

SUPREME COURT OF NIGERIA

25TH MAY, 2012. SC. 443/2011

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC**

CHIEF IKECHI EMENIKE

..... APPELLANT

AND

1. PEOPLES DEMOCRATIC PARTY

2. DR. BELLO HALIRU MOHAMMED RESPONDENTS

(ACTING NATIONAL CHAIRMAN PDP)

3. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

4. GOVERNOR THEODORE ORJI

COURTS - Jurisdiction - Suo motu raising - Correctness of - Court has duty to raise issue - Regarding whether or not it has jurisdiction - To entertain a matter (H1)

APPEALS - Grounds - Mixed law and facts - Nature - How determined - The ground of appeal and particulars thereto - Must be read together (H2)

ACTIONS - Declaratory reliefs - Need to prove - Appellant has the burden - To establish the seven declaratory reliefs - He claimed (H3)

POLITICS - Elections - Political parties - Nomination of candidates - Right of political party to nominate candidate - Cannot be questioned in court (H4)

POLITICS - Elections - Nomination of candidates - Jurisdiction of court - Court can inquire whether - Nomination complied with Electoral Act - And political party's constitution (H5)

ELECTIONS - Political party's primary - Failure to participate - Since appellant did not take part in the valid primary - He cannot validly - Activate jurisdiction of court (H6)

POLITICS - Elections - Political party's constitution - Binding nature - Appellant is bound by Exhibit 7 - And cannot circumvent same to his own benefit (H7)

ELECTIONS - Actions - Inconsistency - Need to avoid - A party should be consistent - In stating as well as in proving its case (H8)

FACTS

Congress to nominate candidate to represent 1st defendant/respondent - Peoples Democratic Party in Abia State gubernatorial election for April 2011 general election, was conducted by the State Executive Committee and National Executive Committee of the Party respectively on different days. Plaintiff/appellant was nominated by the State Executive chapter, while 4th defendant/respondent was nominated by the National Executive chapter. 1st respondent submitted the name of 4th respondent to 3rd defendant/respondent as authentic candidate of 1st respondent for the gubernatorial election. Appellant who did not participate in the primary election conducted by the National Executive Committee of 1st respondent felt disappointed.

Consequently, appellant filed originating summons at Federal High Court seeking for the interpretation of sections 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and sections 85, 86 and 87 of the Electoral Act 2010 (as amended). Appellant prayed the court to declare that he is the authentic candidate of 1st respondent for the said election and should be recognized as such. The court after careful consideration of the applicable laws to this action dismissed same and upheld the nomination of 4th respondent. Appellant was not satisfied. Hence he filed an appeal at the Court of Appeal, Abuja Division. The court also dismissed the appeal and upheld the judgment of the trial court. Aggrieved further, appellant appealed to Supreme Court. 1st and 2nd respondents filed a notice of preliminary objections on the jurisdiction of the court to entertain the action and that appellant did not seek leave to appeal based on the nature of the grounds of appeal.

ISSUE FOR DETERMINATION

The core or central issue in this appeal relates to the due resolution of the serious hegemony between the appellant and the 4th respondent as to who is the right candidate of the 1st respondent

for the governorship election of April, 2011 in Abia State of Nigeria.

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

Jurisdiction - Suo motu raising - Correctness of

1. There is no atom of doubt in my mind that a dispute has arisen between the appellant and the 4th respondent as to who is the candidate of the 1st respondent for the April 2011 Gubernatorial Election. The court should not decline jurisdiction *brevi manu*. To do so may engender the employment of force of arms by the contending parties. A trial court (and nay an appellate court) has a duty to suo motu deal with issue regarding whether or not it has jurisdiction to entertain a matter before it. In short, the court is imbued with due jurisdiction to pronounce on the dispute presented by the parties herein. (p. 1730 A)

APPEALS - Grounds - Mixed law and facts - Nature

2. This court in *Nwadike v. Ibekwe* (1987) 2 NSCC 1219 at 1235 pronounced that it is a recognised fact that the line of distinction between law simpliciter and mixed law and fact is a very thin one. But one does not convert a ground of mixed law and fact into a ground of law by branding it 'error of law' or 'misdirection in law'. Grounds of Appeal and particulars attending to them must be carefully read together to arrive at a decision. It is an error of law if the adjudicating tribunal took into account some wrong criteria in reaching its conclusion. And where a ground deals merely with a matter of inference, even if it be inference of fact, a ground framed from such is one of law. Where a tribunal states the law in a point wrongly, it commits an error in law. Lastly, where the complaint is that there was no evidence or no admissible evidence upon which a finding or decision was based; same is regarded as a ground of law. (p. 1732 H)

ACTIONS - Declaratory reliefs - Need to prove

3. I need to state it clearly at this point that since the appellant claimed seven (7) declaratory reliefs, the law places a legal burden on him to establish his claim. His three (3) injunctive reliefs are predicted on the success of the declaratory reliefs. To that extent, they are consequential reliefs. In *Dumez Nig. Ltd. v. Nwakhoba (2008) 18 NWLR (pt. 119) 361 at 373-374* this court pronounced with force that the burden of Proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence. (p. 1735 A)

D Elections - Political parties - Nomination of candidates

4. Let me state it right away that matters relating to nomination of the candidate of a political party are regarded as domestic affairs and are generally treated as not justiceable. This has been so for quite some time now. The courts have no power to compel a political party to sponsor a candidate outside the thin and limited powers conferred under section 87 of the Electoral Act, 2010 (as amended). (p. 1735 D)

F Elections - Nomination of candidates - Jurisdiction of court

5. The jurisdiction of the court relates to whether complaints in respect of primary election for nomination of a candidate were conducted in line with the provisions of the Electoral Act, 2010 (as amended), the party constitution and the party guidelines. (p. 1735 F)

ELECTIONS - Political party's primary - Failure to participate

6. For a clear view and resolution of the central issue, I shall start with the applicable law on the point. I wish to reproduce section 87(4) (b) and (9) of the Electoral Act 2010 (as amended).

From the above, it occurs to me that for a complaint to come within the narrow compass of the above provision of the law and be cognisable by a court, the aspirant must show

clearly and without any equivocation that the National Executive Committee of the political party conducted a primary election in which he was an aspirant and that the primary election was conducted in breach of specified provisions of the Electoral Act/Election Guidelines. Put in another way, the law provides that a candidate with the highest votes cast at a primary election organised by the National Executive Committee of the 1st respondent to the knowledge of the 3rd respondent can approach the court for redress if he is excluded by the party. The appellant herein, as extant in the record of appeal and admitted by him, did not take part in the primary election authorised and organised by the National Working Committee of the 1st respondent. The appellant who relied on an unauthorised Primary conducted by the State Executive Committee after unlawfully and unilaterally modifying the party guidelines - Exhibit 7 missed the road. Since he did not take part in the valid primary election, to my mind, he had no competent cause of action to activate the jurisdiction of the trial court. The appellant had no vires to initiate the action. The case was not initiated with due process of the law and upon fulfilment of a condition precedent to the exercise of jurisdiction. (p. 1735 G)

