of the meeting where both members of its National and State Executive Committees were elected. ^B

4. *DECLARATION* that guideline No. 3(c) in the 1st defendant’s *Guidelines for the registration of political parties*’ dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present “a register showing that its membership is open to every citizen of Nigeria” is unconstitutional and therefore null and void. ^C

5. *A DECLARATION* that guideline No. 3(d)(iv) contained in the 1st defendant’s *‘Guidelines for the registration of political parties’* dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but realized to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must show “a provision that its Constitution and Manifesto conform with the provisions of the 1999 Constitution, the Electoral Act of 2001 and the guidelines” is unconstitutional and therefore null and void in so far as the guidelines relates to “the Electoral Act, 2001 and these Guidelines.” ^E

6. *A DECLARATION* that guideline No. 3(e) contained in the 1st defendant’s *‘Guidelines for the registration of political parties’* dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party have “a register showing the names, residential addresses of persons in at least 24 States of the Federation and FCT who are members of the association” is unconstitutional and therefore null and void. ^F

7. *A DECLARATION* that guideline No. 3(f) contained in the 1st defendant’s *‘Guidelines for the registration of political parties’* dated the 15th day of May, 2002 issued by the 1st defendant, Independent

National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party have must present “an affidavit sworn to by the Chairman and Secretary of the association to the effect that no member of the National Executive of the Association is
 B *a member of any other existing political association” is unconstitutional and therefore null and void.*

8. A DECLARATION that guideline No. 3(g) contained in the 1st defendant’s ‘Guidelines for the registration of political parties’ dated
 C *the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must present “a bank statement indicating the bank account into which all income of the proposed*
 D *political association has been paid and shall continue to be paid and from which all expenses are paid and shall be paid” is unconstitutional and therefore null and void.*

9. A DECLARATION that guideline No. 3(h) contained in the 1st defendant’s ‘Guidelines for the registration of political parties’ dated
 E *the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that an association seeking registration as a political party must submit “the addresses of its offices, list of its staff, list of its operational equipment and furniture in*
 F *at least 24 States of the Federation” is unconstitutional and therefore null and void.*

10. A DECLARATION that guideline No. 3(h) contained in the 1st defendant’s ‘Guidelines for the registration of political parties’ dated
 G *the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 in so far as it prescribes that “a party seeking registration must submit a list of its staff, list of its operational equipment and furniture in its Headquarters Offices at Abuja” is*
 H *unconstitutional and therefore null and void.*

11. A DECLARATION that guideline No. 5(b) contained in the 1st defendant’s ‘Guidelines for the registration of political parties’ dated
the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on

the 17th day of May, 2002 which prescribes that "a person shall not be eligible to be registered as a member of political association seeking to be registered as a political party if he/she is in the civil service of the Federation or of a State" is unconstitutional and therefore null and void.

12. A DECLARATION that guideline No. 2(d) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes that each association seeking registration as a political party must accompany its application with twenty (20) copies of the Association's Constitution is unconstitutional and therefore null and void. ^B ^C

13. A DECLARATION that guideline No. 2(c) contained in the 1st defendant's 'Guidelines for the registration of political parties' dated the 15th day of May, 2002 issued by the 1st defendant, Independent National Electoral Commission (INEC) but released to the public on the 17th day of May, 2002 which prescribes payment of N100, 000.00 (One Hundred Thousand Naira) by an association, that applies for registration is unconstitutional and therefore null and void. ^E

14. A DECLARATION that sections 74(2)(g) and (h), 74(6), 77(b) and 78(2)(b) of the Electoral Act, 2001 which enlarge and 79(2)(c) of the said Act which curtails the provisions of the 1999 Constitution on the registration of political parties are unconstitutional and therefore null and void and of no effect whatsoever. ^F

15. A PERPETUAL INJUNCTION restraining the 1st defendant, Independent National Electoral Commission (INEC), its agents, officers, privies from basing the registration of political parties either in whole or in part on guidelines Nos. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 5(b), 2(c) and 2(d) or from acting on the said guidelines in the consideration or process of the registration of political parties. ^G

16. AN ORDER compelling the 1st defendant, Independent National Electoral commission (INEC) to refund the sum of N100, 000.00 (One Hundred Thousand Naira) paid by each of the associations that applied for the registration as political parties. ^H

17. AN ORDER compelling the 1st defendant, Independent National Electoral Commission (INEC) to return 19 of the 20 Copies of the association's Constitution submitted to the Independent Na-

tional Electoral Commission (INEC) by the political associations that have applied for registration as a political party.”

Since the delivery of the judgment referred to above, I have had the opportunity of reading the draft of the judgment just delivered by my learned brother Ayoola, JSC wherein he gave his reasons for reaching the same conclusions as I have reached in my said judgment. As the reasons so given accord with my views on the issues raised in this appeal, it is also adopted by me. I hereby affirm my earlier judgment in the matter for the reasons given in the said judgment of my learned brother.

TOBI JSC

I have read the reasons for the judgment of 8th November, 2002 just delivered by my learned brother, Ayoola, JSC and I entirely agree with him. In view of the novel and unique nature of this appeal in the jurisprudence of this court, I shall make my contribution in full.

The civilian government, which was inaugurated in May, 1999 had three political parties. They are, in their alphabetical order, as follows: Alliance for Democracy (AD), Peoples Democratic Party (PDP) and All Peoples Party (APP) which changed its name last year to All Nigeria Peoples Party (ANPP).

In the year 2002 the Independent National Electoral Commission (INEC) saw the need for the registration of more political associations as political parties. The Commission set the ball rolling. The Commission set up Guidelines for the registration of new political parties. The Guidelines were purportedly set up “in the exercise of the power conferred on it by the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2001. I will return to this.

For now, I continue with the facts. INEC put up the necessary advertisements in the National Papers. Political associations responded. They applied for registration under the Guidelines. INEC did not see its way clear in registering all the political associations. They were quite a number, though not a legion. Applying the Guidelines, INEC found only three of the Political Associations registrable as political parties. INEC did exactly that. The Commission registered only three of the Associations as political parties.

The respondents who were the plaintiffs in the Federal High Court, Abuja Division did not like the action of INEC. They went to court and sought a number of declarations centred on INEC's Guidelines. The declarations sought were fourteen. They felt that the Guidelines were a nullity in the light of section 222 of the Constitution. There were also other reliefs sought by the respondents. B

The learned trial Judge, Adah, J., met the respondents some way; less than half way. He did not grant most of the reliefs sought. He made the following final orders:

"From the foregoing therefore, I come to the following conclusion on the consequential reliefs of the plaintiff: C

Relief 1: Granted.

Relief 2: Granted.

Relief 3: Not granted.

Relief 4: Not granted. D

Relief 5: Not granted.

Relief 6: Not granted.

Relief 7: Not granted.

Relief 8: Not granted.

Relief 9: Not granted. E

Relief 10: Not granted.

Relief 11: Not granted.

Relief 12: Not granted.

Relief 13: Granted.

Relief 14: Granted in respect of section 74(2)(g) of the Electoral Act only. The rest not granted. F

Relief 15: Not granted in respect of Guideline Nos. 2(c) and 3(g).

Relief 16: Granted.

