

COURT OF APPEAL PORT HARCOURT DIVISION  
WED. 5TH NOVEMBER, 2003. CA/ PH/EPT/190/2003  
CORAM: S. A. AKINTAN, A. J. IKONGBEH,  
D. A. ADENIJI, JJCA

IBISO N. NWUCHE ..... APPELLANT  
AND  
1. KENNEDY EBKU  
2. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION ..... RESPONDENTS  
3. RESIDENT ELECTORAL  
COMMISSIONER, RIVERS STATE  
& 14 OTHERS

---

APPEALS - Court - Findings - A party aggrieved by conclusion of court on main issue - Can appeal against such conclusion - Or against the reasoning leading to it (H1)

ELECTION PETITIONS - Locus standi - Objection to - Tribunal should have limited itself to the petition - In resolving issue of appellant's locus - Rather than relying on affidavit evidence (H2)

### **FACTS**

This appeal emanated from the decision of the National Assembly/Governorship and Legislative Houses Election Petitions Tribunal sitting at Port Harcourt. The Tribunal had struck out petitioner's/ appellant's petition challenging the return of 1<sup>st</sup> respondent as the winner of the election into the Rivers State House of Assembly to represent the Ahoada East Constituency II.

The order striking out the petition was made following a preliminary objection on behalf of the 1<sup>st</sup> respondent on the grounds inter alia, that the political party (All Nigeria Peoples Party) that sponsored appellant withdrew from the election. As such, appellant lacked locus standi to file this election petition since he did not stand for the election. Appellant felt dissatisfied by the striking out of his petition and thus lodged an appeal at the Court of Appeal, Port Harcourt, maintaining that he duly participated in the election. That, hence, he has the locus to present the petition.

**ISSUE FOR DETERMINATION**

*“Whether the Tribunal was not obliged by law to look at the Petition as presented by the Petitioner to determine whether or not the Petitioner has locus standi to present the petition.”*

**HELD** (Unanimously allowing the appeal per **IKONGBEH JCA**)

*APPEALS - Court - Findings*

**1. How, in the circumstances, therefore could the ground be said to be unrelated to the ratio decidendi of the ruling? There is obviously no merit in such suggestion. A party aggrieved by the ultimate conclusion by a court on the main issue before it can legitimately appeal against such conclusion, as the appellant has done here, or against the reasoning leading to it, or both.** (p. 2631 E)

*ELECTION PETITIONS - Locus standi - Objection to*

**2. From these averments it can be seen that not only was it suggested that the petitioner was a candidate sponsored by the A.N.P.P., but also that the I.N.E.C accepted his candidature and sponsorship as evidenced by the fact that the results released by it showed that the petitioner contested on the platform of the party and scored votes. The facts relied on by the respondents to challenge the locus standi of the petitioner and therefore, the competence of his petition, were introduced by the respondents in the two affidavits in support of their motions. By those facts the respondents were contesting the facts averred in paragraphs 1, 3 and 4 of the petition. On the authorities just reviewed, the Tribunal should have disallowed them to do so, but instead ordered them to file their replies and allowed the petition to proceed to trial. It was clearly wrong to have had recourse to the affidavit evidence in resolving the question of the petitioner’s/appellant’s standing. It should have in considering the preliminary objection to the competence of the petition, limited itself to the petition to see if there was anything in it from which it could be suggested**

***that the petitioner lacked the locus to present the petition. If it found nothing on the face of the petition to suggest that the petitioner's sponsoring party had withdrawn from participation in the election, then it should have left the petition to follow the normal procedure for hearing on the merit. It was premature at that stage to decide the question whether or not the petitioner's party had withdrawn from the election. There was no material on which to base such determination, the available facts pointing to the contrary. For this reason I resolve this issue in favour of the appellant.*** (p. 2637 A)

