

SUPREME COURT OF NIGERIA
FRIDAY 4TH JULY, 2003. SC.31/2003
**CORAM:- I. L. KUTIGI, M. E. OGUNDARE, A. I. KATSINA-
ALU, U. A. KALGO, A. O. EJIWUNMI,
N. TOBI, D. O. EDOZIE, JJSC**

BASHIR MOHAMMED DALHATU APPELLANT
AND
1. IBRAHIM SAMINU TURAKI
2. ALHAJI DALHATU ATTAHIRU
BAFARAWA (CHAIRMAN, CARETAKER
COMMITTEE ANPP)
3. MOHAMMED LAWAL (CHAIRMAN,
CONVENTION COMMITTEE - ANPP)
4. ALL NIGERIA PEOPLE'S PARTY RESPONDENTS
5. JOHN E. K. ODIGIE OYEGUN
6. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

ELECTIONS - Nomination - Power of political party - Onuoha v. Okafor - Political party determines who should be its candidate at election - And such issue is not justiciable in court (H1)

SUPREME COURT - Judgments of - Binding nature of - All courts and authorities in Nigeria are bound by them - And a refusal by judge of lower court to be so bound - Is gross insubordination (H2)

FACTS

4th defendant/respondent had scheduled its gubernatorial primary election for Jigawa State to hold in the State capital, Dutse on 3rd January 2003. The primary election was conducted accordingly in which only 1st defendant/respondent participated and was returned unopposed. Meanwhile, another primary was also conducted in Kano, purportedly for Jigawa State, in which only plaintiff/appellant participated and was returned unopposed. However, 4th respondent recognized the result of the primary conducted in Dutse and duly announced 1st respondent as the winner, issuing him with a certificate of recognition as such.

Consequently, appellant instituted this action in the High Court of FCT, Abuja challenging the return of 1st respondent as the candidate of 4th respondent at a subsequent general election. Appellant filed two motions along with the writ of summons - One *ex parte* for interim injunction and another on notice for interlocutory injunction. Upon being served with the motion on notice, 1st to 3rd respondents raised a preliminary objection to the jurisdiction of the court on the ground that primary election was a political party's internal affair. The objection was over-ruled. Though they instantly appealed against the dismissal of their objection, trial court nevertheless continued hearing and eventually gave judgment to appellant. Aggrieved, respondents appealed to the Court of Appeal, Abuja Division. The appeal was allowed. Dissatisfied, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

Whether having regard to the decision of the Supreme Court in *Onuoha v. Okafor & Ors.* (1983) 14 NSCC 494 a court of law can validly assume jurisdiction in a case to elect or select a candidate for a political party in its internal affair or nominate him for sponsorship in an election.

HELD (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)

ELECTIONS - Nomination - Power of political party

1. In other words, he went before the court and sought for an order directing his political party (ANPP) as to which of the two persons (the plaintiff and the 1st defendant) it ought to sponsor for the gubernatorial elections. This clearly is a political question.

By the authority of *Onuoha v. Okafor* (supra) the trial High Court had no jurisdiction to entertain the matter. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. In other words, it is a domestic issue and not such as would be justiciable in a court of law. This is so because the power and the right to nominate and sponsor a candidate to an election are vested in a politi-

cal party and the exercise of this right is the domestic affair of the party, in this case the ANPP. (p. 2161 E)

SUPREME COURT - Judgment of - Binding nature of

2. The conduct of the learned trial Judge I. U. Bello is to say the least, most unfortunate. This court is the highest and final court of appeal in Nigeria. Its decisions bind every court, authority or person in Nigeria. By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. The doctrine is a sine qua non for certainty to the practice and application of law. A refusal, therefore, by a judge of the court below to be bound by this court's decision, is gross insubordination (and I dare say such a judicial officer is a misfit in the Judiciary). (p. 2162 F)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Rules of court do not vest jurisdiction in the court

It is not the rules of court that vest jurisdiction in the Court but rather the statute creating that court. In this respect, it is to the Constitution of the Federal Republic of Nigeria, 1999, that one has to look to determine the jurisdiction of the High Court of the Federal Capital Territory, Abuja, for it is Section 255(1) of the Constitution that established the court. Section 257 sets out its jurisdiction (p. 2164 G)

2. The jurisdiction of a State High Court is Limited to its territory

It cannot be denied that the subject matter of the Appellants' case relates to the governorship of Jigawa State, a territory that is distinct and separate from the Federal Capital Territory. If any court must have jurisdiction over such a subject matter, it has to be the court in Jigawa State. For the purpose of exercising jurisdiction each State of the Federation is independent of the other and the jurisdiction of its court is limited to matters arising in its territory. The court below, per Oguntade, JCA., was in my respectful view, correct when it held:

"The evidence called by the 1st Respondent upon which the judgment of the lower court was hinged clearly shows that nothing in

connection with the primaries, the subject matter of this dispute, took place in Abuja. It is irrelevant that the defendants resided or had offices in Abuja. Would the 1st Respondent have sued in Lagos or Port-Harcourt if the defendants had offices or reside in either of the two cities? There was no reason sustainable in law why the suit could be initiated in any venue other than Dutse or Kano. There was no jurisdiction in the Abuja High Court to entertain this suit. The lower court should have struck out the suit.” (p. 2165 C)

TOBI JSC
3. Member of a political party is bound by the party’s rules

From the decision of this court in Onuoha, it is clear that the right to sponsor a candidate by a party is not a legal right but a domestic right of the party which cannot be questioned in the matter, a discretion which is unfettered; in the sense that a court of law has no jurisdiction to question its exercise one way or the other. The moment a court goes into such a domestic affair of the party, it has involved itself in nominating a particular candidate, a jurisdiction which a court cannot exercise. While a court of law has the jurisdiction to declare a particular candidate as the winner of an election, a court of law cannot be involved in the domestic affair of nomination of a candidate or candidates in primaries.

