

**SUPREME COURT OF NIGERIA**

6TH JULY, 2012. SC. 69/2012

**CORAM:- M. MOHAMMED, F. F. TABAI, J. A. FABIYI,  
O. O. ADEKEYE, B. RHODES-VIVOUR, JJSC**

PRINCE JOHN OKECHUKWU EMEKA ..... APPELLANT  
AND

1. LADY MARGERY OKADIGBO  
2. PEOPLES DEMOCRATIC PARTY  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION  
4. SEN. ALPHONSUS UBA IGBEKE  
5. CHIEF BENJI UDEOZOR

..... RESPONDENTS

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JURISDICTION - Absence of - Effect - Once court lacks jurisdiction in a suit - Then the proceedings and judgment arising therefrom - Would amount to nullity (H1)

JURISDICTION - Issue of - Time to raise - Issue of jurisdiction is a threshold matter - That it can be raised at anytime - Even for the first time in Supreme Court - Provided parties are heard (H2)

COURTS - Competence - Basis - *Madukolu v. Nkemdilim* - Court is competent when it is properly constituted - With the subject matter within its jurisdiction - And the case initiated by due process of law (H3)

ELECTIONS - Primary election - Duty of party - By virtue of its Constitution - National Executive Committee of PDP - Is responsible for conduct of its National Assembly primary election (H4)

ELECTIONS - Pre election matters - Right of action - Person who was not candidate at primary election - Cannot come to court - To complain about conduct of such primary (H5)

ELECTIONS - Pre election matters - Courts - Jurisdiction - By virtue of Electoral Act s.87(9) - Courts can entertain complaints of aggrieved party - At primary election (H6)

JURISDICTION - Determination - Basis - It is plaintiff's claim that determines jurisdiction - As can be seen in present case - From claims in the originating process (H7)

FAIR HEARING - Audi alteram partem - Meaning - The maxim denotes fairness - As a judge should allow both parties to be heard - Before resolving issue at stake (H8)

JUSTICE - Miscarriage of justice - Meaning - Miscarriage depends on facts of each case - And it occurs where justice - Is not according to law (H9)

MOTIONS - Pending motion - Failure to hear - Effect - Failure of trial court to hear such motion before judgment - Is not always fatal - As Appeal Court should examine the motion (H10)

JUDGMENTS - Delivery - Basis - Judgment should be based on facts of case decided - As courts are not allowed to apply ratio of a case - With little regard to facts before them (H11)

APPEALS - Cross appeal - Purpose - Respondent defends judgment - But where he seeks to correct errors therein - He files a cross appeal (H12)

APPEALS - Respondent's notice - Purpose - The notice is filed where respondent agrees with judgment - But wants same varied or affirmed on other grounds (H13)

ELECTIONS - Nomination - Input of political party - Necessity of - Political party is expected to assist court - To determine who its candidate is (H14)

SUPREME COURT - Appeals - Hearing - Supreme Court hears appeals against judgment of Court of Appeal - And not against judgment of High Court (H15)

**FACTS**

Appellant, 1<sup>st</sup> and 4<sup>th</sup> respondents are members of the Peoples Democratic Party i.e. 2<sup>nd</sup> respondent. They were all interested in the Senatorial seat for Anambra North in the General Elections conducted by 3<sup>rd</sup> respondent in April 2011. 1<sup>st</sup> and 4<sup>th</sup> respondents contested primary election conducted by National Executive Committee of 2<sup>nd</sup> respondent that was held on the 8<sup>th</sup> January 2011, while appellant claims to have participated in another primary election held on the 10<sup>th</sup> January 2011. After the primaries, 2<sup>nd</sup> respondent forwarded the names of 1<sup>st</sup> respondent to INEC i.e. 3<sup>rd</sup> respondent as its candidate for the said Senatorial elections.

Dissatisfied with the stance of 2<sup>nd</sup> respondent, 4<sup>th</sup> respondent filed an originating summons at the Federal High Court, Abuja challenging the outcome of the primary of 8<sup>th</sup> January 2011 and the said submission of names of 1<sup>st</sup> respondent to 3<sup>rd</sup> respondent. The court delivered judgment in favour 4<sup>th</sup> respondent. This gave rise to appeals filed at the Court of Appeal, Abuja. The appeals were consolidated. Eventually, the judgment of the Federal High Court was set aside. The court held that 1<sup>st</sup> respondent was the authentic candidate of 2<sup>nd</sup> respondent for the said election. Appellant who did not participate at the 8<sup>th</sup> January 2011 primary election, filed appeal at Supreme Court.

**ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal and or the trial Court had jurisdiction to determine who is the Peoples Democratic Party Candidate for the Anambra North Senatorial District in the April 2011 general election from two parallel primary elections held on 8<sup>th</sup> January, 2011 and 10<sup>th</sup> January 2011 respectively having regards to the provisions of the Electoral Act, 2010 (as amended)

2. Who among the following:

(a) Prince John Okechukwu EMEKA

(b) Lady Margery OKADIGBO

(c) Senator Alphonsus Uba IGBEKE emerged as the winner of the PDP primaries conducted for the Senatorial seat for Anambra North in the general elections held in April 2011.

3. Whether the Court of Appeal was right in regarding the failure of the trial judge to determine appellant's pending motion filed on 16<sup>th</sup> march, 2011 as fresh issue that requires leave of Court

to Appeal and if it does not amount to denial of Appeals right to fair hearing for the Court of Appeal to deliver judgment in the appellant's Appeal without determining the said motion.

**B HELD** (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

*JURISDICTION - Absence of - Effect*

**1. Issue 1 raises the issue of jurisdiction of the trial Court and the Court to Appeal to hear this suit. The issue of jurisdiction is fundamental in any suit. It is the heart and soul of a suit. It is a Courts authority or power to hear an issue and/or the suit. Once a Court lacks jurisdiction to hear a suit and it goes ahead to hear the suit as if it had jurisdiction, no matter how well the suit was decided the whole proceedings and judgment would amount to a nullity.** (p. 2626 A)

*JURISDICTION - Issue of - Time to raise*

**2. Jurisdiction to hear a suit is a threshold matter. Once raised it must be heard first and decided quickly. It is so important that it can be raised at anytime in the trial Court, on Appeal, suo motu, provided parties are heard, and in this Court for the first time.** (p. 2626 D)

*COURTS - Competence - Basis*

**3. In Madukolu v. Nkemdilim 1962 vol.2 NSCC p.374 - this Court made some observations on jurisdiction and competence of a Court to hear a case. They are good guides in determining jurisdiction. 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.**

**2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction and**

**3. The case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to**

**the exercise of jurisdiction.** (p. 2626 E)

*Primary election - Conduct - Duty of party*

**4. A diligent reading of the above reveals that it is the National Executive Committee of PDP that is responsible for the conduct of the party's National Assembly primaries. The Court of Appeal was correct. There can only be one valid primary and that is the primaries conducted by the National Executive Committee. A primary conducted by the State Chapter of the PDP is not a primary. It is an illegal contraption that carries with it no rights. It is a complete nullity. The primaries conducted on the 8th of January 2011 was conducted by the National Executive Committee of the PDP, and it was the only authentic primaries conducted by the PDP to choose its candidate for the Anambra North Senatorial Seat. On the other hand the purported primaries conducted on the 10th or 12th of January 2011 was conducted by the State Chapter of the PDP. It is null and void for the purpose of choosing the PDP's candidate for the Senatorial elections. It is clear that at no time were two parallel primaries conducted.** (p. 2630 B)

*Pre election matters - Right of action*

**5. A person who was not a candidate/aspirant at the primaries cannot come to the Court to complain about the conduct of the primaries.** (p. 2631 A)

*Pre election matters - Courts - Jurisdiction*

**6. But where the political party conducts its primaries and a dissatisfied contestant at the said 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 primaries were conducted in accordance with the Electoral Act, the Constitution and Guidelines of the party. The reason is simple. The Courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its own constitution.** (p. 2631 B)

*JURISDICTION - Determination - Basis*

**7. It is well settled that the plaintiff's claim determines jurisdiction. A look at the questions asked and the claims in the originating process, the plaintiff/4th respondent, who participated in the primaries conducted on the 8th of January 2011 is not satisfied with the emergence of the 1st respondent as the Senatorial candidate of the PDP at the primaries. He claims to have won the primaries. He is a dissatisfied contestant, and by virtue of section 87(9) of the Electoral Act 2010 (as amended) the Courts have jurisdiction to examine if the primaries were conducted in accordance with the Electoral Act, the Constitution and Guidelines of the Peoples Democratic Party (PDP).** (p. 2631 D)

*FAIR HEARING - Audi alteram partem - Meaning*

**8. The Central complaint is that the appellant was denied a fair hearing which led to a miscarriage of justice. Audi alteram partem means hear the other side. It is a maxim denoting basic fairness and a canon of natural justice. A judge should allow both parties to be heard and should listen to the point of view of both sides before resolving the issue.** (p. 2635 F)

