

SUPREME COURT OF NIGERIA
6TH MARCH, 2009. SC. 153/2007
CORAM:- D. MUSDAPHER, G. A. OGUNTADE, W. S. N.
ONNOGHEN, I. F. OGBUAGU, J. O. OGEBE, JJSC

HON. DR. OKECHUKWU UDEH APPELLANT
AND

1. BARRISTER HANDEL OKOLI
2. INDEPENDENT NATIONAL RESPONDENTS
ELECTORAL COMMISSION (INEC)
3. PEOPLES DEMOCRATIC PARTY (PDP)

ELECTIONS - Candidates - Substitution of - Applicability of party guidelines - The applicable law on the issue of substitution is s. 34 of the Electoral Act 2006 - Irrespective of the provisions of party guidelines (H1)

POLITICS - Party Candidates - Substitution of - Reasons for - To state the reason as "insufficient information" - Is to assign no reason whatsoever for the substitution (H2)

JUDGMENTS - Binding effect - It remains valid and binding on parties - Until set aside by a court of competent jurisdiction - So qualification of appellant was not in issue as at 20/2/07 (H3)

ELECTIONS - Candidates - Substitution - Cogency of reason - In view of existing court judgments on the qualification of the appellant - Any reason for substitution based on his disqualification - Cannot be cogent (H4)

FACTS

The plaintiff/appellant sued the defendants/respondents at the Federal High Court claiming sundry declarations and orders by which he contested the substitution of his name with that of the 1st respondent as the candidate of People's Democratic Party for the Federal House of Representative elections of 21st April, 2007. It is not in dispute that the appellant emerged winner in the primaries conducted by the party, whereupon his name was forwarded to INEC and published at the local government level.

The 2nd respondent counterclaimed for a declaration that the appellant was not qualified to contest. After hearing, the learned trial judge set aside the substitution of the appellant but held in addition that the appellant was not qualified to contest. This resulted in an appeal by the 2nd respondent, and cross-appeal, by the appellant to the Court of Appeal. The court held that the appellant was qualified to contest, but also held that his substitution was valid. Still dissatisfied, the appellant has brought this further appeal against the decision of the Court of Appeal upholding his substitution.

ISSUE FOR DETERMINATION

"Whether the substitution of the appellant with the 1st respondent as the 3rd respondent's candidate for the April 21st, 2007 election in question was in compliance with section 34 of the Electoral Act, 2006. "

HELD (Unanimously allowing the appeal per **ONNOGHEN JSC**) ***ELECTIONS - Candidates - Substitution of***

1. The other issue as to whether the substitution was in compliance with the guideline of the 3rd respondent is really of no moment as the substantive law on the issue of substitution of a candidate remains section 34 of the Electoral Act, 2006 irrespective of whatever a party's guidelines may provide particularly when what it provides is not contrary to that law. The guidelines cannot override the provisions of the Act. (p. 732 B)

Party Candidates - Substitution of - Reasons for

2. There is no doubt whatsoever that for a political party seeking substitution of a candidate for an election under section 34 of the Electoral Act, 2006 to state in its application to INEC simply that the substitution is sought on the ground of insufficient information is to assign no reason whatsoever for the desired change.

The above is what the 3rd respondent stated in the letter of application for the substitution in question dated 19/2/07. (p. 733 H)

JUDGMENTS - Binding effect

3. It is obvious that the primary reason for the substitution as can be gathered from the letter of 20/2/07 *supra*, centres on the alleged qualification of the appellant to contest the election, which issue ap-

pears to be presented therein as still being subjudice. It is however important to note that as at the 19th and 20th February, 2007, the decision of the High Court of the Federal Capital Territory, holden at Zuba in Suit NO.FCT/HC/CV/411/07 which declared in effect, that the appellant is qualified to contest the election still subsisted as it had not been set aside on any appeal. It is settled law that a judgment or ruling of a court remains valid and binding on the parties until set aside by a court of competent jurisdiction. (p. 735 A/D)

Candidates - Substitution - Cogency of reason

4. From whatever angle one looks at the issue, the competent courts of law have found/held that appellant is qualified to contest the election in question and therefore any reason of disqualification of the appellant to contest the election as constituting the ground for substitution of the appellant with the 1st respondent cannot be cogent and verifiable particularly as the appellant's qualification to contest the said election has been positively and manifestly demonstrated by the judgments of the courts; i.e. the High Court of the Federal Capital Territory, holden at Zuba and the Lower Court on the cross appeal. (p. 736 A)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. Exhibit 9 is suspect

Exhibit 9 which appears at page 508 of the Records, is the letter dated 20th February, 2007 and was/is also addressed to Prof. Maurice Iwu.

