

SUPREME COURT OF NIGERIA
20TH APRIL, 2012. SC. 28/2012 (CONS.)
CORAM:- **M. MOHAMMED, C. M. CHUKWUMA-ENEH,**
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC

PEOPLES DEMOCRATIC
PARTY (PDP) - SC.28/2012

AND

TIMIPRE SYLVA - SC.9/2012 APPELLANTS
(CONSOLIDATED)

AND

1. TIMIPRE SYLVA
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
- SC.28/2012

3. ABUBAKAR KAWU BARAJE RESPONDENTS
(Acting National Chairman PDP)

AND

1. PEOPLES DEMOCRATIC PARTY
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
- SC.9/2012

3. ABUBAKAR KAWU BARAJE
(Acting National Chairman PDP)
(CONSOLIDATED)

APPEALS - Issues - Formulation by court - Appellate court can formulate issues - Where the ones raised - Did not address the points in controversy (H1)

APPEALS - Notices of appeal - Multiple filing - Appellant may file more than one notice - But must indicate to court - The notice he wants to rely on (H2)

POLITICS - Elections - Political parties - Substitution of candidates -

1576 PDP v. Sylva (2012) 4 KLR (pt. 310) 1575; (2012) 13 NWLR

Basis - By ss.33 & 35 of Electoral Act 2010 - Candidate can only be replaced - If he dies or withdraws (H3)

POLITICS - Elections - Pre election matters - Electoral Act 2010 ss.33 & 35 - Applicability - The sections are irrelevant - Since INEC cancelled April 2011 election - Fixed for Bayelsa State (H4)

POLITICS - Elections - Political parties - Nomination of candidates - Right to nominate candidates at election - Resides with political parties - And court has no jurisdiction over same (H5)

POLITICS - Pre election matters - Courts - Jurisdiction - Electoral Act 2010 s.87(9) - Confers jurisdiction on courts - Where political party fails - To comply with its constitution - In primary elections (H6)

JURISDICTION - Determination of - Basis - Jurisdiction of court is resolved - By examining the writ of summons - And statement of claim (H7)

JURISDICTION - Federal High Court - 1999 Constitution s.251 - Confers exclusive jurisdiction to the court - Over items listed therein (H8)

SUPREME COURT - Elections - Jurisdiction - S.22 of Supreme Court Act - The section cannot be invoked - Since courts have no power - To question nomination of candidates for election (H9)

FACTS

Independent National Electoral Commission i.e. 2nd respondent fixed gubernatorial elections for Bayelsa State on 26th April 2011. 1st respondent contested in 1st appellant's – Peoples Democratic Party's primaries election held on 12th January 2011 in respect of the said April 2011 election. 1st respondent won the primaries and his name was forwarded to 2nd respondent as 1st appellant's candidate for the April 2011 election. Meanwhile, 1st respondent filed an action at the Federal High Court, Abuja to determine when his tenure will expire. The trial court and Court of Appeal found in favour of 1st respondent. In compliance with the judgments of the courts, 2nd re-

spondent cancelled the election earlier fixed for 26th April 2011 for the State.

In November of year 2011, 2nd respondent announced that gubernatorial elections for Bayelsa State would now hold on 12th February 2012. Accordingly, 1st appellant fixed its primaries on 19th November 2011. 1st respondent applied to contest the primary elections. He was however disqualified to contest in the primary election. Dissatisfied, 1st respondent filed originating summons at the Federal High Court claiming reliefs inter alia, that he remained the bona fide candidate of 1st appellant by virtue of his victory at the previous primary election conducted in January 2011. 2nd respondent filed motion ex parte asking for the same reliefs as 1st respondent. The court allowed the application. Being aggrieved, 1st appellant filed an appeal at the Court of Appeal. 1st appellant contended that the Federal High Court lacked jurisdiction to entertain 1st respondent's action. The court held that Federal High court had jurisdiction to entertain the matter. The matter was thus sent back to Federal High court to be heard on merit. Aggrieved further, 1st appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether after the 1st respondent won the primaries conducted in January 2011 and his name sent to INEC as the PDP's candidate for the gubernatorial elections fixed for April, 2011, he is still the PDP candidate for the gubernatorial elections which was held on 12/2/12.

2. Whether the PDP can stop or prevent the 1st respondent from contesting its primaries conducted on 19/11/11 to choose its candidate for the gubernatorial elections which was held on 12/2/12.

3. Whether the Federal High Court has jurisdiction to hear and determine the 1st respondent's claims.

HELD (Unanimously allowing the main appeal and striking out cross-appeal per **RHODES-VIVOUR JSC**)

APPEALS - Issues - Formulation by court

1. I have examined the issues formulated by the appellant and the 1st respondent. To my mind they do not address the real issue in this appeal. When such is the case an appeal court has inherent power to adopt or formulate issues that in its view would determine the real

points in controversy. (p. 1588 D)

Notices of appeal - Multiple filing

2. An appellant may file more than one Notice of Appeal. All he is required to do is to indicate to the court which of the Notices of
B Appeal he would be relying on. (p. 1590 A)

Elections - Political parties - Substitution of candidates

3. The interpretation of section 33 and 35 of the Electoral Act is that
C after a candidate wins the primaries of his party, he can only be substituted by his party with another person if he dies or withdraws. If he chooses to withdraw he must inform the party in writing, signed and delivered by him and the party shall notify INEC not later than 45 days to the election. (p. 1591 A)

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Electoral Act 2010 ss.33 & 35 - Applicability

4. Section 33 and 35 supra are irrelevant since the 1st respondent never withdrew his candidacy or died. This is a case where the elections fixed for April 2011 in which he was to be the PDP's candidate
E was cancelled by INEC. INEC has the sole responsibility to decide when elections are to be held. (p. 1591 B)

Elections - Political parties - Nomination of candidates

5. The right to nominate or sponsor a candidate by a Political Party is
F a domestic right of the party, a political matter within the sole discretion of the party. A member of the party has no legal right to be nominated/sponsored by his party. A court thus has no jurisdiction to determine who a political party should sponsor. Nomination or sponsor
G ship of a candidate for election is a political matter solely within the discretion of the party, and this is so because the sponsorship or nomination of a candidate is a pre primary election affair of the party. (p. 1594 B)

H ***Pre election matters - Courts - Jurisdiction***

6. But where the political party conducts its primary and a dissatisfied contestant at the primary complains about the conduct of the primaries the courts have jurisdiction by virtue of the provisions of section 87 (9) of the Electoral Act to examine if the conduct of the primary

elections was conducted in accordance with the party's constitution and Guidelines. This is so because in the conduct of its primaries the courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its own constitution. (p. 1594 D)

JURISDICTION - Determination - Basis

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7. Jurisdiction of a court to entertain a suit is resolved by a scrupulous examination of the writ of summons, the statement of claim, and the reliefs claimed. No other document should be examined. Where the originating process is an originating summons the affidavit filed in support of the originating summons serves as the plaintiff's pleadings (statement of claim). Jurisdiction would be resolved by examining only the originating summons, the reliefs contained herein and the affidavit filed in support. (p. 1596 C)

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JURISDICTION - Federal High Court

8. Section 251 of the Constitution confers exclusive jurisdiction on the Federal High Court for the items listed in the section. All items not listed in the section are to be heard and determined by the State High Court. When the jurisdiction of the Federal High Court is in issue the following must co-exist.

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(a) the parties or a party must be the Federal Government or its agency.

