

SUPREME COURT OF NIGERIA
28TH JANUARY, 2011. SC. 282/2010
**CORAM:- F. F. TABAI, I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, J. A. FABIYI, B. RHODES-VIVOUR, JJSC**

SENATOR JULIUS ALI UCHA APPELLANT
AND
1. DR. EMMANUEL ONWE
2. RETURNING OFFICER, EBONYI
CENTRAL SENATORIAL DISTRICT
3. INDEPENDENT NATIONAL RESPONDENTS
ELECTORAL COMMISSION (INEC)
4. PEOPLES DEMOCRATIC PARTY
5. THE CLERK OF NATIONAL ASSEMBLY

JURISDICTION - Courts - Pre-election matters - Authorities - Action Congress v. INEC - The case did not decide the issue - As to whether Election Tribunal had jurisdiction - To hear and determine pre-election matters (H1)

ELECTIONS - Tribunals - Jurisdiction - S. 285 (1) (a) of 1999 Constitution - Scope - The provision confers jurisdiction on Election Tribunals over post election disputes - And not pre-election disputes (H2)

JUDICIAL PRECEDENTS - Elections - Nature of dispute - Substitution of candidates - Enemuo v. Duru - The case is distinguishable from the instant case - As the substitution on which the petition therein was predicated - Was made after the election (H3)

ELECTION PETITIONS - Bases - Candidates - Disqualification of - Where the reason for such disqualification arose from party nomination process - It cannot validly be a basis for an election petition (H4)

COURTS - Jurisdiction - Absence of - Effect - Where a court lacks jurisdiction over a matter - Its proceedings and judgment given therein - Is null and void - And liable to be set aside (H5)

FACTS

The 1st respondent, as petitioner, had petitioned the National Assembly Governorship and Legislative Houses Election Petition Tribunal, Abakaliki, Ebonyi State. The petition was challenging the return of appellant as the senator for Ebonyi Central Senatorial District in the 2007 general elections. 1st respondent's case was that he was the properly nominated flag-bearer of the 4th respondent in respect of the election into the said senatorial seat but that 4th respondent had purported to substitute his name with that of the appellant before general elections. The 4th respondent eventually won at the general elections, leading to the declaration and return of appellant as senator in respect of the said senatorial district. 1st respondent, by the petition sought sundry reliefs for the purpose of declaring him the lawful candidate of 4th respondent in the general elections and winner of the senatorial seat. At the end of hearing, the tribunal dismissed the petition.

Aggrieved, 1st respondent appealed to Court of Appeal against the judgment of the tribunal. Also with leave of court, 4th respondent filed an appeal against an interlocutory ruling of the tribunal. In its judgment, the Court of Appeal allowed 1st respondent's appeal and dismissed 4 respondent's interlocutory appeal. Dissatisfied, appellant appealed to the Supreme Court in respect of the Court of Appeal's decision on both appeals but later withdrew his appeal against the decision of the interlocutory appeal. In sum, the appellant by his appeal, challenged the jurisdiction of the tribunal and as such Court of Appeal to hear and determine the petition and its appeal, on the ground that the cause of action bordered on pre-election matters.

ISSUES FOR DETERMINATION

1. Whether it is today settled law, that all pre-election matters including nomination and substitution of candidates, matters preceding the actual holding of the elections, are only cognizable within the exclusive jurisdiction of regular courts and outside the purview of the jurisdiction of Election Tribunals.

2. Whether the Court of Appeal was in error in relying on its two previous decisions namely *INEC v. AC* (2009) ALL FWLR (part 480) 732 and *SUNDAY v. INEC* (2008) ALL FWLR (PART 431) 985 to held that, the issues of invalid nomination and/or substitution preceding the actual election are nevertheless challengeable in an elec-

tion petition under section 745 (l) (a) and (d) of the Electoral Act 2006; and

3. If the instant election petition was incompetent ab initio and not cognisable before the Election Tribunal, what is the effect of assumption of jurisdiction of the Court of Appeal within the purview of section 246 (3) of 1999 Constitution?

HELD (Unanimously allowing the appeal per **TABAI JSC**)

JURISDICTION - Courts - Pre-election matters - Authorities

1. In **ACTION CONGRESS v. INEC** (supra) the Court of Appeal relying on the decision of this court in **AMAECHI v. INEC** (supra) assumed jurisdiction to hear both the appeal and cross-appeal expeditiously, the matter being a pre-election matter. The action was instituted at the Federal High Court. The issue of whether this Election Tribunal had no jurisdiction to hear and determine pre-election matter was not expressly decided.

In **AMAECHI v. INEC** (2008) 5 NWLR (part 1080) 227 at 314, this court per Katsina-Alu JSC (as he then was) held that the ordinary courts of the land had unfettered jurisdiction over pre-election matters. (p. 332 E)

ELECTION TRIBUNALS - Jurisdiction

2. In **AGBAKOB A v. INEC** (2008) 18 NWLR (part 1119) 489 at 554, this court per Chukwuma-Eneh declared:-

“Section 285 (1) (a) of the 1999 Constitution deals with whether any person has been validly elected as a member of the National Assembly. The provision is clear and unambiguous and literally construed, is concerned with post election disputes. Any dispute resulting from the conduct of an election is not a pre-election dispute but a post election dispute. The dispute here has arisen from the substitution of the appellant by the 2nd respondent as its candidate after winning at the party primary. The opinion of this court on this point as per decided cases, I shall marshal out later on in this segment of my reasoning and they are binding on this court.

There is no basis for this case to inure to the election tribunal, which is a special tribunal created by the Constitution, to handle post election disputes. It has no jurisdiction over pre election disputes” (emphasis mine).

The Court of Appeal also reiterated the principle in ZARANDA v. TILDE (2008) 10 NWLR (part 1094) 184 at 210, where it held that the Governorship and Legislative Houses Election Tribunal sitting in Bauchi, had no jurisdiction to entertain a petition on a ground questioning nomination or substitution of a candidate for an election. (p. 333 C)

JUDICIAL PRECEDENTS - Elections - Nature of dispute

3. In addition to foregoing, the petitioner/1st Respondent also relied on ENEMUO v. DURU (2004) 9 NWLR (part. 877) 75 and OBI v. OBANA (2005) 6 NWLR (part 920) 183.

In ENEMUO v. DURU, the case of the 1st Respondent was that he was duly nominated by his party (the PDP), screened and cleared, and indeed contested the election of the 16th April, 2003 and won and was duly issued with form EC8E (1) by the returning officer. Thereat, the 2nd - 4th Respondents purported to cancel, withdraw and invalidate the said form EC8E (1) and declared the Appellant winner of the said election. The 1st Respondent therefore filed a petition at the Election Tribunal which gave him judgment and granted the reliefs as claimed.

It is clear from the report that the petitioner actually contested the election and won. He was issued with a certificate of return. And the substitution on which the petition was predicated, was made after the election. The matter therefore was clearly a post-election matter over which the election tribunal had jurisdiction. In the circumstances, I hold that the authority does not support the principle postulated by learned counsel for the 1st Respondent. I have also read the case of OBANA v. OBI cited by learned counsel and I can say without any equivocation, that the case has no bearing whatsoever on the issue of proper venue for pre-election and post-election disputes. (p. 334 B/F)

ELECTION PETITIONS - Bases - Candidates

4. It was submitted therefore that by reason of the Appellants non-qualification arising from the nomination exercise of the 4th Respondent, the validity of his election was rightly questioned in the election petition.

That argument is with respect untenable. Section 66 (1) of the

Constitution makes specific provisions for a person's disqualification or non-qualification for election to the Senate or the House of Representatives.

Any of these disabilities spelt out in section 66 (1) of the Constitution can properly constitute a ground upon which a person's election can be questioned in an election petition. A person's disqualification or non-qualification based on or arising from the domestic nomination exercise of his political party, is clearly a pre-election matter over which the election tribunal has no jurisdiction. (p. 335 B/E)

COURTS - Jurisdiction - Absence of

5. The result of the above analysis is that the appeal has merit and should be and is hereby allowed. The nomination and/or substitution exercise of the 4th Respondent upon which the petition was predicated, was clearly a pre-election matter over which only the Federal High Court or the High Court of a State has jurisdiction. The National Assembly Election Tribunal, wherein the 1st Respondent presented the petition, lacked the jurisdiction to entertain the petition, which was therefore incompetent and ought to have been struck out. Consequently, I hold and declare that the proceedings including the judgment of the tribunal of the 13th September, 2007, is null and void and same is accordingly set aside. A fortiori, I declare that the proceedings including the judgment of the Court of Appeal dated the 16th of July, 2010, is null and void and accordingly set aside. (p. 335 H)

REPRESENTATION

Prof. Ilochi Okafor SAN with C. I. Okafor and N. Amugber for the Appellant.