One basic rationale behind this principle of law is that since persons have freely given their consent to be bound by the rules and regulations of a political party, they should be left alone to be governed by such rules and regulations. Once persons have freely mortgaged their consciences to a situation, courts of law should not interfere. I am of the view that Onuoha is applicable to this appeal and I so hold. (p. 2173 B)

EDOZIE JSC
4. Appellants may have a remedy in an action for damages

To some extent, I share the sentiments of the trial Judge that it is improper for a political party, having sponsored one of its members for an elective office, to later withdraw that sponsorship in breach of its constitution. But the apparent injustice is not without a remedy. Just as a servant cannot generally sue for re-instatement but can maintain an action for damages for unlawful termination of his em-

ployment by his master, so too, a candidate whose political party has withdrawn its earlier nomination for election has his remedy in an action for damages and not an action to compel the political party to sponsor him. (p. 2175 G)

REPRESENTATION

C. O. Akpamgbo, SAN, with Y. U. Usman, SAN; B. Akin-Aina, K. Uthman; Irene Ekwuozoh (Miss); and Mohammed Tola, for the Plaintiff/Appellant

Kehinde Sofola, SAN, with A. Abubakar and T. Banjoko, for the 1st, 2nd and 3rd Defendants/Respondents

Mohammed S. Shuaib, Esq., for 4th Defendant/Respondent

E. Okoro, for 5th Defendant/Respondent

Ade Okeaya-Inneh, with F. Abdullahi (Miss), for the 6th Defendant/Respondent

CASES REFERRED TO

Williams v. Daily Times (1999) 1 NWLR (Pt. 124) 1

Rossek v. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382

A-G Ogun State v. Egenti (1986) 3 NWLR (Pt. 28) 265

N.A.B. Ltd. v. Berri Eng. (Nig) Ltd. (1995) 8 NWLR (Pt. 413) 257

Clement v. Iwuanyanwu (1989) 4 S.C. (Pt. II) 89

Emerah & Sons Ltd. v. A-G Plateau State (1990) 4 NWLR (Pt. 147)

Global Transport Oceanico S.A. v. Free Ent. (Nig) Ltd. (2002) 2 S.C. 154

STATUTE & RULES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 251, 255, 257

Federal Capital Territory High Court Rules, 0.10 r. 4

LEAD JUDGMENT BY KATSINA-ALU JSC

On the 10th day of April, 2003, I dismissed this appeal and indicated that I would give my reasons today. I now give my reasons.

The plaintiff by a writ of summons dated 8th day of January, 2003, commenced an action against the defendants before the High Court of the Federal Capital Territory, Abuja. The plaintiff in the action claimed against the defendants the following reliefs:

“1. A declaration that the purported return of the 1st defen-

dant, Ibrahim Saminu Turaki as the 2003 ANPP Gubernatorial candidate for Jigawa State is unconstitutional, void and that the return was and still is a violation of the plaintiff's right of fair hearing, right to be elected for any elective office.

2. An injunction restraining the Respondents from interfering with the aforesaid rights of the plaintiff.

3. And any other relief and/or reliefs as this Honourable court may deem fit to make in the circumstances.

The issues involved in this appeal are simple and straightforward. I shall therefore concern myself with the facts material to the consideration of the questions presented for determination.

From the facts before the trial court, two things happened. The All Nigeria People's Party (ANPP) scheduled all its primary elections to hold on the 3rd day of January, 2003. This is not in dispute. In the case of Jigawa State, the primary elections were to hold in Dutse, Jigawa State capital. A committee with Chief Nnoruka as Chairman, Hajiya Nahibi as member and Arc. Joseph as secretary conducted the screening and the primary election in Kano in which 1st defendant did not take part. Only appellant Bashir Mohammed Dalhatu did. He was naturally declared the winner by the committee.

Meanwhile, another primary election was conducted in Dutse, Jigawa State capital in which the 1st defendant participated. The appellant did not. The 1st defendant was the winner. The result of the election was released to the ANPP by the Chairman of the election committee. The ANPP recognised the same and duly announced the 1st defendant as the winner and issued him a certificate of such recognition on the 7th day of January, 2003. It was as a result of this state of affairs that the appellant took out a writ of summons on the 8th January, 2003, challenging the recognition of the 1st defendant as the gubernatorial candidate for Jigawa State.

The appellant filed two motions along with the writ: a motion *ex parte* for interim injunction and a motion on notice for interlocutory injunction. The learned trial Judge granted the *ex parte* injunction on 8th January, 2003.

The 1st, 2nd and 3rd defendants on 14th day of January, 2003, filed a Notice of Preliminary Objection as to jurisdiction which was dismissed on 22nd January, 2003.

The 1st, 2nd and 3rd defendants appealed against the dismissal of their Preliminary Objection. They also applied by motion for a stay of execution pending appeal. Stay was refused.

On 30th January, 2003, the 1st, 2nd and 3rd defendants applied to the Court of Appeal for a stay of proceedings pending appeal. The motion was fixed for hearing on 5th of February, 2003. The trial court's attention was drawn to this motion but in spite of that it proceeded with the hearing of the case and on 5th of February, 2003, it gave judgment for the appellant.

The defendants' appeal to the Court of Appeal was allowed. This appeal by the plaintiff is against that judgment.

The parties filed their respective briefs of argument. Based on his grounds of appeal, the appellant had submitted at p.4 of his brief of argument three issues for determination, to wit:

"1. Whether the principles of the Supreme Court decision in Onuoha v. Okafor & Ors. (1983) 14 NSCC 494, a case based purely on selection rather than election of candidate and which was decided under a different constitution, with different provisions governing the two different cases, can oust the jurisdiction of a court of law from entertaining this action?"

2. Whether, in view of the provisions of Order 10 Rule 4 of the High Court of the Federal Capital Territory, Abuja, (Civil Procedure Rules), 1991, the court below was right in striking out the Plaintiff's claim on the ground that the trial court lacked territorial jurisdiction to entertain the action.

3. Whether, having regard to the subsisting order of the Court of Appeal to the effect that the Appellants' (now Respondents) Brief of Argument must be based upon settled Records of Appeal, the judgment now appealed against based upon the Brief, which was not based upon the said settled Record is not a nullity."

