

**SUPREME COURT OF NIGERIA**  
FRIDAY 14TH NOVEMBER 2003, SC. 194/2003  
**CORAM: M. L. UWAIS CJN, I. KUTIGI, A. I. IGUH,**  
**A. I. KATSINA-ALU, U. KALGO, S. O. UWAIFO,**  
**D. O. EDOZIE, JJSC**

1. MUHAMMADU BUHARI  
2. DR. CHUBA OKADIGBO ..... APPELLANTS  
3. ALL NIGERIAN PEOPLES PARTY  
AND  
1. CHIEF OLUSEGUN A. OBASANJO ..... RESPONDENTS  
& 267 OTHERS

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APPEALS - Respondents - Role of - Respondent defends the judgment or ruling appealed against - But if he wishes to challenge same - He has to file a cross - appeal (H1)

ELECTION PETITIONS - Appeals - Necessary party - Under the Electoral Act 2002 - Petitioner is not obliged to make a successful or unsuccessful candidate or political party a respondent (H2)

ELECTION PETITIONS - Words & phrases - "Conduct" - Meaning - In s.133(2) Electoral Act 2002 - The word means the manner of directing election (H3)

ELECTION PETITIONS - Filing - Proper party - By s. 133(1) petition can be presented by candidate - Or political party which participated at election - Or by both together (H4)

APPEALS - Application - Alternative prayers - Sustainability - Since the prayers are deemed to have been abandoned by appellants' counsel - It was unnecessary for Court of Appeal to make finding thereon (H5)

***FACTS***

Petitioners/appellants contested in the April 2003 presidential elections held in Nigeria. 1<sup>st</sup> defendant/1<sup>st</sup> respondent also participated in the same election. After the elections, 1<sup>st</sup> respondent was

returned as winner of the election. In reaction, appellants filed this election petition before the Court of Appeal, Abuja in its capacity as the Presidential Election Petition Tribunal against the return of 1st respondent. Appellants alleged that there was inter alia, non-compliance with the Electoral Act. In the alternative, appellants prayed the tribunal for a declaration that 1<sup>st</sup> respondent was not validly elected by a majority of lawful votes cast in the election. After the service of the petition on them, respondents filed a motion on notice under section 136(3) of the Electoral Act 2002 praying the tribunal to strike out the petition for incompetence or alternatively to strike out certain respondents for not being proper parties to the petition.

In reaction, appellants filed a notice of preliminary objection praying the tribunal to strike out the said motion by respondents. Both applications were heard and refused by the tribunal. Dissatisfied, appellants appealed to Supreme Court, contending that the Peoples Democratic Party (PDP) which sponsored 1<sup>st</sup> respondent in the said election ought to have been joined in the petition as necessary party. Appellants also contend that the failure of the tribunal to consider their alternative prayers in its ruling constituted a breach of their fair hearing right.

### **ISSUES FOR DETERMINATION**

*“(1) Whether or not PDP, the victorious political party which sponsored, funded and campaigned for its candidate is a statutory party in a petition challenging the election and alleging unlawful returns; and if not, whether PDP is not a necessary party having regard to the numerous allegations of misconduct against PDP being a participating political party.*

*(2) Whether a candidate in an election and the party that sponsored him can be deemed to be one and same person for the purpose of a petition.*

*(3) Whether or not the failure to consider the alternative prayers of the appellants at all does not constitute breach of appellants’ right to fair hearing and thereby occasioning miscarriage of Justice.*

*(4) Whether allegations made against persons who were not made parties to the petition are competent and fit for trial in the petition and whether those incompetent pleadings ought to be struck out?”*

# **HELD** (Unanimously dismissing the appeal per **KALGO**

**JSC)**

*APPEALS - Respondents - Role of*

**1. The traditional role of a respondent in an appeal, is to defend the judgment or ruling appealed against. If, however, a respondent wishes to depart from this role, by attacking or challenging the judgment or ruling in any way, he or she is enjoined to file a cross-appeal since the main purpose of a cross-appeal is to correct an error which is standing in the way of a respondent in the main appeal.**

**Therefore, in the absence of a cross-appeal by a respondent as in this case, the respondents' counsel cannot be allowed to play the role of an appellant. They are not competent to do so and I so hold. (p. 2460 F)**

*Appeals - Necessary party*

**2. I am of the respectful view that the answer to issue one lies in the interpretation of s.133(2) of the Act and no more. In the case of Gen. Muhammadu Buhari & Anor. v. Alh. Moh. Dikko Yusuf & Anor. (2003) 6 SC (Pt. II) 156, (2003) FW.L.R. (Pt. 174) 329; (2003) 14 NWLR (Pt. 841) 446, this court was asked to decide whether a person who lost at an election can properly be Joined as a respondent in a petition in which the election of a successful candidate is being challenged. In answer to this question, this court categorically said NO. In the leading judgment by Uwaifo, JSC., in the case he said:**

***"It is manifest that Section 133 of the Act places no obligation on a petitioner(s) to make any candidate who lost an election or any Political Party, whether of a candidate elected or returned or of a candidate who lost or which may not have fielded any candidate for the particular seat, a respondent other than the statutory respondent envisaged under subsection (2) as identified in this judgment. As a matter of strict adherence to procedure, all such persons or Political Parties can neither be respondents nor are they necessary parties"***

***The case of Buhari v. Yusuf (supra) is no authority for saying that a victorious Political Party whose candidate was successful at an election is a statutory or necessary respondent.***  
(p. 2465 G)

***ELECTION PETITIONS - Words & phrases - "Conduct" - Meaning***  
***3. The word "conduct" as a noun is defined in Oxford Advanced Learners English Dictionary, 5th Edition as "a person's behaviour, manner of directing and managing things, business, war, etc.; and as a verb, "to lead, guide, behave, direct or manage." In s. 133(2) the word "conduct" is used there as a noun, and it must therefore mean the manner of directing or managing the election. In this case, by sponsoring a candidate for the election or allowing the use of the party's symbol at the election, or appointing an agent under s. 36(1) of the Act, I do not think that constitutes "taking part in the conduct of the election" on the part of the P.D.P. as a party. All that it can amount to is that the party had participated in the election but not in the conduct of the election.*** (p. 2468 D)

***ELECTION PETITIONS - Filing - Proper party***  
***4. By s. 70 of the Act, a registered political party is a body corporate which can sue and be sued, and by s. 133(2) of the said Act, an election petition could be presented by either the candidate or the Political Party which participated at the election or both together. It is very clear that the law gives them independent recognition and rights but if the candidate is sponsored by a party, they can file the petition together in their individual capacities and the law did not make them one and the same for this purpose.*** (p. 2469 E)

***APPEALS - Application - Alternative prayers - Sustainability***  
***5. From what I said in this issue, it was not necessary for the learned President of the Court of Appeal to consider or make any finding on the alternative prayers in the application of the appellants, since they are deemed to have been abandoned by their counsel.***  
***There is, therefore, no question of lack of fair hearing or any***

***miscarriage of justice in the way the Court of Appeal dealt with the appellants' application. I therefore also answer this issue in the negative.*** (p. 2472 E)

## NOTABLE POINTS OF INTEREST

### **IGUH JSC**

#### ***1. Non-joinder of PDP is not fatal as there is no claim against it***

It cannot be disputed that the petitioners made some complaints against the PDP in a few paragraphs of their Petition.

I am satisfied that notwithstanding the complaints made against PDP in the Petition, non-joinder of PDP as a respondent cannot ipso facto defeat the Petitioners' claims against the respondents particularly as no reliefs are sought by the Petitioners against PDP. (p. 2485 B)

### **UWAIFO JSC**

#### ***2. Election petitions - A political party cannot be substituted for its candidate***

A candidate in an election and a political party that sponsored him cannot be one and the same person for the purpose of a petition even when they join to bring an election under Section 133(1) of the Act. That subsection recognises their separateness.

In regard to section 133(2), a political party cannot be substituted for a candidate. That is quite obvious. If the winning candidate should die before or during an election petition, the petition is at an end; his political party cannot be substituted in his place as the respondent. A fresh election will have to be held except in respect of a political office which is required by law to be contested for along with a running mate. The running mate continues as the respondent in such a petition in the circumstances of that event happening. (p. 2489 B)

### **REPRESENTATION**

Chief Afe Babalola, SAN, with O. Okunloye, SAN, Dr. O. Ayeni, G. N. Okonko, A. Adenipekun, T. J. Abubakar, A. A. Babatin, O. Amao and Mis Remi Awe, for the Appellants

Chief M. I. Ahamba, SAN, with Dr. A.M. Ladan, Ikeomi, Esq., J. U.