### **REPRESENTATION**

S.O. Soronadi Esq., for the Appellant

V.N. Ihua-Maduenyi Esq, I.B. Owghonda-Wopara Esq, for the Respondents

### **CASES REFERRED TO**

Intern'l Ltd. v. Vimex Imports-Exports (2001) 10 NWLR (Pt.720) 223  
Okoye v. Lagos State Government (1990) 3 N.W.L.R. (Pt.136) 115  
Ezechigbo v. Gov. Anambra State (1999) 9 N.W.L.R. (Pt.619) 386  
Akanbi v. Military Gov. Ondo State (1990) 3 N.W.L.R. (Pt.140) 525  
Warri Refining & Petrochemical Co Ltd. & Anor. v. Onwo (1991) 12 N.W.L.R. (Pt.630) 312

Ese Shipping and Trading Industry & Ors. v. Tigris International Corporation (1999) 14 N.W.L.R. (Pt. 637) 70

### **STATUTE REFERRED TO**

Electoral Act 2002, ss. 23, 25, para. 49 of 1<sup>st</sup> Schedule

### **LEAD JUDGMENT BY IKONGBEH JCA**

This appeal is from the decision of the National Assembly/Governorship and Legislative Houses Election Petitions Tribunal sitting at Port Harcourt. The Tribunal had struck out the appellant's petition challenging the return of the 1st respondent as the winner of the election into the Rivers State House of Assembly to represent the Ahoada East Constituency II. The order striking out the petition was made following a preliminary objection on behalf of the respondent on the following grounds:

*“(i) The petitioner was a candidate sponsored by the All Nigeria Peoples Party (A.N.P.P.) until the 1st of May, 2003 when the party irrevocably withdrew from participating into the State Assembly Elections.*

*B (ii) By a Public Notice dated 1st May, 2003, in the print and electronic media, the All Nigeria Peoples Party (A.N.P.P.) withdrew from participating into The State Assembly Elections of 3rd May, 2003.*

*(iii) By virtue of the Relevant Provisions of the 1999 Constitution and the Electoral Act, 2002, only registered political parties C can canvass for votes and sponsor candidates in Election.*

*(iv) The petitioner was not a contestant of the May 3, 2003 elections into the State House of Assembly.*

*(v) It will not be possible for the Tribunal to entertain this petition without being called upon to determine the effect of the Notice D issued by the All Nigeria Peoples Party (A. N. P. P.) as it affects their sponsored candidates, which is an internal affair of the party and it’s members.*

*(vii) The petitioner purports to have been the sponsored candidate of the All Nigeria Peoples Party (A. N. P. P.) in the May 3, 2003 E elections into the State House of Assembly*

*(vii) That in view of the (i- vi) (sic) above the petitioner lacks the locus standi to present this petition and the Honourable tribunal lacks the jurisdiction to entertain same.”*

*F A like motion was filed on behalf of the other respondents. As can be gathered from the stated grounds, the argument in support of the objection was that a few days to the election in question the party that sponsored the petitioner gave notice in writing withdrawing from participation in the election. Since, by the provisions of G the 1999 Constitution and the Electoral Act, 2002, no individual can contest an election without sponsorship by a political party, and since the party that sponsored the petitioner/appellant had voluntarily withdrawn from participation in the election, it followed that the petitioner/appellant was not a candidate at the election and, therefore, H not competent to present a petition in respect of the election. Photostat copies of the said document were introduced into the proceedings as Exhibits KEI and A respectively to the two affidavits in support of the motion for objection.*

After hearing arguments, the Tribunal came to the ultimate

conclusion that -

*“... in view of the decision by the Rivers State Branch of the A. N. P. P. unilaterally to withdraw from participating in the House of Assembly election which was held on 3rd May, 2003, the Petitioner/ Respondent could not on his own be regarded as a candidate at the said election. Consequently, he does not have the necessary locus standi to present an election petition under section 133(1) of the Electoral Act, 2002. The petition is therefore incompetent and liable to be struck out and it is struck out accordingly.”* B