(b) Subject matters of the Litigation. (p. 1604 H)

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Elections - Jurisdiction - S.22 of Supreme Court Act

9. Learned counsel for the 1st respondent has asked this court to invoke the provisions of section 22 of the Supreme Court Act and determine the merit of the case. His argument being that this court notwithstanding the claim or reliefs of the parties can always make orders or give judgments that will meet the justice of the case. But where as in this case, courts in Nigeria do not have jurisdiction to question the nomination and sponsorship of a candidate for election any attempt by the courts to change the well laid down position of the law would be a futile exercise. The courts would continue to remain passive on-lookers when the real issue in controversy is a pre-primary election affair of a political party. In the absence of jurisdiction of adjudicate, invoking the provisions of Section 22 of the

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Supreme Court Act would be most inappropriate as such an exercise would amount to a nullity. (p. 1605 G)

NOTABLE POINT OF INTEREST

FABIYI JSC

B *1. Jurisdiction – Fundamental nature of*

It has been pronounced several times that jurisdiction is very vital and fundamental. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but extrinsic to the entire process of adjudication. (p. 1610 D)

REPRESENTATION

D Tayo Oyetibo, SAN with O. Fakunle; W. Ajuwa; J. Agwu and O. Oke, for the Appellants

L. O. Fagbemi, SAN with P. Erokoro, SAN; F. Falana; H. O. Afolabi; D. D. Fiderikumo; O. N. Salawu; A. O. Popoola; A. F. Yusuf; M. Ajara; B. A. Oyun; F. Abiodun; A. Umoru; O. Ogar; A. Odok; M. J. Numa; M. A. Adelodun; E. Ekere and C. Anozie, for the 1st Respondent/1st

E Cross-Appellant

A. Sadauki for the 2nd Respondent/2nd Cross-Respondent

F. F. Egele for the 3rd Respondent/3rd Cross-Respondent

CASES REFERRED TO

F INEC v. Nyako & Ors (2011) 12 NWLR (Pt. 1262) 439

Ikegwuoha v. Ohawuchi (1996) 3 NWLR (Pt. 435) 146

Aduku v. Adejoh (1994) 5 NWLR (Pt. 346) 582

Onuoha v. Okafor (1983) 2 SCNLR 244

G Dalhatu v. Turaki (2002) 15 NWLR 845

Amaechi v. INEC (2008) 1 SC (Pt. 1) 36

Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 365

Uzodinma v. Izunaso (2011) vol. 5 (Pt. 1) MJSC 27

Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517

H Metal Construction (WA) Ltd. v. Aboderin (1998) 8 NWLR (Pt. 563) 538

Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227

Madukolu & Ors. v. Nkemdelim & Ors. (1962) 1 All NLR (Pt. 4) 587

Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508

STATUTES & RULES REFERRED TO

Electoral Act 2010 (as amended), ss. 31, 32, 33, 34, 35,
87(1)(4)(b)(9)

Constitution of Federal Republic of Nigeria (as amended), ss. 36,
251(1)(i)(r) B

Supreme Court Act, s. 22

Supreme Court Rules, O. 8 r. 6(5)

LEAD JUDGMENT BY RHODES-VIVOUR JSC C

Sometime in 2010 INEC, the regulatory body charged with the conduct of elections in Nigeria announced that General Elections for the office of Governor of Bayelsa State would hold in April 2011. At the time Timipre Sylva, the 1st respondent was the Governor of Bayelsa State. He protested. He was of the view that his term of office which commenced in 2007 would expire in May, 2012. This according to him was that the elections in 2007 which he won as nullified by the court, which ordered a re-run, which he also won. So his term of office started to run from the date when he took a second oath of office. The 2nd respondent, INEC did not agree with the position taken by the 1st respondent. Elections for the office of Governor of Bayelsa State was to hold in April, 2011 and that was it. The appellant the Peoples Democratic Party, which the Governor (1st respondent) belonged to decided to hold its primaries in January 2011 with a view to producing its candidate for the election scheduled for April 2011. The 1st respondent contested the primary election and won, and his name was submitted by the appellant to INEC as its candidate for the election for the Office of Governor of Bayelsa State scheduled for April 2011. Meanwhile the 1st respondent filed suit No. FHC/ABJ/C5/65/10. Timipre Sylva v. INEC & Others at FHC. This suit was to determine whether the 1st respondent's tenure would end on the 28th day of May 2011 or the 28th day of May, 2012, and that the 2nd respondent should not conduct elections into that office in April 2011. Finally he asked for an injunction to restrain the appellant from conducting primary election in Bayelsa State for the April 2011 General Election. D
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The 1st respondent succeeded in his suit, and so the 2nd respondent cancelled the elections fixed for April 2011. The 2nd re-

spondents appeal to the Court of Appeal was dismissed. See *INEC v. Nyako & Others* 2011 12 NWLR Pt.1262 p.439. In November of 2011 the 2nd respondent announced that elections for the office of Bayelsa State Governor would now hold on the 12th day of February 2012. The PDP, on being aware of the new date for the gubernatorial elections fixed its primaries for the 19th day of November 2011. The 1st respondent applied to contest the primary elections. He was screened by a panel set up by his party, the PDP. At the end of the screening exercise he was not cleared to contest the primary election. His name was not among those cleared to contest the primary election fixed for the 19th day of November 2011.

Dissatisfied with the turn of events, the 1st respondent filed an originating summons on the 14th day of November 2011 at the FHC. A 10 paragraph affidavit deposed to by Imoh Udoh Tommy was filed in support of the originating summons. The 1st respondent as plaintiff asked for the following reliefs:

1. DECLARATION that having submitted the name of the Plaintiff to the Independent National Electoral Commission as its candidate for the gubernatorial election of Bayelsa State, he remained the only candidate of PDP for the Governorship election of Bayelsa State following the victory of the plaintiff at the primary election conducted by the defendants for the purpose on 12th day of January, 2011 and the defendants are not entitled to change or substitute another candidate for the plaintiff who has not withdrawn his candidature.

2. DECLARATION that the right or interest of the plaintiff as the candidate of PDP in the forthcoming Governorship election of Bayelsa State became vested on the submission of the Plaintiffs name to the Independent National Electoral Commission following his victory at the primary election conducted for the purpose by the defendants on the 12th day of January, 2011.

3. DECLARATION that the Independent National Electoral Commission (INEC) is not entitled or equipped to jettison the name of the plaintiff which has been submitted to it by the National Headquarters of the Peoples Democratic Party as the candidate of the party for Governorship election in Bayelsa State when the plaintiff has not withdrawn his candidacy and is still living.

4. DECLARATION that having conducted a primary election pursuant to section 87(1) (4)(b) of the Electoral Act 2010 as amended

at which the plaintiff emerged as winner and his name having been forwarded to the Independent National Electoral Commission as the candidate of the PDP in the forthcoming gubernatorial election in Bayelsa State, it is not open to the defendants to conduct another primary election while the plaintiff has not withdrawn and has not been disqualified by any law or court order B

5. DECLARATION that the defendants cannot rely on any purported extensive consultation with stakeholder of Peoples Democratic Party (PDP) to remove and/or render ineffective the valid nomination/candidate of the plaintiff as the candidate of the PDP in the forthcoming Governorship election for Bayelsa State. C

6. DECLARATION that the National Working Committee of Peoples Democratic Party (PDP) is not empowered under the Constitution of Peoples Democratic Party (PDP) to appoint, constitute and/or inaugurate as screening committee or screening appeal panel or by whatever named called to screen the plaintiff who has been validly nominated by PDP and whose name has been forwarded to INEC as her candidate for the forthcoming Governorship election in Bayelsa State.

7. AN ORDER setting aside all steps, actions and arrangements made by the defendants for the conduct of another primary election for the purpose of choosing a candidate for the forthcoming gubernatorial election of Bayelsa State. E

8. INJUNCTION restraining the defendants from conducting another primary election to choose a candidate for the forthcoming gubernatorial election in Bayelsa State. F

9. INJUNCTION restraining the 1st defendant from accepting and/or acquiring from the 2nd and 3rd defendants any fresh name or submission of new name as Peoples Democratic Party Governorship candidate for Bayelsa State, other than the name of the plaintiff submitted to it by the 2nd defendant in January 2011 as its candidate for the Governorship Election of Bayelsa State. G

10. INJUNCTION restraining the defendants from changing or substituting another name for the name of the claimant already forwarded to the INEC as the Governorship candidate of the PDP in the forthcoming gubernatorial election of Bayelsa State. H

ALTERNATIVELY

In the event that the court finds that the defendants can con-

duct a fresh or another primary election to choose a candidate for the said election, the plaintiff claims as follows:

1. DECLARATION that having paid all necessary levies to the PDP and having been duly nominated in accordance with Section 32 of the Electoral Act, 2010 as amended the plaintiff is entitled to participate in the primary election of the PDP at which a candidate will be elected to contest the forthcoming gubernatorial election of Bayelsa State.

2. DECLARATION that any such primary election cannot be conducted by the defendant until all candidates for same have been given adequate campaign time and equal opportunities and facilities for participation in the primary election.