Nunieh Yowika (Mrs.), A. S. Shuaibu, A. K. Iroha, E. Ehinze (Miss),  
for the 1st, 2nd and 3rd Respondents

J. K. Gadzama, SAN, with R. O. Yusuf, Esq., C. N. Nwagoma and S.  
O. Emeleaze, for the 3rd, 41st - 268th Respondents

E. O. Sofunde, SAN, with O. A. Eghobamien (Jr.) and M. I. Hanafi,  
B for the 4th to 41st Respondents

**CASES REFERRED TO**

Bohsali v. Arikpo (1966) 1 All NLR 161

C Are v. Ipaye (1986) 3 NWLR (Pt. 29) 416

Lagos City Council v. Ajayi (1970) 1 All NLR 290

Oyeyipo v. Oyinloye (1981) 1 NWLR (Pt. 50) 356

Agibade v. Pedro (1992) 5 NWLR (Pt. 241) 257

Lemboye v. Ogunsiji (1990) 6 NWLR (Pt.155) 210

D Eholor v. Osayande (1992) 6 NWLR (Pt.249) 524

Onayemi v. Okunubi (1965) 1 All NLR 362

P.N. Udoh Trading Co. Ltd. v. Abere (2001) 11 NWLR (Pt. 723) 114

Royal Petroleum Co. Ltd. v. F.B.N Ltd. (1997) 6 NWLR (Pt.510) 584

Ibrahim v. Judicial Service Commission (1998) 12 S.C 20

E Permanent Secretary, Ministry of Works - Kwara State v. Balogun  
(1975) 5 S.C. 57

Adefulu v. Oyesile (1989)12 S.C. 43

Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 NWLR (Pt.14) 46

F **STATUTE REFERRED TO**

Electoral Act 2002, ss. 36, 129, 133 & 136

**LEAD JUDGMENT BY KALGO JSC**

G This appeal, by the 1st and 2nd Appellants, is against the ruling of the Court of Appeal, delivered on the 28th of July, 2003, in which the 2 motions to strike out the petition filed by the appellants and the 3rd - 268th respondents and preliminary objection filed by the 1st and 2nd respondents respectively, were refused. (sic) under  
H the banner of the Peoples' Democratic Party (P. D.P). At the end of the election, the 1st and 2nd appellants were declared duly elected as President and Vice President respectively having scored the highest number of votes at the election, by the 3rd respondent, Independent National Commission (INEC). The 1st, 2nd and 3rd respon-

dents were dissatisfied with the result of the said election, and they filed an election petition in the Court of Appeal containing 294 paragraphs and praying that court to invalidate the whole election on the grounds -

(a) of non-compliance with the provision of the Electoral Act, 2002; B

(b) of corrupt practices, and

(c) that at the time of the election, the 1st appellant was not qualified to contest.

In the alternative the 1st, 2nd and 3rd respondents prayed the court to hold- C

*“That the 1st Respondent (now 1st appellant) was not validly elected by a majority of lawful votes cast in the election and did not receive 25% of votes cast in two-thirds of the States of the Federation and Federal Capital Territory, Abuja, as required by the 1999 Constitution of the Federal Republic of Nigeria.”* D

After service of the petition on the respondents to the petition, the 1st and 2nd appellants filed a reply on 13th June, 2003, and exchanged it between the parties. On the 18th of June, 2003, the learned counsel for the appellants filed a motion on notice under S. 136(3) of the Electoral Act 2002, praying the Court of Appeal to strike out the whole petition for what he called “lack of competency”. In the alternative he asked that court to (i) strike out certain respondents to the petition for not being proper parties to the petition; (ii) Strike out certain paragraphs of the petition for incompetence and non-compliance with the provisions of the Electoral Act, and (iii) direct the petitioner not to lead or call evidence on matters or allegations contained in certain paragraphs of the petition. A similar motion was also filed by the learned counsel for 3rd - 268th respondents to the petition on 19th June, 2003. The learned counsel for the 1st, 2nd and 3rd respondents who referred to the motions as notices of preliminary objections, also filed a notice of preliminary objection on 7th July, 2003, praying the Court of Appeal to strike out the “preliminary objections” of the appellants and the 3rd - 268th respondents. E  
F  
G  
H

The motions and the preliminary objections were then exchanged between the parties and thereafter the learned counsel for the appellants and the 1st, 2nd and 3rd respondents filed and ex-

changed written submissions thereon. On the 17th of July, 2003, the Court of Appeal heard the motion and the preliminary objections together and adjourned for a ruling, and in a considered ruling delivered on the 28th of July, 2003, the Court of Appeal per Abdullahi PCA., who gave the leading ruling and concurred by 4 other Justices B who sat with him, held (p. 248 of the record) -

*“In the final conclusion, all the three applications by the Petitioners, 1st and 2nd Respondents and 3rd - 268th Respondents respectively are refused.”*

C This clearly means that neither the motion nor the preliminary objections heard by the Court of Appeal was successful. But it would appear that only the appellants were dissatisfied with this ruling and they appealed to this court. It is also evidently clear and this was admitted by learned counsel for the 3rd to the 268th respondents, D Mr. Gadzama, SAN, that they have not filed any notice of cross-appeal against the ruling now complained of by the appellants. Therefore, it is my respectful view and I entirely agree with the views of Mr. Sofunde, SAN, counsel for 4th - 41st respondents that not having filed an appeal or cross-appeal in this matter, both himself and Mr. E Gadzama, SAN, for the 3rd, 42nd-268th respondents, have no right to attack or challenge the said ruling of the Court of Appeal. Therefore, whatever was said by either of them in their addresses in court or their respective briefs, challenging the said ruling goes to no issue F at all and I intend to discountenance all such submissions by them in my consideration of this appeal.

***The traditional role of a respondent in an appeal, is to defend the judgment or ruling appealed against. If, however, a respondent wishes to depart from this role, by attacking or G challenging the judgment or ruling in any way, he or she is enjoined to file a cross-appeal since the main purpose of a cross-appeal is to correct an error which is standing in the way of a respondent in the main appeal. See Adefulu v. Oyesile (1989)12 S.C. 43, (1989) 1 NWLR (Pt. 122) 377 Eliochin (Nig.) H Ltd. v. Mbadiwe (1986) 1 NWLR (Pt.14) 46; Lagos City Council v. Ajayi (1970) 1 All NLR 290. African Continental Seaways Ltd. v. Nigerian Dredging Roads & General Liboks Ltd. (1977)5 SC 235 at 247.***

***Therefore, in the absence of a cross-appeal by a respon-***



**dent as in this case, the respondents' counsel cannot be allowed to play the role of an appellant. They are not competent to do so and I so hold.**

Mr. Gadzama, SAN, for the 3rd, 42nd-268th respondents, argued only issues 1 and 2 of the appellants and did not argue issues 3 and 4 in his brief. His conclusion was that the submissions of the appellants' counsel in respect of issues 1 and 2 should be dismissed. He complied with the traditional role of a respondent in this respect.

Mr. Sofunde, SAN, for the 4th - 41st respondents on the other hand adopted the appellants's issues but did not argue any issue of the appellant or raised any issue in his brief. He admitted his inability to attack the judgment of the Court of Appeal for his failure to cross-appeal against it, but then he concluded that the "respondents find themselves unable to support the decision of the Court of Appeal". I think this is more or less disagreeing with the ruling of the Court of Appeal and is a departure from the traditional role of a respondent. On the authorities cited above, the views expressed by Mr. Sofunde, SAN, in the conclusion of his brief, carry no weight in the consideration of this appeal. *But it is my respectful view that as respondents' counsel, nothing stops both counsel from arguing or making submissions on all the issues formulated by the appellants' counsel or even raising new issues formulated by the appellants' counsel or even raising new issues arising from the appellants grounds of appeal and making submissions on them provided these submissions go towards defending the ruling of the Court of Appeal.*

Mr. Ahamba, SAN, learned counsel for the 1st - 3rd respondents also applied for leave to file a cross-appeal in this matter. Chief Afe Babalola, SAN, for the appellants, objected on the grounds that the application was incompetent for non-compliance with Order 6 Rule 2 of the Supreme Court Rules, 1985 as amended. Mr. Ahamba conceded to the non-compliance but asked the court to grant the application in the interest of justice. *This court, in its ruling on the application failed to close its eyes on the non-compliance as the rules of court are made to be followed and complied with except in very special circumstances and this is not one of them. See Nneji v. Chukwu (1988) 3 NWLR (Pt. 81) 184. The application to file the cross-appeal was therefore refused and all documents relating thereto disregarded.*

I now return to consider the appeal filed by the appellants.

In accordance with the rules of this court, learned counsel for the parties filed their respective briefs and exchanged them among themselves. The learned appellants' counsel also filed a reply brief. In the brief filed by the 1st-3rd respondent, a preliminary objection was raised praying this court to strike out this appeal on the grounds:-

- B       “(a) that the appellants lack the locus standi to bring this appeal as neither the appellants nor their counsel is representative or has the authority, either of P.D.P. or the Nigeria Police to file application (sic) (Petition) in the court below or the appeal before this court.  
C       (b) the appellants or their counsel do not have the authority of any of the other respondents who are sought to be struck out in this appeal.”

We decided at the hearing of the appeal, that both the appeal and the preliminary objection be taken together. The leading appellants' counsel, Chief Afe Babalola, SAN, adopted and relied upon his brief and reply brief and urged the court to allow the appeal and overrule the preliminary objection. The leading counsel for the 1st and 3rd respondents, Mr. Ahamba, SAN, also relied upon and adopted all submissions in his brief and urged the court to allow his preliminary objection and dismiss the appeal. The learned senior counsel also addressed the court in elaboration of their written submissions which I shall deal with later in this judgment.