*Miscarriage of justice - Meaning*

**9. Miscarriage of justice varies from case and it really depends on the facts and circumstance of the case. Miscarriage of justice occurs if what occurred is not justice according to the law.** (p. 2635 H)

*Pending motion - Failure to hear - Effect*

**10. It is not in all cases that failure of the trial Court to hear a pending motion before delivery of judgment is fatal to the proceedings. It is the duty of an Appeal Court to examine the motion that was pending and ensure that failure of the trial judge to take it has not led to a denial of fair hearing or/and miscarriage of justice.** (p. 2636 A)

*JUDGMENTS - Delivery - Basis*

**11. Facts have no views. A judgment should always be read in**

**the light of the facts on which the case was decided. The rules of stare decisis do not allow Courts to apply the ratio of a case across the board and with little regard to the facts of the case before them.** (p. 2638 F)

*Cross appeal - Purpose*

**12. The role of a respondent is to defend the judgment, but where a respondent seeks to correct errors in the judgment he files a cross-Appeal.** (p. 2639 C)

*APPEALS - Respondent's notice - Purpose*

**13. Furthermore a respondent's Notice is filed where a respondent agrees with the judgment Appealed against but wants it varied or affirmed on other grounds. A cross-Appeal and a respondent's notice cannot co-exist.** (p. 2639 D)

*ELECTIONS - Nomination - Input of political party*

**14. Before the trial court and the court of appeal the PDP stood by the primaries conducted on the 8th of January, 2011 at which it declared the 1st respondent winner. In this court it leaves the appeal at the direction of the court. It is difficult to understand the role of the PDP. The PDP is expected to assist the court to determine who its candidate is and not leave the court to make mistake on such vital an issue. In determining who the candidate of a party is the input of the party is of paramount importance. In matter where the courts are called upon to decide which of the candidates emerged from a primary, the input of the Party is of paramount importance. A political Party must inform the court of the true position and not leave such a vital issue to be resolved by the court without its input. In election matters the stakes are extremely high. The political party concerned must strive to assist the court positively at all time. The position adopted by the PDP is unfortunate.** (p. 2639 H)

*SUPREME COURT - Appeals - Hearing*

**15. This court hears appeals from or against the judgment of the Court of Appeal and not against the judgment of the High**

***Court. Even if this court heard appeals directly form the High court, this court cannot strike out a suit in which judgment has already been delivered as far back as 17/3/11.***

(p. 2641 E)

**B REPRESENTATION**

Chief S. Akuma SAN with S. Umoh SAN, G. Ukeagbu, J.K.M. Ikwegbue, A. Uzor, A. Joseph, O. Ofulue, M.P. Mwansat, I.L. Umudu, U. Ogunedo & V.A. Amin, for the Appellant

**C** Yusuf O. Ali, SAN for the 1st Respondent with K.K. Eleja, S.A. Oke, A. Akoja, K.T. Sulaiman, P. Ikpegbu, K.O. Lawal, O. Odemuyiwa, F.O. Moronfoye, S.O.Q. Giwa, M. Shehu & A.O. Oloruroaje

V.Y. Kwon for the 2nd Respondent with C.I. Paul

Ahmed Raji for the 3rd Respondent with him A. Adedipe, Z. Garuba,

**D** O. Omo-Eghareuba, O. Durosaro & A. Bajeh

Dr. O. Olanipekun for the 4th Respondent with L. Lasaki, D. Adeshina & O.O. Otemu

C.J. Chinwuba for the 5th Respondent with C.F. Ali, C.A. Ezekwe, C.O.O. Eweka & G. Erimoloye

**E**

**CASES REFERRED TO**

Loriade v. Oyebe (1984) 1 SCNLR 390

Ezomo v. Oyakhire (1985) 2 SC 260

Onuoha v. Okafor (1983) Vol.14 NSCC 494

**F** Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) p.310

Anyia v. Iyayi (1993) 7 NWLR (pt. 305) 290

A.G. Kwara State v. Warah (1995) 7 NWLR (pt. 405) 121

Onuora v. Okeke (2005) 10 NWLR (pt. 932) 47

**G** Ogugu v. State (1994) 9 NWLR (pt. 366) 1

Eke v. Ogbonda (2006) 18 NWLR (pt. 1012) 506

Akpan v. Bob (2010) 17 NWLR (pt. 1223) 421

Kotoye v. Saraki (1994) 7 NWLR (pt. 357) 414

Bobo-Manuel v. Briggs (2003) 5 NWLR (pt. 813) 323

**H** Isiyaku Mohammed v. Kano NA (1968) 1 ALL NLR 42

Adigun v. A.G. Oyo State (1987) 1 NWLR (pt. 53) 678

Nnaji for v. Ukonu (1986) 4 NWLR (pt. 36) 505



**STATUTES REFERRED TO**

Electoral Act 2010 (as amended), s. 87(9)

Court of Appeal Act 2004, s. 15

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 222-224

B

**LEAD JUDGMENT BY RHODES-VIVOUR JSC**

The appellant, 1st and 4th respondents are members of the People Democratic Party (PDP, the 2nd respondent). They were all interested in the Senatorial seat for Anambra North in the General Elections conducted by the 3rd respondent in April, 2011. To qualify as the senatorial candidate of the 2nd respondent the candidates must contest primaries. The 1st and 4th respondents contested a primary held on the 8th day of January 2011, while the appellant participated, according to him in a primaries held on the 10th day of January 2011. The 1st and 4th respondents claimed to have won the primaries conducted on 8/1/2011. The PDP forwarded the name of the 1st respondent to INEC as its candidate for the senatorial elections for Anambra North in the general elections held in April, 2011. I shall comment on the primaries held on 8/1/11 and 10/1/11 later on in this judgment. Dissatisfied with the stance of the PDP forwarding the name of the 1st respondent to INEC as its senatorial candidate, the 4th respondent filed an originating summons where the 3rd respondent, was 1st defendant the 2nd respondent was 2nd defendant, the appellant was 3rd defendant, the 1st respondent was 4th defendant and the 5th respondent was 5th defendant. The plaintiff 4th respondent raised three questions for determination. They are:

1. Whether on the proper interpretation of section 87 of the Electoral Act 2010 the 2nd defendant has the right to remove the name of the person who won the indirect primaries for the nomination of a candidate for election into the Anambra North Senatorial District to be held in April 2011 or any other date and present to the 1st defendant some other person as its candidate other than the winner of the said primaries.

2. Whether the 1st defendant can accept from a political party and recognize as the candidate of the party and place on the ballot paper, a person who did not emerge as the winner of the primaries conducted by the party.

H

3. Whether the 1st defendant can accept from a political party and place on the ballot as a candidate for election into the Anambra North senatorial District to be held in April, 2011 or any other date, a nominee of a political party who is not chosen in accordance with the provisions of section 87 of the Electoral Act.

B And if he answers to questions 1, 2, and 3 are in the negative the plaintiff /4th respondent claims the following reliefs:

1. Declaration that based on the dictates of section 87 of the Electoral Act 2010 the 2nd defendant's candidate for the Anambra North 2011 must be the person who secured majority of the votes cast in the indirect primaries conducted by the 2nd defendant for the C Anambra North Senatorial District between 7th to 10th January, 2011.

2. Declaration that the only valid and authentic list of nominated candidates of the 2nd defendant for the general election is that D which bears the name of the plaintiff as the 2nd defendant's candidate for the Anambra North Senatorial District.

3. An Order of injunction restraining the 2nd defendant, its against, servants and privies from recognizing any result of the National Assembly primary election of PDP conducted between 7th- E 10th January, 2011 in Anambra State other than the result bearing the name of the plaintiff as the duly elected person to contest for the Senate on the Anambra North Senatorial District to be held in April 2011 or any other date.

4. An order of injunction restraining the 1st defendant for accepting, recognizing or acting upon, any list of candidates other than the list bearing the name of the plaintiff as the PDP candidate for F Anambra North Senatorial District or in any way publishing, displaying, screening, putting on the ballot paper or howsoever dealing with G any person other than the plaintiff as the 2nd defendant's candidate for the Anambra North Senatorial District in the General Election scheduled to take place in April, 2011 or any other date.

5. An order of mandatory injunction compelling the 1st defendant to recognize, screen and publish the name of the plaintiff as the H authentic candidate of the 2nd defendant for the general election for senate, Anambra North Senatorial District scheduled for April, 2011 or any other date.

6. An order of injunction restraining the 2nd defendant from holding out, parading or recognizing any person other than the plaintiff

as the candidate of the 2nd defendant for the general election for senate, Anambra North Senatorial District scheduled for April 2011 or any other date.