Emeka Mozie with Ike Obidike and T. Mozie for the 1st Respondent.

I. S. Utuk for the 2nd and 3rd Respondents.

Emeka Etiaba with P. Ozoilisike, L. Ikpeazu (Miss), T. Nweke for the 4th Respondent.

CASES REFERRED TO

INEC v. AC (2009) ALL FWLR (part 480) 732

SUNDAY v INEC (2008) ALL FWLR (PART 431) 985

AMECHI v. INEC (2008) 5 NWLR (PART 1080) 227

- ODEDO v. INEC (2008) 17 NWLR (PART 1117) 554
 AGBAKOBA v. INEC (2008) 18 NWLR (PART 1119) 489
 ANPP v. ARGUNGU (2009) 17 NWLR (PART 1171) 445
 ZARANDA v. TILDE (2008) 10 NWLR (PART 10 94) 184
 ADEOCOUN v. FASHOGBON (2008) 17 NWLR (PART 1115) 149
 B UGWU v. ARARUME (2007) 12 NWLR (PART 1048) 365
 EHINLANWO v. OKE (2008) 16 NWLR (PART 1113) 357
 PAM v. MOHAMMED (2008) 16 NWLR (PART 1112) 1
 OKORI v. UDEH (2008) 10 NWLR (PART 1095) 213
 C ONYEKWELU v. INEC (2008) 14 NWLR (PART 1107) 317

STATUTES REFERRED TO

- Electoral Act, 2006, ss. 144,145 & 745
 Constitution of the Federal Republic of Nigeria, 1999, ss. 285, 246
 D & 145
 Supreme Court Act, s. 22

LEAD JUDGMENT BY TABAI JSC

- E The action which has culminated in this appeal before us was commenced at the National Assembly Governorship and Legislative Houses Election Petition Tribunal Abakaliki in Ebonyi State by way of a petition dated and filed, on the 19th of May 2007. The Petitioner,
 F DR. EMMANUEL ONWE was the Appellant at the court below and the 1st Respondent in this appeal before us. SENATOR JULIUS ALI UCHA was the 1st Respondent at the trial Election Tribunal and at the Court of Appeal. He is the Appellant in the appeal before us. The grounds relied upon for the petition were stated to be that:
 G “ 1. *The 1st Respondent was at the time of the election not qualified to content the election.*
 2. *The petitioner was validly nominated but was unlawfully excluded from the election.* ”
 The petitioner then proceeded to state the facts in support of the
 H petition in 31 paragraphs. They run as follows:-
 " i) *The Petitioner states that sometime in 2006, in preparation for the April, 2007, political parties including the 4th Respondent of which the Petitioner is a financial member, organized Primary Elections in order to elect their candidates.*

ii) *The Petitioner states that the 4th Respondent, published guidelines for the conduct of the said party primaries which served as rules for the primary election. The Petitioner shall at the trial rely on the said guidelines and hereby gives the 4th Respondent notice to produce.*

iii) *In compliance with the said guidelines, the Petitioner who was desirous of running for the senate purchased both the party's "Expression of Interest Form" and "Nomination Form" at the cost of One million, ten thousand Naira only (N1,010,000.00) and shall at the trial rely on Guarantee Trust Bank Tellers No. 3066795 and 3066793 of 15th November, 2006.*

iv) *The Petitioner states that after the payment of the said sum of One million, ten thousand Naira only (1,010,000.00) into the 4th Respondent's party's account, the Petitioner was issued with the 1st Respondent's payment receipt no. 09216 and thereafter, a clearance letter, showing that the petitioner was in good financial standing with the 4th Respondent to stand the party primaries. The petitioner shall at trial rely on the said documents and gives the 4th Respondent notice to produce.*

v) *The Petitioner states that as part of the preparations to the said party primaries, the 4th Respondent constituted two committees namely 'Screening Committee' and 'Ebonyi State Electoral Panel' which screened the Party's candidates for the Primaries and conducted the Primaries respectively.*

vi) *The Petitioner states that lie was screened by the said Screening Committee and cleared, and thereafter given PDP Clearance Certificate with No. 0001275. The petitioner pleads the said clearance certificate.*

vii) *The Petitioner states that after the party screening exercise, the 4th Respondent published the "List of all the senatorial aspirants" showing all the aspirants screened and cleared, to stand the 4th Respondent's senatorial primaries. The Petitioner shall rely on the document and hereby gives notice of produce.*

viii) *The Petitioner states that the 1st Respondent's name was not in the said list of aspirants.*

ix) *The 1st Respondent states that the said Senatorial Primaries for the Ebonyi Central Senatorial District was held on the 2nd of December, 2006, at which event the Petitioner won by an overwhelm-*

ing and undisputable majority.

x) *The Petitioner states that the result of the said primaries were as follows:-*

- | | | |
|---|----------------------------------|---------------|
| B | 1. Chief (Barr.) Felix N. Mgbada | - 213 Votes |
| | 2. Chikwu, Uzoyibo Catherine | - 119 Votes . |
| | 3. Dr. Onwe Emmanuel | - 1894 Votes |
| | 4. Chief I. U. Chima | - 72 Votes |

xi) *The Petitioner states that following his victory at the primaries, he was returned as the party's senatorial candidate for the Ebonyi Central Senatorial District and hereby pleads the result of the said primaries on Form No. Code PD004/NA "Result of National Assembly Primary Election 2006/2007" signed by Mr. John Igboke, returning officer and Mr. Peter Alelele, electoral officer dated the 2nd of December, 2006.*

xii) *The Petitioner states that meanwhile the 1st Respondent was Governorship aspirant of the 4th Respondent party and had bought and obtained the 4th Respondent's "Expression of Interest Form" showing that he intended to seek the office of Governor and also obtained the party's nomination form for the position of Governor of Ebonyi State.*

xiii) *The Petitioner states that the same screening committee also screened the 1st Respondent and cleared and published his name as Governorship aspirant.*

xiv) *The Petitioner further states that the 4th Respondent held Governorship primaries on the 9th of December, 2006, in which the 1st Respondent stood, contested for and lost.*

xv) *The Petitioner states that following his victory in the said party primaries, the electoral committee which conducted the primaries forwarded the report of the 4th Respondent party dated 2nd December, 2006 and signed by Alh. Mustapha Aleh, Chairman, Alh. Bashir Buha, member and Peter Alelele, member stating the holding of the primaries and confirming that the Petitioner won overwhelmingly. The petitioner hereby pleads the said report and gives notice to produce.*

xvi) *The Petitioner states that, thereafter the 4th Respondent under the hand of Dr. Ahmadu Ali, National Chairman, of the party and Chief Ojo Madueke National Secretary, submitted the name of the petitioner to the 3rd Respondent vide 3rd Respondent's form*

CF002C. *The Petitioner hereby pleads the said document and gives the 3rd Respondent notice to produce.*

xvii) *The Petitioner states that the 3^d Respondent screened him and that he went ahead to campaign vigorously for the said election.*

xviii) *The Petitioner states that sometime in February 2007, while he was out campaigning for the election of which he was candidate, he was informed that there were subterranean moves being made to substitute his name behind his back.*

xix) *The Petitioner states that he immediately traveled to Abuja to investigate the said information,*

xx) *The Petitioner states that, he stayed in Abuja monitoring the said information when on 20th February, he was informed that certain persons not being the authorized or all the authorized signatories of the 4th Respondent, has sent a substitution form to the 3^d Respondent purporting to have replaced or substituted the 1st Respondent with the petitioner.*

xxi) *The Petitioner states that upon his investigation, he found out as follows:*

1. *That the substitution form did not carry the signatures of the Petitioner as required by 3^d respondent and neither was any reason given for the purported substitution as required by 3^d respondent, nor was a letter of petitioner's withdrawal attached to the said form as required by 3^d respondent.*