In the appellants' brief, 4 issues were formulated for the determination of this court. They are:-

- F       “(1) Whether or not PDP, the victorious political party which sponsored, funded and campaigned for its candidate is a statutory party in a petition challenging the election and alleging unlawful returns; and if not, whether PDP is not a necessary party having regard  
G to the numerous allegations of misconduct against PDP being a participating political party.  
(2) Whether a candidate in an election and the party that sponsored him can be deemed to be one and same person for the purpose of a petition.  
H       (3) Whether or not the failure to consider the alternative prayers of the appellants at all does not constitute breach of appellants' right to fair hearing and thereby occasioning miscarriage of Justice.  
(4) Whether allegations made against persons who were not made parties to the petition are competent and fit for trial in the

*petition and whether those incompetent pleadings ought to be struck out?”*

For the 1st - 3rd respondents, 3 issues were raised which read thus:-

*“1. Whether Section 133(2) of the Electoral Act, 2002, accommodates the joinder of political parties as respondents in an Election Petition under the Act.* B

*2. Whether the Court of Appeal held that a candidate and the party sponsoring him are one and the same, and if so whether it occasioned a miscarriage of justice.*

*3. Whether the Court of Appeal failed to consider any relief claimed by the appellant in the application to strike out the petition.”* C

Having regard to the grounds of appeal filed by the appellants, I am of the view that the issues formulated by the appellants' counsel in his brief are more germane and worthy of consideration in this appeal. I shall consider them accordingly. D

Before considering issues, it is pertinent to deal with the preliminary objection of the 1st - 3rd respondents' counsel. It is that the learned counsel for the appellants had no authority of the P.D.P., the Nigeria Police, or the other respondents sought to be struck out, to file the petition in the Court of Appeal or this appeal in this court, and that the appeal should be dismissed or struck out. The appellants' counsel objected to the application. Looking at page 283 of the record, the notice of appeal showed clearly that only the 1st and 2nd appellants appealed or complained against the ruling of the Court of Appeal. The said notice of appeal did not indicate that the appeal was brought in the name of or on behalf of the other respondents now being sought to be struck out. Therefore, the issue of striking out the other named parties should only be raised in the appeal itself rather than in the preliminary objection. There is therefore no substance in the preliminary objection and I accordingly overrule and dismiss it. E F G

I now consider the issues formulated by the appellants in their brief of argument.

#### ISSUE 1

This is divided into two parts. These are: (i) whether P.D.P. as a victorious party which sponsored, funded and campaigned for its candidates is a statutory party in the petition challenging the success of its candidates at the election; (ii) whether having regard to the numerous allegations of misconduct made against it in the petition it H

is not a necessary party.

Relying on his brief and reply brief, learned counsel for the appellants, Chief Afe Babalola, SAN, submitted very strongly that since the P.D.P. campaigned for, sponsored and funded the candidature and subsequent election of the 1st respondent on 19th April, 2003, and the ballot papers used at the said election showed the symbol and logo of the P. D. P. as a party, there is no doubt that the P.D.P. as a party has participated in the said election and must necessarily be a party to any petition challenging the said election. He referred the court to s. 133 (1) of the Electoral Act, 2002, (hereinafter referred to as “the Act”). Learned senior counsel also submitted that where as in this case, various allegations are made against a party in a petition, it becomes obligatory to name the party concerned as a respondent in the petition. He further submitted that by virtue of S. 36(1) of the Act, every political party participating at an election has the right to appoint agents to represent it at each polling station and since the agents are deemed to be part and parcel of the party they represent, the P. D. P. having exercised its powers to appoint the agents must be taken to have participated in the said election. He urged the court to allow the appeal.

For the 1st - 3rd respondents (petitioners), Chief Ahamba, SAN, first pointed out that the petitioners/respondents did not claim any relief against the P.D.P. now sought to be joined and so orders can be made against their interest. Learned senior counsel however submitted that they have the right to lead evidence against any person representing any person at the election by virtue of S.129 of the Electoral Act, 2002. On S.36(1) of the Act, learned counsel submitted that an agent appointed thereunder, is not essential or sine qua non to the act of election and Ss.59(c) and 60 of the Act do not involve any political party whether as winner or loser of the election.

On joinder of P.D.P. as a respondent to the petition, learned senior counsel referred to S. 133(2) of the Act and submitted that as the operative words, there are “the person who took part in the conduct of the election” P.D.P. as a party did not qualify as a respondent thereunder as it did not participate in the conduct of the election. Counsel also referred to the decision of this court in *Buhari v. Yusuf* (2003) 6 S.C. (Pt. II) 156, (2003) 14 NWLR (Pt. 841) 446 at pages 449 and 504-5 and submitted that the interpretation of S.133(2) of

the Act was the ratio decidendi of the case and by that decision, the P. D. P. must have participated in the conduct of the election to be joined as a respondent in the petition. This, he argued, is the position of the law and the appellants must produce something to convince the court to change it and this was not done here. He cited the case of Utih v. Onoyivwe (1991) 1 NWLR (Pt.166) 166 at 205 in support. B Learned counsel also referred to the provisions of Ss. 13 1(1) and 133(2) of the Act, and submitted that only a candidate to the election and not a political party is involved in an election petition. Counsel finally submitted that since in S. 133(1) a political party was specifically mentioned as having the right to file an election petition but C was completely omitted in S.133(2) of the Act, such omission must clearly be the intention of the law makers. He urged the court to dismiss the appeal.

On issue 1 of the appellant, Mr. Gadzama, SAN, learned counsel D for the 3rd, 42nd - 268th respondents, submitted in his brief that although the P.D.P is a proper party under S. 133(1) of the Act, it is not a necessary party under S.133(2) of the same Act. He reiterated this in his oral submissions in court.

On issue 2, the learned counsel conceded in his brief and oral E argument that a political party is by virtue of the provisions of S.70 of the Act, a corporate personality separate and distinct from any candidate it might sponsor at an election. Learned counsel examined the general principles of joinder of parties in his brief and submitted that F the failure to include the P.D.P. as a respondent in this case cannot invalidate the petition. He cited a plethora of decided cases in support and finally urged the court to dismiss the appeal. He made no submissions in respect of issues 3 and 4.

Having briefly summarised the submissions of the learned G counsel to the parties in this appeal, ***I am of the respectful view that the answer to issue one lies in the interpretation of 5.133(2) of the Act and no more. In the case of Gen. Muhammadu Buhari & Anor. v. Alh. Moh. Dikko Yusuf & Anor. (2003) 6 S.C (Pt. II) 156, (2003) F.W.L.R. (Pt. 174) 329; (2003) 14 NWLR (Pt. 841) 446, this court was asked to decide whether a person who lost at an election can properly be Joined as a respondent in a petition in which the election of a successful candidate is being challenged. In answer to this question, this court cat-*** H

**egorically said NO. In the leading judgment by Uwaifo, JSC., in the case he said:**

***“It is manifest that Section 133 of the Act places no obligation on a petitioner(s) to make any candidate who lost an election or any Political Party, whether of a candidate  
B elected or returned or of a candidate who lost or which may not have fielded any candidate for the particular seat, a respondent other than the statutory respondent envisaged under subsection (2) as identified in this judgment. As a matter  
C of strict adherence to procedure, all such persons or Political Parties can neither be respondents nor are they necessary parties”***

What Uwaifo, JSC., was saying and this was the decision of this court, is that a petitioner is not obliged under S.133 of the Act in an  
D election petition, to make a candidate who lost the election or any Political Party, a respondent, as they are not necessary parties. But any person, (including a political party) who qualifies under subsection (2) of Section 133 of the Act, will be regarded as a statutory  
E respondent and may be joined as a respondent in such petition. **The case of Buhari v. Yusuf (supra) is no authority for saying that a victorious Political Party whose candidate was successful at an election is a statutory or necessary respondent.**

*Section 133(1) of the Act provides:-*

**F** *“(1) An election petition may be presented by one or more of the following persons:-*

*(a) a candidate at an election;*

*(b) a Political Party which participated at the election”*

**G** *Under this subsection an election petition can be filed by the candidate (who lost the election) or by any Political party which participated at the election or the two of them jointly. This subsection statutorily makes a Political party a petitioner alone or jointly with its candidate at the election. Here, for a political party to qualify as a petitioner it only needs to “participate” at the election and no more,  
H and participation simply means “taking part” not in any specified way. This may include participation by the Political Party itself or through its authorised agent. Section 133 (3) of the act also provides:-*

*(2) The person whose election is complained of is in this Act, referred to as the Respondent, but if the petition complains of the*

*conduct of an electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party”.*

*This subsection deals exclusively with who should be a respondent in an election petition. It sets out, in my view, three classes of respondents. The first one is the person whose election is complained of. This is the candidate at the election who “happens to be the successful candidate at the election. The second class comprises of Independent National Electoral Commission (INEC) staff whose conduct in the election is complained of. The third class which is wider in scope includes other persons who took part in the conduct of the election.*

*The first and second classes of respondents under S.133(2) are distinct, clear and identifiable. The third class of respondents are only identifiable on the interpretation and meaning of the expression “any other person who took part in the conduct of an election”. It is my view that the category of persons envisaged under this class must be those who took part in the conduct and management of the election itself not being INEC staff or officials. I do not therefore believe that the ejusdem generis rule applies to them since the law makes it clear what they must do before qualifying as respondents. It is under this last class that the learned senior counsel for the appellants strongly argued that the P.D.P. falls and therefore attained the status of a necessary party to the petition.*

*Learned appellants’ counsel strenuously submitted in his brief that since the P.D.P. campaigned for, sponsored and funded the candidature of the appellants in the election complained of and it was the name and the symbol of the party that was used in the ballot paper on which the candidates were voted for at the election, both the party and the candidates contested the election and must be joined as respondents once the election is being challenged. It is also submitted in the brief that P.D.P. participated in the election through its agents appointed under S.36(l) of the Act, and that the word “person” in relation to the last category of respondents in S.133(2) of the Act includes a body corporate and artificial person like the P.D.P. Learned counsel also pointed out in the brief that the petition con-*

tained some serious allegations against the P.D.P. in relation to the election and therefore it was not right in law to call or lead any evidence on any of them without making the P.D.P. a party to the petition. He finally submitted that having participated in the conduct of the election and in view of the grievous allegations of misconduct made against it in the petition, the P.D.P. becomes a necessary party in law and should have been joined as a respondent to the petition. And having now failed to join it as such, within the time prescribed by the Act, the whole petition is incompetent and should be struck out.