For their part, the 1st, 2nd and 3rd defendants who filed a joint brief of argument, also submitted three issues for determination. They read as follows:

1. Whether having regard to the decision of the Supreme Court in Onuoha v. Okafor (1983) 14 NSCC 494, a court of law can validly assume jurisdiction in a case to elect or select a candidate for a political party in its internal affair or nominate him for sponsorship in an election.

2. Whether in view of the provisions of Order 10 Rule 4(1) and (2) of the High Court of the Federal Capital Territory, Abuja, (Civil Procedure Rules), 1991, the court below was not right in striking out the Appellant's claim on the ground that the trial court lacked territorial jurisdiction to entertain the action.

B 3. Whether the court below acted properly when it proceeded to hear the Appeal before it having made an order by consent of the parties that they are at liberty to provide other documents that they may wish to file on or by Wednesday, 19th February, 2003.

C The 4th defendant raised two issues in his brief of argument which read:

1. Whether having regard to the facts of the Appellant's case and the state of law in Nigeria today, a court of law can make an order directing the 4th Respondent to sponsor the Appellant in preference to the 1st Respondent or any other person as its Gubernatorial Candidate for the, April 2003 General Elections in Jigawa State.

E 2. Whether the order of the lower court alleged by the Appellant was ever made, if yes, whether the Appellant has not waived any right he may have had to complain by filing his Respondent's brief based on the record before the lower court as well as taking other steps in the proceedings before the lower court.

The 5th defendant, for his part, submitted two issues for determination, to wit:

F 1. Whether the claims of the Plaintiff/Appellant were sufficiently targeted at getting the All Nigeria Peoples Party to sponsor him as its Gubernatorial candidate for Jigawa State so as to justify the invocation by the Court of Appeal of the principles in *Onuoha v. Okafor & Ors* (1983) 14 NSCC 494.

G 2. Whether the trial court lacked territorial jurisdiction to entertain the Plaintiffs' claim.

The 6th defendant raised only one issue at p.1 of its brief of argument:

H *"Whether the learned Justices of the Court of Appeal were right in law and on the facts in holding that the effect of the decision of the Supreme Court in Onuoha v. Okafor (1983) 14 NSCC 494 is that once a matter pertains to the internal dispute of a Political Party, the courts have no jurisdiction."*

The central issue in this appeal is the appellant's issue No. 1.

This issue has been raised by all the parties in their respective briefs of argument. It is whether having regard to the decision of the Supreme Court in *Onuoha v. Okafor & Ors.* (1983) 14 NSCC 494 a court of law can validly assume jurisdiction in a case to elect or select a candidate for a political party in its internal affair or nominate him for sponsorship in an election. B

The kernel of the arguments for plaintiff is that the facts of *Onuoha v. Okafor* are distinguishable from the facts and law applicable to the present case. It was said that in *Onuoha's* case there was no question of contesting for an election but that it was a pure case of a panel of 10 members set up by the political party to select its candidates for senatorial seats in accordance with the party's own constitution. Learned senior counsel endeavoured to distinguish between selection of a candidate and election of a candidate. C

For the defendants, it was said that the thrust of the plaintiff's claim was for an order of perpetual injunction restraining the defendants, particularly 4th defendant, from recognising the Gubernatorial primary election result which took place in Dutse, Jigawa State Capital on 3rd January, 2003, which declared the 1st defendant as the winner of the said election. It was also for an order declaring the plaintiff as the only legally recognised ANPP Gubernatorial Candidate for the 2003 Governorship election in Jigawa State. What was before the trial court for decision was whether in view of the Supreme Court decision in *Onuoha v. Okafor* (supra) the court had jurisdiction to entertain the claim. Learned senior counsel for 1st, 2nd and 3rd defendants submitted that the court is not an appellate body set up by the Party under its constitution to hear appeals from unsuccessful candidates in the nomination and sponsorship exercise within the party. D
E
F

Let us recall the facts of and the decision in *Onuoha's* case. The plaintiff brought an action to compel his political party - NPP to nominate and sponsor him for election to a senatorial seat. The action was instituted in the High Court, which found in favour of the plaintiff. The defendants appealed against the decision of the trial High Court to the Federal Court of Appeal, contending that a court of law ought not to entertain an action to determine whom a political party should or should not sponsor. The appeal was allowed and the action was dismissed. The plaintiff appealed to this court. G
H

The court dismissed the appeal of the plaintiff. Obaseki, JSC., who delivered the leading judgment stated and held at various stages in the course of his judgment at pages 501, 503, 504 and 505 of the report as follows:

B *“The issue raised in this appeal before us, is, in my opinion, as stated by learned counsel for the respondents, i.e., whether the court ought to make an order directing the NPP to sponsor the appellant as against the 3rd respondent.*

C *The answer to the question so raised must, in my view, be in the negative. A positive or an affirmative answer will instantly project or propel the court into the area of jurisdiction to run and manage political parties and politicians. Can the court decide which of the two candidates can best represent the political interest of the NPP? In all honesty, I think the court will in so doing be deciding a political question which it is ill-fitted to do.”*

D *“Implicit in the right to canvass for votes for a candidate is the right to sponsor a candidate for election. The question that therefore arises is whether the court can justifiably interfere under any guise with the free exercise of this right by a political party. I think it cannot*
E *in law do so.”*

“The exercise of this right is the domestic affair of the NPP guided by its constitution. There are no judicial criteria or yardstick to determine which candidate a political party ought to choose and the judiciary is therefore unable to exercise any judicial power in the
F *matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer.”*

G *“The failure to sponsor the appellant cannot be said to be in breach or ultra vires the powers of the NPP because the appellant won the nullified nomination or because the appellant paid N5,000.00 to contest the nomination.”*

H *Irikefe, JSC., (as he then was), in his concurring judgment held: “The matter in controversy in the appeal is whether a court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference for another candidate of the self-same political party. If a court could do this, it would in effect be managing the political party for the members thereof. The*

issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a court of law."