The petitioner has appealed against this conclusion on two grounds (not one as erroneously stated by Mr. V.N. Ihua-Maduenyi in the 1st respondent's brief of argument). Out of the two grounds Mr. A. Eke-Ejelam, who prepared the appellant's brief of argument), formulated the following two issues, which Mr. Ihua Maduenyi adopted on behalf of the 1st respondent: C

*“(a) Within the meaning and context of the provisions of the Electoral Act, 2002 in respect of nomination and withdrawal of a candidate for an election, can Exhibit KEI (also I.N.E.C. A) disentitle the Petitioner from presenting a petition under the Electoral Act, 2002 having regard to the contexts of his petition filed on the 2nd day of June, 2003.”* D

*“(b) Whether the Tribunal was not obliged by law to look at the Petition as presented by the Petitioner to determine whether or not the Petitioner has locus standi to present the petition.”* E

Although Mr. I.B. Owkhonda-Wopara claimed that he had with leave of this Court, filed a brief of argument on behalf of the 2nd - 17th respondents, what he got leave to file and which was deemed as filed was titled “1st respondent's Brief of Argument”. We observe that it is a Photostat copy of the brief filed by Mr. Ihua-Maduenyi on behalf of 1st respondent. We take it, therefore, that no brief was filed on behalf of the 2nd - 17th respondents. F

Before going into a consideration of the issues canvassed before us I shall dispose of the preliminary objection taken to the competence of this appeal by Mr. Ihua-Maduenyi in the 1st respondent's brief. According to learned counsel, Ground 1, which he erroneously thought was the only ground, “does not relate to the matters decided in the judgment”. Counsel drew attention to the following three passages from the Tribunal's Ruling, which, accord- G H

ing to him, “constitute the ratio decidendi upon which the appellant should relate his grounds of appeal”.

“1. ....A cursory look at the affidavits in support of the application and the counter-affidavits of the petitioner/respondent showed that there was no specific denial by the latter of the averments contained in the said affidavit particularly that relating to his participation in the said election. There is no assertion by him that he participated in the election...

2. .... the two (2) sets of counter affidavit filed by the petitioner/respondent which are one and the same in content did not materially deny any of the assertions in the affidavit in support of the application and they are taken as true.....

3. ...it is the view of this Tribunal that the Rivers State Branch of the A.N.P.P. having decided to voluntarily withdraw and indeed unilaterally withdraw from the election of 3rd May, 2003 the petitioner cannot legally challenge an election which he did not contest ..”

According to counsel, “The Tribunal’s holding that the appellant as petitioner lacked locus standi to present his petition stemmed from the above quoted portions of the ruling as a matter of inference or deduction.”

To ascertain whether or not this objection is well taken it is necessary to set out Ground 1 together with its particulars:

“GROUND ONE

The Tribunal erred in law in holding that the Petitioner has no locus standi to present the petition as Exhibit KEI attached to the respondents Preliminary Objection was proof that the petitioner’s political party. All Nigeria Peoples Party (A.N.P.P.) did not participate at the House of Assembly Election of 3rd May, 2003, hence the petitioner could not on his own be regarded as a candidate at the said election.

#### **PARTICULARS OF ERROR**

(a) The Electoral Act, 2002 makes provisions for the nomination and withdrawal of candidates respectively for an election.

(b) There was nothing in Exhibit KEI indicating that it was in compliance with the provisions of the Electoral Act, 2002.

(c) The election of 3rd May, 2003 was a contested election within the meaning of the Electoral Act, 2002.