Relief 17: Not granted. G

Dissatisfied with the judgment of the trial Judge, the respondents appealed to the Court of Appeal. That court upheld the respondents' appeal and granted all the reliefs sought by the respondents. In his lead judgment, Musdapher, JCA (as he then was) said:

"Applying all the principles mentioned above once an association meets the conditions spelt out under s. 222 and s. 223, such an association automatically transforms and becomes a political party capable of sponsoring candidates and canvassing for votes in any constitutional recognised elective offices throughout Nigeria." H

Aggrieved by the judgment, the appellants have come to this court. As usual, briefs were filed and duly exchanged. The 1st appellant formulated the following issues for determination:

B “2.1 *Whether the Justices of the Appeal Court had jurisdiction to adjudicate on this suit when the 2nd respondent was denied fair hearing as enshrined in S. 36(1) of the Constitution of the Federal Republic of Nigeria, 1999.*

C 3.1 *Whether the 1st appellant... have powers under the 1999 Constitution and the Electoral Act, 2001 to make guidelines for Political Associations seeking to transform into political parties.*

4.1 *Whether the learned Justices of the Court of Appeal were right in holding that the guidelines made by the 1st appellant were unconstitutional, null and void.”*

Although the 2nd appellant, the Attorney-General of the Federation, was a party to the proceedings in the High Court and the Court of Appeal, he did not participate in the two lower courts. He however participated in this court. The following issues were formulated for determination by the 2nd appellant:

E “(1) *Whether the National Assembly is not competent to enact the provisions of sections 74(2)(g) and (h); 77(b) 78(2)(b) and 79(2)(c) of the Electoral Act of 2001 and thereby rendering same unconstitutional and void.*

F (2) *Whether the guidelines Nos. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 5(b), 2(c) and 2(d) of the Guidelines issued and released on the 17th day of May, 2002 for the registration of political parties are not within the provisions of the Constitution of the Federal Republic of Nigeria, 1999 with regards to the registration of political parties and thereby making them unconstitutional.”*

G The respondents formulated the following issues for determination:

H “(1) *Whether the 1st appellant (Independent National Electoral Commission) have powers under the 1999 Constitution and the Electoral Act, 2001 to make guidelines for political associations seeking to transform into political parties.*

(2) *Whether the learned Justices of the Court of Appeal were right in Law in holding that the guidelines made by the 1st appellant were unconstitutional, null and void.”*

Learned counsel for the 1st appellant, Mr. A. O. Eghobamien,

SAN submitted on issue No. 1 that the Court of Appeal lacked jurisdiction to hear the appeal on the ground that the 2nd respondent who was a party to this suit was neither present in court nor represented when the court made the order of 3rd July, 2002 in respect of the record of proceedings and the filing of briefs. Citing the case of C. C. B. (Nig.) Plc. v. Samed Investment Co. Ltd. (2000) 4 NWLR (Pt. B 651) 19 at 33-34, learned counsel submitted that it is not fair hearing to shut a party out in the litigation. He argued that since the vacation of the court commenced on 15th July, 2002, the 2nd respondent's period of filing his brief was on 15th October, 2002. Since time does not run during vacation, the appeal was not ripe for hearing until 15th October, 2002 and not on 11th July, 2002 when the appeal was heard. To learned Senior Advocate, the whole proceedings of 11th July, 2002 were a nullity. Counsel cited Order 6 rule 4(1) of the Court of Appeal Rules, 1981 and the cases of Sken Consult v. Ukey D (1981) 1 SC 6 at 22 and Ude v. A.-G., Rivers State (2002) 4 NWLR (Pt. 756) 66 at 77. C

Still on the issue of jurisdiction, learned Senior Advocate submitted that when a condition precedent to exercise of court's jurisdiction has not been fulfilled, the court has no jurisdiction. He cited E Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587 at 589. On how and when to raise issue of jurisdiction and the format, learned Senior Advocate cited Akegbejo v. Ataga (1998) 1 NWLR (pt. 534) 459 at 468; Petrojessica Enterprises Ltd. v. Leventis Trading Co. Ltd. F (1992) 5 NWLR (Pt. 244) 675 at 693 and Onyema v. Oputa (1987) 3 NWLR (Pt. 60) 259 at 293.

On Issue No.2, learned Senior Advocate examined the powers of the 1st appellant in item 15a(i) of the 3rd schedule to the Constitution and section 162 of the Electoral Act, 2001 and submitted that G the 1st appellant by the Constitution and the Electoral Act are to engage in the exercise of regulating the Electoral process from the beginning to the end. Calling in aid the case of A.G., Abia State v. A.G., Federation (2002) 6 NWLR (Pt. 763) 264 at 485-486, on the interpretation of the Constitution, learned counsel submitted that since H it is impossible to legislate with certainty to meet all the dynamic processes that a body like the 1st appellant will have to contend with in a fledgling democracy like Nigeria, the court should construe the provisions of item 15(b)(xi) of the 3rd schedule to the Constitution and

section 162 of the Electoral Act, 2001 to accommodate the intention of the provisions.

It was the argument of learned Senior Advocate that if the framers of the Constitution thought that the requirements made in sections 222 and 223 were absolute and exhaustive and would indeed meet all possible eventualities of formation of political parties, they would not have given INEC powers in the same Constitution to make regulations, guidelines that would enhance the formation of political parties.

Learned Senior Advocate submitted that the Court of Appeal fell into grave error in failing to appreciate the fundamental principle of interpretation of constitutional provisions. Examining further the provision of section 162 of the Electoral Act, counsel argued that the section gives powers to the 1st appellant to make guidelines, rules and regulations for the formation of political parties. He contended that the section was enacted pursuant to the powers given to the National Assembly under section 228(d) of the 1999 Constitution.

Learned Senior Advocate argued in the alternative that the National Assembly has powers given to it by the Constitution to legislate for good governance and in view of the fact that political objectives as contained in section 15(2)(d) are to promote or encourage the formation of associations that cut across ethnic, linguistic, religious or other sectional loyalties, section 162 of the Electoral Act being a proper enactment of the National Assembly ought to be given effect by this court. He cited *A-G., Ondo State v. A-G., Federation* (2002) 9 NWLR (Pt. 772) 222 at 383 to 385.

Urging the court to hold that the Court of Appeal erred in law when it held that the 1st appellant has no powers to make guidelines for political associations seeking to transform into political parties, learned Senior Advocate enumerated basic principles in the interpretation of constitutional provisions in paragraphs 3.19, 3.20 and 4.7 of his brief. He cited *Adesanya v. President of the Federal Republic of Nigeria* (1981) 2 NCLR 358; *A-G., Abia State v. A-G., Federation* (2002) 6 NWLR (Pt. 763) 264 at 485 to 485 and *A-G., Bendel State v. A-G., Federation* (1982) 3 NCLR 1.

Learned Senior Advocate urged the court to hold that the 1st appellant has powers under the 1999 Constitution and section 162 of the Electoral Act, 2001 to make guidelines for registration of politi-

cal associations seeking to transform into political parties.

Issue No.2 is duplicated in the body of the brief. Issue No.2 appears at page 6 of the brief as well as page 11. This must be a typographical error. I therefore renumber issue No.2 at page 11 as Issue No.3.

On that Issue (that is issue No.2 as renumbered issue No.3),^B learned Senior Advocate argued that it is clear and trite that any person or organization is bound by the constitutional provisions and other laws properly enacted. The point whether or not the 1st appellant should prepare guidelines in accordance with the provisions of the 1999 Constitution and related laws is not open to argument,^C learned counsel contended. He quoted verbatim ad literatim some of the Guidelines at pages 12 and 13 of the brief and presented arguments at pages 15 and 16 of the brief, contending essentially that the Guidelines were essential and made in consonance with the provisions of the Constitution. He cited *Kalu v. Odili* (1992) 5 NWLR (Pt. 240) 130 at 170. He dealt specifically with Regulation 04421 of the Civil Service Rules and section 79(2)(a) of the Electoral Act, 2001 as they relate to and affect the civil servant. He urged the court to allow the appeal.^E

Learned counsel for the 2nd appellant, Mr. Rotimi Jacobs submitted on Issue No.1 that the principle of covering the field is inapplicable to the case. Citing *A-G., Abia State v.A-G., Federation* (2002) 6 NWLR (Pt. 763) 264; *A-G., Ogun State v A.-G., Federation* (1982) 3 NCLR 166 and *Lakanmi v. A-G., Western State* (1971) 1 UILR 201 at 209, learned counsel contended that it is clear from the cases that for the principle of covering the field to apply in construing the Constitution and the Act of the National Assembly, the provisions of the Constitution on the matter must be complete, exhaustive, exclusive and covers the whole field. In other words, for the provisions of sections 222 and 223 of the Constitution to cover the field as to the registration of political parties by INEC as was held by the Court of Appeal, so as to render the provisions of sections 74(2)(g) and 74(b), 77(b), 78(2)(b) and 79(2)(c) inoperative and void, it must be shown that sections 222 and 223 of the Constitution are complete, exhaustive, exclusive and cover the whole field of the registration of the political parties.^H

It was the argument of learned counsel that section 222 does

not evince an intention to exhaustively list out the requirements for registration of parties. What is required to be registered with INEC under the section are the names and addresses of such political association, its national officers and the constitution of the association and no more, counsel argued.