I note that this letter, was merely initialled and without the signature of Sen. (Dr.) Amadu Ali. The name that appears herein is "Senator Dr. Amadu A. Ali, fss; GCON. Somebody whose names are not stated, signed for National Secretary. This letter, is suspect as to its originality and authenticity, in my humble but firm view. (pp. 740 F/ 741 D)

REPRESENTATION

L. O. Fagbemi Esq., SAN for the appellant with him are Messrs. K. O. Fagbemi; A. O Popoola; I. G. Ararume and B. A. Oyun.
D. D. Dodo Esq., SAN for the 1st respondent/cross appellant with

him are C. U Ekomaru; A. Ikechukwu Ezechukwu and Maureen Onyiuke (Miss), A. T Ude Chukwu; Paulyn Abhulimen; Chinedu Umeh and Kauna, Penzin.

O. J. Nnadi Esq. for the 2nd respondent with him are Emeka Okoli and Jane Ebubedike.

B Dr. Bello Fadile for the 3rd respondent/cross respondent.

Olatunde Adejuyi Esq. for cross respondent with him is R. Isamotu Esq.

C **STATUTES REFERRED TO**

Electoral Act, 2006, ss. 32 and 34

Constitution of the Federal Republic of Nigeria, 1999, s. 36

LEAD JUDGMENT BY ONNOGHEN JSC

D This is an appeal against the judgment of the Court of Appeal
holden at Abuja in Appeal NO.CA/A/102/2007 delivered on the 4th
day of June, 2007 allowing the appeal of the present 1st respondent
against the judgment of the Federal High Court, holden at Abuja in
Suit NO. FHC/ABJ/CS/188/2007 delivered on the 19th day of April,
E 2007.

The appellant, as plaintiff, instituted Suit NO. FHC/ABJ/CS/
188/07 at the Federal High Court holden at Abuja by way of writ of
summons claiming the following reliefs against the defendants/respon-
F dents jointly and severally:-

“1. Declaration that the option of changing or substituting a
candidate whose name is already submitted to the 1st defendant
INEC by a political party is only available to a political party and/or
INEC under the Electoral Act, 2006 if the candidate is disqualified by
G a court order.

2. Declaration that under section 32(5) of the Electoral Act,
2006 it is only a court of law by an order that can disqualify a duly
nominated candidate of a political party whose name and particulars
have been published in accordance with section 32 (3) of the Elec-
H toral Act, 2006.

3. Declaration that there are no cogent and verifiable reasons
for the 1st and 2nd defendants to change the name of the plaintiff
with that of the 2nd defendant as the candidate of the Peoples Demo-
cratic Party (PDP) for the April 21st, 2007 election into the Federal

House of Representative for Orumba North/South Federal constituency in Anambra State.

4. Declaration that it is unconstitutional illegal and unlawful for the 1st and 2nd defendants to change the names of the plaintiff with that of the 2nd defendant as the Federal House of Representatives candidate of the Peoples Democratic Party (PDP) for Anambra State in the forth coming National Assembly Election in Anambra State after the plaintiff has been duly nominated and sponsored by the Peoples Democratic Party as its candidate and after the 1st defendant has accepted the nomination and sponsorship of the plaintiff with a cleared certificate issued by the 3rd defendant and published the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006, the 3rd defendant having failed to give any cogent and verifiable reasons and there being no High Court order disqualifying the plaintiff.

5. Declaration that the decision to substitute or the substitution of the name of the plaintiff who has acquired a vested right and without being afforded a hearing before the decision to substitute his name is null and void for violating the provision of section 36 of the 1999 constitution which guarantees the plaintiff's right to fair hearing.

6. An order setting aside the purported steps taken by the 1st and 3rd defendants purporting to substitute the name of the plaintiff with that of the defendant as the candidate of the Peoples Democratic Party (PDP) for the April 21st, 2007 general election into the Federal House of Representatives for Orumba North and South Federal Constituency in Anambra State.

7. An order for mandatory injunction compelling the 1st defendant, its agents, privies or howsoever called to recognize the plaintiff as the candidate of the Peoples Democratic Party for the April 21, 2007 General Election into the Federal House of Representatives for Orumba North and South Federal Constituency in Anambra State.

8. An order of perpetual injunction restraining the defendants jointly and severally by themselves, their agents, privies or assigns from changing or substituting the name of the plaintiff as the Anambra State Peoples Democratic Party National Assembly candidate for the April, 2007 Anambra State Federal House of Representatives Election unless or until a court order is made disqualifying the plaintiff

and/or until cogent and verifiable reasons are given as required under section 34(2) of the Electoral Act, 2006.

