

**SUPREME COURT OF NIGERIA**

16TH DECEMBER, 2011. SC. 157/2011 (CON)

**CORAM: -D. MUSDAPHER W. S. N. ONNOGHEN, J. A.  
FABIYI, O. O. ADEKEYE, M. U. PETER-ODILI, JJSC**

1 SENATOR YAKUBU

GARBA LADO & 42 Ors - (SC. 157/2011)

AND

DR. YUSHA'U ARMIYAU - (SC. 334/2011)

(Katsina State Chairman,  
Congress for Progressive  
Change) (CONSOLIDATED)

AND

1. CONGRESS FOR PROGRESSIVE  
CHANGE (CPC)

2. PRINCE TONY MOMOH - (SC. 157/2011)

(National Chairman, Congress  
for Progressive Change (CPC)

..... APPELLANTS

3. ALHAJI AMINU BELLO  
MASARI

4. DR. YUSHA'U ARMAYAU

(Katsina State Chairman,  
Congress for Progressive Change (CPC)

5. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

6. RESIDENT ELECTORAL  
COMMISSIONER, KATSINA STATE

AND

1. CONGRESS FOR PROGRESSIVE  
CHANGE (CPC)

2. PRINCE TONY MOMOH

..... RESPONDENTS

(National Chairman, Congress  
for Progressive Change

3. ALHAJI AMINU BELLO MASARI

4. SENATOR YAKUBU

GARBA LADO & 42 Ors

47. INDEPENDENT NATIONAL ELECTORAL

COMMISSION

48. RESIDENT ELECTORAL

COMMISSIONER, KATSINA STATE

---

JURISDICTION - Fundamental nature - It is relevant in adjudication of a matter - And it can be raised at any time by parties or by court suo motu (H1)

JURISDICTION - Suo motu raising by court - Propriety - Where court decides to suo motu raise the issue of jurisdiction - It must give fair hearing to parties (H2)

JURISDICTION - Determination - Principles - Case of Madukolu v. Nkemdilim laid down the guidelines - As such any defect in competence of court - Will render its proceedings null and void (H3)

ELECTIONS - Nomination - Political party has the power to nominate candidates for election - And any question arising therefrom is not justiciable in court (H4)

ELECTIONS - Substitution of candidates - Under Electoral Act 2006 s. 34 - Political party must inform INEC of any substitution not later than sixty days to election - And it must proffer cogent and verifiable reasons - Save in case of death (H5)

ELECTIONS - Substitution of candidates - Electoral Act 2010 as amended - Does not contain any provision for substitution after nomination (H6)

ELECTIONS - Pre election matters - Aggrieved aspirant at primary election - Must come within Electoral Act 2010 as amended ss. 87(4)(b)(ii), (c)(ii) and 9 - In order to make his complaint justiciable in court (H7)

JURISDICTION - Determination of - Court may consider totality of facts pleaded and evidence adduced to establish same - In order to determine whether or not it has jurisdiction (H8)

### ***FACTS***

Plaintiffs/appellants who are card carrying members of the Congress for Progressive Change claimed that they are the validly nominated candidates of 1st defendant/ 1st respondent to contest the general election of April 2011 in respect of Katsina State into various elective positions in the National and State constituencies following a primary election conducted on the 15th January 2011. But that 1st respondent refused to forward their names to 5th respondent as its duly nominated candidates for the said election contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended and the Electoral Act as amended. On the other hand, 1st - 3rd respondents contend that there was no primary election of 1st respondent on the 15<sup>th</sup> January, 2011 in which appellants emerged as nominated candidates of the political party. They further contend that it was on 13th January 2011 that the primaries of 1st respondent in Katsina State was conducted and the candidates for the various elective positions were nominated, including 3rd respondent. They also stated that the said primaries of 13th January 2011 was contested by some of appellants who lost same and that the names of the duly elected candidates of the party to contest the said general election were forwarded to 5<sup>th</sup> respondent on the 31st January 2011 by 1st respondent in compliance with the 1999 Constitution as amended and Electoral Act 2010 as amended.

Being dissatisfied with the action of 1<sup>st</sup> - 3<sup>rd</sup> respondents, appellants (as plaintiffs) commenced this action by filing originating summons before the Federal High court, Abuja Division. They claim inter alia, a declaration that they are the duly elected candidates of the political party for the said election. 1<sup>st</sup> - 3<sup>rd</sup> respondents filed counter-claim. At the end of hearing, the court granted the reliefs sought by appellants and dismissed the counter-claim of 1<sup>st</sup> - 3<sup>rd</sup> respondents on the basis that it was incompetent. Dissatisfied, 1<sup>st</sup> - 3<sup>rd</sup> respondents filed Notice of Appeal before the Court of Appeal, Abuja division. Appellants (as respondents) filed respondents' notice. The court allowed the main appeal and set aside the judgment of the trial High court. The court also discountenanced appellants' respondents' notice. Aggrieved, appellants filed two appeals i.e. suits no: SC. 157/2011 and SC. 334/2011 to Supreme Court. One of the appeals is

against the setting aside of the decision of trial court, while the other is against the discountenance of appellants' respondents notice. The appeals were consolidated in the Supreme Court. The court suo motu raised the issue of whether or not it has jurisdiction to hear the appeals.

B

**HELD** (Unanimously striking out the appeals for lack of jurisdiction per **ONNOGHEN JSC**)

***JURISDICTION - Fundamental nature***

C

1. The issue of jurisdiction is very important in adjudication and the term has been variously described by jurists including being described as the life blood of any adjudication; the fiat, the stamp of authority to adjudicate

The fundamental importance of the issue of jurisdiction is underscored by the principle of law to the effect that it can be raised for the first time in the trial court or the Court of Appeal or even the Supreme Court and by any of the parties or by the court suo motu. (p. 2695 H)

E

***JURISDICTION - Sua motu raising by court - Propriety***

2. There is however a proviso to the above principle particularly as it relates to the power of the court raising an issue of jurisdiction suo motu. The proviso is to the effect that the court, in that circumstance, must give the parties, as represented by counsel, the opportunity to be heard thereon before proceeding to determine the issue in its judgment. The proviso is very much in accord with prudence, common sense and the principles of fair hearing

F

In the instant case, the issue was raised by the court suo motu, but counsel for all parties was duly given opportunity to be heard thereon and were so heard. (p. 2696 B)

G

***JURISDICTION - Determination - Principles***

3. By the locus classicus case of *Madukolu v. Nkemdilim* (1962) 1 ALL NLR (Pt. 4) 587; (1962) 2 SCNLR 341 this court laid down the proper guidelines in determining the issue of jurisdiction of a court of law. This court stated that a court is competent when:-

H

(a) it is properly constituted as regards members of the Bench, and no member is disqualified for one reason or another,

(b) the subject matter of the case is within its jurisdiction and no feature in the case which prevents the court from exercising its jurisdiction; and,

(c) the case comes before the court initiated with due process of law and upon fulfillment of a condition precedent to the exercise of jurisdiction. B

It is settled law that any defect in the competence of a court is fatal because, the proceedings will be a nullity however well conducted. (p. 2696 D)

