

**SUPREME COURT OF NIGERIA**

9TH JULY, 2012. SC. 390/2011

**CORAM:- A. M. MUKHTAR, C. M. CHUKWUMA-ENEH,  
M. S. MUNTAKA-COOMASSIE, M. U. PETER-ODILI,  
O. ARIWOOLA, JJSC**

HALIMA HASSAN TUKUR ..... APPELLANT  
AND  
1. GARBA UMAR UBA  
2. PEOPLES DEMOCRATIC PARTY ..... RESPONDENTS  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

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APPEALS - Notices of appeal - Multiple filing - Appellant can file more than one notice within time - But he must choose which of them - He intends to rely upon (H1)

APPEALS - Notice of appeal - Amendment - Appellant can amend original notice - To incorporate grounds in other notices of appeal (H2)

EVIDENCE - Evaluation - Trial court evaluates and ascribes probative value to evidence - And is thus in a position - To assess credibility and demeanor of witnesses (H3)

EVIDENCE - Evaluation - Challenge - Principles - When evaluation by judge is in issue - It should inter alia be considered - Whether the evidence is admissible - Or relevant (H4)

EVIDENCE - Reevaluation - Justification - When trial court fails to properly evaluate evidence - Appellate court can intervene - And reevaluate such evidence (H5)

AFFIDAVITS - Deposition - Not challenged - Effect - Deposition in affidavit which is not controverted - Is deemed admitted (H6)

ELECTIONS - Nomination - Political party - Is the proper body - To know who among aspirants - Is cleared for elections - And court

does not question a party's candidate - Where constitutionally nominated (H7)

ESTOPPEL - Meaning - It means a bar that prevents one from asserting a right - That contradicts what one has done before - Or what has been legally established as true (H8)

ESTOPPEL - Estoppel by silence - Meaning - It arises when a party is under a duty to speak - But fails to do so (H9)

### ***FACTS***

Plaintiff/appellant and 1<sup>st</sup> defendant/respondent are members of the Peoples Democratic Party – 2<sup>nd</sup> defendant/respondent. Both parties are interested in contesting for the office of member representing Yauri/Shanga/Ngaski Federal Constituency of Kebbi State at the National Assembly under the platform of 2<sup>nd</sup> respondent. 2<sup>nd</sup> respondent conducted primary elections in order to select candidate to represent it at the general elections to be conducted by 3<sup>rd</sup> defendant/respondent. At the end of the primary election held on 6<sup>th</sup> January 2011, 1<sup>st</sup> respondent emerged as the winner with the highest votes cast, while appellant came 4<sup>th</sup> on the list. Appellant contended that notwithstanding the votes scored by 1<sup>st</sup> respondent and his emergence as the winner of the said primary, she (appellant) was entitled to be nominated as the candidate of 2<sup>nd</sup> respondent.

Appellant further stated that according to 2<sup>nd</sup> respondent, 1<sup>st</sup> to 3<sup>rd</sup> candidates at the primary election had been disqualified by the screening committee of 2<sup>nd</sup> respondent. Hence, they ought not to have participated in the said primary election. Notwithstanding appellant's complaint, the name of 1<sup>st</sup> respondent was eventually submitted to 3<sup>rd</sup> respondent as the candidate of 2<sup>nd</sup> respondent at general election. Consequently, appellant instituted this action at the Federal High Court, Abuja contending that she is the winner of the said primary election. The matter was later transferred to the Federal High Court, Sokoto. At the end of trial, judgment was entered for appellant. Dissatisfied, 1<sup>st</sup> and 2<sup>nd</sup> respondent appealed to the Court of Appeal, Sokoto. The court set aside the judgment of the trial court and held in respondents' favour. Aggrieved, appellant filed two Notices of Appeal at Supreme Court.

**ISSUES FOR DETERMINATION**

*“1. Whether the court below was right in disturbing the finding of the trial court to the effect that the 1st Respondent was not cleared to contest the 2nd Respondent’s primary election held on Thursday 6th January, 2011 for the purpose of picking the 2nd Respondent’s candidate for the Yauri/Shanga/Ngaski Federal Constituency in the April, 2011 general election.*

*2. Whether the court below appreciated the basis for the trial court’s application of principle of estoppels and this notwithstanding, whether the 1st Respondent who failed to challenge the decisions of the 2nd Respondent’s screening Electoral and Electoral Appeal Panels disqualifying him from contesting the 2nd Respondent’s primaries could turn around to complain or extricate itself from the effect of the said decision*

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

*Notices of appeal - Multiple filing*

**1. There is also no doubt and it cannot be disputed that an appellant is entitled to file more than one Notice of Appeal within the time prescribed for so doing by the Rules of court. But whenever there are more than one Notices of Appeal and all the said Notices were filed within the time so prescribed, the Appellant cannot use or rely upon more than just one of the Notices of Appeal to argue the appeal. He must choose which of them he intends to rely upon.** (p. 2660 G)

*Notice of appeal - Amendment*

**2. An appellant is equally entitled to amend an original Notice of Appeal as at when necessary. In other words, an Appellant can amend his notice of appeal to incorporate the grounds in the other Notice(s).** (p. 2661 A)

*EVIDENCE - Evaluation*

**3. Generally, and it is settled law that the evaluation of evidence adduced and ascription of probative value or weight to**

**such evidence is the primary duty of the trial judge who saw and heard the witnesses testified. The trial judge is therefore in a position to access the credibility and watch the demeanour of the witnesses. Therefore, it is the primary responsibility of the trial court to fully consider in totality the evidence of both parties placed before the court. In doing this, the trial judge shall put the evidence on the imaginary scale of justice and weigh it to determine the party in whose favour the scale tilts by making necessary finding of facts and then come to a logical conclusion.** (p. 2675 D/H)

*EVIDENCE - Evaluation - Challenge - Principles*

**4. However, when the evaluation of evidence by a particular trial judge is in issue or being challenged, the guiding principles are as follows:**

- (i) **whether the evidence is admissible**
- (ii) **whether the evidence is relevant**
- (iii) **whether the evidence is credible**
- (iv) **whether the evidence is conclusive**
- (v) **Whether the evidence is probable than that given by the other Party.** (p. 2675 F)

*EVIDENCE - Reevaluation - Justification*

**5. But when the trial court saddled with the responsibility of evaluating evidence fails so to do, or to do so properly, then an appellate court is entitled to intervene and re-evaluate such evidence. Otherwise, the appellate court has no business interfering with the finding of the trial court on such evidence.** (p. 2676 A)

*AFFIDAVITS - Deposition - Not challenged - Effect*

**6. In the instant case, the case was tried on affidavit and documentary evidence. There was affidavit and further affidavit in support of the Originating Summons by the appellant at the trial court. There were also counter affidavits and reply to further affidavit of the Respondents to oppose the originating summons. It is already a settled law that an affidavit evidence constitutes evidence and must be so construed, hence, any**

**deposition therein which is not challenged or controverted is deemed admitted.** (p. 2676 C)

*ELECTIONS - Nomination - Political party*

**7. The 2nd Respondent as the Political Party (PDP) which was sponsoring candidates for an election is the proper person/body, so to speak, to know which of the aspirants amongst its members it has cleared for the primaries and general election afterwards. As long as the guidelines and Constitution of the Political party are not violated or breached, the court has no power to question the choice of a party's candidate presented for election.** (p. 2680 C)

*ESTOPPEL - Meaning*

**8. Generally, estoppels means "a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. A bar that prevents the re-litigation of issues."** (p. 2682 H)

*Estoppel by silence - Meaning*

**9. Therefore, estoppels by silence means "estoppels that arises when a party is under a duty to speak but fails to do so."** (p. 2683 A)

## NOTABLE POINT OF INTEREST

### **ARIWOOLA JSC**

#### **1. Evidence – Definition of**

What then is Evidence?