The 2nd defendant counter claimed against the plaintiff/appellant in the following terms:-

- (a) A declaration that having been indicted by a judicial panel
 B and such indictment having been re-accepted by Anambra State House of Assembly who impeached him the plaintiff/2nd defendant is not qualified to contest the April 21st, 2007 Election into the Orumba North and South Federal Constituency of Anambra State.
- (b) An order restraining the INEC i.e. the 2nd defendant (in
 C the counter claim) from accepting the plaintiff as candidate for the elections or changing the name of the counter-claimant with that of the plaintiff

It is not disputed that the appellant emerged the winner in the
 D primaries conducted by the Peoples Democratic Party to select the candidate to be nominated and sponsored to contest the election into the Orumba North/South Federal Constituency of Anambra State. The 1st respondent in this appeal came second in the said primary election. The name of the appellant was consequently forwarded to
 E INEC the 2nd respondent in this appeal, and published at the local government level. The publication resulted in many petitions challenging the eligibility of the appellant to contest the election. The Peoples Democratic Party, 3rd respondent, investigated the substance
 F of the petitions against the appellant which petitions were based on his activities during his tenure as Deputy Governor of Anambra State, the issues raised being his impeachment, purported pardon by the Governor of Anambra State and the subsequent annulment of the impeachment by the Anambra State House of Assembly. In view of
 G the law suits, the 3rd respondent decided to substitute the name of the appellant with that of the 2nd respondent who, as stated earlier in this judgment, was second in the primary election, resulting in the institution of the main suit, the reliefs of which I had earlier reproduced.

H In sum, while the issue in contention in the main suit is the substitution of the 2nd respondent for the appellant as candidate for the election in question, that of the counter claim remains the disqualification of the appellant to contest the said election.

In a considered judgment, the learned trial judge set aside the

substitution of the appellant but held in addition that the appellant was not qualified to contest the election. Both parties were not satisfied with the judgment resulting in an appeal by the 2nd respondent and a cross appeal by the appellant. In its judgment, the lower court set aside the decision of the trial court which set aside the substitution of the appellant by the 2nd respondent in the main appeal and also set aside the order of the said court disqualifying the appellant from contesting in the election. In other words, both appeals succeeded and were allowed by the lower court. B

The instant appeal however is against the decision of the lower court in the main appeal - relating to substitution of the appellant. There is however, no cross appeal by the respondents or any of them against the decision of the lower court on the cross appeal, following the withdrawal of the cross appeal at the hearing of this appeal. In other words, the appellant remained qualified to contest the election if the substitution is found not to have been validly made. C D

The issues for determination in this appeal, as identified by the learned senior counsel for the appellant, L. O Fagbemi Esq., SAN in the appellant's brief filed on the 24th day of April, 2008 and adopted in argument of the appeal, are as follows:- E

(1) Whether the 3rd respondent proved compliance with the mandatory provisions of the Electoral Act, 2006 in purporting to substitute or change of the name of the plaintiff and whether the failure to afford the plaintiff a fair hearing before the change has not occasioned a miscarriage of justice. Grounds 1, 2, 3, and 6. F

(2) Whether the 3rd respondent complied with its own guideline in purporting to substitute the name of the plaintiff/appellant and whether a breach or non-compliance with the provisions of the guidelines will not render the substitution of the plaintiff name null and void. Grounds 4 and 5. G

On the other hand, Maureen Onyiuke Esq., in the 1st respondent's brief of argument filed on the 2nd day of May, 2008 submitted the following three issues for the determination of the appeal: H

"1. Whether the substitution of the appellant with the 1st Respondent as the 3rd Respondent's candidate for the April 21st, 2007 elections into the House of Representatives for Orumba North/South Federal Constituency of Anambra State, was effected in compliance

with section 34 of the Electoral Act, 2007 (sic).

2. Whether the right to fair hearing is available to the Appellant under the substitution referred to in paragraph (1) above, (sic)

3. Whether the 3rd Respondent complied with its Electoral guidelines and whether non-compliance thereof can invalidate the substitution effected under Section 34 of the Electoral Act, 2007 (sic)
“.

The above issues are identical with the three issues identified for determination by O.J. Nnadi Esq., learned counsel for the 2nd respondent in the 2nd respondent's brief of argument filed on 9th May, 2008.

Before proceeding to deal with the issue(s) as formulated by learned counsel for the relevant parties, it is very necessary to observe that it would always pay us better if issues are limited really to those that are necessary for the determination of the dispute between the parties as arising from the grounds of appeal which in turn must relate to the substance of the decision by the lower court. In the instant case, the issues for determination have been unnecessarily expanded and multiplied to include those that are really not relevant having regard to the decision of the lower courts, facts and circumstance of this case.