Elections - Political party's constitution - Binding nature

7. I now move to the employment of the 1st respondent's guidelines which the appellant tendered as Exhibit 7 ostensibly to prop his case. All the parties referred to and relied on it. At the beginning of this exercise, I quoted above the questions sought for determination by the appellant and his declaratory and injunctive reliefs. From the first question for determination by the appellant and his first declaratory relief, the Originating Summons rests on the claim that the appellant was 'screened, cleared and duly elected' at a primary election conducted by the State Executive Committee of the 1st respondent for the Abia State governorship election 2011. The Abia State Executive Committee maintained that it 'modified' the Electoral Guidelines of the 1st respondent under the 'powers expressly vested' on it and 'faithfully complied' with it in nomi-

ating the appellant. The State Executive Committee did not state where it derived the power to modify Exhibit 7 and what was exactly modified. No provision of Exhibit 7 gives the State chapter of the 1st respondent the competence to set up a Gubernatorial Screening Committee. The appellant is bound by the 1st respondent's Constitution and Guidelines. He cannot circumvent any of them to his own benefit. The appellant must stand or fall by article 16 (f) of Exhibit 7 tendered by him which provides that 'only aspirant cleared by the Gubernatorial Screening Committee or whose appeal the Gubernatorial Screening Appeal Panel has upheld shall be qualified to participate in the primary election.' The appellant was not cleared and as such, he did not participate in the valid Primary authorised and organised by the National Executive Committee of the 1st respondent. (p. 1737 A)

Actions - Inconsistency - Need to avoid

8. The appellant maintained that the guidelines of the 1st respondent in Exhibit 7 was complied with in his own selection as set out in his Originating Summons but was breached in the selection of 4th respondent. He turned round in his reply on points of law to claim that Exhibit 7 is unconstitutional. I need to state it clearly that the stance replicates inconsistency. This court has stated it in clear terms that a party should be consistent in stating his case and consistent in proving it. Justice is more than a game of hide and seeks. It will never decree anything in favour of so slippery a customer as the appellant. (p. 1737 G)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Leave must be sought to raise new issue on appeal

H The Appellant is saying that the 4th Respondent who was dragged to contest the 26th April, 2011 election under the platform of the 1st Respondent was not a member of that party and therefore was not qualified to contest that election by virtue of paragraph (c) of Sub-section (1) of Section 177 of the 1999 Constitution. It is quite plain

from the record of this appeal that this complaint of the Appellant was not placed by the Appellant before the trial Court for determination nor was this issue raised by him in the grounds of appeal and issues for determination at the Court below. This issue of qualification is therefore being raised for the first time in this Court without leave of the Court below or this Court. I am afraid the Appellant cannot be allowed to do so because the law is trite that where leave is required to appeal or raise new issue on appeal, it is a condition precedent to the exercise of jurisdiction. (p. 1740 E) B

RHODES-VIVOUR JSC

2. Pleadings – Binding nature of

I have examined the claims of the appellant which are well laid out in the leading judgment, and I fail to see where this issue is even remotely referred to. If pleadings are to be of any use parties must be held bound by them. Courts are bound by pleadings and not on the whims and fancies of counsel or what they imagine or speculate. The Law is applied to pleaded facts and the issue between the parties resolved. Courts do not concern themselves with issues not before them. The issue of the 4th respondents' membership of the PDP would not be considered in the absence of a pleading to support it (i.e. it was not raised in the affidavit in support of the originating process). It remains a non issue. (p. 1748 A) C

REPRESENTATION

Chief U.N. Udechukwu, SAN with Emeka Ngige, SAN; Abiodun Owonikoko, SAN; N. Uchendu; F. Okonkwo; O. O. Adeleye; A. Pitan; T. Olaiya (Mrs.) O. Manduka (Miss) Chisom Udechukwu (Miss); Dr. Soni Ajala and I. Uche), for the Appellant
Chief O. Oke, SAN with A. O. Ajana; O. Akuyibo and M. Kilani (Miss) Ahmed Raji with A. Mande; Z. Gamba; O. Durasaro and A. Bud (Miss), Dr. Livy Uzoukwu, SAN with Valentine Offia, Esq., for the Respondents F

CASES REFERRED TO

Ajide v. Kelani (1955) 3 MLR (Pt. 12) 248

Onuoha v. Okafor (1983) 2 SC NLR 244

Ehinlanwo v. Oke (2008) 16 NWLR (Pt. 1113) 13 H

- Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587
 O' Kelly v. Trust House Forte Plc (1983) 3 All ER 468
 Alaeto v. Nwapi (2007) All FWLR (pt. 375) 591
 Adesanya v. President FRN (2001) FWLR (Pt. 46) 869
 Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669
 B Benmax v. Austin Motor Co. Ltd. (1945) All ER 326
 Dalhatu. v. Turaki (2003) 15 NWLR (Pt.843) 310
 Ojah v. Ogboni (1996) 6 NWLR (pt.454) 272
 Alakija v. Abdullahi (1998) 6 NWLR (pt.552) 1
 Ogbu v. Wokoma (2005) 14 NWLR (Pt. 944) 118
 C Ikweki v. Ebele (2005) 11 NWLR (Pt.936) 397
 Abiola v. Olawoye (2006) 12 NWLR (Pt.996) 1

STATUTES REFERRED TO

- D Electoral Act 2010 (as amended), ss. 33, 85, 86, 87
 Constitution of Federal Republic of Nigeria 1999, ss. 177(1)(c), 221, 222, 223
 Supreme Court Rules, O. 2 r. 9

LEAD JUDGMENT BY FABIYI JSC

- This is an appeal against the judgment of the Court of Appeal, Abuja Division ("the court below" for short) delivered on 2nd November, 2011 wherein it dismissed the appellant's appeal against the judgment of the Federal High Court (the trial court) delivered by F Kolawole, J. on 28th February, 2011.

- The appellant as plaintiff at the trial court filed his Originating Summons on 28/01/2011 against the respondents as defendants thereat. He set out five (5) questions or issues for determination which G I deliberately reproduce for ease of reference below. They read as follows:-

- H "(1) *WHETHER having regard to Sections 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) it is unlawful for the 1st defendant to refuse to submit to the 3rd defendant the name of the plaintiff who was screened cleared and duly elected by majority of lawful votes cast by accredited delegates at the primary election held by the Abia State Congress of People's Democratic Party on 10th January, 2011, to elect the Abia State Gubernatorial candi-*

date of the party for the 2011 general election, which primary was conducted by the State Executive Committee of the Party recognised by the INEC and confirmed upon prior enquiry from its official records.