*"Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. 'Evidence' is the demonstration of a fact, it signifies that which demonstrates, makes clear, ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptance, the term 'evidence' includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 'Evidence' has also been defined to mean any species of proof legally presented at the trial of*

*an issue, by the act of the parties and through the medium of witnesses, records, documents concrete objects and the like.”*  
(p. 2675 A)

### **REPRESENTATION**

- B S. I. Ameh, SAN with C. V. C. Ihekweazi Esq., A. N. Idakwoji Esq., O. A. Eze, Esq., E. M. D. Umukoro Esq., for the Appellant  
Y. C. Maikyau SAN with Wole Agunbiade Esq., Ladan Baba Kodeng Esq., A. D. Zubairu Esq., Zira Onuaguluchi Esq. and V. O. Yeye Odu (Miss) for 1st and 2nd Respondents  
C D. M. Mando Esq., with I. K. Bawa Esq., Director Legal Services for INEC for the 3rd Respondent

### **CASES REFERRED TO**

- D Agbi Vs. Osbeh (2006) 7 SCM 1  
Fabenro Vs. Arobadi (2006) 3 SCM 99  
Bashaya Vs. State (1998) 5 NWLR (pt. 550) 351  
Kolobo Vs. Alamu (1998) 9 NWLR (pt. 565) 226  
Sha Vs. Kwan (2000) 5 SC 178  
E Military Governor of Lagos State Vs. Adeyigi (2012) 2 SCM 183  
Ajomale Vs. Yadaut (No.2) 5 NWLR (pt. 191) 226  
Magnusson Vs. Koiki (1993) 12 SCNJ 114  
Henry Stephens Engr.. Ltd Vs Yakubu Nig Ltd (2009) 6 SCM 90  
Dalhatu Vs. Turaki (2003) 15 NWLR (pt. 843) 310  
F Akeredolu & Ors Vs. Akinremi (1986) 2 NWLR 710  
Harriman Vs. Harriman (1987) 3 NWLR 244  
Iteshi Onwe Vs. The State (1975) 9-10 SC 41  
Federation Vs. Abubakar (2007) 10 NWLR (pt. 1041)  
G Uzodinma Vs. Izunaso (No.2) (2011) 17 NWLR (pt. 1275) 30

### **STATUTES & RULES REFERRED TO**

- Electoral Act 2006, s. 34  
Electoral Act 2010 (as amended), ss. 31(5), 87(9)  
H Electoral Act 2012, s. 87(4)  
Constitution of the Federal Republic of Nigeria 1999 (as amended)  
Supreme Court Rules 2000 (as amended), O. 8 r. 2

**BOOK REFERRED TO**

Black's Law Dictionary 9<sup>th</sup> Ed. pp. 629, 630 and 635

**LEAD JUDGMENT BY ARIWOOLA JSC**

This is an appeal against the decision of the Court of Appeal, Sokoto Division, holden at Sokoto, delivered on 8th September, 2011 B in appeal No. CA/S/34/2011 wherein it set aside the September, 2011 in appeal No. CA/S/34/2011 wherein it set aside the judgment of the trial Federal High Court, Sokoto, which was delivered on 30/3/2011 in suit No. FHC/S/CS/8/2011. The Appellant herein had earlier commenced an action before the Abuja Federal High Court by an Originating C Summons filed on 7/02/2011 against the 1st and 2nd Respondents then described as Defendants. The suit was later transferred to Sokoto Federal High Court on 7/3/2011. The Originating Summons was later amended to join the 3rd Defendant now 1st D Respondent to the suit. At the end of the day, judgment was entered in favour of the Appellant as per her amended Originating Summons filed on (See; pages 724-736 and pages 1068-1081 respectively of the records).

Aggrieved by the decision of the trial Federal High Court, the E 1st & 2nd Defendants appealed to the court below and the judgment of the trial Federal High Court was set aside on 8/9/2011 in their favour. Dissatisfied with the judgment of the court below led to the instant appeal to this court by the 1st Respondent. The appellant F filed two Notices of Appeal. The first Notice of Appeal was filed on 8/9/2011 while the 2nd Notice of Appeal was filed on 24/11/2011. (See pages 424-426 and 1-13 in the main volume and the Supplementary record respectively). Parties, in compliance with the Rules of this court filed and exchanged their briefs of argument. Upon being G served with the Record of appeal, the appellant filed her brief of argument on 13/12/2011. The 1st and 2nd Respondents filed their joint Respondents' brief of argument on 16/01/2012 and same was deemed properly filed and served on 19/3/2012, while the 3rd H Respondent also filed its brief of argument on 23/12/2011 and same was deemed properly filed and served on 19/3/2012. The Appellant in response to the 1st and 2nd Respondents' brief of argument filed a Reply brief of argument on 7/2/2012 and the said reply was deemed as properly filed and served on 19/3/2012. On the 16th of April,

2012 when the appeal came up for hearing, Mr. Maikyau, learned senior counsel for the 1st and 2nd Respondents referred to the Joint Brief of argument filed on behalf of the 1st and 2nd Respondents on 16/01/2012. He referred to their Notice of Preliminary Objection separately filed on 16/01/2012. He sought leave of court to move  
 B the said notice save from grounds c, d, e, g and h. In other words, he then relied on only grounds a, b and f. He referred to the Notice of Preliminary Objection in the brief of argument on pages 30-39. The said grounds now relied upon for the Preliminary objection are as follows:

C (a) The Appellant filed two Notices of Appeal on 8th of September, 2011 and 24th November, 2011 respectively

(b) The grounds in the two Notices of Appeal were argued by the Appellant in the Appellant's brief of Argument dated 12th of  
 D December, 2011 and filed on the 13th December, 2011.

(c) The maintaining of the two Notices of Appeal by the Appellant constitutes an abuse of the process of this court.

The arguments in support of the grounds of objection are contained in the brief of argument as follows:

E Learned Senior Counsel to the Respondents referred to the Notice of Appeal dated and filed on the 24th of November, 2011 and submitted that it is an abuse of the process of this court. He conceded that the appellant has the right to file numerous Notices of  
 F Appeal subject to compliance with the requirements of law as to their competence. He submitted that the maintenance of the second Notice of Appeal in the light of the Notice of Appeal filed on the 8th of September 2011 constitutes an abuse of the process of this court. Learned Senior Counsel contended that the Notice of Appeal dated  
 G 8/9/2011 has the same parties, deals with the same judgment as the Notice of Appeal filed on 24/11/2011. He submitted that both Notices of Appeal have been argued in the Appellant's brief of argument filed on the 13th December, 2011 and this constitutes an abuse of the process of this court. He relied on *Dingyadi & Anor Vs INEC*  
 H (2010) 4-7 SC (pt.1) 32. Learned Senior Counsel urged the court to dismiss the appeal with costs

In response to the 1st and 2nd Respondents' joint brief of argument, the appellant filed a Reply brief of argument on 07/02/2012. In the reply brief, the appellant referred to the Notice of Preliminary

Objection of the 1st and 2nd respondents filed pursuant to Order 2 Rule 9 of the Rules of this court. Learned Senior Counsel to the Appellant, Ameh, Esq. referred to a Motion on Notice he had filed for leave to appeal on grounds other than grounds of law alone and for leave to amend the Appellant's brief of argument. He submitted that the prayers in the said application shall take care of the Respondents' contentions in their preliminary objection, save that the maintenance of two Notices of Appeal constitutes abuse of court process. He submitted that once the court granted the appellant's application the other objections of the Respondents would have been overtaken by events. He urged the court to so hold. B  
C