I had earlier reproduced the reliefs sought by the appellant in the trial court. It is important to note that the court, in determining the case identified the following two issues only, one each for the main case and the counterclaim; in its judgment to be found at pages 716-720 of Vol.1 of the record of appeal; particularly at pages 716 and 717:

"I have seen the pleadings, counter affidavit and affidavit filed by all parties listened to all submission (sic) of counsel and adoption of written addresses. I find that two issues arises, (sic)

(1) Whether the plaintiff has been properly substituted in accordance with Section 34 of Electoral Act

(2) If positive whether he has been properly fielded fulfillly (sic) in him all requirement of the Constitution".

In resolving the issues, the trial court concluded inter alia, thus at page 719 of the record;

"On the whole, the reliefs of the plaintiff in 1,2,3,4,5 are refused. I grant relief (sic) 6, 7 and 8 of the originating summons.

I uphold the relief A and Part of relief B of the counter claim of 2nd Defendant and relief B to the extent that 1st Defendant should be restrained from accepting the Plaintiff as a candidate for the election “.

The relevant reliefs had earlier been reproduced in this judgment. It should be noted that the present appellant did not appeal against the refusal of the trial court to grant reliefs 1,2,3,4 and 5 but cross appealed only on the grant of the reliefs in the counter claim, and submitted the following five issues for the determination of the cross appeal to wit.

“1. *Whether the learned trial judge was not in serious error in granting the counter-claim of the 2nd respondent to the effect that the plaintiff/cross appellant was not qualified to contest election.*

2. *Whether the learned trial judgment had jurisdiction to determine whether Anambra State Governor can lawfully pardon the plaintiff for any offence/indictment arising from impeachment when:-*

(a) *when such a complaint is not justiciable before the Federal High Court;*

(b) *there was no claim challenging the exercise of power by the Executive Governor of Anambra State and;*

(c) *Anambra State who is a necessary party to determine the propriety of the order was not joined.*

3. *Whether the learned trial judge evaluated the piece of evidence before him in coming to his decision on the counter-claim.*

4. *Whether the grant of reliefs 6, 7 and 8 of the claim does not automatically mean the defeat of the counter-claim, and*

5. *Whether the counter-claim is an abuse of processes.*

It is very obvious that the cross appeal raised no issue with regard to the refusal of the claims in question neither did the lower court decide on them.

The instant appeal is based mainly on the decision of the lower court on the main appeal which also did not challenge the decision of the trial court on the refusal to grant the said reliefs but mainly on the holding setting aside the substitution of the present 1st respondent for the appellant. It is therefore very clear that the issue or sub-issue as to “*whether the failure to afford the plaintiff a fair hearing before the change has not occasioned a miscarriage of justice*” as raised in issue 1 of the appellant’s brief does not arise at all and therefore, very

irrelevant particularly when the trial court specifically refused to grant claim 5 which grounded the claim for fair hearing and there was no appeal against that refusal as earlier demonstrated in this judgment. In short, the substance of this appeal lies in the main issue which is and remains: whether the substitution of the appellant with the 1st respondent as the 3rd respondent's candidate for the April 21st, 2007 election in question was in compliance with section 34 of the Electoral Act, 2006. I intend to determine this appeal solely on that issue.

The other issue as to whether the substitution was in compliance with the guideline of the 3rd respondent is really of no moment as the substantive law on the issue of substitution of a candidate remains section 34 of the Electoral Act, 2006 irrespective of whatever a party's guidelines may provide particularly when what it provides is not contrary to that law. The guidelines cannot override the provisions of the Act.

In arguing the issue, learned senior counsel for the appellant, L. O Fagbemi Esq., SAN referred to the provisions of section 34 of the Electoral Act, 2006 and submitted that a political party has the right to change its candidate for an election at least 60 (sixty) days to the election after which time, it can only effect the change when it gives cogent and verifiable reasons, except in case of death of the candidate; that the reason assigned for the change is as stated in the letter dated 19th February, 2007 - exhibit E which simply stated that the name of the appellant was submitted "without enough information" which senior counsel said is no reason, let alone cogent and verifiable reason-relying on the case of Ugwu vs Araraume: that the lower court was in error when it relied on the letter of 20/2/2007 to hold that cogent and verifiable reasons were given by the respondent when at the material time there was a judgment of a competent court of law declaring that the appellant was qualified to contest, which decision still subsists and is binding. Learned senior counsel then urged the court to resolve the issue in favour of the appellant and allow the appeal.