***Political party has power to nominate candidates for election*** C

4. The instant case is an election related matter in the sense that it is a pre-election matter arising from the nomination exercise allegedly conducted by the 1st respondent to elect the candidate to represent it in the April, 2011 general elections in Nigeria. The issue of jurisdiction raised in this case is therefore as it relates to the competence of the courts to hear and determine matters relating to the nomination of candidates by political parties for general elections which exercise has generally been held by the courts to be within the exclusive domestic jurisdiction of the political parties to the exclusion of the courts of law. It is in line with the above that the courts have held that the question of the candidate a political party will sponsor in an election is in the nature of a political question which is not justiciable in a court of law. (p. 2696 H) D E F

***ELECTIONS - Substitution of candidates***

5. However, in 2006 following the enactment of the Electoral Act, 2006 particularly Section 34 thereof the absolute powers of political parties in relation to nomination of their candidates for elections was tampered with by the legislature only to the extent and in relation to change/substitution of a nominated candidate whose names and particulars had been forwarded by the party to the Independent National Electoral Commission (INEC) one hundred and twenty (120) days to an election. The said Section 34 required a political party intending to change/substitute any of its candidates for any election to inform INEC of such a change in writing not later than sixty (60) days to the election and must assign cogent and verifiable reasons for the intended change/substitution, except in the case of the death of G H

the candidate to be changed or substituted.

The above provision was designed to bring sanity to an otherwise chaotic situation hitherto existing in the electoral system whereby the political parties could arbitrarily change candidates even on the eve of an election. It is however, very important to emphasize the point that Section 34 of the Electoral Act, 2006 did not interfere with nor did it alter or modify the principle that the question as to who is a candidate of a political party for any election is a political question within the domestic jurisdiction of the political parties and consequently not justiciable. What Section 34 did was to restrict the power of the political parties to change or substitute their candidates at will and at any time. (p. 2697 C)

### ***ELECTIONS - Substitution of candidates***

6. However, the present Electoral Act, 2010 (as amended) does not contain any provision for substitution or change of a nominated candidate once the nomination is made. In the present Electoral Act, section 87 deals with the processes leading to the nomination of a candidate by a political party for any election and provided in sub-section 4 (b)(ii) and (c)(ii) that the aspirant who emerges at the primaries with the highest number of votes “shall be declared the winner of the primaries of the party and the aspirants name shall be forwarded to the Independent National Electoral Commission as the candidate of the party”, whether the nomination relates to the office of Governorship of a State, Senatorial or House of Representatives, or State House of Assembly seats, respectively. (p. 2698 A)

### ***Pre election matters***

7. The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the preview of section 87 (4)(b)(ii); (c)(ii) and (9) of the Electoral Act, 2010 (as amended), supra. It is only if he can come within the provisions of those sub-sections that his complaints can be justiciable as the courts cannot still decide as between two or more contending parties which of them is the nominated candidate of a political party; that power still resides in the political parties to exercise. The enactment is not designed to encourage factions emerging

from the political parties with each electing its candidates but claiming same to be candidates of the political party concerned.

As stated earlier in this judgment, section 87 of the Electoral Act, 2010 as amended deals with the procedure needed for the nomination of a candidate by a political party for any election and specifically provided a remedy for an aggrieved aspirant who participated at the party primaries which produced the winner by the highest number of votes. Where, however, there is a dispute, as in the instant case as to which of two primaries of a Political party produced the nominated candidate that dispute is not justiciable under the provisions of section 87(4)(b)(ii), (c)(ii) and (9) supra and the courts will have no jurisdiction to entertain same.

In the instant case, the jurisdiction in question is statutory and is very limited in scope. On the face of the claim it would appear that the courts have jurisdiction under Section 87 (4)(b)(ii);(c)(ii) and (9) of the Electoral Act, 2010 (as amended), if the right being claimed by the appellants and in dispute between the parties arose from the primaries of 15th January, 2011, alone.

Once there arises a dispute as to which of the two primaries conferred a right of candidature on the parties to represent a political party in an election, the matter is taken outside the preview of Section 87(4)(b)(ii); (c)(ii) and (9) of the Electoral Act, 2010 (as amended). (p. 2698 D/2702 F/2703 C)

### ***JURISDICTION - Determination of***

8. While it is settled law that it is the claim of a plaintiff as evidenced in the writ of summons and statement of claim, that determines the jurisdiction of the court. Where however, from the totality of the pleadings of both parties and the evidence adduced to establish same, it becomes obvious that the court has no jurisdiction with regards to the subject matter of dispute or that the claim, in reality, cannot come within the statutory jurisdiction of the court, the court will take into account the totality of the facts pleaded by the parties and evidence adduced to establish same in determining whether the court has jurisdiction or not. (p. 2702 H)

### ***REPRESENTATION***

Mr. Zakaranu Garubam with Mr. K. O. Idahosa for the Appellants

Mr. S. Ibiwoye with Theophilus Okute for 1st and 2nd Respondents  
Mr. Kolade Awojobi for the 3rd Respondent  
Ricky Tarfa, SAN for the appellants in SC/157/2011 and Appellant in SC.334/2011 with Messrs P. Nkem (Miss), C. E. Okocha (Miss) and A. A. Oyegbami, Esq.

B 4th - 46th respondents in SC.334/2011 - Messrs A. J. Owonikoko, SAN B. Adulogu, A. Okubote.

J. O. Baiyeshea, SAN for the 1st - 3rd respondents in both appeals, with Messrs I. Alasan, S. Ipinlaye, R. S Baiyeshea, E. Omozeghian, Y. A Dikko, S. David, Animashaun and J. Akor.

C Ademola Bakare Esq for the 4th respondent in SC.157/2011  
Ahmed Raji Esq. for the 5th and 6th respondents in SC.157/2011 and 47th and 48th respondents in SC.334/2011 with Messrs A. D. Auta, Fatima Buka, Adeola Adedipe and Zakari Garba

D

**CASES REFERRED TO**

Katto v. CBN (1991) 22 NSCC (Pt. 1) 736 at 751

Oloriade v. Oyebi (1984) 1 SCNLR 390

Ezomo V. Oyakhire (1985) 1 NWLR (Pt. 2) 195

E Madukolu v. Nkemdilim (1962) 1 ALL NLR (Pt. 4) 587

Onuoha v. Okafor (1983) SCNLR 244

A-G Anambra v. A-G Federation (1993) 6 NWLR (pt.302) 692

Oloriode v. Oyebi (1984) 1 SCNLR 390

Ezomo v. Oyakhire (1985) 1 NWLR (pt.2) 332

F Diapanlong v. Dariye (2007) 8 NWLR (pt.1036) 332

Sken consult v. Ukey (1981) SC 6

Oshatoba v. Olujitan (2000) 5 NWLR (pt.555) 159

Bankole v. Pelu (1991) 8 NWLR (pt.211) 523

G Petrojessica Enter Ltd. v. Leventis Ltd. (1992) 5 NWLR (pt.244) 675

Dalhatu v. Turaki (2003) 15 NWLR (pt.843) 310

Peter Obi v. INEC (2007) 11 NWLR (pt.1046) 565

**STATUTES REFERRED TO**

H Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 221, 222 and 223

Electoral Act, 2010 (as amended), 33, 85 and 86, 87(1)(4)(6)(9)