(2) *WHETHER* having regard to the combined effect of Sections 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria, 1999 and Section 87 (1), (4) and (6) of the Electoral Act, 2010 which, among the other things guarantee, recognise and prescribe the mode of conducting party primaries only on democratic principles or basis, and which enjoins parties to submit to the Independent National Electoral Commission (INEC) the name of the candidate who emerged winner at State Congress of the party, the 1st and 2nd defendants have power to disqualify or reject plaintiff candidature which was the choice of the delegates at the State Congress, and adopt instead by arbitrary fiat, the 4th defendant as the candidate of the 1st defendant for the office of Governor of Abia State in the 2011 General Election. B
C
D

(3) *WHETHER* having regard to Section 87(6) of the Electoral Act, 2010 (as amended) the 1st defendant is not bound to submit to the 3rd defendant the name of 1st plaintiff as the 1st defendant's Gubernatorial candidate for Abia State in the 2011 general election, being the only aspirant of the 1st defendant who Presented himself for primary election and was confirmed by the accredited delegates with overwhelming majority votes at the State Congress of 1st defendant held on 10th January, 2011. E
F

(4) *WHETHER* in view of Section 33 and 87(6) of the Electoral Act, 2010 (as amended), and having acquired vested interest in the party ticket as the duly elected Gubernatorial candidate of 1st defendant in the primary election of the 1st defendant, conducted at the Abia State Party Congress held on 10th January, 2011, the Plaintiff's candidature can be rejected, disregarded, revoked, reversed, annulled, re-assigned to, or be substituted with 4th defendant, or any other person when plaintiff being still alive, has not withdrawn his candidature to contest on the platform of the 1st defendant at the general election. G
H

(5) *If question 4 is answered in the NEGATIVE, WHETHER* and having regard to Section 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the plaintiff, in the eye of

the law, is the candidate of the 1st defendant, entitled to all the benefits of his candidature as flag bearer of the 1st defendant, eligible to contest and be voted for on the platform of the 1st defendant in respect of the office of Governor of Abia State at the 2011 general election, in the event that 1st, 2nd and 3rd defendants conspire, fail, B refuse or neglect to take all necessary steps required under the Electoral Act, 2010 (as amended) to ensure that plaintiff's name is duly submitted, published before the date of the election and placed on the ballot for use in the conduct of the Abia State Gubernatorial election in 2011."

C Based on the answers to the questions posed, the appellant as plaintiff at the trial court prayed for seven (7) fairly repetitive reliefs and three (3) injunctive remedies. It is also apt to set them out below for a proper appreciation of the real issues in contention in this appeal. They read as follows:-

D *"(1) A DECLARATION that by virtue Sections 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 is bound to submit to 3rd defendant the name of plaintiff E who was screened, cleared and duly elected by majority of lawful votes cast by accredited delegates at the Primary election or congress of the Abia State chapter of the Peoples Democratic Party (PDP) held on 10th January, 2011, to elect the Abia State Gubernatorial candidate of the party in the 2011 general elections which primary was F conducted by the State Executive Committee of the party recognised by the INEC and confirmed upon prior enquiry from its official records.*

(2) A DECLARATION that by the combined effect of Sections G 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria, 1999 and Section 87(1), (4) and (6) of the Electoral Act, 2010 which, among other things guarantee, recognise and prescribe the mode of conducting party primaries only on democratic principles or basis, and enjoins parties to submit to the Independent National H tional Electoral Commission (INEC) the name of Candidate who emerged winner at State Congress of the party, the 1st and 2nd defendants have NO Power to disqualify or reject plaintiff being the choice of the delegates at the Abia State Congress.

(3) A DECLARATION that the 1st and 2nd defendants cannot

by arbitrary fiat or through any illegal method adopt the 4th defendant or any other person other than the plaintiff as the candidate of the 1st defendant for the gubernatorial election in Abia State in the 2011 General Elections.

(4) A DECLARATION that by virtue of Section 87(6) of the Electoral Act, 2010 (as amended) the 1st defendant is duly bound to submit to the 3rd defendant the name of plaintiff as the 1st defendant's Gubernatorial candidate for Abia State in the 2011 general election, being the only aspirant of the 1st defendant who presented himself for primary election and was confirmed by the accredited delegates with overwhelming majority votes at the State Congress of 1st defendant held on 10th January, 2011 organised by the Abia State Executive Committee of the 1st defendant.

(5) A DECLARATION that in view of Sections 33 and 87(6) of the Electoral Act, 2010 (as amended), and having acquired vested interest in the party ticket as the duly elected Gubernatorial candidate of 1st defendant in the primary election of the 1st defendant, conducted at the Abia State Party Congress held on 10th January, 2011, the plaintiff's candidature CANNOT be rejected, disregarded, revoked, reversed, annulled, re-assigned to, or be substituted with 4th defendant or any other person, when plaintiff is still alive, and has not withdrawn his candidature to contest on the platform of the 1st defendant in the general election.

(6) A DECLARATION that by virtue of Section 221 of the constitution of the Federal Republic of Nigeria, 1999 (as amended), the plaintiff, in the eyes of the law, is the candidate of the 1st defendant entitled to all the benefits of his candidature as flag bearer of the 1st defendant, eligible to contest and be voted for on the Platform of the 1st defendant in respect of the Office of Governor of Abia State at the 2011 general election.

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

(8) AN ORDER OF PERPETUAL INJUNCTION restraining the

1st and 2nd defendants, their servants, agents and or privies from recognizing, or submitting to 3rd defendant the name of any person other than that of plaintiff and his nominated running mate in person of Dr. Chukwuemeka C. Okwuonu as candidate (sic) of 1st defendant for the office (sic) of Governor and Deputy Governor of Abia State respectively at the 2011 general election.

(9) AN ORDER OF PROHIBITORY INJUNCTION restraining the 3rd defendant, its agents, servants or privies from accepting and giving recognition to any other candidates, other than the Plaintiff and his nominated running mate in person of Dr. Chukwuemeka C. Okwuonu as Gubernatorial and Deputy Gubernatorial candidates of the 1st defendant at the 2011 general election into the office of the Governor of Abia State.

(10) AN ORDER OF MANDATORY INJUNCTION compelling the 3rd defendant to provide for and place on the ballot paper to be used for the Gubernatorial election in Abia State at the 2011 general election, the name of plaintiff and that of his nominated running (sic) Dr. Chukwuemeka C. Okwuonu as the Gubernatorial and Deputy Gubernatorial candidates of 1st defendant, in the event that 1st defendant fail or neglect to so submit the aforesaid names as its candidates for the offices.

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

In its real essence, the appellant, as plaintiff at the trial court desired that he be declared as the governorship candidate of the 1st respondent for Abia State in the April, 2011 general election. The trial court after a proper consideration of the facts, guidelines and the applicable laws dismissed the claim and upheld the nomination of the 4th respondent as the governorship candidate of the 1st respondent for Abia State. The appellant appealed to the court below which dismissed the appeal on 2nd November, 2011 and affirmed the judgment of the trial court. The appellant felt unhappy with the stance posed by the court below and has decided to further appeal to this court.

On behalf of the 1st and 2nd respondents, a Notice of preliminary objection was filed on 22nd February, 2011 pursuant to Order 2, Rule 9 of the Supreme Court Rules and under the inherent juris-

diction of this court. The stated respondents desire to raise and rely on preliminary objection on points of law to urge this court to strike out this appeal on the ground that same is incompetent and that the courts lack the jurisdiction to entertain the dispute raised in the Originating Summons. The Particulars of objection are as follows:-

“1. Dispute as to which of two parallel elections is valid is outside the provision of section 87(9) of the Electoral Act and therefore not justiceable.

2. Being appeal on grounds of fact and mixed law and facts, appellant’s failure to seek and obtain the leave of this Honourable court or that of the lower court renders the appeal incompetent and liable to dismissal.”