(d) *In the petition filed by the petitioner he described in details how he participated at the election of 3rd May, 2003 into the Rivers State House of Assembly.*

(e) *It is the case as formulated by the petitioner in his petition which the Court ought to look at to determine whether he participated in the election to entitled him to present a petition as envisaged by S.133 of the Electoral Act, 2002.*" (Italics mine). B

As I pointed out earlier on in this judgment, the main issue raised before the Tribunal by the respondents by their objection was whether or not the Petitioner had the locus standi to present the petition he presented. While it was argued on behalf of the respondents that the appellant had no locus standi the latter's counsel maintained that he had. All other points, including the observations in the passages highlighted by the 1st respondent's counsel, led up to the conclusion on the main issue. As has been seen, the tribunal resolved the issue in the negative, namely, that the petitioner did not have locus standi. The sting in the entire proceedings, as far as the petitioner was concerned, lay in this conclusion. That was the part of the Tribunal's decision that put paid to his bid to have his petition heard on the merit. That was the part of the decision he wanted removed. That was why in Ground 1 he expressly complained that, "*The Tribunal erred in law in holding that the petitioner has no locus standi to present the petition*". C D E

***How, in the circumstances, therefore could the ground be said to be unrelated to the ratio decidendi of the ruling? There is obviously no merit in such suggestion. A party aggrieved by the ultimate conclusion by a court on the main issue before it can legitimately appeal against such conclusion, as the appellant has done here, or against the reasoning leading to it, or both.*** F G

For this singular reason, I see no merit whatsoever in this objection. It is accordingly overruled.

I shall take the second issue first. Relying on Anason Ibeto International Ltd. v. Vimex Imports-Exports (2001) 10 NWLR (Pt.720) 223, @ 231. Okoye v. Lagos State Government (1990) 3 N.W.L.R. (Pt.136) 115 @ 124; Ezechigbo v. Governor Anambra State (1999) 9 N.W.L.R. (Pt.619) 386, @ 398 - 399, and Akanbi v. Military Governor, Ondo State (1990) 3 N.W.L.R. (Pt.140) 525, @ 531 & 532. H

Mr. Eke-Ejelam, for the appellant, submitted that the Tribunal was wrong in coming to its conclusion as to the petitioner's locus based on an alleged defect, which was not apparent on the face of the petition. Counsel pointed out that the Tribunal based its ruling on Exhibit KE1 to the affidavit in support of the 1st respondent's motion  
B "and failed to determine the issue by looking at whether the contents of the petition filed by the petitioner contained facts which entitles him to present a petition." It was counsel's contention that the averments in the petition clearly showed that the petitioner/appellant was  
C a candidate who was sponsored at the election by a political party and who was, therefore, competent to present a petition.

In answer, Mr. Ihua-Maduenyi, for the 1st respondent, contended that the Tribunal was entitled to go beyond the petition and look at affidavit evidence. According to learned counsel, "*since the*  
D *issue was raised by the respondents in their motions and affidavit the Tribunal was equally obliged to look at the grounds of objection and affidavit evidence in support thereof.*"

With the greatest respect to Mr. Ihua-Maduenyi, I do not agree with his contention. I do not agree that the law authorizes the  
E respondents to introduce facts extraneous to the petition and rely on such facts as the basis for challenging the competence of the petition by way of preliminary objection seeking to strike out the petition in limine. The defect in the petition warranting the challenge must be  
F apparent on the face of petition. No ground for challenge that would necessitate what would clearly amount to a trial-before-trial is allowed by law to be introduced by the respondent. Paragraph 49 of the First Schedule to the Electoral Act, 2002, relied on by Mr. Ihua-Maduenyi; particularly sub-paragraph (5) thereof, makes this point abundantly  
G clear. It provides:

"5. *An objection challenging the regularity or competence of an election petition shall be heard and determined before any further steps in the proceeding if the objection is brought immediately the defect on the face of the election petition is noticed.*" (Italics mine).

H It is clear from this provision that the objection permitted to be taken here is one in respect of a defect on the face of the election petition. Any defect that is not apparent on the face of the petition must wait to be addressed at the hearing of the petition after issues have been joined and evidence has been taken. If such defect as is



brought out in evidence at the trial is such as defeats the petition then it would have been operated as a good defence to the petitioner's petition.