- C I have already found that the third class of respondents under S.133(2) of the Act must be within the phrase “any other person who took part in the conduct of the election.” It is my view that the operative word in this phrase is “conduct”. It is not enough to show that a person merely participated in the election to come within the provisions of S.133(2) of the Act, he must be shown to have taken part in the conduct of the election. ***The word “conduct” as a noun is defined in Oxford Advanced Learners English Dictionary, 5th Edition as “a person’s behaviour, manner of directing and managing things, business, war, etc.; and as a verb, “to lead, guide, behave, direct or manage.” In S.133(2) the word “conduct” is used there as a noun, and it must therefore mean the manner of directing or managing the election. In this case, by sponsoring a candidate for the election or allowing the use of the party’s symbol at the election, or appointing an agent under S. 133(2) of the Act, I do not think that constitutes “taking part in the conduct of the election” on the part of the P.D.P. as a party. All that it can amount to is that the party had participated in the election but not in the conduct of the election.***
- G In my view those who are primarily charged with the conduct of the election are INEC officials who have no interest other than ensuring that the election is carried out peacefully and in accordance with the Act. I also entirely agree with Mr. Ahamba, SAN, for the 1st, 2nd and 3rd respondents, that according to subsections (2) and (3) of S. 36 of the Act, the absence or presence of an agent in a polling station does not affect the election in anyway as anything which an agent is appointed to do can be done by a candidate who appoints such an agent to represent him. The agent is not therefore sine qua non to the election and cannot be considered as taking any part in the con-



duct of the election.

I am however in agreement with the learned counsel for the appellants that the word ‘person’ in S.133(2) of the Act includes artificial persons or corporate entities. He is supported by the Interpretation Act Cap. 192, Laws of the Federation and numerous decisions of this court. See Ibrahim v. Judicial Service Committee (1998) 12 S.C. 20, (1998)14 NWLR (Pt. 584)1. In the instant case, a registered political party is by virtue of S.70 of the Act, a body corporate and a legal entity. ‘But I am not in agreement with the learned counsel that merely because certain allegations are made in the petition against the P.D.P., it is a necessary party and should be joined in the petition as a respondent without the law saying so.

In the final analysis, I find that the P.D.P as a party which sponsored the appellants to victory at the April 19, 2003, elections does not qualify as necessary party to the petition and cannot be joined as a respondent by virtue of S. 133(2) or any other provisions of the Act. ‘The answer to issue 1 is therefore in the negative.

#### ISSUE 2

This issue is narrow in its scope. It questions whether a candidate sponsored by a party at an election is deemed to be one and the same with his or her party in an election petition.

***By S.70 of the Act, a registered political party is a body corporate which can sue and be sued, and by S.133(1) of the said Act, an election petition could be presented by either the candidate or the Political Party which participated at the election or both together. It is very clear that the law gives them independent recognition and rights but if the candidate is sponsored by a party, they can file the petition together in their individual capacities and the law did not make them one and the same for this purpose.*** Learned counsel himself conceded in his brief that a political party and its members cannot be held to be one and the same, and he referred to the old English case of Salomon v. Salomon (1897) AC 22 and the decision of this court in Royal Petroleum Co. Ltd. v. F.B.N Ltd. (1997) 6 NWLR (Pt.510) 584 at 599 in support. I entirely agree with him and having advanced no legal argument to the contrary, I find no substance in the submissions of learned counsel on this issue. I answer the issue in the negative.

#### ISSUE 3

This issue deals with the alternative prayers in the application which were refused by the Court of Appeal giving rise to this appeal. The main argument of the learned counsel for the appellants is that apart from the main prayer to strike out the whole petition for lack of competence for failure to join P.D.P as a party, there are other alternative prayers to strike out certain paragraphs of the petition and to disallow the petitioners/respondents from leading any evidence on certain paragraphs thereof, and the Court of Appeal had failed to consider the alternative prayers in its ruling appealed against. Learned counsel also pointed out that he had submitted comprehensive written address on the issues raised in the alternative prayers and fully addressed the Court of Appeal on them. He referred to a myriad of decisions of this court on the necessity of a court to make pronouncements on all heads of claim or relief presented to it by a party, and submitted that failure to do so in this case breached his right to fair hearing and occasioned a miscarriage of justice.

For the petitioners/respondents, Chief Ahamba, SAN, submitted in his brief that the Court of Appeal did not fail, neglect or refuse to pronounce upon the relief placed before it in the appellants' application. Learned counsel then referred to the record of proceedings which should have been paged 200-204 and specifically referred to page 201 thereof where in the proceedings at the hearing of the application, the learned counsel for the appellants specifically omitted some points contained in his reply which dealt with the issues in the alternative prayers. Thereafter counsel argued, the Court of Appeal regarded the alternative prayers as having been withdrawn and this was echoed in the leading ruling on p. 236 of the record. He finally urged that the submissions of the appellants' counsel on this issue are misconceived and should be dismissed.

On the 17th of July, 2003, when the appellants' counsel's application was being heard by the Court of Appeal, Chief Afe Babalola, SAN, for the applicants, was recorded to have said: (page 201 of the record)

*"I have filed a reply on 16/7/03. In view of the ruling of this Court this morning on the case of Yusuf v. Obasanjo, I shall omit some of the points I wanted to raise. I refer to Page 2 of my particular paragraph 4 to page 7".*

The learned counsel's reply filed on 16/7/03 is on pp. 193-

.200 of the record. It has 7 pages of written submissions divided into 8 paragraphs. According to the quoted extract above, learned counsel informed the Court of Appeal that he was omitting from his reply brief all issues argued from paragraph 4 to page 7 of the reply brief. This meant that he was only technically relying on paragraphs 1-3 of the reply brief in arguing the application. These paragraphs only deal with the question of INEC officials who participated in the conduct of the election and who should properly be joined as respondents to the petition. They also deal with certain sets of respondents against whom no allegations of election malpractice was made. It would appear therefore that learned counsel has abandoned the issue of striking out the petition for being incompetent from what he told the Court of Appeal earlier quoted above. But from the further submissions made by the learned senior counsel on that day from the bottom of p. 201 to p. 202 of the record, he concentrated his arguments on the failure to join P.D.P. as a respondent under S. 133(2) of the Act. The Court of Appeal, per Abdullahi, PCA., was therefore right in my view, when it observed on page 236 of the record that:-

“But, at the hearing of the two applications en bloc, learned Senior Counsel for first and second respondents appear (sic) to have withdrawn all grounds of objection to the petition save the one complaining about non-joinder of People Democratic Party” (Underlining mine)

The learned President was supported in his observation by 3 of the 4 Justices that sat with him in hearing the application. Oguntade, JCA., on p. 281 of the record said:-

*“Now to the objection itself, the only matter remaining to be considered in the light of the indication given by Chief Afe Babalola, SAN, on his objection is with respect to the non-joinder of” the P.D.P.”* Mahmud, JCA., also had this to say on page 216 of the record:

*“Following the withdrawal of most of the grounds upon which the respondents challenged the competence of the petitioners’ petition at the hearing by the learned senior counsel for the respondents, the only ground left in support of the 1st and 2nd respondents’ preliminary objection is the failure of the petitioners to join the Peoples’ Democratic Party (PDP) as a necessary party to the petition under S.133(2) of the Electoral Act, 2002.”*

Nsofor, JCA., also observed on p.269 of the record thus:-

*“The Motion on Notice filed on the 18th of June, 2003, (supra) was urged next by the Senior Counsel for the 1st and 2nd respondents. It is necessary to note here that the Senior Counsel did not pursue any further other limbs of the objection but rather pressed the objection in respect of the non-joinder of Peoples’ Democratic Party P.D.P in view of the ruling by this court in CA/A/EP/1/2003: Yusuf v. Chief Obasanjo (unreported) delivered on the 17/7/2003.”*

The remaining Justice, Tabai, JCA., did not make any observation to this effect in respect of the 1st and 2nd respondents’ counsel but having regard to the unchallenged record of what learned counsel for the appellants had said at the hearing of the application and the observation of the 3 learned justices in their respective rulings, I am more than satisfied that the only issue outstanding for the consideration of the Court of Appeal was the non-joinder of the P.D.P. as a necessary party to the petition. I accordingly so find.