3. DECLARATION that under and by virtue of the Constitution of Nigeria 1999 (as amended) the Constitution and Guidelines of PDP question of security is not a factor to determine whether a person should be cleared to contest primary election of the political party.

4. DECLARATION that the decision of the National Working Committee of the Peoples Democratic Party to disqualify the plaintiff from participating at the Governorship primary election for Bayelsa State when the plaintiff or any other person never appealed to it and when there was no sitting of the body as an entity, is null void and of no effect whatsoever.

5. DECLARATION that the decision of the National Working Committee of the Peoples Party to issue a press statement disqualifying the plaintiff from contesting the Governorship primary election in Bayelsa State, without affording the plaintiff a hearing is null and void for violating the plaintiffs constitutional right to fair hearing guaranteed by section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as the African Charter on Human and Peoples Right.

6. INJUNCTION restraining the defendants, by themselves, their agents, servants and/or privies or otherwise howsoever from conducting any ward congress and from further embarking on activities leading to any primary election to the PDP for the said gubernatorial election any time earlier than four weeks from the date of judgment and after the name of the plaintiff/claimant would have been published as was done in respect of other candidates in the PDP primary

election for the post of Governor of Bayelsa State.

A motion of Notice was filed along with the originating summons. Therein the plaintiff/applicant asked for the following orders:

a. AN ORDER of Interlocutory Injunction restraining the defendants officers or otherwise and/or any other person however described from conducting, organizing or holding any meeting or ward congress and embarking on any activities leading to the holding of any fresh gubernatorial primary election for Bayelsa State on the 19th of November, 2011 or on any other day pending the determination of the substantive suit. B

b. AN ORDER of Interlocutory Injunction restraining the 1st defendant whether by itself, servant, agents, privies or however called from accepting from the 2nd and 3rd defendants any fresh submission of name of Governorship aspirant from Bayelsa State to change/ substitute the name of the plaintiff which has already been submitted to the 1st defendant after the primary election of January 2011, pending the hearing and determination of the substantive suit. C D

c. AN ORDER of Interlocutory injunction restraining the 2nd and 3rd defendants, whether by themselves, servants, agents, privies or howsoever called from forwarding a fresh name or governorship aspirant to the 1st defendant when the plaintiff is still alive and has not withdrawn his candidacy for the governorship election of Bayelsa State pending the determination of the substantive suit. E

AND/OR ALTERNATIVELY

d. AN ORDER of Interlocutory Injunction mandating the defendants whether by themselves, their servants, agents, privies or however, called to publish the name of the plaintiff as an aspirant for the 19th November, 2011 governorship primaries in Bayelsa State or any governorship primary election schedule for Bayelsa State, on any date which the defendants may choose pending the determination of the substantive suit. F G

The 1st respondent (INEC) filed an application ex parte asking for the same reliefs. Kolawole J of the Federal High Court presided. His lordship heard the Motion ex parte on the 15th of November 2011. The following orders were made: H

1. That the instant motion ex parte is not refused, but the defendants shall be put on Notice of same and they shall within 72 hours of being served with the said motion on Notice, show cause

why the plaintiff shall not be entitled to the preservatory orders as the said prayers 1 - 3 on the motion *ex parte* sought.

2. That in the event that the defendants when served with the originating summons, the motion on notice and the enrolment of these orders the 2nd and 3rd defendants in particular, were unable
B to show such reasonable and or just cause why the orders shall not be made, this court will have no hesitation in granting the said orders in the way and manner as couched or any grant prayer 4 as the alternative prayer couched in the motion *ex parte*.

3. That in the event, perhaps, unlikely that the 2nd defendant
C in defiance of these orders, take steps which may be prejudicial perhaps subversive of those orders and of these proceedings before the return day, which I have fixed at 22/11/2011, this court will without much ado, proceed to making such necessary orders to nullify such
D steps or decisions taken once they are served with the processes and/or orders made therein order to uphold and protest the sanctity of the courts processes and to vindicate the integrity of the court as the established constitutional arbiter between the State and the citizens and between the citizens interest.

4. That the originating summons together with motion on
E Notice and the Certified True Copy of the Enrolment of these orders made herein shall be served on the defendants, the 2nd and 3rd defendants in particular shall within 72 hours of such service, show
F cause why the plaintiff shall not be entitled to have the orders sought by this motion *ex parte* dated and filed on 14/11/2011 granted in his favour.

5. That the said motion on Notice is adjourned to 22nd day of
G November, 2011 for hearing along with the orders made on the defendants, the 2nd and 3rd defendants in particular to show cause why the plaintiff shall not have the orders sought *ex parte* granted in his favour.

6. That the further consideration of this matter is further adjourned to 22nd day of November, 2011.

H Dissatisfied with these orders, the 2nd defendant (the PDP) filed an appeal to the Court of Appeal. The PDP's complaint was the Federal High Court had no jurisdiction to entertain the plaintiff's action and that the learned judge made prejudicial statements which disqualified him from hearing the Motion on Notice and the substan-

tive suit (i.e. the Originating Summons). In its judgment delivered on the 7th day of January, 2012 the Court of Appeal held that the Federal High Court had jurisdiction to entertain the 1st respondent's action. The Court proceeded to order the suit remitted back to the Federal High Court for the hearing of the Originating Summons on the merit. The court also held that the presiding judge disqualified himself by statements made in the Ruling on the 15th of November, 2011. This appeal is against that judgment. The plaintiff cross appealed. The cross-appeal is SC.9/2012. B

I must observe that the suit Nos of the appeals are wrong. The appeal was filed on 7/1/12, while the cross-appeal was filed on 10/1/12. A cross appeal is filed after an appeal has been filed. It follows naturally that the appeal must have an earlier suit number than the cross appeal. It is clear that there has been some lapse in the Registry of this court by giving SC.28/2012 to the appeal and SC.9/2012 to the cross appeal. It should be the other way round. C D

Learned counsel for the appellant, Mr. Tayo Oyetibo SAN formulated three issues for determination for the appeal. They are:

1. Whether the Court of Appeal was right in Law, in holding that the Federal High Court has jurisdiction to entertain the 1st respondents action, when the reliefs being sought in the 1st respondents originating summons and the facts disclosed in the affidavit in support of the originating summons, show clearly that his action relates to pre-primary election affairs of the appellant which are not justiciable and therefore outside the jurisdiction of the Federal High Court. E F

2. Whether the Court of Appeal was right in law in restricting itself to the main claims being sought by the 1st respondent on his originating summons, in holding that the Federal High Court has jurisdiction to entertain the action, when it ought to have struck out the action on the ground that the Federal High Court has no jurisdiction to entertain both the main claims and the alternative claims contained in the originating summons. G

3. Whether the Court of Appeal was right in Law, in holding that the Federal High Court has jurisdiction to entertain the 1st respondents action when the reliefs being sought in the 1st respondents originating summons and the facts disclosed in the affidavit in support of the originating summons, show clearly that this action re- H

lates to pre-primary election affairs of the appellant which are not justiciable, and therefore outside the jurisdiction of the Federal High Court.

Learned counsel for the 1st respondent Mr. L. O. Fagbemi, SAN formulated two issues. They are

B 1. Having regard to the nature of the claim of the plaintiff/1st respondent, whether the Court of Appeal was wrong in its conclusion that, the Federal High Court has jurisdiction.

C 2. Whether an alternative claim can be used to determine the jurisdiction of the court.

Learned counsel for the 2nd respondent, Mr. A. Sadauki did not file a brief, while learned counsel for the 3rd respondent, Chief F. F. Egele filed a brief on the 1st of February 2012 wherein he adopted the issues in the appellants brief.

D ***I have examined the issues formulated by the appellant and the 1st respondent. To my mind they do not address the real issue in this appeal. When such is the case an appeal court has inherent power to adopt or formulate issues that in its view would determine the real points in controversy.*** See

E Ikegwuoha v. Ohawuchi 1996 3 NWLR pt.435 p.146; Aduku v. Adejoh 1994 5 NWLR Pt.346 p.582.