B Dealing with the provision of section 223 of the Constitution, learned counsel submitted that the section does not prescribe the modality for the registration but the content of the Constitution of the party. The only requirement prescribed by section 223, counsel
C argued, is for the political party Constitution to make provision for periodic election and to ensure that its executive committee and the governing body reflect federal character.

On the Electoral Act of 2001, learned counsel submitted that by the failure of the respondents to challenge the provisions of sections 74(4) and (5), (7), (8), 79(2)(a)(b)(c)(d) & (e), they have unwittingly conceded that sections 222 and 223 of the Constitution did not cover the field of the requirement of the registration of political parties, by INEC. Counsel submitted that the Court of Appeal was wrong when it held on the authority of *A-G., Abia State v. A -G.,*
E *Federation* (supra) that the Constitution adequately covered the field. To counsel, the case was not applicable in the circumstances.

On the legislative powers of the National Assembly, learned counsel referred to the provisions of sections 4(2)(4), 15(2) and (3), 40, 45(1 lea), 153(1), 228(d) and items 56, 67 and 69 of the Exclusive
F Legislative List and submitted that the National Assembly has the legislative power to enact the Electoral Act dealing with party registration. He cited *A.-G., Ondo State v. A.-G., Federation* (2002) 9 NWLR (Pt. 772) 222 at 334; *Rabiu v. The State* (1980) 8-11 SC
G 130 at 148; Also reported in (1982) 2 NCLR 117; *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264; *Aqua Ltd. v. Ondo State Sports Council* (1988) 4 NWLR (Pt.91) 622; *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506; *A.-G., Province of Ontario v. A.-G., Dominion of Canada* (1912) AC 571; *New South Wales v.*
H *Brewery Employees Union of South Wales* (1908) 6 CLR 469 at 611-612 and *Bank of the New South Wales v The Commonwealth* (1947-1948) 76 CLR 1 on the interpretation of the Constitution.

It was the contention of learned counsel that the guidelines voided by the Court of Appeal are intended to ensure that the politi-

cal parties to be registered through the exercise have national spread, whilst other items are intended to enable the 1st appellant to effectively perform its functions under part D of Chapter VI of the Constitution as prescribed by section 228(d) of the Constitution. He contended further that the provisions of the Electoral Act voided are also to achieve the same objective. B

On Issue No.2, learned counsel submitted that the Court of Appeal was not right in holding that the guidelines issued by the 1st appellant requesting Associations to comply when seeking to become political parties are not within the contemplation of the Constitution C and therefore void. Conceding that the 1st appellant has not legislative competence to make laws, counsel submitted that the guidelines released by the 1st appellant are not laws. He relied on the dictionary definition of guidelines and urged the court to allow the appeal.

Learned Senior Advocate for the respondents, Chief Gani D Fawehinmi, submitted on the two issues taken together that Nigerians have a fundamental right to form or belong to a political party by virtue of section 40 of the Constitution of the Federal Republic of Nigeria, 1999. He argued that from the proviso to section 40, the enjoyment of the section is predicated upon the recognition by the E 1st appellant in accordance with the Constitution.

He contended that section 222 of the Constitution has made specific, direct, distinct, exclusive, definitive, clear and unambiguous provisions on conditions for recognition of political associations as F political parties. By the opening sentence in section 222, the Constitution has evinced the intention to cover the field with regards to the conditions or requirements that must be fulfilled before a political association can become a political party in Nigeria, learned Senior Advocate argued. And once a political association fulfils those condi- G tions, the 1st appellant has no choice but to recognise such association as a political party, counsel maintained. Accordingly, no guideline and no Act of the National Assembly can add to, alter, enlarge, curtail, or repeat the conditions contained in section 222. This is so, notwithstanding item 15(b), part 1 of the third schedule and section H 228(d) of the Constitution, counsel submitted.

It was the submission of learned Senior Advocate that if the National Assembly pursuant to item 15(b) promulgates any law that duplicates the requirements of section 222 such law is in operative. If

such law enlarges the requirements in section 222 the law is unconstitutional and therefore null and void. If such law adds to the requirements in section 222, such law is unconstitutional and therefore null and void. If such law curtails the requirements in section 222, such law is unconstitutional and therefore null and void. If such law alters any of the requirements in section 222, such law is unconstitutional and therefore null and void, learned Senior Advocate submitted.

It was the argument of learned Senior Advocate that the National Assembly is not empowered under section 228(d) to make laws with respect to political associations seeking registration as political parties. Section 228(d), counsel argued, merely empowers the National Assembly to make laws with respect to already registered political parties.

Learned Senior Advocate argued, in the alternative, that if the National Assembly claimed umbrage or refuge under section 228(d) of the Constitution, those contested sections of the Electoral Act, 2001 can still not be saved because the Constitution has already covered the field in respect of political associations seeking registration as political parties.

He submitted that the enactment of the challenged sections of the Electoral Act, 2001 by the National Assembly is not within the powers conferred on the legislative body by section 228(d) of the Constitution because the same Constitution has already covered the field on the matter of registration of political associations as political parties and section 228(d) of the Constitution relates to political parties that have been recognised and have qualified to function as such, and not associations seeking to be registered as political parties.

Learned Senior Advocate submitted further that the National Assembly has no power to enact the contested sections of the Electoral Act, 2001 and the 1st appellant has no power to make guidelines on how an association can become a political party in so far as the Constitution has covered the field in section 222. Counsel relied on *A.G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt763) 264.

Arising from the decision in *A.-G., Abia State v. A.-G., Federation*, learned Senior Advocate submitted that section 222 of the Constitution has completely and exhaustively covered the field with re-

spect to when a political association can become a political party. He relied on the opening words of section 222 which provides as follows: *“No association by whatever name called shall function as a political party unless...”* To learned Senior Advocate, that I expression is definitely categorical and with the six conditions stated in section 222, the Constitution has evinced the intention to completely and exhaustively cover the field with respect to how an association can become a political party in Nigeria, bearing in mind that it is a fundamental right given and guaranteed in section 40 of the Constitution to every person, to belong to or form a political party for the protection of his interest. B
C

Learned Senior Advocate submitted that a constitution of the political association to be registered with the 1st appellant pursuant to section 222(c) of the Constitution ought to comply with section 223 of the Constitution only to the extent that the provisions stated in section 223 are reflected in the association’s condition before the constitution of the association is registered with 1st appellant. To learned Senior Advocate, this is to prevent section 222(c) from being read with stultifying narrowness. D

Dealing painstakingly with section 74 of the Electoral Act, learned Senior Advocate submitted that section 74(2) has added additional requirements to section 222 of the Constitution. These are subsections (g) and (h) thereof. He submitted that section 74(2)(a) to (f) are inoperative because they merely repeated or duplicated the provisions in section 222(a) to (f) of the Constitution. But the additional requirements in section 74(2) (g) and (h) are void because they constitute an enlargement by addition, which are inconsistent with section 222 of the Constitution. E
F

On section 74(6), learned Senior Advocate submitted that in so far as it prescribes a requirement for payment of N100,000 administrative and processing fees, is void by an addition of a requirement to conditions under section 222 and in so far as it encompasses the requirements in section 74(2), it is equally void. G

On section 77(b) of the Electoral Act, 2001, learned Senior Advocate submitted that in so far as the subsection recognises section 74, it is unconstitutional and in so far as it recognises the guidelines, it is unconstitutional. H

On section 78(2)(b), learned Senior Advocate submitted that

the subsection is void in that what the Constitution of a party must contain has been provided for in section 223 of the 1999 Constitution. Consequently the National Assembly cannot make laws stipulating requirements other than those in section 223.