On 28th February, 2012 when the appeal was heard, learned counsel for the 1st and 2nd respondents and senior counsel for the appellants made further oral submissions in respect of the preliminary objection. Senior counsel for the 4th respondent withdrew the Notice of Preliminary Objection filed by him on 23/02/2012 and same was struck out. Arguing particular 1 of the preliminary objection, Chief Oke observed that save and except as may be covered by the provision of section 87(9) of the Electoral Act, 2010 (as amended) matters relating to nomination of the candidate of a political party are regarded as domestic affairs and thus not justiceable. He cited the cases of Onuoha v. Okafor (1983) 2 SCNLR 244; Ehinlanwo v. Oke (2008) 16 NWLR (pt. 1113) 13. He felt that a careful consideration of the above stated section 87(9) of the Electoral Act, 2010 will reveal that it is not intended to provide an endless or unlimited access to court by aggrieved aspirant or party member. He submitted that the section only avails an aspirant who complains that a political party fails to comply with its guidelines or the Electoral Act in nominating or selecting its candidate for a particular election. He submitted that for a complaint to come within the narrow compass of the above provision the aspirant must show that the particular political party (1) conducted a primary election in which he was an aspirant and (2) the primary election was conducted in breach of specified provisions of the Electoral Guidelines/Electoral Act.

Learned counsel submitted that since there were two primaries, a claim based on same cannot find support from section 87(9) of the Electoral Act, 2010. He cited the case of Lado & Ors. v. C.P.C.

& Ors. (2011) 12 SC (Pt. 111) 113. He felt that the reliefs sought in the Originating Summons cannot be countenanced by the court. On behalf of the appellant, senior counsel contended that the appellant is not raising issue of double primaries and that Lado's case is distinguishable. ***There is no atom of doubt in my mind that a dispute has arisen between the appellant and the 4th respondent as to who is the candidate of the 1st respondent for the April 2011 Gubernatorial Election. The court should not decline jurisdiction brevi manu. To do so may engender the employment of force of arms by the contending parties. A trial court (and nay an appellate court) has a duty to suo motu deal with issue regarding whether or not it has jurisdiction to entertain a matter before it.*** See: Alaeto v. Nwapi (2007) All FWLR (pt. 375) 591; Adesanya v. President FRN (2001) FWLR (Pt. 46) 869; (1981) 1 All NLR 1; Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669. ***In short, the court is imbued with due jurisdiction to pronounce on the dispute presented by the parties herein.***

On behalf of the 1st and 2nd respondents, it was also contended that the appeal being on grounds of facts and mixed law and facts, appellant's failure to seek and obtain the leave of this court or that of the court below renders the appeal incompetent and liable to dismissal. Learned counsel referred to section 233(3) of the Constitution of the Federal Republic of Nigeria 1999. He submitted that a calm examination of the eight (8) grounds of appeal will reveal that they are either of pure facts or of mixed law and facts for which leave should be sought and obtained. He cited the case of Opuleyo & 2 Ors v. Omoniwari & Anor (2007) 6 SC 35.

Senior counsel for the appellant had a contrary view as he maintained that all the eight (8) grounds of appeal relate to law. He cited Ogbechie & Ors. v. Onochie & Ors (1956) 3 SC 45 at 58, Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 718). Senior counsel observed that ground 1 complains that the court below failed to resolve issues properly raised which is a ground of law while ground 2 complains above reaching wrong conclusion on uncontested facts. Grounds 3 and 4 touch on erroneous conclusion of law in respect of Exhibit '7' while ground 5 complains of failure to resolve a specific question raised. Ground 6, according to senior counsel, complain of the court below acting in excess or outside jurisdiction. Ground 7

complains of erroneous conclusion based on Exhibit 12 while ground 8 also alludes to erroneous conclusion touching on law. Senior counsel submitted that a ground of appeal involves a question of law alone when the complaint of the appellant in that ground can be dealt with without resort to determination of any question of fact when facts are agreed or admitted or when determination of the ground is not dependent on any fact to be proved. He cited the case of *Medical & Dental Practitioners Disciplinary Tribunal v. Okonkwo* (2001) 7 NWLR (Pt. 711) 206 at 232. B

It is pertinent to reproduce the eight (8) Grounds of Appeal without their particulars here below for a clear view of same. They read as follows:- C

GROUND ONE:

The Court of Appeal misdirected itself in law when in resolving the single issue upon which it decided the appeal it affirmed the decision of the trial court upholding the nomination of the 4th respondent as candidate of the 1st respondent for the 2011 Governorship Election in Abia State, without resolving vital issues raised by the appellant. D

GROUND TWO:

The Court of Appeal misdirected itself in law when it held in effect that the appeal of the appellant failed because the appellant did not participate in the screening and primary election conducted by the Gubernatorial Election Panel constituted by the National Executive Committee of the 1st respondent. F

GROUND THREE:

The learned Justices of the Court of Appeal erred in law and thereby came to a wrong conclusion adverse to the appellant at pages 38-39 of the cyclo-styled judgment when they held thus:- G

"...since the appellant has tendered Exhibit 7 which the 1st and 2nd defendants exhibited as PDP6, he is bound by the document and he cannot dissociate himself from it ..."

And in so holding placed reliance on *Attorney-General Enugu State v. AVOP Plc* (1995) 6 NWLR (Pt. 399). H

GROUND FOUR:

The Court of Appeal misdirected itself in law when it held that since the appellant tendered Exhibit 7, he is bound by it and cannot argue that any provision therein is invalid.

GROUND FIVE:

The learned justices of the Court of Appeal misdirected themselves in law and thereby occasioned a miscarriage of justice when they failed and or omitted to determine the appellant's issue No. 6 which was formulated from grounds 12 and 13 of the appeal before them wherein the appellant sought determination of the question whether -

"...the learned trial Judge did not occasion a miscarriage of justice in failing to pronounce on the plaintiff's objection to the competence of the further counter affidavit and further counter affidavit and Exhibits GG8 and PDP12 attached thereto, filed by the 1st, 2nd and 4th defendants without leave of court which were relied upon to arrive at the decision."

GROUND SIX:

The Court of Appeal erred in law and acted outside of the limited jurisdiction conferred on it in pre-election matters under section 87(9) of the Electoral Act, 2010 (as amended) when it cognised and made part of the basis of its decision, the alleged non-clearance of the appellant by the Screening Committee of the 1st respondent in resolving the question of whether the appellant or the 4th respondent was the winner of the Abia State gubernatorial primary election of the 1st respondent held on 10th January, 2011.

GROUND SEVEN:

The Court of Appeal misdirected itself in law when it held that Exhibit PDP 12, an enrolled order of judgment in a suit of which the appellant was not a party, was properly received by the trial court and treated as a validation of the purported Executive Committee of Abia State chapter of the 1st respondent elected on 6/12/2010 which produced the 4th respondent.

GROUND EIGHT:

The Court of Appeal misdirected itself when it held that the Abia State Executive Committee which produced the appellant was dissolved by the National Executive Committee of the 1st respondent on the 2nd August, 2010 and as such have no legal status when it purportedly returned the appellant.