INEC fixed gubernatorial elections for Bayelsa State for April 2011. The 1st respondent contested his party's primaries (i. e. PDP) for that election in January 2011 and won. His name was forwarded to INEC as the PDP's candidate for the gubernatorial election fixed for April, 2011. The 1st respondent, then filed suit No.FHC/ABJ/CS/651/10. The suit was to determine when the tenure of the 1st respondent would come to an end. Whether on 28/5/2011 or 28/5/12, INEC held the view that the 1st respondent's tenure would come to an end on 28/5/11. That explains why it fixed gubernatorial elections for April, 2011. The 1st respondent was of the view that his term would end on 28/5/12. The Federal High Court agreed with the 1st respondent's view and the Court of Appeal affirmed that judgment. After the decision INEC fixed gubernatorial elections for Bayelsa State for 12/2/12 while the PDP fixed its primaries for 19/11/11. The 1st respondent went to court because he claims to be the authentic candidate of the PDP by virtue of winning the primaries held in January 2011 and his name sent to INEC as the PDP candidate. He also

went to court because the PDP (his party) refused to allow him contest the primary elections which was held on 19/11/11. To my mind the real issues in this appeal are:

1. Whether after the 1st respondent won the primaries conducted in January 2011 and his name sent to INEC as the PDP's candidate for the gubernatorial elections fixed for April, 2011, he is still the PDP candidate for the gubernatorial elections which was held on 12/2/12. B

2. Whether the PDP can stop or prevent the 1st respondent from contesting its primaries conducted on 19/11/11 to choose its candidate for the gubernatorial elections which was held on 12/2/12. C

3. Whether the Federal High Court has jurisdiction to hear and determine the 1st respondent's claims.

At the hearing of appeal on the 7th day of February 2012 learned counsel for the appellant and learned counsel for the 1st respondents made lengthy submissions. I shall not reproduce the submission since they shall be well reproduced when considering the issues for determination of the appeal. Learned counsel for the appellant adopted his brief filed on 27/1/12. He urged this court to allow the appeal and strike out the action. Learned counsel for the 1st respondent adopted his brief filed on 1/2/12 and urged this court to dismiss the appeal. Both counsel agreed that this appeal raises the issue of jurisdiction and that if it succeeds suit No. SC.9/2012 is dead. I also agree. Learned counsel for the 2nd respondent did not file a brief. He informed the court that he is neutral. Learned counsel for 3rd respondent adopted his brief filed on 1/2/12 wherein he adopted the three issue and arguments in appellants brief. He urged this court to dismiss the cross-appeal and conceded the main appeal. Learned counsel for the 1st respondent observed that on the 7th day of January, 2012 learned counsel for the appellant filed a Notice of Appeal and on the 13th day of January, 2012 he filed a Notice of Withdrawal of Appeal. He submitted that by virtue of the provisions of Order 8 Rule 6 (5) of the Supreme Court Rules an appeal which has been withdrawn is deemed dismissed. He further submitted that the appellants appeal was dismissed from that day. Record of Appeal shows that the appellant filed two Notices of Appeal on the 7th of January 2012 and on the 13th of January 2012. On the 7th of February when the appeal was heard learned counsel for the appellant D
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informed the court that he was withdrawing his Notice of Appeal filed on 7/1/12 and that he would rely on the Notice of Appeal filed on 13/1/12. There was no objection. Notice of Appeal filed on 7/1/12 was struck out, it having been withdrawn.

An appellant may file more than one Notice of Appeal.

All he is required to do is to indicate to the court which of the Notices of Appeal he would be relying on. A Notice of Appeal withdrawn is struck out. This appeal is heard on the Notice of Appeal filed on the 13th day of January 2012.

ISSUE NO. 1

Learned counsel for the appellant observed that, though the 1st respondent won the primary election conducted by the appellant in January 2011. He abandoned the result of that primary by applying to the appellant to contest the primary election scheduled for 19/11/11. Reference was made to paragraphs IV. V. XIV of the affidavit in support of the originating summons, contending that by abandoning the results of the primaries conducted in January 2011 he was no longer PDP's candidate for the elections.

Learned counsel for the 1st respondent observed that the 1st respondent won the primaries in January 2011 and his name was forwarded to INEC as PDP candidate for the gubernatorial election filed for April 2011. He submitted that by virtue of Section 33, 35 of the Electoral Act, there cannot be a second primary or substitution of name in which a prior primary was conducted, contending that another primary can only be conducted if the events envisaged in Section 35 occur. Finally he submitted that the primaries conducted in January, 2011 are valid.

The following sections of the Electoral Act shall be examined to resolve this issue. Sections 31, 33 and 35. Section 33 of the Electoral Act States that:

"33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this act except in the case of death or withdrawal by the candidate."

While section 35 states that:

"35. A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election and the political party shall con-

vey such withdrawal to the commission not later than 43 days to the election."

The interpretation of section 33 and 35 of the Electoral Act is that after a candidate wins the primaries of his party, he can only be substituted by his party with another person if he dies or withdraws. If he chooses to withdraw he must inform the party in writing, signed and delivered by him and the party shall notify INEC not later than 45 days to the election. I will pause here before I consider section 31 of the Electoral Act. ***Section 33 and 35 supra are irrelevant since the 1st respondent never withdrew his candidacy or died. This is a case where the elections fixed for April 2011 in which he was to be the PDP's candidate was cancelled by INEC. INEC has the sole responsibility to decide when elections are to be held.*** Now, paragraphs IV, V, XIV of the affidavit in support of the 1st respondents originating summons read.

(IV) That in spite of his protest and complaint, officials of the 2nd defendant advised that he should obtain another expression of interest form and nomination form as the party - PDP would not allow him to stand as its candidate based upon the previous primary consequent upon which he, again paid the sum of N500, 000 and N5, 000,000 respectively totalling N5, 500.000.00 to express his interest and for the nomination respectively.

(V) That in further alternative to his position of maintaining his mandate as the party flag bearer as per exhibit H and M series he attended the screening by the gubernatorial screening Committee for the fresh primary under protest on 27th day of October, 2011...

(XIV) That he continued to campaign for the said primary election without the publication of his name by the 2nd defendant...

My lords, the 1st respondent paid N5.5 M (Five Million Five Hundred thousand) naira, presented himself to the Screening Committee of his party, and campaigned extensively for the fresh primary elections fixed by his party for 19/1/11 to choose its candidate to stand for Governor of Bayelsa in elections fixed for 12/2/12. These are clear acts indicative of the fact that the 1st respondent had abandoned the results of the primaries he won in January 2011. He was now interested in the primaries fixed for 19/11/11. Furthermore the primaries that the 1st respondent won in 2011 fades into significance

since the elections for which the said primaries was conducted were cancelled. The 1st respondent won the primaries conducted in January 2011 and his name forwarded to PDP as the PDP's candidate for the elections slated for April 2011. With the cancellation of the elections of April 2011 the primaries conducted in January 2011 is no more of any relevance. INEC has the sole responsibility to fix dates for elections and to my mind if INEC fixes a date for elections and for whatever reason, be it logistic, I do not think anyone has a cause of action against INEC for cancelling an election (not held) and rescheduling elections for another day. Furthermore INEC fixed the elections for April 2011 on its understanding that the 1st appellant's term would end on 28/5/11, but with the court's judgment that 1st appellant tenure would end on 28/5/12 the need to cancel election for April 2011 was justified. In sum the 1st respondent is/was no longer the PDP's candidate for gubernatorial elections held on 12/2/12 simply because he did not take part in the primaries for that election which was held on 19/11/11. Since the general elections fixed for April 2011 were cancelled by INEC, the provisions of sections 33 and 35 of the Electoral Act are no longer applicable. With the cancellation of the general elections, primaries held in January 2011 are irrelevant for determining PDP's candidate for Governor of Bayelsa State.

ISSUE 2

Learned counsel for the appellant observed that the PDP conducted two primaries, in January 2011 and in November 2011. He further observed that paragraph 7 of the 1st respondent's pleadings shows clearly that both he and the PDP had abandoned the primaries conducted in January 2011, contending that on disclosed facts in his pleadings the real issue in controversy was a pre-primary election affair of the PDP, having abandoned primary of January 2011. He submitted that the court has no jurisdiction to entertain/interfere with pre primary affairs of a Political Party. Reliance was placed on *Onuoha v. Okafor* 1983 2 SCNLR p.244, *Dalhatu V. Turaki* 2002 15 NWLR p.845 p.310, *Senator Y.G. Lado & others v. Congress for Progressive Change & other* (unreported consolidated appeals SC/157/2011 and SC334/2011 delivered on 16/12/2011. Concluding he submitted that the 1st respondents claim is not justiceable as it remains within the realm of the internal affairs of the party.