Bello, JSC., (as he then was), in his contribution stated that:
"Upon reading the above constitutional and statutory provisions together, it seems to me that the power and the right to nominate and sponsor a candidate to the election are vested in a political party and the exercise of such power and right is a matter within the discretion of a political party. A court has no jurisdiction to nominate a candidate for a political party or to compel a political party to nominate or sponsor a particular candidate."

Now, the plaintiff's claim before the trial court was simply this. The plaintiff sought an order of perpetual injunction restraining the defendant, particularly 4th defendant, from recognising the Gubernatorial primary election which took place in Dutse, Jigawa State on the 3rd January, 2003 which declared the 1st defendant as the winner of the said election. He also sought for an order declaring the plaintiff as the only legally recognised ANPP Gubernatorial candidate for the 2003 Gubernatorial election in Jigawa State. Put simply, the plaintiff wanted the Party - ANPP to sponsor him as the Party's candidate, as against the 1st defendant, in the 2003 Gubernatorial election in Jigawa State. ***In other words, he went before the court and sought for an order directing his political party (ANPP) as to which of the two persons (the plaintiff and the 1st defendant) it ought to sponsor for the gubernatorial elections. This clearly is a political question.***

By the authority of Onuoha v. Okafor (supra) the trial High Court had no jurisdiction to entertain the matter. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. In other words, it is a domestic issue and not such as would be justiciable in a court of law. This is so because the power and the right to nominate and sponsor a candidate to an election are vested in a political party and the exercise of this right is the domestic affair of the party, in this case the ANPP.

Now, the case of Onuoha v. Okafor (supra) was brought to the

attention of the trial Judge. Regrettably, for reasons best known to him, he chose to ignore it and proceeded to decide as follows:-

“*There is no doubt that the court has no duty to nominate or elect a candidate for a political party, as it cannot campaign for the candidate. It is the constitutional responsibility of the concerned party to campaign for their chosen candidates, but where as in this case the party had encouraged and permitted an individual to strive toward the realisation of his constitutional right as a citizen to vote and be voted for through the acceptance of prescription fee, processed nomination forms, and to further screen him for that purpose to stand for the election and win, yet the political party is allowed to turn its back against all the obvious solid grounds that entitles him to be the candidate of the party now for the post he is seeking, in my view is dishonest and fraudulent, and contravenes items 15(5) of the 1999 Constitution...*”

The purported recognition of the 1st defendant by ANPP is illegal going by the evidence before the court. On the other hand evidence revealed and this court is satisfied that the declaration of P.W.1 Nnoruka, the appointed chairman of the Primaries Election Committee for Jigawa State in which he genuinely returned the plaintiff as the winner and the 6th Defendant (INEC) has the opening to accept the plaintiff as the rightful candidate for the Gubernatorial Candidate for Jigawa State under the platform of the ANPP.

He concluded his judgment thus:

“I also with great respect call on the Supreme Court to re-amend its position on the internal affairs of political parties.”

The conduct of the learned trial Judge I. U. Bello is to say the least most unfortunate. This court is the highest and final court of appeal in Nigeria. Its decisions bind every court, authority or person in Nigeria. By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. The doctrine is a sine qua non for certainty to the practice and application of law. A refusal, therefore, by a judge of the court below to be bound by this court’s decision, is gross insubordination (and I dare say such a judicial officer is a misfit in the Judiciary).

It is for the foregoing reasons that I dismissed this appeal on 10th April, 2003, with costs.

KUTIGI JSC

I read in advance the reasons for judgment just rendered by my learned brother, Katsina-Alu, JSC., for dismissing the appeal herein on 10th April, 2003. I also indicated on that same day that I will give my reasons for dismissing the appeal today. I agree with the reasons so ably stated by my learned brother that I adopt them as mine. I however wish to stress the point that the case of *Onuoha v. Okafor & Ors* (1983) 14 NSCC 494, was rightly applied to the facts of this case by the Court of Appeal. It is unfortunate that although that case was cited to the trial Judge, he deliberately and consciously refused to apply it, because he thought the Supreme Court was wrong in its decision in that case. If the Supreme Court was wrong, he was also wrong not to have followed the age-long established doctrine of *stare decisis*, otherwise known as judicial precedent. His action had been variously described as “gross insubordination”, “judicial rascality”, “reckless,” “judicial impertinence” amongst others. I think he richly deserved the descriptions. I have nothing more to add.

OGUNDARE JSC

I dismissed this appeal on 10th April, 2003, with N10,000.00 costs and indicated then that I would give reasons for my judgment on 4th July, 2003. I now proceed to give my reasons for dismissing the appeal.

I have read in advance the reasons given by my learned brother, Katsina-Alu, JSC., for also dismissing the appeal. I agree with his reasons, which I hereby adopt as mine. I only need to comment briefly on the issue of the territorial jurisdiction of the trial High Court of the FCT, Abuja, to entertain the suit in the first instance.

Three issues have been placed before us in this appeal and they read as follows:

“1. Whether the principles of the Supreme Court decision in Onuoha v. Okafor & Ors. (1983) 14 NSCC 494, a case based purely on selection rather than election of candidates and which was decided under a different constitution, with different provisions governing the two different cases, can oust the jurisdiction of a court of law from entertaining this action?”

2. *Whether, in view of the provisions of Order 10 Rule 4 of the High Court of the Federal Capital Territory, Abuja, (Civil Procedure Rules), 1991, the court below was right in striking out the Plaintiff's claim on the ground that the trial court lacked territorial jurisdiction to entertain the action.*

B 3. *Whether, having regard to the subsisting order of the Court of Appeal to the effect that the Appellants' (now Respondents) Brief of Argument must be based upon settled Records of Appeal, the judgment now appealed against based upon Brief which was not based upon the said settled Record is not a nullity."*

C On Issue (2) which relates to the territorial jurisdiction of the trial High Court, Chief C. O. Akpamgbo, SAN, learned leading counsel for the Appellant, contended both in his brief and oral submission before us that the High Court of the Federal Capital Territory, Abuja, D had jurisdiction for the reasons that the substitution of the name of the 1st Respondent for that of the Appellant was done by the 4th Respondent at the latter's Headquarters in Abuja and that the Defendants were all resident in Abuja. He relied on Order 10 Rule 4 of the Federal Capital Territory High Court Rules which provides:

E "(1) *All other suits shall, where the Defendant resides or carries on business or where the cause of action arose in the Federal Capital Territory be commenced and determined in the High Court of the Federal Capital Territory, Abuja.*

F "(2) *If there are more Defendants than one resident in different Judicial Divisions, the suit may be commenced in any of the Judicial Divisions; subject however, to any order which the court may, upon the application of any of the parties, or on its own Motion, think fit to make with a view to the most convenient arrangement for the trial of the suit"*.

