

SUPREME COURT OF NIGERIA
25TH MARCH 2011, SC. 363/2009
CORAM:- D. MUSDAPHER, M. MOHAMMED,
F. F. TABAI, C. M. CHUKWUMA-ENEH, JJSC

1. CHIEF ALBERT ABIODUN ADEOGUN
 2. ALHAJI ADEMOLA RASAQ APPELLANTS
(Chairman, Peoples Democratic
Party, Osun State)
 - AND
 1. HON. JOHN O. FASOGBON
 2. PEOPLES DEMOCRATIC PARTY
(P.D.P.) RESPONDENTS RESPONDENTS
 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC).
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JUDGMENTS - Courts - Errors - Means of correction - It need not be by means of an appeal - Where the error by the court is under the slip rule - Or under its inherent jurisdiction to give effect to its apparent intention (H1)

JUDGMENTS - Appeals - Mistakes - Effect - It is not every mistake that will result in setting aside on appeal - Only such mistake that is material - And has eroded the foundation of the decision (H2)

JUDICIAL PRECEDENTS - Application of - Guiding principle - Underlying principles of earlier decisions have no application to subsequent cases - Unless the facts in the two cases are on all fours (H3)

JUDGMENTS - Slips - Reference to abandoned notice - Effect on judgment of Court of Appeal - The court dealt with all the material issues raised by appellants - Notwithstanding the slip (H4)

APPEALS - Resolution - Bases - Whether grounds of appeal or issues - Appeals are resolved on issues raised and canvassed - Not on grounds of appeal simpliciter (H5)

FAIR HEARING - Breach - Proof - Where the circumstances com-

plained of - Are covered by the slip rule as in this case - There is no breach of fair hearing (H6)

PRACTICE & PROCEDURE - Trials - Irregular procedure - Acquiescence - Effect - Where parties acquiesce to adoption of such procedure by court - They are foreclosed from subsequently complaining about it (H7)

PARTIES - Actions - Consistency in case - Meaning - It means that in an appeal - Parties are to confine their cases to what they pleaded - As to the issues for determination before trial court (H8)

PRACTICE & PROCEDURE - Adherence to procedure - Waiver - Effect - Where a party waives his right to insist on adherence - He cannot later be heard to decry such noncompliance with procedure (H9)

ELECTIONS - Substitution of candidates - Information to INEC - Validity - Such information is invalid in the case of PDP - Unless it is given by its National Chairman and National Secretary (H10)

ELECTIONS - Substitution of candidates - Reasons - Source of - The reason for substitution in the case of PDP - Must be given sufficiently - By its National Chairman and National Secretary only (H11)

ELECTIONS - Substitution of candidates - Cogency of reasons - Where the reason given is that the earlier name was forwarded in error - As in the instant case - Such reason is neither cogent nor verifiable (H12)

FACTS

The 1st respondent, as plaintiff, sued the rest of the parties before the Federal High Court Challenging the substitution of his name, with that of the 1st appellant, as the 2nd respondent's as candidate for the seat of Ife Federal Constituency in the National Assembly for the 2007 general elections. It was not in dispute that 1st respondent was the person originally nominated by the 2nd respondent and that his name was forwarded by 2nd respondent to 3rd respondent as such. However, before the date of the election, the

National Chairman and the National Secretary of the 2nd respondent sent a letter to the 3rd respondent substituting the name of the 1st respondent with that of the 1st appellant on the ground that the former was sent in “error”. Subsequently, 2nd appellant, the chairman and officials of Osun State Chapter of the 2nd respondent sent three other letters to 3rd respondent expatiating on the reason for the substitution. It is the case of 1st respondent that the substitution was invalid for noncompliance with S. 34 of the Electoral Act 2006. Trial court partially granted 1st respondent’s reliefs by declaring that 2nd respondent had no power to recommend such substitution; but it refused to grant the order of injunction sought on the basis of the declaration.

Aggrieved, 1st respondent appealed to Court of Appeal against the refusal of the injunctive reliefs. Also dissatisfied appellants cross-appealed to Court of Appeal. In its judgment, Court of Appeal allowed the appeal but dismissed the cross-appeal. However, in the course of its judgment, the court had erroneously referred to appellants’ abandoned notice of cross-appeal instead of their amended notice of cross-appeal. Nevertheless, the court based its decision on appellants’ brief of argument and the issues raised therein. Still dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal. It is their contention that the error in referring to the abandoned notice of cross-appeal was fatal.

ISSUES FOR DETERMINATION

“(i) Whether in determining the cross-appeal of the appellants herein the lower court was right in relying on the notice of cross-appeal that had been abandoned.

(ii) Whether the lower court properly considered the case made by the appellants that the failure of the trial court to allow parties to call oral evidence in support of their pleadings prevented the trial court as well as the lower court from (sic, being) able to do justice in this case.

(iii) Whether on a proper consideration and understanding of the (sic, the case) put forward by the appellants gave the impression that no documents were available before the lower court and that the appellants put forward something less than the truth of the process before the trial court.

(iv) Whether the lower court was right on holding that the

combined effect of letters dated 6/12/2006, 20/12/2006, 24/1/2007 and 5/2/2007 did not amount to cogent and verifiable reasons to justify the substitution of the 1st appellant for the 1st respondent in the April 21st, 2007 general elections.

B (v) *Whether the lower court was right in failing to consider the appellants sixth issue which was argued by the appellants.*

(vi) *Whether in the absence of any evidence led in support of the 1st respondent's claims the lower court properly granted the claims of the plaintiffs which are declaratory in nature.*

C **HELD** (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

JUDGMENTS - Courts - Errors - Means of correction

D 1. No doubt in the course of adjudication accidental slips or errors as here are bound to occur and even reoccur. In any event each situation has to be viewed from its peculiar facts and circumstances as no two cases are the same in matters of this nature. I must observe however, that the general principle that the only way of reviewing or correcting any apparent error in the court's judgment is by way of appeal is subject to the power of the court exercisable under the Slip Rule in regard to accidental slips vis-a-vis also the power of the court exercisable under the inherent jurisdiction which eminently is used to give effect to the intention of the court. There is no question of their being used as a cause of having a second thought on the decision.
F (p. 678 B)

JUDGMENTS - Appeals - Mistakes - Effect

G 2. The Slips as these are dealt with under the inherent jurisdiction of the court and the rules of court have made adequate provisions to cope with accidental slips; see Order 8 Rule 16 of the Supreme Court Rules. It is the import and intendment of the provisions of the pertinent rules of courts vis-a-vis the power exercisable under the inherent jurisdiction of the courts under the slip rule that have informed H the pronouncement of this court in such cases as Pavex Int. Co Ltd. V. Afribank Ltd. (2000) 4 SC (Pt.11) 196 to the effect that it is not every accidental slip or mistake of the lower court that will result in an appeal being set aside - the error must be of a material nature that has eroded the foundation of the decision. (p. 678 F)

JUDICIAL PRECEDENTS - Application of - Guiding principle

3. Bearing in mind that facts are sacrosanct in the process of applying the principles derived or distilled from one case to another as per the doctrine of precedents and having examined the facts of this case against the facts of the above cited cases heavily relied upon by the appellants on this point I agree and accept the submission of the respondents that the underlying principles derived or distilled from the decisions in such cases as Tunbi v. Opawole (supra) and Nwokoro v. Onuma as well as Okonji v. Njokanma (supra) have no application to the immediate facts in this matter as they are not on all fours with the instant case and so a non sequitur. In this case the errors amount to accidental slips or mistakes. And I so find. (p. 679 G)

JUDGMENTS - Slips - Reference to abandoned notice

4. Nonetheless, from the abstract of the record as I will refer to anon, it has also been unequivocally demonstrated that the lower court notwithstanding the accidental slips in referring to the abandoned original notice of cross-appeal instead of the amended notice of cross-appeal has all the same dealt with the appellants' case by considering all the material issues as raised for determination in this matter as per the appellants' brief of argument. Again, this is so as found in the concluding paragraph of its judgment as per page 502 of the record as follows:

"Even though her procedural style is not one I would recommend, that did detract for (sic) the fact that she considered what was before her and made a decision upon it. Therefore, the postures of the cross-appellant are not buttressed by the facts and what took place in the Court below. In fact the cross-appellant has put forward something less than the truth of the process before the court of first instance and what the trial judge did or did not do. The cross-appeal fails and is dismissed for lacking in merit."