The learned President dealt extensively with the only issue left in the application and concluded thus:-

*“I still hold the view that the conclusion I reached earlier on, that P.D.P. even though a political party that sponsored the 1st and 2nd respondents who emerged victorious at the election do not come under the umbrage of Section 133(2) of the Electoral Act, 2003.”*

***From what I said in this issue, it was not necessary for the learned President of the Court of Appeal to consider or make any finding on the alternative prayers in the application of the appellants, since they are deemed to have been abandoned by their counsel.*** See Eholor v. Osayande (1992) 6 NWLR (Pt.249) 524 at 534; Agibade v. Pedro (1992) 5 NWLR (Pt. 241) 257 at 269; Are v. Ipaye (1986) 3 NWLR (Pt. 29) 416 at 418. ***There is, therefore, no question of lack of fair hearing or any miscarriage of justice in the way the Court of Appeal dealt with the appellants’ application. I therefore also answer this issue in the negative.***

ISSUE 4

This issue raises the question whether the Court of Appeal has jurisdiction over persons who were not made parties to the petition but against whom certain allegations were made in the petition and whether all paragraphs containing such allegations against them ought

to be struck out. This issue cannot be dealt with without considering the alternative prayers which I have earlier found to have been abandoned by the learned senior counsel for the appellants. To this extent, the consideration of this issue does not arise in the determination of this appeal. I am therefore not considering this issue for the reason stated here. B

Finally from what I have said above, all the issues for determination of this appeal have been decided against the appellants. I therefore find no merit in the appeal and I accordingly dismiss it with no order as to costs. C

### UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Kalgo, JSC. I entirely agree that both the preliminary objection raised by the petitioners/ respondents and this appeal have no merit and that the preliminary objection be overruled while the appeal be dismissed. D

I wish to allude, by way of emphasis only, to the argument on the provisions of Section 133 of the Electoral Act, 2002. The section reads:- E

*“133 ( 1 ) An election petition may be presented by one or more of the following persons-*

*(a) a candidate at an election*

*(b) a Political Party which participated at the election.* F

*(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of the election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his of her official status as a necessary party.”* G

Chief Afe Babalola, SAN, learned counsel for the respondents/ appellants, has argued that both the Peoples’ Democratic Party (PDP) H and the Nigeria Police Force ought to have been joined as the necessary parties in the petition in the Court of Appeal brought by the Petitioner/Respondents, since certain serious allegations of misconduct have been made against them (i.e. the PDP and the Nigeria

Police Force) in some of the averments contained in the election petition and that if not joined, their interests would be affected by the decision in the petition. In addition, he argued that by the provisions of Section 133 subsection (2) of the Electoral Act, 2002, the PDP is a statutory party and should have been joined as a party to the petition. He contended that the failure by the Petitioners/Respondents to effect the joinder of the parties rendered the petition incompetent and the Court of Appeal ought to have struck it out. He cited in support the provisions of Sections 133 and 36 of the Electoral Act, 2002, and relied on the case of *Muhammadu Buhari & Anor. v. Alhaji M. D. Yusuf & Anor* (2003) 6 S.C. (Pt.II) 156, (2003) F.W.L.R. (Pt. 174) 329 per Uwaifo, JSC., also (2003) 14 NWLR (Pt. 841) 446.

Chief Ahamba, SAN, learned counsel for the 1st to 3rd Petitioners/Respondents replied that since the Petitioners/ Respondents did not claim any relief in the petition against the PDP or the Nigeria Police Force, no order could be made against their interest and, therefore, it was not necessary to join them in the petition. He submitted that by virtue of the provisions of Section 129 of the Electoral Act, 2002, which provides as follows:-

“129. A person who-

(a) directly or indirectly, by himself or by another person on his behalf, makes use of or threatens to make use of any force, violence or restrain;

(b) inflicts or threatens to inflict by himself or by any other person, any temporal or spiritual injury, damage, harm or loss on or against a person in order to induce or compel that person to vote or refrain from voting, or on account of such person having voted or refrained from voting; or

(c) by abduction, duress, or fraudulent device or contrivance, impedes or prevents the free use of the vote by a voter or thereby compels, induces, or prevails on a voter to give or refrain from giving his vote,

(c) by preventing any political aspirants from free use of the media, designated vehicles, mobilization of political support and campaign at an election,

commits the offence of undue influence and is liable on conviction to a fine of N100,000 or imprisonment for twelve months, and shall in addition be guilty of corrupt practice under Section 133

*of this Act and the incumbent be disqualified as a candidate in the election."*

His clients have the right to lead evidence of undue influence against any person representing any other person during the conduct of the election. He replied, with regard to the provisions of Section 36 of the Act, which provides for the appointment of polling agents by political parties, that such agents are not essential or sine qua non to the conduct of an election. He drew attention to Sections 59 subsection (c) and 60 of the Electoral Act, which deal with the decision of a Returning Officer on the "declaration of scores of candidates and the return of a candidate" and the declaration of results respectively, to submit that such acts do not involve any political party whether as a winner or a loser to the election. On Section 133 subsection (2), he argued that the PDP did not qualify to be a respondent under those provisions, because it did not conduct the election. D

Learned counsel for the 3rd, 42nd to 268th respondents/respondents, Mr. Gadzama, SAN, argued that although the PDP is a proper party under Section 133 subsection (1) of the Act to bring a petition, it is not a necessary party under the provisions of Section 133 subsection (2) of the Act to be joined as a Respondent to petition. E

*Now, it is clear from the provisions of Section 133 subsection (1) of the Electoral Act, 2002, a political party which participated or whose candidate participated in an election, could bring a petition either by itself or in conjunction with the candidate it sponsored at the election. This is so, because the subsection expressly so provides. The position is however, not so clear under subsection (2) of the section which after specifically naming the electoral officers to be joined as Respondents to a petition added the phrase - "or any other person who took part in the conduct of the election." The question therefore is: does a political party, which sponsored a candidate, whose flag and logo were used on a ballot paper and which appointed polling agents for the election, come under the phrase "or any other person who took part in the conduct of the election?" I am unable to agree with the submission by the respondents/appellants that the PDP falls under the definition of any other person that took part in the conduct of the election. If this premise were to be upheld, the question that will arise is: what of the electorate, who was physically present at* F G H

*the polling booth, queued, voted, had his thumb marked with indelible ink? Did he or she take part in the conduct of election? The answer must be in the negative for although the electorate took part in the election, he or she did not conduct the election. Similarly, in the absence of express provision under subsection (2) of the Section 133, a political party cannot be said to have conducted the election in the same manner as the specified officials, that is an Electoral Officer, a Returning Officer and a Presiding Officer actually did. The political party though a participant in the election, like the electorate, cannot be said to be an election official. Therefore it is not, in my view, the intendment of Section 133 subsection (2) of the Electoral Act, 2002, that a political party should be a necessary or statutory respondent where a petition is being brought against its successful candidate. The dictum of Uwaifo, JSC., in Muhammadu Buhari & Anor (supra), relied upon by the respondents/appellants when read fully, does not support their case. The dictum as cited by the appellants/respondents is an obiter, because this court was concerned with the question whether a petitioner who is a loser of an election has the obligation to make another loser and the loser's party, as opposed to the successful candidate and his part, respondents to the petition. The question was in fact answered in the negative and so could not be of any assistance or support to the respondent/appellants in the present case where the question is whether the party of a successful candidate should be joined as a co-respondent. What " was stated by Uwaifo, JSC., in Muhammadu Buhari's case reads:-*

*"it is manifest that Section 133 of the Act places no obligation on a petitioner to make any candidate who lost an election or any political party, whether of a candidate elected or returned or of a candidate who lost or which have not fielded any candidate for the particular seat, a respondent other than the statutory respondent envisaged under subsection (2) as identified in this judgment. As a matter of strict adherence to procedure, all such persons or political parties can neither be respondents nor are they necessary parties."*

In conclusion, it is for those and the fuller reasons contained in the leading judgment of my learned brother, Kalgo, JSC., that I too will dismiss this appeal with no order as to costs.



### KUTIGI JSC

This is an interlocutory appeal against the ruling of the Presidential Election Petition Tribunal (hereinafter referred to as the Tribunal) delivered on 28th July, 2003, refusing to strike out the petition and the Notices of Preliminary Objection thereon. The Tribunal in the lead ruling of Abdullahi, PCA., concluded thus -

*"In the final conclusion, all the three applications by the petitioners 1st & 2nd respondents, and 3<sup>rd</sup> -268th respondents respectively are refused. The Petition will be heard/on the merit. I make no order as to costs."*

It is thus clear that each and every application before the tribunal considered in the ruling failed completely.

Dissatisfied with the ruling of the tribunal, the appellants have appealed to this court.

The appellants have submitted four (4) issues for determination in this appeal on pages 6-7 of their brief. These issues can conveniently and for clarity be stated to be -

1. Whether Section 133(2) of the Electoral Act, 2002, permits the joinder of P.D.P. or any political party as respondent in a petition.

2. Whether the tribunal said in its ruling that a candidate and the party sponsoring him are one and the same; and if so, whether it occasioned a miscarriage of justice.