With respect to the objection on the maintenance of two Notices of Appeal, having constituted an abuse of court process, learned senior counsel submitted that the contention was misconceived, to say the least. He referred to the same *Dingyadi & Anor Vs INEC* (2010) 18 NWLR (Pt.1224) 1 and contended that in that case this court only treated as constituting an abuse of court process, a situation where the Appellant filed and maintained two separates Notices of Appeal in two different divisions of the court of Appeal, namely, Abuja and Sokoto on the same matter, such that two conflicting decisions could emerge if both appeals were maintained. He submitted that the situation in the instant case is different in that the two Notices of Appeal were filed in the same court and the appeal is being considered as one. He said the case of *Dingyadi & Anor v. INEC* (Supra) does not apply to the instant appeal. D  
E  
F

Learned Senior Counsel contended that this court has in a plethora of cases decided that an appellant is at liberty to file two or more notices of appeal so long as they are filed within time and is at liberty to choose whether to use all or some of the notices or stick to one and withdraw or abandon the rest, but that the filing and maintenance of more than one notices of appeal in the same matter before the same court does not render any of the Notices incompetent. He cited; *Registered Trustees of Amorc Vs Awoniye* (1994) 7 NWLR (pt.355) 154 at 191; *Tukur vs Government of Gongola State* (1983) 1 NWLR (Pt.68) 39 at 49; *First Bank of Nigeria Plc. vs. TSA Industries Ltd* (2010) 15 NWLR ( Pt.1210) 247 at 290. G  
H

Learned Senior Counsel submitted that both Notices of Appeal which the appellant filed in this appeal on 8/9/2011 and 24/11/

2011 respectively are in exercise of one right of appeal in the matter and are therefore competent and the appellant is at liberty to either use both of them or abandon one and use the other. He was emphatic that the appellant has elected to use both Notices of Appeal as she is entitled to do. He urged the court to so hold.

B However, learned Senior Counsel submitted that, assuming without conceding that the 1st and 2nd Respondents are right their contention on the Notices of Appeal, or that this court finds merit in their argument, in this regard, the Appellant applied to abandon the  
C 1st Notice of Appeal filed on 8th September, 2011, and to amend the Appellant's brief of argument to remove or sever any reference to grounds of the said Notice of appeal under issue 1 and 4 of the Appellant's brief of argument. He relied on *Shanu v. Afribank* (2000) 8 NWLR (Pt.684) 392.

D As earlier stated, the 1st and 2nd Respondents formally filed a Notice of Preliminary Objection pursuant to Order 2 Rule 9 of the Rules of this Court, (as amended). The said preliminary objection is also raised and argued in their brief of argument. However, when the appeal came up for hearing, and the court allowed the respon-  
E dents to argue their appeal, learned Senior Counsel sought leave to abandon grounds c, d, e, g and h of the objection having been overtaken by event. In the circumstance those grounds and the arguments proffered on them in the Respondents' brief of argument are hereby struck out.

F There is no doubt and this has been clearly admitted by the Appellant that two Notices of Appeal were filed by the appellant against the same judgment of the court below delivered on 8th September, 2011. The said Notices of Appeal appellant are:

- G (a) Notice of Appeal filed on 8th September, 2011 and  
(b) Notice of Appeal filed on 24th November, 2011.

***There is also no doubt and it cannot be disputed that an appellant is entitled to file more than one Notice of Appeal within the time prescribed for so doing by the Rules of court.***  
H ***But whenever there are more than one Notices of Appeal and all the said Notices were filed within the time so prescribed, the Appellant cannot use or rely upon more than just one of the Notices of Appeal to argue the appeal. He must choose which of them he intends to rely upon.*** See *Bilante International*

Ltd v. Nigeria Deposit Insurance Corporation (2011) 8 SCM 40 at 540; Iteshi Onwe v. The State (1975) 9 - 11 SC 41.

**An appellant is equally entitled to amend an original Notice of Appeal as at when necessary. In other words, an Appellant can amend his notice of appeal to incorporate the grounds in the other Notice(s).** But rather unfortunately, the Appellant in this case not only filed two Notices of Appeal but attempted to prosecute the appeal based on the two Notices of Appeal. Indeed, the appeal had been argued on the two Notices of Appeal without making the required choice of the one to use out of the two Notices. From the Appellant's brief of argument, on pages 8-9, the issues for determination are stated as follows:

*"Respectfully, from the two (2) Notices of Appeal filed by the Appellant, it is humbly submitted that the following issues arise for determination.*

*1. Whether the Court below was right in holding that the jurisdiction vested by and the redress provided under Section 87(9) of the Electoral Act, 2010 (as amended) are limited to award of damages and did not include jurisdiction to order the reinstatement of the Appellant as candidate of the 2nd Respondent as candidate of the 2nd Respondent as ordered by the trial court. (Grounds 2 of the Appellant's first Notice of Appeal and Grounds 1, 2 and 3 of the Second Notice of Appeal).*

*2. Whether the court below was right in disturbing the finding of the trial court to the effect that the 1st Respondent was not cleared to contest the 2nd Respondent's primary election held on Thursday 6th January, 2011 for the purpose of picking the 2nd Respondent's candidate for Yauri/Shanga/Ngaski Federal Constituency in the April, 2011, general Election (Grounds 4 and 5 of the Appellant's second Notice of Appeal).*

*3. Whether the court below appreciated the basis for the trial court's application of principle of estoppels and this notwithstanding, whether the 1st Respondent's screening, Electoral and Electoral Appeal Panels disqualifying him from contesting the 2nd Respondent's primaries could turn around to complain or extricate itself from the effect of the said decision. (Ground 6 of the Appellant's second Notice of Appeal).*

*4. Whether in view of the facts established by affidavit and*

*documentary evidence, in this case, the court below was correct in holding that the Appellant did not prove that the 2nd Respondent violated its Electoral Guidelines 2010 by nominating the 1st Respondent as its candidate for the election into membership of the House of Representatives for the Yauri/Shanga/Ngaski Federal Constituency.*

*B (Ground 1 of the Appellant's first Notice of Appeal and Ground 7 of the Second Notice of Appeal). ”*

As can be clearly seen in the Issues formulated for determination of this appeal, the TWO NOTICES OF APPEAL PRODUCED THE SAID FOUR (4) Issues. In other words, and in effect, the said four Issues are argued in the appellant's brief of argument.

On the appellate jurisdiction of this court, Order 8 rule 2 of the Supreme Court Rules, 2000 (as amended) provides as follows:-

*D “Order 8 (2) (1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called “the Notice of Appeal”) to be filed in the Registry of the court below which shall set forth the grounds of appeal, state whether the whole or part only of the decisions of the court below is complained of (in the latter case specifying such part) and state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such parties. It shall also have endorsed on it an address for service.”*

From the above rule of this court, it is clear that an appeal to this court is required to be argued on a Notice of Appeal but not more than one. As stated earlier, there is no doubt that an appellant may file more than a Notice of Appeal within the time prescribed by the Rules so to do but the argument on the appeal shall be hinged on only one Notice of Appeal which may incorporate the grounds in other Notices by way of amendment by or with leave of the court at any time. (See Rule 4 of Order 8 supra).