On section 79(2)(c), learned Senior Advocate contended that the membership of a political association seeking registration as a political party appears unrestricted by sections 40 and 222(b) of the Constitution. He stated the provisions of section 40 and the provisions of section 222(b) at pages 22 and 23 of his brief. It was the further contention of learned Senior Advocate that section 79(2)(c) has already curtailed the provisions of sections 40 and 222(b) of the Constitution by restricting and prohibiting certain persons from exercising their fundamental right to associate freely, form or belong to a political party of their choice. He contended also that there is nothing in section 228(b) which gives the National Assembly or the 1st appellant the right to curtail, and/or alter the fundamental right guaranteed under the provisions of the Constitution.

Accordingly, he submitted that section 79(2)(c) is an alteration by restricting the provisions of sections 222(b) and 40 of the Constitution and to that extent it is void.

Dealing with the Guidelines, learned Senior Advocate submitted that Guideline 3(a) is contrary to section 222(a) of the Constitution in so far as it enjoins such association seeking recognition and registration to function as a political party to submit names, residential address and States of origin, respectively of the members of its National and State Executive Committees and the records of proceedings of the meeting where these officers were elected. To learned Senior Advocate, the Guidelines are partly a repetition and partly an enlargement of the provisions of section 222, which the 1st appellant has no constitutional competence to do. Guideline No. 3(a) is therefore void, counsel submitted.

On Guideline 3(c), learned Senior Advocate submitted that once the Constitution of the association, which must be registered with the 1st appellant, contains a provision that the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping, as stipulated by section 222(b), then it is not and cannot be a binding legal requirement that such an association must keep a register to reflect the

fact that its membership is open to every citizen of Nigeria. To learned Senior Advocate, no party's register can feasibly reflect membership of every citizen of Nigeria.

Learned Senior Advocate submitted further that Guideline No. 3(c) is not only contrary and inconsistent with the Constitution, it is also contrary to 1st appellant's prescription in exhibit 02. To the extent that a register should be provided, the Guideline is an enlargement of section 222(b) of the Constitution and therefore void. The procurement of a register showing that the membership of the association is open to every citizen of Nigeria is not a prescription, stipulation or condition made by section 222(b), accordingly, Guideline No. 3(c) is therefore unconstitutional, null and void, learned Senior Advocate contended.

On Guideline 3(d)(iv), learned Senior Advocate argued that the requirement of the guideline cannot be found in section 222. He therefore submitted that the guideline is an addition to the requirement in section 222. The matter of manifest which can be found in section 224, relates to registered political parties rather than to political associations seeking registration as Political parties, counsel contended.

On Guideline 3(e), learned Senior Advocate submitted that the guideline cannot be found in section 222, and accordingly an addition to the requirements of the section and to that extent void.

On Guideline 3(f), learned Senior Advocate submitted that there is no provision in section 222 which makes the requirement in the guideline a condition precedent for registration of a political association seeking registration as a political party; and therefore void.

On Guidelines 3(g) and 3(h), learned Senior Advocate submitted that the guidelines cannot be found in section 222 and therefore null and void. He also examined Guideline 3(h) in relation to section 222(f) and submitted that the Guideline was an enlargement of the subsection.

On Guideline 2(d), learned Senior Advocate submitted that the guideline is another classic example of arbitrariness and usurpation of power that is not vested in the 1st appellant, and therefore unconstitutional, and void.

On Guideline 5(b), learned Senior Advocate submitted that it is clearly an alteration by restricting the provisions of sections 40 and

222(b) of the Constitution, and therefore void. Counsel tabulated in Appendix A in his brief at pages 38 to 45, the effect of the decision of this court in *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264 in respect of some provisions of the Electoral Act, 2001. He urged the court to dismiss the appeal.

B In his reply brief, learned counsel for the 2nd appellant, submitted that the right to form and belong to a political party is not at large as it is prescribed under the Constitution itself. He relied on the proviso to section 40 of the Constitution. To entitle a citizen to take
C advantage of section 40, the political parties (as against political associations), must have been registered or recognised by the 1st appellant, counsel contended. He made reference to section 45(1) of the Constitution on derogation from all the guaranteed rights under section 40.

D Learned counsel submitted that since the respondents did not challenge the provisions of section 74(2)(e) - (f) in the two lower courts, they cannot do so in this court without leave of the court. He urged the court to disregard the argument. Relying on *Director SSS v. Agbakoba* (1999) 3 NWLR (Pt. 595) 314 at 365; *Salami v. Mohammed* (2002) 9 NWLR (Pt. 673) 469; *Oshatoba v. Olujitan* (2000) 5 NWLR (Pt. 655) 159; *Ogunbadejo v. Owoyemi* (1993) 1 NWLR (Pt. 271) 517 at 535; *Oyebode v. Ajayi* (1993) 1 NWLR (Pt. 269) 313; *Buhari v. Takuma* (1994) 2 NWLR (Pt. 325) 183 at 190,
E learned counsel submitted that the respondents who did not appeal
F or cross-appeal should not be allowed to enlarge the scope of their claims or even raise fresh matter in their brief. He urged the court to ignore the challenge to the provisions of section 72(2)(a) and (f) of the Electoral Act.

G Fair hearing, in essence, means giving equal opportunity to the parties to be heard in the litigation before the court. Where parties are given opportunity to be heard, they cannot complain of breach of the fair hearing principles.

H There is no evidence before the court that the 2nd appellant, who was the 2nd respondent in the lower court, was denied a hearing. He was a party. He decided not to contest the suit. He has the legal right not to contest the suit. Of course, he cannot complain. He did not complain. Paradoxically, the 1st appellant now complains. Can the 1st appellant protect the interest of the 2nd appellant better

than the 2nd appellant himself? I think not.

Learned Senior Advocate for the 1st appellant did not indicate or show in his brief in what circumstances the 2nd appellant was denied fair hearing. It is not enough for counsel to say that the right to fair hearing was breached in a matter; counsel must show by the evidence available the circumstances of such breach. And the evidence must be that the party was not given an opportunity to state his case which he wanted to state in his own way. I reject the submission of learned counsel for the 1st appellant on fair hearing. It totally lacks merit.

The main focus of this appeal is whether the Guidelines made by the 1st appellant are constitutional in the light of section 222 of the Constitution. Section 222 of the Constitution provides as follows:

“No association by whatever name called shall function as a political party, unless:

(a) The names and addresses of its national officers are registered with the Independent National Electoral Commission;

(b) The membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping;

(c) A copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission;

(d) Any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration;

(e) The name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and

(f) The headquarters of the association is situated in the Federal Capital Territory, Abuja.”

The Preamble to the Guidelines reads:

“In exercise of the power conferred on it by the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act, 2001, the Independent National Electoral Commission (in these guidelines referred to as the Commission) hereby issues the following guidelines

for the registration of political parties.”

The preamble tells a lie when it provides that the Constitution of the Federal Republic of Nigeria, 1999 confers on the 1st appellant the power to make guidelines. There is no such provision in the Constitution. Similarly, the submission of learned Senior Advocate for the
B 1st appellant that the 1st appellant has powers to make guidelines under the Constitution, with the greatest respect, is not correct. There is no enabling provision in the 1999 Constitution which vests power in the 1st appellant to make guidelines.

