

COURT OF APPEAL  
20TH APRIL, 2011. CA/A/133/M/2011  
CORAM:- M. L. GARBA, J. O. BADA, R. O. NWODO, JJCA

1. CONGRESS FOR PROGRESSIVE  
CHANGE (CPC)
2. PRINCE TONY MOMOH
3. ALHAJI AMINU BELLO MASARI ..... APPELLANTS  
(National Chairman, Congress for  
Progressive Change (CPC)
- AND
1. SENATOR YAKUBU GARBA LADO
2. SEN. ABDU UMAR YANDOMA & 41 Ors.
44. DR. YUSHA'U ARMIYAU ..... RESPONDENTS  
(Katsina State Chairman, Congress  
for Progressive Change (CPC)
45. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION (INEC)
46. RESIDENT ELECTORAL  
COMMISSIONER, KATSINA STATE

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APPEALS - Grounds - From which no issue is raised - Fate - Such grounds are deemed abandoned - And liable to be struck out - This is applicable to grounds 6 and 7 in this instance (H1)

APPEALS - Reply briefs - Filing - By virtue of O.17 r.5 of Court of Appeal Rules 2007 - Appellant has an option to file reply brief - Which deals on new points raised by respondent - But he is not allowed to reargue points (H2)

APPEALS - Issues - Basis - Issues must be distilled from grounds of appeal - And grounds must attack decision of the court - Failing which the grounds are deemed incompetent (H3)

APPEALS - Issues - Formulation by respondent - Where he decides to raise issues outside grounds of appeal - He must file a cross appeal

or a respondent's notice (H4)

STATUTES - Interpretation - Words used in s. 85(1) of Electoral Act 2010 - Are simple and unambiguous - And should be given their ordinary meaning (H5)

AFFIDAVITS - Depositions - Not denied by counter affidavit - Are deemed admitted and court is to act thereon - But absence of further affidavit - To refute depositions in counter affidavit - May not lead to favourable exercise of discretion (H6)

EVIDENCE - Affidavits - Conflict - Resolution of by court - Can be by calling for oral evidence - Or by authentic documentary evidence in support of one of the affidavits (H7)

ELECTIONS - Nomination - Political party has the power to nominate candidates for election - Members are bound by same - Save where there is noncompliance with Electoral Act and the Party's Constitution (H8)

ELECTIONS - Nomination - Intra party affairs - Presentation of candidate for an election is intra party matter - Court is involved where provision of Electoral Act - Or the Party's constitution is not complied with (H9)

EVIDENCE - Evaluation - Trial court is to properly assess evidence adduced - Before giving her judgment (H10)

AFFIDAVITS - Facts - How challenged - Facts in affidavit are contradicted by facts in counter affidavits - And not by arguments of counsel (H11)

### FACTS

1st to 43rd respondents as plaintiffs at the Federal High Court, Abuja, commenced this action by originating summons seeking the determination of the following question, inter alia: Whether having regard to Sections 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 85 and 86 of the Electoral Act 2010 (as amended) 1st defendant is not bound to

submit to 4th defendant (now appellant) the names of plaintiffs who were screened, cleared and duly elected by majority of lawful votes cast by accredited delegates at the primary election held on the 15th day of January, 2011, by the Katsina State Congress for Progressive Change (CPC) to elect candidates for offices of Governor, Senate, House of Representatives and State House of Assembly for the 2011 general election, which primaries were witnessed and endorsed by the INEC designated monitoring Team.

The originating summons was supported by an affidavit of 31 paragraphs and a further affidavit. 1st and 2nd defendants now 1st and 2nd appellants filed a notice of preliminary objection and an affidavit in defence of the originating summons. Third appellant as 6<sup>th</sup> defendant filed an affidavit in opposition to the originating summons and a counter claim. The court ruled in favour of respondents and dismissed appellants' counter claim and notices of preliminary objection. Dissatisfied, appellants have appealed to the Court of Appeal, Abuja Division. 44th respondent raised a preliminary objection contending that the 1st ground of appeal is an omnibus ground of appeal which in a civil matter is grossly incompetent, and as such deserves to be struck out.

#### ISSUES FOR DETERMINATION

1. Whether the trial court was right in holding that the 1st to 43rd Respondents have sufficiently proved that they are the candidates of the CPC in Katsina for the April, 2011 general election regard being had to the Electoral Act 2010, the counter affidavit to the originating summons and counter claims filed by the 1st, 2nd and 3rd Appellants.
2. Whether a miscarriage of justice has not been occasioned by the wrong conclusion of the trial court that there are no materials before the Court to support the counter claim of the 1st, 2nd and 3rd Appellants regard being had to evidence adduced at the trial particularly the counter affidavit to the originating summons and counter claim filed by the 1st, 2nd and 3rd Appellants.
3. Whether the trial court was right in granting all the declaratory and injunctive reliefs sought by the Respondents regard being had to Section 87 Electoral Act, the 1st Appellant's Constitution and the entire affidavit filed before the trial court.
4. Whether the failure of the trial court to consider issues for determination raised by the Appellants did not occasion a miscarriage of

justice regard being had to the principles of fair hearing and Section 36 of the Constitution of the Federal Republic of Nigeria 1999.

HELD (Unanimously dismissing the preliminary objection and allowing the appeal per NWODO JCA)

**B APPEALS - Grounds from which no issue is raised - Fate**

1. Affidavit in support of an originating process or motion stands as evidence of the facts deposed to in a case. The court below is enjoined to consider the averments in the affidavit and the annexed exhibits before his decision. It is my firm view that ground one being an omnibus ground of appeal is not defective or incompetent on the face of it. It is permissible under the rules of this court. The objections on ground one lacks merit, it is a competent ground. The objection is overruled. In respect of grounds 6 and 7 of the appellants' notice of appeal and the issues distilled for determination, it is obvious the appellants have not distilled any issue for determination from those two grounds. It is settled law that arguments are to be canvassed on the basis of the issues formulated and not on the ground of appeal.

Where a party fails to formulate any issue from the ground of appeal those grounds will be deemed abandoned. Grounds 6 and 7 consequently are deemed abandoned and struck out. (p. 1373 C)

**APPEALS - Reply briefs - Filing**

2. I must observe that the learned senior counsel in his reply brief replied on some new points raised but proceeded to reargue points earlier argued. This approach is not permissible under the rules of (sic, this) court and I have discountenanced the paragraphs of his reply brief containing arguments on points earlier canvassed in the appellants' brief.

By order 17 rule 5 of the Court of Appeal rules 2007, an appellant has an option to file a reply brief which shall deal with all new points arising from the respondent's brief. (p. 1377 C)

**APPEALS - Issues - Basis**

3. A vivid look at this ground clearly shows that ground 3 is tied to the second part of issue one distilled by learned senior counsel Ricky Tarfa whilst ground 4 is tied to the first part of issue one. I have also looked at the grounds 1 and 2 under the notice of intention.

From the grounds the complaint of the 1st - 43rd respondents in respondents' notice is that the counter claims of the 1, 2 and 6 defendants are not known to the rules of the Federal High Court (Civil Procedure) rules 2009 and they ought to have been discountenanced and struck out by the court.

Learned senior counsel on the illegality of the counter claims canvassed the issue. It is trite law that issues for determination must be raised from grounds of appeal and the ground must flow from the decision of the court and where it does not, the ground filed is incompetent. (p. 1378 E)

### ***APPEALS - Issues - Formulation by respondent***

4. It is also settled law that when the respondent in an appeal decides to distil issues for determination, he must relate same to the grounds of appeal filed by the appellant. If he decides to raise an issue not related to the grounds of appeal filed by the appellant, he must file a cross appeal or file a respondent's notice.

A respondent's notice will apply where a particular point in the appeal is stretched by the respondent who contends for its maintenance but proposes variation of it, if it is the only means by which he would be enabled to retain it.

A respondent who has not filed a cross appeal or respondent's notice can only adopt the issues formulated by the appellant or recast the appellant's issues by giving them a slant favourable to his defence of the appeal without departing from the complaint in the grounds of appeal. (pp. 1378 H/1392 C)

### ***STATUTES - Interpretation***

5. The fundamental question that arises from the submissions of the learned senior counsel and the learned counsel is whether from the provisions under Sections 85(1), 87(2) of the Electoral Act 2010 as amended and affidavit evidence and documents annexed, the court below is correct.

The underlying principle in the interpretation of a statute is that the meaning of the words in the statute must be collected from the plain and unambiguous expressions used therein rather than from any notion which may be entertained as to what is just and expedient.