The foregoing abstract of the lower court's judgment has therefore debunked the appellants' contention of non consideration of their case in this appeal or that it has been predicated solely on the abandoned notice of cross-appeal. (p. 680 D)

APPEALS - Resolution - Bases

5. It seems to me therefore properly acceptable that the lower court in spite of the accidental slip or mix-up evident on the facts of this case as I have tried to adumbrate above, it has nonetheless reached a correct decision in this appeal by having resolved it on the material issues raised for determination by the appellants. And I so hold. Also it is settled as per the case of Niger Construction Ltd. V. Okingbeni (1987) 4 NWLR (Pt. 67) 787 that appeals are allowed on the issues raised and successfully canvassed and not on the grounds of appeal simpliciter as is being urged by the appellants here.

And so it would have been anachronistic and particularly so for the court to succumb to mere technicalities in dealing with this appeal in the face of its peculiar facts as against doing substantial justice in the matter. (p. 681 C)

FAIR HEARING - Breach - Proof

6. The facts of this case do not admit of any breach of fair hearing, a far cry in the circumstances as gathered from the case of the appellants.

Albeit, this conclusion also follows from my holding above that the instant error or slip being accidental is covered by the principle of Slip Rule. The appellants' case has been duly considered as ventilated in their further amended brief of argument; and so they cannot be heard to complain of not having been given the opportunity of presenting their case to the court and particularly so as no miscarriage of justice has thus been occasioned to the appellants by the decision reached thereon. (p. 682 B)

Trials - Irregular procedure - Acquiescence

7. In the circumstances of this case, the appellants cannot approbate and reprobate, that is, blow hot and cold all at the same time particularly as here that the appellants have acquiesced in the procedure even though it be irregular as adopted by the trial court. They cannot now be heard to urge to the contrary at this stage as it is too late in the day to do so. In that vein, it is misplaced and misconceived to submit that the trial court has erred by not having allowed the case of the parties to be developed as per their pleadings due to the trial

court's failure to call for oral evidence from the parties, which procedure the appellants have alleged has interfered with the trial court's fundamental duty of making proper findings on the issues as joined on the pleadings before it. This issue in my view has been foreclosed by the decision of this court as per Adeogun v. Fasogbon (2008) 17 NWLR (Pt. 1115) 149 between the instant parties. (p. 684 E)

PARTIES - Actions - Consistency in case - Meaning

8. Besides, as decided in Ajide & Ors. v. Kelani (supra) a party should maintain a consistent case in prosecuting his case all through the hierarchy of the courts. Meaning that in an appeal as here a party should confine his case to what he has pleaded as to the issues raised for determination in the trial court.

The appellants in their written addresses at trial court have asked for the instant reliefs as claimed in this matter. It does not therefore lie in their mouth to urge the contrary in this court even more so as the appellants have been the winner at the trial court where they have never challenged the irregular procedure. I do not therefore agree with their case that the declaratory reliefs as claimed in this matter have been wrongly granted by the lower court, that submission is not maintainable by the appellants on the peculiar facts of this case and it is not as though the instant irregular procedure has rendered the instant proceedings null and void on that ground. (p. 686 A)

Adherence to procedure - Waiver

9. Finally, the appellants have decried in this regard the absence of oral evidence that would otherwise have resolved in particular the crucial issues in controversy in this regard that is to say, as to whether the 1st respondent has emerged through the party primary elections by election, selection or consensus - the question of want of oral evidence in these respects based on my reasoning above goes to no issue as again, the issue has also been settled and so foreclosed by the above reported case between the parties. It is also as settled in Amaechi v. INEC (supra) that where a party as the appellants here having waived his right to insist on following the strict procedure in a matter before a court he cannot later, on appeal, having led the other party to so act relying on his waiver be heard to decry the procedure as irregular with a view to resiling from it. No court (of equity) worth its

salt would allow a party in the circumstances to renege from his acquiescence in the circumstances and more so on the peculiar facts of this matter. Again, I resolve these issues against the appellants.
(p. 687 D)

B *ELECTIONS - Substitution of candidates - Information to INEC*

10. Section 34(1) (supra) has inter alia provided that the Commission shall be informed of any necessary move for the change of sponsored candidates whose names have already been sent to it. The provision of the Section although clear has not said who and the status of the person to so inform the Commission. I think it is left for the Commission and the 2nd respondent to think about such questions under their respective enabling powers as provided as per the Electoral Act 2006 hence the resort to the 2nd respondent's Electoral Guidelines and its constitution on this matter as registered and deposited with the 3rd respondent (i.e. INEC). By the provisions of the said Articles 49, 50 and 51 of the said Electoral Guidelines (also as quoted as per the record) read together, the National Chairman and National Secretary of the 2nd respondent are designated to validly convey Nominations and substitutions in regard to sponsored candidates under Section 34(2) (supra) to INEC and so to approach INEC on such matters as in this case by any other route being clearly unacceptable should be rejected. (p. 689 H)

F *Substitution of candidates - Reasons - Source of*

11. In this matter only the letter of 5/2/2007 to the 4th respondent (INEC) in the Cause Of Substituting the 1st appellant for the 1st respondent is relevant and material and so in point as it has been signed by the 2nd respondent's National Chairman and National Secretary.

It therefore, follows that it is the only source of accessing the reason for any substitution as here and if I may repeat so that all the other letters of 6/12/2006, 20/12/2006 and 24/1/2007 on the said substitution not having been so signed by National Chairman and the National Secretary have been rendered irrelevant and immaterial on the combined reading of Articles 49, 50 and 51 of the said Electoral Guidelines and they go to no issue in the cause of replacing the 1st respondent in this matter. They have to be discountenanced and

discarded. Meaning further that those letters ought not also to be read conjunctively with the letter of 5/2/2007 to support the reason given in the said letter of 5/2/2007 as the appellants have urged in this regard. This is so as the reasons for replacing the 1st respondent as contained in those letters upon my finding above cannot add nor enlarge or even detract from the reason contained in the letter of 5/2/2007 from the party Headquarters. (p. 690 F)

Substitution of candidates - Cogency of reasons

12. The letter of 5/2/2007 although emanating from the National Chairman and National Secretary, it has applied for the 1st respondent to be replaced by the 1st appellant, whose name as alleged has been sent in “error” to INEC; the reason therein is otherwise not acceptable as held in *Amaechi v. INEC* (supra) wherein it has been held that “error” in having sent the name of one Amaechi to INEC as a reason for changing it thereat will not ipso facto, without more in the context of the cause of replacing a sponsored candidate by a political party under Section 34(2) supra amount to a cogent and verifiable reason as it is no reason at all. This is further buttressed by the decision in *Ugwu & Anor. v. Ararume & Anor.* (2007) 12 NWLR (pt. 1048) 367 - where the forwarding of Ararume’s name to INEC has as alleged been done in “Error”, it has been held to be no reason at all in the sense of not being cogent and verifiable. In that vein therefore, I also reject “error” as given in the letter of 5/2/2007 as the reason for applying for the instant substitution as the issue has been settled by the above decided authorities. (p. 691 G)

REPRESENTATION

Chief Akin Olujunmi SAN with I. Egbuasi, O. Olujunmi, A. Olujunmi, Akiajemi Olujunmi, O. Atejedanye, Anne Elienam Miss, Toyin Fameso (Miss), Ayo Akinsanya for the Appellant.