Trial was on affidavit and documentary evidence. Abdul-Kafarati J of the Federal High Court, Abuja presided, and on the 17th of March 2011 delivered judgment in favour of the plaintiff/4th respondent in these words:

*"I have earlier held in judgment that the plaintiff won the primary election of 8/1/2011 based on his averments in paragraphs 5, 7, 8, 9, 15, 16 and 18 of his affidavit in support and exhibits A-C, C1, D-D164. Having said this I am of the opinion that the 1st and 2nd defendants were not justified in removing the name of the plaintiff and substituting it with that of the 3rd defendant. I hold that the 1st and 2nd defendant did not comply with the provisions of section 87 of the electoral Act. Based on the foregoing I hold that question 1-3 in the originating summons are answered in negative. Consequently upon this all the declaratory and injunction reliefs as contained on the face of the originating summons are granted. The 1st defendant is ordered to publish the name of the plaintiff as the authentic candidate of the 2nd defendant for the general election for Senate Anambra North Senatorial District Scheduled for April, 2011 Election."*

According to the learned trial judge the plaintiff/4th respondent is the authentic candidate of the PDP based on the primaries of the PDP which was held on the 8th of January 2011. Three Appeals were filed against the judgment of the trial Court. They are Appeals Nos. CA/A/166/2011, CA/A/243/2011 and CA/A/281/2011. The three Appeals were subsequently consolidated and heard on the 5th of October 2011. Senator A. Uba Igbeke and INEC were respondents in the three Appeals. Prince J. Ikechukwu Emeka is a respondent in three Appeals. Prince J. Okechukwu Emeka is a respondent in the first and third Appeals and appellant in the second Appeal. The PDP is a respondent in the first and second Appeals and the appellant in the third Appeal. Lady Margarey Okadigbo is the appellant in the first Appeal but the respondent in the second and third Appeals, while Chief B. Udezor is a respondent in the second Appeal. The judgment of the trial Court was upset on Appeal, the Court of Appeal said:

“...In Appeal 1 the appellant lady Margery Okadigbo being the candidate that scored the highest votes in the primary election held by the PDP in Anambra Senatorial District on the 8th January, 2011, the only validly held PDP primary election in that Senatorial District in respect of the April 2011 general elections, was the candidate that on the said primary election and I hereby so hold.”

This Appeal is against that judgment. In accordance with order 6 Rules 1 and 2 of the Supreme Court Rules briefs were filed and exchange. The appellants brief was filed on the 19th day of March 2012. The 1st respondents brief was filed on the 27th day of March, 2012. The 2nd respondent filed a brief but withdrew it. There is no brief for the 2nd respondent. The 3rd respondent filed a brief on the 2nd day of April 2012. The 4th respondent filed a brief on the 11th day of May 2012, while the 5th respondent filed a brief on the 13th day of April, 2012. The appellant filed a reply to the 1st respondent brief on the 3rd day of April 2012 and a reply to the 4th respondents brief on the 16th day of May, 2012.

The appellant formulated three issues for determination. They are:

1. Whether the Court of Appeal and or the trial Court had the jurisdiction to determined who is the peoples Democratic Party Candidate for the Anambra North Senatorial District in the April 2011 general election form two parallel primary elections held on 8th January 2011 and 10th January, 2011 respectively having regards to the provisions of the Election Act, 2010 (as amended).

2. Whether the Court of Appeal properly invoked its powers under section 15 of the Court of Appeal Act, 2004 to condone abuse of its process and awarded a relief not claimed by the 1st respondent by declaring for the Anambra North Senatorial District in April 2011 general election.

3. Whether the Court of Appeal was right in regarding the failure of the trial judge to determine appellants pending motion filed on 16th march, 2011 as fresh issue that requires leave of Court of Appeal and if it does not amount to denial of appellant’s right to fair hearing for the Court of Appeal to deliver judgment in the appellants Appeal without determining the said motion.

The 1st respondent formulated three issues for determination:

1. Whether the two lower Courts were not right having regard

to the fact and circumstances, the provisions of the Electoral Act and Party Guidelines of the 2nd respondent in assuming jurisdiction to determine the matter brought before them.

2. Whether the Court of Appeal in the circumstances was not right by invoking the provisions of section 15 of the Court of Appeal Act 2004 to declare the 1st respondent a the Anambra North Senatorial District candidate of the 2nd respondent at the April 2011 general election. B

3. Whether the Court of Appeal was not right having regard to its earlier findings that the action was properly commenced by Originating Summons and duly holding that the appellant's motion has become a mute point. C

The 2nd respondent withdrew his brief and it was struck out. The 3rd respondent did not formulate any issue in its brief. The 4th respondent formulated three issues for determination. D

1. Whether having regards to the facts and circumstances of this suit, the provisions of the Electoral Act and the party guidelines of the People Democratic Party (PDP), the Court of Appeal and the trial Court were not right in assuming jurisdiction to entertain and determine the matter in dispute. E

2. Whether the Court of Appeal while invoking its powers under section 15 of the Court of Appeal Act 2004, was right in awarding a relief not claimed by the 1st respondent by declaring the 1st respondent as the 2nd respondents candidate for the Anambra North Senatorial District at the April 2011 general election. F

3. Whether having regard to the Court of Appeal's findings that the action was properly commenced by Originating Summons, the appellant's contention that the trial Court did not entertain his motion seeking a determination on the same point, has not been rendered otiose and a mere academic exercise. G

The 5th respondent also formulated three issues for determination.

1. Whether the Court of Appeal and or the trial Court had jurisdiction to determine who is the Peoples Democratic Party candidate for the Anambra North Senatorial District in the April 2011 general election from two parallel primary elections held on 8th January, 2011 and 10th January 2011 respectively having regards to the provisions of the Electoral Act, 2010 (as amended). H

2. Whether the Court of Appeal properly invoked its powers under section 15 of the Court of Appeal Act, 2004 to condone abuse of its process and awarded a relief not claimed by the 1st respondent by declaring the 1st respondent the 2nd respondents candidate for the Anambra North Senatorial District in the April 2011 general election.

3. Whether the Court of Appeal was right in regarding the failure of the trial judge to determine appellants pending motion filed on 16th March, 2011 as fresh issue that requires leave of Court of Appeal and if it does not amount to denial of appellants right to fair hearing for the Court of Appeal to deliver judgment in the appellants Appeal without determining the said motion.

I have examined the issue formulated by all sides in this Appeal, and I am of the firm view that three issues shall resolve this Appeal.

Issue 1 is on jurisdiction the appellant, 1st, 4th and 5th respondent make it their first issue.

Issue 2 is the burning and central issue for determination and it is who among the following:

- (a) Prince John Okechukwu Emeka
- (b) Lady Margery Okadigbo
- (c) Senator Alphonsus Uba Igbeke emerged as the winner of the PDP primaries conducted for the Senatorial seat for Anambra North in the general elections held in April 2011.

Issue 3 Issue 3 is common to all sides and it is on the handling of the motion filed on 16/3/2011 by the learned trial judge.

The three issues for determination of this Appeal shall be:

1. Whether the Court of Appeal and or the trial Court had jurisdiction to determine who is the Peoples Democratic Party Candidate for the Anambra North Senatorial District in the April 2011 general election from two parallel primary elections held on 8th January, 2011 and 10th January 2011 respectively having regards to the provisions of the Electoral Act, 2010 (as amended)

2. Who among the following:

- (a) Prince John Okechukwu EMEKA
- (b) Lady Margarey OKADIGBO
- (c) Senator Alphonsus Uba IGBEKE emerged as the winner of the PDP primaries conducted for the Senatorial seat for Anambra

North in the general elections held in April 2011.

3. Whether the Court of Appeal was right in regarding the failure of the trial judge to determine appellant's pending motion filed on 16th march, 2011 as fresh issue that requires leave of Court to Appeal and if it does not amount to denial of Appeals right to fair hearing for the Court of Appeal to deliver judgment in the appellant's Appeal without determining the said motion. B

At the hearing of the Appeal on the 17th day of May 2012 learned counsel for the appellant, Chief Solo Akuma SAN adopted the appellants brief filed on the 19th of March 2012, a reply to 1st respondents brief filed on the 3rd of April 2012, and a reply to 4th respondents brief filed on the 16th of may 2012 and in amplification urged this Court to overrule the Court of Appeal as that Court acted in excess of its jurisdiction under section 15 of the Court of Appeal Act. He further urged this Court to follow the decision in CPC Lado Consolidated Appeals SC157/2011 and 334/2011 judgment delivered on 16/12/2011 and allow the Appeal. C D

Learned counsel for the 1st respondent Mr. Y.O. Ali SAN adopted his brief filed on the 27th of March 2012. He observed that CPC v. Lado (supra) is not applicable, contending that there were two parallel primaries conducted by the party while in this case there was only one valid primary held on 8/1/11. He further observed that section 87 (9) of the Electoral Act 2010 (as amended) creates jurisdiction to the Federal High Court, State High Court, and High Court of the Federal Capital Territory to hear the claims in this case. He urged this Court to dismiss the Appeal. E F

Learned counsel for the 2nd respondent, Mr. V.Y. Kwon said that he was leaving the Appeal at the discretion of this Court. He withdrew his briefs and they were struck out. G

Learned counsel for the 3rd respondent, Mr. A. Raji observed that his client is an umpire. He is neutral, particularly as the People Democratic Party is neutral.