The facts of this case are in some respects similar to those in Akinbi's case. In that case the plaintiff was dismissed from the Public Service of Ondo State. He took action challenging the dismissal. There was nothing on the face of his statement of claim to suggest that his action was caught by the provisions of the Public Officers (Special Provisions) Decree, 1984. That suggestion was introduced by the defendant in its Statement of Defence. Therein the defendant pleaded the fact that the matter was not justiciable because of the provisions of the Decree and proposed to raise this as preliminary point of law by way of a preliminary objection. At the point of taking the objection it became necessary to take evidence to determine whether or not the plaintiff's action was caught by the Decree. Ogundare, J.C.A, as he then was, condemned this procedure. In his view, if at that stage, the preliminary objection could not be disposed of without recourse to evidence outside the pleadings, particularly the Statement of Claim, then the point in question should have been left till the trial. He explained at pages 531 - 532 of the Report.

*"The preliminary objection raised in paragraph 1 of the statement of defence could only be determined at the stage it was taken by reference to the pleadings particularly the statement of claim. Once the learned trial Chief Judge found he could not determine the issue on the pleadings that were before him, he ought to proceed to the full trial of the case and decide the point after evidence might have been led. It ceased to be a preliminary point if the point could not be decided without evidence being led; it is indeed a defence to the action. The justiciability of an action is decided, as a preliminary point, with reference to the plaintiff's pleadings, that is, the statement of claim - see: Shell-BP Petroleum Development Co. of Nigeria Ltd. & 5 Ors. v. M.S. Onasanya [1976] 6 S. C. 89, 94."*

In the case cited by the learned justice of the Court of Appeal, Madarinkan, J.S.C., who delivered the judgment of the Court, said at p.336 (1976) N. S. C. C. Vol. 10).

*"... in considering whether to strike out a pleading, the court must restrict itself to the facts in the particular pleading without having any recourse to the facts in the opponents pleading."* (Italics mine).

See also Warri Refining & Petrochemical Co Ltd. & Anor. v. Onwo (1991) 12 N.W.L.R. (Pt.630) 312 @ 326, where this Court, per Tabai, J.C.A. observed and stressed:

“Now, the preliminary objection raised in paragraph 12 of the Joint Statement of Defence challenging the jurisdiction and competence of the trial court to hear the objection is founded on the alleged failure of the plaintiff/respondent to serve 30 days pre-action notice on the Chairman or Managing Direction of the 2nd defendant/appellant at its Headquarters at Falomo. It is settled law that jurisdiction is determined by the nature of the plaintiff’s claim. Therefore the preliminary objection could only have been decided by reference to the facts contained in the Statement of Claim. See *Shell B.P. Petroleum Development Co. v. Onasanya* (1976) 6 S.C. 89 at 94; *Adeyemi v. Opeyori* (1976) 10 S.C. 31 at 49; *Lawrence Akinbi v. Military Governor Ondo State & Another* (1990) 3 NWLR (Part 140) 525 at 532. In the instant case, I cannot find the facts in the 30 paragraph amended statement of claim, which *ex facie*, constitute the grounds for the preliminary objection. Before the trial therefore, this issue of lack of jurisdiction and competence could not have been resolved in favour of the defence by way of preliminary objection.” (Italics mine).

Any doubt that may have lingered on this point after this must have been cleared by the Supreme Court decision in *Ese Shipping and Trading Industry & Ors. v. Tigris International Corporation* (1999) 14 N.W.L.R. (Pt. 637) 70. Again, some of the facts are similar to the facts of the case before us on appeal. The plaintiff alleged some facts in paragraph 2 of its amended statement of claim, which tended to show that it had a good cause of action against the defendant. The defendants in a motion to, inter alia, set aside the writ of summons and statement of claim for non-disclosure of a cause of action, introduced facts contradicting the facts in paragraph 2 of the amended statement of claim. The Supreme Court ruled that they could not legitimately do so. Ogundare J.S.C. who read the lead judgment, remarked and held at pp. 84 and 85.