Dr. J. O. Olatoke, Chief Olusola Oke with M. Onyeaika for the 2nd Respondent.

Patience Osagiede-Ofeyi with Isokan Uwuighi for the 3rd Respondent.

CASES REFERRED TO

Udeze v. Chidebe (1990) NWLR (Pt.125) 141

- Chime v. Chime (1995) 6 NWLR (Pt.404) 734
 Nzekwe v. Nwagbo (1988) 1 NWLR (Pt.72) 616
 Aro v. Aro (2000) 3 NWLR (Pt. 649) 443 at 456
 Motunwase v. Soruagbe (1988) 5 NWLR (Pt.92) 90
 Nwokoro v. Onuma (1999) 3 NWLR (Pt.136) 22 at 33
 B Adeogun v. Fashogbon (2008) 17 NWLR (Pt. 1115) 149
 Olubodun v. Lawal (2000) AFWLR (Pt.343) 1468 at 1504
 Udo v. C.R.S.C.N.C. (2001) 12 NWLR (Pt.7232) 116 at 160
 Amaechi v. INEC (2008) 5 NWLR (pt.1080) 227 at 311-313
 C Okonji v. Njokanma (1991) 7 NWLR (Pt.202) 131 at 150-151
 Onyejekwe v. Onyejekwe (1999) 3 NWLR (Pt.596) 482 at 503
 Ugwu & Anor. v. Araraume & Anor. (2007) 12 NWLR (Pt. 1048) 367 at 495

D **STATUTES REFERRED TO**

Electoral Act, 2006, s. 34
 Court of Appeal Act, s. 16

LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

- E This appeal is against the decision of the Court of Appeal, Abuja Division (Lower Court) delivered on 27/10/2009. Going by the decision, the appellant's (now 1st respondent herein) appeal has been allowed. In the same breath the lower court has dismissed the cross-appeal brought by the 1st respondent, (i.e. the appellants herein)
 F and being dissatisfied with the decision they have filed the instant appeal to this court.

- Without stating the facts in detail, the salient facts in the appeal crucial for resolving the immediate issues for determination as raised
 G in this matter are as borne out in the body of this judgment. However, this is a pre-election matter in which the appellants (herein) and the 1st respondent (herein) are locked in a desperate struggle for the party's (i.e. 2nd respondent herein) nomination and sponsorship as the candidate for the seat of Ife Federal Constituency in the National
 H Assembly for the 2007 general election. In the course of the matter a number of letters for substitution have been written by the 2nd respondent's National and local officials, which inter alia have craved for the substitution of the 1st appellant for the 1st respondent. The 3rd respondent (INEC) has accordingly effected the substitution as

the 1st respondent's name has been forwarded to the 3rd respondent (INEC) in "error"; hence the 1st appellant has taken part in the 2007 general election.

Aggrieved by the substitution, the 1st respondent has filed the instant action at the Federal High Court challenging the alleged substitution and claiming the following reliefs:

"(i) Declaration that the 2nd defendant has no right and/or power to recommend the substitution of the plaintiff with the 1st defendant as candidate of the PDP for the Ife Federal Constituency.

(ii) Declaration that the proposed substitution or replacement of the plaintiff with the 1st defendant as the candidate of Peoples Democratic Party for the Ife Federal Constituency by the 2nd and 3rd defendants is unlawful, illegal, unconstitutional, null and void and of no effect whatsoever.

(iii) Declaration that the proposed selection of the 1st defendant as the candidate of PDP for the Ife Federal Constituency is fraudulent, unlawful, illegal, unconstitutional, null and void and of no effect whatsoever.

(iv) Perpetual Injunction restraining the 1st defendant from allowing himself to be substituted, or presented to the 4th defendant as the candidate of Peoples Democratic Party for election into Ife Federal Constituency.

(v) Perpetual Injunction restraining the 2nd and 3rd defendants from substituting and/or presenting the 1st defendant to the 4th defendant as candidate of Peoples Democratic Party for the Ife Federal Constituency.

(vi) Perpetual injunction restraining the 4th defendant from recognizing and/or accepting the 1st defendant as candidate of Peoples Democratic Party for the Ife Federal Constituency in the 2007 general election."

It is important to emphasize at the outset that of the foregoing reliefs, the trial court partially has granted relief 1 (one) that is to say; "to the extent that 2nd defendant (i.e. 2nd respondent (PDP) herein) cannot recommend such substitution to 4th defendant" (i.e. INEC 3rd respondent herein) (words in brackets supplied) otherwise it has refused the rest of the reliefs as above stated. Hence, the 1st respondent has cross-appealed to the Lower Court while the appellants have appealed the whole decision; I have stated above how the lower

court has dealt with the appeal. In this court the parties have filed and exchanged their respective briefs of argument. In the appellants' brief of argument (who also have filed a reply brief), they have raised a number of issues for determination as follows:

B *(i) Whether in determining the cross-appeal of the appellants herein the lower court was right in relying on the notice of cross-appeal that had been abandoned - covers ground 1.*

C *(ii) Whether the lower court properly considered the case made by the appellants that the failure of the trial court to allow parties to call oral evidence in support of their pleadings prevented the trial court as well as the lower court from (sic, being) able to do justice in this case - covers ground 2.*

D *(iii) Whether on a proper consideration and understanding of the (sic, the case) put forward by the appellants gave the impression that no documents were available before the lower court and that the appellants put forward something less than the truth of the process before the trial court - covers ground 3.*

E *(iv) Whether the lower court was right on holding that the combined effect of letters dated 6/12/2006, 20/12/2006, 24/1/2007 and 5/2/2007 did not amount to cogent and verifiable reasons to justify the substitution of the 1st appellant for the 1st respondent in the April 21st, 2007 general elections - covers ground 4.*

F *(v) Whether the lower court was right in failing to consider the appellants sixth issue which was argued by the appellants-covers ground 5.*

G *(vi) Whether in the absence of any evidence led in support of the 1st respondent's claims the lower court properly granted the claims of the plaintiffs which are declaratory in nature - covers ground 6."*

H A notice of preliminary objection based on a number of grounds has been filed by the 1st respondent. At the oral hearing of this appeal before us the same has been withdrawn and has accordingly been struck out. The 1st respondent has adopted the appellants' issues for determination herein and has argued his case as per his brief of argument upon the same issues, the 2nd respondent (PDP) has argued this appeal also on the basis of the issues as raised by the appellants.