2. *That the publicly recognised signature of the 4th Respondent's National Chairman, Dr. Ahmadu Ali was not on the said substitution form.*

xxii) *The Petitioner states that under the 3^d Respondent's Guidelines, a substitution must carry the signature of both the National Chairman and National Secretary before it can be have any effect or taken to have come from the party.*

xxiii) *The Petitioner states that he immediately wrote a letter objecting to the fake substitution to the National Chairman of the party dated 20th February 2006, complaining of the incompetence of the purported substitution and received verbal assurances both that the substitution did not emanate from the National Chairman and that the Petitioner should continue his campaign. The petitioner hereby pleads the said letter and gives notice to produce.*

xxiv) *The Petitioner further wrote a protest letter to the National Chairman of INEC in which he complained that the purported substitution fell outside the time stipulated for substitution. The Petitioner pleads the said letter and gives the 3^d Respondent notice to produce.*

B xxv) *The Petitioner thereafter returned to his senatorial district and began to campaign, whilst the 1st Respondent stayed back in Abuja and never campaigned.*

xxvi) *The Petitioner states that at no time did the 4th Respondent notify him that he was about to be or had been substituted.*

C xxvii) *The Petitioner further states that he was never disqualified by the 4th Respondent nor was any reason or reasons given as to why he should be substituted.*

D xxviii) *The Petitioner shall at trial state that he was never validly substituted.*

xxix) *The Petitioner States that, in the national Assembly Election of 21st April 2007, the ballot papers used for the election bore neither the pictures of the candidates nor their names but bore only the party names and symbols,*

E xxx) *The Petitioner states that those who voted for the party actually believed that they were voting for the Petitioner.*

xxxi) *The Petitioner states that he was surprised when after the election, the 2nd respondent purported to return the 1st Respondent as elected."*

F The Petitioner then sought the following reliefs:-

"WHEREFORE, your Petitioner prays that it may be determined, that:

a. *A Declaration that the Petitioner is the valid candidate of the 4th Respondent.*

b. *A Declaration that the 1st and 4th Respondents did not validly substitute the Petitioner,*

c. *A Declaration that the Petitioner was the candidate of the 4th Respondent who ought to have been returned by the 2nd and 3^d Respondents as winner of the Senate election for Ebonyi Central Senatorial District of 21 April 2007,*

d. *An Order nullifying or invalidating the return of the 1st Respondent as the winner of the said election.*

e. *An Order that Petitioner is the duly elected member repre-*

senting the Ebonyi Central Senatorial District of Ebonyi State in that he is the person validly nominated by the 4th Respondent as its candidate for the election.

f. An Order directing the 2nd & 3^d Respondents to issue a Certificate of Return to this Petitioner as winner of the election.

g. An Order of injunction preventing the Clerk of the National Assembly from swearing in the 1st Respondent as member of the National Assembly.

h. An Order of Injunction preventing the 3^d Respondent from issuing a Certificate of Return to the 1st Respondent on the 28th of May 2007 or any other date.

OR IN THE ALTERNATIVE

a. That the election be nullified entirely and that the 3^d Respondent be ordered to conduct a bye-election in the Senatorial District with the Petitioner as candidate of the 4th Respondent."

In support of the petition, the Petitioner/Respondent deposed to a paragraph affidavit statement of which paragraphs 17-28 are not in the record. The Petitioner/Respondent also listed the details of 20 documents on which he intended to rely at the hearing of the petition.

The Appellant as 1st Respondent at the Tribunal filed a 24 paragraph reply to the petition. The said reply runs as follows:-

"1. Save as is hereinafter expressly admitted, the 1st Respondent denies each and every allegation of fact contained in this petition as if each were set out herein 'and traversed seriatim, fact for fact, sentence for sentence and paragraph for paragraph and shall at the trial rely on all legal and equitable defences open to him and not specifically admitted.

2. Paragraph 1 of the petition is denied. The Petitioner did not contest the National Assembly election held on 21st April, 2007, for the Ebonyi Central Senatorial District. The Petitioner was not sponsored by the 4th Respondent for the said election and so could not have been elected or returned as winner at the said election.

3. Further, the 1st Respondent states that the Petitioner was not nominated for the said election.

4. 1st Respondent admits paragraph 2 of the petition.

5. Paragraph 3 is admitted only to the extent that the 4th Respondent is a political party in Nigeria. The 1st Respondent denies

that the Petitioner was a candidate sponsored by the 4th Respondent for the said election. 1st Respondent was the candidate sponsored by the 4th Respondent at the said election.

6. Paragraph 4 of the petition is admitted.

B 7. Respondent denies the fact contained in paragraph of the grounds for the petition. 1st Respondent was qualified to contest the election.

C 8. Paragraph 2 of the grounds is denied. The Petitioner was not validly nominated for the election and was not excluded from the election. The Petitioner was not a candidate at the election as he was not sponsored by the Respondent or any other registered political party in Nigeria.

D 9. Paragraph 2 (i) and (ii) of the grounds for the petition are hereby admitted except to state that the schedule primary election organized by the 4th Respondent for candidates wishing to contest the National Assembly election was postponed and rescheduled for another date. The 1st Respondent is not in a position to know whether the Petitioner is a financial member of the 4th Respondent's political party.

E 10. The 1st Respondent is not in a position to deny or admit the averments contained in paragraphs 2 (iii) and (iv) of the grounds for the petition as they are matters within the peculiar knowledge of the Petitioner and the 4th Respondent.

F 11. Paragraph 2 (vi) and (v) of the grounds of the petition are admitted except to state that the scheduled primary election organized by the 4th Respondent was cancelled and rescheduled for another date.

G 12. Paragraph 2 (vii) and (viii) of the grounds of the petition are admitted except to state that at the time of the rescheduled primary election for the National Assembly candidates the 1st Respondent's name was listed having been screened and cleared for the said rescheduled primary election.

H 13. Paragraph 2 (ix) (x) and (xi) of the grounds of the Petition are denied. Even though National Assembly primary election was scheduled for 2nd December, 2006, same was cancelled by the Respondent as it affect the Ebony Central Senatorial election following protests from other candidates and adverse Security Report sent to the Party Secretariat. There was no voting at the said primary elec-

tion scheduled for 2nd December, 2006, and no result was declared by Mr. Holm Igboke who was the returning officer for the scheduled primary election. The figures shown by the Petitioner are fictitious and made up for an election that did not hold.

14. Paragraph 2 (xii) of the grounds of the Petition is admitted. The 1st Respondent states that after the Governorship primary election at which the 1st Respondent withdrew following the decision of stake holders in Ebonyi State for a consensus candidate and before the rescheduled National Assembly primary election he bought his forms, paid the necessary fees to the 4th Respondent, was screened and cleared for the primary election, and contested and won the primary election. 1st Respondent was sponsored by the 4th Respondent for the National Assembly election and contested for same on 21st April, 2007, at which he was declared the winner having polled the majority of lawful votes cast at the election. Before the 1st Respondent bought his form to contest the rescheduled primary election, the 4th Respondent gave him the report of the electoral panel for the Ebonyi State on the conduct of National Assembly (Senate) primary election, 2006/2007 dated 4th December, 2006. The 1st Respondent shall at the trial rely on a copy of this report given to him.

15. Paragraph 2 (xiii) and (xiv) are admitted. Screening exercises continued after 9th December, 2007 for the National Assembly primary election.

16. In answer to paragraph 2 (xv) of the grounds of the Petition, the 1st Respondent states that he is not in a position to admit or deny the averment contained therein. 1st Respondent however restates the fact that the primary election scheduled for 2nd December, 2006 was cancelled and no result was declared by the returning officer Mr. John Igboke for the said scheduled primary election.

17. 1st Respondent is not in a position to admit or deny the averments contained in paragraphs 2(xvi) and (xvii) of the grounds of the petition except to deny that Petitioner campaigned for the National Assembly election, lie was never a candidate of the 4th Respondent for the said election. The 1st Respondent will at the trial contend that if the 4th Respondent's party Chairman and Secretary ever submitted petitioners' name to the 3^d Respondent same was done either by the fraud of the petitioner, misrepresentation or in error.