The words used in Section 85(1) of the Electoral Act 2010 are simple and unambiguous and should in construction be ascribed its ordinary meaning. (p. 1380 G)

***Depositions not denied by counter affidavit - Effect***

B 6. The aforesaid averments by the National Secretary of 1st appellant were not contradicted by the respondents in any affidavit. Where depositions in an affidavit are not denied by way of a counter affidavit, they are generally deemed admitted and the court is to act thereon. I must however add that the absence of a further affidavit C to refute averments in a counter affidavit does not ipso facto amount to a conclusive exercise of a favourable discretion. The burden still lies on the deponent to convince the court of the facts deposed to in certain situations. (p. 1386 F)

D ***Affidavits - Conflicts - Resolution by court***

7. The respondents' contention from their affidavit is that primary election were conducted on the 15th of January, 2011, Supervised by INEC officials who were put on notice by the state chairman of the party and people were sent from Abuja National party office to conduct the election on the 15th January, 2011 which election returned the 1st - 34 respondents as candidates for the party in the various elective offices. He also averred that the earlier two primaries were cancelled. On the other hand the political party, the first appellant E from their counter affidavit are saying that they did not sanction nor give the date 15th of January for holding of the primaries. It is indisputable from the facts given by the appellants in their affidavit and the 1st - 44th respondents' affidavit that the way to resolve the various versions is to look at the documentary evidence annexed as exhibits in the originating summons, counter affidavit and the other F affidavits in the record. Where there is conflict in affidavit evidence G the court can resolve same by calling for oral evidence or by authentic documentary evidence which supports one of the affidavits in conflict with another. Where there are documentary evidence before the court, it can suo motu resolve such conflicting evidence by resort to the documentary evidence. (p. 1386 H) H

***ELECTIONS - Nomination***

8. The 1st - 44th respondents are all described as members of the CPC. Each of the respondents is a card carrying member of the party. Thus having subscribed to the provisions under the constitution of their party, they are enjoined to observe and obey same. A Constitution is the organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the members. The members are bound by its provisions. B

I must emphasis again that it is a political party that sponsors a candidates and once you are a member the resolution of the party on nomination is the final, unless there was non compliance with the statutory provisions of the electoral Act or the constitution by the party during the conduct of primaries. C

It is difficult for me to conceive that exhibit H was one of the documents presented as evidence before the trial court and the court still granted the reliefs. The provisions of S.87 and 85 of the Electoral Act were not complied with by the 1st - 44th respondents. D

Every member of the party having voluntarily joined the party must respect and obey the law under their constitution. From the totality of the affidavit evidence, the inevitable conclusion is that the conduct of the primaries held on 15th of January, 2011 organized by the 44th respondent was not sanctioned by the National Executive Committee (NEC) of the party or the board of trustees. E

(p. 1388 F)

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***ELECTIONS - Nomination - Intra party affairs***

9. The issue of who should be a candidate of a political party at an election is an intra party matter which should be determined by the rules, Constitution and provisions in the Electoral Act. The court will normally be involved where the provisions in the Electoral Act or the party's constitution has not been complied with. (p. 1392 H) G

***EVIDENCE - Evaluation***

10. The proceeding that led to the forwarding of 3rd appellant's name is in line with the constitution of the party on nomination and the Electoral Act. The trial court erred when he preferred the evidence lead by the respondents which did not reveal compliance to the Electoral law and the constitution of the party. H

The learned senior counsel for the appellant raised the point on miscarriage of justice. The learned trial judge held that there are no materials to support the counter claim. The appellant must show that the non compliance occasioned a miscarriage of justice. The competency of the counter claim did not arise out of the judgment. I must add that the Federal High Court rules made no provision for filing a counter claim to originating summons. Therefore, I have relied on counter affidavit not counter claim. The duty of trial court is to assess evidence before her. (p. 1393 B)

***AFFIDAVITS - Facts - How challenged***

11. The learned senior counsel for 1st - 43rd respondents submitted that the uncontradicted affidavit evidence of Dr. Yushau Armayaiu is an admission of the facts by the appellants and that appellants' counsel in paragraphs 4 32 (sic) admitted the contents of the said affidavit. The law is settled that facts in an affidavit are contradicted by facts in a counter affidavit or affidavit in opposition and not by arguments of counsel. Therefore any argument of counsel cannot amount to admission of facts in the affidavit. In effect submission does not constitute evidence. (p. 1393 F)

**NOTABLE POINTS OF INTEREST**

**NWODO JCA**

1. Notice of appeal - Legal position on omnibus ground of appeal As has been decided in a plethora of cases an omnibus ground of appeal is founded on the weight of evidence and it is really an appeal on facts and cannot be used to raise issues of law.

What then is the position of the law when a notice of appeal contains an omnibus ground of appeal without particulars?

Order 6 rule 3 of the Court of Appeal Rules 2007 stipulates as follows:

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

**Vague grounds**

Any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not be permitted,

save the general ground that the judgment is against the weight of the evidence, and ground of appeal or any part thereof which is not permitted under this Rule may (sic, be) struck out by the Court of its own motion or on application by the respondent.

From the above provision it is obvious the exception to the general rule is that an omnibus ground is permissible. Interpreting a similar provision of the rules of court under order 3 rule 2(4) of the old Court of Appeal rules, the court in *Adeyeri v. Okobi* (1997) 6 NWLR (Pt.510) 534 held that in a civil appeal the general ground that the judgment is against the weight of evidence is permissible, and that by virtue of order 3 rule 2(4) of the Court of Appeal rules an omnibus ground which alleges that the judgment is unreasonable and cannot be supported having regard to the weight of evidence is a valid ground of appeal.

In the case of *Atuveve v. Ashama* (1987) 1 NWLR (pt.49) 267 It was held under a similar rule of court that the use of omnibus ground of appeal is allowed.

Order 6 rule 3 of the rules of (sic, this) court is clear on the provision as regards omnibus ground of appeal. It is the exception to the general rule that any ground which is vague or general in terms should not be permitted. (p. 1372 B)

## 2. Elections - Procedures for nomination of candidates

Under that provision a registered political party is required to give at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of nominating candidates for any of the elective offices specified under the Act. Subsection (2) gives INEC the discretion to attend and observe the congress which is convened by the political party for the purpose of nominating candidates for an election. Three significant points to note under Section 85 are as follows (a) it is the registered political party that shall give the commission (INEC) notice of any congress. The use of the word registered political party can only mean the political party which headquarters is registered as the address of the party. Section 156 of the Electoral Act described a political party as one that includes any association of persons whose activities includes canvassing for votes in support of a candidate for election under this Act and registered by the commission. Therefore it is the party at the national level that has

the responsibility under the Electoral Act to give notice of congresses for nomination (b) The commission need not attend and observe the congress, it is optional. In effect the non attendance of INEC to observe congress is of no legal consequence to the primary election which is an intra-party election. (c) The congress for nomination of candidates for election is to be convened by a political party. The political party in reference is the party at the national level. Section 87(1) of the same Act set out the procedure for nomination of candidates by political parties. Under Section 87 (4) (1) (b) it is crystal clear that in the case of nominations to the position of governorship candidates a political party shall where they intend to sponsor candidates, hold a special congress in the state. All that can be discerned from the provision therein and the party's constitution is that the political party will hold a special congress in the state and on a specific date to be appointed by the National Executive Committee of the party.

D The Electoral Act confers on the party at the national level through the National Executive Committee the power to give a date for the party primaries in the state. The congress however is to be held in the state. The discretion is that of the political party to delegate party members that will conduct the primaries in nominating candidates for Gubernatorial, National and State Assemblies. The provisions are unequivocal on the responsibility of the National Executive Council of the party to initiate and coordinate party primaries giving a specific date for the primaries. (p. 1381 H)

F 3. Miscarriage of justice - Meaning

Therefore, the grant of injunctive relief in favour of the 1st - 43rd respondents in the circumstance was wrong. Miscarriage of justice simply means failure of justice. The trial court failed to determine the questions that were raised in line with the law and the affidavit evidence before the court. I therefore resolve issue 4 in favour of the appellant. (p. 1394 D)

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### REPRESENTATION

H J. O. Baiyeshea SAN with A. Melami SAN, Ismaila Alasa, Richard Baiyeshed, Bidemi Animashaun, Stewart David, Ahmed U. M El-Marzu, A.S. Yerima, Joshua Alor for the Appellants

Rickey Tarfa (SAN) with A. O. Owonkoko, P. Jala Owo, Uche Obi,

B. Aduloju, O. Okubote and O. Soka for 1st to 43rd Respondents  
Ademola Bakare with I. K. Shedrack, A. Soremi, and O. Omotosho  
for 44th Respondent

H. M. Liman I. M. Dikko Y. D. Dangana T. N. Akoso and I. Shuaibu  
for 45th and 46th Respondents.

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### CASES REFERRED TO

IGP v. Eze (2008) All FWLR (Pt.416) 198 at 1994

Ejiofor v. Okeke (2000) 7 NWLR (Pt.665) 363 CA

Lasisi Asalu v. Dakaw (2006) 26 NSCQR (Pt.2) 958

C

Osazuwa v. Isibor (2004) FWLR (Pt.194) 387 at 407

Mogaji v. Cadbury Nig. Ltd (1985) 2 NWLR (Pt.7) 393

Kava v. UBA Ltd (1997) 1 NWLR (Pt.481) 251 at 253 SC

WAEC v. Adeyanju (2008) All FWLR (Pt.428) 206 at 22

C. A. Anyoke & Ors v. Adi & ors (1986) 3 NWLR (pt.31) 73

D

A.G Akwa Ibom State v. Essien (2004) 7 NWLR (pt.872) 288

Lawal v. Osuala v. UBA Plc (2003) 5 NWLR (pt.813) 376 CA

Audu v. INEC (No. 2) (2010) 13 NWLR (Pt.121) 456 at 521

Balogun v. Oligbede (1991) 8 NWLR (Pt.208) CA, 223 at 235

Narindex Trust Ltd v. NIMB Ltd. (2001) 10 NWLR (pt.721) SC. 321

E

A.G Ondo State v. A - G Ekiti State (2001) 17 NWLR (pt.743) 706

### STATUTES & RULES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, s.36

F

Electoral Act (as amended) 2010, ss. 85(1), 87(1)(4)(b), 156

Evidence Act Cap. E14 LFN 2004, ss.86, 87

Court of Appeal Rules 2007, O.6 r.3, O.17 r.5, O.9 rr.2, 3

Fed. High Court (Civil Procedure) Rules 2009, O.3 rr.6-9, O.13 r.3

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### LEAD JUDGMENT BY NWODO JCA

This is an appeal against the judgment of the Federal High court Abuja division in suit No.FHC/ABJ/CS/126/2011 delivered on 15th of February, 2011.