Learned counsel for the 4th respondent, Dr. O. Olanipekun adopted his brief filed on the 11th of May 2012, and urged us to dismiss the Appeal and set aside the judgment of the Court of Appeal, arguing that he does not need to file a cross-Appeal since he raised the issue of jurisdiction. Reliance was placed on PDP v. Okorocha & 10 Ors. SC.17/2012 delivered on 2/3/12. H

Learned counsel for the 5th respondent, Mr. C.J. Chinwuba adopted his brief filed on the 13th of April, 2012 and observed that the Guidelines are clear as to the numbers of delegates to take part in the primaries. He urged this Court to allow the Appeal.

***Issue 1 raises the issue of jurisdiction of the trial Court and the Court to Appeal to hear this suit. The issue of jurisdiction is fundamental in any suit. It is the heart and soul of a suit. It is a Courts authority or power to hear an issue and/or the suit. Once a Court lacks jurisdiction to hear a suit and it goes ahead to hear the suit as if it had jurisdiction, no matter how well the suit was decided the whole proceedings and judgment would amount to a nullity.*** See *Broniks Motors Ltd & Ors. v. Wema bank Ltd* 1983 1 SC NLR p.293, *Okoya v. Santilli* 1990 2 NWLR pt.131 P.172, *A.G. Federation v. Sode* 1990 1 NWLR Pt.128 P.500, *Osafire v. Odi* (1) 1990 1 NWLR Pt.137 P.130.

***Jurisdiction to hear a suit is a threshold matter. Once raised it must be heard first and decided quickly. It is so important that it can be raised at anytime in the trial Court, on Appeal, suo motu, provided parties are heard, and in this Court for the first time.*** See *Usman Dan Fodio University v. Kraus Thompson Organisation Ltd* 2001 15 NWLR Pt.736 P.305, *Oloriade v. Oyebe* 1984 1 SCNLR P.390, *Ezomo v. Oyakhire* 1985 2 SC p.260. ***In Madukolu v. Nkemdilim 1962 vol.2 NSCC p.374 - this Court made some observations on jurisdiction and competence of a Court to hear a case. They are good guides in determining jurisdiction. 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.***

***2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court form exercising its jurisdiction and***

***3. The case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.***

This issue on jurisdiction falls under (2) above. Learned counsel for the appellant Chief S. Akuma SAN observed that the 2nd respondent conducted two primaries in respect of Anambra North



Senatorial District on the 8th of January 2011 and the 10th of January 2011. He submitted that the two lower Courts lacked jurisdiction to decide which of the two primaries is valid. He further submitted that whether there is a dispute as to which of the two primaries of a political party produced the nominated candidate that dispute is not justiciable under the provisions of section 87(4) (c)(i),(ii) and (9) of the Electoral Act, 2010 (as amended). Reliance was placed further on *Onuoha v. Okafor* 1983 14 NSCC p.494, *Senator Y.G. Lado & others v. Congress for Progressive Change (CPC) & ors.* SC 157/2011 and SC.334/2011 unreported Supreme Court judgment delivered on 15/12/2011. He urged this Court to resolve this issue in favour of the appellant.

Learned counsel for the 1st respondent submitted that any primary election held in contravention of the provisions of the Electoral Act, the constitution of the 2nd respondent and the Guidelines for the general election made pursuant thereto is not only null and void but is illegal and a non-event. He observed that the primaries conducted on the 10th or 12th of January, 2011 is a nullity because it was conducted by the Anambra State Chapter of the PDP while the primaries conducted on the 8th of January, 2011 is valid since it was conducted by the National Executive Committee of the PDP. Relying on section 87(1)(4)(c)(i) and (ii) of the Electoral Act, Articles 12 and 17 of the PDP Constitution, part 5 of the PDP Electoral Guidelines, he submitted that the facts of the case are different from *Senator Y.G. Lado's* case, contending that the two lower Courts had jurisdiction to hear this case. He urged this Court to resolve this issue in favour of the 1st respondent and dismiss it.

Learned counsel for the 4th respondent Dr. O. Olanipekun urged this Court to uphold the finding of the Court of Appeal that the only validly held PDP primaries for the Anambra North Senatorial District was the primaries conducted on the 8th of January 2011 by the National body of the PDP. He submitted that the event which has aggrieved the 4th respondent falls within the previews of the provisions of section 87(4)(c)(ii)(10) of the Electoral Act thus making the matter justiciable and giving the 4th respondent the right of access to Court to ventilate his grievance. He urged this Court to hold that the decision in *Senator Lado's* case does not apply. Arguing in the alternative he urged this Court to depart from the decision in

Senator Lado's case for being a decision reached per incuriam.

Learned counsel for the 5th respondent, Mr. C.J. Chinwuba adopted the arguments of learned counsel for the appellant. To my mind what is to be resolved in this issue of jurisdiction is whether there were two parallel primaries or one valid primary. On this issue  
B the Court of Appeal said:

*"From the arguments the evidence adduced at the trial the 2nd and 4th respondents in Appeal 3 produced and relied on result's that were manufactured by the PDP Anambra State Chapter who do not satisfy the provisions of the Electoral Act, the PDP constitution and Electoral Guidelines of the PDP. For the avoidance of doubt, it is only the national Executive Committee of the PDP and not its State Chapter that has power under Article 17 of the PDP Constitution and paragraph 17 of the Electoral Guidelines to screen candidates  
C D for National Assembly election."*

The Court of Appeal continued:

*"In Appeal 1 the appellant Lady Margery Okadigbo being the candidate that scored the highest votes in the primary election held by the PDP in Anambra Senatorial District on the 8th January, 2011, the only validly held primary election in that senatorial District in respect of the April 2011 general elections was the candidate that won the said primary election..."*  
E

An examination of the following legislation becomes necessary  
F now.

1. The Electoral Act 2010 (as amended)
2. The constitution of the PDP
3. Electoral guidelines of the PDP

Section 87(1), (4) (c) (i) and (ii) (7) of the Electoral Act 2010  
G (as amended) state that:

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

(a) In the case of nominations to the position of a Senatorial  
H Candidate, house of Representative and State House of Assembly a Political party shall, where they intend to sponsor candidates-

(i) Hold special congress in the Senatorial District, Federal Constituency respectively, with delegates voting for each of the aspirants in designated centers on specific dates.

(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.

(7) A political party that adopt the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convection, congress or meeting. B

Now, the PDP by virtue of Articles 12 and 17 of its constitution and in furtherance of subsection 7 of section 87 of the Electoral Act the PDP issued electoral guidelines for the conduct of primary elections. Relevant extracts of the constitution reads: C

*"Functions of the national Executive Committee".*

Article 12.71 The national Executive Committee shall

(j) make party electoral regulations to govern the conduct of elections to all Party Offices at every level and regulate procedure for selecting the Party candidates for elective offices. D

Article 12.73. The decisions of the national Executive Committee shall be binding on all organs and members of the party.

Article 17.2. Notwithstanding the provisions of Article 12 of this constitution, the National executive Committee shall regulate the procedure for selecting offices in the following manner- E

(e) In the conduct of primaries for the party's candidate for the post of senator, the primaries shall be held at senatorial constituency Headquarters. F

The PDP issued guidelines. Clauses 27 (vi), 31(a) (c) and (e) runs as follows:

Clause 27(vi) There shall be for each state of the Federation and FCT a National Assembly Electoral panel of five members (one Chairman and four others) appointed by the national Executive Committee on the recommendation of the National Working Committee of the party. Clause 31(a) All results polled at the national Assembly primary election shall immediately be announced publicly and thereafter recorded on the official result sheet from code PD004/ NA. G H

(d) The result sheet form code PD004/NA shall be signed by the Returning Officer and the aspirants or their accredited agents present provided that he failure or neglect or refusal to sign the form

by the aspirant or his agent shall not invalidate the result.

(e) No aspirant for the primary election to the senate or the House of Representatives shall be declared nominated or elected, unless he has polled the highest votes cast and the winner shall be declared returned by the Chief Returning Officer immediately after the election.

***A diligent reading of the above reveals that it is the National Executive Committee of PDP that is responsible for the conduct of the party's National Assembly primaries. The Court of Appeal was correct. There can only be one valid primary and that is the primaries conducted by the National Executive Committee. A primary conducted by the State Chapter of the PDP is not a primary. It is an illegal contraption that carries with it no rights. It is a complete nullity. The primaries conducted on the 8th of January 2011 was conducted by the National Executive Committee of the PDP, and it was the only authentic primaries conducted by the PDP to choose its candidate for the Anambra North Senatorial Seat. On the other hand the purported primaries conducted on the 10th or 12th of January 2011 was conducted by the State Chapter of the PDP. It is null and void for the purpose of choosing the PDP's candidate for the Senatorial elections. It is clear that at no time were two parallel primaries conducted.***

Where there are two primaries conducted by the National Executive of the PDP, a situation at best imagined, it is only then that it can be said that there were two parallel primaries. The authentic primary could easily be resolved by documentary evidence available.

WHETHER THE COURT OF APPEAL AND THE TRIAL COURT HAD JURISDICTION TO DETERMINE WHO IS THE PDP CANDIDATE FOR THE ANAMBRA NORTH SENATORIAL SEAT.