Electoral Act 2006, s. 34



**LEAD JUDGMENT BY ONNOGHEN JSC**

The appeals are against the judgment of the Court of Appeal Holden at Abuja in appeal No. CA/A/232/2011 delivered on the 20th day of April, 2011 in which the court allowed the appeal of the present 1st - 3rd respondents against the judgment of the Federal High Court, Holden at Abuja in Suit No. FHC/ABJ./CS/126/2011 delivered on the 25th day of February, 2011 granting the claims of the plaintiffs, now appellants before this court. B

On the 3rd day of February, 2011 the appellants in SC/157/2011 caused an originating summons to be issued against the present respondents therein in which they called for the determination of the following questions:- C

"1. WHETHER having regard to Section 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), 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 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. E

2. WHETHER having regard to the combined effect of Section 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 87(1)(4) and (6) of the Electoral Act, 2010 (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 Independent National Electoral Commission (INEC) the names of candidates who emerged winners at State congress of the party, the 1st and 2nd defendants have the power to disqualify or reject plaintiffs candidature 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 Senate (sic) (State) House of Assembly for 2011 general elections. F G H

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 candidate of 1st defendant in the primary election of the 1st defendant, conducted at the Katsina State Party Congress held on 15th January, 2011 general election, the  
 B plaintiffs candidature can be rejected, disregarded, revoked, reversed, annulled, reassigned to, or be substituted with 6th defendant, in respect of governorship and or any other unknown persons for Katsina constituencies in respect of Senate, House of Representatives and  
 C State House of Assembly for the 2011 general elections when the plaintiffs being still alive, have not withdrawn their candidature to contest on the platform of the 1st defendant at general election schedule to hold in April, 2011 for the elective offices.

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 candidates of the 1st defendant, entitled to all the benefits 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  
 E of the office of the Governor, Senate, House of Representatives and State House of Assembly in Katsina State at the 2011 general election”.

In consequence of the above questions, the plaintiffs claimed the following reliefs.-  
 F

1. A DECLARATION that by virtue of Section 221, 222 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 and the names of plaintiffs who were screened, cleared  
 G and duly elected by majority of lawful votes cast 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 2011 general election which primaries,  
 H were witnessed and endorsed by the INEC designated Monitoring Team.

2. A DECLARATION that the combined effect of Section 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 (as amended) which among other things guarantee, recognize and prescribe the mode to 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 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 Representatives and State House of Assembly for 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 Representative 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, 2010 (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 1st defendant in the primary election of the 1st defendant, conducted in Katsina, 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 is 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 candidate of the 1st defendant, entitled to all the benefits 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 Representatives and State House of Assembly in Katsina State at the 2011 general election.

6. A DECLARATION that any acts, omission, commission, fail-

ure, refusal or neglect, by 1st, 2nd and 3rd defendants to take all necessary steps required under the Electoral Act, 2010 (as amended) to 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  
B election is illegal and unconstitutional.

7. 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  
C other than that of 1st plaintiff and his nominated running mate in person of ABDULAZIZ 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  
D 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 - 47th defendants candidates of 1st defendant for the elective offices of Katsina State constituencies in the Senate, House of Representatives and House of Assembly respectively at the  
E 2011 general election.

9. AN ORDER OF PROHIBITORY INJUNCTION restraining the 4th defendant, its agents, servants or privies from accepting and giving recognition to any other persons other than the 1st plaintiff  
F and his nominated running mate in person of ABDULAZIZ 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.

10. AN ORDER OF PROHIBITORY INJUNCTION restraining  
G 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.

H 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 name of plaintiffs as candidates of 1st defendant in

respect of the offices to which party primaries tickets; in the event that 1st defendant fail or neglect to so submit the aforesaid names as its candidates for the offices”.

As stated earlier in this judgment, the trial court granted all the reliefs of the plaintiffs/appellants resulting in an appeal by the 1st - 3rd respondents in this court which appeal was allowed and the judgment of the trial court set aside. The instant appeals are against that judgment. B

The issues for determination, as identified by learned senior counsel for the appellants in SC/157/2011 in the appellants’ brief deemed filed on 15th November, 2011 and adopted in argument on even date, are as follows:- C

1. Whether in view of the uncontroverted evidence before the lower court, their Lordships correctly constructed and applied the relevant provisions of the constitution and the electoral act canvassed by the appellants before them, in reversing the decision of the trial court that the 2nd - 43rd appellants herein were the duly nominated candidates of the 1st respondent for the various national and State legislative offices in the general elections of April, 2011 in Katsina State; D  
E

2. Whether the learned justices of the Court of Appeal did not occasion a miscarriage of justice when they discountenanced the appellants’ respondents notice, notwithstanding that the lower court had granted leave in respect of the said respondents’ notice, of the 4th of April, 2011; F

3. Whether the lower court was not wrong in relying on materials contained in incompetent processes before the court to reverse the trial courts judgments?

On the other hand, learned senior counsel for the 1st - 3rd respondents in the brief of argument filed on 31st October, 2011 formulated the following two (2) issues for determination:- G

1. Whether considering the evidence on record before it, the relevant provisions of the constitution of the Federal Republic of Nigeria, 1999, the Electoral Act, 2010 (as amended) and the constitution of the Congress for Progressive Change (CPC), the Court of Appeal correctly held that the appellants were not validly nominated candidates of the 1st respondent for the various offices they aspired to in Katsina State in the 2011 general election? H

2. Whether the court of Appeal rightly made use of the processes contained in the record before it in arriving at its decision allowing the appeal of the 1st - 3rd respondents?

The two (2) issues formulated by learned counsel for the 4th respondent, DEMOLA BAKARE, Esq, in the brief of argument filed on 31st October, 2011 are the same as appellants' issues 1 and 3 earlier reproduced in this judgment. I therefore see no need to reproduce them herein.

The two issues formulated by learned counsel for the 5th and 6th respondents, HASSAN M. LIMAN, SAN in the brief of argument deemed filed on 15th November, 2011 are very simple and straight forward. They are:-

1. Whether the Court of Appeal was right when it held that the 3rd respondent was validly nominated against the 2nd - 43rd appellants regards being had to the provision of the constitution of the Congress for Progressive Change CPC, the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria, 1999 (as amended);

2. Whether the Court of Appeal was right in holding that the 1st - 43rd respondents failed to prove sufficiently that they are the valid candidates of the 1st respondent in Katsina State general election regards being made to the evidence presented vis-a-vis the Electoral Act, 2011, constitution of Republic of Nigeria, (as amended).

With respect to appeal no SC/334/2011, the issues for determination as identified by learned counsel for the appellant, DEMOLA BAKRE ESQ in the appellant brief dated 21st September, 2011 are as follows:-

1. Whether the Court of Appeal rightly overruled the appellant's preliminary objection on the competence of Grounds 1, 2 and 3 of the respondents' notice of appeal.

2. Whether the Court of Appeal rightly held that the party primaries of the 1st respondent conducted on 15th January, 2011 was invalid.

3. Whether the Court of Appeal was right to have held that the 3rd defendant was the properly nominated candidate of the 1st respondent when most of evidence relied on by the 3rd respondent particularly exhibit H were inadmissible.