The 1st to 43rd respondents as plaintiffs in the Federal High Court (hereinafter referred to as Court Below) commenced an action by originating summons Issued on 03/02/11 seeking the determination of the following questions.

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1. WHETHER having regard to sections 221, 222 and 223 of

the constitution of the Federal Republic of Nigeria, 1999 (as amended) and section BS (sic), 86 of the Electoral Act 2010 (as amended) the 1st Defendant is not bound to submit to the 4th Defendant the names of the plaintiffs who were screened, cleared and duly elected by majority of lawful votes cast by accredited delegates at the primary election held on the 15th day of January, 2011 by the Katsina state Congress Of Progressive Change (CPC) to elect candidates for offices of Governor, Senate, House of Representatives and state House of Assembly for the 2011 general election, which primaries were witnessed and endorsed by the INEC designated monitoring Team.

2. WHETHER having regard to the combined effect of sections 221, 222 and 223 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) which, among other things guarantee, recognize and prescribe the mode of conducting party primaries only on democratic principles or basis, and which enjoins parties to submit to the Independent National Electoral commission (INEC) the names of candidates who emerged winner at state congress of the party, the 1st and 2nd defendants have the power to disqualify or reject plaintiffs' candidates which was the choice of the delegates at the state congress, and adopt instead by arbitrary fiat, the 6th Defendant for the office of Governor of Katsina state and some other unknown persons as candidates of the 1st Defendant for Katsina state constituencies in respect of Senate, House of Representatives and State House of Assembly for the 2011 general election.

3. WHETHER in view of sections 33 and 87 (4) of the Electoral Act 2010 (as amended), and having acquired vested interest in the party ticket as the duly elected candidates of 1st Defendant in the primary election of the 1st Defendant, conducted at the Katsina state party congress held on 15th January, 2011 by winning the said primaries, for offices of Governor, Senate, House of Representatives and state House of Assembly, for the 2011 general election, the plaintiffs' candidature can be rejected, disregarded, revoked reversed, annulled, re-assigned to, or be substituted with 6th Defendant, in respect of governorship and or any other unknown persons for Katsina Constitution in respect of senate, House of Representatives and state House of Assembly for the 2011 general elections when the plaintiffs being still alive, have not withdrawn at the general election schedule to hold in April 2011 for the elective office.

4. If question 3 is answered in the NEGATIVE, WHETHER having regard to section 221 of the Constitution of the Federal Republic of Nigeria 1999 (as amended the plaintiffs are in the eyes of the law, the candidature as flag bearers of the 1st Defendant, eligible to contest and be voted for on the platform of the 1st Defendant in respect of offices of the Governor, State (sic, Senate), House of Representatives and State House of Assembly in Katsina State at the 2011 general election. <sup>B</sup>

Consequent on determination of the above questions the plaintiff claimed the following reliefs:

“(1) A DECLARATION that by virtue of section 221, 222 <sup>C</sup> and 223 of the constitution of the Federal Republic of Nigeria, 1999 and Sections 85 and 86 of the Electoral Act 2010 (as amended) the 1st Defendant is bound to submit to 3rd Defendant the name of Plaintiffs who were screened, cleared and duly elected by majority <sup>D</sup> of lawful votes casts by accredited delegates at the Primary election or congress in Katsina State chapter of Congress For Progressive Change (CPC) held on 15th January, 2011 to elect the Katsina state party candidates for elective offices of Governor, senate, House of Representatives and State House of Assembly in Katsina State at the <sup>E</sup> 2011 general election which primaries were witnessed and endorsed by the INEC designated Monitoring Team.

(2) A declaration that the combined effect of sections 221, 222, 223 and 228 of the constitution of the Federal Republic of Nigeria, 1999 and section 87 (1) (4) and (6) of the Electoral Act, 2010 <sup>F</sup> which among other things guarantee, recognize and prescribe the mode of conducting party primaries only on democratic principles or basis, and enjoins parties to submit to the Independent National Electoral commission (INEC) the name of candidates who emerged <sup>G</sup> winner at the state congress of the party, the 1st and 2nd Defendants have No power to disqualify or reject Plaintiffs being the choice of the delegates at the Katsina State congress held on 15th January, 2011 in respect of the elective offices of Governor, and constituencies of Senate, House of Representative and state House of Assembly for <sup>H</sup> the 2011 general elections.

(3) A DECLARATION that the 1st and 2nd Defendants cannot by arbitrary fiat or through any illegal method adopt the 6th Defendant for the office of Governor of Katsina state and any other

unknown persons as candidates of the 1st Defendant for Katsina state constituencies in respect of Senate, House of Representatives and state House of Assembly for the 2011 general elections.

(4) A declaration that in view of sections 33 and 87 (4) of the Electoral Act, 2011 (as amended), and having acquired vested interest in the party ticket as the duly elected Gubernatorial, Senatorial, House of Representatives and State House of Assembly by being Candidate of in (sic) Defendant in the primary election of the 1st Defendant, conducted in Katsina state, the Plaintiffs' respective candidature CANNOT be rejected, disregarded, revoked, reversed, annulled, re-assigned to, or be substituted with 4th Defendant or any other person, when Plaintiffs are still alive, and have not withdrawn their respective candidature to contest on the platform of the 1st Defendant in the general election scheduled to hold in April, 2011 for the said elective offices.

(5) A DECLARATION that by virtue of section 221 of the constitution of the Federal Republic of Nigeria, 1999 (as amended), the Plaintiffs are in the eyes of the law, the candidates of the 1st Defendant, entitled to all the benefit of their candidature as flag bearers of the 1st Defendant eligible to contest and be voted for on the platform of the 1st Defendant in respect of the offices of Governor, Senate, House of Representative and State of Assembly in Katsina State at the 2011 general election.

(6) A DECLARATION that any acts, omission, commission, failure, refusal or neglect, by 1st, 2nd and 3rd Defendants to take all necessary steps required under the Electoral Act, 2010 (as amended) to endure (sic, ensure) that plaintiffs' names are duly submitted and published before the date of the election and placed on the ballot for use in the conduct in Katsina State Gubernatorial election in the 2011 general election is illegal and unconstitutional.

(7) AN ORDER OF PERPETUAL INJUNCTION retraining the 1st and 2nd Defendants, their servants, agents and or privies from recognizing, or submitting to 4th Defendant the name of any person other than that of 1st Plaintiff and his nominated running mate in person of ABULAZIZ MUSA YAR ADUA as candidate of 1st Defendant for the office of Governor and Deputy Governor of Katsina state respectively at the 2011 general election.

(8) AN ORDER OF PERPETUAL INJUNCTION restraining

the 1st and 2nd Defendants, their servants, agents and or privies from recognizing, or submitting to 4th Defendant the name of any person other than that of 2nd - 4th Defendants (sic, plaintiffs) candidates of 1st Defendant for the elective offices of Katsina State constituencies in the Senate, House of Representative and House of Assembly respectively at the 2011 general election. B

(9) AN ORDER OF PERPETUAL INJUNCTION restraining the 4th Defendants, its agents, servants or privies from accepting and giving recognition to any other persons other than the 1st Plaintiff and his nominated running mate in person of ABULAZIZ MUSA YAR ADUA as Gubernatorial and Deputy Gubernatorial candidates of the 1st Defendant at the 2011 general election into the office of the Governor of Katsina State. C

(10) AN ORDER OF PERPETUAL INJUNCTION restraining the 4th Defendant, its agents, servants or privies from accepting and giving recognition to any other persons other than the 2nd- 45th Plaintiffs as candidates of the 1st Defendant at the 2011 general election into the legislative offices of the various constituencies in Katsina State. D

(11) AN ORDER OF MANDATORY INJUNCTION compelling the 4th Defendant to provide for and place on the ballot paper to be used for the governorship, senate, House of Representatives and State House of Assembly election in Katsina State at the 2011 general election, the names of plaintiffs as candidates of 1st Defendant in respect of the offices to which party primaries ticket; in the event that 7th Defendant fails or neglects to so submit the aforesaid names as its candidates for the offices. E F

(12) SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit and just to make in the circumstances of this case.” G

The originating summons was supported by an affidavit of 31 paragraphs and a further affidavit. The 1st and 2nd defendants now the 1st and 2nd appellants filed a notice of preliminary objection and an affidavit in defense of originating summons. The third appellant as the sixth defendant filed an affidavit in opposition to the originating summons and a counter claim on 16/02/2011 wherein he claimed the following reliefs: H

“i. A declaration that by the combined provision of Sched-

ule 3 paragraph 2 (i) (ii) (iii); and paragraph 5(i)(ii) & (iii) of the Constitution of 1st Defendant, it is the 1st defendant (through its organs:- the National Executive Committee - NEC on Board of Trustee BOT) that has the exclusive power and right to carry out the process and procedure that will culminate in the valid nomination of the governorship candidate of the party for Katsina State of Nigeria for the scheduled 2011 election.

ii. A declaration that having regard to the said scheduled 5(i)(ii) & (iii) of the constitution of the 1st Defendant as amended and section 87(i)8.(b) (i) of the Electoral Act, 2010 as amended, the nomination of the 6th Defendant as governorship candidate of the 1st Defendant for Katsina State at the primaries conducted on 13/1/2011 is valid.

iii. A declaration that the purported nomination of the 1st plaintiff as a governorship candidate based on an invalid and unlawful nomination exercise/procedure on 15/1/2011, is invalid, null and void and of no effect whatsoever.

iv. A declaration that the purported nomination of other plaintiffs as candidates for election at the invalid and unlawful primaries of 15/1/2011, is null and void and of no effect whatsoever.

v. An order of the court declaring the 6th defendant as the validly nominated governorship candidate of the 1st defendant for Katsina State for the 2011 elections AND an order compelling the 4th Defendant to accept the candidature of the 6th Defendant to contest the 2011 governorship election for Katsina State.