This court in Nwadike v. Ibekwe (1987) 2 NSCC 1219 at 1235 pronounced that it is a recognised fact that the line of distinction between law simpliciter and mixed law and fact is

a very thin one. But one does not convert a ground of mixed law and fact into a ground of law by branding it ‘error of law’ or ‘misdirection in law’. Grounds of Appeal and particulars attending to them must be carefully read together to arrive at a decision. It is an error of law if the adjudicating tribunal took into account some wrong criteria in reaching its conclusion. B
O’ Kelly v. Trust House Forte Plc (1983) 3 All ER 468. **And where a ground deals merely with a matter of inference, even if it be inference of fact, a ground framed from such is one of law.** Benmax v. Austin Motor Co. Ltd. (1945) All ER 326. **Where a tribunal states the law in a point wrongly, it commits an error in law. Lastly, where the complaint is that there was no evidence or no admissible evidence upon which a finding or decision was based; same is regarded as a ground of law.** C

I tend to agree with the senior counsel for the appellant that the grounds of appeal drafted in a crafty manner relate to law as variously pinpointed in his submissions earlier depicted above. The preliminary objection is overruled. The appeal is competent and shall be decided on its merit anon. On behalf of the appellant, six (6) issues were formulated for determination. They read as follows:- D E

(1) Whether the Court of Appeal was justified in affirming the decision of the court of first instance and holding that the 4th defendant and not the appellant was the duly elected gubernatorial candidate of the Peoples Democratic Party to contest the 2011 general election (Ground 1). F

(2) Whether the Court of Appeal was justified in dismissing the appellant’s appeal on the ground that the appellant did not participate in the screening and primary election conducted by the gubernatorial electoral panel constituted by the National Executive Committee of the 1st respondent (Grounds 2 and 6). G

(3) Whether the Court of Appeal was justified in its conclusion that because the appellant tendered Exhibit 7 (the Electoral Guidelines for primary elections 2010 of the Peoples Democratic Party), the appellant cannot argue that paragraph 16 (f) of the said guidelines is contrary to the PDP Constitution or the Electoral Act 2011 (sic) and the constitution of the Federal Republic of Nigeria, 1999 (Grounds 3 and 4). H

(4) Whether the Court of Appeal was correct when it held that

Exhibit PDP 12 was properly received in evidence by the trial court against the interest of the appellant and used to validate the executive of Abia state chapter of the 1st respondent purportedly elected on the 6th of December, 2010 for the purpose of electing the 4th defendant (Ground 7).

B (5) Whether the Court of Appeal was correct when it held that the Abia State Executive committee which organised the primary to elect the appellant was dissolved by the National Executive committee of the 1st respondent on the 2nd day of August, 2010 and as such had no legal status when it purportedly elected the appellant C (Ground 8)

(6) Whether the Court of Appeal was justified in the use it made of the 4th appellant's further affidavit and Exhibit GG8 attached to it and 1st and 2nd defendants' further - further counter D affidavit and Exhibit PDP12 attached to it without deciding the issues raised by the appellant concerning them (Ground 5).

Learned counsel for the 1st and 2nd respondents felt that the above six issues formulated by the appellant amount to hair-splitting or proliferation. He submitted a lone central issue for determination.

E It reads as follows:-

"Whether the Court of Appeal was not justified in affirming the decision of the court of 1st instance and holding that the 4th respondent and not the appellant was the duly nominated gubernatorial candidate of the Peoples Democratic Party (1st respondent) for the 2011 governorship election in Abia State."

F On behalf of the 3rd respondent (INEC) one issue which does not appear to have direct bearing with any of the grounds of appeal was formulated for determination. It is basic that an issue should be based on a ground or grounds of appeal. The issue which can hardly G be countenanced reads as follows:-

"In the determination of the candidate for a political party, whether the 3rd respondent ought to deal with the National Executive Committee of the Party or the State Executive Committee."

H On behalf of the 4th respondent, the sole issue distilled from the eight grounds of appeal for determination reads as follows:-

"Whether the Court of Appeal was not right when it dismissed the appellant's appeal and affirmed the decision of the trial court that the nomination of the 4th respondent as the candidate of the 1st

respondent for the 2011 Abia State Governorship election was proper.”

I need to state it clearly at this point that since the appellant claimed seven (7) declaratory reliefs, the law places a legal burden on him to establish his claim. His three (3) injunctive reliefs are predicted on the success of the declaratory reliefs. To that extent, they are consequential reliefs. In Dumez Nig. Ltd. v. Nwakhoba (2008) 18 NWLR (pt. 119) 361 at 373-374 this court pronounced with force that the burden of Proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence.

The core or central issue in this appeal relates to the due resolution of the serious hegemony between the appellant and the 4th respondent as to who is the right candidate of the 1st respondent for the governorship election of April, 2011 in Abia State of Nigeria.

Let me state it right away that matters relating to nomination of the candidate of a political party are regarded as domestic affairs and are generally treated as not justiceable. This has been so for quite some time now. See: Onuoha v. Okafor (1983) 2 SC NLR 244; Ehinlanwo v. Oke (2008) 16 NWLR (Pt. 1113) 13. The courts have no power to compel a political party to sponsor a candidate outside the thin and limited powers conferred under section 87 of the Electoral Act, 2010 (as amended). The jurisdiction of the court relates to whether complaints in respect of primary election for nomination of a candidate were conducted in line with the provisions of the Electoral Act, 2010 (as amended), the party constitution and the party guidelines.

For a clear view and resolution of the central issue, I shall start with the applicable law on the point. I wish to reproduce section 87(4)(b) and (9) of the Electoral Act 2010 (as amended).

“Section 87(4) (b) - In the case of nominations to the Position of governorship candidate, a political party shall, where they (sic) intend to sponsor a candidate:-

(i) *Hold a special congress in the State Capital with delegate voting for each aspirant at the congress to be held on a specify (sic) date appointed by the National Executive Committee (NEC) of the party.*

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

C (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 D of a State or FCT for redress."*

From the above, it occurs to me that for a complaint to come within the narrow compass of the above provision of the law and be cognisable by a court, the aspirant must show clearly and without any equivocation that the National Executive Committee of the political party conducted a primary election in which he was an aspirant and that the primary election was conducted in breach of specified provisions of the Electoral Act/Election Guidelines. Put in another way, the law provides that a candidate with the highest votes cast at a primary election organised by the National Executive Committee of the 1st respondent to the knowledge of the 3rd respondent can approach the court for redress if he is excluded by the party. The appellant herein, as extant in the record of appeal and admitted by him, did not take part in the primary election authorised and organised by the National Working Committee of the 1st respondent. The appellant who relied on an unauthorised Primary conducted by the State Executive Committee after unlawfully and unilaterally modifying the party guidelines - Exhibit 7 missed the road. Since he did not take part in the valid primary election, to my mind, he had no competent cause of action to activate the jurisdiction of the trial court. The appellant had no vires to initiate the action. The case was not initiated with due process of the law and upon fulfilment of

a condition precedent to the exercise of jurisdiction. See: Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587; (1962) 2 SCNLR 341. A'fortiori, the court lacks jurisdiction.