I had referred and quoted above, the Issues distilled from the two Notices and Grounds of Appeal in the appeal to show that the said issues were distilled from the two Notices of appeal and they are so argued in the appellant's brief of argument. As I stated earlier, it is not the filing of two Notices of Appeal that is wrong and improper, that is allowed and acceptable. What appears not neat and tidy enough is the way the Appellant in this appeal argued the appeal upon the

two Notices of Appeal without an amendment incorporating the grounds of appeal in one. However, the learned senior counsel to the Appellant has sought to withdraw or abandon the first Notice of Appeal filed earlier in this appeal on 8th September, 2011 and the issues formulated therefrom. This can surely be done and it is permissible. In *Tukur Vs Government of Gongola State* (1988) 1 NSCC B 30 at 36 this court had held as follows:

*“An appellant can validly withdraw one of two Notices of Appeal and then proceed to argue his appeal based on the other remaining Notice of Appeal”.*

In the same case, this court, per Obaseki, JSC on page 41 C opined as follows:

*“...that the filing of more than one notice does not affect the validity of an appeal if all the notices are filed within the statutory period for appealing. Notices filed outside the period unless time is D extended are incompetent. In other words, an appeal is not incompetent because it is brought by more than one notice of appeal.”*

See also; *Akeredolu & Ors Vs. Akinremi & Ors* (1986) 2 NWLR 710, *Harriman Vs Harriman* (1987) 3 NWLR 244 and *Iteshi Onwe Vs The State* (1975) 9-10 SC 41. Earlier in the Tukur's case (supra) E this court had opined as follows:

*“It is more correct to say that the Rules of the Court of Appeal did not expressly provide for the filing of more than one notice. The Rules were silent on the Issue and it is therefore my opinion that every notice of appeal filed within time is valid. If more than one F notices are filed within time, the others may be superfluous but not invalid. All the notices combined have been in exercise of a right of appeal. They may have stated different grounds which if permissible in law, gives validity and competency to the notice. Where several G notices of appeal have been validly filed, I cannot see anything preventing an application for leave to consolidate them into one or for withdrawal of all except one.”*

In the circumstance, having sought to withdraw the first notice of appeal and be left with the other notice of appeal which was equally H filed within time and is competent, the preliminary objection is misconceived and unsustainable. Accordingly, it is overruled. The appeal is to be heard on merit. The first notice of appeal filed on 8/9/2011 having been withdrawn, the issues distilled therefrom must go

with it. Therefore, issues 1 and 4 are struck out with the Notice of appeal filed on 8/9/2011, from which the said issues were distilled. The argument of this appeal by the Appellant was then based on the remaining two Issues 2 and 3 distilled from the second Notice of appeal. The said Issues for clarity are:

B Issues for Determination

C *“1. Whether the court below was right in disturbing the finding of the trial court to the effect that the 1st Respondent was not cleared to contest the 2nd Respondent’s primary election held on Thursday 6th January, 2011 for the purpose of picking the 2nd Respondent’s candidate for the Yauri/Shanga/Ngaski Federal Constituency in the April, 2011 general election. (Grounds 4 and 5 of the Appellant’s second Notice of Appeal).*

D *2. Whether the court below appreciated the basis for the trial court’s application of principle of estoppels and this notwithstanding, whether the 1st Respondent who failed to challenge the decisions of the 2nd Respondent’s screening Electoral and Electoral Appeal Panels disqualifying him from contesting the 2nd Respondent’s primaries could turn around to complain or extricate itself from the effect of the said decision (Ground 6 of the Appellant’s second Notice of Appeal),*

F It is noteworthy that the 1st and 2nd Respondents in their joint brief of argument did not formulate separate issues from the Appellant’s Notices of appeal. They sought to rely and base their argument of the appeal on the issues as formulated by the Appellant from the two Notices of appeal. But since the Appellant had withdrawn and/or sought to abandon the first Notice of Appeal, at the same time, the arguments of the Respondents on the issues formulated from the grounds contained in the said notice of appeal shall be discountenanced. On issue No.1 above, the appellant referred to the sole issue formulated by the trial Judge in his judgment which was considered by him germane for determination and upon which the appellant’s suit was determined as follows:-

H *“Whether the 1st Respondent was duly cleared to contest the primary Elections”.*

The Appellant referred to the trial court’s findings on page 1077 and submitted that the finding was based on the evidence presented by the parties and properly evaluated by the trial court. The appel-

lant referred to the conclusion of the court below on pages 415-418 of volume 1 of the record on the alleged improper evaluation of the Exhibits produced by the 1st Respondent and submitted that the court was wrong. It was contended that in view of the importance of Article 27 (i)-(v) of the 2nd Respondent's Electoral Guidelines for Primary Elections, 2010 in matters of primary election, the trial court considered both Exhibits H, I and K which were attached to the appellant's Amended Originating Summons and those Exhibits presented by the 1st and 2nd Respondents but preferred Exhibits H, I and K based on cogency and credibility. It was further contended that by Article 27 (iv) of the 2nd Respondent's Electoral Guidelines, only aspirants cleared by the State Screening Panel or by the Appeal Panel shall be allowed to participate in the primary election. Learned Senior Counsel submitted that Exhibits H, I and K which are the reports of the Screening Committee /Panels of the 2nd Respondent, clearly showed that the 1st Respondent was never cleared to contest the primaries.

It was further submitted that there was nothing on record to show that those Exhibits, GU3, GU4, GU5, GU6, GU14 and GU15 were ever submitted by the 1st Respondent during the screening or to the screening panel as the reports of the three Panels in Exhibits H, I and K denied such submission, in particular, Exhibit K on pages 865-866 of Volume 1 of the record. Learned Senior Counsel referred to Exhibit GU1, which was said to have been presented by 1st Respondent to the 2nd Respondent's Electoral Panel to show that he was cleared and submitted that same was merely a photocopy of provisional clearance certificate which the panel considered but turned down. He referred to Exhibit I - the Electoral Panel Report on pages 855-862 of Volume 1 of the record and submitted that it shows that after the screening exercise, the screening Panel forwarded its report and List of cleared aspirants to the 2nd Respondent's National Secretariat which in turn made it available to the Electoral Committee / Panel for the conduct of the primaries. The said list, he said, also confirmed the 1st Respondent's non clearance and disqualification. The appellant referred to Exhibit GU8 as one of the documents produced by the 1st Respondent at the trial court and said not to have been considered. It was submitted that in view of the mandatory provisions of Paragraph 27 (v) of the 2nd Respondent's Electoral

Guidelines, so long as the 1st Respondent was not cleared by any of the Panels to contest the primaries, the fact that he polled the highest votes pales into the realm of insignificance since he was ab initio not supposed to be voted for. It was further submitted that the Appellant led credible evidence to show that the 1st Respondent was never  
B cleared to contest the primary election in question and that the trial court was right in relying on the evidence led by the appellant. The appellant referred to the contention of the 1st & 2nd Respondents that they had no knowledge of and did not receive Exhibits H, I and  
C K and contended that from the content of the said Exhibits it is clear that the National Secretariat of the 2nd Respondent was in receipt of the Reports and indeed worked with them at various stages of the primaries and even after the conduct of the primaries. It was further  
D contended that following the emergence of the appellant as candidate and her endorsement by the three Committees/Panels, the 2nd Respondent invited her to its National Headquarters and she was given INEC nomination Form EC4 B 8 (iv), that is Exhibit L and INEC Affidavit Form C. F001 Exhibit M to be completed as the duly  
E elected candidate for her Federal Constituency. She completed the forms and submitted for onward transmission of her name to the 3rd Respondent. Learned Senior Counsel submitted that even for the above done, the 2nd Respondent cannot deny knowledge of the Reports of the Committees/Panels. He further submitted that the mere  
F fact of denial of knowledge and receipt of Exhibits H, I and K by the 1st and 2nd Respondents respectively did not render the contents of the Exhibits less credible. He urged the court to resolve the issue in favour of the appellant.