C However the second arm of the preamble which provides that the Electoral Act, 2001 confers on the 1st appellant the power to make guidelines is correct because section 162 of the Act conferred on the 1st appellant power to *“issue regulations, guidelines or manuals for the purpose of the Act and for its due administration.”*

D I should start from section 40 of the Constitution. By the section, every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. The proviso is to the effect that the above provision
E shall not derogate from the powers conferred by the Constitution on the INEC with respect to political parties to which the INEC does not accord recognition.

While the section vests in the individual the right to associate, and assemble with other persons and form or belong to any political
F party, the proviso restricts the right, and the restriction is to the effect that the provision will not derogate from the powers of INEC with respect to political parties to which the Commission does not accord recognition. In other words, section 40 applies only to political parties which INEC accords recognition. In this respect, section 222 of
G the Constitution comes into play as that section provides for conditions to be fulfilled or satisfied before an association can function as a political party.

By the proviso to section 40, the 1st appellant has the right not
H to accord recognition to political parties. The question arises whether 1st appellant has a discretionary power not to accord recognition to a political party. In my humble view, once a political association fulfils or satisfies the six conditions in section 222, the 1st appellant is constitutionally bound to recognise it as a political party. But where a

political association does not fulfill or satisfy the six conditions in section 222, the 1st appellant will not recognise the political association as a political party. The six conditions stipulated in section 222 are conjunctive and not disjunctive. Accordingly, a political association must fulfill or satisfy all the six conditions contained in the section.

Section 222 is mandatory with the compulsory “shall” and the conjunction “unless” which means, “if not, on the condition that.” Put in another language, no political association can become a political party without fulfilling or satisfying the six conditions contained in section 222. The position is as sacrosanct as that.

Let me take section 228(d) of the Constitution, a provision which vests in the National Assembly the power to make laws in furtherance of the provisions of section 162 of the Electoral Act, 2001. Learned Senior Advocate for the respondents submitted that section 228(d) does not empower the National Assembly to make laws with respect to political associations seeking registration as political parties, but merely empowers the National Assembly to make laws with respect to already registered political parties. I think learned counsel for the 2nd appellant made similar submission in his reply brief. I entirely agree with the submission. After all, the subsection does not contain the words “political associations” but rather provides for political parties.

In my humble view, the Guidelines made by the 1st appellant cannot seek refuge under section 228(d) of the Constitution. This is because the subsection does not vest in the 1st appellant the power to make guidelines. The role to be played by section 228(d) stops at the National Assembly qua legislature only and does not extend to the 1st appellant.

If I may go further on a comparative analysis of sections 222 and 228. The two sections provide for distinct and separate situations. While section 222 provides for formation of political parties, section 228 provides for powers of the National Assembly with respect to existing political parties. In other words, section 222 must be fulfilled before section 228 comes into operation. Putting it in another language, it is after the formation of political parties under section 222 that the National Assembly can confer on the 1st appellant “other powers” to ensure that political parties within the meaning of section 222 can effectively ensure and observe the provisions of part

III, chapter 6 of the Constitution. Section 228(d) ends on the door step of the National Assembly. It cannot be extended to the 1st appellant.

B Learned counsel for the 2nd appellant invoked the provision of section 45(1)(a) in the construction of section 40. To counsel, since section 45(1)(a) allows an enactment of a legislation which derogates from the right conferred under section 40 if such an enactment is in the interest of public safety, public order or public morality, the restriction to section 40 is not limited to section 222.

C In other words, the sky is the limit of section 45(1) of the Constitution as it affects the exercise of legislative powers of the National Assembly. With respect, I do not agree with him. His submission has not taken into consideration the supremacy clause of the Constitution, in section 1, an aspect I will deal with in this judgment. If the D contention of learned counsel is correct, then the National Assembly has the legislative powers to enact an Act which vests more powers on the 1st appellant, clearly beyond the provisions of section 222. That cannot be the correct legal position. The supremacy of the National Assembly is subject to the overall supremacy of the Constitution. Accordingly, the National Assembly which the Constitution vests E powers cannot go outside or beyond the Constitution. Where such a situation arises, the courts will, in an action by an aggrieved party, pronounce the Act unconstitutional, null and void. See A.-G., Abia State v. A.-G. Federation (2002) 6 NWLR (Pt. 763) 264.

F Learned counsel also made reference to sections 4, 15, 53 of the Constitution and items 56, 67 and 68 of the Exclusive Legislative List in strengthening his argument that the National Assembly is empowered to make regulations and laws for the registration of political G parties. Section 4 provides for the general legislative powers of the Legislatures. It does not specifically provide for the power of the National Assembly to make laws for the registration of political parties. Section 15 is in Chapter on Fundamental Objectives and Directive Principles of State Policy. There is nothing in the section dealing specifically on political parties. Section 53 provides for who presides in H the Senate or the House of Representatives at the National Assembly and at joint sittings of both Houses. There is nothing in the section on political parties.

That takes me to the Exclusive Legislative List. I agree with

learned counsel that item 56 empowers the National Assembly to make law for the regulation of political parties. Items 67 and 68 are omnibus provisions which are not directly concerned with political parties. Perhaps one can see the relevance of section 4, particularly section 4(2) in relation to item 56 of the Exclusive Legislative List. But I should give a warning in the application of item 56 and the warning is that the National Assembly should not in any way go outside the provisions of section 222 in making laws for the regulation of political parties. B

Learned counsel for the 2nd appellant also referred the court to item 15(b) of Part 1 of the third schedule to the Constitution. The item provides as follows: C

“The Commission shall have power to register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly.” D

The provision anticipates all the sections in the Constitution which deal with registration of political parties and the Electoral Act of 2001, the Act which was in operation at the material time. The issue before this court, in the way I understand it, is not that the respondents are questioning the power of the 1st appellant to register political parties; rather they question the power of the 1st appellant to make guidelines which are outside the provisions of section 222. I should perhaps say here to complete the picture for whatever it is worth, that the powers of the National Assembly to enact an Act empowering the 1st appellant to register political parties will only be valid if such Act is in conformity with the provisions of the 1999 Constitution. An Act which is inconsistent with the provisions of the 1999 Constitution will be null and void ab initio. See A.-G., Abia State v. A.-G., Federation (2002) 6 NWLR (Pt. 763) 264; A.-G., Ondo State v. A.-G., Federation (2002) 9 NWLR (Pt. 772) 222. E F G

Learned counsel for the 2nd appellant, while responding to the decision of the court below on the status of item 15(b) of part 1 of the Third Schedule, submitted that a community reading of sections 4, 40, 45 and item 15(b) of Part 1 of the third schedule would bring a result that would not subordinate item 15(b) to other provisions of the Constitution. The intention of the Constitution is to confer power on the National Assembly to make law for the registration of political parties, learned counsel submitted. H

The submission is sound. I entirely agree with counsel. Provisions in a Constitution are of equal strength and constitutionality. No provision is inferior to the other and a fortiori no provision is superior to the other. We do not have here a situation of an Act of the National Assembly or a Law of the House of Assembly of a State; where those legislation play an inferior role in respect of a constitutional provision.

I do not agree with the court below, with the greatest respect, when it held that item 15(b) is inferior to sections 222 and 223 of the Constitution which covered the ground or field. While I will take the issue/doctrine of covering the field later, I should say here that the doctrine cannot be applied in respect of two constitutional provisions which vest powers on the National Assembly to make laws. After all, the doctrine of covering the field stems from the Federal might of the National Assembly and it will be a contradiction to the whole concept, if item 15(b) which vests power in the National Assembly is said to be inferior. I ask: inferior to what? And what is more, item 15(b) is not in any way in conflict with any other provision on political parties. As I said, the law-making power of the National Assembly under item 15(b) can only be valid if an Act arising from the item is not in conflict with the Constitution.