On Issue 1 as set out above: Having gone through the relative positions of the parties as per their submissions on this issue, I think

the real question for scrutiny is whether the lower court having indeed explicitly considered all the material issues as founded on the appellants' amended notice of cross-appeal as per the appellants' brief of argument, and so whether its judgment in this matter has otherwise been vitiated solely because of a mix-up/confusion apparent in the lower court's judgment as it has in error referred to the abandoned original notice of cross-appeal instead of the amended notice of cross-appeal in considering of the appellants' case. B

The appellants have made a heavy weather of this mix-up and have strongly contended that the lower court has reached a perverse decision, all the same in having considered and determined the appellants' case upon the four grounds of appeal contained in the abandoned original notice of cross-appeal as against the grounds of appeal as contained in the amended notice of cross-appeal consisting of 6 grounds of appeal. In the result, it is submitted that the lower court has therefore, failed to resolve all the issues based on the complaints raised by them for adjudication in the appeal. Also that the lower court clearly has breached their fundamental right of fair hearing which has occasioned a miscarriage of justice. The appellants in support of their stance here have cited the following cases: Nwokoro v. Onuma (1999) 3 NWLR (Pt.136) 22 at 33 and Okonji v. Njokanma (1991) 7 NWLR (Pt.202) 131 at 150-151 where the lower court has based its decision on an abandoned brief of argument to contend that this court unhesitatingly in such cases has set aside such decisions. On the question of want of fair hearing they have cited Kotoye v. CBN (1989) 1 NWLR (Pt.98) 419 at 448 to point out that the court has always followed the principle as expatiated therein much more so where it has occasioned a miscarriage of justice. F

The 1st respondent on the other hand in response to the appellants' case here has submitted as per his brief, and I quote a portion of his brief in this regard as saying: *"that the appellants herein formulated issue 4 (four) in respect of ground 1 (one) of their notice of cross-appeal (see p.441 of the record); issue 5 (five) from ground 2 (two) of the notice of cross-appeal (see page 442 of the record) and issue 6 (six) from grounds 5 (five) and 6 (six) of the notice of cross-appeal as amended (see page 443 of the record)"*. And has therefore submitted thereof that, *"No doubt the lower court dispassionately considered the cross-appeal issues 4, 5 and 6 as at pages G H*

496-502 of the record...”; thereby rendering otiose the effect of the reference in its judgment to the original notice of cross-appeal instead of the grounds as per the amended notice of cross-appeal and so that the lower court has failed to consider their case in the appeal. See: *Nwokoro v. Onuma* (supra) at page 33. The point is also taken
 B that appeals are otherwise considered on the basis of the issues raised for determination and not on the grounds of appeal simpliciter.

The 2nd respondent (i.e. PDP) on issue one has conceded that the lower court in the mix-up has completely omitted to set out
 C issue 3 as formulated for determination even though, it has reviewed and considered all the same, issues 2 and 3 as per its judgment, again as per the Record at pp.499-502 and has distinguished the instant case from the facts and circumstances in the case of *Tunbi v. Opawole* (2002) 2 NWLR (Pt.644) 278 in which the appellant’s right of fair
 D hearing (in the cited case) has been breached by the lower court making use of an abandoned brief of argument in arriving at its decision and such other similar cases herein cited by the appellants. It has submitted that the instant mix-up amounts to a slip or mistake that has not affected the decision substantially as to vitiate it. See: *Pan*
 E *Atlantic Shopping & Transport Agencies Ltd. V. Rheem Mass GMBH* (1997) 9 NWLR (Pt.493) 248 at 256 paragraphs C-D.

The court is urged to resolve issue one in favour of the 1st,
 2nd and 3rd respondents and to uphold the decision of the lower
 F court.

The high point of the foregoing arguments proffered by the parties herein is that the confusion/mix-up that has surrounded the lower court’s judgment in referring to the abandoned notice of cross-appeal in considering the appellants’ case in this matter has brought
 G to the fore respectfully the importance of every court taking great care as well as being circumspective in judgment writing. What has happened here although no doubt avoidable has respectfully introduced an unnecessary twist in regard to the issues for determination raised in this matter. I now go on to discuss this matter.

H As issue one has stood out as the joker of the pack of issues raised by the appellants for determination in this matter it requires in my view dealing with exhaustively. It has emerged in this matter that the appellants have filed two sets of notices of cross-appeal, that is to say - original and amended notices. The original notice of cross-ap-

peal contains 4 (four) grounds of appeal and the amended notice of cross-appeal contains 6 (six) grounds of appeal from which six issues have been formulated. The Lower Court has gotten it all wrong and mixed up in its judgment as to the relevant grounds of appeal and the issues for determination by referring to the abandoned original notice of cross-appeal instead of the amended notice of cross-appeal B
albeit in error in considering the appellants' case vis-a-vis the material issues raised for determination in this matter. This is evident as at p.496 et seq. of the record. To put these matters in their perspectives I have to rehash the sequence of events culminating in the lower court's decision as at p.502 of the record. Under the heading of "I C
shall recast the grounds of appeal with particulars viz" the lower court has proceeded to quote the four original grounds of appeal in the cross appeal, which have been abandoned instead of the extant amended notice of appeal containing six grounds. The lower court D
has set out in its judgment only two of the three issues raised from the abandoned notice of cross-appeal as against six issues raised from the amended notice of cross-appeal as per their further amended brief of argument in considering the appeal and even then that it has proceeded to rely on only two out of the three issues so formulated E
by the 1st respondent in the appeal even as the appellants have contended that the 2nd issue thereof has not arisen from the decision. The appellants have therefore argued that the error has led to relying on the original notice of cross-appeal and that has grossly affected F
the due consideration of their entire case as founded on the amended notice of cross-appeal and on the issues raised therefrom. Furthermore, that the lower court has even then considered the 1st respondent's two issues instead of the three issues raised for consideration by the 1st respondent in the appeal. They have also contended that the appellants' singular complaints in the matter as regards the trial court in not having allowed the parties to call oral evidence in support of their respective pleadings and also in wrongfully relying on admissions without more in granting of the declaratory reliefs as claimed, have thus rendered the decision of the lower H
court in that regard perverse.

The respondents on the other hand have submitted as I have set out above and have added that the cited cases in support of the appellants' case to wit: *Tunbi v. Opawole* (supra) *Nwakoro v. Onuma*

(supra) and Okonji v. Njokanma (supra) are inapplicable to this case as the lower court has merely slipped, that is, in error by having recourse to the original notice of cross-appeal already abandoned whereas it should have referred to and relied on the amended notice of cross-appeal in the course of considering the appellants' case before it.

Having examined the foregoing contentions vis-a-vis the facts and circumstances of this matter, firstly it should be noted that the courts after all are manned by human beings and so prone to commit slips or errors or mistakes in writing their judgments as here. **No doubt in the course of adjudication accidental slips or errors as here are bound to occur and even reoccur. In any event each situation has to be viewed from its peculiar facts and circumstances as no two cases are the same in matters of this nature. I must observe however, that the general principle that the only way of reviewing or correcting any apparent error in the court's judgment is by way of appeal is subject to the power of the court exercisable under the Slip Rule in regard to accidental slips vis-a-vis also the power of the court exercisable under the inherent jurisdiction which eminently is used to give effect to the intention of the court. There is no question of their being used as a cause of having a second thought on the decision.** Although in this case the court has not been invited to correct the instant accidental mistake, the lower court's judgment in this matter is on appeal to this court on this ground and so I have all the same to advert to the above two ways of dealing with the issue also albeit by noting the state of the instant judgment as delivered by lower court and as intended but for the instant slips. **The Slips as these are dealt with under the inherent jurisdiction of the court and the rules of court have made adequate provisions to cope with accidental slips; see Order 8 Rule 16 of the Supreme Court Rules. It is the import and intendment of the provisions of the pertinent rules of courts vis-a-vis the power exercisable under the inherent jurisdiction of the courts under the slip rule that have informed the pronouncement of this court in such cases as Pavex Int. Co Ltd. V. Afribank Ltd. (2000) 4 SC (Pt.11) 196 to the effect that it is not every accidental slip or mistake of the lower court that will result in an appeal be-**

ing set aside - the error must be of a material nature that has eroded the foundation of the decision. The error that has arisen in this matter is obvious on the record and in my respectful view is governed by the principle of Slip Rule. I will return to it later on in this judgment.