18. In answer to paragraph 2 (xviii), (xix), (xx), (xxi), (xxii), (xxiv) and (xxv) the 1st Respondent states as follows:-

a. That he is not aware of the facts contained therein as they are facts within the peculiar knowledge of the petitioner and the 3^d and 4th Respondents. The 1st Respondent campaigned throughout the period allowed in all the wards within the Senatorial District Petitioner did not campaign for the election having not been sponsored for the election by the 4th Respondent.

b. The 4th Respondent conducted the reschedule primary election and the 1st Respondent was the winner at the said primary election as a consensus candidate having been returned by all the delegates. The 4th Respondent submitted the name of the 7th Respondent as it candidate within the time prescribed by the 3^d Respondent. The 4th Respondent gave the 1st Respondent a copy of the result of the rescheduled primary election and the report of the State Electoral Panel that conducted the rescheduled primary election dated 14th December, 2006. 1st Respondent will rely on a copy of the said report at the trial.

c. The 1st Respondent as the candidate of the 4th Respondent contested the election and won the said election held on 21st April, 2007 and was so declared the winner of the election.

19. In answer to paragraph 2 (xxvi) (xxii) and (xxviii) the 1st Respondent states that Petitioner could not have been validly nominated when there was no primary election on 2nd December, 2006. The purported letter forwarding his name to the 4th Respondent and then to the 3^d Respondent must have been in error or obtained by fraud or misrepresentation by the Petitioner.

20. Paragraph 2 (xxx) of the grounds of the petition is denied. Before the date of the election names of the candidates for the election were published and posted on the notice board of the 3^d Respondent in all the Local Government offices within the senatorial district. The 1st Respondent campaigned for the election throughout the towns within the senatorial district. All persons who voted at the election voted for their choice candidate and those of them who voted for PDP candidate voted for the 1st Respondent as he was the party's candidate at the election known to the electorates.

21. Paragraph 2 (xxix) is admitted. 1st Respondent adopts the averments contained above in further answer.

22. *The return of the 3^d Respondent after the election was proper as the 1st Respondent was the candidate of the 4th Respondent of the said election. The 1st Respondent polled the majority of the lawful votes cast at the election.*

23. *The 1st Respondent shall before or at the trial contend that this petition is incompetent on the following grounds:-* B

i. The issues raised in this petition are clearly outside the jurisdiction of the Tribunal, ii, The Petitioner has no locus standi to bring this petition being a person not contemplated by the provisions of Section 144 (i) (a) and (b) of the Electoral Act, 2006. C

24. *The 1st Respondent shall at the trial urge the Tribunal, to dismiss or strike out this petition as lacking in merit and for want of jurisdiction.”*

He also listed six documents on which he intended to rely at the hearing of the petition. In addition, he also filed a 19 paragraph statement on oath.

The 2nd and 3rd Respondents also filed a 19 paragraph reply to the petition. Also the 4th Respondent (PEOPLES DEMOCRATIC PARTY)

filed a Reply of 27th paragraphs. It was dated 19/06/2007. Because of its importance, I shall also reproduce the reply. The Reply runs thus: E

1. *The 4th respondent shall during the trial urge the election petition tribunal to dismiss the petition on the ground of incompetence in that the petitioner lacks the locus standi to bring up the petition and with a substantial cost.* F

2. *The 4th respondent shall also urge the honourable tribunal to dismiss the petition on the ground that the court lacks the jurisdiction to entertain same.* G

Save as hereinafter expressly admitted, the 4th respondent denies each material allegation of facts contained in the petition as if same were set out serially and traversed seriatim.

3. *The Respondent denies paragraph 1 of the petition and in answer to the paragraph states that the 1st respondent was at the time of the election duly qualified to contest the election.* H

4. *The 4th respondent denies paragraph 2 (two) of the petition and in answer to the said paragraph avers that the petitioner was neither nominated by the 4th respondent nor his name unlawfully*

excluded from the election.

5. The 4th respondent admits paragraphs 2 (vii) of the petition.

6. The 4th respondent admits paragraph 2 (viii) of the petition to the extent that the fact that the 1st Respondent's name was not in the list did not foreclose the 1st respondent from being nominated by the 4th respondent as issues of screening and clearance are purely internal procedural arrangements within the 4th respondent.

7. The 4th respondent denies paragraph 2 (ix) of the petition. In further answer to the said paragraph, the 4th respondent states that the 2nd December 2006 Ebonyi State Senatorial primaries was inconclusive as it was marred by violence, insecurity and thuggery.

8. The 4th respondent denies paragraph 2 (x) of the petition and in answer to the paragraph states that since the election held on 2nd December 2006, was inconclusive, the petitioner could not have scored the number of votes the alleged or any votes at all. The 4th respondent thereby pleads the report of the electoral panel dated 4th December 2006.

9. The 4th respondent denies paragraph 2 (xi) of the petition and states that the petitioner was neither returned as the party's senatorial candidate nor issued with the 4th respondents results sheet.

10. In further answer to the said paragraph 2 (i) the 4th respondent states that following the cancellation of the 2nd December, 2006 primaries for Ebonyi Central Senatorial District, the Ebonyi State electoral panel finally organized fresh primaries for the said zone on 14th December, 2006, where the 1st respondent was validly nominated having scored a consensus vote of 504. Result sheet of the said 14th December, 2004, primaries is here by pleaded.

11. The 4th respondent admits paragraph 2 (xii) and 2 (viii) of the petition to the extent that the 1st respondent purchased the 4th respondents Governorship expression of interest and party's nomination forms but had to jettison, his ambition when the stakeholder of 4th respondent and his family members persuaded him to do so.

12. The 4th respondent admits paragraph 2 (iv) of the petition, to the extent that the 4th respondents held Governorship primaries on 9th December 2005, but denies that the 1st respondent stood, contested for and lost.

13. In further answer to the said paragraph 2 (iv) the 4th respondents avers that the 1st respondent stepped down for the in-

cumbent Governor at the said 9th December 2006 primaries.

14. The 4th respondent denies paragraph (xv) of the petition and states that the electoral panel of the Ebonyi State not at any time forward a report to the national chairman of the 4th respondent confirming that the petitioner won overwhelmingly. The petition is put to the strictest prove of the allegation. B

15. In further answer to the said paragraph (xv), the 4th respondent avers that the Ebonyi State Electoral Panel's report dated 14th December 2006 confirmed the 1st respondent as the candidate validly nominated by the 4th respondent. C

16. The 4th respondent denies paragraph 2 (xvi) of the petition and states that the National Chairman and the National Secretary of the 4th respondent did not at anytime validly submit the name of the petitioner to the 3^d respondent vide 3^d respondents from CF002C or any other form at all and puts the petitioner to strict D prove of the allegation.

17. The 4th respondent is not in position to admit or deny paragraph 2 (xvii) of the petition in that the petitioner may have been screened as a candidate of any of the other political parties and not as a candidate for the 4th respondents and that the petitioner E having been screened as such has the legitimate right to campaign vigorously as a candidate of any other parties.

18. The 4th respondents denies paragraph 2 (xviii) of the petition and states that the petitioner was never a candidate of the 4th respondents for the purpose of the April 21st, 2007 senatorial F election.

19. The 4th respondents admits paragraph 2 (xx) of the petition only to the extent that the 4th respondents had to send the substitution form to the 3^d respondent when it discovered that some G names of those who were not validly nominated candidates of the 4th respondents found their way to the office of the 3^d respondent but states that the substitution form carried the authorized signatories of the 4th respondent.

20. The 4th respondent denies paragraphs 2 (xxi) (1) (2) and H (xxii) of the petition and states that the petitioner know or ought to have done when he discovered those irregularities as there are internal procedure within the 4th respondents for venting of such grievances.

21. *The 4th respondent denies paragraph 2 (xiv) of the petition and in further answer to this avers that the national chairman of the 4th respondents did not in any way or at all give any verbal or written assurances to the petitioner. The petitioner is put to the strict prove of the allegation.*

B 22. *The 4th respondent does not join issues with the petitioner in paragraphs 2 (xvii) and (xxv) of the petition as the paragraphs have nothing to do with the 4th respondent.*

C 23. *In answer to paragraph 2 (xxvi) of petition the 4th respondent states that it owes no duty both under the law or equity to notify the petitioner that his name will be substituted when the 4th respondent did not at any time forward the name of the petitioner to the 3^d respondent.*

D 24. *In answer to paragraph 2 (xxvii) the 4th respondents avers that the petitioner contested the primaries and lost, and as his name was never sent to the 3^d respondent, there is no need to give any reason(s) for his substitution.*

E 25. *The 4th respondent denies paragraph 2 (xxx) the petition and avers that the petitioner is merely being speculative, mischievous and imaginary with no substance to his claims.*

26. *The 4th respondent hereby pleads and shall rely on all relevant documents to this petition at the trial.*

F 27. *The 4th respondent shall contend at the trial that the petition lacks merit, is incompetent and will urge the tribunal to dismiss the petition.*

He also indicated that he will call 4 witnesses during the trial of the petition.