Both counsel for the appellants cited section 15 of the Constitution. While learned Senior Advocate for the 1st appellant submitted that section 15(2)(b) should be read with section 162 of the Electoral Act, learned counsel for the 2nd appellant referred us to the decision of this court in *A-G., Ondo State v. A-G., Federation* (2002) 9 NWLR (Pt. 772) 222, particularly the dictum of Ogwuegbu, JSC. Learned counsel for the 1st appellant also cited *A-G., Ondo State*. He relied on the dictum of Uwaifo, JSC.

The submissions have the same purport and impact and it is that section 15 goaded or propelled the Electoral Act, 2001. In *A-G., Ondo State v. A-G., Federation* (supra), this court held that the Fundamental Objectives and Directive Principles of State Policy can be made justiciable by legislation. Although the court dealt specifically with section 15(5) of the Constitution, the pronouncement could apply mutatis mutandis to section 15(2) of the Constitution.

In *A-G Ondo State*, this court did not decide that the sky is the only limit to the powers of the National Assembly to make laws. This

court correctly held some of the provisions of the Corrupt Practices and Other Related Offences Act, 2000 unconstitutional, null and void. And that is the only context in which I should deal with the submissions of both counsel.

The next issue I should deal with is whether section 222 is exhaustive. Both Chief Eghobamien and Mr. Jacobs submitted that the section is not exhaustive. Chief Fawehinmi submitted that the section is exhaustive. He submitted at page 10 of his brief:

"I submit that by the expression, No association by whatever name called shall junction as a political party unless, the Constitution has evinced the intention to cover the field with regards to the conditions or requirements that must be fulfilled before a political association can become a political party in Nigeria."

Counsel for the 2nd appellant submitted at page 8 of his brief:

"This section does not evince an intention to exhaustively list out the requirements for registration of parties: What is required to be registered with INEC under the section is the names and addresses of such political association, its national officers and the Constitution of the association and no more."

The word "exhaustive" simply means complete. Are the six conditions provided for in section 222 exhaustive or complete of all situations in respect of recognising political associations as political parties? That is the fundamental question. I do not think so. In the first place, it is not the role of a Constitution to provide for all conditions and situations in respect of the recognition of political associations as political parties. The Constitution, the fons et origo of the legal system, cannot provide for all conditions and situations in respect of recognition of political associations as political parties.

With the greatest respect to Chief Fawehinmi, the conjunction "unless" does not mean that the conditions are exhaustive. In my view, the conditions set the constitutional standard which must be fulfilled before a political association can be recognised as a political party. Nothing stops the National Assembly to use its powers to enact an Act, which confers on the 1st appellant the power to make any regulations or guidelines which add to or edify the conditions spelt out in section 222. The only time the courts will raise their eyebrows is when the regulations or guidelines made under an Act of the National Assembly are inconsistent with the six conditions set out in sec-

tion 222. It is my view that while section 222 sets out constitutional conditions, the 1st appellant can make guidelines under section 162 of the Electoral Act in respect of issues of administration on the registration of parties. One such example is in section 74(2)(g) of the Electoral Act, 2001. This is a matter which is essentially of an administrative nature which the Constitution needs not provide, particularly in view of the fact that the daily rising and racing inflation may catch up with the fee payable for registration. I know as a matter of fact that Government spends money for the procurement of registration forms and other services related to registration and I do not expect the Government to provide forms and the services gratis. The days when Government played the role of Father Christmas are gone. Political associations wishing to be registered as political parties must bear part of the financial burden, if not all of it.

I think this is a convenient point to take the issue of the doctrine of covering the field, which all the three counsel dealt with. Counsel cited the relevant decisions which I find most useful. The doctrine of covering the field is one of American and Australian constitutional Law origin. To my restricted knowledge, the doctrine was invoked for the first time in Nigerian law in the case of *Lakanmi v. A-G., West* (1971) 1 UILR 201. The Supreme Court held in that case that Decree No. 51 of 1966 promulgated by the Federal Military Government covered the same field as Edict No.5 of 1967 promulgated by the Western State Military Government. The court accordingly declared Edict No.5 of 1967 a nullity.

In *A-G., Ogun State v.A-G., Federation* (1982) 3 NCLR 166, Fatayi-Williams, CJN, said at page 176:

“Where identical legislations (sic) on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly and a State House of Assembly, it would be more appropriate to invalidate the identical law passed by the State House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter. To say that law is inconsistent in such a situation would not in my view, sufficiently portray clarity or precision of language.”

Idigbe, JSC, of blessed memory, said at page 194:

“Where under a Federal set up, both the Federal and State Legislatures, each empowered by the Constitution so to do legislate

on the same subject then if it appears from the provisions of the Federal Law on the subject that the Federal Legislature intends to cover the entire field of the subject matter and thus provide what the law on the subject should be for the entire federation, then the State Law on the subject is inconsistent with the Federal Law and the latter must prevail and the State law on the subject is invalid. If no general intention to cover the entire field on the subject can be gathered from the Federal Law, then the mere concurrence of the two laws (i.e. the Federal and the State Laws) on the subject is not eo ipso an inconsistency although the detailed rules in the provisions of both laws may lead to different results on the same facts.”

Eso, JSC, took a fairly different course when he said:

“Where ... the legislation enacted by the State is the same as the one enacted by the Federal Government where the two legislation is in pari materia, I respectfully take the view that the State legislation is in abeyance and becomes inoperative for the period the Federal legislation is in force. I will not say it is void. If for any reason, the Federal legislation is repealed, it is my humble view that the State legislation, which is in abeyance, is revived and becomes operative until there is another Federal legislation that covers the field.” See also A.-G., Abia State v A.-G., Federation (supra).

The doctrine of covering the field can arise in two distinct situations. First, where in the purported exercise of the legislative powers of the National Assembly or a State House of Assembly, a law is enacted which the Constitution has already made provisions covering the subject matter of the Federal Act or the State Law. Second, where a State House of Assembly, by the purported exercise of its legislative powers enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the State law. In both situations, the doctrine of covering the field will apply because of the “Federal might” which relevantly are the Constitution and the Act

In my humble view, a State Law which is not necessarily inconsistent with either the Constitution or an Act of the National Assembly but merely covers the legislative field of the National Assembly is not that harmful as it is merely a surplusage. In line with the decision of Eso, JSC, in A.-G., Ogun State (supra), such a law of a State House of Assembly is in abeyance and inoperative and could be revived

and becomes operative if for any reason the Federal legislation is repealed.

In *A-G Abia State v. A-G Federation* (supra). Uwais, CJN, said at pages 391 to 392:

"I agree that the doctrine of covering the field can conveniently be extended to apply to a situation where the Constitution has covered the field vis-a-vis a Federal or State legislation, such legislation is not void simpliciter but will not be operative in view of the provisions of the Constitution. However, if the legislation is inconsistent with the provisions of the Constitution, then, the legislation is void to the extent of the inconsistency vide section 1 subsection 3 of the Constitution."

Applying the above principles of law to the Electoral Act of 2001, Uwais, CJN, had no difficulty in holding that some sections of the Act were either void for being inconsistent with the Constitution or inoperative for repeating what the Constitution has provided.

Relying on the above case, learned Senior Advocate for the respondents urged this court to pronounce unconstitutional and void the provisions of sections 74(2) (6), 77(b), 78(2)(b), 79(2)(c) and some of the Guidelines unconstitutional and void. I should recall here the submission of learned counsel for the 2nd appellant in his reply brief that the submission of learned Senior Advocate on the unconstitutionality of Section 74(2)(e)-(f) of the Electoral Act was not raised in the court below and that he needed leave to raise the issue as a fresh issue.

That may well be so but it is also the law that the Supreme Court, as a court of last resort, is competent to entertain a point of law raised for the first time before it when the justice of the case demands. Such point must, however, be a substantial point.