Subsection (9) of section 87 of the Electoral Act 2010 (as amended) 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 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, any apply to the Federal High Court or the High Court of a State or FCT for redress.”*

***A person who was not a candidate/aspirant at the primaries cannot come to the Court to complain about the conduct of the primaries.*** See Onuoha v. Okafor 1983 Vol.14 NSCC p.494, Dalhatu v. Turaki 2003 15 NWLR Pt.843 p.310, PDP v. T. Sylva & 2 Ors. SC.28/2012 and SC.9/2012 Judgment delivered by this Court on 20/4/2012. ***But where the political party conducts its primaries and a dissatisfied contestant at the said 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 primaries were conducted in accordance with the Electoral Act, the Constitution and Guidelines of the party. The reason is simple. 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 O. Izunaso 2011 Vol.5 (Pt.1) MJSC P27

***It is well settled that the plaintiff's claim determines jurisdiction.*** See Anya v. Iyayi 1993 7 NWLR pt.305 p.290, A.G. Kwara State v. Warah 1995 7 NWLR pt.405 p.121, Anigboro v. Sea Trucks Nig Ltd 1995 6 NWLR Pt.399 p.43, Onuora v. Okeke 2005 10 NWLR Pt.932 47. ***A look at the questions asked and the claims in the originating process, the plaintiff/4th respondent, who participated in the primaries conducted on the 8th of January 2011 is not satisfied with the emergence of the 1st respondent as the Senatorial candidate of the PDP at the primaries. He claims to have won the primaries. He is a dissatisfied contestant, and by virtue of section 87(9) of the Electoral Act 2010 (as amended) the Courts have jurisdiction to examine if the primaries were conducted in accordance with the Electoral Act, the Constitution and Guidelines of the Peoples Democratic Party (PDP).***

Furthermore it is so clear under subsection (9) of section 87 of the Electoral Act 2010 (as amended) that the Federal High Court or the High Court of a State of Federal Capital Territory has jurisdiction to hear complaints from aspirants/candidates who are/were dissatisfied with the conduct of primaries in which they contested. The two lower Courts have/had jurisdiction to hear this case. Having found that both Courts below had jurisdiction to hear the claims I shall now address the other issues. Who among the following

1. Prince John Okechukwu Emeka
2. Lady Margery Okadigbo
3. Senator Alphonsus Uba Ibeke emerged as the winner of the PDP primaries conducted on 8/1/11 for the Senatorial Seat for Anambra North.

B There was only on valid primaries by the PDP to choose its candidate for the Anambra North Senatorial Seat and that was the primaries conducted by the National Executive Committee of the PDP on the 8th of January 2011. Lady Margery Okadigbo and Senator Alphonsus Uba Igbeke were candidates at the primaries which  
C held on 8/1/2011. Prince J.O. Emeka (the appellant) did not participate in the primaries which held on 10/1/11 and conducted by the State Chapter of the people Democratic Party. The settled fact is that the appellant was not a candidate at the primaries of 8/1/11. This  
D means that he could not emerge as the PDP candidate for the Senatorial Seat for Anambra North. Failure to participate at the PDP primaries held on 8/1/11 brings the appellant's desire to be a Senator to an end. This Appeal filed by Prince John Okechukwu Emeka has no redeeming features.

E At the hearing of this Appeal on the 17th day of May, 2012 learned counsel for the 4th respondent urged this Court to dismiss the appeal and set aside the judgment of the Court of Appeal, and on page 36 of his brief he only asked for the dismissal of the Appeal.  
F These are conflicting prayers. Dismissal of Appeal means total agreement with the judgment of the Court of Appeal, while, that the judgment be set aside means total disagreement with the judgment of the Court of Appeal. A respondent is expected to defend the Appeal. In the absence of a cross-Appeal the judgment of the Court of Appeal  
G remains inviolate.

I must further observe that the central issue in the Appeal before this Court is jurisdiction of the Courts below to hear this case. Since this issue has been resolved by this Court, to the effect that he Courts below had jurisdiction to hear the case, there is really nothing  
H more to decide. The emergence of the 1st respondent as the PDP candidate for the Senatorial elections cannot be questioned by the appellant, since he never contested the primaries form which the 1st respondent emerged.

As regards the 4th respondent, since he has not questioned

the judgment of the Court of Appeal, which declared the 1st respondent the winner of the primaries, means he agree with the judgment of the Court of Appeal that the 1st respondent won the primaries conducted on the 8th January 2011.

The Motion dated 16/3/2011

The appellant as 3rd defendant in the trial Court filed a motion on 16/3/2011. His prayer was for: B

An order of this Honourable Court transferring this matter to the General Cause List and ordering pleadings to be filed.

Learned counsel for the appellant argued that failure of the learned trial judge to hear and determine the motion filed on 16/3/2011 infringed on the appellants right to fair hearing guaranteed by section 36 of the constitution, contending that since the complaint is a breach of fundamental rights and constitution such as issue can be raised at the Court of Appeal and Supreme Court for the first time without leave. Reliance was placed on Ogugu v. State 1994 9 NWLR p.366 p.1 Eke v. Ogbonda 2006 18 NWLR pt. 1012 p.506. Concluding he submitted that the failure on the part of the Court of Appeal to determine the aforesaid motion on Notice before delivering the judgment on 16/12/11 occasioned a miscarriage of justice against the appellant. Relying on Akpan v. Bob 2010 17 NWLR Pt.1223 p.421. He urged this Court to resolve this issue in favour of the appellant contending that where a miscarriage of justice occurs it will lead to the nullification of the decision reached. C

Learned counsel for the 1st respondent observed that the issue in the Motion filed on 16/3/2011 was dealt with by the Court of Appeal when that Court said: D

*“The instant action was properly commenced by the 1st respondent Senator Alphonsus Uba Igbeke. The 3rd issue is resolve against the appellant in Appeal 1, ground 11 of the Appeal from which it has been distilled therefore fails.”* E

He urged this Court to resolve this issue against the appellant as it is clearly academic and hypothetical. Reliance was placed on Kotoye v. Saraki 1994 7 NWLR Pt.357 p.414 F

Learned counsel for the 4th respondent observed that the learned trial judge saw the motion filed on 16/3/2011 as an attempt by the appellant to delay the hearing of the suit by arresting the judgment which the trial Court was already to deliver on 17/3/2011. H

Relying on *Newswatch Comm. Ltd. v. Atta* 2006 12 NWLR Pt. 993 p.144, *Bobo-Manuel v. Briggs* 2003 5 NWLR Pt.813 p.323. He observed that this Court not only frowned at, but also refused applications to arrest judgment of a Court in civil matters. Learned counsel further observed that there was no miscarriage of justice since the Court of Appeal in exercise of its powers under section 15 of the Court of Appeal Act assumed the position of the trial Court and decided that the suit was properly commenced by originating summons. He observed that the appellants motion filed on 16/3/2011 was determined by the Court of Appeal and the appellant has not attacked the decision of the Court of Appeal on that issue. He urged this Court to resolve the issue against the appellant.

Learned counsel for the 5th respondent adopted the submissions of learned counsel for the appellant at his. The entry of conditional appearance is an appearance under protest and usually means an appearance to object to the Courts jurisdiction. On the other hand the entry of unconditional appearance conveys the clear impression that the party concerned has no objection to the suit, and that includes, no objection to the way the suit is/ was commenced. I must say straightaway that the appellant as 3rd defendant entered unconditional appearance to this suit. Entry of unconditional appearance mean that he had no objection to the suit as filed. The time to object to the originating summons procedure is at the beginning of the hearing of the suit and not a day before judgment. Motion filed on 16/3/2011 was filed with one clear motive, and that was to delay the hearing of the suit. This suit was commenced by originating summons seeking answers to some questions and declarations if the questions are not answered positively.