G With profound respect to learned Senior Advocate, it is not the rules of court that vest jurisdiction in the Court but rather the statute creating that court. In this respect, it is to the Constitution of the Federal Republic of Nigeria, 1999, that one has to look to determine the jurisdiction of the High Court of the Federal Capital Territory, Abuja, for it is Section 255(1) of the Constitution that established the court. Section 257 sets out its jurisdiction and it reads:

H "257.(1) *Subject to the provisions of Section 251 and any other provisions of this Constitution and in addition to such other jurisdic-*

tion as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja, shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. ^B

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of the Federal Capital Territory, Abuja and those which are brought before the High Court of the Federal Capital Territory, Abuja, to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.” ^C

It cannot be denied that the subject matter of the Appellants' case relates to the governorship of Jigawa State, a territory that is distinct and separate from the Federal Capital Territory. If any court must have jurisdiction over such a subject matter, it has to be the court in Jigawa State. For the purpose of exercising jurisdiction each State of the Federation is independent of the other and the jurisdiction of its court is limited to matters arising in its territory. The court below, per Oguntade, JCA., was in my respectful view, correct when it held: ^E

“The evidence called by the 1st Respondent upon which the judgment of the lower court was hinged clearly shows that nothing in connection with the primaries the subject matter of this dispute, took place in Abuja. It is irrelevant that the defendants resided or had offices in Abuja. Would the 1st Respondent have sued in Lagos or Port-Harcourt if the defendants had offices or reside in either of the two cities? There was no reason sustainable in law why the suit could be initiated in any venue other than Dutse or Kano. There was no jurisdiction in the Abuja High Court to entertain this suit. The lower court should have struck out the suit.” ^F

I have taken pains to discuss this judgment on territorial jurisdiction of a court in view of recent developments whereby litigants rather than suing in the proper courts come to the High Court of the Federal Capital Territory, Abuja. I think their Lordships of the High Court of the Federal Capital Territory ought to be circumspect before deciding whether or not it is wise and correct to exercise jurisdiction ^H

in matters outside the territory of the Federal Capital Territory. Their court, unlike the Federal High Court has jurisdiction only in matters arising out of the Federal Capital Territory, Abuja. Order 10 Rule 4 is only to determine the proper judicial division of the court where a matter can be heard and determined.

B I entirely agree with my learned brother, Katsina-Alu, JSC., that Onuoha v. Okafor & Ors. (1983) 14 NSCC 494 was rightly applied in the facts of the case on hand by the Court of Appeal. This case was cited to the trial Judge. He failed, rather he refused, to
C apply it. He thought the Supreme Court was wrong in its decision in that case and arrogantly closed his judgment in these words.

“I also with great respect call on the Supreme Court to re-amend its position on the internal affairs of political parties”.

This to my mind is the height of judicial impertinence ever
D exhibited by a judge of a court lower than the Supreme Court. The doctrine of stare decisis is fully entrenched in our jurisprudence to ensure certainty of the law. Had the learned trial Judge in this case cared to read that case and the various dicta of their Lordships of this court, he would not have exhibited such crass ignorance that ran
E through his judgment. I think enough said on this the better.

KALGO JSC

F This appeal was dismissed by me on the 10th day of April, 2003. I indicated on that day, that I shall give my reasons for dismissing the appeal and I do so now.

I have had the privilege of reading in advance the reasons given by my learned brother, Katsina-Alu, JSC., in his leading judgment just delivered. I entirely agree with all the reasons given by him
G therein which I adopt as mine. I have no doubt in my mind that the decision of this court in Onuoha v. Okafor & Ors. (1983) 14 NSCC 494, fully covered the main dispute in this case. It involved the decision of a political party, in this case the ANPP, to sponsor a candidate
H for the 2003 gubernatorial election. It appears to me based on Onuoha’s case that irrespective of what happened at the primary election stage in this case, it is not the function of the court to compel the ANPP to sponsor any candidate in preference to another one from the same party, at in this case. That decision is entirely the do-

mestic political affair of the party, and it was in my view properly taken by the ANPP in this case.

My general comment on the last sentence in the judgment of the learned trial Judge which says -

“I also with great respect call on the Supreme Court to re- B
amend its position on the internal affairs of political parties”.

is that it is rather daring and unfortunate. In my view it is a clear misconception of the well established principle of stare decisis in our judicial system. There is no doubt that the learned Judge had at the back of his mind the decision of this court in Onuoha’s case (su- C
pra) and he did not realise that his duty like all other judges of the lower courts was to apply its ratio decidendi whether he agreed with it or not. See A-G Ogun State v. Egenti (1986) 3 NWLR (Pt. 28) 265; Emerah & Sons Ltd. v. A-G Plateau State (1990) 4 NWLR (Pt. 147) 788. He could only avoid it where it was possible to distinguish the D
case he was dealing with from that of Onuoha. In this, case, he could not do so and so it was not open to him to avoid applying it to the case before him nor could he “advise” the Supreme Court to change its position on it. It is well-settled that the Supreme Court can only E
change its position in a case decided earlier by it where it considers, for good and substantial reasons, to overrule itself on an application where the need arises. Williams v. Daily Times (1999) 1 NWLR (Pt 124) 1; Rossek v. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382; John v. Lawanson (1971) All NLR 58. Judges of the lower courts have no F
right under any circumstances to ask or advise this court to change its decision in any case. Their duty is to follow the principles of law enun- ciated by the Supreme Court in all cases, and apply them in similar cases before them.