Based on the foregoing narrative of this matter no doubt it begs the question whether the lower court having considered and determined the appellants' case on the abandoned original notice of cross-appeal the said judgment stands automatically vitiated without more. The answer to the poser is firstly, it has to be borne in mind that every error or slip has to be determined on its peculiar facts and even more so where as in this case the error respectfully is of the court's own making. There can be no question that the lower court in this matter has referred to the abandoned original notice of cross-appeal albeit in error in its judgment. Firstly, I agree and accept as settled the proposition of the law that a court is bound to consider all the issues as raised by the parties in the case before it as otherwise it would be failing in its duty; as per *Tunbi v. Opawole* (supra) *Nwakoro v. Onuma* (supra) and *Okonji v. Njokanma* (supra) cited to this court. It is also settled that once a notice and grounds of appeal have been abandoned they cannot any more form part of a party's case whether or not contained in a brief as in the case of appellants here. That is to say, that where a party's case as per his brief of argument has been abandoned it is settled that his case cannot be considered or determined at all as per the abandoned brief and any such decision based on an abandoned brief stands vitiated no matter however well conducted. See: *Tunbi v. Opawole* (supra) and therefore in that wise it cannot be a misuse of language to say that there has been a breach of fair hearing and unarguably that it has occasioned a miscarriage of justice in which instance the appellant's case as presented in their brief has not really been considered in the appeal.

Bearing in mind that facts are sacrosanct in the process of applying the principles derived or distilled from one case to another as per the doctrine of precedents and having examined the facts of this case against the facts of the above cited cases heavily relied upon by the appellants on this point I agree and accept the submission of the respondents that the underlying principles derived or distilled from the decisions in

such cases as *Tunbi v. Opawole (supra)* and *Nwokoro v. Onuma as well as Okonji v. Njokanma (supra)* have no application to the immediate facts in this matter as they are not on all fours with the instant case and so a non sequitur. In this case the errors amount to accidental slips or mistakes. And I so find.

B These are apparent from the said judgment and so I go ahead to consider and treat the slips by reference to the instant judgment.

On the question whether the appellants' case has been so considered against the background of these slips I have perused the record and I am satisfied from the lower court's review of the appellants' case that issue 4 is based on ground 1 (one), and Issue 5 (five) on ground 2 (two), although both of them are from the abandoned original notice of cross-appeal and Issue 6 (six) is raised from grounds 5 (five) and 6 (six) of the amended notice of cross-appeal and these issues have been duly considered by the lower court in its judgment.

Nonetheless, from the abstract of the record as I will refer to anon, it has also been unequivocally demonstrated that the lower court notwithstanding the accidental slips in referring to the abandoned original notice of cross-appeal instead of the amended notice of cross-appeal has all the same dealt with the appellants' case by considering all the material issues as raised for determination in this matter as per the appellants' brief of argument. Again, this is so as found in the concluding paragraph of its judgment as per page 502 of the record as follows:

"Even though her procedural style is not one I would recommend, that did detract for (sic) the fact that she considered what was before her and made a decision upon it. Therefore, the postures of the cross-appellant are not buttressed by the facts and what took place in the Court below. In fact the cross-appellant has put forward something less than the truth of the process before the court of first instance and what the trial judge did or did not do. The cross-appeal fails and is dismissed for lacking in merit."

The foregoing abstract of the lower court's judgment has therefore debunked the appellants' contention of non consideration of their case in this appeal or that it has been predicated solely on the abandoned notice of cross-appeal. The implica-

tion of the above decisive conclusion on the appellants' case howbeit even in having referred to the abandoned original notice of cross appeal instead of the amended notice of cross-appeal in this appeal in considering of the appellants' case in error has not on the whole affected a dispassionate consideration of the appellants' case and the conclusion reached by the lower court as per the above abstract. The lower court is satisfied that the trial court has dispassionately considered what has been presented before it as the appellants' case to arrive at the above conclusion hence the lower court has proceeded rightly in my view to dismiss the cross-appeal and to allow the 1st respondent's appeal as per the above abstract in this matter.

It seems to me therefore properly acceptable that the lower court in spite of the accidental slip or mix-up evident on the facts of this case as I have tried to adumbrate above, it has nonetheless reached a correct decision in this appeal by having resolved it on the material issues raised for determination by the appellants. And I so hold. Also it is settled as per the case of Niger Construction Ltd. V. Okingbeni (1987) 4 NWLR (Pt.67) 787 that appeals are allowed on the issues raised and successfully canvassed and not on the grounds of appeal simpliciter as is being urged by the appellants here. See: also Chime v. Chime (1995) 6 NWLR (Pt.404) 734 And so it would have been anachronistic and particularly so for the court to succumb to mere technicalities in dealing with this appeal in the face of its peculiar facts as against doing substantial justice in the matter.

Again, if I may expatiate on a crucial point in this matter; it is settled law that it is not every accidental slip or omission as the case may be in a judgment that will lead to the judgment being upturned as it must be one substantial or material enough to affect the basis of the decision which is not the case here and so it is not just enough to merely identify the accidental error or slip in a judgment as the appellants have attempted to do here, it must be demonstrated that it has substantially affected the decision. Respectfully, the appellants have not taken such further bold step here in that regard and in my view as the slip is merely accidental in nature, it will be corrected under the inherent jurisdiction of the court. See Nzekwe v. Nwagbo (1988) 1 NWLR (Pt.72) 616; Mora v. Nwalusi (1962) 1 ANLR 681

and Udeze v. Chidebe (1990) NWLR (Pt.125) 141, I must also observe that the instant accidental slip has not impeded the lower court's reasoning in considering of the appellants' case as borne out by the above quoted abstract.

I now come to the important question of fair hearing whether
 B in the circumstances of this case it has been breached or not. It is a
 fundamental right and its breach vitiates any decision. ***The facts of
 this case do not admit of any breach of fair hearing, a far cry in
 the circumstances as gathered from the case of the appel-***
 C ***lants. See: Nwakoro v. Onuma (supra). Albeit, this conclusion
 also follows from my holding above that the instant error or
 slip being accidental is covered by the principle of Slip Rule.
 The appellants' case has been duly considered as ventilated in
 their further amended brief of argument; and so they cannot***
 D ***be heard to complain of not having been given the opportunity
 of presenting their case to the court and particularly so
 as no miscarriage of justice has thus been occasioned to the
 appellants by the decision reached thereon.***

In the result, I hold that the lower court's reference in its judg-
 E ment to the abandoned original notice of cross-appeal instead of the
 amended notice of cross-appeal, in the circumstances as I have found
 above, is an accidental slip or omission or mistake for that matter and
 as not having affected the lower court's consideration and determi-
 F nation of the material issues raised by the appellants in their further
 amended brief of argument as predicated on their amended notice
 of cross-appeal. It naturally follows therefore that the said decision
 cannot be faulted nor vitiated solely on the ground of having re-
 G amended notice of cross-appeal albeit in the consideration of its judg-
 ment. I uphold the lower court's decision in this matter as correct.
 The appellants' case in the circumstances is totally misplaced and
 misconceived. I therefore find no grounds for otherwise upholding
 issue one in the appellant's favour.

H On issues 2, 3 and 6 as set out above, they have been aptly
 argued together having been linked together by the question of pro-
 cedure as it transcends the three issues, and I deal with them by firstly
 examining the alleged direction given by the trial court to the parties
 at the close of pleadings to formulate issues for determination by

filing their respective written addresses. Thus, the parties as contended by the appellants have not been allowed to call oral evidence to support the averments in their respective pleadings and for improperly granting of the plaintiff's (i.e. 1st respondent) reliefs of declaratory nature on bare admissions.

The appellants in their reaction to these issues have alleged of not having been allowed to call oral evidence on the issues as joined on their respective pleadings and that what has followed is a total absence of any findings on any of the crucial issues as joined on the pleadings hence the absence of definitive pronouncement on whether the 1st respondent has emerged in the party's primary elections by election, selection or consensus. See *Onyejekwe v. Onyejekwe* (1999) 3 NWLR (Pt.596) 482 at 503 paragraphs D-E, *Aro v. Aro* (2000) 3 NWLR (Pt. 649) 443 at 456 paragraphs B-C.