On the date fixed for judgment, i.e. 17/3/2011, the appellant informed the Court that he had a motion on Notice filed on 16/3/2011. That is to say it was filed the day before judgment was to be delivered. The learned trial judge reacted to the pending motion as follows:

*“Court: The matter as set down for judgment and that will be the business of the Court, the 3rd defendant has earlier brought an application and hearing the main case was stalled because of that we had to adjourn for him and other applicants for joinder to come today the matter is for judgment he is coming with another applica-*



tion. *I will not allow that...*"

The learned trial judge went ahead to deliver judgment while the 3rd defendant/appellants motion file on 16/3/11 was pending. The long settled position of the law is that all pending motions etc, no matter how frivolous they may appear must be heard and a Ruling, no matter how short delivered. Failure to hear and determine pending applications would very likely amount to a denial of fair hearing or/and a miscarriage of justice. B

The Motion on Notice filed on 16/3/2011 by the 3rd defendant/appellant was for:

*"An order of this Honourable Court transferring this matter to the general cause list and ordering pleadings to be filed."* C

The learned trial judge did not hear the motion filed on 16/3/2011 but the Court of Appeal did. Relevant extracts from the Record of Appeal (the judgment of the Court of Appeal) reads: D

*"Apart from the facts that the issue of filing the action by way of originating summons has been treated and resolved on issue 3 in Appeal 1 there was also no decision on that as the learned trial judge simply proceeded with the business for the day and that was reading the judgment which all the parties assembled that morning for. It was therefore not part of the lower Court's decision and may only be raised with leave as a fresh issue."* E

The Court of Appeal later held thus:

*"The instant action was properly commenced by the 1st respondent Senator Alphonsus Uba Igbeke. The 3rd issue is resolved against the appellant in Appeal 1, ground 11 of the Appeal form which it has been distilled therefore fails."* F

***The Central complaint is that the appellant was denied a fair hearing which led to a miscarriage of justice. Audi alteram partem means hear the other side. It is a maxim denoting basic fairness and a canon of natural justice. A judge should allow both parties to be heard and should listen to the point of view of both sides before resolving the issue.*** See Isiyaku Mohammed v. Kano NA 1968 1 ALL NLR P42; Adigun v. A.G. Oyo State 1987 1 NWLR Pt.53 p.678. ***Miscarriage of justice varies from case and it really depends on the facts and circumstance of the case. Miscarriage of justice occurs if what occurred is not justice according to the law.*** See Nnaji for v. Ukonu 1986 4 G H

NWLR Pt.36 p.505, H. Okonkwo & Anor. V.G. Udoh 1997 9 NWLR Pt.519 p.16.

***It is not in all cases that failure of the trial Court to hear a pending motion before delivery of judgment is fatal to the proceedings. It is the duty of an Appeal Court to examine the motion that was pending and ensure that failure of the trial judge to take it has not led to a denial of fair hearing or/and miscarriage of justice.*** The substance of the pending motion is whether this case should be commenced by originating summons or by pleadings. Relying on its powers under section 16 of the Court of Appeal Act that Court held that the action was properly commenced by Originating Summons. The substance of the pending motion was thereby resolved. Any further complaint of denial of fair hearing or miscarriage of justice fades into insignificance. The 3rd defendant/appellant was not denied fair hearing, and there was no miscarriage of justice. He raised the issue in the Court of Appeal and it was correctly resolved against him.

Learned counsel for the appellant, Chief Solo Emeka SAN relied on SC.331/2011. *Mrs. M. Okadigbo v. Prince J.O. Emeka & 2 Ors.* Judgment of this Court delivered on 27/1/12 to support his case. This was an Appeal from the decision of the Court of Appeal Enugu Division which set as an Election Appeal tribunal of Anambra State. The appellant, Mrs M. Okadigbo prayed for the following reliefs:

1. An order disqualifying the candidate of the 1st respondent (i.e. prince John Okechukwu Emeka) as candidate for the April 19th election into Anambra North Senatorial District as not having been sponsored by a political party.
2. An order returning the petitioner as the elected candidate in the April 9th Senatorial Election having polled the majority of lawful votes cast at the said election.
3. An order directing the 3rd respondent (PDP) to issue certificate of return to the petitioner being the winner of the said elected.

On 29/6/2011 the tribunal had this to say:

1. That this tribunal lacks jurisdiction to entertain this petition as it is predicated on pre-election issues, and
2. That the petitioner has no locus standi to present and maintain this petition, the preliminary objection succeeds and we accord-

ingly order that this petition be and it is hereby struck out.

In the same vein the lower Court on 19/8/2011 affirmed the decision of the trial tribunal in these avoids:

*“In the instant case, there was no final and subsisting judgment of a Court in favour of the appellant but an ex parte order meant to last momentarily pending the determination of the substantive application. The subsequent order of the Federal High Court Awka made on 25/3/2011 urged parties to maintain the status quo until the matter is disposed of.*

*There is nothing before this Court to show that the matter has been disposed of on the merit meaning that of is perhaps still pending. The issue in contention remains a pre-election matter. The appellant is free to proceed with the matter at the Federal High Court including perhaps contempt proceedings for a breach of the ex parte order where it is found necessary but not in an election Petition Tribunal. In the circumstance I hold that the trial tribunal was right in finding that it lacks jurisdiction to entertain the appellants petition because it is predicated on pre-election issues.*

*On the issue of locus standi, it is my humble view that addressing the issue now will constitute an academic exercise having agreed with the trial tribunal that it lacked jurisdiction to even look into the petition having found that it is a pre-election matter. From the totality of the above, I hold that this Appeal lacks merit and is hereby dismissed. The Ruling of the trial tribunal delivered on 29/6/2011 is hereby affirmed.”*

The Hon. Justice C.M. Chukwuma-Eneh, JSC prepared and delivered the leading judgment of this Court on the 27th of January, 2012. His lordship agreed with concurrent findings of the Courts below that the trial tribunal had no varies to entertain the appellants claims. The position of the law is that a judgment is authority for what it actually decides. See Yusuf v. Obasanjo 2004 5 SC (pt.1) p.27, Adegoke Motor Ltd. v. Adesanya 1989 3 NWLR Pt.109 p.250.

The appellant’s petition was on a pre-election matter. That is whether Prince J.O. Emeka was sponsored by a political party. The trial tribunal found that the appellant’s petition was a pre-election matter and declined jurisdiction. The Court of Appeal agreed with trial tribunal and advised the appellant to proceed to the Federal High Court, the Court saddled with jurisdiction to hear pre-election

matters (section 87 (9) of the Electoral Act 2010 (as amended). The Supreme Court in the leading judgment delivered by Hon. Justice C.M. Chukwuma-Eneh, JSC on the 27th of January 2012 agreed with both Courts below. His lordship said:

B *“What so far has resulted from the circumstance of this case is that it could be properly determined at the Federal High Court as it is a pre-election matter and it may ultimately come to this Court.”*

Agreeing with both Courts below His lordship said that the trial tribunal has no vires to entertain this matter. Suit No. SC.331/2011 Mrs. M. Okadigbo v. Price J.O. Emeka, decided by this Court on 27/1/2012 is authority that Election Tribunals do not have jurisdiction to hear pre-election matter. This Appeal commenced in the Federal High Court, and proceeded to the Court of Appeal and then to this Court. I fail to see or understand how a decision that an election Tribunal has no jurisdiction to hear pre-election matter is of any help to the appellant when this Appeal did not come from an Election tribunal. Suit No. SC.331/2011 Mrs. M. Okadigbo v. Prince J.O. Emeka is of no relevance in deciding the issues in the Appeal. Counsel should always identify the ratio decidendi of a judgment and not the obita dicta. The ratio decidendi in SC.331/2011 Mrs. M. Okadigbo v. Prince J.O. Emeka judgment delivered by this Court on 27/1/12 is that Election Tribunals have no jurisdiction to hear pre-election matters. Any other matter commented on in the concurring judgments are of no relevance in this suit. WHY THE DECISION OF THIS COURT IN SENATOR Y.G. LADO & ORS V. CPC SC.157/2011 AND SC.334/2011 consolidated judgment delivered on 16/12/2011 IS NOT APPLICABLE THIS CASE.

G ***Facts have no views. A judgment should always be read in the light of the facts on which the case was decided. The rules of stare decisis do not allow Courts to apply the ratio of a case across the board and with little regard to the facts of the case before them.*** See Albion Construction Ltd. R.A.O. INV & PROD Ltd 1992 1 NWLR Pt.219 p.583. In Lado’s case there were two parallel primaries conducted on 13/1/2011 and 15/1/2011. In this case there was only one primary conducted on 8/1/11. The purported primaries conducted on 10/1/11 was not a primary, it was illegal and thus carried no right whatsoever. Lado’s case had to do with the Constitution of the Congress for Progressive Change. In this

case it is the constitution and Guidelines of the Peoples Democratic Party (PDP). The facts and circumstance of Lado's case was clearly different from the facts of this case and so not applicable to this case.

I shall now, briefly comment on the all the litigants.

The Appellant - The appellant, according to him won the primaries conducted by the State Chapter of the PDP on 10/1/11. That was an illegal primaries. He did not participate in the only legal primaries conducted on 8/1/11 to choose the PDP's Senatorial Candidate for the General Elections which held in April 2011. He was in the circumstances NEVER the Senatorial Candidate of the PDP. His Appeal fades away. There is no merit anymore in the Appeal.

***The role of a respondent is to defend the judgment, but where a respondent seeks to correct errors in the judgment he files a cross-Appeal.*** See *Eloichin (Nig) Ltd v. Mbadiwe* 1986 1 NWLR Pt.14 p.47. ***Furthermore a respondent's Notice is filed where a respondent agrees with the judgment Appealed against but wants it varied or affirmed on other grounds. A cross-Appeal and a respondent's notice cannot co-exist.*** See *Anyaduba v. NRT Ltd* 1990 1 NWLR Pt.127 p.397.

Whether a respondent files a cross-Appeal or a respondents notice the role of the respondent is still to defend the judgment on Appeal.

The 1st Respondent - The 1st respondent lost in the trial High Court but won in the Court of Appeal. The implication of her victory in the Court of Appeal is that it was she who emerged as the winner of the Senator for the PDP to represent Anambra North. The 1st respondent defended the judgment admirably in this court, and has discharged her role as a respondent.