“Surely where a defendant is disputing an averment of fact made in a statement of claim, the proper way to do so is not by filing an application to have the plaintiff’s action dismissed in limine but to file a defence traversing that averment of fact and establishing evi-

dence at the trial on which the trial court will make a finding of fact either for or against the plaintiff on such averment of fact.

In the copious affidavit evidence placed before the trial court, effort was directed to showing the contrary of the averments in the pleading of the plaintiff. In my respectful view the way to do this is by traversing, in a statement of defence, such averments and not come by way of application to dismiss in limine. B

I have considered all the grounds upon which the defendants sought in the Federal High Court to have plaintiff's action dismissed in limine.... The use by the defendants of affidavit evidence to counter or traverse matters of fact pleaded by the plaintiff is clearly not a correct practice or procedure. In an application of the nature brought by the defendants, it must be presumed that all the facts pleaded by the plaintiff are correct. Where the defendants dispute any such facts they must file a statement of defence and lead evidence at the subsequent trial in support of their case. C

In his contribution, Karibi-Whyte, J.S.C., said at p. 89:

"It is elementary principle that the jurisdiction of the court is determined by the claim on the writ of summons of the plaintiff - see *Adeyemi v Opeyori* (1976) 9 - 10 S.C. 31. For the purpose of determining the cause of action the court must accept the averments of the plaintiff - see *Joseph Ayangboye & Ors. v. Balogun* (1990) 5 NWLR (Pt. 151) 392." E

Finally, Onu J.S.C. said at p. 92 and 93;

"Where an averment of facts ... in a Statement of Claim, is being disputed the proper way to do so is not by filing an application to have the plaintiffs action dismissed in limine but to file a defence traversing that averment of fact and establishing evidence at the trial on which the trial court will make a finding of fact either for or against the plaintiff on such averment of fact. F

Thus, when at the trial court a trial strictly so-called was not embarked upon but rather proceedings founded upon a Ruling premised on the Amended State of Claim and affidavit evidence proffered by the parties, the learned trial Judge was clearly in error when in her Ruling dated 26/6/96 she inter-alia, set aside the Writ of Summons as well as the Amended Statement of Claim, and by holding that the name of the 3rd defendant, that is, Owners of M. V. 'S Araz', be struck out from the suit. H

Now, I have read the petition in the case now on appeal before us. There is nothing on the face of it to indicate that the petitioner's party withdrew from participation in the election or that the petitioner was not a candidate at the election on the platform of a political party or that, for any other reason, his locus standi to present the petition was impaired. Quite on the contrary, paragraphs 1, 3 and 4 alleged not only that the A.N.P.P. sponsored the petitioner but also that the petitioner took part in the election and that the 2nd respondent, I. N. E. C., acknowledged the facts. The three paragraphs reads:

*"1. Your Petitioner, Ibisio N. Nwuche was a candidate of the All Nigeria Peoples Party (hereinafter simply called A.N.P.P.) who stood for the Rivers State House of Assembly Election for Ahoada East Constituency 2 (Two) held on the 3rd day of May, 2003. Petitioner is 38 years old and a citizen of Nigeria and a registered voter.*

*3. And your Petitioner states that the candidates and their scores as arbitrarily allocated and assigned to each candidate and declared by the returning Officer for the Ahoada East Local Government Area Constituency 2 in the House of Assembly Elections are as follows:*