It is for the above and the more detailed reasons given by G
Katsina-Alu, JSC., in his leading judgment, that I dismissed this appeal on 10th April, 2003, with costs.

EJIWUNMI JSC

I had the advantage of reading in draft the reasons for judgment just delivered by my learned brother, Katsina-Alu, JSC. I agree with them. Two issues clearly dominate the appeal. The first is, whether the action ought to have been brought before the Abuja High Court

H

of the Federal Capital Territory rather than in the State where the event occurred. In support of the contention that the action could be brought before the Abuja High Court as was done in the case, learned counsel for the appellant relied on Order 10, Rule 4 of the Federal Capital Territory High Court Rules which provides:-

B “(1) *All other suits shall, where the defendant resides or carried on business or where the cause of action arose in the Federal Capital Territory be commenced and determined in the High Court of the Federal Territory, Abuja.*

C “(2) *If there are more Defendants than one resident in different Judicial Divisions, the suit may be commenced in any of the Judicial Divisions; subject, however, to any order which the court may, upon the application of any of the parties, or on its own Motion, think fit to make with a view to the most convenient arrangement for the trial of the suit.*”

D I do not consider that the learned Senior Advocate can be right in his submission. With the greatest respect to him, it must be stated that the rules of court do not vest jurisdiction in court. Rather it is the statute that created the court that also makes the necessary
E provision for the jurisdiction of the court. With regard to the High Court of the Federal Capital Territory, it is Section 255(1) of the Constitution that established the court. Its jurisdiction is set out in Section 257, thus:

F “257.(1) *Subject to the provisions of Section 251 and any other provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja, shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent*
G *of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of any offence committed by any person.*

H “(2) *The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of the Federal Capital Territory, Abuja, and those which are brought before the High Court of the Federal Capital Territory, Abuja, to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.*”

It is undeniable that the events that led to that action had to do with the governorship of Jigawa State. It is of course not debatable that Jigawa State is totally distinct and different from the Federal Capital Territory, Abuja. It seems to me that if any action was to be properly commenced, that action should have been initiated in the court in Jigawa State. In this respect, I think it must be remembered that by our Constitution, each State of the Federation is independent of the other and the jurisdiction of each State is limited to matters arising in its territory. Hence the court below per Oguntade, JCA., was right when it held:-

“The evidence called by the 1st Respondent upon which the judgment of the lower court was hinged clearly shows that nothing in connection with the primaries, the subject matter of the dispute, took place in Abuja. It is irrelevant that the defendants resided or had offices in Abuja. Would the 1st respondent have sued in Lagos or Port-Harcourt if the defendants had offices or reside in either of the two cities? There was no reason sustainable in law why the suit could be initiated in any venue other than Dutse or Kano. There was no jurisdiction in the Abuja High Court to entertain this suit. The lower court should have struck out the suit.”

I think what I have said above is to make it clear that courts ought to bear in mind that jurisdiction is not to be assumed, but must be based on the constitutional provisions that established the court.

I have already stated above that I agree with reasons given by my learned brother that the case *Onuoha v. Okafor & Ors.* (1983) 14 NSCC 494 applied to the facts of this case. It is difficult to understand the judicial reasoning which led the trial High Court to make the preposterous observation in his judgment when he said thus:-

“I also with respect call on the Supreme Court to re-amend its position on the internal affairs of political parties”

The less said about this observation the better. Suffice it to say that the Judge did not in making this statement bear in mind the settled principle of *stare decisis*, which compels him to abide by the decisions of appellate courts. In any event, had he properly understood the reasoning in the judgment delivered by the Justices of this court in *Onuoha v. Okafor & Ors* (supra), he would have refrained from making that observation. In this regard, it is apposite to quote the observation of Nnamani, JSC., at page 511 of *Onuoha v. Okafor*

& Ors. (supra) which reads:-

“In the circumstances of this case, it seems to me that the only matter which would have properly called for determination by a court is the possibility of breach of the proprietary interest of the appellant. Regrettably, that is not the matter before the courts. In my view, in the interest of the healthy growth of our democratic process, in an appropriate case (and I do not here decide that on the facts of this case this was necessarily one) political parties must by use of the remedy of damages be dissuaded from swooping one sponsored candidate for another without due regard to their constitution and/or the rules of natural justice.” (Emphasis mine)

Our courts must not allow themselves to be drawn into the conflicting positions taken by our political parties when jockeying for political power. It is for the reasons stated above, and the fuller reasons given in the judgment of my learned brother, Katsina-Alu, JSC., that I dismissed this appeal on the 10th April, 2003, with N10,000.00 as costs.

E **TOBI JSC**

On 10th April, 2003, I dismissed the appeal and indicated that day that I will give reasons for my judgment on 4th July, 2003. I now give my reasons.

Let me first take the issue of jurisdiction. Learned Senior Advocate for the appellant, Mr. C. O. Akpamgbo, submitted that the court below was wrong in holding that the suit ought to have been initiated in Dutse or Kano and not at the High Court of the FTC, as it overlooks both the appellants pleadings, evidence and Order 10 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 1991.

Learned Senior Advocate for the 1st, 2nd and 3rd respondents, Mr. Kehinde Sofola, submitted that since the subject matter of the suit is the primary election for the Jigawa State ANPP Gubernatorial candidate, the court below was right in holding that there was no reason sustainable in law why the suit could be initiated in any venue other than Dutse or Kano. I think learned Senior Advocate for the 1st, 2nd and 3rd respondents is correct. It is clear that the primaries, the subject matter of the action, was held in Kano.