On this issue No.1 above, the 1st and 2nd Respondents re-  
G ferred to the argument/submission proffered by the 1st and 2nd Respondents as Appellants before the court below as can be found on pages 135-147 of Vol. 2 of the record and that in spite of the host of documents and quality of the affidavit evidence from the 1st and 2nd Respondents, the trial court only considered Exhibits H, I and K  
H which accompanied the affidavit filed by the appellant as Plaintiff before the trial court. It was contended that this was in spite of the fact that the 1st and 2nd Respondents had said that the said documents were not their documents and that the 1st Respondent was cleared to contest the primaries. They submitted that it was incorrect

for the appellant to claim that the trial court properly evaluated the affidavit and documentary evidence presented by the parties. The 1st and 2nd Respondents referred extensively to the judgment of the court below and submitted that the court was right when it held that the trial court failed to evaluate the evidence placed before it by the 1st and 2nd Respondents. It was contended that the trial court did not consider the depositions by the 2nd Respondent on its counter affidavit on Exhibits H, I and K which the trial court so heavily relied upon. They referred to Article 27 (i)-(v) and contended that whereas Article 27 (i) and (ii) provide for the existence of a screening committee and screening Appeal Panel respectively, for each State of the Federation and the Federal Capital Territory, Article 27 (v) provides that only aspirants cleared by the Screening Committee or whose appeal is upheld by the Appeal Committee shall be allowed to participate in the primary election. It was further contended that the 2nd Respondent in its counter affidavit before the trial court deposed to the fact that it did not receive any report from these Committees as alleged by the Appellant. They submitted that the existence of the committees/Panels is one thing and the existence of the report is yet another and there was no evidence before the trial court better than the counter affidavit of the 2nd Respondent.

The Respondents contended further that the position of the 2nd Respondent on the candidature of the 1st Respondent was consistent with the fact that Exhibit GU1 - (Clearance Certificate) issued to the 1st Respondent was issued and signed by authorized officers of the 2nd Respondent. Subsequently, the 1st Respondent took part in the conduct of the primaries and emerged the winner with the highest number of votes of 222 with the Appellant on the 4th position with 93 votes. And in compliance with the provisions of Article 27 (v) of the 2nd Respondent's Guidelines for the conduct of primaries, the name of 1st Respondent as the winner of the primaries was submitted to the 3rd Respondent (INEC) and the name was published in accordance with the provisions of section 31(5) of the Electoral Act, 2010 (as amended). The Respondents submitted that the lower court was right when it held that the findings by the tribunal without consideration of unchallenged documentary evidence exhibited before the tribunal was perverse. They urged the court to so hold. They submitted further that Exhibits H, I and K are not reliable and ought

not to have been relied upon by the trial court. The court is urged to hold that the trial court did not evaluate the evidence placed before it by the 1st and 2nd Respondents, otherwise it ought not to have relied on Exhibits H, I and K to find that the 1st Respondent was disqualified from the primaries conducted by the 2nd Respondent.

B They urged the court to resolve the issue in favour of the 1st and 2nd Respondents.

The 3rd Respondent in its brief of argument referred to the four (4) Issues formulated by the Appellant in her brief of argument.

C The said brief of argument was settled by Ahmed Raji Esq. who claimed to be mindful of the admonition of this court to the effect that the 3rd Respondent as an Umpire in election matters should remain impartial. Reference was made to A.G. Federation Vs. Abubakar (2007) 10 NWLR (Pt.1041) 1 per Onnoghen and Aderemi, JJSC at pages 106 and 183-184 respectively. Reference was also made to Uzodinma Vs. Izunaso (No.2) (2011) 17 NWLR (Pt.1275) 30 per Rhodes-Vivour and Onnoghen, JJSC at 55 and 78 respectively. Learned Counsel contended that the issue in dispute in that latter case had to do with who, between the Appellant and the 1st

E Respondent was the PDP candidate for Imo West Senatorial District for 2011 general election. It is similar to the dispute in the instant appeal. By the facts and circumstances in this appeal, the trial lower court delivered its judgment on the 30th March, 2011 wherein it found for the appellant and granted its prayers as contained on the

F face of the Originating Summons. Consequent to the judgment, the Appellant's name was forwarded to the 3rd Respondent as candidate of the 2nd Respondent, who subsequently contested the 9th April, 2011 National Assembly general Election and won.

G Learned counsel submitted that it is not within the province of the 3rd Respondent to determine who the candidate of a political party should be. Rather, the mandate of the 3rd Respondent is to comply with the relevant provisions of the Electoral Act on the submission to INEC of names of candidates by any political party. The

H 3rd Respondent in its brief of argument however formulated a sole issue for determination of the appeal from the Notice of Appeal filed by the Appellant on 8th September, 2011 as follows:

*“Whether the court below was right in holding that the jurisdiction vested by and the redress provided under section 87 (9) of*

*the Electoral Act, 2010 (as amended) are limited to award of damages and did not include jurisdiction to order the reinstatement of the Appellant as Candidate of the 2nd Respondent as ordered by the trial court.”* (Grounds 1, 2 and 3 of the second Notice of Appeal.

In proffering argument in this appeal, the 3rd Respondent agreed with the Appellant on the Issue formulated with regards to the purport of Section 87 (9) of the Electoral Act, 2010 (as amended) which gives an aggrieved person the right of audience in court where he feels that injustice will be meted on him by the failure of its political party in complying with its Constitution and Guidelines. Learned counsel to the 3rd Respondent referred to Section 87 (9) (*supra*) and contended that the question of the candidate a political party will sponsor is more in the nature of a political question which the courts are reluctant to deliberate upon and answer. It was submitted that the judiciary has been relieved of the task of answering the question by the Electoral Act when it gave the power to the leader of the Political Party to answer the question. It was further contended that, the 3rd Respondent being an Umpire is a statutory body established pursuant to Section 153 (f) of the Constitution with powers under Section 14 of the Third Schedule and functions under the provisions of the Electoral, Act 2010 (as amended). The 3rd Respondent therefore has no preference for any of the parties in this Appeal but only carries out its activities as enshrined in the relevant statutes. It is submitted that where a political party forwards the name of a person to the 3rd Respondent (INEC) as its candidate, it is not the province of the 3rd Respondent to question the candidature; particularly when the procedure for the submission of names as prescribed by the Electoral Act has been complied with. In other words, the submission of a candidate’s name to the 3rd Respondent by a Political Party is a *prima facie* evidence that the candidate is a member of the Party and has been duly screened by the Party as provided for in its Constitution and Electoral Guidelines.

Learned counsel to the 3rd Respondent submitted that the jurisdiction of a trial court to entertain intra-party affairs is strictly delimited to Section 87 (9) of the Electoral Act, 2010 (as amended) in the event that the political party fails to comply with its own Constitution and Guidelines. He placed reliance on *Uzodinma Vs Izunaso* (No.2) (*supra*) at pages 59-60, as applicable to the instant appeal,

the 3rd Respondent therefore disagreed with the decision of the court below when it relied on the decision of this court in *Dalhatu Vs. Turaki* (2003) 15 NWLR (Pt.843) 310 at 349-350 and held as it did on pages 419-420 of the record of appeal. He submitted further that damages is not a remedy provided in Section 87 of the Electoral Act, 2010 (as amended). And it is instructive to note that there was no equivalent of Section 87 in the provisions of the Electoral Act under which *Dalhatu Vs. Turaki* (supra) was decided. He once again relied on *Uzodinma Vs. Izunaso* (No.2) (supra) and submitted that this court did not award damages. The 3rd Respondent finally urged the court to allow the appeal and hold that the court has power to declare a particular candidate the winner of a primary election based on the evidence before the court and in line with the new provisions of the Electoral Act.