On the part of the 1st respondent, it is submitted by Maureen Onyiuke Esq. that the 3rd respondent gave cogent and verifiable reasons for the substitution of the appellant as required by section 34 of the Electoral Act, 2006; that at the time of the substitution, there was reasonable fear and apprehension that the issue of the qualifica-

tion of the appellant to contest the election may not be concluded before 20/2/2007, the last date for substitution and as such it would be risky to field him as a candidate; that the requirements of section 34 (1) and (2) of the Electoral Act, 2006 were therefore met and urged the court to resolve the issue against the appellant and dismiss the appeal. B

In arguing issue 1, O. J Nnadi .Esq. for the 2nd respondent submitted in the 2nd respondent's brief of argument that "*the Court of Appeal is right in the decision of the court that the substitution of the appellant with the 1st respondent by the 3rd respondent was for cogent and verifiable reasons and satisfied the requirement of section 34 of the Electoral Act, 2006*"; that the lower court was right in relying on the letters dated 19/2/07 and 20/2/07 in coming to that conclusion and urged the court to resolve the issue against the appellant and dismiss the appeal. C D

Dr. Bello Fadile for the 3rd respondent stated in the brief of argument filed on 14/10/08 that the 3rd respondent not having any particular interest in the matter abides by whatever decision this court may take on the appeal.

Section 34 of the Electoral Act, 2006, the compliance therewith or otherwise of which the issue for determination in this appeal arose provides as follows:- E

"1. A political party intending to change any of its candidates for any election shall inform the commission of such change in writing not later than 60 (sixty) days to the election. F

2. Any application made pursuant to subsection (1) of the section shall give cogent and verifiable reasons. Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section". G

The question is whether the 3rd respondent in seeking to substitute the appellant with the 1st respondent gave cogent and verifiable reasons to secure the substitution. The trial court held that it did not while the lower court held that it did having regard to the contents of the letter dated 20/2/07. H

There is no doubt whatsoever that for a political party seeking substitution of a candidate for an election under section 34 of the Electoral Act, 2006 to state in its application to

INEC simply that the substitution is sought on the ground of insufficient information is to assign no reason whatsoever for the desired change, see Suit NO. SC/291/2007: Senator Hosea Ehinlanwo vs Chief Olusola Oke & Ors decided by the court on the 27th day of June, 2008.

B **The above is what the 3rd respondent stated in the letter of application for the substitution in question dated 19/2/07.** To that extent, it is my view that the said letter of 19/2/07 -exhibit E - is ineffective in securing the substitution sought as it contained no cogent and verifiable reason for the substitution as required by section 34 (2) of the Electoral Act, 2006 supra.

C Turning to the letter of 20/2/07 which the lower court held as containing the cogent and verifiable reasons for the substitution of the appellant with the 1st respondent, it is important to reproduce D the letter. It states as follows:-

*“Professor Maurice Iwu
Chairman,
Independent National Electoral-Commission (INEC)
Abuja.*

E **SUBSTITUTION: PDP CANDIDATE FOR ORUMBA NORTH/
SOUTH FEDERAL CONSTITUENCY, ANAMBRA STATE**

Please we wish to refer to our letter dated 19th February, 2007 on the above subject matter and forward a copy of the PDP Electoral Panel’s Report which declared Barrister Handel Okoli winner of the F Primaries.

The reasons supplied by the Panel has been subject of several law suits and legal opinions for which the Party is constrained to re-consider Dr. Okey Udeh’s nomination as one that is legally contro- G versial. Further attached are:

1. Motion for leave to appeal against Ruling obtained by Dr. Udeh dated 19/2/07

2. Motion Exparte date 19/2/07

3. Letter date 12th February, 2007

H *In view of the fact that the issue of his qualification is still subjudice and that the Court may not decide the matter before the last date for substitution, the Party considers it safer and more politically expedient to substitute Dr. Okey Udeh with Barrister Handel Okoli.*

This information is for your further necessary action please.

Senator Dradu A. Ali, fss, GCON

National Chairman

National Secretary"

It is obvious that the primary reason for the substitution as can be gathered from the letter of 20/2/07 supra, centres on the alleged qualification of the appellant to contest the election, which issue appears to be presented therein as still being subjudice. It is however important to note that as at the 19th and 20th February, 2007, the decision of the High Court of the Federal Capital Territory, holden at Zuba in Suit NO.FCT/HC/CV/411/07 which declared in effect, that the appellant is qualified to contest the election still subsisted as it had not been set aside on any appeal. It is equally important to note that even the alleged application for leave to appeal against that judgment as indicated in the letter of 20/2/07 was dated 19/2/07 as well as a motion exparte (i.e. both are dated 19/2/07). It is therefore very clear that as at 19/2/07 or even 20/2/07 the judgment as to the qualification of the appellant to contest the election had not been set aside and **it is settled law that a judgment or ruling of a court remains valid and binding on the parties until set aside by a court of competent jurisdiction.** In fact, there is no evidence on record that the decision was later set aside by an appellate court.