The Constitution of the Federal Republic of Nigeria provides for the jurisdiction of the High Court of the States as well as the High Court of the Federal Capital Territory. It does not appear to me that Section 257 of the Constitution can really accommodate the action. In the face of the constitutional provision, one cannot talk about a rule of court, which Order 10 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 1991, is. The answer to issue No. 2 is that the court below was right in striking out the plaintiff's claim on the ground that the trial court lacked territorial jurisdiction to entertain the action. B

In *Onuoha v. Okafor* (1983) 4 NSCC 494 the appellant brought an action to compel his political party - NPP - to nominate and sponsor him for election to a senatorial seat. The action was instituted in the High Court, which held in favour of the plaintiff. The respondents appealed against the decision to the Federal Court of Appeal, contending that a court of law ought not to entertain an action to determine who a political party should or should not sponsor. The appeal was allowed and the action was dismissed. On appeal, the Supreme Court held that the High Court has no jurisdiction to entertain the matter. Nomination or sponsorship of a candidate for election is a political matter solely within the discretion of the party, accordingly, the appellant's claim should not have been entertained by the High Court. C

Learned Senior Advocate for the appellant, Mr. C. O. Akpamgbo submitted in his brief that *Onuoha*, a case based purely on selection rather than election, is not applicable to the facts of this case. Learned Senior Advocate submitted that in *Onuoha* there was no question of contesting for an election but it was a pure case of a Panel of 10 members set up by a political party to select its candidates for senatorial seats in accordance with the party's own constitution. D

Learned Senior Advocate for the 1st, 2nd and 3rd respondents, Mr. Kehinde Sofola, submitted in his brief that the issue before this court is on all fours with the decision in *Onuoha*. He urged the court to follow its earlier decision in *Onuoha*. Counsel quoted the decision of this court in *Onuoha* in extenso. He called the attention of the court to the decision of the learned trial Judge who refused to follow the decision in *Onuoha*. E

What are the facts of the case? The 4th respondent, ANPP,

scheduled all its primary elections to hold on 3rd January, 2003, at the various State capitals. In the case of Jigawa State, it took place in Dutse, the State capital on that day. In the primaries, the 1st defendants who is the 1st respondent in this appeal, Ibrahim Saminu Turaki, was returned as the 2003 ANPP Gubernatorial candidate for Jigawa State.

The appellant filed an action in the High Court of the Federal Capital Territory, Abuja, for a declaration that the return was unconstitutional and an injunction restraining the 1st respondent from interfering with the rights of the plaintiff. The learned trial Judge granted the prayers of the appellant. He said at page 140 of the Record:

“The purported recognition of 1st Defendant by ANPP is illegitimate going by the evidence before the court. On the other hand, evidence revealed and this court is satisfied that the declaration of P.W.1, Mr. Nnoruka, the appointed Chairman of the Primaries Election Committee for Jigawa State in which he genuinely returned the Plaintiff as the winner at the 6th Defendant (INEC) has the opening to accept the Plaintiff as the rightful candidate for the Gubernatorial candidate for Jigawa State under the platform of the ANPP. This is the position and judgment of this court on the Plaintiff’s claim, which has succeeded and accordingly granted. It is now left to the ANPP as a political party to demonstrate to the Nigerian citizens and the world its ability to uphold the tenets of the rule of law.”

The Court of Appeal allowed the appeal. The judgment of the learned trial Judge was set aside. The plaintiff’s suit was struck out. Relying on Onuoha v. Okafor (supra), Oguntade, JCA., said at page 362 of the record.

“The lower court should have declined the invitation to adjudicate on this matter. It should have struck out this suit once it became manifest that what was in issue was a political decision to be made as to who should be the candidate for the ANPP. I decide this issue against the 1st respondent.”

Is Onuoha distinguishable from the present case? That is the million naira question. Although Mr. Akpamgbo came out brilliantly to argue that Onuoha is distinguishable from this case, I do not see any meaningful distinction that can make the difference in favour of his client. As it is, both cases, in my understanding, involved the sponsorship of a candidate by a political party. While Onuoha involved

the political party of the NPP, this case involved the political party of the ANPP.

Mr. Akpamgbo made strenuous efforts to distinguish between the words “selection” and “election”. I do not see any meaningful distinction as both deal with the exercise of a choice or preference in respect of two or more things, in our context between two or more candidates. As a matter of diction, the two words could conveniently be used interchangeably in relation to or in respect of the sponsorship of candidates to represent a political party, as in this appeal. B

From the decision of this court in Onuoha, it is clear that the right to sponsor a candidate by a party is not a legal right but a domestic right of the party which cannot be questioned in the matter, a discretion which is unfettered; in the sense that a court of law has no jurisdiction to question its exercise one way or the other. The moment a court goes into such a domestic affair of the party, it has involved itself in nominating a particular candidate, a jurisdiction which a court cannot exercise. While a court of law has the jurisdiction to declare a particular candidate as the winner of an election, a court of law cannot be involved in the domestic affair of nomination of a candidate or candidates in primaries. C D E

One basic rationale behind this principle of law is that since persons have freely given their consent to be bound by the rules and regulations of a political party, they should be left alone to be governed by such rules and regulations. Once persons have freely mortgaged their consciences to a situation, courts of law should not interfere. I am of the view that Onuoha is applicable to this appeal and I so hold. F

The learned trial Judge refused to follow Onuoha. That was not all. He asked this court to re-amend its position in Onuoha. In his words. G

“I also with great respect call on the Supreme Court to re-amend its position on the internal affairs of political parties,”

The word “re-amend” gives the impression that this court had earlier amended its position in Onuoha, whatever that means. I cannot remember the case in which this court amended its position in Onuoha. But that is not very important. The important thing is that a trial Judge would have the courage and the strength not to follow a decision of the Supreme Court merely because he feels that the de- H

cision is wrong. As if that is not bad enough, the Judge had called upon this court to “re-amend its position” to fall in line with his.

This is an extremely unfortunate situation. Apart from the fact that it attempts to destroy the well settled principles of stare decisis, this court is invited to abandon its own correct decision to follow a wrong decision of a trial Judge. This is very serious. On my part, I will not obey him. He is wrong in his Judgment and this court is correct in Onuoha.

It is for the above reasons and the more detailed reasons given by my learned brother, Katsina-Alu, JSC., that I too dismiss the appeal.

EDOZIE JSC

This appeal by the Plaintiff/Appellant was heard and dismissed on 10th April, 2003, and the reasons for the judgment reserved for today 4th July, 2003, I now give reasons for the judgment dismissing the appeal.