On the question of granting declaratory reliefs: It is submitted by the appellants that such reliefs are not granted on admissions and in the absence of preponderance of oral evidence from the claimant and that the lower court in the instant matter has erroneously granted declaratory reliefs without oral evidence to support them and thus has erred in law. See *Olubodun v. Lawal* (2000) AFWLR (Pt.343) 1468 at 1504, *Motunwase v. Soruagbe* (1988) 5 NWLR (Pt.92) 90, *Bello v. Emeka* (1981) 1 SC 101 and *Udo v. C.R.S.C.N.C.* (2001) 12 NWLR (Pt.7232) 116 at 160 and *Amaechi v. INEC* (2008) 5 NWLR (pt.1080) 227 at 311-313 Paragraphs A-G. In summary therefore it is submitted that on the conflicting averments in the pleadings (including the above) not having been resolved by oral testimony, there is no basis for granting the declaratory reliefs and so they have further submitted that the judgment cannot stand.

The 1st respondent has argued in response that the appellants have acquiesced in the irregular procedure at the trial court and having done so the trial court has rightly relied on the pleadings and documents exhibited to the affidavits and other processes filed in the matter in reaching its decision because the case is primarily documentary in nature i.e. consisting of affidavits on which the granting of the declaratory reliefs has been premised at the trial court and so the appellants cannot now be allowed to resile from their previous position at the trial court as it has amounted to a waiver. Even then, it has been contended that the appellants are estopped from raising these

issues as the same have been raised and adjudged by this court upon the first coming to this court of the parties in this matter as per suit No. SC. 183/2007 as reported in Adeogun v. Fasogbon (2008) 17 NWLR at page (Pt. 1115) 149 per Tabai JSC, which is binding on this court.

B The 3rd respondent (PDP) on this question of procedure adopted by the trial court in these respects has observed that the appellants have raised no objection to the irregular procedure at the trial court and are therefore bound by it. The documents attached to the affidavits and other court processes filed in this matter have clearly
C been relied upon by the parties in their written addresses at the trial court and the appellants never raised any objection in the proceedings upon which the trial court has relied to give them judgment at the first instance and particularly that the irregularity has not occasion
D a miscarriage of justice and so that the instant challenge of the procedure is in bad faith and should be discountenanced. Further that it is unfounded, the 3rd respondent (PDP) has contended, for the appellants to urge that the judgment be reversed on those grounds. I agree entirely with the foregoing submissions of the 2nd and 3rd respondents.
E

In the circumstances of this case, the appellants cannot approbate and reprobate, that is, blow hot and cold all at the same time particularly as here that the appellants have acquiesced in the procedure even though it be irregular as adopted by the trial court. They cannot now be heard to urge to the contrary at this stage as it is too late in the day to do so. In that vein, it is misplaced and misconceived to submit that the trial court has erred by not having allowed the case of the parties to be developed as per their pleadings due to the trial court's failure to call for oral evidence from the parties, which procedure the appellants have alleged has interfered with the trial court's fundamental duty of making proper findings on the issues as joined on the pleadings before it. This issue in my view has been foreclosed by the decision of this court as per Adeogun v. Fasogbon (2008) 17 NWLR (Pt.1115) 149 between the instant parties. It has held therein that the uncontroverted nature of the facts of this matter as per the documents before the trial court has been behind the trial court ordering the parties to

proceed without more to exchange of their written addresses on the matter rather than call oral evidence in expatiation of their pleadings. And the parties by complying accordingly have acquiesced in it and cannot be heard to complain. I do not therefore think that the issue is still open to be controverted or relitigated any more or less in the same proceedings as the instant one and more so as the parties are even then estopped from doing so in the absence of fraud or want of jurisdiction, where properly so raised. The court has therefore, become functus officio in that regard. Even so as this court in the said reported case has also found that the procedure adopted in this case by the trial court is “most apt”. This court cannot sit on appeal over that finding. Besides, it has not occasioned a miscarriage of justice. B C

In this matter it is common ground as gathered from the processes filed therein, firstly, that the 1st respondent has emerged as the 2nd respondent’s candidate for Ife Federal Constituency for the 2007 general election. If I may observe on the facts of this matter, it is still the law that nomination as well as sponsorship of candidates for election in a general election as in this instance is within the domain of the political parties; this view appears to be in accord with the letter and spirit of the Electoral Act 2006. This point of law as laid in Onuoha v. Okafor (1983) NSCC 494 is still good law not having been overruled. Secondly, that a number of letters have been sent to the 3rd respondent i.e. INEC to substitute the 1st appellant for the 1st respondent is uncontroverted; and thirdly, it is also in evidence that the 1st respondent has challenged his substitution for not being in accordance with Section 34(2) of the Electoral Act 2006. These accepted facts or critical materials have emanated if I may repeat from the processes including the affidavits and documents before the trial court and they have also formed the bases of the written addresses by the parties at the trial court meaning in effect that both sides to the matter have unequivocally consented to the irregular procedure if at all. In my view therefore, the appellants’ repudiation of the procedure as irregular in this court is in utter bad faith and an afterthought and being unacceptable it is hereby rejected. In the decision in Amaechi v. INEC (supra), a case similar to this matter on the point the parties therein having adopted an irregular procedure constituting, to all intents and purposes a waiver of their rights, the parties therein have not been allowed to resurrect them i.e. return to their original posi- D E F G H

tions nor have they been heard to complain of the irregularity in that case in this court and so the attitude of the appellants' here in this regard must be highly deprecated as the same principle is applicable to this case in which the parties have acquiesced in the said irregular procedure without more. **Besides, as decided in Ajide & Ors. v. Kelani (supra) a party should maintain a consistent case in prosecuting his case all through the hierarchy of the courts. Meaning that in an appeal as here a party should confine his case to what he has pleaded as to the issues raised for determination in the trial court.** See Jumbo v. Bryanko Int. (1995) 6 NWLR (pt.403) at 555-6. **The appellants in their written addresses at trial court have asked for the instant reliefs as claimed in this matter. It does not therefore lie in their mouth to urge the contrary in this court even more so as the appellants have been the winner at the trial court where they have never challenged the irregular procedure. I do not therefore agree with their case that the declaratory reliefs as claimed in this matter have been wrongly granted by the lower court, that submission is not maintainable by the appellants on the peculiar facts of this case and it is not as though the instant irregular procedure has rendered the instant proceedings null and void on that ground.**

On the other aspects of the appellants' case I can find no basis for the appellants' contention that the trial court's decision is also based on admissions (which is far fetched) and thus as has been contended by the appellants that the declaratory reliefs as sought have been granted solely on admissions.

It is settled law that a declaratory relief is not granted solely on admission; even also see Motunwase v. Sorugbe (1988) 5 NWLR (Pt.92) 90, Bello v. Emeka (1981) 1 SC.101, Udo v. C.R.S.C.N.C. (2001) 12 NWLR (Pt.732) 116 at 160 and Amaechi v. INEC (2008) 5 NWLR (Pt. 1050) 227 at 311-313. That said; I agree with the reasons and reasoning in Amaechi's case (supra) as in this case that the fact that no viva voce evidence has been called at the trial court on the pleadings on the issue of declaratory reliefs as claimed here does not ipso facto render the proceedings before the trial court void. The parties having accepted the uncontroverted documentary evidence as per the affidavits and other processes filed in this matter

have acted and used them in their written addresses - in all, thus bearing forth their acquiescence in the irregular procedure. They cannot at this stage resile from the said irregular procedure.