Another aspect of the issue of non-qualification of the appellant to contest the election has to do with the counter claim filed by the 1st respondent then 2nd defendant in the suit giving rise to this further appeal. It was, as made clear earlier in this judgment, based on the same issue of disqualification of the appellant. As we already know, the trial judge did find that the appellant was disqualified leading to a cross appeal to the Court of Appeal which cross appeal was allowed by that court. Initially there was an appeal by the 1st respondent against that decision which cross appeal was withdrawn by the learned senior counsel for the 1st respondent, D, D Dodo Esq., SAN on the 10th day of December, 2008 when this appeal was heard and consequently dismissed by this court. There is therefore no appeal against the decision of the lower court on the cross appeal thereby still confirming the finding of the High Court of the Federal Capital Territory holden at Zuba that the appellant is qualified to contest the election.

It is therefore clear that ***from whatever angle one looks at the issue, the competent courts of law have found/held that appellant is qualified to contest the election in question and therefore any reason of disqualification of the appellant to contest the election as constituting the ground for substitution of the appellant with the 1st respondent cannot be cogent and verifiable particularly as the appellant's qualification to contest the said election has been positively and manifestly demonstrated by the judgments of the courts; i.e. the High Court of the Federal Capital Territory, holden at Zuba and the Lower Court on the cross appeal.***

It is also crucial to point out that from the records it was the appellant who won the primary election of the party which made it possible for the party to forward his name as its candidate to INEC for the election in question. The 1st respondent was second in the election. It is not that the appellant did not win the primary election—though that would not have had any impact if no cogent and verifiable reasons were given for the substitution. However, the appellant having won the primary election as a result of which the 3rd respondent decided to sponsor him as its candidate for the election and the substitution of the 1st respondent for the appellant having been found to be contrary to the provisions of section 34 of the Electoral Act, 2006, the issue under consideration is therefore resolved in favour of the appellant and the appeal allowed for being meritorious.

The judgment of the lower court as it concerns the main appeal before that court is hereby set aside and the decision of the trial court restored except the aspect relating to the counter claim which was set aside by the lower court.

In view of the nature of this case and in order to promote the spirit of reconciliation, I make no order as to costs.

Appeal allowed.

H **MUSDAPHER JSC**

I have had a glance at the judgment of my Lord Onnoghen, JSC just delivered with which I entirely agree. For the same reasons contained in the judgment which I respectfully adopt as mine, I too, allow the appeal. I set aside the judgment of the Court of Appeal as it

concerns the main appeal and I restore the decision of the trial court except the aspect relating to the counter-claim which was set aside by the lower court. I make no order as to costs.

OGUNTADE JSC

B

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Onnoghen JSC. He has carefully considered the facts of this appeal and related these to the applicable principles of law. I entirely agree with him. I would also allow this appeal and make the same orders as in the lead judgment. I also subscribe to the order on costs.

C

OGBUAGU JSC

D

This is an appeal against the decision of the Court of Appeal, Abuja Division (hereinafter called “the court below”) delivered on 4th June, 2007, setting aside the Judgment of the Federal High Court, Abuja delivered on 19th April, 2007 and affirming the substitution of the name of the Appellant with that of the 1st Respondent/Cross-Appellant as the duly nominated candidate of the 3rd Respondent in the 21st April, 2007 elections into the National Assembly for Orumba North and South Federal Constituency of Anambra State.

E

Dissatisfied with the said decision, the Appellant, has appealed to this Court on four (4) Grounds of Appeal. He has formulated two Issues for determination, namely,

F

“(2) Whether the 3rd Respondent proved compliance with the mandatory provisions of the Electoral Act, 2006 in purporting to substitute or change the name of the Plaintiff/Appellant and whether the failure to afford the Plaintiff a fair hearing before the change has not occasioned a miscarriage of justice.

Grounds 1,2,3, and 6.

(1) Whether the 3rd Respondent complied with its own guideline (sic) in purporting to substitute the name of the Plaintiff/Appellant and whether a breach or non-compliance with the provisions of the guidelines will not render the substitution of the Plaintiff’s name null and void. Grounds 4 and 5”.

H

On its part, the 1st Respondent, formulated three (3) Issues

for determination, namely,

“1. Whether the substitution of the Appellant with the 1st Respondent as the 3rd Respondents’ candidate for the April 21, 2007 elections into the House of Representative for Orumba North/South Federal Constituency of Anambra State, was effected in compliance with Section 34 of the Electoral Act 2007.

2. Whether the right to fair hearing is available to the Appellant under the substitution referred to in paragraph (I) above.