3. Whether the tribunal failed to consider any relief claimed in the appellants' application to strike out the petition. Now, Section 133 of the Electoral Act No. 4 of 2002 provides as follows:

*" 133 (1) An election petition may be presented by one or more of the following persons -*

*(a) a candidate at an election;*

*(b) a Political Party which participated at the election.*

*(2) The person whose election is complained of is, in this Act, referred to as to the Respondent, but if the Petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer, or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act, be deemed to be a -Respondent and shall be joined in the election petition in his or her official status as a necessary party."*

(Emphasis supplied by me)

There is clearly no problem with the “statutory petitioners under Section 133(1) above. It is either -

- (i) a candidate
- (ii) a political party, or
- B (iii) both candidate and a political party acting together.

However, “statutory respondents” under Section 133(2) above will include -

- (1) The person whose election is complained of;
- C (2) An Electoral Officer;
- (3) A Presiding Officer;
- (4) A Returning Officer;
- (5) Any other person who took part in the conduct of an election

- D The problem here is with Item (5) above. *Can P.D.P. or any political party which participated at the elections be construed to mean that P.D.P. or a political party “took part in the conduct of an election?” I do not think so. “Taking part in the conduct of an election” can in my view only mean “taking part in the management of an election” leading to the results thereof. While an Electoral Officer, a Presiding Officer or a Returning Officer easily come within that definition, a political party I believe does not. So, P.D.P. does not qualify to be a statutory respondent and so it cannot be joined (see Buhari & Anor. v. Yesufu & Anor (2003) 6 S.C. (Pt.II) 156, (2003) 14 NWLR (Pt. 841) 446. “I therefore answer issue (1) in the negative.*
- E
- F

Issue (2) is in my view clearly incompetent because there is nowhere in the lead ruling where it is stated that any candidate and the political party supporting him or her, are one and the same. But G having sufficiently demonstrated above that a candidate and his or her political party are not one, (see Section 133(1) above), the issue must be answered in the negative and I answer it by saying that a candidate and a political party supporting him or her are not the same.

- H As for issue (3), the portion and concluding part of the lead ruling of the tribunal has been set out above which unmistakably show that the entirety of each and every application before the tribunal was dismissed. There were three such applications which were treated together. The question of not considering alternative prayers

does not therefore arise. The applications were all dismissed whether the reliefs sought were in the alternative or not. And that much was clear from the ruling itself. The answer here too must be in the negative.

All the three issues are therefore resolved against the appellants. It is for these reasons and those stated in the judgment of my learned brother, Kalgo, JSC., which I read before now that I too dismiss the appeal. The appeal is hereby dismissed with no order as to costs.

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C

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### ***IGUH JSC***

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kalgo, JSC., and I agree that this appeal is without substance and ought to be dismissed.

D

In view, however, of the constitutional importance of the issues that were canvassed before us in the appeal, I propose to say a few words of my own in connection with the more important of such issues.

The background facts that culminated in this appeal have already been adequately set out in the leading judgment and no useful purpose will be served by my recounting them in any detail. It suffices to state that these proceedings arose from the result of the Presidential election held in Nigeria on the 19th day of April, 2003.

E

Following the Election Petition filed by the petitioners against the respondents, the 1st and 2nd respondents filed a Notice of Preliminary Objection before the Presidential Election Tribunal, hereinafter referred to as “the Tribunal” praying that the petition be struck out on ground of incompetence. The petitioners for their part, raised an objection to the respondents’ application on the ground that the same was also incompetent. Their contention was that the respondents had taken steps in the proceedings by the filing of their reply to the petition. They claimed that the respondents’ application was consequently prohibited by the provisions of Paragraph 49(2) and (5) of the First Schedule to the Electoral Act, 2002.

F

H

The tribunal, in its ruling, dismissed both the objection of the petitioners as well as the application of the 1st and 2nd respondents seeking to strike out the petition. It is against this decision that the 1st

and 2nd respondents have appealed to this court.

The question posed under issue 1 is whether the political party known as the Peoples Democratic Party, hereinafter also referred to as PDP, the victorious party which sponsored, funded and campaigned at the election for its candidate, the 1st and 2nd respondents, now appellants, is a statutory party in the election petition which challenges the election result and alleges unlawful returns; and if not, whether PDP “participated” in the 2003 presidential election thereby to qualify as “any other person” who took part in the election as provided under Section 133(2) of the Electoral Act, 2002. This issue, in my view, is the main question for resolution in this appeal.

It was contended on behalf of the 1st and 2nd respondents, hereinafter referred to as the appellants, by their leading learned Senior Advocate of Nigeria, Chief Afe Babalola, that the political party, PDP, is necessary and, indeed, a statutory party as a respondent to the election petition as in fact and in law, it participated in the election. It was his submission that failure to join the party, PDP, as a respondent in the Election Petition is fatal to the proceeding. The appellants argued that the petitioners recognised that a political party which sponsored a candidate at the election, shall be joined as a party in an election petition and that this is why they joined the All Nigerian Peoples Party, otherwise also known as the ANPP, as the 3rd petitioner in the present petition. Learned leading Senior Advocate of Nigeria relied on Section 133(2) of the Electoral Act, 2002, for his contention and he submitted that the Electoral Act specifically makes the victorious party and its candidate statutory parties, as respondents, in any election petition. He pointed out that it is instructive that those who may present an election petition as provided for under Section 133(1) of the Electoral Act include a candidate at the election and a Political Party which participated at the election. He stressed that grievous allegations of misconduct were levelled against the Police and PDP in the petition and that they ought to be joined as respondents in the Petition. He argued in particular that once the court finds that the PDP is a person which took part in the conduct of the election, it shall of necessity be joined as a respondent to the petition. He submitted that it was the PDP that sponsored the appellants, campaigned on their behalf and had agents at the polling stations and that it therefore took part in the conduct of the election. He

argued that the petitioners having failed to join PDP as a respondent to the action, the petition ought to be struck out on ground of incompetence.

Learned leading Senior Advocate of Nigeria for the petitioners, Chief M. I. Ahamba, in his reply submitted that it must not be lost sight of that no reliefs were claimed by the petitioners against the PDP or the Police in this action. He referred to the case of Buhari & Ors. v. Yusuf and Ors. (2003) 6 S.C. (Pt.II) 156, (2003)14 NWLR (Pt. 846), at 449, 504 and 505 and observed that the decision touched on the interpretation of Section 133(2) of the Electoral Act, 2002, now in issue. He submitted that the ratio decidendi therein is that a loosing Political Party need not to be joined in an election petition. He contended that it is evidence that will disclose whether a Police Officer mentioned in an Election Petition was assigned to perform election duties or whether he was a rampaging police officer on a disruptive frolic of his own. He argued that a police officer assigned to election duties against whom complaint is made is a necessary party in an election petition because he is part of the conduct of the elections. He stressed that no such assigned police officer was complained against in the Petition. He contended that the crucial question is who took part in the conduct of an election. He submitted that a Political Party cannot be involved in the conduct of an election. He stressed that the legislature when they drafted Section 133(2) of the Electoral Act, 2002 were not oblivious of Section 131 where the term Political Party is expressly mentioned. He urged the court to dismiss the appeal and allow the petitioners to proceed with the 268 respondents already before the court.

Learned leading Senior Advocate of Nigeria for the 3rd, 42 - 268th respondents, J. K. Gadzama, Esq., in his reply submitted that a perusal of the reliefs sought by the petitioners against the respondents discloses no claim against the PDP. He stressed that, parties to an action may be classified into proper, desirable and necessary parties. He referred to Section 133(2) of the Electoral Act, 2002, and contended that it could not be suggested that PDP took part in the conduct of the election even though it participated as a sponsor in the exercise. He referred to Section 133(1) of the Electoral Act and submitted that PDP having participated at the election may be a proper party for joinder as a petitioner by virtue of the express provisions of

Section 133(l)(b) thereof. It cannot however, be a necessary party as envisaged under Section 133(2) of the Act. In his view, the petitioners have a discretion whether or not to join the Political Party, PDP, as a respondent to their action. He further submitted that failure to join PDP as a respondent cannot make the election petition incompetent.

B Learned leading Senior Advocate of Nigeria for the 4th -41st respondents, E. O. Sofunde, Esq., for his own part, indicated, quite rightly in my view, that, having not filed any appeal in the proceedings, he could not rightly and effectively contribute in the appeal.

C Although copious submissions were made by learned counsel for the parties with regard to the resolution of issue 1, I think the matter lies within a very narrow compass having regard “to the express provisions of Sections 133(l)(a) and (b) and 132(2) of the Electoral Act, 2002.

D Section 133(1) (a) and (b) which deals in unmistakable terms with persons entitled to present election petitions provides as follows:-

*“133(1) An election petition may be presented by one or more of the following persons -*

*(a) a candidate at an election;*

E *(b) a Political Party which participated at the election.”*

It is crystal clear that under Section 133(1) (a) and (b) of the Electoral Act, 2002, an election petition may thus be presented by one or both of the following persons:-

F (a) A candidate at the disputed election and/or

(b) A Political Party which participated at the election.

It is obvious that no other person or persons outside those expressly mentioned may present an election petition.

G As against the provisions of Section 133(1) and (b) ante are those of Section 133(2) which, again clearly make provisions in respect of those who shall be joined as respondents in an election petition.