The facts of the case are simple and include the following-

The appellants in SC/157/2011 and the 3rd respondents are card carrying members of the Congress for Progressive Change (CPC), a registered political party in Nigeria, who participated in one primary election of the party or the other scheduled to elect candidates to represent the political party in the general election held in April, 2011. The political party is the 1st respondent while the 2nd respondent is the National Chairman of the party. The 4th respondent and appellant in SC/334/2011 is the Katsina State chairman of the party while the 5th and 6th respondents are some of those responsible for conducting the April, 2011 general election in Nigeria.

It is the case of the appellants that they are the validly nominated candidates of the 1st respondent to contest the general election of April, 2011 into various elective positions in the National and state constituencies following a primary election conducted on the 15th day of January, 2011 but that the 1st respondent refused to forward their names to the 5th respondent as its duly nominated candidates for the said elections contrary to the provisions of relevant statutes etc.

On the other hand, the 1st - 3rd respondents contend that there was no primary election of the 1st respondent on the 15th day of January, 2011 in which the appellants emerged as nominated candidates of the party; that it was on 13th January, 2011 that the primaries of the 1st respondent in Katsina State was conducted and the candidates for the various elective positions nominated, including the 3rd respondent; that the said primaries of 13th January, 2011 was contested by some of the appellants who lost same and that the names of the duly elected candidates of the party to contest the said general election were duly forwarded to the 5<sup>th</sup> respondent on the 31st day of January, 2011 by the 1st respondent in compliance with the law.

From the facts of the case, it is very clear that while appellants claim their right to represent the 1st respondent in the general elections of April, 2011 as emanating from a primary election conducted on the 15th day of April, 2011, the 1st - 3rd respondents deny same but claim that the only primary election conducted by the 1st respondent from which its candidates were nominated for the election was held on 13th January, 2011.

The above clearly shows that there were two (2) primary elections for the April, 2011 general elections in Nigeria. It is however the

case of the appellants that the primary election of 13th January, 2011 was inconclusive and/or cancelled while the 1st - 3rd respondents denied the allegation.

The existence of the two (2) conflicting primaries is eloquently confirmed by the decisions of the lower courts in this matter. While the trial court entered judgment for the appellants based on the results of the primaries conducted on the 15th January, 2011, the Court of Appeal reversed same and upheld the nomination of candidates at the primaries conducted on the 13th day of January, 2011.

From the above undisputed facts, it is clear that the fundamental issue that called for determination by the trial court and which was decided was which of the two (2) lists of candidates emanating from the two primaries constitutes the duly nominated candidates of 1st respondent for the general election in question.

It was with the above state of facts and evidence on record that when the appeals came to be heard on the 15th day of November, 2011, this court called on learned counsel for the parties to address the court on the issue as to whether the courts have jurisdiction to entertain the suit having regards to the provisions of section 87 (4)(b)(ii) (c)(ii) and (9) of the Electoral Act, 2010 (as amended). Subsections (4)(b)(ii) and (c)(ii) provide inter alia:

“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 aspirants name shall be forwarded to the Independent National Electoral Commission (INEC) as the candidate of the party...”

On the other hand subsection (9) of Section 87 provides thus: “(9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or the High Court of a State or F.C.T, for redress”.

Upon application by learned senior counsel for the appellants RICKY TARFA ESQ, SAN, A. J. OWONIKOKO ESQ, SAN was granted permission to address the court on the issue of jurisdiction as raised by the court.

It is the submission of learned senior counsel for the appellants that where legislation places limitation on the liberty of political par-



ties to nominate candidates for election, the common law rules of non-interference with the liberty of political parties on nomination of candidates becomes modified as in Section 87(9) of the Electoral Act, 2011 (as amended); that the right of action envisaged under Section 87(9) of the Electoral Act, 2011 (as amended) avails only an aspirant at the primaries; that the instant case centers on the failure of the party (1st respondent) to forward the names of the appellants to INEC having won the party primary election; that in the circumstance the courts have jurisdiction to entertain the matter since it is the claim of the plaintiff that determines or is relevant to the determination of the issue of the jurisdiction of the court. B  
C

On his part, learned senior counsel for the 1st - 3rd respondents, JOHN O. BAIYESHEA ESQ, SAN submitted that it is the duty of a political party to conduct primaries and that the 1st respondent did so on 13th January, 2011; that some of the appellants participated in the said primaries but lost; that if the appellants were dissatisfied with the conduct of the primaries they ought to have gone to court to challenge the primaries not to conduct a fresh primaries; that appellants have no claim against the primaries of 13th January, 2011, finally that the courts have no jurisdiction in the matter. D  
E

Learned counsel for the 4th respondent and appellant in SC/334/2011, DEMOLA BAKRE ESQ did not make submission on the issue of jurisdiction but simply conceded the appeal, in SC/157/2011.

However, learned counsel for the 5th and 6th respondents, AHMED RAJI ESQ submitted that the court has a limited jurisdiction under Section 87(9) of the Electoral Act, 2011 (as amended) which can only be set in motion if there was a primary election; that where there is a dispute as to whether there was a primary election or not or whether there was one primary or two or more the courts would have no jurisdiction to determine those issues and that the courts in this case have no jurisdiction to determine the matter. F  
G

At the conclusion of arguments counsel for all parties agreed that the decision in SC/157/2011 will bind them in SC/334/2011.

***The issue of jurisdiction is very important in adjudication and the term has been variously described by jurists including being described as the life blood of any adjudication; the fiat, the stamp of authority to adjudicate - See Katto v. CBN (1991) 22 NSCC Pt. 1) 736 at 751-752, (1991) 9 NWLR*** H

(pt.213) 126 at 149. *The fundamental importance of the issue of jurisdiction is under-scored by the principle of law to the effect that it can be raised for the first time in the trial court or the Court of Appeal or even the Supreme Court and by any of the parties or by the court suo motu* - See *Oloriade v. Oyebe* B (1984) 1 SCNLR. 390; *Ezomo V. Oyakhire* (1985) 1 NWLR (Pt. 2) 195 (1985) 2 SC 260 at 282.

*There is however a proviso to the above principle particularly as it relates to the power of the court raising an issue of jurisdiction suo motu. The proviso is to the effect that the court, in that circumstance, must give the parties, as represented by counsel, the opportunity to be heard thereon before proceeding to determine the issue in its judgment. The proviso is very much in accord with prudence, common sense* C D *and the principles of fair hearing - see Katto v. CBN (Supra).*

*In the instant case, the issue was raised by the court suo motu, but counsel for all parties was duly given opportunity to be heard thereon and were so heard.*

*By the locus classicus case of Madukolu v. Nkemdilim* E (1962) 1 ALL NLR (Pt. 4) 587; (1962) 2 SCNLR 341 *this court laid down the proper guidelines in determining the issue of jurisdiction of a court of law. This court stated that a court is competent when:-*

(a) *it is properly constituted as regards members of the Bench, and no member is disqualified for one reason or another,* F

(b) *the subject matter of the case is within its jurisdiction and no feature in the case which prevents the court from* G *exercising its jurisdiction; and,*

(c) *the case comes before the court initiated with due process of law and upon fulfillment of a condition precedent to the exercise of jurisdiction.*

*It is settled law that any defect in the competence of a* H *court is fatal because, the proceedings will be a nullity however well conducted.*

*The instant case is an election related matter in the sense that it is a pre-election matter arising from the nomination exercise allegedly conducted by the 1st respondent to elect*