As stated earlier, the appellant herein was the plaintiff at the Federal High Court (herein referred to as the trial court), wherein after the 3rd Defendant/Respondent was joined, her Originating Summons was duly amended. In the said amended originating summons the following questions were raised for determination:

*"1. Whether a person disqualified or declared ineligible by his political party to contest an election can participate in party primaries organized or conducted by the same political party.*

*2. Whether by the clear provisions of Section 87 of the Electoral Act, 2010, it is not mandatory for the 1st Defendant to nominate its House of Representatives candidate/Flag bearer for Yauri/Shangal Ngaski Federal Constituency of Kebbi State for the April 2011 National Assembly on the basis of the result of the said Primary Election.*

*3. Whether by the provisions of Section 87 (1) (c) (iv) of the Electoral Act, 2010, it is not mandatory for the 1st Respondent to nominate the Plaintiff as its House of Representatives candidate/flag bearer for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State, in the April 9, 2011, General Election, the Plaintiff having won the direct primary election held on January 6, 2011.*

*4. Whether having regard to the express provisions of Section 87 of the Electoral Act, 2010, the 1st Defendant can submit the name (sic) non contestant in the primary election as its candidate/flag bearer for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State, for the*

said April 2011 General/National Assembly Election.

5. Having regard to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010, whether the 1st Defendant having screened and disqualified an aspirant from participating in the primaries can turn around to submit the name of the disqualified aspirant/non contestant as its candidate for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State for the April 9, 2011 General Election/National Assembly Election”

See pages 724-725 of the Record. Based on the above questions, the Appellant sought from the trial court the following reliefs:

“(a) A declaration that it is mandatory for the 1st Defendant to nominate the winner of the said Primary Election as its flag bearer Candidate for the purpose of participating and contesting in the National Assembly election Kebbi State slated for 2nd April, 2011.

(c) A declaration that the plaintiff having scored the highest number of votes in the primary Election of the 1st Defendant, is the rightful and lawful candidate of the 1st Defendant for the April 2, 2011 National Assembly Election in respect of Yauri/Shanga/Ngaski Federal Constituency of Kebbi State.

(d) A declaration that the submission of the name of disqualified aspirant/non contestant to the 2nd Defendant by the 1st Defendant as its candidate for the said election of 2nd April, 2011 is illegal, unlawful, null and void and of no effect whatsoever.

(e) An order of injunction restraining the 2nd Defendant either by itself, officers, agents, privies, staff or through any person(s) howsoever from recognizing, accepting or dealing with any other name submitted to it on any way whatsoever as the 1st Defendant’s candidate in the April 2, 2011 National Assembly Election save the name of the plaintiff.

(f) An order directing the 1st defendant to submit the name of the plaintiff as the validly nominated candidate for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State at the April 2, 2011 General Election/National Assembly Election.

(g) An order directing the defendants particularly the 2nd defendant to recognize, accept and deal with the plaintiff as the flag bearer of the 1st Defendant for the April 2, 2011 election having emerged the winner of the 1st Defendant’s primary election.”

In support of the Summons was an affidavit to which various

documents were annexed and marked Exhibits A-M respectively. To oppose the summons, the 3rd Defendant (herein referred to as 1st Respondent) filed a counter affidavit and attached various documents marked as Exhibits GU1- GU14 respectively. The Appellant filed a further affidavit to her Originating Summons and the 1st Respondent duly responded. Parties filed written addresses. In its judgment, the trial court came to the following conclusions:

*“Based on the above analysis, I find as a fact based on the affidavit evidence before the court and particularly the unchallenged decision of the screening Committee which excluded the 3rd Defendant from participating in the Primary Election for the Yauri/Shanga/Ngaski Federal Constituency of Kebbi State, the 3rd Defendant must be deemed in the first place not to be a proper aspirant in the said primary Election of the 1st Respondent for the Yauri/Shanga/Ngaski Federal Constituency Election.*

*The Plaintiff’s action therefore succeeds. All the questions for determination in the Originating Summons are resolved in favour of the plaintiff. All the declaratory and injunctive orders are granted in favour of the plaintiff.”*

The instant 1st and 2nd Respondents appealed to the court below against the decision of the trial Federal High Court upon nine (9) Grounds of Appeal contained in their Notice of Appeal dated 29/4/2011 but filed on 05/05/2011. They sought the following relief from the court below.

*“An order of this Honourable court setting aside the judgment of the Federal High court delivered on the 30th of March, 2011 and in its stead, an Order dismissing all the declaratory and injunctive reliefs claimed by the 1st Respondent in the Amended Originating Summons.”*

It is note-worthy that the court below after considering the issues formulated and agreed for determination by the court resolved the issue in favour of the appellants before it. The court then came to the conclusion, inter alia, as follows:

*“In the circumstance, it is difficult to see why these Exhibits and others were not given any consideration by the learned trial Judge. This has led to a perverse finding by the trial court which has occasioned a miscarriage of justice...”*

*Finally, I hold that the only remedy available to an aspirant,*

*who complains that his party has not complied with the guidelines set by it in the process of its nomination or choice of candidate for an election is in damages and certainly not in the court imposing a candidate on the party. This is in line with the authority of the Supreme Court in Dalhatu Vs Turaki (2003) 15 NWLR (Pt.843) 310 at 349-350, per Edozie, JSC...* B

*That is the position of the law. Section 87 (9) provides for remedy and remedy is an action for damages.*

*This appeal succeeds and it is accordingly hereby allowed. The decision of the Federal High Court, Sokoto Division in Suit No.FHC/S/CS/8/2011 delivered on the 30th day of March 2011 is hereby set aside.* C

*The effect is that the action of the 1st Respondent Hon. Halima Hassan Tukur, before the Federal High Court failed as she has failed to show how the 2nd Appellant violated its guidelines. A Plaintiff for declaration succeeds on the strength of his evidence and not on the admissions or weaknesses of the case of the Defendant.* D

*1st Respondent's action before the lower court is hereby dismissed; parties shall bear their own costs."*

There is no doubt that the Issue No. 1 above being considered now on whether the court below was right in disturbing the finding of the trial court to the effect that the 1st Respondent was not cleared to contest the 2nd Respondent's primary election held on Thursday 6th January, 2011 for the purpose of picking the 2nd Respondent's candidate for the Yauri/Shanga/Ngaski Federal Constituency in the April, 2011 general election bothers on the evaluation of the affidavit and documentary evidence adduced by both parties before the trial Federal High Court. F

One of the main issues formulated before the court below for its determination and which was the bed rock of the appeal was – G

*"Whether or not the failure by the learned judge to consider the defence of the Appellants and to properly evaluate the evidence placed by the parties before the court granting the declaratory and injunctive relief claimed by the 1st Respondent the Originating Summons did not constitute a breach of the Appellants' right to fair hearing as to render the judgment nullity."* H

The 1st and 2nd Respondents had contended that the trial court failed to consider and properly evaluate the affidavit and docu-

mentary evidence they adduced before it in arriving at its decision as it did. They referred to paragraph 5(a)-(f) of their counter affidavit. The Chairman of the State's Screening Committee of the 2nd Respondent (PDP) gave the information deposed to in the said Counter affidavit. The depositions goes thus:

B *"That I was informed by Dr. Ojukwu, the Chairman of the State Screening Committee for Kebbi of the following facts at the 1st Defendant's National Headquarters on the said 7th of March, 2011 at about 3.30p.m. which facts I verily believe to be true that*