Written addresses were filed and exchanged. The learned trial judge in a reserved judgment held:

“I hold that the plaintiffs have sufficiently proved that they are the candidates of the CPC in April, 2011 general elections having been duly elected at congress of the 1st defendant. All the questions posed for determination in originating summons are resolved in favour of the plaintiffs. In the same vein all the declaratory and injunctive orders are granted in favour of the plaintiffs. On the whole the originating summons succeeds and same is hereby granted.” In respect of the counter claim of the 1st and 2nd appellant the court held:-

“On the counter-claims of the 1st and 2nd defendants and the 6th defendant am of the view that from the record before the court

there are no materials to support them. They are just designed to waste the precious time of this court. For that reason they are hereby dismissed.”

The court in respect of the two notices of preliminary objection also held they lacked merit and dismissed them.

Dissatisfied with the decision of the court below the appellants caused a notice of appeal to be filed on 01/03/2011, containing eight grounds of appeal. The 1st-43rd respondents filed a respondents notice out of time, but were granted leave by the court to incorporate arguments in support of the notice in the their brief.

In compliance with the practice and rules of this court, the parties filed and exchanged their briefs of argument. At the hearing of the appeal on 12/04/2011, the learned senior counsel for the appellant J.O Baiyeshea adopted the appellants’ brief settled by him and deemed filed on 24/03/2011 and the reply brief to 1st-43rd respondents’ brief filed 12/04/2011. He urged the court to allow the appeal. The learned senior counsel Rickey Tarfa adopted the 1st - 43rd respondents’ brief of arguments settled by him and deemed properly filed on 12/04/2011. Mr. Bakare, learned counsel for the 44th respondents adopted the brief of argument settled by him deemed filed on 12/04/2011 containing preliminary point of objection. The 45th and 46th respondents did not file brief of argument.

I will first look at the preliminary objection raised in the brief of the 44th respondent. It is the contention of the learned counsel Mr. Bakare that the 1st ground of appeal is an omnibus ground of appeal which in a civil matter is grossly incompetent. He cited several cases. Learned counsel submits that the resultant effect of the incompetent ground one of the Notice of Appeal is that Issue 1 distilled therefrom is affected, as it is settled law that where an issue is distilled from an incompetent ground with other competent grounds, the incompetent ground infects the competent ground and renders all the grounds from which issue is distilled and argued incompetent. Learned counsel relied on *Aselusola v. Akinde* (2004) 12 NWLR (Pt.887) 295 at Pg. 310 - 311, *Akuche v. Nwamadi* (1992) 8 NWLR (Pt.258) 214 at Pg. 223 - 224, *Bereyin v. Gbobo* (1989) 1 NWLR (Pt.97) 372 at Pg.380.

He urged the court to strike out the appellants’ ground one of the notice of appeal and Issue 1 inclusive of argument canvassed therein. It is the further submission of learned counsel that no issue

has been distilled from grounds 6 and 7 of the notice of appeal and the court should deem the grounds as abandoned and should be struck out. The purport raising an omnibus ground is that there is no acceptable evidence to support the findings of the trial court or that the judgment in favour of a successful party is against the totality of the evidence adduced before the trial court. See *Sha v. Kwan* (2000) 5 SC 178. *A.G Akwa Ibom State v. Essien* (2004) 7 NWLR (pt.872) 288, *C. A. Anyoke & Ors v. Adi & ors* (1986) 3 NWLR (pt.31) 73

As has been decided in a plethora of cases an omnibus ground of appeal is founded on the weight of evidence and it is really an appeal on facts and cannot be used to raise issues of law.

What then is the position of the law when a notice of appeal contains an omnibus ground of appeal without particulars.

Order 6 rule 3 of the Court of Appeal Rules 2007 stipulates as follows:

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

Vague grounds

Any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not be permitted, save the general ground that the judgment is against the weight of the evidence, and ground of appeal or any part thereof which is not permitted under this Rule may (sic, be) struck out by the Court of its own motion or on application by the respondent.

From the above provision it is obvious the exception to the general rule is that an omnibus ground is permissible. Interpreting a similar provision of the rules of court under order 3 rule 2(4) of the old Court of Appeal rules, the court in *Adeyeri v. Okobi* (1997) 6 NWLR (Pt.510) 534 held that in a civil appeal the general ground that the judgment is against the weight of evidence is permissible, and that by virtue of order 3 rule 2(4) of the Court of Appeal rules an omnibus ground which alleges that the judgment is unreasonable and cannot be supported having regard to the weight of evidence is a valid ground of appeal.

In the case of *Atuveve v. Ashama* (1987) 1 NWLR (pt.49) 267

It was held under a similar rule of court that the use of omnibus

ground of appeal is allowed.

Order 6 rule 3 of the rules of (sic, this) court is clear on the provision as regards omnibus ground of appeal. It is the exception to the general rule that any ground which is vague or general in terms should not be permitted.

It is the further contention of learned counsel that from the nature of the hearing at the court below there was no evidence to appraise. The originating summons procedure enjoins the plaintiffs to depose to an affidavit. An affidavit is a statement of facts. An affidavit meant for use in a court stands as evidence and must as far as possible conform to oral evidence admissible in court.

See Section 86 of the Evidence Act. *Lawal v. Osuala v. UBA Plc* (2003) 5 NWLR (pt.813) 376 CA

Affidavit in support of an originating process or motion stands as evidence of the facts deposed to in a case. The court below is enjoined to consider the averments in the affidavit and the annexed exhibits before his decision. It is my firm view that ground one being an omnibus ground of appeal is not defective or incompetent on the face of it. It is permissible under the rules of this court. The objections on ground one lacks merit, it is a competent ground. The objection is overruled. In respect of grounds 6 and 7 of the appellants' notice of appeal and the issues distilled for determination, it is obvious the appellants have not distilled any issue for determination from those two grounds. It is settled law that arguments are to be canvassed on the basis of the issues formulated and not on the ground of appeal. See: *Amadi v. NNPC* (2006) SC (Pt.166). *Kava v. UBA Ltd* (1997) 1 NWLR (Pt.481) 251 at 253 SC

Where a party fails to formulate any issue from the ground of appeal those grounds will be deemed abandoned. Grounds 6 and 7 consequently are deemed abandoned and struck out.

I will now look at the merits of the appeal. The learned counsel for the appellants in the appellants' brief distilled four issues for determination which read thus:

"1. Whether the trial court was right in holding that the 1st to 43rd Respondents have sufficiently proved that they are the candidates of the CPC in Katsina for the April, 2011 general election regard being had to the Electoral Act 2010, the counter affidavit to the originating summons and counter claims filed by the 1st, 2nd

and 3rd Appellants. This issue arose from grounds 1, 2, and 8 of the notice of appeal.

2. Whether a miscarriage of justice has not been occasioned by the wrong conclusion of the trial court that there are no materials before the Court to support the counter claim of the 1st, 2nd and 3rd Appellants regard being had to evidence adduced at the trial particularly the counter affidavit to the originating summons and counter claim filed by the 1st, 2nd and 3rd Appellants. This issue arose from ground 3 of the notice of appeal.

3. Whether the trial court was right in granting all the declaratory and injunctive reliefs sought by the Respondents regard being had to Section 87 Electoral Act, the 1st Appellant's Constitution and the entire affidavit filed before the trial court. This issue arose from ground 4 of the notice of appeal.

4. Whether the failure of the trial court to consider issues for determination raised by the Appellants did not occasion a miscarriage of justice regard being had to the principles of fair hearing and Section 36 of the Constitution of the Federal Republic of Nigeria 1999. This issue arose from ground 5 of the notice of appeal."

The learned counsel for the 1st - 43rd respondents in their brief of argument also distilled three issues which read thus:

"1. Whether the trial court rightly upheld 1st - 43rd Respondents' case and granted all the reliefs sought by the 1st - 43rd Respondents, regard being had to the evidence before the court and the relevant applicable laws and whether the counter claims before the trial court were competent in law and ought to have been countenanced by the trial court? (Grounds 3 and 4 of the Notice of Appeal and Grounds 1, 2 and 4 of Respondents' Notice).