G The 5th Respondent who is the CLERK OF THE NATIONAL ASSEMBLY did not file a Reply to the petition.

In reaction to the Reply filed by the Appellant/1st Respondent, the petitioner file ANSWERS to the said reply. It was dated 21st of June, 2007. The said ANSWERS to the 1st Respondent's Reply states as follows:-

H *"Save and except as is hereinafter expressly admitted, the Petitioner denies each and every allegation of fact contained in this 1st Respondent's Reply to this petition as if each were set out herein and traversed seriatim, fact for fact, sentence for sentence and paragraph for paragraph and shall at the trial rely all legal and equitable de-*

fences open to him and not specifically admitted.

1. In answer to paragraph 9, 11, 12, 13, 14, 15, 16, 18 (b), 19 the Petitioner states that as follows:

i. *That the Ebonyi Central Senatorial Primaries of 2nd December, 2006 held at Onueke was not cancelled, nor postponed to 14th December, 2006, or to any other date, but rather the free and fair primary election took place wherein the Petitioner emerged victorious and that any other results and reports pleaded by the 1st respondent was contrived. The Petitioner hereby pleads video-tape recording of the said primaries at Onueke in Ezza South Local Government of Ebonyi State showing the primaries as peaceful and order. The petitioner pleads the report of the STATE ELECTORAL PANEL that conducted the said primaries dated 2nd December 2006, and gives notice of produce.*

ii. *The Petitioner shall contend at the trial that if the primary election was post-poned, he the Petitioner would have re-contested and that any result being peddled by the 1st Respondent and any report in support is contrived.*

iii. *The 1st Respondent did not emerge from any primaries, but form attempt to unlawfully and improperly substitute the Petitioner and the Petitioners name had been submitted and the 3^d Respondent had screened Petitioner. The Petitioner hereby pleads letter dated 5th February 2007, addressed to 3^d Respondent's chairman by 4th Respondent applying for the 1st Respondent to be substituted and INEC Form CF004 . A notice of withdrawal/substitution signed by the 1st Respondent seeking to substitute the Petitioner.*

iv. *The Petitioner states that the 1st and 4th Respondents attempt to substitute him did not follow proper procedure as there was no cogent and verifiable reason adduced to support the attempted substitution which substitution was done on the 20th of February, 2007 after the period allowed for such substitution.*

v. *The Governorship Primaries of the 3^d Respondent in Ebony State was not by consensus but was contested.*

vi. *The Petitioner states that no rescheduled primary election took place on the 14th of December, 2006 and that the 1st Respondent never stood any primary election. The Petitioner shall at trial lead evidence to show that the party nomination form purportedly bought by the 1st Respondent was only bought on the 16th of Decem-*

ber, 2006, after the purported rescheduled primaries. The Petitioner hereby gives the 1st and 3^d Respondent notice to produce Guarantee Trust Bank Plc. (where every party form payment was made) deposit teller.

(see pages 88-91 of the record.)

B The Petitioner filed ANSWERS to the Reply of the 2nd and 3rd Respondents. It was dated and filed on the 2nd of July, 2007 copied at pages 125-126 of the record. In part of the answer, the Petitioner at page 126 of the record asserted as follows:-

C *“In answer to paragraphs 1 - 19 of the 2nd and 3^d Respondents reply, the Petitioner states as follows :-*

i. *The Petitioner states that the purported attempt to substitute the Petitioner’s name was countermanded by this 4th Respondent vide letter dated 5th December, 2006 signed by the 4th Respondent’s D secretary and chairman and addressed to the 3^d Respondent’s chairman. The said letter is hereby pleaded and 2nd and 3^d Respondents are given notice to produce.*

ii. *The Petitioner states that any purported substitution was invalid and incompetent not having adduced “cogent and verifiable” E reasons and or that such substitution was outside the time within which a substitution is allowed.*

On that same 2nd of July, 2007, he also filed ANSWERS to the Reply of the 4th Respondent. At page 139 of the record the petitioner answered in the following terms:-

F *“1. In answer to paragraphs 7, 9, 10, 14, 15 and 21 of the Respondents reply, the Petitioner states as follows:*

i. *That the result of the said primary election of the 2nd December 2006 was widely published by major newspapers in Nigeria and G pleads This Day Newspaper of December 5th 2006 at page 11, Guardian Newspapers of December 4th 2006 and Independent Newspaper of December 5th 2006 at page A9.*

ii. *In answer to paragraphs 17 and 18 of the 4th Respondent’s Reply, the Petitioner answers as follows:*

H a. *That the Petitioner campaigned vigorously as a candidate of the 4th Respondent and pleads and relies on different campaign bearing the name of the Petitioner, his picture and the logo and names of the 4th respondent.*

iii. *That the returning officer for the primary election was John*

Igboke while Mr. Peter Alelele was the electoral officer.”

By a motion dated and filed on the 10/07/2007, the 5th Respondent sought an order striking out the name of the 5th Respondent for misjoinder. It was supported by an affidavit of 4 paragraphs and is copied at pages 133-135 of the record.

The above substantially represents the state of the pleadings by the parties in court. B

The actual trial of the petition commenced on Tuesday the 24th of July, with the testimony of the petitioner as PW1. His testimony is contained at pages 140-142 of the record. He closed his case after his testimony. C

The defence opened on the 31st of July, 2007 with the testimony of JOHN IBOKE as the DW1. His testimony is contained at pages 144-145 of the record. The next witness for the defence was CLETUS ALOKE who testified as DW2. His evidence is recorded at pages 145-147. The DW3 was OKEAGU OGADA. His testimony is contained in pages MS-152 of the record. OKPANI NDUKWE was the DW4. His testimony is recorded at pages 153-155. The 1st Respondent/Appellant JULIUS ALI UCHA testified as the DW5. His evidence is recorded at pages 155-159. The 2nd and 3rd Respondents had no witnesses. The parties through their counsel submitted and exchanged written addresses which they adopted in the proceedings on the 22nd of August, 2007. E

In its judgment on the 13th of September, 2007, the Tribunal dismissed the petition. The Petitioner was aggrieved by the decision and preceded an appeal to the Court of Appeal. The notice of appeal dated 1st October, 2009 was filed on the 2nd of October, 2007. The said notice of appeal was amended and the amended notice of appeal was dated March, 2008. And with the leave of court of 4th Respondent, PEOPLES DEMOCRATIC PARTY, also file a notice of appeal against an earlier ruling of the tribunal delivered on the 2nd of July, 2007. It was dated and filed on the 23rd of February, 2009. The said appeal being against a ruling of the tribunal was an interlocutory appeal. There were thus before the court below two appeals, that is, the main appeal and the interlocutory appeal. F

The main appeal was CA/E/EPT/18/2007. The interlocutory appeal was CA/E/EPT/18A/2007. G

At the Court of Appeal the parties, through their counsel, H

filed and exchanged their briefs of arguments. In its judgment delivered on the 16th of July, 2010 the Interlocutory Appeal was dismissed. The main appeal was however allowed. In the concluding paragraph the Court of Appeal, Mr. Oyobode O. Lokulo - Sodipe declared:-

“The situation in the instant appeal is also such that all materials needed to declare the Appellant who must be treated de jure and de facto as having won the election of 21/04/2007 are before this court. This being the case the first three main reliefs which the Appellants seek in the appeal will be and are hereby granted accordingly:-

1. This appeal is allowed.

2. The result election and return of the 1st Respondent Senator Julius Ali Ucha for the Ebonyi Central Senatorial election conducted on 2 April, 2007 are hereby nullified.

3. The Appellant - Dr. Emmanuel Onwe is hereby declared as the Winner of the Ebonyi Central Senatorial election.

In the light of the above reliefs granted the Appellant particularly as the certificate of Return issued the 1st Respondent stands nullified the 3^d Respondent is hereby ordered to forthwith issue the Appellant - Dr. Emmanuel Onwe a certificate of Return as the Winner of the Ebonyi Central Senatorial District election.”