*the candidate to represent it in the April, 2011 general elections in Nigeria. The issue of jurisdiction raised in this case is therefore as it relates to the competence of the courts to hear and determine matters relating to the nomination of candidates by political parties for general elections which exercise has generally been held by the courts to be within the exclusive domestic jurisdiction of the political parties to the exclusion of the courts of law. It is in line with the above that the courts have held that the question of the candidate a political party will sponsor in an election is in the nature of a political question which is not justiciable in a court of law. See Onuoha v. Okafor (1983) SCNLR 244: (1983) NSCC 494.*

*However, in 2006 following the enactment of the Electoral Act, 2006 particularly Section 34 thereof the absolute powers of political parties in relation to nomination of their candidates for elections was tampered with by the legislature only to the extent and in relation to change/substitution of a nominated candidate whose names and particulars had been forwarded by the party to the Independent National Electoral Commission (INEC) one hundred and twenty (120) days to an election. The said Section 34 required a political party intending to change/substitute any of its candidates for any election to inform INEC of such a change in writing not later than sixty (60) days to the election and must assign cogent and verifiable reasons for the intended change/substitution, except in the case of the death of the candidate to be changed or substituted.*

*The above provision was designed to bring sanity to an otherwise chaotic situation hitherto existing in the electoral system whereby the political parties could arbitrarily change candidates even on the eve of an election. It is however, very important to emphasize the point that Section 34 of the Electoral Act, 2006 did not interfere with nor did it alter or modify the principle that the question as to who is a candidate of a political party for any election is a political question within the domestic jurisdiction of the political parties and consequently not justiciable. What Section 34 did was to restrict the power of the political parties to change or substitute their*

*candidates at will and at any time.*

*However, the present Electoral Act, 2010 (as amended) does not contain any provision for substitution or change of a nominated candidate once the nomination is made. In the present Electoral Act, section 87 deals with the processes leading to the nomination of a candidate by a political party for any election and provided in subsection 4 (b) (ii) and (c) (ii) that the aspirant who emerges at the primaries with the highest number of votes “shall be declared the winner of the primaries of the party and the aspirants name shall be forwarded to the Independent National Electoral Commission as the candidate of the party”, whether the nomination relates to the office of Governorship of a State, Senatorial or House of Representatives, or State House of Assembly seats, respectively.*

*The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the preview of section 87 (4) (b) (ii); (c) (ii) and (9) of the Electoral Act, 2010 (as amended), supra. It is only if he can come within the provisions of those sub-sections that his complaints can be justiciable as the courts cannot still decide as between two or more contending parties which of them is the nominated candidate of a political party; that power still resides in the political parties to exercise. The enactment is not designed to encourage factions emerging from the political parties with each electing its candidates but claiming same to be candidates of the political party concerned.*

In the instant case, evidence on record shows that there were two primaries and the contending parties claim their right to represent the 1st respondent not from a single primaries conducted by the 1st respondent. What then are the facts as stated in the affidavits and counter affidavits, relevant to the issue under discussion?

In the affidavit in support of the originating summons the appellants deposed, inter alia as follows:-

“9. that I indicated intention to contest for the office of the governor of Katsina State in the forthcoming general elections stated 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 15th 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; B

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; 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; D

15. that the 4th defendant on its own part nominated officials whose role was to monitor and supervise the 1st defendant party's primaries see king 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; E

20. that the 2nd - 45th defendants also won and been declared the winner/flag-bearer of the 1st defendant in their respective constituencies; F

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; G

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; and, H

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 way for the submission of the 6th defendant's name to the 3rd defend-

ant.

In the affidavit of the 1st and 2nd respondents in defence of the originating summons, the National Secretary of the 1st respondent deposed, inter alia to the following facts:-

B “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 C 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.

(iv) In further answer to paragraph 7(iii) above, all the alleged primary elections by which the plaintiffs purportedly hinge their D 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 E 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.

F (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.

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 notional executive council of the 1st defendant is attached 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 defendant on 5th day 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. B

(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. Jibrin Muhammad Hassan (Rtd), which was however inconclusive and annulled by the party on account of violence and thuggery. The letter appointing and mandating the committee is attached as Exhibit 'C'. C

(g) The primaries held on the 8th day of January, 2011 were inconclusive and the 1st defendant ordered for rerun, with an expanded ten-man committee chaired by the same by Cot. Jibrin Muhammad 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/HQR/INEC/GEN/2011/1 attached here as Exhibit 'B'. D E

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 stated to hold on the 11th day of January, 2011; F

(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 5th January, 2011 with reference No. CPC/HQR/INEC/GEN/2011/ 1; G

(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. H 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 Exhibit

‘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, Congress and Primaries committee of the party was further submitted to the 4th defendant by the 1st defendant (as a party) in INEC FORM CF 001 AND INEC FORM CF 002B (list of candidates) as evidenced and acknowledged by the 4th defendant on the 31st day of January, 2011. The list and acknowledgements are attached hereto as Exhibit ‘E1’ and ‘E2’ respectively.

The appellants did not file a further affidavit challenging the depositions of the National Secretary of the 1st respondent reproduced supra.

Upon going through the affidavit evidence, the lower court in its judgment, particularly at page 823 of the record, stated thus:

*“After a careful scrutiny of the documentary exhibits, one critical question that arises looking at the procedure adopted by the 44th 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 question is whether having regards to the clear issue as found above by the lower court, the case of the parties come within the provisions of Section 87(4)(b)(ii); (c)(ii) and (9) of the Electoral Act, 2010 as amended.

It is my considered view that it does not.

***As stated earlier in this judgment, section 87 of the Electoral Act, 2010 as amended deals with the procedure needed for the nomination of a candidate by a political party for any election and specifically provided a remedy for an aggrieved aspirant who participated at the party primaries which produced the winner by the highest number of votes. Where, however, there is a dispute, as in the instant case as to which of two primaries of a Political party produced the nominated candidate that dispute is not justiciable under the provisions of section 87(4)(b)(ii), (c)(ii) and (9) supra and the courts will have no jurisdiction to entertain same.***

***While it is settled law that it is the claim of a plaintiff as evidenced in the writ of summons and statement of claim, that***



**determines the jurisdiction of the court. Where however, from the totality of the pleadings of both parties and the evidence adduced to establish same, it becomes obvious that the court has no jurisdiction with regards to the subject matter of dispute or that the claim, in reality, cannot come within the statutory jurisdiction of the court, the court will take into account the totality of the facts pleaded by the parties and evidence adduced to establish same in determining whether the court has jurisdiction or not.**

The question becomes from the issues as joined in the pleadings, does the court have jurisdiction?

**In the instant case, the jurisdiction in question is statutory and is very limited in scope. On the face of the claim it would appear that the courts have jurisdiction under Section 87 (4)(b)(ii);(c)(ii) and (9) of the Electoral Act, 2010 (as amended), if the right being claimed by the appellants and in dispute between the parties arose from the primaries of 15th January, 2011, alone.**

**Once there arises a dispute as to which of the two primaries conferred a right of candidature on the parties to represent a political party in an election, the matter is taken outside the preview of Section 87(4)(b)(ii); (c)(ii) and (9) of the Electoral Act, 2010 (as amended).**

In conclusion I hold the view that the courts have no jurisdiction to hear and determine the matter in dispute. Consequently suit no. FHC/ABJ/CS/126/2011 and appeal nos. CA/A/133/2011, SC/157/2011 and SC/334/2011 are hereby struck out for lack of jurisdiction. I order that parties bear their costs.