Learned counsel for the 1st respondent observed that the ap-

pellant and the 2nd to 4th respondents have no jurisdiction to substitute him for someone else after he won the primaries conducted in January 2011, contending that the primaries conducted in January 2011 is valid and the 1st respondent is the authentic candidate of the PDP for the gubernatorial elections for Bayelsa State. He observed that the case relied on by learned counsel for the appellant were B wrongly cited, contending, that at the time the 1st respondent filed the suit there was only one primary election that was held on 11/1/2011. Submitting that the argument of the appellant that this suit raised pre-primary election affair is highly misconceived and the argument should be discountenanced. He urged the court to resolve C the issue against the appellant.

In deciding this issue I shall examine the following cases. They were all decided by the full court (i.e. of the Supreme Court) - Onuoha v. Okafor 1983 Vol. 14 NSCC p. 494, Dalhatu v. Turaki 2003 15 D NWLR pt. 843 p.310, Amaechi v. INEC 2008 1 SC pt.1 p.36, Ugwu v. Ararume 2007 12 NWLR pt.1048 p.365. Onuoha v. Okafor (supra) decided that nomination or sponsorship of a candidate for election is a political matter within the discretion of the party. Dalhatu v. Turaki (supra) followed Onuoha v. Okafor (supra) Amaechi v. INEC E (supra) decided that a person who contest and wins the primary election can only be barred from contesting the General Election, if and only if his political party gives cogent and verifiable reasons for the substitution as required by the Electoral Act of 2006. If no such reason is given the candidate who won the primaries remains the recognized F candidate of the party and would be declared the winner of the election (even if he did not contest the general election). Ugwu v. Ararume (supra) explained section 34 of the Electoral Act 2000, thus. A political party intending to change the name of its candidate shall G inform INEC in writing not later than 60 days to the election giving cogent/verifiable reasons. There shall be no substitution after 60 days. Onuoha v. Okafor (supra) and Dalhatu v. Turaki (supra) are relevant in this appeal and I shall explain. Amaechi v. INEC (supra) is irrelevant because in that case Gov. Amaechi contested the primaries and H won but was barred from contesting the General Elections. His party, the PDP was unable to give cogent and verifiable reasons why he was not allowed to contest the general elections.

In this case Gov. Sylva contested primaries in January 2011

for a general election fixed for April 2011. The general election was cancelled. Fresh primaries were fixed by this party, but he was not allowed to contest. There is thus no similarity in Amaechi case and this case. In Amaechi's case he was barred from contesting the general election. In this case Gov. Sylva was barred from contesting primaries of his party.

The right to nominate or sponsor a candidate by a Political Party is a domestic right of the party, a political matter within the sole discretion of the party. A member of the party has no legal right to be nominated/sponsored by his party. A court thus has no jurisdiction to determine who a political party should sponsor. Nomination or sponsorship of a candidate for election is a political matter solely within the discretion of the party, and this is so because the sponsorship or nomination of a candidate is a pre primary election affair of the party. But where the political party conducts its primary and a dissatisfied contestant at the primary complains about the conduct of the primaries the courts have jurisdiction by virtue of the provisions of section 87 (9) of the Electoral Act to examine if the conduct of the primary elections was conducted in accordance with the party's constitution and Guidelines. This is so because in the conduct of its primaries the courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its own constitution. See: Hope Uzodinma v. Senator Osita Izunaso 2011 vol. 5 (Pt. 1) MJSC p.27. The primaries conducted on 19/11/11 wherein the 1st respondent was not allowed by the PDP to contest is a pre primary election affair of the PDP which no court has jurisdiction to question. Onuoha v. Okafor (supra) Dalhatu v. Turaki (supra) are thus very relevant in resolving this issue as they are instructive.

Section 87(9) of the Electoral Act reads,

“(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 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 FCT for redress.”

An aspirant is a person with a strong desire to achieve a posi-

tion of importance or to win a competition. Indeed Section 87 (1) of the Electoral Act States that:

“A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective posts.”

From the above it is clear that an aspirant is a person who contested the primaries. An aspirant is thus a candidate in the primaries. Section 87 (9) of the Electoral Act confers jurisdiction on the courts to hear complaints from a candidate who participated at his parties primaries and complains about the conduct of the primaries. The facts in this case are conclusive that the 1st respondent did not participate as a candidate in the PDP primaries which held on 19/11/11, to choose the party Candidate for general election for Governor of Bayelsa State which was fixed for 12/2/12. The 1st respondent not being a candidate at the primaries cannot be heard to complain about the conduct of the primaries. Section 87 (9) of the Electoral Act is thus not applicable. The PDP has the right to bar the 1st respondent, or any of its members from contesting its primaries if it so desires.

ISSUE 3

Learned counsel for the appellant observed that the 1st respondent asked for 16 reliefs, further observing that 13 of those reliefs are against the PDP while 2 are against INEC and one affects both PDP and INEC. He submitted that before the Federal High Court can have jurisdiction all the reliefs sought by the 1st appellant must be within the jurisdiction of the court. Reliance was placed on *Tukur v. Govt of Gongola State* 1989 4 NWLR pt.117 p. 517. Concluding he observed that the two claims against INEC do not involve a determination of any executive or administrative action or decision of INEC within the meaning of section 251 (i)(r) of the Constitution. As regards the other reliefs which are against the PDP, he observed that the Federal High Court has no jurisdiction under Section 251(i)(r) since the PDP is not an agency of the Federal Government, and the fact that INEC is a party makes no difference. He urged this court to allow the appeal on the ground that the Federal High Court has no jurisdiction to hear the 1st respondent's claims.

Learned counsel for the 1st respondent observed that after the 1st respondent won the primary elections in January, 2011 and his name submitted to INEC as the PDP's candidate INEC or any other person cannot ignore, or change or substitute his name. He

submitted that the complaint of the plaintiff is sustained on claim 3 and that is the principal claim contending that the principal claim determines jurisdiction. Reliance was placed on *XS (Nig.) Ltd. v. Taisei (WA) Ltd.* 2006 15 NWLR Pt. 1003 p. 533. *Metal Construction (WA) Ltd. v. Aboderin* (1998) 8 NWLR Pt. 563 p. 538. He further observed that the main claim is covered by section 251(1)(r) of the Constitution, since INEC is an agency of the Federal Government and the 1st respondents seeks declaration and injunction against it. He submitted that the Federal High Court has jurisdiction to entertain both the main claim as well as the alternative claim in view of the combined provisions of Section 251 of the Constitution and Section 87(9) of the Electoral Act.

Jurisdiction of a court to entertain a suit is resolved by a scrupulous examination of the writ of summons, the statement of claim, and the reliefs claimed. No other document should be examined. Where the originating process is an originating summons the affidavit filed in support of the originating summons serves as the plaintiff's pleadings (statement of claim). Jurisdiction would be resolved by examining only the originating summons, the reliefs contained herein and the affidavit filed in support.

The reliefs claimed by the 1st respondent in the court of first instance have been well laid out in the early part of this judgment. I shall now reproduce the 10 paragraph affidavit (pleadings) filed in support of the originating summons. This is important because if pleadings are to be any use parties must be held bound by them. It reads:

1. I am the personal assistant to Timipre Sylva, the plaintiff in this case and by virtue of this position, I am very conversant and/or familiar with the facts of this case.

2. The facts grounding the depositions contained herein are facts within my personal knowledge except where otherwise the source is expressly and specifically stated.

3. That I have always been with the plaintiff right from the beginning of his aspiration to vie for election for 2nd term as Governor of Bayelsa State.

4. That I was present with the plaintiff when he obtained his expression of interest and nomination from and as the personal assistant, I closely monitored facts of the events as they relate to this

case.

5. That I was informed by the plaintiff (Timipre Sylva) at Government house. Yenagoa on 13th November, 2011 at about 5.00 p.m and I verily believe him as follows.