Section 133(2) of that Act provides thus:-

H *“133(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and*

*shall be joined in the election petition in his or her official status as a necessary party.”*

Accordingly, it is again expressly provided under Section 133(2) of the Act that those who shall be joined as respondents to defend an election petition are:-

(a) The person whose election or return is complained of, referred to as the respondent. B

(b) Where, however, the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of the election, such officer or other person shall for the purpose of the Act be joined in the election petition in his or her official status as a necessary party. C

*Three points need be emphasized in connection with the said Section 133(1) and 133(2) of the Electoral Act, 2002. The first is that whereas Section 133(1) deals entirely with persons who are entitled D and who may present an election petition, Section 133(2) is concerned with persons who shall be joined as respondents in an election petition. Secondly, whereas Section 133(1) of the Act expressly provides that an election petition may be presented by a Political Party which participated at the election, Section 133(2) fails to make E a similar express provision with regard to whether a Political Party may, or, indeed, shall be sued and/or whether the joinder of a Political Party, as a respondent, in an election -petition is mandatory. Thirdly, whereas Section 133(1) provides that a Political Party which “participated” F at an election may present an election petition, Section 133(2) provides that three named INEC officers or “any other person who took part in the conduct of an election” shall be joined as respondents in an election petition as necessary parties if the petition complains of their conduct in the election. G*

*It is not in dispute that the ANPP as a Political Party participated in the relevant election and was therefore properly joined as the 3rd petitioner in the present petition. It seems to me plain also that the National Assembly which in their wisdom made express provision under Section 133(1) to the effect that a Political Party which participated H in an election may present an election petition, deliberately omitted to make a similar provision in favour of such Political Party as a respondent under Section 133(2) of the Act. This omission on the part of the National Assembly for the inclusion of Political Party as a*

*respondent under Section 133(2) of the Electoral Act is clearly significant and worthy of note. In my view, it cannot be said that when the legislature enacted Section 133(2), they were oblivious of the provisions of Section 133(1) of the Act. Accordingly, I am not prepared to accept that the Legislature by Section 133(2) of the Electoral Act, must be understood to have enacted that the joinder of a Political Party as a respondent in an election petition is mandatory and in default of which such a petition is rendered incompetent.”*

Chief Afe Babalola, SAN, did, however, argue that the words “any other person who took part in the conduct of an election” must be deemed to include not only natural persons but also artificial persons such as the PDP.

*There can be no doubt that the definition of the word “person” in a legal parlance under the Nigeria, Law is not limited to natural persons or human beings only but admits and includes artificial persons such as corporation sole, company or anybody of person, corporate or incorporate. See Ibrahim v. Judicial Service Commission (1998) 12 S.C 20,(1998) 14 NWLR (Pt. 584)1 at 36. The crucial question, however, is whether PDP is a person that took part in the conduct of the election as prescribed by Section 133(2) of the Electoral Act, 2002.*

In this regard, learned leading Senior Advocate of Nigeria for the 1st and 2nd “respondents submitted that PDP sponsored candidates for the election and had Polling Agents at the election and, to that extent, it could be said that it took part in the conduct of the election. With profound respect, I am unable to accept that PDP by the mere fact that it had Polling Agents under Section 36(1) of the “Act” at the election took part in the conduct of the election. A Political Party’s Polling Agents under the law are mere “onlookers and do not take part in the actual conduct of an election. In my view, a Political Party that fielded a candidate and appointed Agents did not necessarily take part in the conduct of the election. At best, it participated at the election. Having participated at the election, such a Political party may under Section 133(1) of the Electoral Act, 2002, be joined as a petitioner in an election petition. It is not, however, a statutory party, the non-joinder as a “respondent of which necessarily renders an election petition incompetent and liable to be struck out.



Chief Afe Babalola, SAN, however, further submitted in the alternative that having regard to the serious allegations of misconduct made against the PDP, that party must be deemed to be a respondent and should have been joined in the petition as a respondent.

It cannot be disputed that the petitioners made some complaints against the PDP in a few paragraphs of their Petition. The court, however, cannot, pursuant to the audi alteram partem rule enter judgment against a person who will be affected directly by its decision if such a person is not made a party to the action and he had no opportunity of defending the action. See Permanent Secretary, Ministry of Works, Kwara State v. Balogun (1975) 5 S.C. 57 at 59. I am satisfied that notwithstanding the complaints made against PDP in the Petition, non-joinder of PDP as a respondent cannot ipso facto defeat the Petitioners' claims against the respondents particularly as no reliefs are sought by the Petitioners against PDP. See Onayemi v. Okunubi (1965) 1 All NLR 362 at 365 and Bohsali v. Arikpo (1966) 1 All NLR 161 at 165. Issue 1 must accordingly be answered in the negative.

*There is next issue 2 which questions whether a candidate in an election and the party that sponsored him can be deemed to be one and the same person for the purpose of an election petition.* "A political party, without doubt, is a corporate personality, separate and distinct from a candidate sponsored by the party at an election. A corollary to this basic legal position is that a corporate personality in law is different and distinct from its members. See Salomon v. Salomon and Co. (1897) AC 22. In the same vein, there is Section 70 of the Electoral Act, 2002, which provides as follows:-

*"70. Every Political Party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name."*

Reference may also be made to the provisions of Section 133(1) earlier set out in this judgment. That section of the Electoral Act clearly refers to the two entities, to wit, a candidate at an election and a Political Party which participated at the election as different persons. It is thus plain that a candidate in an election and the party that sponsors him cannot be one and the same person for the purpose of an election petition. Issue 2 is accordingly answered in the negative.

must however hasten to point out that a resolution of issue 2 in favour of the 1st and 2nd appellants is practically of no significant consequence to them as the question has no relevance to the determination of this appeal. This is because what the tribunal observed is that there was nothing the PDP could contribute to the success of the 1st and 2nd appellants which it would not achieve as a witness. This observation is totally different in substance and effect from what the appellants have alleged in ground 3 of their grounds of appeal from which issue 2 was formulated. But as I have already indicated, issue 2 is answered in the negative.

Turning now to issue 3, the question posed is whether the failure by the tribunal to consider the alternative prayers of the appellants does not constitute a breach of the appellants' right to fair hearing which thereby occasioned a miscarriage of justice. I think the more appropriate question to ask is as formulated by the respondents which is whether the tribunal failed to consider any reliefs claimed by the appellants in their application to strike out the petitioners' election petition.

In this regard, the tribunal observed:-

*"But, at the hearing of the two applications en bloc, learned senior counsel for first and second respondents appears to have withdrawn all the grounds of objection to the petition, save the one complaining about non-joinder of Peoples' Democratic Party. The learned counsel for 3rd to 268th respondents also withdrew his objection to the petition on all grounds except grounds (b) and (c). In the circumstance, I think the complaint of the 3rd to 268th respondents on non-joinder of proper and necessary parties could conveniently be considered along with the outstanding relief of the first and second respondents. The two objections coalesce. In the circumstance both will be taken together."*

The real question is whether or not the Tribunal was right in holding that the learned Senior Advocate for the 1st and 2nd appellants appeared to have withdrawn all the grounds of objection to the petition save the one that complained about the non-joinder of Peoples Democratic Party as a respondent in the election petition.

I have closely studied the record of proceedings of this appeal and it seems to me that the above observation of the tribunal is consistent with what transpired before that court on the 17th day of July,

2003, when the 1st and 2nd appellants' application was argued. At Page 201 of the Record of Proceeding of the relevant date, learned counsel for the 1 st and 2nd appellants, Chief Afe Babalola, SAN, was recorded as follows:-

*"CHIEF AFE BABALOLA SAN: I filed a written reply on 16/7/03. In view of the Ruling of this court this morning on the case of Yusuf v. Obasanjo. I shall omit some of the points I wanted to raise. I refer to page 2 of my reply, particularly paragraphs 4 to page 7."*

Some parts of the appellants' written arguments referred to in the learned Senior Advocate's statement were accordingly abandoned in their submissions before the court below.

"A close examination of learned Senior Advocate's submissions before the Tribunal at Pages 2001 - 2002 does unmistakably disclose that their alternative prayers were not canvassed in any way. Only the joinder of Peoples Democratic Part was vigorously and extensively argued and canvassed before the Tribunal.

*The law is settled that where counsel proffered no argument on any issue before the court, such an issue must be deemed as having been abandoned. See Eholor v. Osayande (1992) 6 NWLR (Pt. 249) 524 at 534, Agibade v. Pedro (1992) 5 NWLR (Pt. 241) 257, Ikpuku v. Ikpuku (1991) 5 NWLR (Pt.193) 571, Lemboye v. Ogunsiji (1990) 6 NWLR (Pt.155) 210 at 232. In the first place there is evidence on record that the alternative prayers were not argued or canvassed before the tribunal. I think the tribunal in these circumstances was right to have treated them as abandoned. It was also right in not considering them as matters abandoned go to no issue.*

Issue 3 is accordingly resolved against the appellants. There is finally issue 4 which poses the question whether allegation made against persons who were not made parties to the petition are competent and fit for trial in the petition and whether those incompetent averments ought not to be struck out. This issue is related to and is closely tied to issue 3 which deals with the alternative prayers. However, since the alternative prayers were not canvassed or argued before the Tribunal and were consequently treated as abandoned, issue 4 must equally be treated as abandoned. Accordingly, the question does not now arise for resolution.

In the final result, all the issues having been answered in the negative, this appeal accordingly fails.