I now move to the employment of the 1st respondent's guidelines which the appellant tendered as Exhibit 7 ostensibly to prop his case. All the parties referred to and relied on it. At the beginning of this exercise, I quoted above the questions sought for determination by the appellant and his declaratory and injunctive reliefs. From the first question for determination by the appellant and his first declaratory relief, the Originating Summons rests on the claim that the appellant was 'screened, cleared and duly elected' at a primary election conducted by the State Executive Committee of the 1st respondent for the Abia State governorship election 2011. The Abia State Executive Committee maintained that it 'modified' the Electoral Guidelines of the 1st respondent under the 'powers expressly vested' on it and 'faithfully complied' with it in nominating the appellant. The State Executive Committee did not state where it derived the power to modify Exhibit 7 and what was exactly modified. No provision of Exhibit 7 gives the State chapter of the 1st respondent the competence to set up a Gubernatorial Screening Committee. The appellant is bound by the 1st respondent's Constitution and Guidelines. He cannot circumvent any of them to his own benefit. The appellant must stand or fall by article 16 (f) of Exhibit 7 tendered by him which provides that 'only aspirant cleared by the Gubernatorial Screening Committee or whose appeal the Gubernatorial Screening Appeal Panel has upheld shall be qualified to participate in the primary election.' The appellant was not cleared and as such, he did not participate in the valid Primary authorised and organised by the National Executive Committee of the 1st respondent.

The appellant maintained that the guidelines of the 1st respondent in Exhibit 7 was complied with in his own selection as set out in his Originating Summons but was breached in the selection of 4th respondent. He turned round in his reply on points of law to claim that Exhibit 7 is unconstitutional. I need to state it clearly that the stance replicates inconsis-

ency. This court has stated it in clear terms that a party should be consistent in stating his case and consistent in proving it. Justice is more than a game of hide and seeks. It will never decree anything in favour of so slippery a customer as the appellant. See: *Ajide v. Kelani* (1955) 3 MLR (Pt. 12) 248 at 269 C-

B D. It is extant in the record of appeal that the 4th respondent was duly screened by the Gubernatorial Screening Panel set up by the 1st respondent's National Executive committee. He was cleared to contest the valid primary election organised by the 1st respondent. He won and his name was sent to the 3rd respondent as the 1st respondent's candidate for the Governorship Election of April, 2011.

C The appellant realized the futility of his action. He appreciated that he had no chance in respect of his claims touching on declaratory reliefs. He jettisoned the real issue and attempted to hang on a D straw; as it were. He tried to cling tenaciously to the point relating to the membership of the 4th respondent. The claim of the appellant as set out in the originating Summons and reproduced above did not raise any question about the membership of the 4th respondent. No question for determination touched on it. There was no declaratory E relief in that respect. Again, it should be stated that there should be consistency in prosecuting a case by a party. See: *Kalu v. Uzor* (2006) 8 NWLR (Pt. 981) 66 at 87. The point relating to membership of the 4th respondent was raked up and unduly elevated on appeal. Even F if it were to be found that the 4th respondent's membership was faulty, it will still not validate the appellant's nomination by an unauthorised State Executive Committee which 'modified' Exhibit 7 the 1st respondent's Electoral Guidelines without due vires.

G The court below did a nice job by affirming the stance taken by the trial court. The concurrent findings of the two courts below are not in any respect perverse. The findings have support in law and evidence. I shall not interfere with same. See: *Ojah v. Ogboni* (1996) 6 NWLR (Pt. 454) 272; *Ogbu v. Wokoma* (2005) 14 NWLR (pt. 944) 118 at 140; *Kale v. Coker* (1982) 12 SC 252, *Seven-Up Bottling Co. v. Adewale* (2004) 4 NWLR (Pt. 8962) 183. I resolve the H core or central issue against the appellant. At this point, I am done.

The appeal has no chance of success; as it rests on a sinking sand right from its inception. The appeal is hereby dismissed with N50,000.00 costs to each respondent.

MOHAMMED JSC

I have been privileged before today to read in draft the leading judgment of learned brother Fabiyi JSC which he has just delivered. I am completely with him in the reasoning and the conclusion he arrived at in dismissing this appeal. B

Considering the nature of the dispute that the Appellant as the Plaintiff took to the trial Federal High Court for resolution, the judgment of the trial Court which was affirmed on appeal in the judgment of the Court of Appeal now on further appeal to this Court, the only issue for determination is whether the Court of Appeal was right in dismissing the Appellant's appeal and affirming the judgment of the trial Court. The case of the Appellant at the trial Court, the Court of Appeal and in this Court is that he was screened, cleared contested the primaries conducted by the Abia Executive Committee of the 1st Respondent P.D.P. and emerged as the candidate for the 1st Respondent in the Governorship Election conducted in Abia State in the April 2011 election. However what the Appellant failed to realize is the fact that the primaries of the 1st Respondent conducted by the Abia State Executive committee of the party, is not recognised by the Electoral Act 2010 which by Section 87(4) of the Act, vests that power on the National Executive Committee (N.E.C.) of the party. The relevant provisions of Section 87 of the Act read:- C D E

"87(1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions..." F

(4) A political party that adopts the system of indirect Primaries for the choice of its candidates shall adopt the procedure outlined

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

(i) hold special congress in the State Capital with delegate voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party." H

The question to be answered from these clear provisions of the law is whether the Appellant who claimed to have emerged as the duly elected candidate of the 1st Respondent from the primaries

conducted by the Abia State Executive committee of the 1st Respondent can be regarded under the law as the properly elected candidate of the 1st Respondent for the April, 2011 election in Abia State. The answer is definitely in the negative because the Appellant was a product of a candidate who emerged from primaries conducted by a body
 B that was not empowered under the law to conduct the election. Even from that angle alone, it is not difficult to see that the Court below was on very strong ground in dismissing the Appellants appeal. The Appellant had also through his learned senior Counsel in the Appel-
 C lant's brief of argument and oral submission seemed to have placed very heavy reliance on the provisions of Section 177(1)(c) of the 1999 Constitution which states:- *"177(1) A person shall be qualified for election to the office of Governor of a State if:-*

- (a) *he is a citizen of Nigeria;*
- D (b) *he has attained the age of thirty-five years*
- (c) *he is a member of a Political Party and is sponsored by that political party and*
- (d) *he has been educated up to at least School Certificate level or its equivalent."*

E The Appellant is saying that the 4th Respondent who was dragged to contest the 26th April, 2011 election under the platform of the 1st Respondent was not a member of that party and therefore was not qualified to contest that election by virtue of paragraph (c) of
 F Sub-section (1) of Section 177 of the 1999 Constitution. It is quite plain from the record of this appeal that this complaint of the Appel-
 G lant was not placed by the Appellant before the trial Court for determination nor was this issue raised by him in the grounds of appeal and issues for determination at the Court below. This issue of qualifi-
 cation is therefore being raised for the first time in this Court without leave of the Court below or this Court. I am afraid the Appellant cannot be allowed to do so because the law is trite that where leave is
 H v. N.N.P.C. (1991) 8 N.W.L.R. (Pt. 212) 652. In any case even if the issue were properly raised, the Appellant who is alleging that the 4th Respondent was not qualified under the Constitution to contest the election, has the burden of proving that allegation in order to succeed in his claim against the Defendants/Respondents. The burden

of proof in this respect does not lie with the 4th Respondent who contested the election or the 1st Respondent, the political party that sponsored him for the election.