The 1st Defendant/Respondent was aggrieved by the above judgment and has come on appeal to this court. He filed two notices of appeal. The first was with respect to the decision of the lower court on the Interlocutory appeal. It was dated and filed on the 19th of July, 2010. It is at pages 720 - 722 of the record. It raised four grounds of appeal. The second notice of appeal dated 26th July, 2010 was filed on the 27th of July 2010 and is at pages 723 - 730 of the record. On the 30/11/2010, when the appeal was heard, the 1st notice of appeal was withdrawn and struck out.

Here again the parties through their counsel filed and exchanged their briefs of argument. The Appellant's brief was prepared by Prof. Ilochi A. Okafor SAN. It is dated 14/09/2010 and was filed on the 21/09/2010. The 1st Respondent's brief was prepared by Emeka Mozie Esq. It was dated and filed on the 30/11/2010. The 1st Respondent also filed a notice of preliminary objection on the 30/11/2010 and which objection is argued at pages 6-12 of this brief.

In the Appellant's brief Prof. Ilochi A. Okafor SAN formu-

lated the following three issues for determination:-

1. Whether it is today settled law that all pre-election matters including nomination and substitution of candidates, matters preceding the actual holding of the elections, are only cognizable within the exclusive jurisdiction of regular courts and Outside the purview of the jurisdiction of Election Tribunals. B

2. Whether the Court of Appeal was in error in relying on its two previous decisions namely INEC v. AC (2009) ALL FWLR (part 480) 732 and SUNDAY v. INEC (2008) ALL FWLR (PART 431) 985 to held that the issues of invalid nomination' and/or substitution preceding the actual election are nevertheless challengeable in an election petition under Section 745 (l) (a) and (d) of the Electoral Act 2006; and C

3. If the instant election petition was incompetent ab initio and not cognisable before the Election Tribunal, what is the effect of assumption of jurisdiction of the Court of Appeal within the purview of Section 246 (3) of 1999 Constitution? D

In the 1st Respondent's Brief Mr. Emeka Mozie identified only one issue for determination as follows:-

"Whether the Court of Appeal had the appellate jurisdiction E to adjudicate on the appeal duly instituted as appeal No. CA/E/EPT/18/2007 having regard to Section 246 (3) of the Constitution and the Electoral Act?"

I have had a careful look at the Notice and Grounds of appeal F and it is my view; that the Appellant's first issue effectively disposes of the appeal. The issue is "whether have regard to the provisions of section 285 and other provisions of the 1999 Constitution and Sections 144 (1) and 145 (1) of the Electoral Act, 2006, jurisdiction is vested in the National Assembly Election Tribunals and/or the Governorship and Legislative House Election Tribunals to hear and determine election petitions grounded on pre-election disputes? I shall nevertheless also briefly consider the other issues submitted by the Appellant. G

The substance of the arguments of Prof. Ilochi A. Okafor H SAN in the Appellant's Briefs are as follows: It is his submission that for the purposes of section 285 of the 1999 Constitution and sections 140 -145 of the Electoral Act, 2006, there is a subject matter dichotomy of matters into pre-election and post election matters. Ac-

cording to him while pre-election matters fall within the exclusive jurisdiction of the ordinary courts including the Federal High Court, High Court of a State and High Court of the Federal Capital Territory, the post-election matters fall within the exclusive jurisdiction of Election Tribunals established under section 285 of the Constitution.

B It was his submission therefore that the subject matter in the instant case is a pre-election matter over which therefore the trial Tribunal has no jurisdiction. It was counsel's further submission that since the trial tribunal had no jurisdiction to hear and determine the petition, the Court of Appeal equally had no jurisdiction to entertain the appeal from the Tribunal. It was his further submission that the proceedings both at the trial tribunal and at the Court of Appeal were conducted without jurisdiction and therefore null and void. In support of these submissions learned senior counsel referred to the following authorities which, he contended are on all fours with the instant case: ACTION CONGRESS v. INEC (2007) 18 NWLR (PART 1065) 50; AMECHI v. INEC (2008) 5 NWLR (PART 1080) 227, ODEDO v. INEC (2008) 17 NWLR (PART 1117) 554; AGBAKOBA v. INEC (2008) 18 NWLR (PART 1119) 489; ANPP v. ARGUNGU (2009) 17 NWLR (PART 1171) 445; ZARANDA v. TILDE (2008) 10 NWLR (PART 1094) 184; ADEOCOUN v. FASHOGBON (2008) 17 NWLR (PART 1115) 149; UGWU v. ARARUME (2007) 12 NWLR (PART 1048) 365; EHINLANWO v. OKE (2008) 16 NWLR (PART 1113) 357; PAM v. MOHAMMED (2008) 16 NWLR (PART 1112) 1; OKORI v. UDEH (2008) 10 NWLR (PART 1095) 213; ONYEKWELU v. INEC (2008) 14 NWLR (PART 1107) 317 AND ACTION CONGRESS & ANOR. v. INEC (2007) 12 NWLR (PART 1048) 222.

G Learned senior counsel referred to the essential facts as pleaded in the petition, and contended that this case like the cases cited above is all about nomination and substitution, and that the only material difference is the appropriateness of the forum wherein to ventilate the grievance or complaint. The cause of action accrued the moment the alleged wrong substitution was made on the 20th of February, H 2007, whereas the election was held on the 21st of April, 2007 Respondent had more than two months before the election to ventilate his grievance at the regular courts, learned senior counsel pointed out. The petition before the Election Tribunal was before a court which lacked the jurisdiction to entertain and determine it; counsel

submitted.

On the Appellant's 2nd issue learned senior counsel referred to some conclusions of the judgment of the lower court and its reliance on its two previous decisions in. *INEC v AC* (2009 ALL FWLR (part 480) 732 and *SUNDAY v. INEC* (2008) ALL FWLR (pt. 434) 985 and submitted that for the Petitioner/Respondent to have the locus standi to present the petition he must be a candidate at the election. He placed his reliance on section 144 (1) of the Electoral Act, 2006, which provides to the effect that an election petition can only be presented by one or more of the following persons:

(a) A candidate in an election.

(b) A political party which participated in the election.

It was the submission of learned senior counsel that a person who had been excluded from an election, like the Petitioner/Respondent in the instant case and who did not therefore participate in the election cannot claim to be a candidate within the meaning of section 144 (1) of the Electoral Act and therefore lacks the locus standi to bring the action. He relied on *OKON v. BUB & ORS.* (2004) INWLR (part 854) 378 at 383. It was his further submission that in an election petition, the petitioner or petitioners must of necessity be claiming against another candidate from a different political party as distinct from the situation in this case where the petitioner claims against fellow party member and against his own political party. In support of this contention, he relied on *ONYEKWELI v. INEC* (supra). To other words an election petition can only be by the candidate and the political-party that sponsored him and not, as in this case, by the petitioner against his own political party, the PDP. Counsel relied as *INEC & ORS. v. AC and 7 OTHERS* (supra) and *OKONKWO v INEC* (2004) NWLR (part 854) 242.

Learned senior counsel further referred to the four grounds upon which an election may be questioned in an election petition in section 145 (1) of the Electoral Act, 2006 and submitted that once a Petitioner claims under Section 145 (1) (d) for unlawful exclusion, he cannot even in the alternative also claim under 145 (1) (a) that the person whose election in question was not qualified to contest at the time of the election. He referred to the provisions in section 145 (1) (d) of the Act and submitted that it is only the political party that can be the petitioner to claim for the unlawful exclusion of its candidate.

It was his submission that the court below was therefore in error to hold that the Petitioner/Respondent was by virtue of the provisions of Section 145 (1) (a) entitled to claim against the Appellant's non qualification. In support of this submission, he relied on ABUBAKAR v YAR'ADUA (2008) 19 NWLR (part 1120) 1 at 83-84.

B It was the submission of learned senior counsel that going by the principle of STARE DECISIS the court below was bound by the numerous previous decisions of this court and its previous decision as it failed to distinguish the said previous decisions from this case.

C With respect to whether section 246 (3) of the 1999 Constitution applies to this case, it was the submission of learned senior counsel that having regard to the legal position that the Trial Tribunal lacked the jurisdiction to hear the petition and a fortiori the lower court's lack of jurisdiction to entertain the appeal, section 246 (3) does not D apply.

In conclusion, it was urged that this court should invoke its powers under section 22 of the Supreme Court Act to do what the Trial Tribunal ought to have done by striking out the petition.