2. Whether the trial court was right in holding that 1st - 43rd Respondents had proved that they were the validly nominated candidates of the 1st Appellant for the April, 2011 elections in Katsina State having been duly elected at the congress of the 1st Appellant? (From Grounds 1, 2 and 8 of the Notice of Appeal).

3. Whether the issues for determination raised by the Appellants and the evidence in support of which was found incredible and self contradictory, were rightly resolved against them by the trial court? (Ground 5 of the Notice of Appeal and Grounds 3 and; (sic) of Respondents, Notice).'

The 44th respondents counsel distilled the following issues:-

“1. Whether the trial court was right in holding that the 1st - 43rd respondents proved that they were the validly nominated candidates of the 1st Appellant for the April, 2011 elections in Katsina State having been duly elected at the congress of the 1st Appellant (Ground 1, 2 and 8 of the Notice of Appeal). B

2. Whether the trial Court rightly held that there were materials before it to support the Appellants’ counter-claims. (Ground 3 of the Notice of Appeal).

3. Whether having regard to the evidence led by the 1st - 43rd Respondents, the trial Court was right in granting all the reliefs sought by them. (Ground 4 of the Notice of Appeal). C

4. Whether having formulated a sole issue which it considered fundamental after carefully considering the issues presented to it by all the parties and in view of the extant Rules of the Court, the trial Court was still bound to consider all the issues raised by the Appellants. (Ground S (sic) of the Notice of Appeal). D

The Issues distilled in the appellants’ brief is comprehensive but because the 1st - 43rd respondents also filed notice of intention from wherein they have distilled issues for determination in this appeal, I will consider the issues together. E

Under Issue one, it is the submission of the learned senior counsel that the trial court erred in law by holding that the 1st to 43rd respondents have sufficiently proved that they are the candidates of the CPC in Katsina for the April, 2011 general election having been duly elected at the congress of the 1st appellant. F

He contends that the appellants have shown by Exhibit C that the notice was given to INEC that election will hold between 8 January, 2011 to 14th January, 2011 not 15th of January, 2011, the date the purported primaries of the respondent were held. It is his further contention that there is no notice shown that the 1st appellant gave notice to INEC for the primaries purportedly held on the 15th January, 2011. Learned senior counsel further argued that the averments in the affidavit of the 1st 2nd and 3rd appellants show that the purported primaries held on the 15th of January, 2011 and relied on by the respondents were never sanctioned by the 1st appellant. He contends that the averments on affidavits of the appellant was not controverted. H

It is his further submission that the implication of the reference to a political party in S. 85 and 87 (4) (b) (1) of the Electoral Act 2010 (as amended), is that a congress, conference or meeting convened for any of the elective offices specified in the Act are the exclusive prerogatives of a political party and the trial court was wrong in relying on the primaries of 15th January, 2011 to hold that the 1st to 43rd respondents have sufficiently proved that they are the candidates of the CPC in Katsina State for the April, 2011 general election. He urged the court to hold that the trial Judge was wrong in relying on the primaries of 15th of January, 2011 to hold that the 1st to 43rd respondents have sufficiently proved that they are candidates of the CPC in Katsina state for the April, general election.

The second question under issue one is whether the counter claims filed before the trial court is competent.

The learned senior counsel for the 1-43 respondents referred to the provision under the old (civil procedure) rules of the Federal High Court and order 3 rules 6 - 9 and order 13 rule 3 which all relate to originating summons. It is his submission that in view of the fact that the Federal High Court Rules 2009 does not by any stretch of the imagination suggest that a party can file a counter claim, to an originating summons the counter claim filed by the appellants has no basis and is therefore incompetent.

Learned senior counsel further submitted that the counter claim to originating summons is inapplicable and therefore the processes filed in support of the counter claim are also inadmissible evidence. He argued that the court is duty bound to consider a counter claim where competently filed as it is a separate and distinct claim for determination. He cited *Narindex Trust Ltd v. NIMB Ltd.* (2001) 10 NWLR (pt.721) SC. 321. *Ojoebue v. Naubia* (1772) NSCC 478 at 482.

The learned senior counsel noted that the court held that the counterclaim was incompetent and dismissed them both. He cited: *Balogun v. Oligbede* (1991) 8 NWLR (Pt.208) CA, 223.

The learned senior counsel for the appellants in his reply brief contended that the second part of issue one formulated on the brief of the 1 - 43rd respondents did not arise from the decision of the trial court. He argued that the appellants' grounds of appeal merely challenged the decision of the trial court to dismiss the counterclaim on the

ground that there were no “materials to sustain” them. He therefore submits that the 1st to 43rd respondents’ submission in paragraph 4.22 pg 19 of their brief that the trial court in its judgment dismissed the said counter claim for being incompetent is not the correct record of the court’s order. He contends that the trial court did not make such order and the respondents are wrong in canvassing the issue of alleged illegality of the counter claims, which the trial court did not pronounce upon. B

He cited: IGP v. Eze (2008) All FWLR (Pt.416) 198 at 1994.

WAEC v. Adeyanju (2008) All FWLR (Pt.428) 206 at 221 C

Lasisi Asalu v. Dakaw (2006) 26 NSCQR (Pt.2) 958.

I must observe that the learned senior counsel in his reply brief replied on some new points raised but proceeded to reargue points earlier argued. This approach is not permissible under the rules of (sic, this) court and I have discountenanced the paragraphs D of his reply brief containing arguments on points earlier canvassed in the appellants’ brief.

By order 17 rule 5 of the Court of Appeal rules 2007, an appellant has an option to file a reply brief which shall deal with all new points arising from the respondent’s brief. E

Learned counsel for the 44th respondents in their brief submitted that the 1 - 43rd respondents and 44th respondents have by their depositions and documentary evidence adduced credible evidence to show that the primary election was conducted on the 15th of January, 2011, the date fixed for the 1st appellant’s primaries for the seat of Governor, National and State Assemblies in Katsina State. He contends (sic, that) the 45th and 46th respondents were notified of the date and the 1st appellant sent people that conducted and supervised the election primaries and the 45th and, 46th respondents also sent a delegation to monitor the election .He contends that the 1st-43rd respondents won the election and 44th respondents submitted their completed forms. It is his contention that the evidence satisfied the trial court and the burden shifted to the appellants. He argued there was nothing to show (sic, that) the primaries of 13 January, 2011 was witnessed by any official of the 45th and 46th respondents. He contends it is not in evidence that any group of persons appointed by the 1st appellant conducted or supervised the election purportedly held on 13th January, 2011. F  
G  
H

In respect of compliance to the provisions of Section 85(1) and Section 87(4)(1) of Electoral Act, learned counsel submits that the notices sent by the 1st appellant on 24th December, 2010 and 5th January, 2011 adequately covered the period. Issue one was distilled from the ground of appeal and the notice of intention. These

B grounds 3 and 4 without the particulars read thus:

GROUND THREE

“The learned trial Judge erred in law and arrived at wrong conclusion which occasioned a miscarriage of justice by holding that there are no materials from the record before the Court to support the counter Claims of the 1st and 2nd and 6th Defendants”.

GROUND FOUR

“The learned trial judge erred and arrived at a wrong conclusion which occasioned a miscarriage of justice by holding that all the questions posed for determination in the originating summons are resolved in favour of the Plaintiffs and in effect granted all the declaratory and injunctive orders in the originating Summons.”

A vivid look at this ground clearly shows that ground 3 is tied to the second part of issue one distilled by learned senior counsel Ricky Tarfa whilst ground 4 is tied to the first part of issue one. I have also looked at the grounds 1 and 2 under the notice of intention.

From the grounds the complaint of the 1st - 43rd respondents in respondents’ notice is that the counter claims of the 1, 2 and 6 defendants are not known to the rules of the Federal High Court (civil procedure) rules 2009 and they ought to have been discountenanced and struck out by the court.

Learned senior counsel on the illegality of the counter claims canvassed the issue. It is trite law that issues for determination must be raised from grounds of appeal and the ground must flow from the decision of the court and where it does not the ground filed is incompetent. See: WAEC V. ADEYANJU (2008) ALL FWLR (PT.428) AT 221, IGP V. EZE (PT.416) 1989 AT 1994

It is also settled law that when the respondent in an appeal decides to distill issues for determination, he must relate same to the grounds of appeal filed by the appellant. If he decides to raise an issue not related to the grounds of appeal filed by the appellant, he must file a cross appeal or file a respondent’s notice. See: MOMODU V. MOMOH (1991) 1NWLR (PT.169) 608, OSSAI V. WAKWAH (2006)

4 NWLR (PT.969) 208.

The issue on whether the counter claims before the trial court was competent in law did not arise from ground 3 of the notice of appeal. I have also looked at the notice of intention in particular ground 1, 2 and, 4.