However, the Supreme Court may refuse to entertain a question of law if it is satisfied that the court below would have been in a more advantageous position to deal with the matter. See *Nigerian Bottling Company Ltd. v. Ngonadi* (1985) 1 NWLR (Pt. 4) 739. See also *Mogaji v. Cadbury Nigeria Ltd.* (1985) 2 NWLR (Pt. 7) 393.

In my view, the issue raised on section 74(2)(e) and (f) is a substantial point of law which this court can take in the interest of justice. And what is more, it is an issue in which the court below is not in a more advantageous position to deal with. And so, I will take

section 74(2)(e) and (f) along with the other provisions of the repealed Act for the purpose of this appeal. The point to be taken is whether the sections were valid or unconstitutional at the time they were in operation, and relevantly in relation to this case.

I will now take the provisions of the Electoral Act complained of by learned Senior Advocate for the respondents in the order he raised them. B

Section 74(2) (g) and (h): The subsections provide as follows:

“No Association by whatever name is called shall function as a political party unless:

(g) it produces evidence of payment of registration fee of N100,000.00 or as may be fixed from time to time by an Act of the National Assembly, C

(h) it provides the addresses of the offices of the Political Association in at least two-thirds of the Federation spread among the six geo-political zones.” D

It is clear from section 222 of the Constitution that both subsection 2(g) and (h) are not contained in the section. I do not expect the Constitution to provide for section 74(2)(g) which is more of an administrative matter. It is common knowledge that the process of registration involves money. The application forms and other accompanying documentation involve money. As I said above, I do not expect the 1st appellant to play the role of a Father Christmas. Somebody has to defray part of the expenses, and it should be the political association that wants to be recognised as a political party under section 222. Considering the cost of production of materials and labour, I do not see the amount of N100,000.00 as too much. E F

I entirely agree with learned Senior Advocate that subsection (h) is clearly an enlargement of section 222 which is most unwarranted. Apart from section 222, the provision is clearly against the spirit of section 40 of the Constitution. Although the section 40 right is vested in a person while section 74(2)(g) deals with political association, the end result is clear; it is that a person who wants to belong to a particular party which cannot satisfy the provision of section 74(2)(g) as a political association, will be denied the section 40 right. While I cannot speculate the intention of the lawmaker, the subsection is most likely provided to make it difficult for political associations to function as political parties. H

Section 74(6) The subsection provides as follows:

“Any political association that meets the conditions stipulated in subsections 1 and 2 of this section shall be registered by the Commission as a political party within 30 days upon payment of the sum of N100,000.00 administrative and processing fees and if after the 30 days the association is not registered by the Commission it shall be deemed to be so registered.”

In my humble view, there is nothing wrong in the subsection, particularly in the light of my decision in respect of section 74(2)(g). Like in section 74(2)(g), the financial burden has to be passed on to the political associations.

Section 77(b): The subsection provides as follows:

“77. without prejudice to the provisions of section 74, once a particular association is granted registration as political party by the Commission, that political party shall further submit to the Commission the following particulars -

(b) Copy of the party’s Constitution drawn up in compliance with chapter 11 of the Constitution of the Federal Republic of Nigeria and with the requirements of the relevant guidelines issued by the Commission.”

In my humble view, there is nothing unconstitutional in the subsection as it affects the submission of the party’s Constitution to the 1st appellant. The subsection is not specific as to the guideline and I will make my opinion known when I am dealing with the guidelines.

“Section 78(2)(b): The subsection provides as follows:

78(2) The Constitution and Manifesto produced pursuant to subsection (1) of this section shall:

(b) at all times be in compliance with the provisions of the Constitution, the electoral laws and guidelines made by the Commission.”

The subsection is not unconstitutional in so far as the electoral laws and guidelines are not inconsistent with the provisions of the Constitution.

Section 79(2)(c): The subsection provides as follows:

“79(2) Subject to subsection (1) of this section, a person shall not be eligible to be registered as a member of political party if he: (c) is a member of the Public Service or Civil Service of the

Federation, a State or Local Government or Area Council as defined by the Constitution.”

This provision is unconstitutional, particularly in view of section 40 of the Constitution. The opening words of section 40; “every person”, cover a member of the Public Service or Civil Service of the Federation as well as a State or Local Government or Area council. The above apart, the provision is also against section 222(b) of the Constitution which provides that the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping.

That takes me to the Guidelines. Section 162 of the Electoral Act, 2001 vests in the 1st appellant *“the power to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Act and for the due administration thereof.”*

In his lead judgment, Musdapher, JCA (as he then was) declared as follows at page 387 of the record:

“I accordingly declare guidelines 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 2(d) and 5(g) and 5(b) unconstitutional, therefore null and void. Similarly, I declare sections 74(2)(g) and (h), 74(6), 77(b) and 78(2)(b) and s. 79(2)(c) of the Electoral Act 2001 as unconstitutional therefore null and void.”

Muntaka-Commassie, JCA ordered at page 402 of the record:

“It is my decision that the following guidelines issued by the Independent National Electoral Commission (INEC) are unconstitutional and inoperative, same are not only set aside but also struck down. They are guidelines 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 2(d) and 5(b). This court also agreed that the following sections of the Electoral Act, 2001 are in conflict with the relevant provisions of the 1999 Constitution. They are sections 74(2)(h), 74(6), and 79(2)(c) of the Act.”

Bulkachuwa, JCA added at page 405 of the record:

“In view of the above therefore the Independent National Electoral Commission guidelines 2(d), 3(a), 3(c), 3(d)(I), 3(e), 3(f), 3(g), 3(h) and 5(b) are not in conformity with constitutional provisions and are therefore null and void. Similarly the provisions of sections 74(2)(h), 74(6), 77(b), 78(2)(b) and 79(2)(c) of the Electoral Act, 2001 are unconstitutional and therefore null and void.”

I should pause here to say that the final orders given by the

three learned Justices are not exactly the same. The orders given by each of the three learned Justices are slightly different in terms of the number of guidelines and the number of sections that were declared unconstitutional, null and void. Final orders are the most important aspect of a judgment and it is most necessary that the orders made by the panel must be exactly the same. Difference in orders of a panel can only be justified where a justice writes a minority judgment. But there was no minority judgment in the appeal heard by the court below. I would like to think that the difference in the orders could be typographical errors.

I now take the guidelines in the order learned Senior Advocate for the respondents took them.

Guideline 3(a): This guideline provides as follows:

"3. No Association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(a) The names, residential addresses and States of origin respectively of the members of its National and State Executive Committees and the records of proceedings of the meeting where these officers were elected"

This guideline is unconstitutional as it enlarges and adds to the provision of section 222 of the Constitution. While section 222 stops at national officers, guideline 3(a) includes state officers. In addition, the guideline also include "record of proceedings of the meeting where these officers were elected." There is no such provision in section 222. It is therefore null and void ab initio.

Guideline 3(c): This guideline provides as follows:

"3. No Association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(c) register showing that its membership is open to every citizen of Nigeria."

This guideline is unconstitutional. In view of the clear provision in section 222(b), the further requirement in the guideline that a register showing that the membership of the political association is open to every citizen of Nigeria is unconstitutional, because it is not a requirement in section 222(b). It is therefore null and void ab initio.