E On behalf of the Petitioner/Respondent Mr. Emeka Mozie made submissions in the 1st Respondent's Brief that substance of which runs as follows: He first of all argued the preliminary objection which grounds are stated as follows:

1. This is an appeal arising from the decision of the Court of F Appeal on whether a person has been validly elected as a member of the National Assembly under the Constitution of the Federal Republic of Nigeria 1999.

2. By virtue of section 246 (3) of the Constitution of the Federal Republic of Nigeria 1999, the decision of the Court of Appeal in G respect of appeals arising from election petitions shall be final.

3. By section 233 of the Constitution of the Federal Republic of Nigeria 1999, the Appellant has no right of appeal as of right to the Supreme Court of Nigeria and no leave was granted.

H It was his submission that the Supreme Court is a creation of statute with defined areas of jurisdiction and although its powers are enormous, its jurisdiction is nevertheless limited. It was his submission that the jurisdiction which is not specifically conferred is excluded. He referred to section 233 (3) of the Constitution under which an appeal can only move from the from the Court of Appeal to the Su-

preme Court with the leave of either the Court of Appeal or the Supreme Court, and submitted that leave was not sought and obtained and that the appeal was for that reason incompetent. He further referred to the provisions of section 246 (3) of the Constitution and submitted that whether the lower Court committed errors in its decision there is no right of appeal from that decision. He relied on *ADIGUN v. GOVT. OSUN STATE*. He said there had been previous attempts by litigants to circumvent the provisions of section 246 (3) of the Constitution and which the Supreme Court has consistently resisted. He referred then to *OKONKWO v. NGIGE* (2007) 12 NWLR (part 1047) 919. He relied further on *ONUAGULUCHI v. NDU* (2001) 7 NWLR (part 712) 309 at 331-332; *AWUSE v. ODILI* (2003) 18 NWLR (part 851) 116 at 151 and *UMANAH v. ATTAH* (2006) 17 NWLR (part 1009) 505 at 527-528.

On the Respondent's sole issue for determination learned D counsel referred to the averments in the petition to the effect that he was a candidate at the election and submitted that the assertion sufficed to confer on him locus standi to initiate the petition. It was counsel's further submission that while section 285 (1) of the Constitution and Section 145 (1) of the Electoral Act were the enabling provisions to initiate the petition at the tribunal, section 246 (i) was the enabling provision for the Court of Appeal to entertain the appeal.

Learned counsel further submitted that validity of a person's election includes his qualification, by his being sponsored by a political party. A petition duly filed by a Petitioner who claims to be a candidate cannot be defeated on the ground that intra party matters were mentioned, learned counsel argued. According to him, election includes nomination and so intra party matter relating to facts which arose after a candidate had been nominated through intra party nomination exercise cannot qualify as a pre-election matter. Counsel relied on *AMAECHI v. INEC* (2008) 2 NWLR (part 1080) to the effect that it is the party that contests an election and submitted that the 1st Respondent was all along the candidate of the PDP who contested and won the election. It was submitted that the Court of Appeal decisions on *PDP v. HARUNA* (2004) 16 NWLR (part 900) 487, *BAYO v. NOIDDA* (2004) 8 NWLR (part 876) 544, *KWARA v. INOCENT* (2009) ALL FWLR (part 460) 719 and *ONYEKWELI v. INEC* (2008)

14 NWLR (part 1107) 317 are not relevant in this case. Also not relevant counsel, argued is AD v. FAYOSE (2004) ALL FWLR (part 214) 25. It was further submitted that upon nomination of a candidate by a political party, the political party loses all rights in the matter and that the candidate so nominated would be at liberty to maintain the petition in spite of the wishes of the political party. For this submission he relied on ELEMUO v. DURU (2004) 9 NWLR (part 877) 75 and OBI v. ABANA (2005) 6 NWLR (part 920) 183. It was further submitted that the term “Petitioner or its candidate” ought not to be given the rigid interpretation placed on it by the Appellant and that it should be given a liberal interpretation so as to accommodate a petition by a candidate, contending that section 144 of the Electoral Act, 2006, already donated locus standi to a candidate.

In paragraph 7.17 at page 16 of the 1st Respondent’s brief, it is stated as follows:

“There was really no pleadings that supported the ground founded or, the issue of wrongful exclusion and thus that ground may well be considered abandoned. This being the case the comment of his Lordship in ABUBAKAR v. YAR’ADUA (2008) 19 NWLR (part 1120) 1 referred in the appellant’s brief is really not apposite or relevant.”

Learned counsel then listed out eight decisions of this Court which he contended are inapplicable. They are:

AMAECHE v. INEC (supra), ODEDO v. INEC (2008) 17 NWLR (part 1117) 554; AGBAKOBA v. INEC & ORS (supra); ADEOGUN v. FASHOGBON (2008) 17 NWLR (part 1115) 149; UGWU v. ARARUME (2007) 12 NWLR (PART 1048) 367; EHINLANWO v. OKE (2008) 16 NWLR (part 1113) 357; PAM v. MOHAMMED (2008) 16 NWLR (part 1112), ACTION CONGRESS v. INEC (2007) 12 NWLR (part 1048) 222. It was also contended that ANPP v. ARGUNGU (2009) 17 NWLR (part 1171) 1, AC & ANOR. v. INEC & ANOR. (2007) 18 NWLR (part 1065) and ZARANDA v. TILDE (2008) 10 NWLR (part 1094) 184 are totally inapplicable. It was counsel’s submission that the case are distinguishable from the instant case. In conclusion, it was urged that the appeal be dismissed.

I have carefully considered the pleadings including the petition, the Replies filed by the Respondents including the 4th Respondent (the PDP) and the answers to the replies filed by the Petitioner/

1st Respondent, the judgment of the trial Tribunal, the judgment of the Court of Appeal and the address of counsel for the Appellant and the Plaintiff/ 1st Respondent.

As I indicated above in this judgment, the Appellant's 1st issue effectively determines this appeal. The issue is whether having regard to the cause of action being and arising from the result of the 4th Respondent's nomination exercise the National Assembly Election Tribunal established under section 285 (1) of the Constitution had the jurisdiction to hear and determine the petition filed by the Petitioner/Respondent. The contention of the Appellant is that since the cause of action in the PDP's intra party nomination exercise which was completed by its decision of the 20th of February, 2007 (some two months before the election on the 21st April, 2007) it is a pre-election matter and over which therefore the Election Tribunal had no jurisdiction and that only the Federal High Court or the High Court of a State that has the jurisdiction to entertain a claim based thereon. The position of the petitioner/Respondent on the other hand is that he was the person duly nominated at the PDP primary election held on the 2nd December, 2006 and that he won by an overwhelming and undisputed majority. And that, by reason thereof the Appellant as 1st Respondent at the Tribunal was on the 21st of April, 2007 not qualified to contest the election. That by virtue of the Appellant's non qualification his purported election could and was rightly questioned at the Tribunal in the petition. In support of their submissions, both sides relied on section 285 (1) of the Constitution and Sections 144 (1) and 145 (1) of the Electoral Act 2006 and a number of Supreme Court and Court of Appeal authorities by which I should be guided. I should therefore start by setting out these provisions. Section 285 (1) of the Constitution 1999 says:-

“ 285 (1) *There shall be established for the Federal one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether:-*

(a) *any person has been validly elected as a member of the National Assembly.*

(b) *the term of office of any person under this Constitution has ceased;*

(c) *The seat of a member of the Senate or a member of the*

House of Representatives has become vacant; and

(d) a question or petition brought before the election tribunal has been properly or improperly brought.

With respect to the provisions of the Electoral Act, 2006, section 144 (1) therein provides:-

B “144 (1) An election petition may be presented by one or more of the following persons:-

(a) a candidate in an election;

(b) a political party which participated in the election.”

C And Section 145 (1) of the Electoral Act 2006 states:-

“145 (1) An election may be questioned on any of the following grounds:-

(a) that a person whose election is questioned was, at the time of the election not qualified to contest the election;

D *(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;*

(c) that the respondent was not duly elected by majority of lawful votes cast at the election; or

E *(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.*

With regard to the cases cited, let me examine those which consider relevant to the issues raised herein.”

In ACTION CONGRESS v. INEC (supra) the Court of Appeal relying on the decision of this court in AMAECHI v. INEC (supra) assumed jurisdiction to hear both the appeal and cross-appeal expeditiously, the matter being a pre-election matter. The action was instituted at the Federal High Court. The issue of whether this Election Tribunal had no jurisdiction to hear and determine pre-election matter was not expressly decided.