Finally, since the nature of the dispute between the parties in this appeal is essentially surrounded by questions of facts upon which there are concurrent decisions of the two Courts below, whether or not this Court can interfere with those decisions depends entirely if the decisions were perverse or not supported by evidence or that there was substantial error manifest in the proceedings resulting in miscarriage of justice. See *Ojah v. Ogboni* (1996) 6 N.W.L.R. (pt.454) 272; *Alakija v. Abdullahi* (1998) 6 N.W.L.R. (pt.552) 1 and *Ogbu v. Wokoma* (2005) 14 N.W.L.R. (Pt. 944) 118 at 140. As none of the conditions for interference have been put forward and establishment by the Appellant in this appeal, the appeal must fail.

Accordingly, I also dismiss the appeal and abide by the orders made in the leading judgment including the order on costs.

CHUKWUMA-ENEH JSC

This appeal, in my opinion, has raised a pervading question which has lately featured in most election matters of this nature in this court. It has emanated from a clear attempt to drag the court into the arena of deciding on a political question consisting of the choice of a candidate of a political party (as the 1st respondent) for an elective office (as in this matter, the governorship position for Abia State under 1999 constitution). In most cases as the instant one an aspirant would allege the violation of the party's internal rules, guidelines and constitution and even the spirit and letter of the Electoral Act 2010 (as amended) in the selection, nomination and adoption of candidates for elective offices. The court so far has rightly resisted being so dragged into the murky waters of deciding mere Politics.

Let me vouch respectfully as a settled principle of law that the question of choosing of candidates for elective offices of members of a political party is governed by the rules, guidelines and constitution of the political party concerned as a matter of the internal affairs of the party concerned and so it is a question which is non-justiceable in a court of law as per the principle decided in *Onuoha v. Okafor* (1983) NSCC 494, per *Obaseki JSC*; *Dalhatu v. Turaki* (2002) 15 NWLR

(pt.843) 310 and lately in Senator Y. G. Lado & Ors. V. Congress for Progress Change & Ors, as per unreported consolidated appeals SC.157/2011 and SC.334/2011 delivered on 16/12/2011.

The appellant in this matter, in summary, has invited this court to wade into a matter of the party primaries conducted by the Abia State Executive Committee of the party (i.e. of the 1st respondent), which has on the one hand purportedly selected the appellant as the party's candidate for the governorship position for Abia State for the April 2011 general election whereas on the other hand, the party primaries conducted by National Executive Committee of the 1st respondent has selected the 4th respondent for the position of the same Abia State gubernatorial election for April 2011. There can be no doubt that where the instant action is predicated on a non-justiciable subject matter otherwise disclosing no reasonable cause of action, the court clearly has no jurisdiction to entertain the same and it is therefore liable to be dismissed in limine. See: Okolo v. Union Bank of Nigeria Ltd. (2000) 3 NWLR (Pt.859) 87, Ikweki v. Ebele (2005) 11 NWLR (Pt.936) 397, Abiola v. Olawoye (2006) 12 NWLR (Pt.996) 1. Strictly speaking, the appellant as claimed has predicated this action on the provision of Section 87(1), (4) (6) and (9) of the Electoral Act 2010 (as amended) and the guidelines on the party's primaries as per Exhibit 7 in thus challenging the party's choice of the 4th respondent as its candidate for the said election. It is a common ground on both sides of this matter that the appellant has not participated in any manner whatsoever in the process of screening exercise, selection, and nomination etc culminating in the instant party primaries as conducted by the National Executive committee of the 1st respondent with the power to do so as bestowed by the party's guidelines as per exhibit 7. Meaning in effect that the National Executive Committee rightly has exercised its power in choosing of a candidate in regard to the said gubernatorial election process. The 4th respondent having emerged as the winner in the said party primaries conducted by the National Executive Committee of the 1st respondent albeit is the only lawful candidate of the 1st respondent to stand for the Abia State gubernatorial election for April 2011 in line with the party guidelines as per Exhibit 7. Besides, these findings of fact cannot be challenged here having been so found by the two lower courts without eliciting further evidence of special circumstances

showing them to be perverse.

On the backdrop of the appellant's case in this matter the question in my view to decide has been narrowed down to considering the validity of which of the two exercises of selecting a candidate for the said governorship position via the party primaries as conducted on the one hand by the Abia State Executive Committee in cross reference on the other hand to the selection of the 4th respondent by the National Executive Committee of the 1st respondent with the power to do so as per Exhibit 7. As a follow-up is the poser of whether the appellant not having been an aspirant in the party primaries as conducted by the National Executive Committee of the 1st respondent can properly invoke the court's jurisdiction however limited under Section 87(9) to challenge the 1st respondent's exercise of its discretionary powers to deal with the matter of selecting, nominating and adopting of the 4th respondent as its candidate for the said governorship position vis-a-vis the declaratory and injunctive reliefs as claimed in this matter by the appellant, and finally whether the process of choosing the said governorship candidate in this matter is purely a domestic affair of the 1st respondent.

Before delving into these posers in this matter I think I should firstly examine the extent of a court's jurisdiction ordinarily vis-a-vis the instant matter on the backdrop of which it is intended to resolve the foregoing posers; that is to say, by examining the same from the angle of a court's jurisdiction as expounded in the case of *Madukolu & ors v. Nkemdilim* (1962) NSCC 374 at 599-380 per Bairaman JSC, thus - "*a court is competent when:*

(1) *It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; 2nd*

(2) *the subject matter of the case is within its jurisdiction, 2nd there is no feature in the case which prevents the court from exercising its jurisdiction; and*

(3) *the case comes before the court initiated by due process of law and fulfilment of any of the condition precedent to the exercise of jurisdiction.*"

The bottom line of the foregoing factors vis-a-vis this matter is that a court has to be so constituted accordingly otherwise it lacks the vires to deal with any matter before it. I think that in this matter apart

from examining the amenability of the instant subject-matter of the appellant's case to the court's jurisdiction as restated above it is also to be examined whether the action has come before the court by due process of law and the fulfilment of any condition precedent to ignite the court's jurisdiction to deal with the matter. It is settled as I have opined above that notwithstanding the Electoral Act 2010 (as amended) the issue of a political party choosing its candidates for elective offices is non-justiceable being a domestic (i.e. internal) affair of the party. It is a political question. In other words, a member who is aggrieved has no cause of action as it has not raised any question as to the rights and obligations of the member determinable by a court of law. See *Onuoha v. Okafor* (supra) and *Thomas v. Olusosoye* (1986) 1 NWLR (pt.18) 669 per Obaseki JSC. Again this point has also been expounded as settled law by Nnamani JSC (of blessed memory) in the case of *Abraham Adesanya v. The president Federal Republic of Nigeria* (1981) 5 SC.112 at 187-188 thus:

"Section 6(6) (b) to my mind encompasses the full extent of judicial power vested in the courts by the constitution. Under it the courts have power to adjudicate on a justiceable issue touching on rights and obligations of the person who brings the complaint to court... It seems to me that the courts must operate within the perimeter of the judicial powers vested in them by section 6(6) (b) of the Constitution and that they can only take cognizance of justiceable actions properly brought before them in which there is dispute, Controversy and above all, in which the parties have sufficient interest."