By order 9 rule 2 the respondent who desires to contend that the decision of the court below should be affirmed on grounds other than upon that relied on by the court must give notice to that effect specifying that contention. B

Rule 3 stipulates an exception which requires leave of court and this includes where grounds are not specified in the notice or where respondent seeks to support the decision of the court below upon any ground that was not relied upon by the court below. C

The 1st - 43rd respondents set out 5 grounds upon which they want the decision of the court affirmed. A respondent's notice will apply where a particular point in the appeal is stretched by the respondent who contends for its maintenance but proposes variation of it, if it is the only means by which he would be enabled to retain it. D

Ground one in the notice relates to the competency of the counter claim. The learned trial judge as is reflected from page 506 of the record of appeal distilled four issues for determination arising from the two notices of objection filed in the court below. E

The court below after consideration of the issues dismissed the preliminary objection. In the entirety of the judgment of the court below, the court did not make any pronouncement on the competency of the counter claim. However, from the final decision of the court there is the presumption that the trial court had looked at the counter claims when he held as follows: F

"On the counter claims of the 1st, 2nd defendant and the 6th defendant I am of the view that from the record before the court there are no materials to support them. They are just designed to waste the precious time of this court for that reason they are hereby dismissed." G

It is crystal clear from the forgoing pronouncement by the court below that the counter claim was dismissed on the basis of lack of evidence and not on ground of competency of the counterclaim. Consequently grounds 1 and 2 on the notice of intention to contend did not arise H

from the decision of the trial court. There is equally no evidence that leave was sought from the court before grounds 1 and 2 on the notice of intention to contend was filed. The complaint of the 1 - 43rd respondents is on competence of a process filed. He had the option to cross appeal or seek leave to raise that ground. The notice of contention under ground 1 and 2 filed on 30/03/2011 are incompetent and hereby struck out. Issue one distilled from ground one and two on the notice of intention is also struck out. The arguments in relation thereto became of no legal effect and is discountenanced.

Having determined the preliminary issue. I will now proceed to consider the main issue for determination. Issue one is on whether the trial court was right in holding that the 1st to 43rd respondent have sufficiently proved that they are the candidates of the 1st appellant, Congress for Progressive Change (CPC) in Katsina State for the April, 2011 general election regard being had to the Electoral Act 2010, and the counter affidavit filed by the 1, 2 and 3 appellants.

The learned trial judge distilled one issue for determination which is whether the plaintiffs are candidates of the 1st defendant in the 2011 general elections. He found that the plaintiffs established there was a State Congress and that the State Executive Committee notified INEC of the dates of the primaries for the 15/01/11 and invited them and that exhibit D the result sheet of the primaries was presented showing the 1st respondent emerged winner. He relied on paragraphs 14, 15, 16 and 23 of the affidavit. He also relied on paragraphs 3, 4, 5, 6, 9 and 10 - 23 of the affidavit of the 44 respondents, the chairman of the state CPC chapter Katsina State. The fundamental question that arises from the submissions of the learned senior counsel and the learned counsel is whether from the provisions under Sections 85(1), 87(2) of the Electoral Act 2010 as amended and affidavit evidence and documents annexed the court below is correct. Section 85(1) read thus:

“A registered political party shall give the Commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under this Act.”

Section 87 (2) reads thus:-

“(2) The procedure for the nomination of candidates by

political parties for the various elective positions shall be by direct or indirect primaries.

(3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

(4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below-

(b) In the case of nominations to the position of Governorship candidate, a political party shall, where they intend to sponsor candidates-

(i) Hold a special congress in the State capital with delegates voting for each of the aspirant at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party.

(ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party, for the particular State.

The underlying principle in the interpretation of a statute is that the meaning of the words in the statute must be collected from the plain and unambiguous expressions used therein rather than from any notion which may be entertained as to what is just and expedient. See *Lawal v. G. B Ollivant* 1972 3 SC 124.

The words used in Section 85(1) of the Electoral Act 2010 are simple and unambiguous and should in construction be ascribed its ordinary meaning. Under that provision a registered political party is required to give at least 21 days notice of any convention, congress conference or meeting convened for the purpose of nominating candidates for any of the elective offices specified under the Act. Subsection (2) gives INEC the discretion to attend and observe the congress which is convened by the political party for the purpose of nominating candidates for an election. Three significant points to note under Section 85 are as follows (a) it is the registered political party that shall give the commission (INEC) notice of any congress. The use of the word registered political party can only mean the political party which headquarters is registered as the address of the party. Section 156 of

the Electoral Act described a political party as one that includes any association of persons whose activities includes canvassing for votes in support of a candidate for election under this Act and registered by the commission. Therefore it is the party at the national level that has the responsibility under the Electoral Act to give notice of congresses for nomination (b) The commission need not attend and observe the congress, it is optional. In effect the non attendance of INEC to observe congress is of no legal consequence to the primary election which is an intra-party election. (c) The congress for nomination of candidates for election is to be convened by a political party. The political party in reference is the party at the national level. Section 87(1) of the same Act set out the procedure for nomination of candidates by political parties. Under Section 87 (4)(1)(b) it is crystal clear that in the case of nominations to the position of governorship candidates a political party shall where they intend to sponsor candidates hold a special congress in the state. All that can be discerned from the provision therein and the party's constitution is that the political party will hold a special congress in the state and on a specific date to be appointed by the National Executive Committee of the party. The Electoral Act confers on the party at the national level through the National Executive Committee the power to give a date for the party primaries in the state. The congress however is to be held in the state. The discretion is that of the political party to delegate party members that will conduct the primaries in nominating candidates for Gubernatorial, National and State Assemblies. The provisions are unequivocal on the responsibility of the National Executive Council of the party to initiate and coordinate party primaries giving a specific date for the primaries. The facts in support of the originating summons are stated in the affidavit in support including the present 44th respondent. I will reproduce some of the paragraphs of the affidavit: the first respondent read thus:

"9. That I indicated intention to contest for the office of the governor of Katsina State in the forthcoming general elections slated for 2011.

11. That I appeared before the screening panel after which the panel notified me in writing that I was successful and advised me to commence full preparation of the gubernatorial primaries fixed for 11th January, 2011.

12. That I have been informed by the 2nd -45th plaintiffs on the 15th January, 2011 at the venue of the congress at about 1:00 pm and I verily believe them that they were screened and certified successful to contest for their respective offices.

13. That subsequent to the screening exercise, the State executive committee notified the 4th Defendant of the dates of the primaries and invited them to attend for the purpose of observing the process and outcome. Copy of the said letter is hereto attached and marked as EXHIBIT C.

14. That the 1st Defendant nominated the following persons; (i) Engr. Suleiman Adamu (ii) Dr. A. Yabagi (iii) A. Ahmed and (iv) Dr. A. D Usman, who were responsible for the conduct and supervision of the election primaries in to all elective offices.

15. That the 4th Defendant on its own part nominated officials whose role was to monitor and supervise the 1st Defendant party's Primaries seeking to fill all vacant elective position in the State.

19. That after the primaries which was under close supervision and monitoring of the officers of the 4th defendant, I was declared winner having polled a total of 95, 953 votes.

20. That the 2nd - 4th defendants (sic, 2<sup>nd</sup> – 45<sup>th</sup> plaintiffs) also won and been declared the winner flag-bearer of the 1st defendant in their respective constituencies.

22. That consequent upon my emergence, and my nomination of a running mate, the State executive submitted the result of the party congress and list of successful candidates to the National Chairman of the 1st Defendant in person of Prince Tony Momoh.

23. That a copy of the result and list of successful candidates was delivered to the 4th Defendant for its advance information and records pending when National Secretariat of the Party would officially forward the list of candidates to the 4th Defendant  
A copy of the State chapter report on the congress is attached and marked Exhibit E.

24. That up till now, I am being denied access to INEC FORMS F001 and F002 by the 1st and 2nd Defendants which has paved was (sic, way) for the submission of the (sic) do defendant's name to the 3rd Defendant"

In the second affidavit in support paragraphs 8 reads thus:

"That I was issued with INEC Nomination Form. I'm yet to

receive the INEC Nomination Form to be completed as running mate to the Plaintiff and I am aware that unless I complete the necessary nomination form and my name is forwarded along with 1st Plaintiff as the joint flag bearers of the party at the 2011 Gubernatorial election in Katsina State, 4th Defendant will not recognize our candidature.”

B In the affidavit of I and 2 appellants in response to the originating summons captioned as affidavit in defence of plaintiffs originating summons and in support of reliefs by way of counter claim. The National Secretary of the 1st appellant averred to the following facts:

C “4. (ii) Paragraph 2 of the main affidavit in support of the originating summons is denied as the 1st plaintiff was not duly elected as a Gubernatorial flag bearer of the 1st defendant to stand in the April 2011 general elections. The purported Katsina primaries elections of 15/01/2011 was not authorized by the 1st defendant and the 1st plaintiff has been disqualified to be fielded as a CPC candidate for election on account of his disposition to violence and disregard for party principles.

D (iv) In further answer to paragraph 7(iii) above, all the alleged primary elections by which the plaintiffs purportedly hinge their respective declaration of victories were conducted on 15/01/2011 without the authorization or ratification of the 1st defendant, or recognition of the 1st defendant (xiii) Further to the above rebuttal, the 1st plaintiff was not the declared winner and gubernatorial flag bearer of the CPC at the primary election of 13/01/2011, the victors of which were sent to the 4th defendant, and there was no cause or reason for him to withdraw his candidature as claimed in paragraphs 24, 25 and 26 of his affidavit.

E (xv) The depositions in paragraph 29 of the main affidavit are vehemently denied to the extent that it is not true that the names of the plaintiffs had been substituted; much as it is not correct to label the non-submission of their names as null and void.

F 5. That I know as a fact:

G (a) That the responsibility for initiating; coordination and conducting party primaries for elections into governorship, Federal and state assemblies is the exclusive preserve of the Board of Trustees and National Executive Council of the 1st Defendant is attached hereto as Exhibit A.