---

### **MUSDAPHER JSC**

I have had the honour before now to read the judgment of my Lord Onnoghen, JSC just delivered in these matters. For the same reasons so eloquently discussed in the judgment, which reasons I adopt as mine, I too also hold that the courts have no jurisdiction to entertain these political matters. Consequently, the appellants' case before the court of trial is struck out, and this should be the order of the trial court. I too make no order as to costs.

**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother- Onnoghen, JSC. I agree with the reasons leading to the conclusion arrived at therein. The vital issue for determination is whether the court is imbued with jurisdiction to entertain the appellants' complaint. The matter relates to a pre-election affair of the 1st respondent. In desiring to have its candidates for various elective posts, two primaries were conducted on 13-01-2011 and 15-01-2011. Consequently, a serious furore ensued. The situation remained dicey and inconclusive.

Ordinarily, on issue of nomination, there is no jurisdiction in the court. The position has been so for quite sometime now. See: Onuoha V. Okafor (1983) SCNLR 244; (1983) NSCC 491.

The court is however vested with a limited jurisdiction which can be ignited only where there is a conclusive primary election conducted by the National Executive of the party in tune with Section 21(ii) (e) of the CPC Constitution

By the provisions of Section 87 (4) (b) (ii); (c) (ii) and (9) of the Electoral Act 2010 (as amended), where there is one single primary and a contestant wins and his name is not forwarded to INEC, he can complain before the court. This is not the position in this matter.

In the scenario presented by the appellants, it is clear to me that their claim before the trial court was not initiated with due process. Same robs the court of competence. See: Madukolu V. Nkemdilim (1962) 1 ALL MR (Pt. 4) 5897, (1962) 2 SCNLR 341. A fortiori, the court lacks jurisdiction.

For the above reasons and those carefully set out in the lead judgment, I too feel that the trial court lacked jurisdiction and the suit before it is struck out. It goes without saying that the appeals before the Court of Appeal and herein must also be struck out for want of jurisdiction. I endorse all the consequential orders contained in the lead judgment, that relating to costs inclusive.

**ADEKEYE JSC**

I was privileged to read in draft the judgment just delivered by my learned brother W.S.N. Onnoghen, JSC. I cannot but agree

with his meticulous reasoning and ultimate conclusion that the courts have no jurisdiction to hear and determine the matter.

The reliefs, background facts of the case and the issues raised for determination in the briefs of all the parties are as set out in the lead judgment of my brother and I shall refrain from treading on the same path for avoidance of repetition. B

It is undisputedly in evidence and supported by the Record of appeal that parties; the 1st - 43rd appellants who are card-carrying and legitimate members of the party; Congress for Progressive Change (CPC in short) and the 1st - 3rd respondents, the Party C.P.C., the National Chairman of the party, Alhaji Aminu Bello Masari and Dr. Yushari Arma Yau - the Kaduna State Chairman of the party joined issues on the result of the primaries conducted by the 1st respondent, C.P.C. party organ for the nomination of its candidates to contest for the general elections conducted by INEC, the 5th respondent in April 2011 throughout the country. The various elective posts affected, were in the National and State Constituencies. It was the stand of the appellants that the only valid primaries election conducted by the party was that of the 15th of January 2011. They emerged as winner of the posts and their names ought to be forwarded to the 5th respondent as the duly nominated candidates to contest the April 2011 election. The party flagrantly refused to forward their names contrary to the constitution of the 1st respondent the electoral laws and guidelines. C D E

The 1st - 3rd respondents on the other hand, maintained the position that there was no primary election on the 15th of January 2011 as the valid primaries was that conducted by the party on the 13th January 2011. The appellants were amongst the candidates who contested on that day but they lost. The names of those nominated at the primaries of the 13th of January 2011 were forwarded to the 5th respondent as the candidates of the party eligible to contest at the general elections of April 2007 in compliance with the laid down statutory provisions. As at the time the matter came before the trial court, there was an intra-party disagreement as regards names of party members nominated for election into the National and State Legislative Houses emanating from an inconclusive and conflicting primaries by the party and non-compliance with the laid down procedure of nominating candidates by law. This disparity reflected in F G H

the allegation of the appellants that the 13th of January 2011 was inconclusive and had to be cancelled.

While the 1st-3rd respondent held that the primaries were properly conducted and the root of the complaint was the disorderliness of the appellants because they lost in that primaries.

B The trial court predicated its judgment on the primaries held on the 15th of January 2011 and found in favour of the appellants.

C This decision prompted the respondents to appeal. The Court of Appeal reversed the judgment and validated the primaries held on the 13th of January 2011. The effect is to recognise the candidates nominated at those primaries as the party's candidate to contest at the 2011 general election. That was the scenario when this appeal came for hearing and determination by this court on the 15/11/11.

D This court acting judicially and judiciously and having gleaned through the briefs of all the parties identified that the salient legal point raised by this appeal, is that of jurisdiction of this court to hear and determine the appeal. The central issue raised in the facts of the case emanated from the intra party process of nominating candidates to contest an election on the platform of the party. This is a  
E convenient stage for me to add a few words to the unique aspect of jurisdiction under the Nigerian Judicial system as brilliantly elucidated by my brother in the lead judgment. The issue of jurisdiction is a threshold issue and where it is identified and raised, it behoves on the  
F court to settle the issue one way or the other before proceeding to hearing the case on the merits. The reason being that jurisdiction is a fundamental or radical question of competence. It is either the court has jurisdiction to hear a matter or the reverse is the case.

The court is only competent to hear a case when -

G (a) It is properly constituted as regards members and qualifications of the members of the bench and no member is disqualified for one reason or the other.

(b) The subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.  
H

(c) The case comes by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

The court is only competent to entertain this appeal if the subject-matter of the case is within its jurisdiction and there is no

feature in the case which prevents the court from exercising its jurisdiction. A defect in competence is fatal and the proceedings are null and void ab initio however well conducted and well decided they may be. A defect in competence is extrinsic to adjudication.

A-G Anambra v. A-G Federation (1993) 6 NWLR (pt.302) pg. 692, Madukolu v. Nkemdilim (1962) 2 SCNLR pg.341, Oloriode v. Oyebe B (1984) 1 SCNLR 390, Ezomo v. Oyakhire (1985) 1 NWLR (pt.2) pg.332, Diapalong v. Dariye (2007) 8 NWLR (pt.1036) pg.332, Skenconsult v. Ukey (1981) SC 6.

It is the question of jurisdiction being radically fundamental C that it can be raised at any stage of a proceedings even for the first time in a trial court, on appeal even for the first time in the apex court - such as it happened in this appeal on the 15/11/11. It may be raised by the parties and even by the court itself. As I mentioned earlier, it was raised in this appeal by this court. The court is at liberty to do so D where the question involves a substantial point of law substantive or procedural where no further evidence needs be adduced and the court has to take the decision in the interest of justice. This court raised the issue of jurisdiction with the foregoing at the back of its mind. As the matter was raised suo motu, the counsel for all the E parties in addition to adopting their respective briefs were invited to address the court on this crucial issue of the jurisdiction of this court in the appeal. Oshatoba v. Olujitan (2000) 5 NWLR (pt.555) pg.159, Bankole v. Pelu (1991) 8 NWLR (pt.211) pg.523, Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd. (1992) 5 NWLR (pt.244) F Pg.675.