Guideline 3(d) (iv): The guideline provides as follows:

“3. No Association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(d) A copy of the Association’s Constitution, which must contain among other things:

(iv) a provision showing that its constitution and manifesto conform with the provisions of the 1999 Constitution, the Electoral Act of 2001 and these guidelines.” B

This guideline is unconstitutional as it enlarges and adds to section 222. There is no requirement of submission of manifesto in section 222. It is null and void ab initio. C

Guideline 3(e): The guideline provides as follows:

“3. No Association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(e) A register showing the names, residential addresses of persons in at least 24 States of the Federation and FCT who are members of the Association.” D

This guideline is unconstitutional. It is not in section 222. It is an enlargement and addition to section 222. It is therefore null and void ab initio. E

Guideline 3(f): The guideline provides as follows:

“3. No Association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(f) An affidavit sworn to by the Chairman and Secretary of the Association to the effect that no member of the National Executive of the Association is a member of any other existing party or existing political association.” F

This guideline is unconstitutional. There is no such requirement in section 222. As a matter of law, section 222 does not provide for the Chairman and the Secretary or any other person for that matter swearing an affidavit. I entirely agree with Chief Fawehinmi (SAN), that guidelines 3(f) is a condition precedent for the registration of a political association as a political party. It is therefore null and void ab initio. G

Guideline 3(g): The guideline provides as follows:

“(3) No Association by whatever name called shall be regis-

tered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(g) *A bank statement indicating the bank account into which all monies of the proposed Political Association has been paid and shall continue to be paid and from which all expenses are paid and shall be paid."*

This guideline is unconstitutional as it is an enlargement and addition to section 222. It is therefore null and void ab initio. Although the learned trial Judge described the guideline in his judgment as an "unworthy clog, which has no legitimacy", he refused to grant the plaintiffs' relief No.8 seeking for a declaration that the guideline is unconstitutional, and therefore null and void. With the greatest respect, the learned trial Judge contradicted himself by not granting the relief after declaring the particular guideline null and void and of no effect whatsoever. I do not think he had any option in the matter. Did he forget that he had come to such a conclusion at page 24 of his judgment? He ought not to have forgotten, or better still, he could not have forgotten because the final orders he made immediately followed the above order he gave. I do not think the learned trial Judge was fair to the respondents. He was not even fair to himself. I say no more.

Guideline 3(h): The guideline Provides as follows:

"3. No Association by whatever name called shall be registered as a political party unless the Association submits to the office of the Chairman of the Commission the following:

(h) *The address of its Headquarters Office at Abuja and the address of its offices, list of its staff, list of its operational equipment and furniture in at least 24 States of the Federation."*

This guideline is unconstitutional. There is no such provision in section 222. It enlarges and adds to the provision of section 222. The only provision in section 222(f) is that the headquarters of the association must be situated in the Federal Capital Territory, Abuja. The guideline is therefore null and void ab initio.

Guideline 2(d): The guideline provides as follows:

"2. The application for registration as a political party shall be made on the Commission's Form PAI in twenty copies and shall be accompanied by documents showing the following:

(d) *Twenty copies of the Association's Constitution and Mani-*

festo.”

This guideline is not unconstitutional. The requirement is more of an administrative matter which the 1st appellant can carry out, particularly in the light of the provisions of section 223 of the Constitution. I do not expect the Constitution to spell out administrative functions of the 1st appellant. With respect, I do not agree with Chief B Fawehinmi (SAN) that this guideline is another classic example of arbitrariness and usurpation of power. It is not.

Guideline 5(b): The guideline Provides as follows:

“5. A Person shall not be eligible to be registered as a member C of political association seeking to be registered as a political party if he/she

(b) is in the Civil Service if the Federation or of a State.”

This guideline is unconstitutional. It clearly offends the provisions of sections 40 and 222(b) of the Constitution and therefore D null and void ab initio. Civil servants are subject to and governed by the existing Civil Service Rules. Such Civil Service Rules make the guideline otiose and unnecessary.

All that I have said above on the provisions of the Constitution vis-à-vis Electoral Act, 2001 and the Guidelines made by the 1st ap- E pellant zero on the supremacy of the Constitution. By section 1 of the Constitution provides for the supremacy of the Constitution. By section 1(3), if any other law is inconsistent with the provisions of the constitution, the Constitution shall prevail and that other law shall, to F the extent of the inconsistency, be void. This court has consistently upheld the above supremacy clause. See the most recent cases of A.-G., Abia State v. A.-G., Federation (2002) 6 NWLR (Pt. 763) 264; A.-G., Ondo State v.A.-G., Federation (2002) 9 NWLR (Pt. 772) 383. G

In the total package of the supremacy of the Constitution in this appeal are mainly sections 40 and 222. The provisions of Chapter IV in which section 40 is a part are sacrosanct. The procedure for the amendment of the Chapter is tedious and difficult as spelt out in section (3) of the Constitution. Since section 40 vests in every person H the right to freely associate with other persons and belong to any political party, an Act of the National Assembly or a guideline of the 1st appellant ambitiously trying to take away the rights guaranteed in the section cannot stand. This is because the Constitution is supreme.

The same applies to section 222. Since that section has provided for six conditions for a political association to be recognised or registered by the 1st appellant as a political party, neither the National Assembly nor the 1st appellant can now enact any Act or make guidelines respectively detracting from the provision of section 222.

B Until section 222 is amended in accordance with section 9(2) of the Constitution, it remains the constitutional yardstick upon which political associations can become political parties.

C Learned counsel for the 1st appellant dealt exhaustively with the liberal interpretation of the Constitution. His ally, learned counsel for the 2nd appellant supported him. The liberal approach they commended to this court was aimed at accommodating the guidelines made by the 1st appellant.

D While this court has consistently championed the liberal interpretation of the Constitution for purposes of expanding the frontiers of the Constitution to accommodate as much foreseeable and proximate situations as possible, this court cannot do so when the provisions of the Constitution are clear and the intention of the makers of the Constitution are thus obvious. The golden and main rule of the interpretation of statutes, including the Constitution, is the intention of the law-maker. Once the intention of the law-maker is clear, resort cannot be made to any liberal interpretation of the Constitution. This is because a liberal interpretation of the Constitution beyond and above the intention of the law-maker will amount to the Judge making law. While there is a vibrant debate as to whether the Judge should make law, it will be against the principle of separation of powers for the Judge to make law where the intention of the lawmaker is clear. Perhaps the Judge could be involved in making the law if the intention of the law-maker is not clear and he is in a difficult position in the circumstances of the case before him. In such a circumstance, since he cannot adjourn the matter for the legislature to make a law to place the situation on his hands, he could make the law.

H Liberal approach to the interpretation of the Constitution is good in relevant situations, but this court cannot do so excessively to the extent that it destroys the fabrics of constitutionalism and constitutionality. All interpretation of the Constitution must bow or kowtow to these twin principles or pillars of constitutional law in our democracy in which the rule of law, democracy's life blood, triumphs to the

egalitarian advantage of Nigeria and its people. Liberalism in the interpretation of the Constitution is good, but too much of it, or better, excess of it, like excess of everything could be bad and dangerous. If a liberal interpretation of the Constitution will do grave injustice to one of the parties, this court should be loath in taking that course.

In other words, this court should keep its borders of interrelation of the Constitution closed if opening them will result in destroying the intention of the makers of the Constitution. This court cannot add one extra word outside the intention of the makers of the Constitution where the constitutional provision is obvious and clear.

I realize that learned Senior Advocate for the 1st appellant is taking us on a long and apparently difficult journey in the interpretation of some sections of the Constitution and if we follow him, it will be difficult for us to retrace our steps in other cases in the future. We cannot embark upon such a dangerous journey. No.

In the light of the foregoing, I come to the conclusion and hold that the appeals by both 1st and 2nd appellants succeed in part.

I make the following orders:

1. Relief No.1 is granted.
2. Relief No.2 is refused.
3. Relief No.3 is granted.
4. Relief No.4 is granted.
5. Relief No.5 is granted.
6. Relief No.6 is granted.
7. Relief No.7 is granted.
8. Relief No.8 is granted.
9. Relief No.9 is granted.
10. Relief No. 10 is granted.
11. Relief No. 11 is granted.
12. Relief No. 12 is refused.
13. Relief No. 13 is refused.
14. Relief No. 14 is granted in part only, that is, in respect of section 74 subsection (2)(h) and section 79 subsection.

There is no order as to costs. Each party is to bear its costs. Appeals allowed in part.