The 2nd Respondent - The 2nd respondent is the People Democratic Party (PDP). At the hearing of this appeal on the 17th of May, 2012 learned counsel representing the PDP Mr. V.Y. Kwon withdrew his brief and informed the court that he leaves the appeal at the discretion of the court.

***Before the trial court and the court of appeal the PDP stood by the primaries conducted on the 8th of January, 2011 at which it declared the 1st respondent winner. In this court it leaves the appeal at the direction of the court. It is difficult to understand the role of the PDP. The PDP is expected to assist***

***the court to determine who its candidate is and not leave the court to make mistake on such vital an issue. In determining who the candidate of a party is the input of the party is of paramount importance.*** See Uzodinma v. Izunaso 2011 vol. 5 (pt.1) MJSC 27. ***In matter where the courts are called upon to decide which of the candidates emerged from a primary, the input of the Party is of paramount importance. A political Party must inform the court of the true position and not leave such a vital issue to be resolved by the court without its input. In election matters the stakes are extremely high. The political party concerned must strive to assist the court positively at all time. The position adopted by the PDP is unfortunate.***

The 3rd Respondent - The 3rd respondent is the Independent National Electoral Commission (INEC). Learned counsel for the 3rd respondent informed this court at the hearing of the appeal that the 3rd respondent is neutral. It being an umpire. Reliance was placed on A.G. Federation v. Abubakar 2007 10 NWLR Pt. 1041 p.1 Uzodinma v. Izunaso (No.2) 2011 17 NWLR Pt.1275 p.30. In the Uzodinma case I said in the leading judgment that:

*“...In an action to determine who a party nominated as its candidate the input of the party is of paramount importance. INEC on the other hand is merely a nominal party with little or no stake in the matter. INEC should remain neutral in the matter. After all INEC cannot be seen to sympathize more than the bereaved.”*

Onnoghen JSC also observed:

*“Secondly the 3rd respondent INEC as an umpire is expected to remain impartial in disputes of this nature.”*

Reliance on the above by learned counsel for the 3rd respondent, settles the matter. In issues of the domestic affairs of a Political party INEC is expected to remain neutral.

The 4th Respondent - Senator Alphonsus Uba Igbeke and Lady Margery Okadigbo contested the PDP Senatorial primaries conducted on 8/1/2011. He claims to have won the primaries but the Party did not agree with him, so he went to court and won. On appeal he lost. The court of appeal declared Lady Margery Okadigbo winner of the primaries conducted on 8/1/2011. There is no appeal by Senator Alphonsus Uba Igbeke before this court, neither is there a cross appeal by him. In the absence of an appeal, he accepts the judgment of

the court of appeal as correct. That judgment remains inviolate for all times. The 1st respondent who emerged as the Senatorial candidate at the Senatorial primaries conducted on 8/1/11 is the duly elected Senator of the PDP to represent Anambra North in the National Assembly.

The 5th Respondent - The learned trial judge had this to say B  
on the 5th respondent -

*"I do not understand what the 5th defendant wants. Unlike the 3rd and 4th defendants who are claiming to be candidates, he is only supporting the claim of one of them. He deposed to the affidavit in his capacity as the State Chairman of the PDP. His principal is sued and so he has no business being a party. At best he can be a witness..." Accordingly his name is hereby struck out from the case. Both his counter-affidavit and written address are also struck out."* C

The 5th respondent urged this court to set aside the judgment D  
of the Federal High Court delivered on 17/3/2011 and to strike out Suit No. FHC/ABJ/CS/189/2011 Senator Alphonsus Uba Igbeke v. Independent national Electoral Commission & 4 Ors. Suit No. FHC/ABJ/CS/189/2011 is the suit from which this appeal emanates. Judgment in that suit was delivered by the trial judge on 17/3/2011. **This E  
court hears appeals from or against the judgment of the Court of Appeal and not against the judgment of the High Court. Even if this court heard appeals directly from the High court, this court cannot strike out a suit in which judgment has already been delivered as far back as 17/3/11.** F  
I too, like the learned trial judge find the role of the 5th respondent rather strange. He is in this case to support the candidature of the appellant. The observation of the learned trial judge was absolutely correct when she struck his name out. How his name resurfaced in these proceedings remains a mystery. He has no business in this appeal. G

This appeal fails. It is hereby dismissed for the simple reason that both courts below had jurisdiction to hear the suit, and there is no appeal by 4th respondent against the judgment of the Court of Appeal. 1st respondent Lady Margery Okadigbo scored highest number of votes at the primary election held by PDP on 8th January, 2011 and was the candidate that won the said primaries. She is the duly elected Senator for the PDP representing Anambra North. H

**MOHAMMED JSC**

I have had the opportunity before today of reading in draft the judgment of my learned brother Rhodes Vivour, JSC, which has just been delivered. The facts of the case have been very carefully set out in the judgment thereby bringing out the real issues for determination in the Appeal. I entirely agree with my learned brother that this appeal has no merit whatsoever and consequently must fail to justify its dismissal.

However, let me put in a word or two on the issues arising for determination in the appeal particularly the issue of jurisdiction which has been canvassed repeatedly in cases arising from disputes in primaries conducted by political parties to chose their candidates for general elections conducted by the Independent National Electoral Commission in exercise of its powers under the constitution and the Electoral Act. The issue raised on jurisdiction in the present case reads:

*“Whether the Court of Appeal or the trial Federal High Court had jurisdiction to determine who is the Peoples Democratic Party candidate for the Anambra North Senatorial District in the April, 2011 general election from two parallel primary elections held on 8th January, 2011 and 10 January, 2011 respectively having regard to the provisions of the Electoral Act, 2010 (as amended).”*

The law is indeed well settled that it is the claim of the Plaintiff that determines the jurisdiction of the trial Court. See *Anigboro v. Sea Trucks Nigeria Ltd* (1995) 6 N.W.L.R. (Pt. 399) 43 and *Adeyemi v. Opeyori* (1976) 9 - 10 S.C. 31. The reliefs claimed by the 4th Respondent in this appeal who was the Plaintiff at the Federal High Court are:

*“1. Declaration that based on the dictates of Section 87 of the Electoral Act 2010 the 2nd Defendant’s candidate for the Anambra North Senatorial District election to be held in April, 2011 must be the person who secured majority of the votes cast in the indirect primaries conducted by the 2nd Defendant for the Anambra North Senatorial District between 7th to 10th January, 2011.*

*2. Declaration that the only valid and authentic list of nominated candidates of the 2nd Defendant for the general election is that which bears the name of the Plaintiff as the 2nd Defendant’s candidate for the Anambra North Senatorial District.*

*3. An order of injunction restraining the 2nd Defendant, its*



*agents, servants and privies from recognizing any result of the National Assembly primary election of the Peoples Democratic Party (P.D.P) conducted between 7th - 10th January, 2011 in Anambra State other than the result bearing the name of the Plaintiff as the duly elected person to contest for the Senate on the Anambra North Senatorial District to be held in April, 2011 or any other date.* B

*4. An order of injunction restraining the 1st Defendant from accepting, recognizing or acting upon, any list of candidates other than the list bearing the name of the Plaintiff as the Peoples Democratic Party (P.D.P) Candidate for Anambra North Senatorial District.”* C

It is quite clear from the above reliefs 1 - 4 and the remaining reliefs 5 and 6 sought the Plaintiff at the trial Court, are based on the provisions of Section 87 of the Electoral Act 2010 (as amended), the relevant provisions of which state-

*“87(1) A political Party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions ...*

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

*In case of nominations to the position of a Senatorial candidate, House of Representatives and State House of Assembly,*

*A Political Party shall, where (sic) they intend to sponsor candidates-*

*(i) Hold special congress in the Senatorial District, Federal Constituency and the State House of Assembly Constituency respectively, with delegates voting for each of the aspirants in designated centers on specific dates.* F

*(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 Commission by the party.”* G

The 4th Respondent who was the Plaintiff at the trial Court was definitely relying on the above provisions of the Electoral Act, 2010 when he placed his complaint before that Court for declaratory and injunctive reliefs to declare the list of candidates containing his name as the authentic P.D.P. Senatorial District candidate in the 2011 Senatorial Election. The provisions of the Electoral Act 2010 H

which gives the trial Court jurisdiction to entertain the case of the 4th Respondent/Plaintiff is Section 87(9) of the Act which 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.”*

These provisions of sub-section (9) of Section 87 of the Electoral Act, 2010 (as amended) are quite clear and plain and hardly requiring any interpretation. The complaint of the Plaintiff being on selection or nomination of a candidate of a political party for election, in the present case the selection or nomination of candidate of the P.D.P. for election into the seat of Senator from the Anambra North Senatorial District, the subject matter is squarely within the jurisdiction of the Federal High Court. See *Madukolu and Ors. v. Nkemdilim & Ors.* (1962) 2 S.C.N.L.R. 341. In other words by virtue of the provisions of Section 87(9) of the Electoral Act 2010 (as amended) the Federal High Court and consequently the Court of Appeal were right in assuming jurisdiction to hear and determine the plaintiff's action and the appeal that arose from the decision of the trial Court to the Court of Appeal.