It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother, Kalgo, JSC., that I too dismiss this appeal but make no order as to costs.

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B

**KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother, Kalgo, JSC., with which I am in complete agreement.

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The issue of who is a respondent in an election petition under the provisions of Section 133(2) of the Electoral Act, 2002, has been decided by this court. It was exhaustively treated and made plain in *Buhari v. Yusuf* (2003) 6 S.C. (Pt.II) 156, (2003)14 NWLR (Pt.841) 446. *The People Democratic Party (PDP) is not a necessary party to be made a respondent under the provisions of Section 133(2) of the Act. This is because it did not take part in the conduct of the election and in my opinion no political party was envisaged under tnm provisions of Section 133(2).*

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In respect of the second issue, I think it is elementary that a candidate and a political party that sponsored him can not be one and the same person for the purpose of an election. This is why Section 133(1) of the Electoral Act 2002 provides that they can join to bring an election petition. The Assembly, be it National or State, is made up of candidates that won elections on the platform of the various political parties.

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Issues 3 and 4 were abandoned in the court below. These issues therefore do not arise for consideration in this appeal.

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For the foregoing reasons and those more fully stated by my learned brother, Kalgo, JSC., I also dismiss the appeal. I also make no order as to costs.

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**UWAIFO JSC**

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I have had the opportunity of reading in advance the judgment of my learned brother, Kalgo, JSC., and I agree with him: (1) that the Peoples' Democratic Party is not a necessary party to be made a respondent under the provisions of Section 133(2) of the Electoral Act, 2003. It did not take part in the conduct of the election

and it seems to me clear that no political party was envisaged under the said provisions. This was sufficiently made plain in Buhari v. Yusuf (2003) 6 S.C. (Pt.II) 156, (2003) 14 NWLR (Pt.841)446. Although it is true that the ejusdem generis rule does not apply in the interpretation of Section 133(2), it must be understood that the phrase “any other person” will cover only a person who was assigned to take part in the conduct of an election. Such a person need not be an Electoral Officer, a Presiding Officer, a Returning Officer but “any other person who took part in the conduct of an election. (2) That a candidate in an election and a political party that sponsored him cannot be one and the same person for the purpose of a petition even when they join to bring an election under Section 133(1) of the Act. That subsection recognises their separateness.

In regard to section 133(2), a political party cannot be substituted for a candidate. That is quite obvious. If the winning candidate should die before or during an election petition, the petition is at an end; his political party cannot be substituted in his place as the respondent. A fresh election will have to be held except in respect of a political office which is required by law to be contested for along with a running mate. The running mate continues as the respondent in such a petition in the circumstances of that event happening. Issues 3 and 4 raised by the appellants do not arise.

For the above reasons and those more fully stated by my learned brother, Kalgo, JSC., I too dismiss the appeal,

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### **EDOZIE JSC**

Having been privileged to read the draft of the lead judgment just delivered by my learned brother, Kalgo, JSC., I agree with his reasoning and conclusion in dismissing the appeal. This contribution is only by way of emphasis on some of the issues canvassed by the parties.

The substance of the appellants’ first issue for determination queries whether the PDP, a political party, is not a statutory or necessary party to be joined as a respondent in an election petition challenging the return of its candidates. *The answer to this quest/on rests on a proper construction of Section 133 subsection a of the Electoral Act which enacts-*

*“The person whose election is complained of is in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party.”*

*It does not seem to me that the subsection draws any distinction between statutory and necessary parties. The subsection identifies three categories or classifications of persons who ought to be joined as Respondents in an election petition, viz:-*

*(a) the person whose election is complained of, that is, the successful candidate.*

*(b) electoral officials who took part in the conduct of the election whose conduct the petition complains of and &*

*(c) any other person who took part in the conduct of the election whose conduct the petition complains of.*

*Insofar as the subsection recognises them as necessary parties, they are both statutory and necessary parties to be joined as Respondents in an election petition. The above classification relates to natural persons and made no reference to artificial person such as a Political Party. Besides, there is the further qualification that the person must be one who took part in the conduct of the election. The PDP does not fit into any of the three categories of persons described above. It participated in the election in the sense that it sponsored candidates and took necessary steps to ensure their success at the election but it certainly did not take part in the conduct of the election which was the exclusive responsibility of INEC and its supporting staff. The PDP does not therefore qualify as a statutory and necessary party to be joined in an election petition as contemplated by Section 132(2) of the Electoral Act. This view is in accord with the recent decision of this court in the case of Mohammadu Buhari & Anor v. Alhaji Mohammed Dikko Yusuf & Anor (2003) 6 S.C. (Pt. II) 156, (2003) FWLR (Pt. 74) 329, (2003) 14 NWLR (Pt. 841) 446, where in the latter at P.499, Uwaifo, JSC., in the lead judgment of the court stated:-*

*“Section 133 which I earlier reproduced provides in Subsection (1) for persons who may present a petition. It is either one or both of (a) a candidate at an election; (b) a political party which*

*participated at the election. No other person may do so. In the same vein, those who shall be joined to defend the petition in accordance with subsection (2) are the person whose election (or return) is complained of, referred to as the respondent, and any of the officials mentioned in the subsection or any other person who took part in the conduct of the election, and in either case the petition complains of their conduct of the election. All such persons are regarded as the statutory respondents and who only, in my view, qualify as the necessary parties. I think even a cursory reading of Obih v. Mbakwe (supra) at p.204 B-D and Egolum v. Obasanjo (supra) at 387 B-C must reveal a total support for this view."*

*The answer to the issue under consideration is in the negative, that is to say, that the P.D.P as a political party, does not qualify to be joined as a Respondent in the election petition.*

The appellants' second issues poses the question whether a candidate in an election and the party that sponsored him can be deemed to be one and same person for the purpose of a petition.

In resolving this issue, one must bear in mind one of the elementary principles in brief writing which is that an issue for determination must be distilled from the grounds of appeal which in turn must be a challenge against a finding or decision appealed against Idika v. Erisi (1998) 2 NWLR (pt.78) 563, Modupe v. State (1988) 9 S.C. 1, (1988) 4 NWLR (Pt.87) 130, Okeke v. Ezike (1993) 4 NWLR (Pt. 209)751.

It does not seem to me that the court below made any finding that a candidate in an election and the party that sponsored him can be deemed to be the same. The passage in the judgment of the court below relied upon by the appellants for the issue in question as reproduced in page 35 of the appellants' brief reads thus:-

*"The Peoples Democratic Party clearly is an interested party as the sponsor of the candidacy of first and second respondents but is not a party which ought to have been joined and its presence before the court is not necessary in order to enable the court determine both effectively and completely all issues in controversy in the matter or suit- The joinder is being sought in my respectful opinion to assuage injured feelings. There is nothing the party can contribute to the success of the respondents which it would not achieve as their witness."(Underlining for emphasis)*

With due respect to the learned senior counsel for the appellants, there is nothing in the above passage to suggest that the court below decided that a political party can be deemed to be one and the same person. They are mutually exclusive entities. One is a natural person, the other is an artificial body. They may have a common interest and common grievance. A petition against the return of a candidate is a challenge against his political party in much the same way as a complaint against the latter is an attack against the former. It is in this sense that the passage quoted above can be understood. The answer to this issue is also in the negative.

The appellants' 3rd issue is "whether the lower court is not in error for failing to consider the alternative prayer of the appellants thereby breaching the appellants' right to fair hearing and occasioning a miscarriage of justice." In their motion paper which gave rise to the present appeal, the appellants' first prayer was to strike out the petition on ground of incompetency. This was followed by three alternative prayers (a) striking out the names of some respondents who were not proper parties, (b) striking out some paragraphs of the petition and (c) preventing the petitioners from leading evidence in respect of the same paragraphs of the petition.

The court below found that to the course of arguing the motion, the appellants withdrew the grounds of objections relating to the alternative prayers and concentrated on the objection in respect of the first prayer, hence, it observed at p.236 of the Record.

*"But at the hearing of the two petitions en block, learned senior counsel for first and second respondents appear to have withdrawn all the objections to the petition save the one complaining about non-joinder of Peoples Democratic Party....."*

There is no appeal against this finding and therefore its correctness cannot be questioned: *Yesufu v. Kupper International* (1996) 5 NWLR (Pt. 446) 17, *P. N. Udo Trading Co. Ltd. v. Abere* (2001) 11 NWLR (Pt. 723) 114 at 146. If the learned counsel to the appellant withdrew from the court below the objections relating to the alternative prayers, in consequence of which the court below declined to consider the reliefs, it does not lie in his mouth to come to this court to complain about denied of fair hearing. The audi alteram pattern principle of natural justice merely enjoins that a party to a dispute be given the opportunity of presenting its case. A party who failed or



neglected to present his case by withdrawing or abandoning it cannot complain of denial of fair hearing. *Oyeyipo v. Oyinloye* (1981) 1 NWLR (Pt. 50) 356.

It is my judgment that the appellant were not denied a fair hearing by the failure of the court below to consider the appellants' alternative reliefs, which had been abandoned. I, therefore, resolve the 3rd issue against the appellants and similarly resolve the 4<sup>th</sup> issue for the same reason. B

For the foregoing and the more detailed explanations in the lead judgment, I also dismiss the appeal with no order as to costs. C

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