(i) that he is a registered voter and financial member of the party (PDP) with a current PDP membership card No. 5177001 and INEC Card No. VIN 90F5AFD26A295192898 issued on the 16th of January, 2011. The membership and voters cards are attached and marked as Exhibit A and A1 respectively. B

(ii) that he is up to date in the payment of his membership dues as a member of the PDP and the party in acknowledging this fact apart from issuance of requisite receipt, also gave him a letter dated the 26th day of October, 2011 duly signed by the National Vice Chairman, South-South. Copy is attached hereto and marked Exhibit A3 series. C

(iii) that ever since he joined the party PDP he has actively taken part in every and all activities or programme of the Peoples Democratic Party at his ward, state and National levels. D

(iv) that as a member of the PDP, he has a copy of its constitution, which is now shown to me and hereto attached and marked as *"Exhibit B"* E

(v) that he is a graduate of the University of Port-Harcourt, Rivers State, and holds a Bachelor Degree in English Language. His educational qualification certificate, NYSC discharges certificate and documents for change of name and other qualifying documents. (tax clearance certificate and declaration of age) are hereto attached and marked as *"Exhibit B1 series"* F

(vi) that his state of origin is Bayelsa and he is a leading member of PDP in that State, as well as the incumbent Governor of the State; G

(vii) that sometime in September, 2010. He signified his interest to fly and flag of PDP as its Governorship candidate in Bayelsa state in the schedule election, along with several other candidates;

(viii) that in furtherance of his intentions, he paid for and obtained an *"Expression of interest for Gubernatorial Nomination form"* of the Defendant to enable him actualize his aspiration. A copy of the said form is hereto attached and marked as *"exhibit C"*; H

(ix) that upon submission of Exhibit C and having satisfied all

other conditions set and stipulated by the 2nd Defendant, including payment of the sum of N500,000.00 (five hundred thousand naira) only, he obtained from the 2nd defendant its nomination form for Gubernatorial primary Election. A copy of the form is hereto attached and marked as “*Exhibit D*”;

B (x) that amongst other conditions laid down by the 2nd Defendant for each candidate seeking to fly its flag as the Governorship candidate in the Governorship Election are:

- a) payment of the sum of N500,000.00 (Five Hundred Thousand Naira) only for expression of interest; and
- C b) payment of the sum of N5,000,000.00 (Five Million naira) only to obtain the Nomination form.

(xi) That he paid the sum of N500,000.00 into the 2nd Defendant account at Skye Bank on 17th day of September, 2010 to D express his interest vide Bank Teller No. 4924579 and the sum of N5,000,000.00 to the 1st Defendant through the same bank on the 17th September, 2010, with Teller No. 4924463. The two tellers are attached hereto and marked “*Exhibit E series*”.

E (xii) that after the payments in respect of “*Exhibit E* expression of interest Form and Nomination Form were given to him and he duly filled same and submitted them to the 2nd Defendant together with all the required documents and information.

(xiii) that in compliance with the further directives of the 2nd F defendant he deposed to an affidavit at the High Court of Bayelsa State Yenagoa Registry giving an undertaking to comply with the party’s guidelines on the 24th September, 2010.

(xiv) that as an aspirant, he obtained a copy of the defendant’s Electoral Guidelines for primary elections, 2010. A copy is hereto G attached and marked as “*Exhibit F*” and.

(xv) that up till date, the defendant did not produce or issue another Electoral Guidelines for primary election apart from “*Exhibit F*”

H (6) That I was further informed by the plaintiff herein at the time place and circumstance stated above, and I verily believe him as follows:

(i) that upon submissions of all the necessary forms and documents, he appeared before the screening committee of the 2nd defendant and the said committee found him suitable to participate in

the primary election after which he was issued with a clearance certificate. A copy of his clearance certificate is hereto attached and marked as "Exhibit G".

(ii) that after the clearance given to him by the 2nd defendant to participate in the primary election, he campaigned throughout the nooks and crannies of all the Local Government Areas of Bayelsa State visiting each of the Local Governments, the towns and villages and each of the wards of the state several times. B

(iii) that his candidacy was well received throughout the length and breadth of the state, consequently, he won the primary election conducted in Bayelsa State by the 2nd defendant amongst the candidates who signified their intention and contested with Him on 12th January, 2011. A copy of the result of the primary election, the letter of the appointment of Electoral Panel dated 8th January, 2011 and the report of the Electoral Panel of 10th January, 2011 are hereto attached and marked as "*Exhibit H series*." C D

(iv) that nobody petitioned against his success at the said primary election to the screening appeal panel or any other body or committee of the 2nd defendant;

(v) that consequent upon his success at the January, 2011 primary election and in accordance with the provisions of the Electoral Act, 2010 (as amended) his name was forwarded to Independent National Electoral Commission 1st defendant hereinafter referred to as "*INEC*" by the National Headquarters of 2nd defendant from the Abuja office E F

(vi) that after the submission of his name as aforesaid the 2nd defendant at its National Headquarters in Abuja gave me a copy of the letter forwarding his name among other candidate names. Copy of the said letter dated 24th January, 2011, but received at INEC's Headquarters in Abuja on the 27th of January, 2011, and INEC form CF002B are attached herewith and marked "*Exhibit M series*." G

(vii) that up to today his name has not been withdrawn from INEC by the 2nd defendant for the forthcoming Gubernatorial Election for Bayelsa State just as no other Gubernatorial Election has been held in Bayelsa State since then. H

(viii) that while campaigning and waiting for the general election to hold INEC announced the postponement of the Governorship election in Bayelsa State among some other states till further

notice.

(ix) that INEC subsequently announced a new date for the election to the office of the Governor of Bayelsa State and scheduled same to hold in February, 2012. A copy of the party press statement to that effect is hereto attached and marked as “*Exhibit N.*”

B (7) That Plaintiff herein further informed me at the Government House Yenagoa on 13th November, 2011 at about 5.00p.m. and I verily believe him as follows:

C (i) that curiously and surprisingly, in October, 2011, the 2nd defendant herein made a public service announcement in the African Independent Television (AIT) of her intention.

To conduct another primary election in Bayelsa State to nominate her candidate for the election to the office of the Governor of Bayelsa State.

D (ii) that he immediately protested to the 2nd and 3rd defendant against the conduct of a new primary election, since he is still alive and has not withdrawn his nomination/candidature, having won the January Governorship primary election conducted for the same purpose. A copy of his letter of protest dated 13th day of October, 2011
E is hereto attached and marked as “*Exhibit I*”.

(iii) that upon the decision of the 2nd and 3rd defendants to conduct another primary election, one of the then aspirants demanded for a refund of his payment of N5,500,000.00 (five million five hundred thousand naira) being total amount paid for expression of interest and nomination form for the primary election of January, 2011
F but the 2nd defendant refused the application to refund on the ground that the primary election had been held and concluded in the states where INEC postponed election which includes Bayelsa State in 2011.
G A copy of his demand and the extract of minutes of the meeting of the 2nd defendant is hereto attached and marked as “*Exhibit J series*”.

(iv) that in spite of his protest and complaint, officials of the 2nd defendant advised that he should obtain another expression of
H interest form and nomination form as the party-PDP would not allow him to stand as its candidate based upon the previous primary consequent upon which he again, paid the sums of N500,000 and N5,000,000 respectively totalling N5,500,000.00 to express his interest and for the nomination respectively. A copy of the Skye Bank

PLC receipt of payment/teller No. 0089973 dated 19th October, 2011, for the expression of interest as well as the nomination forms and the two (2) forms (Expression of interest Form and the Nomination Form) are hereto attached and marked as “*Exhibit K series*”.

(v) that in further alternative to his position of maintaining his mandate as the party flag bearer as per “*Exhibit H and M series*”, he attended the screening by the Gubernatorial Screening Committee for the fresh primary under protest on 27th day of October, 2011 and he was again issued with a clearance certificate and a summary of report of the screening exercise on the 28th October, 2011. A copy each of the aforesaid document are attached and marked as “*Exhibit L and L1*” respectively.

(vi) that surprisingly the 2nd and 3rd defendants have serially published the names of the aspirants for the primary election for the Governorship seat in Bayelsa State but excluded his name without any justification.