Although the Appellant also relied on the decision of this court in *Senator Y. G. Lado & Others v. Congress for Progressive Change (C.P.C) & Ors.* SC. 157/2011 and SC.334/2011 delivered on 15th December, 2011 to challenge the jurisdiction of the trial Federal High court and the Court of Appeal to entertain the case at the trial court and the subsequent appeal at the court of Appeal, this ground does not avail the Appellant either as the present case is distinguishable from the case of *Lado v. C.P.C.* (supra), relied upon.

While there were two parallel primaries conducted by the National Executive Committee of the C.P.C. in Lado's case, what happened in the present appeal is rather different. The primaries that gave rise to the dispute between the parties in this appeal, cannot be described as “parallel.” This is because while the Appellant claimed to have emerged as the candidate of the P.D.P. for the Anambra North Senatorial District for the April, 2011 election from the primaries illegally and unlawfully conducted on 10th January, 2011, by the

Anambra State Chapter of the P.D.P. whose Chairman had been unnecessarily dragged into this case as the 5th Respondent, the 1st Respondent's candidature of the P.D.P. was the product of the primaries lawfully conducted on 8th January, 2011 on the orders of the National Executive Committee of the Party in accordance with the Electoral Act, 2010 (as amended), the Constitution of the party and its guidelines for the general election made pursuant to the party's Constitution. In the case at hand therefore, where there was only one valid primaries conducted by the National Executive Committee of the Party which produced the 1st Respondent as its candidate for the Anambra North Senatorial District for the April, 2011 election, the trial Court and the Court below were not deprived of jurisdiction to entertain the case and the subsequent appeal. See recent unreported decision of this Court given on 25th May, 2011 in appeal No. SC. 443/2011 between chief Ikechi Emenike vs. Peoples Democratic Party (P.D.P) & 3 ors. This puts to rest the Appellant's complaint on jurisdiction of the trial Court and the Court of Appeal raised in the first issue for determination in his brief of argument.

It is for the above reasons and more elaborate reasons given in the leading judgment, that I find myself joining my learned brother Rhodes-Vivour JSC in dismissing this appeal and affirming the judgment of the Court below with no order on costs.

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### **FABIYI JSC**

I have read before now the judgment just delivered by my learned brother Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the Appeal is devoid of merit and deserves to be dismissed.

This matter relates to a primary affair by Peoples Democratic Party. Ordinarily, on issue of nomination of a candidate for an election of this kind, there is no jurisdiction in the Court to dabble into same. It is the prerogative of the party to take care of it. This position has been so for quite sometime now. See: Onuoha v. Okafor (1983) H SCNLR 244; (1983) NSCC 494.

The Court is however vested with a very limited and thin jurisdiction which can be ignited under the provision of section 87 (4) (b) (ii), (c) (ii) and (9) of the Electoral Act, 2010 (as amended). The

section imbues the National Executive Committee of the party with  
 vires to organize and conduct the primaries. A candidate who took  
 part in such a primary election and is aggrieved can complain before  
 the court. It is extant in the record of Appeal that the appellant herein  
 did not take part in the primary election conducted by the National  
 B Executive Committee of the Peoples Democratic Party which was  
 won by the 1st respondent. He took part in a primary Election sur-  
 reptitiously organized by the State Executive chapter of the Peoples  
 Democratic Party which had no vires to organize same on 10-01-11.  
 C Such was a sham and a farce. See: the case of Chief Ikechi Emenike  
 v. Peoples Democratic Party & 3 ORS. SC. 443/2011, unreported  
 judgment delivered on 25th May, 2012.

My learned brother said it all. For the above reasons and those  
 clearly set out in the lead judgment, I too feel that the Appeal has no  
 D chance for success. It is accordingly dismissed by me. I endorse all  
 consequently orders contained in the lead judgment; inclusive of that  
 relating to costs.

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E **ADEKEYE JSC**

I have read before now the judgment just delivered by my  
 learned brother Bode Rhodes-Vivour, JSC. I agree with his impec-  
 cable reasoning and conclusion in respect of the issues formulated  
 F for determination in this Appeal.

The issues, argument and submission of the appellant and re-  
 spondents have brought to the front burner the prerogative of the  
 parties in nominating their candidates in preparation for a demo-  
 cratic election and the extent to which any disgruntled or aggrieved  
 G party candidate can challenge the ultimate choice of the party in Court.  
 The relevant statutes and documents as enumerated in the lead judg-  
 ment are as follows:-

- 1) Sections 222-224 of the 1999 Constitution as amended
- 2) Section 87 (1), 4(c) (I) and (II) (7) and (9) of the Electoral  
 H Act 2010 as amended.
- 3) Articles 12 and 17 of the Peoples Democratic Party Consti-  
 tution.
- 4) Part 5 of the Peoples Democratic Party Guidelines.
- 5) Electoral Guideline for the conduct of Primary Election.

On gleaning through these documents, the choice of the candidate by any party for elective post shall be by holding party primaries. The choice of candidate in this Appeal is by the Peoples Democratic Party to fill the Anambra North Senatorial District in the National Assembly prior to the April, 2011 general election. It is stipulated in the Party Constitution and the relevant Party guidelines that any Primary shall be conducted by the National Executive Committee of the Peoples Democratic Party with the officials of Independent National Electoral Commission in attendance. B

The foregoing must be strictly adhered to in the nomination of a candidate. Any candidate who emerged in compliance with this procedure shall be deemed to be the only authentic nominee of the party. In this Appeal, the only choice of the Peoples Democratic Party in the primaries conducted in the regular manner by the National Executive Committee on the 8th of January 2011 was the 1st respondent Lady Margery Okadigbo. The appellant, Prince John Okechukwu Emeka emerged as the winning candidate of the faction of the Anambra State Chapter of the Peoples Democratic Party which conducted its primaries through another organ other than the National Executive Committee on the 10th of January 2011. The court shall not hesitate to declare such a choice of candidate unfit and unacceptable, having failed to be nominated through the proper and recognized organ of the party. C D E

The position still remains intact that the issue of nomination or sponsorship of an election candidate is within the domestic affairs of the political parties and the courts have no jurisdiction to nominate for a political party its candidate for any election. Onuoha vs. Okafor (1983) 2 SCNLR 244, Dalhatu vs. Turaki (2003) 15 NWLR, pt. 843, pg. 310. The court however is duty-bound to interpret the law as made by the legislature so as to determine whether or not in the exercise of its rights of sponsorship or nomination the political party has complied with the relevant provisions of the law laid down to conduct of the primaries in the present dispensation under the Electoral Act 2010 as amended. Section 87 (1) (9) stipulates that F G H

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

Section 87 (1) (9) reads:-

*“Notwithstanding the provisions of this 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. High Court for redress”.*

The courts, both the Federal High Court or the State High Court, and in the Appeal to the Court, are competent to determine whether the relevant provision party constitution and electoral guidelines have been followed in the choice of a candidate for any elective post. The courts can declare which party process is right and can produce a proper candidate particularly where two primaries are held by a party for example, one by the National Executive Committee and the other by the State chapter of the party. Parties must be cautious in citing and relying on a case unless the facts are on all fours with the particular case under consideration. Each case is decided on its own peculiar facts.

The appellant, Prince John Okechukwu Emeka and the learned Senior Counsel Chief Solo Akuma (SAN) urged this Court to follow its earlier decision in the case of SC 334/2011 Senator L. G. Lado & others vs. Congress for Progressive Change (CPC) & others judgment of this Court delivered on 15th of December 2011. In that case two lists of candidates were forwarded to INEC whereas the primaries held on two different dates the 13th and the 15th of January 2011 by the same body were disputed. The appellant did not ascertain whether the Constitutions of Congress for Progressive Change (CPC) and Peoples Democratic Party (PDP) are similar as to the procedure for nomination of candidates. The appellant’s nomination conducted ultra vires of the power of the State Executive Chapter of the Peoples Democratic Party, (PDP) is illegal, null and void and with no legal consequence whatsoever. The appellant is the product of an invalid primaries.

The two lower Courts have the jurisdiction to determine the case before them and to hold in the circumstance that the valid primaries is that conducted on the 8th of January 2011. The unreported decision of this Court delivered on 25th May 2011 in the Appeal No. SC 443/2011 between Chief Ikechi Emenike vs. Peoples Democratic Party & 3 ors had settled the appellant’s complaint on

jurisdiction of the trial Court and the Court of Appeal raised in the first issue for determination in this appeal. That decision adequately represents the opinion of this Court on that subject-matter.

With fuller reasons given by my learned brother in the lead judgment, I also agree that the Appeal lacks merit and it must fail. I agree with the consequential order that Lady Margery Okadigbo having scored the highest number of votes at the primaries election held by the Peoples Democratic Party on 8th June 2011 is the duly elected Senator for the PDP representing Anambra North Senatorial District in the April 2011 senatorial election. The Appeal is dismissed with no order as to costs.

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