Clearly, the fact that the decision of the lower court is based on these affidavits and documentary evidence before the trial court will not for those reasons only tantamount to a decision based on admissions, as admission in law is much more than relying as here on the affidavit evidence and the facts contained in the processes filed in this case - even then they cannot without more be taken as having been established or admitted. The lower court, nonetheless has in my view rightly granted the declaratory reliefs sought in the appeal acting under Section 16 of the Court of Appeal Act and I cannot therefore interfere with that cause. On the whole and more importantly this court cannot be seen to sit in judgment over its decision on this point as already found and reported as per Adeogun v. Fasogbon (2008) 17 NWLR (Pt. 1115) 149; as it has laid to rest these issues and also the appellants again, if I may repeat are estopped from re-litigating the issues as there must be an end to litigation.

Finally, the appellants have decried in this regard the absence of oral evidence that would otherwise have resolved in particular the crucial issues in controversy in this regard that is to say, as to whether the 1st respondent has emerged through the party primary elections by election, selection or consensus - the question of want of oral evidence in these respects based on my reasoning above goes to no issue as again, the issue has also been settled and so foreclosed by the above reported case between the parties. It is also as settled in Amaechi v. INEC (supra) that where a party as the appellants here having waived his right to insist on following the strict procedure in a matter before a court he cannot later, on appeal, having led the other party to so act relying on his waiver be heard to decry the procedure as irregular with a view to resiling from it. No court (of equity) worth its salt would allow a party in the circumstances to renege from his acquiescence in the circumstances and more so on the peculiar facts of this matter. Again, I resolve these issues against the appellants.

On the 4th issue: It is clear that the questions to be resolved

here include firstly whether the mode of conducting proper substitution by the 2nd respondent as a political party as provided under the law has been met and secondly, on whether the reason given for the replacement of the 1st respondent by the 1st appellant is cogent and verifiable.

B The appellants have contended that the purpose of the letters of 6/12/2006, 20/12/2006 and 24/1/2007 which have emanated from the 2nd respondent's local chairman and its other local officials as well as the letter of 5/2/2004 from the National Headquarters of the PDP read together have spelt out in clearer terms the reason
C given by the 2nd respondent (PDP) to replace Hon. Fashogbon, the 1st respondent by the 1st appellant and that the move has been regularly taken pursuant to Section 34(2) of the Electoral Act 2006 and the 1999 Constitution and should not have given rise to any
D dispute or acrimony if the lower court has followed the principles in this court's decision in *Ehinlauwo v. Oke* (supra). The appellants respectfully have been wrong-footed in so submitting as above.

The 1st respondent on the other hand has maintained on this issue that he has won the party primary election and sequel to it his
E name has been sent to the 4th respondent (i.e. INEC) which has screened and cleared him for the said election and that the appellants have contended in the letter of 5/2/2007 that his name has been sent in "error" and in that regard he has made the point that
F save as alleged in the said letter of 5/2/2007, which is no reason at all that they (the appellants) have failed to give any cogent and verifiable reason. He submits that the substitution of the 1st appellant for the 1st respondent being unlawful cannot be sustained under Section 34(2) (supra).

G The 2nd respondent (PDP) has followed suit in challenging the substitution under Section 34(2) (supra) by opining that the procedure as prescribed by the Electoral Guidelines for the PDP Primary Elections as well as the constitution of the party (i.e. PDP) is that the letters giving reasons for any substitution of names already sent to
H INEC by the 2nd respondent (PDP) have to be signed by the party National Chairman and National Secretary and so that the letters of 6/12/2006, 20/12/2006 and 24/1/2007 not having been so signed, they go to no issue. It is to be noted that the above reasoning of the 1st and 2nd respondents cannot be faulted and I accept them.

This issue is a recurring issue in many appeals to this court and this court has in consequence made several pronouncements on the point. These decisions include Ugwu & Anor. v. Araraume & Anor. (2007) 12 NWLR (Pt. 1048) 367 at 495, Ehinlanwo v. Oke (supra), and Amaechi v. INEC (supra) etc. The rationale that seems to have emerged from the above cited cases on this issue is that Section 34 of the Electoral Act 2006 read on the backdrop of Articles 49, 50 and 51 of the Electoral Guidelines for the PDP's Primary Elections (binding on the appellants and 1st and 2nd respondents) and being plain and free from any ambiguity are concerned with the provisions for substituting of candidates where their names have already been sent to INEC (the 3rd respondent) as in this matter for screening. Section 34 (supra) for ease of reference provides:

"34(1) A political party intending to change any of its candidates for the 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"

(3) Not applicable and so not copied.

The provisions of Articles 49, 50 and 51 of the Electoral Guidelines of the 2nd respondent for ease of reference are as follows:

"49: The National Chairman and the National Secretary of the Party shall convey all final results of the primary election as approved by the National Executive Committee of the Party containing a detailed list of party candidates for various elective public offices to the Independent National Electoral Commission (INEC).

50: All submissions to the Independent National Electoral Commission with respect to party candidates shall carry the full signatures of the National Chairman and National Secretary. Any submissions to INEC not carrying the said signatures shall be null and void.

51: The National Executive Committee on the recommendation of the National Working Committee may substitute the name of a candidate earlier submitted to the Independent National Electoral Commission (INEC) if sufficient reason/evidence to do so arise."

Section 34(1) (supra) has inter alia provided that the Commission shall be informed of any necessary move for the change of sponsored candidates whose names have already been sent to it. The provision of the Section although clear

has not said who and the status of the person to so inform the Commission. I think it is left for the Commission and the 2nd respondent to think about such questions under their respective enabling powers as provided as per the Electoral Act 2006 hence the resort to the 2nd respondent's Electoral Guidelines and its constitution on this matter as registered and deposited with the 3rd respondent (i.e. INEC). By the provisions of the said Articles 49, 50 and 51 of the said Electoral Guidelines (also as quoted as per the record) read together, the National Chairman and National Secretary of the 2nd respondent are designated to validly convey Nominations and substitutions in regard to sponsored candidates under Section 34(2) (supra) to INEC and so to approach INEC on such matters as in this case by any other route being clearly unacceptable should be rejected. There can be no doubt that this procedure of changing sponsored candidates has been prescribed and followed to minimize to the barest the confusion that otherwise would have beclouded the whole process where as in this case the Zonal Chairman and other local officials as against the National Chairman and National Secretary of the 2nd respondent are allowed to engage in such exercise (i.e. as a free for all affair) i.e. as exemplified by" what has actually happened in this case as per the said letters. Thus by the foregoing reasons the said letters of 6/12/2006, 20/12/2006 and 24/1/2007 from the Local Chairman and officials have been otherwise rendered very much irrelevant and unacceptable in considering the reason for the alleged substitution in this matter.

In this matter only the letter of 5/2/2007 to the 4th respondent (INEC) in the Cause Of Substituting the 1st appellant for the 1st respondent is relevant and material and so in point as it has been signed by the 2nd respondent's National Chairman and National Secretary. This view is in consonance with the letter and spirit of the said Articles 49, 50 and 51 of the said Electoral Guidelines (2006) and the Electoral Act 2006. **It therefore, follows that it is the only source of accessing the reason for any substitution as here and if I may repeat so that all the other letters of 6/12/2006, 20/12/2006 and 24/1/2007 on the said substitution not having been so signed by National Chairman and the National Secretary have been rendered irrelevant**

and immaterial on the combined reading of Articles 49, 50 and 51 of the said Electoral Guidelines and they go to no issue in the cause of replacing the 1st respondent in this matter. They have to be discountenanced and discarded. Meaning further that those letters ought not also to be read conjunctively with the letter of 5/2/2007 to support the reason given in the said letter of 5/2/2007 as the appellants have urged in this regard. This is so as the reasons for replacing the 1st respondent as contained in those letters upon my finding above cannot add nor enlarge or even detract from the reason contained in the letter of 5/2/2007 from the party Headquarters. I agree and accept that the 2nd respondent has therefore unsuccessfully applied to have the 1st respondent replaced by the 1st appellant and that the purported substitution of the 1st appellant for the 1st respondent is of no effect and so null and void; it has been a non starter ab initio. And I so hold.