(vii) that contrary to the Electoral Guidelines of the 2nd defendant the Gubernatorial Screening Appeal Panel of the defendant invited me vide public service announcement of African Independent Television (AIT) to appear before them and obliged them with his attendance. Where he was informed of a petition written by an anonymous person challenging his candidature on security reasons and he responded immediately after which I was cleared.

(viii) that none of the aspirants for the Bayelsa State Governorship primary election was aggrieved by the decision of the Gubernatorial Screening Committee for Bayelsa State nor Petitioned or appealed against his clearance till date.

(ix) that under the guidelines of the 2nd defendant only an aggrieved candidate can appeal to the appeal committee against the decision of the screening committee.

(x) that since he was cleared by the screening committee he never appealed to the appeal committee for review of this screening committee.

(xi) That “*Exhibit L*” (this clearance certificate) has not been set aside nor withdrawn till date as the appeal panel members were all satisfied with his explanations before them.

(xii) That he has severally demanded before now both orally and in writing for the reason for the 2nd and 3rd Defendants’ failure

to publish his name as an aspirant in the scheduled gubernatorial primary but no explanation has been given by the 2nd Defendant. A copy of plaintiff's letter of demand is hereto attached and marked as "*Exhibit O*".

B (xiii) That the failure to publish his name as one of the aspirants for the Bayelsa State Governorship primary election is a calculated attempt to exclude him from the designed primary election billed to take place in Bayelsa State on the 19th day of November, 2011, as the delegate will not recognize him as an aspirant.

C (xiv) that he continued to campaign for the said primacy election without the publication of his name by the 2nd Defendant, the delegates will not listen to him thereby limiting his chances of success at the primary election even if a fresh one can be conducted.

D (xv) that in the January, 2011 Governorship primary election which he won convincingly, took place in Bayelsa State, and similarly the fresh primary election now scheduled to be conducted is also to take place in Bayelsa State.

E (xvi) that his personal enquiry reveals that it was the "*National Working Committee*" of PDP, the 1st Defendant herein chaired by the 2nd defendant that initially decided that any name should not be published as an aspirant for fear of my winning the primary election again.

F (xvii) that it is only the National Executive Committee (NEC) of the PDP, 2nd defendant that has the power to determine the procedure and time for the holding of primary election for the nomination of the party's candidate.

G (xviii) that National Executive Committee (NEC) of the PDP, the 2nd Defendant herein through its screening or screening appeal panel never disqualified him from the primary election now scheduled for 19th November, 2011.

H (xix) that under Peoples Democratic Party's Constitution, the Defendant is bound by the decision of the screening appeal panel and the National Executive Committee (NEC)

(xx) that neither the National Working Committee nor the National Executive Committee (NEC) of the 2nd Defendant has power to disqualify any cleared aspirant from contesting in the primary election.

(xxi) that there would be ward congress and later primary elec-

tion on the 19th day of November, 2011.

8) That I was also informed by the plaintiff at the time, place and circumstances stated above, and I verily believed him as follows;

(i) that he is aware that other candidates of PDP for the primary election have been campaigning to would be delegates for the ward congress and primary election having had their names published. B

(ii) that unless he is given adequate time, opportunity and facilities he would be at a disadvantage in the ward congress and all activities leading to the primary election.

(iii) that if this suit is not heard timeously, he will be denied his vested and accrued right and/or the opportunity to participate in the primary election of the 2nd defendant scheduled to hold on 19th November, 2011. C

(iv) that on Friday 11th November, 2011, he had a discussion D with the acting National Chairman of PDP, 2nd defendant herein, who confirmed to him that the party will not allow him to contest the fresh primary election for security reasons.

(v) that up to this moment the 2nd defendant has not formally written to him to convey its decision not to allow him to contest primary election on ground of security reasons. E

(vi) that the defendants want to wait till the very last minute before a written communication will be written to him so as to frustrate his intention of participating in the primary (though on protest) F to challenging in court the party's action denying him the right to participate in the fresh primary.

(vii) that when he attended the screening exercise of the party he was obliged with a copy of a document stating the criteria to be used to screen all aspirants of the party for the forthcoming Governorship primary election in Bayelsa State. Attached hereto is Exhibit G P as a copy of the said criteria.

(viii) that issues or question of security is not a consideration for screening or clearance of an aspirant who intends to contest the Governorship primary election of the party. H

(ix) that on Sunday, the 13th day of November, 2011, the national Secretary of the 2nd defendant issued a press statement, disqualifying him from contesting the fresh party primary election which she now scheduled for 18th day of November, 2011, contrary

to Exhibit N wherein it scheduled same for 19th November, 2011. A copy of the press statement is hereto attached and marked as “*Exhibit Q*”.

(x) that there was no meeting of the National Working Committee, of the 2nd defendant before the issuance of Exhibit Q

(xi) that there was no appeal against his candidature or clearance to the National Working Committee of the 2nd defendant or even the 3rd defendant.

(xii) that the National Working Committee of the party did not give him any opportunity to defend himself or respond to any issue or allegation (if any) before its decision to disqualify him from contesting the primary election.

(xiii) that the decision to disqualify him is a penal sanction and he should be afforded a hearing before such decision was taken.

9) It will be in the interest of justice to grant my prayers.

There are 16 reliefs in the originating summons Reliefs 1, 2, 4, 5, 6, 7 and 8 are against the Peoples Democratic Party (PDP). Reliefs 3 and 9 are against the Independent National Electoral Commission. Relief 10 can be said to be against both the PDP and INEC. All the six alternative reliefs are against the PDP. It is clear after reading the 1st respondents pleadings that his dispute is against the appellant for refusing to allow him to contest the party primaries of 19/11/11 for the general elections fixed for 12th February, 2012. Put in another way his cause of action really is the refusal of the appellant to publish his name as one of the aspirants cleared to contest the primary election fixed for 19/11/11. This is the fundamental issue in the dispute. Reliefs 3 and 9 which are against INEC are not fundamental, they are ancillary claims. Reliefs 1, 2, 4, 5, 6, 7, 8 and all the alternative claims question pre-primary election affairs of the party which no court has jurisdiction to entertain. Reliefs 3 and 9 are ancillary claims as they are collateral to, dependant on and ancillary to claims 1, 2, 4, 5, 6, 7 and 8 and all the alternative claims. A court cannot hear and determine ancillary claims if it has no jurisdiction to entertain the main claims and if the ancillary claims will clearly involve substantial discussion of the main claims. *Tukur v. Govt. of Gongola State* 1989 4 NWLR pt.117 p.517 is instructive on this point.

Section 251 of the Constitution confers exclusive jurisdiction on the Federal High Court for the items listed in the

section. All items not listed in the section are to be heard and determined by the State High Court. When the jurisdiction of the Federal High Court is in issue the following must co-exist.

(a) the parties or a party must be the Federal Government or its agency.

(b) Subject matters of the Litigation.

B

Satisfying above is not the end of the matter. The pleadings of the plaintiff must be carefully examined so as to understand the facts and circumstances of the case in order to determine if the claims are within the jurisdiction of the court. It is clearly not enough only to have an agency of the Federal Government as a party before Federal High Court has jurisdiction. Subsection (r) of section 251(1) of the Constitution states that:

“(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies...”

I earlier on made it clear that the 1st respondent's dispute is against the appellant, because the appellant did not allow him to contest the primaries fixed for 19/11/11. The PDP is not an agency of the Federal Government. It is a political party. The 1st respondent's claims against the appellant are not justiceable and since the Federal High Court has no jurisdiction to entertain those claims it also has no jurisdiction to entertain the ancillary claims and for the avoidance of doubt the courts in Nigeria have no jurisdiction to bear the 1st respondent's claims. This is so because nomination and sponsorship of a candidate for election is a political matter solely within the discretion of the party. The 1st respondent's claim ought not to have been entertained by the Federal High Court for the simple reason that it is a pre-primary election matter of affair of the PDP. *Onuoha v. Okafor* G Supra.

Learned counsel for the 1st respondent has asked this court to invoke the provisions of section 22 of the Supreme Court Act and determine the merit of the case. His argument being that this court notwithstanding the claim or reliefs of the parties can always make orders or give judgments that will meet the justice of the case. Reliance was placed *Amaechi v. INEC* 2008 5 NWLR pt.1080 p.227 where this court stated the position of the Law thus:

H

“This court and indeed all courts in Nigeria has a duty which flows from a power granted by the Constitution of Nigeria, to ensure that citizens of Nigeria high and low get the justice which the their case deserves. The powers of the court are derived from the constitution not at the sufferance or generosity of any other arm of the Government of Nigeria. The judiciary like all citizens of this country cannot be a passive on looker when any person attempts to subvert the administration of justice and will not hesitate to use the powers available to it to do justice in the cases before it.”