C *(a) The screening Committee received a petition from the plaintiff informing the Committee that some aspirants had not resigned their appointments 7 days to the primary election in contravention of Section 24(1) of the 1st Defendant's guidelines. A copy of the said petition is attached herewith and marked as Exhibit PDP 2.*

D *(b) That the Screening exercise on the 30th December, 2010 wherein the plaintiff and Ado Sani were cleared to contest the primaries for the Yauri/Shanga/Ngaski Federal Constituency.*

E *(c) That the other aspirants who could not produce evidence of resignation from public service and Code of Conduct clearance were not cleared by the Committee but the aspirants insisted that they had these documents, hence the committee informed them to produce same before the committee wind up their assignment if really they had the said documents.*

F *(d) That as facts, Garba Uba did produce evidence of his resignation and the acknowledgment of the Kebbi State Government with respect to his resignation and also Certificate of clearance by the Code of Conduct, Kebbi State on the 31st December, 2010.*

G *(e) That the Screening Committee accordingly issued Garba Umar Uba with a Certificate of clearance on the 31st December, 2010.*

*(f) That the Screening Committee lodged against the clearance of the 3rd defendants before the Screening Appeal Committee" (See pages 945-946 of the Record of Appeal)*

H The 1st and 2nd Respondents had contended further that the trial court had based its judgment on only the documents attached to the Plaintiff/Appellant's Originating Summon - Exhibits H, I and K without considering those documents attached to the Counter Affidavits of the 1st and 2nd Respondents. The Respondents had submitted that if the trial court had considered and properly evaluated

the affidavit evidence proffered by them in their counter affidavit and their various documents attached therewith, the trial court's decision would have been different.

What then is Evidence?

*"Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. 'Evidence' is the demonstration of a fact, it signifies that which demonstrates, makes clear, ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptance, the term 'evidence' includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 'Evidence' has also been defined to mean any species of proof legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents concrete objects and the like."* See Black's Law Dictionary, Ninth Edition, page 635.

**Generally, and it is settled law that the evaluation of evidence adduced and ascription of probative value or weight to such evidence is the primary duty of the trial judge who saw and heard the witnesses testified. The trial judge is therefore in a position to access the credibility and watch the demeanour of the witnesses.** See; Bartholomew Onwubuariri & Ors Vs Isaac Igboasoiji & Ors (2011) 1 SCM 100 at 119; Michael Eyo Vs Emeka Collins-Onuoha & Anor (2011) 2 SCM 178 at 105; Guardian Newspapers Ltd & Anor Vs. Rev. Pastor Ajeh (2011) 5 SCM 111 at 124. **However, when the evaluation of evidence by a particular trial judge is in issue or being challenged, the guiding principles are as follows:**

- (i) **whether the evidence is admissible**
- (ii) **whether the evidence is relevant**
- (iii) **whether the evidence is credible**
- (iv) **whether the evidence is conclusive**
- (v) **Whether the evidence is probable than that given by the other Party.** See; Mogaji Vs. Odojin (1978) 4 SC 91.

**Therefore, it is the primary responsibility of the trial court to fully consider in totality the evidence of both parties placed before the court. In doing this, the trial judge shall put the evidence on the imaginary scale of justice and weigh it to de-**

**termine the party in whose favour the scale tilts by making necessary finding of facts and then come to a logical conclusion.**

**But when the trial court saddled with the responsibility of evaluating evidence fails so to do, or to do so properly, then an appellate court is entitled to intervene and re-evaluate such evidence. Otherwise, the appellate court has no business interfering with the finding of the trial court on such evidence.** See Agbi & Anor Vs Osbeh & Ors (2006) 7 SCM 1; (2006) 11 NWLR (pt.990) 65, Fabenro Vs Arobadi & Ors (2006) 3 SCM 99, (2006) 7 NWLR (Pt.978) 174 Bashaya Vs. State (1998) 5 NWLR (Pt.550) 351; Ojo Kolobo Vs. Alamu (1998) 9 NWLR (Pt.565) 226. Sha Vs. Kwan (2000) 5 SC 178; Military Governor of Lagos State & Ors. Vs. Adebayo Adeyigi & Ors (2012) 2 SCM 183 at 210. **In the instant case, the case was tried on affidavit and documentary evidence. There was affidavit and further affidavit in support of the Originating Summons by the appellant at the trial court. There were also counter affidavits and reply to further affidavit of the Respondents to oppose the originating summons. It is already a settled law that an affidavit evidence constitutes evidence and must be so construed, hence, any deposition therein which is not challenged or controverted is deemed admitted.** See: Ajomale Vs Yaduat & Anor (No.2) 5 NWLR (Pt.191) 226 at 282-283, (1991) 5 SCNJ 178, Magnusson Vs. Koiki (1993) 12 SCNJ 114; Henry Stephens Engineering Ltd Vs Yakubu (Nig) Ltd (2009) 6 SCM 90 at 99. The court below when considering the Respondent's appeal from the decision of the trial court had stated thus:

**"I have copiously quoted the judgment of the lower court earlier in this judgment. It is apparent from the judgment that apart from Exhibit GU1, the learned trial Judge turn (sic) a blind eye to all the other Exhibits placed before him by the defence. His judgment is based solely on Exhibits H, I and K submitted by the 1st Respondent."**

The court below as well as this court are in a position, once there is failure on the part of the trial court to carry out its primary function of evaluation of documentary evidence adduced to evaluate same. See; Mallam Yusuf Jimoh & Ors Vs Mallam Karimu Akande

& Anor (2009) 1 SCM 34 at 58,. In Osundele & Anor Vs Shittu Agiri & Anor (2009) 1 SCM 11-12 (Pt.1) 95 at 109-1, this court opined thus:

*“As regards documentary evidence, this court is in as good a position as a trial court, in the evaluation of documentary evidence pursuant to Order 8 Rule 12(2) of its Rules. The court can examine also the said documents and exhibits in question in this case and draw necessary inferences.”*

See also FSB International Bank Ltd. Vs. Imano (Nig) Ltd. (2000) 11 NWLR (Pt.679) 62C at 637; (2000) 7 SCNJ 65, per Achike, JSC and Gonzee Nig Ltd Vs Nigerian Educational Research & Development Council & 2 Ors (2005) 8 SCM 99; (2005) 6 SCNJ (Pt.1) 25 at 35 (2005) All FWLR (Pt.274) 235 at 247-248. After being satisfied and this is apparent on the records, that the trial court failed to consider the affidavit evidence and documents attached thereto by the Respondents, the court below, as it was entitled so to do, proceeded to consider the case presented in defence by the Respondent and came to the following conclusion:

*“There is no doubt that the learned trial Judge has failed to evaluate evidence of qualification placed before him by the 1st Appellant. It will be a travesty of justice for a court to set a task for itself and then embark on something else. The task set by the learned trial Judge was that he was going to determine whether Appellant was qualified to participate in the primary election leading to the choice of candidate for Yauri/Shanga/Ngaski Federal Constituency. It will be observed from the record that the 1st Respondent had forwarded a petition to the Screening Committee, complaining that certain aspirants have not resigned their appointments. This petition was not copied to anyone, including the 1st Appellant who was to be directly affected by it. It is also apparent that the Screening Committee has acted upon the petition without informing the aspirants of the existence of the petition. Also apparent from the record is the fact that all subsequent petitions written by the 1st Respondent followed the same pattern. They were not copied to the persons directly affected. It is, therefore, a little wonder that when this action was instituted, the 1st Appellant was not made a party thereto whereas the judgment was to be against him.*

*It is in this light that one has to view the so-called report of the*

*Screening Committee and that of the Electoral Appeal Committee. Both reports were denied by the 2nd Appellant as having been submitted to it. This is contained in the affidavit of the 2nd Respondent in response to the 1st Respondent's further affidavit. By Article 27 (i) of PDP's Electoral Guidelines, for primary elections, 2010, it is the*