H **In AMAECHI v. INEC (2008) 5 NWLR (part 1080) 227 at 314, this court per Katsina-Alu JSC (as he then was) held that the ordinary courts of the land had unfettered jurisdiction over pre-election matters.**

EDEDU v. INEC (2008) 17 NWLR (part 1117) 554 was more specific on the issue before us. At page 602 the Supreme Court per Tobi JSC stated:-

“It is not my understanding of section 285 (1) (a) of the Con-

stitution that the subparagraph can accommodate pre election matter. It is rather my understanding that the sub-paragraph provides for determination of whether any person has been validly elected as a member of the National Assembly. In my humble view the sub-paragraph provides for election matters which give rise to post-election and not pre election proceedings. As the reliefs sought by the Appellants are pre-election matters, section 285 (1) (a) could not avail him as that sub-paragraph does not provide for litigation arising from party primaries ...” And still on the court which has the jurisdiction over pre-election matters, this court pointed emphasised at the same page 602 thus:-

“The reliefs sought by the appellant are clearly outside the jurisdiction of the election tribunals as they are predicated on pre-election matter.”

In AGBAKOBA v. INEC (2008) 18 NWLR (part 1119) 489 at 554, this court per Chukwuma-Eneh declared:-

“Section 285 (1) (a) of the 1999 Constitution deals with whether any person has been validly elected as a member of the National Assembly. The provision is clear and unambiguous and literally construed, is concerned with post election disputes. Any dispute resulting from the conduct of an election is not a pre-election dispute but a post election dispute. The dispute here has arisen from the substitution of the appellant by the 2nd respondent as its candidate after winning at the party primary. The opinion of this court on this point as per decided cases, I shall marshal out later on in this segment of my reasoning and they are binding on this court. There is no basis for this case to inure to the election tribunal, which is a special tribunal created by the Constitution, to handle post election disputes. It has no jurisdiction over pre election disputes” (emphasis mine).

The Court of Appeal also reiterated the principle in **ZARANDA v. TILDE (2008) 10 NWLR (part 1094) 184 at 210**, where it held that the Governorship and Legislative Houses Election Tribunal sitting in Bauchi, had no jurisdiction to entertain a petition on a ground questioning nomination or substitution of a candidate for an election.

The Petitioner/Respondent argued that the cases cited by the Appellant are inapplicable to this case. He did not however discuss

any of the cases to demonstrate its irrelevance to the facts of this case. He contended that upon nomination of a candidate by a political party his right to file a petition ensures to him. He relied on AMAECHI v INEC (supra) and AGBAKOBA v. INEC (supra), I have already examined the two cases and non of them is an authority for his submission.

In addition to foregoing, the petitioner/1st Respondent also relied on ENEMUO v. DURU (2004) 9 NWLR (part. 877) 75 and OBI v. OBANA (2005) 6 NWLR (part 920) 183.

In ENEMUO v. DURU, the case of the 1st Respondent was that he was duly nominated by his party (the PDP), screened and cleared, and indeed contested the election of the 16th April, 2003 and won and was duly issued with form EC8E (1) by the returning officer. Thereat, the 2nd - 4th Respondents purported to cancel, withdraw and invalidate the said form EC8E (1) and declared the Appellant winner of the said election. The 1st Respondent therefore filed a petition at the Election Tribunal which gave him judgment and granted the reliefs as claimed.

The appeal to the Court of Appeal was dismissed. In the concluding paragraph lead judgment at page 106 of the report, ii. Fabiyi JCA (as he then was) concluded:-

“In conclusion, the appeal is devoid of merit. The Appellant who did not contest the election ought not to have been returned. He has no seat in the House of Representatives.”

It is clear from the report that the petitioner actually contested the election and won. He was issued with a certificate of return. And the substitution on which the petition was predicated, was made after the election. The matter therefore was clearly a post-election matter over which the election tribunal had jurisdiction. In the circumstances, I hold that the authority does not support the principle postulated by learned counsel for the 1st Respondent. I have also read the case of OBANA v. OBI cited by learned counsel and I can say without any equivocation, that the case has no bearing whatsoever on the issue of proper venue for pre-election and post-election disputes.

Learned, counsel for the 1st Respondent further made reference to provisions of section 2 (1) (b) (i) of the Constitution on ap-

peals to the provisions the Court of Appeal as of right from decisions of the National Assembly Election Tribunals on any question as to whether any person has been validly elected as a member of the National Assembly and submitted that the validity of the person's election includes his qualification; that the Appellant, not being the person that was nominated for Ebonyi Central Senatorial District in the nomination exercise of the 4th Respondent, was no qualified to contest the election. ***It was submitted therefore that by reason of the Appellants non-qualification arising from the nomination exercise of the 4th Respondent, the validity of his election was rightly questioned in the election petition.***

That argument is with respect untenable. Section 66 (1) of the Constitution makes specific provisions for a person's disqualification or non-qualification for election to the Senate or the House of Representatives. These include the persons voluntary acquisition of the citizenship of a country other than Nigeria, his having been adjudged a lunatic or an undischarged bankrupt his having been sentenced to death or to imprisonment for an offence involving dishonesty, that he is a member of a secret society, his having been indicated for embezzlement his presentation of a forged certificate to the Independent National Electoral Commission. ***Any of these disabilities spelt out in section 66 (1) of the Constitution can properly constitute a ground upon which a person's election can be questioned in an election petition. A person's disqualification or non-qualification based on or arising from the domestic nomination exercise of his political party, is clearly a pre-election matter over which the election tribunal has no jurisdiction.***

In view of the foregoing considerations and particularly having regard to the specific pronouncements of this court on the issue of proper venue for pre-election and post-election matters in the cases which I have reviewed above and which I am bound to follow, I hold that the Election Tribunal had no jurisdiction to hear and determine the petition. The matter of the Petitioner/ 1st Respondent's nomination and/or substitution is a pre-election domestic matter of the PDP for which determination jurisdiction is vested in the Federal High Court or the High Court of a State.

The result of the above analysis is that the appeal has

merit and should be and is hereby allowed. The nomination and/or substitution exercise of the 4th Respondent upon which the petition was predicated, was clearly a pre-election matter over which only the Federal High Court or the High Court of a State has jurisdiction. The National Assembly Election Tribunal, wherein the 1st Respondent presented the petition, lacked the jurisdiction to entertain the petition, which was therefore incompetent and ought to have been struck out. Consequently, I hold and declare that the proceedings including the judgment of the tribunal of the 13th September, 2007, is null and void and same is accordingly set aside. A fortiori, I declare that the proceedings including the judgment of the Court of Appeal dated the 16th of July, 2010, is null and void and accordingly set aside.

In the event, I enter judgment for the 1st Defendant/Respondent/Appellant allowing the appeal. And by virtue of the provisions of Section 22 of the Supreme Court Act, the petition be and is hereby struck out for incompetence.

I assess the costs of this appeal at N50,000.00 against the 1st Respondent, in favour of the Appellant.

MUHAMMAD JSC

I had the advantage of reading the judgment delivered by my learned brother Tabai, JSC. I agree with my Lord's conclusion that the appeal be allowed. I abide by all the consequential orders contained therein.

MUNTAKA-COOMASSIE JSC

Having had the opportunity before today of reading the lead judgment of my learned brother Francis Tabai JSC which he, has just delivered. I entirely agree with his conclusions that this appeal is pregnant with merit and same is allowed. I abide by the consequential orders made by my learned brother in the lead judgment including that of costs.

FABIYI JSC

I have read before now, the judgment just delivered by my learned brother, Tabai, JSC. I agree with the conclusion therein that the appeal be allowed. I endorse the consequential orders made in the lead judgment. B

RHODES-VIVOIR JSC

The issue in this appeal is substitution, a pre-election matter. C
The proper court to initiate proceedings is the Federal High Court and not an Election Petition Tribunal as was done in this case. Accordingly, the judgment delivered by the Election Petition Tribunal on a pre-election matter is a nullity.
The fact that appeals on election matters terminate in the Court of D
Appeal does not apply here as appeals on issues of substitution terminates in this court. This court thus has jurisdiction to make pronouncements on pre-election matters (in this case substitution). Both judgments of the two courts below are nullities.

For this reasoning I would allow the appeal. E

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