PARTY	CANDIDATES	TOTAL VOTES SCORED
A.N.P.P.	IBISO N. NWUCHE	4,238
P.D.P.	KENNEDY EBEKE	26,426
A.D.	NO CANDIDATE	36
A.P.G.A.	NO CANDIDATE	13
A.P.I.P.	NO CANDIDATE	1
J.P.	NO CANDIDATE	26
N.D.P.	NOBLE EGBE	1,008
N.N.P.P.	NO CANDIDATE	2
P.R.P.	NO CANDIDATE	3
U.N.P.P.	BENSON OCHOMA	271

*The 1st respondent who was sponsored by the Peoples Democratic Party (PDP) was returned as elected.*

*4. The Petitioner shall contend that the figures ascribed to each of the candidates in the table shown above were the product of deliberate wrong entries made by the 2nd Respondent's agents or servants or representatives arbitrarily without regard to actual and/or polling. Petitioner hereby pleads the declared results and the 2nd Respondent and its agents are hereby given notice to produce the*

*original.”*

***From these averments it can be seen that not only was it suggested that the petitioner was a candidate sponsored by the A.N.P.P., but also that the I.N.E.C accepted his candidature and sponsorship as evidenced by the fact that the results released by it showed that the petitioner contested on the platform of the party and scored votes. The facts relied on by the respondents to challenge the locus standi of the petitioner and therefore, the competence of his petition, were introduced by the respondents in the two affidavits in support of their motions. By those facts the respondents were contesting the facts averred in paragraphs 1, 3 and 4 of the petition. On the authorities just reviewed, the Tribunal should have disallowed them to do so, but instead ordered them to file their replies and allowed the petition to proceed to trial. It was clearly wrong to have had recourse to the affidavit evidence in resolving the question of the petitioner's/appellant's standing. It should have in considering the preliminary objection to the competence of the petition, limited itself to the petition to see if there was anything in it from which it could be suggested that the petitioner lacked the locus to present the petition. If it found nothing on the face of the petition to suggest that the petitioner's sponsoring party had withdrawn from participation in the election, then it should have left the petition to follow the normal procedure for hearing on the merit. It was premature at that stage to decide the question whether or not the petitioner's party had withdrawn from the election. There was no material on which to base such determination, the available facts pointing to the contrary. For this reason I resolve this issue in favour of the appellant.***

This point suffices to dispose of the appeal. I therefore see no need to deal with the first issue. In the result I allow this appeal. The decision of the Tribunal striking out the appellant's petition is hereby set aside. I remit the petition for hearing on the merit by the Tribunal as presently constituted or as may be re-constituted by the President of this Court.

**AKINTAN JCA**

I had the privilege of reading the draft of the leading judgment prepared by my learned brother, A.J. Ikongbeh, JCA, All the issues raised in the appeal have been fully discussed. I entirely agree with his reasoning and conclusion that the tribunal was wrong in striking  
 B out the petition. I agree that the appeal should be allowed and the petition be remitted back for hearing on its merit. I too make similar orders as are made in the leading judgment, including that on costs.

C

**ADENIJI JCA**

I have read in advance, the lead judgment delivered this morning by my learned brother IKONGBEH J.C.A and I agree with his reasoning and conclusion. I only wish to add that election petitions being in a class of their own need to be handled with a measure  
 D of flexibility.

It will appear that no specific provision was made in the Electoral Act 2002 for a political party wishing to withdraw from an election. There are however, provisions for a political party wishing to  
 E withdraw its candidate and for a candidate wishing to withdraw from an election. See Section 23 and 25 of the Electoral Act 2002. That is not to say however that a political party cannot withdraw from an election. It is a constitutional right but it needs to inform the candidate it has sponsored and whose fate is at stake. That development  
 F may appear novel and that is a good reason why the matter ought to have gone to full trial to give the candidate the opportunity of stating his views on the development. It does not serve the interest of justice to shut a candidate up. Determination of the petition at full trial would  
 G have enabled the Tribunal to have a second look at the situation and make a judicial pronouncement on same.

For the above reason and particularly for the reasons given in the lead judgment, I too allow the appeal and do abide by the consequential orders made in the lead judgment.

H