So that in this case this court as held in the above abstract can only take due cognizance of justiceable actions properly constituted before it. However the present Electoral Act 2010 (as amended) as it appears in the area of choice of candidates for elective offices has in a way affected that principle of law by providing that an aspirant, in other words one who has sufficient interest in the matter in dispute and in this instance has complained about the non-compliance with the party's guidelines in the selection or nomination of candidates for the party primaries can raise an action seeking from the court a redress against his political party - Section 87(9) (infra). For ease of reference Section 87(1) & (9) crucial to this matter provides as follows: *"87(1) A political party seeking to nominate candidates for elections under this Acts shall hold primaries for aspirants to all elective*

positions.

(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 FCT for redress.”

Construing the words of the foregoing provisions they are clear and so a combined reading of both provisions show that the onus on the appellant in order to properly constitute this action is firstly to bring himself within the definition of an “aspirant” as contemplated under the Electoral Act 2010 (as amended); this is founded on the principle that he who alleges has the onus of proof otherwise the locus to challenge an action is baseless, that is to say as in this case the onus to challenge the party primaries leading to the choice of the 4th respondent by 1st respondent. He can only do so if he has been an aspirant in the context of the above provisions in which case he must have been a person who has taken part in authentic and valid party primaries. The appellant has failed to bring his case within this ambit of the instant law. All the same according to exhibit 7, the Abia State Executive Committee is incapable under the party’s guidelines of conducting valid party primary for the governorship position for the said election. It is not vested with the power to carry out such exercises. The appellant therefore cannot be clothed with the necessary standing to sue as an aspirant in this matter. Meaning that his action therefore has no leg on which to stand. See Senator Abraham Adesanya’s case (supra).

On the other leg of the onus on the appellant in this action, that is to show that the party primary conducted by the National Executive Committee of the 1st respondent, which has selected the 4th respondent is invalid or unauthentic in the circumstances particularly so in the face of the party’s guidelines as per Exhibit 7 which the appellant has tendered at the trial; and I hold that the onus has not been discharged as Exhibit 7 has showed abundantly clearly that the power to conduct the instant party primary for the gubernatorial election 2011 for Abia State is vested on the National Executive committee of the 1st respondent which if I may repeat, has selected the 4th respondent so that the purported process for the same exercise as

conducted by the Abia State Executive Committee being a non-starter is of no effect at all for want of vires to carry out that exercise. And so severally the appellant is not an aspirant in the context of the provisions of Section 87 and as the onus on him on that point has not been discharged. But also, even then, Section 87(9) cannot be invoked based on the facts and circumstances of this case (a pre-primary matter conducted by the 1st respondent) as the 1st respondent's decision on this matter is non-justiceable, and therefore, there cannot be a reasonable cause of action against the 1st respondent to sustain the instant action which is determinable in a court of law. It couldn't have been otherwise on the peculiar facts of this case. Having before now read the lead judgment of my learned brother Fabiyi JSC in this matter with which I agree entirely; in the final analysis, the appellant's action must fail; and it fails. There is no doubt that this case has also raised the issue of the court lacking the jurisdictional competence to entertain the same although the issue it must be observed has not been raised nor decided by the two tower courts. In that vein the appeal is dismissed and I subscribe to the consequential orders including the one on costs as contained in the lead judgment.

MUNTAKA-COOMASSIE JSC

I was privileged to have read in advance the illuminating lead judgment of my learned brother John Fabiyi JSC. I have seen the reasons and conclusions therein adumbrated. I admire same. It was all agreed during the conference that this appeal should be dismissed. I have nothing more to add. I agree. Appeal shall be dismissed as held by my learned brother John Fabiyi JSC.

RHODES-VIVOUR JSC

I read in draft the leading judgment prepared and delivered by my learned brother, Mr. Justice J.A. Fabiyi, JSC, and I am in complete agreement with his lordships reasoning and conclusion.

The issue is who, between the appellant and the 4th respondent is the candidate of the 1st respondent for the Gubernatorial Election for Abia State which was held in April 2011.

According to the appellant he contested the primaries election

conducted by the State Executive Committee of the Party, and won, so he is the authentic candidate of the PDP (1st respondent) for the said Gubernatorial Elections. The 4th respondent was not a candidate of that primaries. He contested the primaries conducted by the National Executive Committee of the Party and won.

Section 87 (1)(4)(b)(i)(ii), 9 of the Electoral Act, 2010 (as amended) reads as follows: “87 (1) *A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.*” B

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

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

(i) hold a special congress in the state capital with delegate voting for each of the aspirant of the congress to be held on a specific date appointed by the National Executive Committee of the party.

(ii) the aspirant with the highest number of votes of the end of voting shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the Independent National Electoral Commission as the candidate of the party, for the particular state; E

(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 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.” F G

It must be elementary now, that the only valid primary is the one conducted by the National Executive Committee of the PDP. The primaries, which the appellant participated in was illegal, it having been conducted by the State Executive Committee of the PDP. That explains why the appellant’s case crumbled like a pack of cards with concurrent findings of fact by the courts below stating the obvious position of the Law. There is clearly no merit whatsoever in the appellant’s case. Appellant did not contest in the primaries election of which the 4th respondent emerged as the candidate of the PDP for H

the Gubernatorial Elections. He has raised the issue that the 4th respondent is not a member of the PDP.

I have examined the claims of the appellant which are well laid out in the leading judgment, and I fail to see where this issue is even remotely referred to. If pleadings are to be of any use parties must be held bound by them. Courts are bound by pleadings and not on the whims and fancies of counsel or what they imagine or speculate. The Law is applied to pleaded facts and the issue between the parties resolved. Courts do not concern themselves with issues not before them. The issue of 4th respondents' membership of the PDP would not be considered in the absence of a pleading to support it (i.e. it was not raised in the affidavit in support of the originating process). It remains a non issue. The primaries conducted by the National Executive Committee of PDP which the appellant did not take part are a pre primaries election affair of the PDP which no court has jurisdiction to question. *Onuoha v. Okafor* 1983 Vol. 14 NSCC 494 *Dalhatu v. Turaki* 2003 15 NWLR pt.843 p. 310 and more recently *PDP v. T. Sylva & 3 Ors.* Suit No. SC 28/2012 and SC.9/2012 consolidated judgment of this court delivered on the 20th of April, 2012. But where the political party conducts its primaries and a dissatisfied contestant of the primaries 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 primaries election were conducted in accordance with the party's constitution and Guidelines. *Hope Uzodinma v. Senator O. Izunaso* 2011 vol. 5 pt. 1 M.J.S.C. 27. 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. Appellant did not take part of the primaries conducted by the National Executive Committee of the PDP of which the 4th respondent emerged the candidate of PDP. He cannot be a dissatisfied contestant in the circumstance. He has no locus standi to question the membership of the 4th respondent. 4th respondent is the authentic candidate of the PDP. The case of appellant fades into insignificance.

For this, and the more detailed reasoning in the leading judgment the appeal is dismissed with costs of N50, 000:00 to each respondent.