Furthermore, in line with the above, the lower court has rightly in my view discountenanced the contents of the above mentioned other letters even though their prime purpose as alleged by the appellants is to show that the choice of the 1st appellant and the move to substitute him for the 1st respondent is to position their party to effectively win the said election albeit as a cogent and verifiable reason in the circumstances and also as complementing the reason in the letter of 5/2/2007. These posturing by the appellants in regard to the said letters are to say the least of no moment and baseless howbeit based on my findings above.

The 1st, 2nd and 3rd respondents have submitted again, rightly in my view that the letters of 6/12/2006, 20/12/2006 and 24/1/2007 not having been duly authorized and signed by the constituted authority of the 2nd respondent (PDP) which letters as I have found are irrelevant and go to no issue, should not count or otherwise be taken account of in considering whether the reason for the alleged substitution is cogent and verifiable and I agree. **The letter of 5/2/2007 although emanating from the National Chairman and National Secretary, it has applied for the 1st respondent to be replaced by the 1st appellant, whose name as alleged has been sent in "error" to INEC; the reason therein is otherwise not acceptable as held in Amaechi . v. INEC (supra) wherein it has been**

held that “error” in having sent the name of one Amaechi to INEC as a reason for changing it thereat will not ipso facto, without more in the context of the cause of replacing a sponsored candidate by a political party under Section 34(2) supra amount to a cogent and verifiable reason as it is no reason at all. This is further buttressed by the decision in Ugwu & Anor. v. Ararume & Anor. (2007) 12 NWLR (pt. 1048) 367 - where the forwarding of Ararume’s name to INEC has as alleged been done in “Error”, it has been held to be no reason at all in the sense of not being cogent and verifiable. In that vein therefore, I also reject “error” as given in the letter of 5/2/2007 as the reason for applying for the instant substitution as the issue has been settled by the above decided authorities.

And so, I agree with the respondents that the alleged substitution of the 1st appellant for the 1st respondent being unlawful in the circumstances is null and void. Again, I resolve issue 4 against the appellants.

On Issue 5: In this matter the appellants are alleging that the sixth issue having been fully argued in their brief of argument has not been considered by the lower court in its judgment. The synopsis of issues 5 and 6 which have been argued together is whether the lower court i.e. the trial court should have allowed a suit initiated by writ of summons to be heard on documentary evidence only without calling oral evidence. However this issue is covered by issue one which I have dealt with exhaustively herein and so I should not repeat myself. I agree and accept the 1st respondent’s submission that where a party has decided to argue two issues together, the court is not obliged to consider the issues separately without more. Since the two issues have been lumped and treated together because of their similarity and common substratum; they have been argued together and so they have clearly been covered under issue one herein. I therefore see no point in repeating my views on issue one in that regard all over in dealing with the instant issue six as it should be taken as having been disposed of in this matter as I adopt my reasons above in deciding issue 6 in that regard. I resolve this issue without more against the appellants.

In the result, having resolved all the issues in this matter against the appellants, I accordingly hold that there is no merit whatsoever in

this appeal and I dismiss it in its entirety and hereby affirm the decision of the lower court. I award to each of the 1st and 2nd respondents the sum of N50,000.00 (i.e. to each of them). The 3rd respondent (INEC) is to bear its own costs in this appeal. Appeal dismissed.

B

MUSDAPHER JSC

I have read before now the judgment of my lord Chukwuma-Eneh, JSC just delivered with which I entirely agree. For the same reasons as elaborated in the aforesaid judgment which I respectfully adopt as mine, I too do resolve the relevant issues against the appellants and consequently find no merit in the appeal.

I also dismiss the appeal and abide by the order for costs proposed in the aforesaid judgment.

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MOHAMMED JSC

I have been privileged before today of reading in draft, the judgment of my learned brother Chukwuma-Eneh JSC which has just been delivered. I am fully with him in his reasoning and conclusion in resolving the issues arising for determination in this appeal resulting in the dismissal of the appeal.

It is quite clear from the letter of substitution signed by the Chairman and Secretary of the 2nd Respondent and sent to the 3rd Respondent that the only reason given for seeking the substitution of the 1st Respondent with the 1st Appellant as the candidate of the 2nd Respondent in the election, was that the name of the 1st Respondent was submitted to the 3rd Respondent in 'error.' The question that calls for determination is therefore whether the submission of the name of the candidate in 'error' can scale the hurdle of cogent and verifiable reason required by Section 34(2) of the Electoral Act 2006. This Court had in fact laid to rest this question in many of its decisions beginning with the decision in *Eng. Charles Ugwu & Anor. v. Sen. Ifeanyi Araraume & Anor.* (2007) 12 N.W.L.R. (Pt. 1048) 367) at 445 where this Court decided that substitution of a candidate's name on the ground of error is not cogent and verifiable reason and therefore not in compliance with Section 34(2) of the Electoral Act

2006.

With these few comments, I am of the view that the appeal lacks merit and same is hereby dismissed. I abide by the orders made in the leading judgment including the order on costs.

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TABAI JSC

I read, in advance, the lead judgment prepared by my learned brother, CHUKWUMA-ENEH, JSC wherein he comprehensibly addressed the various issues raised. He addressed, in particular, the issue of the Lower Court's inadvertent reference to the original notice of cross-appeal instead of the amended notice of cross-appeal, the issue of fair hearing, the effect of the decision of this Court between the parties reported in (2008) 17 NWLR (part 1115) 149 the effect of the letters dated 6/12/2006, 20/12/2006, 24/01/2007 and 5/2/2007 e.t.c. and all of which he resolved in favour of the 1st - 3rd Respondents.

I agree entirely with the reasoning and conclusion in the lead judgment that the appeal lacks merit. The result is that I also dismiss the appeal with costs as assessed in the lead judgment.

RHODES-VIVOUR JSC

The issue in this appeal is substitution. Substitution of a candidate must be in compliance with the provisions of Article 51 of the PDP Electoral Guidelines for Primary Elections 2006, and Section 34 (2) of the Electoral Act.

By the provisions of Article 51 of the PDP Electoral Guidelines for Primary Election 2006 substitution of a candidate must be initiated by the National Working Committee of PDP and made to the National Executive Committee who shall take action.

In this matter the 1st respondents name was forwarded to INEC as the PDP's candidate for Ife Federal Constituency for the 2007 General Elections. However some Zonal executives decided to replace the 1st respondent with the 1st appellant. The 1st respondent protested. Nothing was done, rather the 2nd appellant wrote a letter dated 20/12/06 to the National Chairman of the PDP of the decision

to substitute the name of the 1st respondent with the 1st appellant on the ground that the name of the 1st respondent was sent to INEC in error.

The 1st appellant contested the Elections and won while the issue of who was the correct candidate for Ife Federal Constituency remained unresolved. B

Section 34(2) of the Electoral Act States that

*“Any application made pursuant to subsection
(1) of this section shall give cogent and veritable reasons.”*

See Amaechi v. INEC 2008 5 NWLR pt. 1080 p. 227 C

That the 1st respondents name was sent to INEC as the candidate of the PDP in error is not a cogent and veritable reason for substitution. In the absence of cogent and veritable reasons for the substitution of the 1st respondent, the entire exercise by the PDP substituting the 1st respondent for the 1st appellant was wrong. The D 1st respondent is the candidate of the PDP in the 2007 Elections for the Ife Federal Constituency. As regards the procedure adopted by the learned trial judge. It is accepted practice that where parties agree to have their case settled by an unusual procedure, so long as that procedure meets the requirement of fair hearing, a party cannot thereafter complain of the unusual procedure. For this and the much fuller reasoning of my learned brother Chukwuma-Eneh, JSC I too would E dismiss their appeal with costs as assessed in the leading judgment.

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