I had a preview of the lead judgment just read by my learned brother, Katsina-Alu, JSC., and I am in complete agreement with his reasons for dismissing the appeal and the severe strictures passed on the stubborn attitude of the trial Judge in refusing to adhere to the doctrine of stare decisis.

The fundamental and overriding question for determination posed by all the parties, that is, the Plaintiff/Appellant and the four sets of Defendants/Respondents, is as succinctly formulated in the 1st, 2nd and 3rd Defendants'/Respondents' brief, thus:-

“1. Whether having regard to the decision of the Supreme Court in Onuoha v. Okafor (1983) 14 NSCC 494, a court of law can validly assume jurisdiction in a case to elect or select a candidate for a political party in its internal affairs or nominate him for sponsorship in an election.”

It is not in dispute that the issue that arose for determination in Onuoha's case (supra) was whether a court had the jurisdiction to entertain an action to determine the candidate whom a political party will sponsor for election to any elective office or seat in the legislature.

In its unanimous decision, this court answered the question in the negative Obaseki, JSC., in his lead judgment had this to say at

page 504 of the report:-

“The exercise of this right is the domestic affair of the ANPP guided by its constitution. There are no judicial criteria or yardsticks to determine which candidate a political party ought to choose and the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it had no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer.”

In the present appeal, the vital issue for determination is the same as in the case of Onuoha (supra). The gravamen of the plaintiff’s case was that he won the Gubernatorial ANPP primary for Jigawa State conducted in Kano but that his political party, the ANPP chose the 1st Defendant who apparently won the primary conducted in Dutse, Jigawa State as the party’s official candidate for governorship election in respect of Jigawa State. It seems to me obvious that the present case is on all fours with the Onuoha’s case and by the doctrine of stare decisis, the principle of law enunciated in the Onuoha’s case is binding in the present case.

It is evident that the attention of the trial court was drawn to the Onuoha’s case (supra) but it refused to follow it on the ground as stated by it that:-

“...where as in this case the party had encouraged and permitted an individual to strive toward the realization of his constitutional right as a citizen to vote and be voted for through the acceptance of prescription fee, processed nomination forms, and further screen him for that purpose to stand for the election and win, yet the political party is allowed to turn its back against all the obvious solid grounds that entitles him to be the candidate of the party now for the post he is seeking, my view is dishonest and fraudulent...”

To some extent, I share the sentiments of the trial Judge that it is improper for a political party, having sponsored one of its members for an elective office, to later withdraw that sponsorship in breach of its constitution. But the apparent injustice is not without a remedy. Just as a servant cannot generally sue for re-instatement but can maintain an action for damages for unlawful termination of his employment by his master, so too, a candidate whose political party has withdrawn its earlier nomination for election has his remedy in an

action for damages and not an action to compel the political party to sponsor him.

In this regard, the dictum of Nnamani, JSC., in Onuoha's case is apposite. At page 511 of the report, His Lordship said:-

B *"in my view, in the interest of the healthy growth of our democratic process, in an appropriate case (and I do not here decide that on the facts of this case this was a necessary one) political parties must by use of the remedy for damages be dissuaded from swapping one sponsored candidate for another without due regard to their constitution and/or the rules of natural justice."*

C In any event, even if the remedy of a candidate whose sponsorship for an election was withdrawn is not redressible (sic) in a court of law, that is no justification for the refusal of a lower court to follow the decision of a higher court.

D The doctrine of judicial precedent, otherwise known as stare decisis, is not alien to our jurisprudence. It is a well settled principle of judicial policy which must be strictly adhered to by all lower courts. While such lower courts may depart from their own decisions reached per incuriam, they cannot refuse to be bound by decisions of higher
E courts even if those decisions were reached per incuriam. The implication is that a lower court is bound by the decision of a higher court even where that decision was given erroneously: see *Emerah & Sons Ltd. v. Attorney-General Plateau State & Ors.* (1990) 4 NWLR (Pt. 147) 788; *Global Transport Oceanico S.A. v. Free Ent. (Nig) Ltd.*
F (2002) 2 S.C. 154; (2001) 5 NWLR (Pt. 706) 426 at p. 441.

In the case of *N.A.B. Ltd. v. Berri Eng. (Nig) Ltd.* (1995) 8 NWLR (Pt. 413) 257 at p.280, the principle of judicial precedent was restated thus:-

G *"The doctrine of judicial precedent (otherwise called stare decisis) requires all subordinate courts to follow decisions of superior courts even where these decisions are obviously wrong having been based upon a false premise; this is the foundation on which the consistency of our judicial decision is based: see Ngwo v. Monye (1970)*
H *1 All NLR 91 at 100. It is, however, the principle of law upon which a particular case is decided that is binding. Such a principle is called the ratio decidendi. A statement made in passing by a Judge which is not necessary to the determination of the case in hand is not a ratio decidendi of the case but an obiter dictum and it has no binding*

effect for the purpose of the doctrine of judicial precedent: see Ofumme v. Okoye (1966) 1 ANLR 94. See also the case of Clement v. Iwuanyanwu (1989) 4 S.C. (Pt. II) 89; (1989) 3 NWLR (Pt. 107) 39.

The same view was expressed by this court per Uwais, CJN., in the case of Atolagbe v. Awuni (1997) 9 NWLR (Pt. 522) 536 where at p. 564, His Lordship observed, thus -

“It is now settled that under the common law doctrine of precedent or stare decisis the decision of a higher court may be criticised by the judge of a lower court, but notwithstanding the criticism, the judge of the lower court is bound to follow and apply such decision in the case before him. He has no right to disregard the decision or sidetrack it.”

The decision of this court in Onuoha’s case (supra) is valid today as it was in 1983 when it was decided. No serious attempt was made by any of the learned counsel for the parties in this appeal to criticize it.

The refusal by the Abuja High Court to follow that binding decision which is on all fours with the case being adjudicated upon amounts to judicial rascality which calls for strong deprecation.

It is for the foregoing reasons in addition to those adumbrated in the lead judgment that I too dismissed the appeal with costs as assessed and fixed in the lead judgment.

F

G

H