H

(b) That the Board of Trustees had in the exercise of its power stated above served the 4th Defendant with notice of convention and invitation to observe and monitor convention and party primaries on the 24th day of December 2011.

(c) Some circumstances set in and the party could not keep to the dates 24th December, 2011 in consequence of which a notice of change of dates was further served on the 4th Defendants on to day (sic) of January, 2011. A copy of the letter is attached hereto as Exhibit B.

(d) The 1st Defendant intimated by its letter of 5th January, 2011 that party primaries of Katsina state was to hold on the 10th day of January, 2011 with the possibility of re-run on the 11th and or 13th January, 2011 as the case may be.

(f) That the 1st Defendant consequently organized the Gubernatorial, Federal and state Assembly primaries for Katsina State on the 8th day of January, 2011 under Coordinatorship of a three -man committee chaired by Col. Jibril Muhammad Hassan (Rtd), which was however inconclusive and annulled by the parry on account of violence and thuggery. The letter appointing and mandating the committee is attached as Exhibit 'C'.

(g) The primaries held on the 8th day of January, 2011 were inconclusive and the 1st Defendant ordered for re-run, with an expanded ten-man committee chaired by the same by Col. Jibrin Mohammad Hassan (Rtd), which was eventually held on the 13th day of January, 2011 in line with the notice served on the 4th Defendant by a letter dated 5th January, 2011 with reference No.CPC/HQR4/INEC/GEN/2011/1 attached here as Exhibit B.

5. That I know as a fact:

(a) That Defendant had at no point in time served the 4th Defendant with any notice of a congress or party primary slated to hold on the 11th day of January, 2011.

(b) That re-run eventually held on the 13th day of January, 2011 in line with the notice served on the 4th Defendant by a letter dated 5th January, 2011 with reference NO.CPC/HQR.INEC/GEN/2011/1.

(c) That result of the re-run held the 13th day of January, 2011 was on the 14th day of January, 2011 served on the 4th Defendant which received, acknowledged and accepted the result of

the 1st Defendant's party primaries held on the 13th day of January, 2011. A copy of the letter and list served on the 4th Defendant in support of the letter dated the 14th day of January, 2011 by which the 6th Defendant was declared winner along with successful federal and state assembly members is shown to me and attached hereto as Exhibits 'D' respectively.

(d) The list of the successful candidates as submitted to the 4th defendant on the 14th day of January, 2011 by the Chairman National Convention, congresses and primaries Committee of the party was further submitted to the 4th Defendant by the 7th Defendant (as a party) in INEC FORM CF 001 an INEC FORM CF 002B (List of candidates) as evidenced and acknowledged by the 4th defendants on the 31st day of January 2011. The list and acknowledgements are attached hereto as Exhibit 'E1 and E2' respectively.

8. That I was issued with INEC Nomination Form to be completed as running mate to the Plaintiff; and I am aware that unless I complete the necessary nomination form and my name is forwarded along with the 1st Plaintiff as the joint flag bearers of the party at the 2011 Gubernatorial election in Katsina State, 4th Defendant will not recognize our candidature at the election."

The aforesaid averments by the National Secretary of 1st appellant were not contradicted by the respondents in any affidavit. Where depositions in an affidavit are not denied by way of a counter affidavit, they are generally deemed admitted and the court is to act thereon. I must however add that the absence of a further affidavit to refute averments in a counter affidavit does not ipso facto amount to a conclusive exercise of a favourable discretion. The burden still lies on the deponent to convince the court of the facts deposed to in certain situations. See A.G Ondo State v. A - G Ekiti State (2001) 17 NWLR (pt.743) 706 SC, Ejiofor v. Okeke (2000) 7 NWLR (Pt.665) 363 CA.

The respondents' contention from their affidavit is that primary election were conducted on the 15th of January, 2011, Supervised by INEC officials who were put on notice by the state chairman of the party and people were sent from Abuja National party office to conduct the election on the 15th January, 2011 which election returned the 1st - 34 respondents as candidates for the party in the various elective offices. He also averred that the earlier two primaries

were cancelled. On the other hand the political party, the first appellant from their counter affidavit are saying that they did not sanction nor give the date 15th of January for holding of the primaries. It is indisputable from the facts given by the appellants in their affidavit and the 1st - 44th respondents' affidavit that the way to resolve the various version is to look at the documentary evidence annexed as exhibits in the originating summons, counter affidavit and the other affidavits in the record. Where there is conflict in affidavit evidence the court can resolve same by calling for oral evidence or by authentic documentary evidence which supports one of the affidavits in conflict with another. Where there are documentary evidence before the court, it can suo motu resolve such conflicting evidence by resort to the documentary evidence. See *Bawa v. Phenias* (2001) 4 WLR (1024) 251 CA.

The exhibits annexed to the originating summons I have carefully scrutinized (sic, i.e.) Exhibit B I and B2 is the nomination form, completed and submitted to the office of National Secretary in favour of 1st and 2nd respondent, exhibit C is the letter signed by the state chairman of CPC to INEC informing them of the date for the primary elections on 15th January, 2011. The letter is a notice dated 14th January 2011 for them to monitor the election. Exhibit D is the copy of the result sheet wherein the first respondent was declared winner. Exhibit E is a copy of the state chapter report on congress by the resident electoral commissioner Katsina State.

In the affidavit of the national secretary of the 1st appellant exhibit A annexed is a copy of the constitution. Exhibit B is a notice of change of dates to INEC, exhibit C is the letter appointing and mandating a three man committee to co-ordinate the election that was inconclusively held on 8th of January 2011, exhibit E1 and E2 are the list of successful candidates submitted to INEC on 14th of January, 2011 by the chairman national convention. Then exhibit H is the extracts of the meeting of the board of trustees of the 1st appellant. After a careful scrutiny of the documentary exhibits, one critical question that arises looking at the procedure adopted by the 44 respondent that produced the 1st -43rd respondents on one hand and how the third appellant was nominated is which of the candidates was nominated in the primaries in accordance with the Electoral law. The answer is not fair fetched. The evidence deposed

to by the plaintiffs in the court below is that the state chairman of the CPC Katsina notified INEC of the primaries they held on 15th of January, 2011 and forwarded advance copy of the result without the sanction or evidence of authority from the National Executive Council of the party. Section 85(1) of the Electoral Act confers the responsibility of notification to INEC on the 1st and 2nd appellant not the state chairman of the party. Section 85(2) provides it is the 1st appellant that should convene the congress for the purpose of primary. There is no credible evidence that the first appellant nor the National Executive council directed primaries to be held on the 15th January, 2011.

The constitution of the 1st appellant under schedule 3 paragraph 5 set out conditions for nomination as a candidate for the party. This constitution specifically provided that all candidates for elective offices under the constitution of the Federal Republic of Nigeria must be certified and approved by the board of trustees or to whoever it delegates such powers before submission to the state Independent Electoral Commission or INEC.

The 1st - 44th respondents are all described as members of the CPC. Each of the respondents is a card carrying member of the party. Thus having subscribed to the provisions under the constitution of their party, they are enjoined to observe and obey same. A Constitution is the organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the members. The members are bound by its provisions. The Katsina State chairman, the 44th respondents cannot usurp the statutory powers conferred on the National Executive council of the 1st appellant. Any such act such as serving notice on INEC without any evidence he was delegated to so act is outside the statutory provision and such an act is invalid. The fulcrum of the dispute is settled in exhibit H the extract of the minutes of the board of trustees of the CPC the 1st appellant dated 25th January, 2011.

The board of trustees of the 1st appellant resolved that the primary elections conducted on 13th of January, 2011 was conclusive in spite of violence. The 1st respondent and the 3 appellant participated in the primaries. The board of trustee had the final say. Exhibit H resolved the controversy on whether there was an election on the 13th of January, or not. I must emphasis again that it is a political

party that sponsors a candidates and once you are a member the resolution of the party on nomination is the final unless there was non compliance with the statutory provisions of the electoral Act or the constitution by the party during the conduct of primaries. The primary election held on the 13th of January, 2011 was sanctioned by the board of trustee of the 1<sup>st</sup> appellant. The 3rd appellant name was forwarded to INEC by the political party as stipulated in the electoral act. The learned trial judge was therefore wrong when he held that the primaries of 15 of January 2011 was sanctioned by the National Headquarters of the party in view of the contents of exhibit H. The decision of the Board of Trustee was not challenged. It is difficult for me to conceive that exhibit H was one of the documents presented as evidence before the trial court and the court still granted the reliefs. The provisions of S. 87 and 85 of the Electoral Act were not complied to by the 1st - 44th respondents. Every member of the party having voluntarily joined the party must respect and obey the law under their constitution. From the totality of the affidavit evidence, the inevitable conclusion is that the conduct of the primaries held on 15th of January, 2011 organized by the 44th respondent was not sanctioned by the National Executive Committee (NEC) of the party nor the board of trustees.

Section 87(4) (b) (1) of the Electoral Act 2010 confers on the 1st appellant the power to specify date for the congress. They served on the 45th respondent notice of dates within which the primaries will be conducted. They did not schedule any party primary programme against 15th January, 2011.

I agree with the submission of the learned senior counsel for the appellants that the trial court was wrong in relying on the primaries of 15th January, 2011 to hold that the 1st -34th respondents have sufficiently proved that they are the candidates of the CPC in Katsina for the April, 2011 general election. The decision of the trial court was not based on the overwhelming documentary evidence that the primaries of 13th January, 2011 was sanctioned by the board of trustees of the first appellant. For the forgoing I resolve issue No one in favour of the appellant.