I cannot agree more with the above. **But where as in this case, courts in Nigeria do not have jurisdiction to question the nomination and sponsorship of a candidate for election any attempt by the courts to change the well laid down position of the law would be a futile exercise. The courts would continue to remain passive on lookers when the real issue in controversy is a pre-primary election affair of a political party. In the absence of jurisdiction of adjudicate, invoking the provisions of Section 22 of the Supreme Court Act would be most inappropriate as such an exercise would amount to a nullity.**

Accordingly the appeal succeeds. It is allowed. The pending suit before the Federal High Court is hereby struck out. The cross-appeal is also struck out. Parties shall bear their own costs.

F

MOHAMMED JSC

I have had the privilege before today of reading the judgment of my learned brother Rhodes-Vivour JSC which he just delivered. The facts of the case which both parties apparently failed to address in their respective briefs of argument in the appeal and the cross-appeal, have been very carefully set out in the judgment thereby bringing out the real issues for determination in the appeal.

In the determination of the issues identified, it is very important to take into consideration that although the 1st Respondent contested and won his party's primary election held in January, 2011 which produced him as the candidate for the Appellant P.D.P. in the Governorship election in Bayelsa State then scheduled for April, 2011, that election did not hold in Bayelsa State following the order of the Federal High Court and affirmed by the Court of Appeal that the

election should not hold until 2012. That order of Court was made at the instance of the 1st Respondent who complained to the Court that his tenure of office as the Governor of Bayelsa State would not end until 2012. Therefore, even though his name was forwarded to and received by Independent National Electoral Commission as the candidate to contest the Governorship election scheduled for April, 2011 in Bayelsa State, the cancellation of that election by the order of Court had swept away all rights acquired by the 1st Respondent from the results of the primary election of January, 2011, and the forwarding of his name to National Electoral Commission as P.D.Ps candidate to contest the election that never took place. In other words it is quite clear on the facts of this case that all rights accrued to the 1st Respondent as the PDP Governorship candidate in Bayelsa State relates only to the election earlier fixed for April, 2011. These acquired rights as a candidate for that election, in my view, do not remain in the 1st Respondent indefinitely. It is therefore doubtful if the 1st Respondent was still clothed with those rights at the time he instituted his action for declaratory and injunctive reliefs at the Federal High Court, the judgment in which case gave rise to the present appeal.

Coming back to the real dispute between the parties in this case, it all arose from the result of the primary election of the P.D.P conducted in January, 2011 and the second primary election for the same P.D.P. conducted in November, 2011 in which the 1st Respondent complained that he was not allowed to participate. The law has enjoined all political parties seeking to nominate candidates for elections under the Electoral Act, 2010 (as amended), to hold primaries for aspirants to all elective positions. See Section 87(1) of the Electoral Act 2010. The primary election conducted by the Appellant in this appeal, the P.D.P. in January, 2011 for the Governorship election in Bayelsa State in which the 1st Respondent emerged the winner, was conducted in compliance with the Electoral Act. Similarly, the primary election conducted by the Appellant P.D.P. in November, 2011 for the same Governorship election in Bayelsa State, was also conducted in compliance with the Electoral Act. The main issue in this appeal therefore centred on jurisdiction of the trial Court to entertain and determine the complaints of the 1st Respondent that was brought to the trial Federal High Court claiming various declaratory and injunctive reliefs in the originating summons. In this respect, the

trial Court could have come to the 1st Respondent's rescue only if his case were within the provision of Section 87(9) of the Electoral Act 2010 (as amended) states -

"87(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."

The provisions of this sub-section of the Electoral Act, 2010 are quite plain. The 1st Respondent who was not a candidate and who did not participate in the contest in the primaries conducted by the Appellant on 19th November, 2011, is certainly not clothed with any rights to approach any Court for redress on the clear provisions of the law. As far as the primaries conducted by the Appellant in January, 2011 which produced the 1st Respondent as the Appellant's candidate is concerned, there is no complaint against it in this appeal which could have been brought only under Section 87(9) of the Electoral Act, 2010 as the election for which the primaries were held was aborted at the instance of the 1st Respondent himself thereby making it impossible for him to complain against any party in any Court of law on the matter having regard to the provisions of Section 87(9) of the Electoral Act, 2010 (as amended). In short, having regard to the circumstances of this case where the election of April, 2011 in which the 1st Respondent was cleared to contest as the candidate of the Appellant did not hold while the same 1st Respondent did not participate in the primaries conducted by the Appellant on 19th November, 2011 for the rescheduled Governorship election in Bayelsa State in February, 2012, the 1st Respondent was deprived of any cause of action arising from the primaries conducted by the Appellant for which he could have gone to Court under Section 87(9) of the Electoral Act, 2010 for redress. This is because, in my view, the 1st Respondent's case at the trial Court was not initiated with due process of the law and upon fulfilment of condition precedent to the exercise of jurisdiction by the trial Court which was clearly deprived of jurisdiction to entertain the action. See *Madukolu & Ors. v. Nkemdelim & Ors.* (1962) 1 All N.L.R. (Pt.4) 587; (1962) 2 S.C.N.L.R. 341.

It is for the above reasons and fuller reasons contained in the leading judgment of my learned brother Rhodes-Vivour JSC, that I entirely agree that the trial Federal High Court lacked jurisdiction to entertain the action of the 1st Respondent filed in that Court by Originating Summons. Accordingly, the appeal succeeds and it is hereby allowed. The judgment of the Court below is set aside. The pending action of 1st Respondent at the trial court is struck out with no order on costs. Consequently, the cross-appeal is also struck-out with no order on costs.

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MUNTAKA-COOMASSIE JSC

I was allowed to read in draft the lead judgment rendered by my learned brother Bode Rhodes-Vivour JSC. I agree. I have nothing more to add in view of the time factor.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Rhodes-Vivour JSC. I agree with the lucid reasons therein advanced to arrive at the inescapable conclusion that the appeal is meritorious and should be allowed while the cross appeal which was withdrawn should be struck out.

E

The facts of the matter have been ably set out in the lead judgment. It will not serve any useful purpose to repeat same except as may be required to establish my view points. As extant in the record of appeal, Independent National Electoral Commission fixed the gubernatorial elections for Bayelsa State for April, 2011. The 1st respondent contested the party's primaries for that election in January, 2011 and won. His name was forwarded to Independent National Electoral Commission as the Peoples Democratic Party's candidate for the gubernatorial election slated for April, 2011. The 1st respondent then filed a suit to determine when his tenure would come to an end - whether 28/5/2011 or 28/5/2012. The court found in favour of the 1st respondent that the tenure will end on 28/5/2012. The Court of Appeal affirmed same. Independent National Electoral Commission in compliance with the stance posed by the court which supported the 1st respondent then cancelled the election fixed for April, 2011.

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With the cancellation of the election slated for April 2011, it goes without saying that the primaries conducted in January 2011 for the election fixed for the stated election became irrelevant, as it disappeared into oblivion along with the cancelled election. The primaries of the appellant which took place in November, 2011 is a different ball game. The appellant did not avail the 1st respondent the chance to take part in the primaries conducted on 19/11/2011. In its real essence, the complaint of the 1st respondent relates to the fact that he was not allowed to participate in the said primaries of his party. This is in connection with a pre-primary affair of Peoples Democratic Party which does not fall within the province of the courts to adjudicate upon. This has been so for quite sometime now. See: Onuoha v. Okafor (1983) 2 SCNLR 244; Dalhatu v. Turaki (2002) 15 NWLR (Pt.843) 310. In short, the courts have no jurisdiction in respect of this matter.

It has been pronounced several times that jurisdiction is very vital and fundamental. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but extrinsic to the entire process of adjudication.] See: Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508.

For the above views and the fuller reasons advanced by my learned brother, I too feel that the appeal should be allowed. I endorse all consequential orders made in the lead judgment; that relating to costs inclusive.

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