I shall return to the provisions of the Electoral Act 2010, as amended, which forms the pedestal for the jurisdiction of this court on the issue of nomination of candidates by the party to be the flag G bearers of the party in the various elective posts in a general election. I have to highlight further that the issue of nomination is categorised as a pre-election matter. I have to emphasise that the Nigerian constitution does not conceive the idea of an independent candidate. A H political aspirant can only contest for an elective post on the platform and ticket of a party. Before the promulgation of the Electoral Law 2006 which gave a contestant the right to contest the issue of his substitution after he had won at the primaries section 34 and section 32 where a candidate's false particulars can be challenged in a court

of law - every other step taken by the party in the pre-election procedure relating to sponsorship and nomination of its candidates are non-justiciable, This court has in many landmark pronouncements explained the issue of nomination of candidates prior to an election.

This court held in the case of Dalhatu v. Turaki (2003) 15 NWLR (pt.843) pg. 310 at pgs. 334-335 that: -

*“A court of law has no jurisdiction to adjudicate on the issue of which candidate’s political party should nominate or sponsor for an election. The exercise of this right is the domestic affair of the party guided by its constitution. Since there are no judicial criteria or yardstick to determine which candidate a political party ought to choose, the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer. If a court could do this, it would in effect be managing the political party for the members thereof.”*

Onuoha v. Okafor (1983) 2 SCNLR pg. 244, Ugwu v. Ararume (2007) 12 NWLR (pt.1048) pg.365.

Section 87 (4) (b) (c) (II) and 87 (9) of the Electoral Act 2010 as amended reads: -

Section 87 (4) (b) (c) (II) -

*“The aspirant with the highest number of votes at the end of the 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.”*

Section 87 (9) reads -

*“Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for an election, may apply to the Federal High Court or the High Court of a State or FCT for redress.”*

The foregoing has clearly diminished the exclusive preserve of the party over the issue of the nomination and sponsorship of its candidates to contest in any forthcoming election. Any aspirant who is aggrieved by the provisions of this Act and that the guidelines of a political party have not been complied with during the primaries may

apply to Court for redress. In the case in hand, affidavit evidence disclosed that there were two conflicting primaries and two sets of candidates on ground, In effect, it means that the party failed to conduct an authentic primaries or even produce the names of candidates or aspirants with the highest number of votes after the voting who can be declared the winners of the primaries. The names forwarded to INEC were disputed. At this juncture, this court is being invited to decide which of these erring factions the authentic candidates for CPC are. This is a role which is still within the prerogative of the 1st respondent as an intra-party affair. The issue is still premature for any judicial intervention; in other words, it is non-justiciable in accordance with Section 87 (9) of the Electoral Act as amended. B C

In the judgment of the trial court at page 823 of the Record where the learned trial judge after spotting this anomaly in the process of sponsorship and nomination of candidates for the party expressed that - D

*“After a careful scrutiny of the documentary exhibits one critical question that arises looking at the procedure adopted by the 44th respondent that produced the 1st - 43rd respondents on the one hand, and how the third appellant was nominated is which of the candidates was nominated in the primaries in accordance with the electoral Act”.* E

The foregoing finding of the learned trial judge is impeccable. Where a court holds that it has no jurisdiction to entertain a case before it, the only appropriate order the court can make in the circumstance is an order striking out the case. F

Okoye v. Nigerian Construction & Furniture Co. Ltd. (1991) 6 NWLR (pt.199) Pg.501, Peter Obi v. INEC (2007) 11 NWLR (pt.1046) pg.565. G

With fuller reasons given by my learned brother in the lead judgment, it is my conclusion that the courts have no jurisdiction to hear and determine the matter in dispute. In the final analysis, Suit No. FHC/ABJ/CS/2011 and Appeal Nos. CA/A/133/2011; SC/157/2011 and SC/334/2011 are hereby struck out for lack of jurisdiction. H Parties are to bear their costs.

**PETER-ODILI JSC**

I had the privilege of reading the draft judgment in these two appeals which my learned brother, W.S.N. Onnoghen made available to me. I agree with the decision and reasoning in the judgment just delivered.

B The action leading to these appeals were commenced by an originating Summons filed on the 3rd day of February, 2011 by the Appellants who were the Plaintiffs before the Federal High court, Abuja Division coram - Honourable Justice Abdul Kafarati. The respective processes in support of the originating Summons of the 1st - C 4th Appellants' contention are at pages 20 - 42 of the Record of Appeal.

After consideration of the processes enumerated, the Federal High court granted all the reliefs sought in favour of the Appellants therein and dismissed the counter-claim of the 1st, 2nd and 3rd D Respondents on the basis that it was incompetent. Dissatisfied the 1st, 2nd and 3rd Respondents filed a Notice of Appeal dated the 28th February, 2011 and filed on 1st March, 2011 before the Court of Appeal Abuja division.

E On the 20th day of April, 2011 the Court of Appeal allowed the appeal setting aside the judgment of the Federal High court, wherein the Court of Appeal held that:-

"The 1st - 44th Respondents are described as members of the CPC. Each of the Respondents is a card carrying member of the F 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.

G They are bound by its provisions. The Katsina State chairman, the 44th Respondent cannot usurp the statutory powers conferred on the National Executive council of the 1st Appellant.

H Any such act such as serving notice on INEC without any evidence that he was delegated to so act is outside the statutory provisions and such act is invalid. The fulcrum of the dispute is settled in Exhibit H, the extract of the minutes of the Board of Trustee of the CPC the first Appellant dated the 25th day of January, 2011.

The Board of Trustees of the 1st Appellant resolved that the primary election conducted on the 13th of January, 2011 was con-



clusive in spite of violence. The 1st respondent and the 3rd Appellant participated in the primaries.”

With the settlement of all Briefs in the two appeals having been done, on the 15th day of November, 2011 date of hearing, this Court asked the counsel for the parties to address it on whether or not this Court had the necessary jurisdiction to adjudicate in the appeal aforesaid. B

In firing the first salvoes, learned counsel for the Appellant, Mr. Owonikoko SAN stated that the issue raised by the court centered on non-justiciability of nomination within political parties. That where specific provisions of the law are made to regulate the conduct of political processes as to how their candidate has to be nominated, the common law rule has to be qualified. That such an interaction came under section 87 (4) (9) (10) of the Electoral Act 2010 as amended. He said Party Primaries has been defined by law and he referred D specifically to section 156 of the Electoral Act. That the court cannot wash its hands off redeeming the infraction done by the Political Party and that pages 22 - 23 of the Reply Brief has addressed the matter adequately and refers to the CPC constitution. C

He referred to Exhibit H to show primaries conducted on the 15th January 2011. E

Responding learned counsel for the 1st-3rd Respondents, Mr. Baiyeshea SAN said their Brief was filed on 31/10/11 and in it they had argued their Preliminary objection. That this appeal should be dismissed and that it is the candidates submitted by the CPC to INEC that should be upheld. He said the CPC did not send any officials to whatever that transpired on the 15th. He referred to pages 22-25 of the Brief on the issue of jurisdiction. That the constitution of the CPC is exhibited and that Dr. Yushau Arimiyau (CPC Katsina, State Chairman) did not have the power to conduct the primaries as he purportedly did. Mr. Baiyeshea further said it is the Board of Trustees and National Executive Council that has the power to so conduct. That the Record showed that Appellants and Respondents contested on 13/1/11 and therefore Appellants are estopped from complaining and the primary purportedly held on 15/1/11, was not valid. He said the remedy available to the Appellants would have been to challenge the primaries of 13/1/11, Exhibit H settled the matter once and for all. That this action founded on an unknown primaries were F G H

not based on law. He cited Section 87 (7) of the Electoral Act, 2010 as amended.