#### Issue No. 2 and 3

Whether a miscarriage of justice has not been occasioned by the wrong conclusion of the trial court that there are no materials

before the court to support the counter claim of the 1st, 2nd and 3rd appellants regards being had to evidence adduced at the trial particularly the counter affidavit to the originating summons and counter claim filed by the 1st, 2nd, and 3rd appellants. Whether the learned senior counsel submitted that the judgment of the trial court could have been otherwise if the evidence adduced by the appellants was properly evaluated in line with the spirit that no counter affidavit was filed by any of the respondents in opposition to the affidavit and documentary evidence in support of the appellants' counter claim.

Learned counsel urged the court to hold that a miscarriage of justice has been occasioned by the wrong conclusion of the trial court that there are no materials before the court to support the counter claim of the 1st, 2nd, and 3rd and 6th appellants regard being had to evidence adduced at the trial particularly the counter affidavit to the originating summons and counter claim.

Learned senior counsel submitted that Section 87 (1) and (4) (1) and C of Electoral Act, as amended vest the right to organize and specify date for holding of primaries on the party. It is his submission that the purported primaries of the 15th January, 2011 is void ab initio as the affidavit evidence of the 1st appellant reveals that the party did not approve nor show interest in the holding of the primaries of 15th January, 2011 and the 3rd appellant also stated he was not aware of any primary for governorship conducted on 15th of January, 2011. Learned counsel further submitted that the trial court decision is akin to letting the respondents find a right on an apparently unlawful and void act from which no legal right can arise.

The learned senior counsel Rickey Tarfa in response contends that the 3rd appellant contended he won the governorship primary held on 13th January, 2011 but could not produce a result of the election. Whilst the 1-43 respondents were able to produce their own results of the election held on 15th January, 2011 which results bore endorsement of INEC official and national officer of the 1st appellant.

Learned senior counsel submits that it is trite that result of any election regulated by law and expected to be reduced into writing in appropriate form is presumed correct until the contrary is proved. And where one result is challenged and alleged not to be genuine, the person who so contends must tender a different one which is

authentic to enable the court decide which is valid. See *Audu v. INEC* (No. 2) (2010) 13 NWLR (Pt.121) 456 at 521.

He submits that the purported forwarding of 3rd appellant's name to INEC on 14th January, 2011 resulting from the election which was not witnessed by INEC cannot qualify as a result of election and documents forwarded. See *Ibrahim v. Shagari* (1983) NSCC 431 At 445 B

It is his further submission that since the election was required to be documented and result issued the only proof of the primary election acceptable in law must be the best evidence of it. i.e. the result of the election duly witnessed by INEC official. See *NIDB v. FEMBO (Nig) Ltd* (1997) 2 NWLR (Pt. 489) CA 543 at 569. C

Learned senior counsel further submitted that in computing the 21 days notice. The date on which the notice is issued is not counted. He cited *Auto import Export v. Adebayo* (2002) 18 NWLR (Pt.799) pg 554 at 561. D

Learned senior counsel in his reply brief argued that the submissions of the 1st - 43rd respondents' brief on counter claim, abuse of process, inadmissibility of affidavit evidence on basis of hearing, computation of time on validity of notice to hold congress and the issue of whether after an abortive primary INEC need to be given a fresh notice, canvassed in the briefs were all not based on the appellants' appeal and no leave was granted by this court for respondents to reargue them by way of respondents' notice. I am not in doubt that the respondents' counsel can introduce in his brief new argument as long as it is based on the issue distilled by the appellant arising from the competent grounds of appeal. However, when he decides to introduce an argument on an issue that did not arise from the decision of the court below the court will discountenance the argument. The issue of inadmissibility of the affidavit of the 1st and 2nd appellants canvassed at page 31 paragraphs 5.13 did not arise from the judgment of the court. I have also looked at the notice of intention to contend and same does not contain any ground on inadmissibility of affidavit evidence. In respect of argument on computation of time. This argument has introduced a new dimension which the learned trial judge did not have the advantage to consider before he pronounced his decision. Although Section 85 (1), 86 and Section 87 of the Electoral Act 2010 were referred to before the court below, the court did E  
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not properly construe same before he held that the primaries were properly conducted in accordance with that provision. The court did not consider the issue on computation of time nor pronounce on it. A respondent who has not filed a cross appeal or respondent's notice can only adopt the issues formulated by the appellant or recast the appellants' issues by giving them a slant favourable to his defence of the appeal without departing from the complaint in the grounds of appeal. *Osazuwa v. Isibor* (2004) 3 NWLR (Pt.859) 16 C.A.

The 1st - 43rd respondents in their notice did not raise this issue as a ground nor did they seek leave of court to raise same. It is belated for the respondents to now attempt to raise these issues at the stage of appeal without leave of the court. However in case I am wrong on issue of notice of INEC since the nature of the issue raised falls within the ambit of Section 85 of the Electoral Act, I would briefly look at it.

I had earlier said that issue of computation did not arise from the grounds of appeal. The main notice to INEC was on the 24 January 2011 the 1st appellant held the primaries sanctioned on the 13<sup>th</sup> (sic, January 2011). A Mathematical calculation from the 24<sup>th</sup> of December (sic, 2010) to the 13<sup>th</sup> (sic, January 2011) still falls within the 21 days. The cases cited are not apposite, because they dealt with filing of processes in court. The relevant provision is on service of notice which should start from the date on the document as applicable in this case.

The issue of who should be a candidate of a political party at an election is an intra party matter which should be determined by the rules (sic) constitution and provisions in the Electoral Act. The court will normally be involved where the provisions in the Electoral Act or the party's constitution has not been complied to. S. 87 (10) of the Electoral Act (2010) (as amended).

The 1st appellant through its board of trustees, set out in exhibit H, in detailed form the fact that the first primary was inconclusive and the second one subsequently held on 13 of January, 2011 was adopted as the date the primaries were held and that the third appellant won the highest votes in the governorship primary and that the party had also forwarded his name to INEC.

The proceeding that led to the forwarding of 3rd appellant's name is in line with the constitution of the party on nomination and the Electoral Act. The trial court erred when he preferred the evi-

dence lead by the respondents which did not reveal compliance to the Electoral law and the constitution of the party.

The learned senior counsel for the appellant raised the point on miscarriage of justice. The learned trial judge held that there are no materials to support the counter claim. The appellant must show that the non compliance occasioned a miscarriage of justice. The competency of the counter claim did not arise out of the judgment. I must add that the Federal High Court rules made no provision for filing a counter claim to originating summons. Therefore, I have relied on counter affidavit not counter claim. The duty of trial court is to assess evidence before her. See *Mogaji v. Cadbury Nig Ltd* (1985) 2 NWLR (Pt.7) 393 *Osazuwa v. Isobor* (2004) FWLR (Pt.194) 387 at 407. The learned senior counsel for 1st - 43rd respondents submitted that the uncontradicted affidavit evidence of Dr. Yushau Armayaiu is an admission of the facts by the appellants and that appellants' counsel in paragraphs 432 admitted the contents of the said affidavit. The law is settled that facts in an affidavit are contradicted by facts in a counter affidavit or affidavit in opposition and not by arguments of counsel. Therefore any argument of counsel cannot amount to admission of facts in the affidavit. In effect submission does not constitute evidence. See *Oduwole v. David West* (2010) All FWLR (pt.532) SC 1643. The evidence placed before the trial court by the appellants supported their claim and not that of the 1st - 43rd respondents. See: *Overseas Construction Ltd. v. Creak Enterprise Ltd* (1985) 3 NWLR (Pt.13) 407, *Adeniyi v. Adeniyi* (1972) 4 SC 10. *Oduwole v. David West* (Supra)

In the light of the forgoing issues 3 formulated by the appellants, I resolve in favour of the appellants and issue 2 and 3 formulated by 1 – 43 respondents in relation to the notice of intention I resolve in favour of the appellants against them.

I agree with the learned senior counsel for the appellants that there is no evidence that one Engr. Suleiman Adamu Committee was mandated by the National Executive Committee of the 1st appellant to conduct primary on 15th January, 2011. This is fundamental since the document from the Board of Trustees clearly shows that National Executive Committee did not sanction primary of 15th January 2011. The primary held on the 13th of January, 2011 was properly conducted in accordance with electoral law on the 13th of January,

2011.

Therefore, the grant of injunctive relief in favour of the 1st - 43rd respondents in the circumstance was wrong. Miscarriage of justice simply means failure of justice. The trial court failed to determine the questions that were raised in line with the law and the affidavit evidence before the court. I therefore resolve issue 4 in favour of the appellant.

In the final analysis, having resolved all the issues distilled for determination in favour of the appellants, I hold that this appeal succeeds. I hereby allow the appeal and set aside the decision of the Federal High Court in suit number FHC/ABJ/CS/126/2011 delivered on 15th of February, Each party to bear its own cost.

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GARBA JCA

D I agree

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BADA JCA

I read before now the lead Judgment of my learned brother REGINA OBIAGELI NWODO, JCA, just delivered and I agree with the reasons given therein and the conclusion reached.

I am also of the view that there is merit in this appeal and it is allowed by me. I abide by the consequential orders.

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