3. Whether the 3rd Respondent complied with its Electoral guidelines and whether non-compliance thereof can invalidate the substitution effected under Section 34 of the Electoral Act 2007

The 2nd Respondent, formulated also three issues for determination. They read as follows:

“(i) Having regard to all the relevant laws and evidence before the court, whether the Court of Appeal was right in the decision of the Court of Appeal that the Appellant/Cross Respondent is not disqualified from contesting the election into Orumba North and South Federal Constituency in the April 2007 general election to the Federal House of Representatives.

“(ii) Whether from the relief sought in the Counter Claim of the Cross Appellant/Respondent the Court of Appeal was right in holding that, the Federal High Court had no jurisdiction to entertain the Counter Claim of the Cross Appellant.

“(iii) Whether the judgment in suit No. FCT/HC/CV/411/07 Between Perpetus Ezechukwu Nwankwo Vs. Dr. Okey Udeh can be relied upon so as to operate to estoppel the Cross-Appellant from claiming the relief sought in suit No. FHC/ABJ/CS/188/2007”.

On 10th December, 2008, when this appeal came up for hearing, the learned leading Counsel for the Appellant-Fagbemi, Esq., (SAN), adopted their Brief. He stated that the letter pleaded, was that of 19th February, 2007. He referred to page 377 of the Records. That even the letter of 20th February, 2007, did not and does not, contain cogent and verifiable reason for the substitution. He referred to Amaechi’s case (it is reported in (2007) 7-10 S.C. 172) and finally, urged the court, to allow the appeal.

Dodo, Esq. (SAN) - leading learned counsel for the 1st Respondent, also adopted their Brief. He referred to page 256 of the Records and he posed the question - “Did the PDP having regard to

all the circumstances, act on the side of caution? He submitted that the reasons were cogent and verifiable. He urged the Court, to dismiss the appeal and affirm the decision of the court below.

In respect of the Cross-Appeal, the learned (SAN), informed the Court that he has abandoned the same and therefore, withdraw the same. The Court, accordingly, dismissed the Cross-Appeal with costs. B

The learned counsel for the 2nd Respondent, - Nnadi, Esq., also adopted their Brief and urged the Court, to dismiss the appeal.

Dr. Fadile - learned counsel for the 3rd Respondent, adopted their Brief. He told the Court that they relied on the letter of 19th February, 2007 and not on the one said to be dated 20th February, 2007 and stated that they did not see it. He stated that he would leave the matter to the Court to determine. C

Fagbemi, Esq., (SAN) thereafter, told the Court that with the withdrawal of the Cross-Appeal, there was no inhibition on the way of the Appellant. D

Judgment was thereafter, reserved till to-day.

I note that from the Statement of Claim of the Plaintiff/Appellant, the 1st Defendant, is Independent National Electoral Commission (INEC) while the 2nd Defendant, is Barrister Handel Okoli. But in this appeal, the 1st Respondent is Okoli, Esq., while the 2nd Respondent, is Peoples Democratic Party (PDP). E

In my respectful view, the crux or the real and only lone issue in this appeal is Issue 1 of the 1st Respondent. Part of Issue 1 of the Appellant and issue 2 of the 1st Respondent, which deal with fair hearing, are now of no moment, because, in my respectful view, of the withdrawal of the Cross-Appeal which had been dismissed. F

Section 34 of the Electoral Act, 2006 (hereinafter called "the Act") provides as follows: G

"(1). A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection (1) of this Section shall give cogent and verifiable reasons. H

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this Section".

Did the 3rd Respondent, in seeking to substitute or replace the Appellant with the 1st Respondent, give cogent and verifiable reasons for the said substitution? I or one may ask.

In Exhibit 8 which appears at page 507 of the Records, the letter of February 19, 2007 addressed to Prof. Maurice Iwu, Chairman, INEC, Abuja, reads as follows:

“SUBSTITUTION: PDP CANDIDATE FOR ORUMBA NORTH/SOUTH FEDERAL CONSTITUENCY, ANAMBRA STATE.

This is to confirm that Barr. Handel Okoli is the PDP Candidate for Orumba North/South Federal Constituency, Anambra State.

Barr. Handel Okoli substitutes the earlier name for the aforementioned constituency which was submitted without enough information.

This is for your necessary action.