Mr. Bakare, learned counsel for the 4th Respondent adopted their Brief filed on 31/10/11. He said the Primaries were conducted on the 15/1/11 and it was a National Executive Committee of the CPC that did so. That the primaries election of 13th January 2011 was conclusive and it was so declared by the National Body of their party.

For the 5th and 6th Respondents Mr. Raji learned counsel on their behalf adopted their Brief filed on 2/11/11 and deemed filed on 15/11/11. That they are impartial and would abide by whatever the decision of the court turns out to be. He said on the issue of jurisdiction that ordinarily the court has none but in view of Section 87 Electoral Act as amended the court is invested with a limited jurisdiction which can only be ignited if there is a primary election. That the jurisdiction comes to life when in the course of a primary a contestant who has won did not have his name submitted to INEC. That from this scenario, on the question asked by the court as to whether or not it has jurisdiction, Mr. Raji submitted that there is a want of jurisdiction.

In regard to appeal No SC/334/2011, the issues for determination as identified by learned counsel for the Appellant, Demola Bakre in the Appellant's Brief dated 21st September, 2011 are thus:-

1. Whether the Court of Appeal rightly overrated the Appellants' preliminary objection on the competence of Grounds 1, and 3 of the Respondents' notice of appeal.

2. Whether the court of Appeal rightly held that the party primaries of the 1st Respondent conducted on 15th January 2011 was invalid.

3. Whether the Court of Appeal was right to have held that the 3rd Defendant was the properly nominated candidate of the 1st Respondent when most of the evidence relied on by the 3rd Respondent particularly exhibit H were inadmissible.

The facts briefly stated above and from what can be seen from the Record of Appeal this court brought about the addresses of counsel on whether this court can enter into the merits of the appeals. That is to say whether this court has jurisdiction to venture into what is being asked of it in the appeals in view of the clear provisions

of Section 84 (4) (b) (ii) (c) (ii) and (9) of the Electoral Act, 2010 (as amended). I shall recapture Section 87 (4) (b) (ii) and (c) (ii) below and thus:-

“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 aspirants name shall be forwarded to the Independent National Electoral Commission (INEC) as the candidate of the party...”<sup>B</sup>

“(9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High court on the High court of a state or F.C.T., for redress”.<sup>C</sup>

The long and short of the dispute between the parties in my humble view is that while the Appellants are of the view that there is a limitation on the liberty of political parties to nominate candidates for election and the common law rules of non-interference with the liberty of political parties on nomination of candidates has been altered within the provisions of Section 87 (9) of the Electoral Act 2010 (as amended) and the right of action as contemplated by that provision becomes activated only when an aspirant at the primaries as in the case at hand, when the party, that is 1st Respondent in this instance failed to forward the names of the Appellants to INEC being the winners in their view of the party primary election.<sup>E</sup>

That since that is the scenario the courts from Federal High Court to this court have jurisdiction to determine the merits of what has been done.<sup>F</sup>

Taking a different route, the 1st - 3rd Respondents position is that the 1st Respondent had conducted the primaries on 13th January 2011, and if the Appellants who had participated therein were not satisfied ought to have challenged the conduct of the primaries and not unilaterally embarked upon a fresh primary election on 15th January, 2011 in spite of the subsisting one of 13th January, 2011. That since that was the case the Appellants cannot now claim against the primaries of 13th January, 2011 and the implication is that the courts have no jurisdiction in the matter.<sup>G</sup><sup>H</sup>

Demola Bakre learned counsel for the 4th Respondent and Appellant in SC/234/2011 conceded the appeal in SC/157/2011,

and said nothing in the matter of jurisdiction.

Mr. Ahmed Raji for the 5th and 6th Respondent said there is no jurisdiction in the courts including this court in respect of the circumstances thrown up in these appeals since the contest inter parties is not whether there was a primary election and who was the winner but rather what is in issue is whether there was one primary and which one or two or more primaries and which is the valid primary election to which the court would give effect. He concluded by saying in respect to what is at play before us, that there is no jurisdiction.

All counsel having agreed to abide by the decision that would be reached in SC/157/2011 and it would bind them in SC/334/2011.

It is within that mind set that the issue of jurisdiction with its paramount position in adjudication that this court had no difficulty in calling attention to that and dealing with it with dispatch before anything else. See *Ebe v. Ebe* (2004) 3 NWLR (pt. 850) 215; *Mbadinuju v. Ezuka* (1994) 8 NWLR (pt. 364) 535; *UBA Plc v. Okonkwo* (2004) 5 NWLR (Pt. 867) 445 at 446; *Skenconsult (Nig.) Ltd v. Ukey* (1981) 1 SC 6; *Governor of Anambra State v. Anah* (1981) 8 NWLR (Pt.412) 213; *Madukolu v. Nkemdilim* (1962) 2 SCLR 341.

In the past as exemplified by the well known case of *Onuoha v. Okafor* (1983) SCNLR 244, the Courts were clearly kept off the domestic arena of political parties in the internal affairs including whatever manner they brought out their candidates for election and who they chose to bring forth. That situation was interfered with by the Electoral Act, 2006 with particular reference to Section 34 whereby that complete ouster of the Courts right to adjudication in political party's activities was changed to some extent and so where a nominated candidate whose name was substituted such substitution would obtain within certain conditions such as the provision of cogent and verifiable reasons be proffered to INEC before the change of candidate would be validly made.

The situation now is different in that the current Electoral Act, 2010 as amended has no such provision as in the old Electoral Act, 2006 in that once the nomination has been made no change or substitution can be effected and so in keeping with Section 87 4 (b) (ii) and (c) (ii) of the Electoral Act, 2010 as amended once an aspirant emerges at the primary election with the highest number of votes, he 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. This provision takes care of nomination in relation to the office of Governorship of a State, Senatorial or House of Representatives or State Houses of Assembly respectively.

I would venture to posit that there is a thin line which the Courts must tread in circumstances such as the present in discerning whether there is jurisdiction or not. In doing so the compass is no other than the Plaintiff's claim in the writ of summons and the statement of claim. In the case at hand what is in these claims is for the court to validate the primary election of 15th January, 2011, even though there was another earlier on 13th January 2011, which Appellants contend was inconclusive. It is therefore not difficult for this court to see that what it is being called upon to do is outside the vision of Section 87 of the Electoral Act, 2010 as amended and therefore the Courts lack the jurisdiction to enter into the discourse within the appeals since the Courts below also lacked the jurisdiction.

That being the case whatever the Political Party had done is covered by its right to deal with its internal affairs. For the above reasons and the more elaborate reasons of the lead judgment, I strike out this appeal on a lack of jurisdiction.

I make no order as to costs.

F

G

H