[the underlining mine]

SIGNED

SIGNED

*SEN. (DR.) AMADU ALI, GCON OJO MADUEKWE, CFR
National Chairman National Secretary”.*

The above surely and certainly, with respect, contains no cogent or verifiable reasons for the substitution. See the cases of Araraume v. INEC (2007) 9 NWLR (Pt.1038) 127 @ 159-160 affirmed by this Court in Engr. Ugwu & anor. v. Senator Ararume & anor. S.C. 63/2007 of 5th April, 2007 (it is now reported in) (2007) 12 NWLR (Pt. 1047) 365, 367 @ 384-385: (2007) 6 S.C. (Pt.I) 88 and Senator Ehinlanwo v. Chief Oke & 2 ors. S.C. 291/2007 delivered on 27th June, 2008. (it is now reported in) (2008) 6-7 S.C. (Pt.II) 123. Exhibit 9 which appears at page 508 of the Records, is the letter dated 20th February, 2007 and was/is also addressed to Prof. Maurice Iwu. It bears the same heading or subject matter as that in Exhibit 8.

It reads as follows:

“SUBSTITUTION: PDP CANDIDATE FOR ORUMBA NORTH/SOUTH FEDERAL CONSTITUENCY, ANAMBRA STATE

Please we wish to refer to our letter dated 19th February 2007 on the above subject matter and to forward a copy of the PDP Electoral Panel’s Report which declared Barrister Handel Okoli winner of the Primaries.

The reasons supplied by the Panel has been subject of several

Law suits and legal opinions for which the Party is constrained to reconsider Dr. Okey Udeh's nomination as one that is legally controversial. Further attached are:

1. Motion for Leave to appeal against Ruling obtained by Dr. Udeh dated 19/2/07

2. Motion Exparte dated 19/2/07

3. Letter dated 12th February, 2007

In view of the fact that the issue of his qualification is still subjudice, and that the Court may not decide the matter before the last date for substitution, the Party considers it safer and more politically expedient to substitute Dr. Okey Udeh with Barrister Handel Okoli.

*This information is for your further necessary action please.
[the underlining mine]*

Signed.

Senator Dr. Amadu A. Ali, fss; GCON.

Signed.

National Chairman.

for: National Secretary".

I note that this letter, was merely initialled and without the signature of Sen. (Dr.) Amadu Ali. The name that appears herein is "Senator Dr. Amadu A. Ali, fss; GCON. Somebody whose names are not stated, signed for National Secretary. This letter, is suspect as to its originality and authenticity, in my humble but firm view. However, Dr. Fadile maintains that they didn't see or receive it. I am bound to ignore it and I do ignore and discountenance it. I believe it was made for the purpose of this case. Even if I regard it as genuine, but there is the Judgment of the trial court holding that the Appellant is qualified to contest the said election which, has not been set aside by an Appellate Court. It is conceded in the above letter that the matter or issue, is still subjudice. However, the Cross-Appeal, having been withdrawn, I agree with Mr. Fagbemi, (SAN), that the effect, is that the Appellant's appeal remains unchallenged. Afterwards, the Records show the Appellant in the Primaries held by the 3rd Respondent, won. So be it.

Before concluding this Judgment, I note that the trial court in its said Judgment at page 719, stated inter alia, as follows:

"On the whole the reliefs of Plaintiff in 1,2,3,4,5 are refused, I grant relief (sic) 6, 7, and 8 of the Originating Summons"

Reliefs 6, 7 and 8 read as follows:.

“6. *AN ORDER* setting aside the purported steps taken by the 1st and 3rd Defendants purporting to substitute the name of the plaintiff with that of the 2nd defendant as the candidate of the Peoples Democratic Party (PDP) for the April 21st, 2007 general election into the Federal House of Representatives for Orumba North and South
B Federal Constituency in Anambra State.

7. *AN ORDER* of mandatory injunction compelling the 1st Defendant, its servants, agents, privies or howsoever called to recognize the plaintiff as the candidate of the Peoples Democratic Party (PDP)
C for the April 21st 2007 general election into the Federal House of Representatives for Orumba North and South Federal Constituency in Anambra State,

8. *AN ORDER* of perpetual injunction restraining the defendants jointly and severally by themselves, their agents, privies or assigns from changing or substituting the name of the plaintiff as the
D Anambra State Peoples Democratic Party National Assembly candidate for the April, 2007 Anambra State Federal House of Representatives election unless or until a court order is made disqualifying the Plaintiff and or until cogent and verifiable reasons are given as re-
E quired under section 34(2) of the Electoral Act, 2006”.

It is from the foregoing and the more detailed Lead Judgment of my learned brother, Onnoghen, JSC, just delivered and which I had the privilege of reading before now, that I agree with him, that
F there is merit in this appeal. I too, allow the appeal and I abide by the consequential orders contained in the lead Judgment including that in respect of costs.

G **OGEBE JSC**

I had a preview of the lead judgment of my learned brother Onnoghen, JSC just delivered and I agree entirely with his reasoning and conclusion in allowing the appeal. I also allow the appeal and endorse the consequential orders made in the lead judgment.

H