B *National Executive Committee of the party that has power to appoint Screening Committee. The National Working Committee's role, under the guidelines, does not go beyond recommending to the National Executive Committee the persons to be appointed into various*

C *Committees. All the so-called reports were addressed to the National Working Committee. If the 2nd Appellant denied the receipt of the report of this Committee, it only stands to reason that the 1st Appellant who claimed that he was not aware of it is telling the truth, more so as it was not copied to him.*

D *It is evident and both sides agreed that the screening was to take place for two days. The screening started on the 30th day of December, 2010 and Clearance Certificate was endorsed for the 1st Appellant on the 31st day of December, 2010. It was endorsed by both the Chairman and the Secretary of the Screening Committee.*

E *Exhibit GU 14, letter of resignation giving approval for resignation has also not been challenged. Exhibit GU8 at page 915 of the record is the result of the primary Election endorsed by the Electoral committee members and also endorsed by the aspirants' agents. This*

F *exhibit has not been challenged or denied.*

*In this circumstance, it is difficult to see why these Exhibits and the others were not given any consideration by the learned trial Judge. This has led to a perverse finding by the trial court which has occasioned a miscarriage of justice."*

G *Similarly, the counter affidavit of the 2nd Respondent which was filed to oppose the Originating Summons of the Appellant before the trial Federal High Court reads, inter alia, thus:*

*"4. That I have read the plaintiff's Originating Summons and the supporting affidavit and was informed by Mr. Olusola Oke, the*

H *National Legal Adviser of the 1st Defendant of the following facts at the 1st Defendant's Secretariat on the 7th March, 2011, at about 3.00p.m. which facts I verily believe to be true as follows...*

*(c) That in specific response to the said paragraphs, Garba Umar Uba was cleared by the 1st Defendant's Screening Committee to*

*contest in the primaries and was accordingly issued with a clearance certificate to that effect on 31st December, 2010. A copy of the said clearance certificate is attached herewith and marked Exhibit PDP1.*

*(d) That the Clearance Certificate issued to Garba Umar Uba referred to in paragraph (c) above was duly signed by the authorized officers of the 1st Defendant, the Chairman and Secretary of the Screening Committee, Dr. Edison Ojukwu and Barr. Garba Ibrahim respectively.*

*(e) That the Electoral Appeal Committee's terms of reference do not include/extend to entertaining complaints relating to the eligibility of aspirants arising from decisions of the Screening Committee. The Electoral Committee was to address complaints arising from the conduct/procedure adopted at the primary Elections."*

(See pages 944-945 of the Record of Appeal).

My Lords, it was not denied by the Appellant that her complaint against the 1st Respondent in Exhibit PDP2 referred to in the above paragraph 5(a) of the Counter Affidavit was considered and resolved in favour of the 1st Respondent. Exhibit PDP2 written by the Appellant to the Chairman PDP Screening Committee for National Assembly, Kebbi State, Nigeria is at pages 949-950. The said document reads, inter alia, thus:

*"Sir, Sani Yusuf Rukubulo is currently a serving Commissioner in Kebbi State Ministry of Education and Garba Umar Uba is also serving as a Senior Assistant to His Excellency, the Executive Governor of Kebbi State. While Shehu Barau is serving as Vice Chairman Caretaker Committee in Ngaski Local Government and Sani Ado is also serving as Political Appointee in the National Headquarters of our great party, PDP.*

*By PDP Electoral guidelines for primary election particularly, Section 24(e): "any aspirant for primary election to the National Assembly shall, if he is a member of the Executive Committee of the Party or is a political appointee at any level must resign from such position not later than 7 (seven) days before the date of primary election"*

It is however note-worthy that to corroborate the depositions in paragraph 5(a)-(f) of the Counter affidavit earlier quoted, the Respondent attached Exhibits GU14 and GU15. The said Exhibits are the letter of Resignation by the 1st Respondent dated 23/12/2010

and Acknowledgment of receipt and approval of resignation by the office of the Secretary to the State Government dated 24/12/2010 respectively. (See pages 1025 and 1029 of volume 1 of the record. In the same vein, Exhibit PDP3 is the Certified True copy of the acknowledgment of the submission of the name and particulars of the 1st Respondent forwarded to the Respondent (INEC). See page 951 of the Record of Appeal.

There is no doubt at all that the trial court did not consider and evaluate the affidavits evidence contained in the depositions in the Counter affidavit of the 1st and 2nd Respondents. Neither did the court consider the documents attached to the Counter affidavit as Exhibits. The court below was therefore perfectly right to have considered those Exhibits along with the affidavit evidence of the Respondents. ***The 2nd Respondent as the Political Party (PDP) which was sponsoring candidates for an election is the proper person/body, so to speak, to know which of the aspirants amongst its members it has cleared for the primaries and general election afterwards. As long as the guidelines and Constitution of the Political party are not violated or breached, the court has no power to question the choice of a party's candidate presented for election.***

In Hope Uzodinma v. Senator Osita B. Izunaso & Ors. (2011) 12 NWLR (pt.1275) 30 at 81-82, this court gave credence to the depositions in an affidavit by the Peoples Democratic party (PDP) as a political party in a similar situation on a dispute over who was the nominated candidate of the party, as follows:

*"However, there is evidence that appellant was issued another certificate of clearance dated 6th January, 2011 to contest the primary election scheduled for 8th January, 2011; that the 2nd Respondent issued a press release listing out the names of aspirants cleared for the said primary election of 8th January, 2011; that in the list, so published, the name of appellant appears as one of the aspirants; that appellant consequently participated in the election and emerged and was declared the winner thereof with a total vote of 2,147 and as against the 1st respondent who came a distant 2nd with 891 votes; that the name of the appellant was consequently and in accordance with the provisions of Section 31(1) of the electoral Act, 2010, as amended, forwarded together with those of other con-*

*testants/aspirants to the various office to the 3rd Respondent as the 2nd Respondents candidate for Imo West Senatorial District in the National Assembly Election scheduled for April, 2011.*

*All the above facts point irresistibly to the conclusion that appellant was duly cleared by the National Working Committee to contest the said primary election but the lower courts failed to take the facts into consideration but based their decision on the narrow issue of none production of the report of the National Working Committee clearing appellant even when 2nd Respondent, the most important person qualified to say, whether or not appellant was cleared by the National Working Committee of the 2nd Respondent stated on Oath to the contrary...*

*I hold the view that the 2nd Respondent is the proper person to say whether the National Working Committee cleared appellant or not and having said that appellant was so cleared. I think that was sufficient to establish the fact of clearance and I so hold."*

In the instant case the 2nd Respondent (PDP) was in the best position to state whether or not the 1st Respondent was cleared and it has stated so in its counter affidavit and documentary evidence marked as Exhibits. But rather unfortunately the depositions and documentary evidence adduced by the Respondents were not considered by the trial court before concluding that the 1st Respondent was not qualified to contest the primary elections, much more the general elections into the National Assembly. In the circumstance, the court below was therefore right in disturbing the finding of the trial court, which is perverse, to the effect that the 1st Respondent was not cleared to contest the 2nd Respondent's primary election held on Thursday 6th January, 2011 for the purpose of picking the 2nd Respondent's candidate for the Yauri/Shanga/Ngaski Federal Constituency in the April, 2011 general election. Accordingly, the issue is resolved against the Appellant.

The second issue is whether the court below appreciated the basis for the trial court's application of principle of estoppels and this notwithstanding whether the 1st Respondent who failed to challenge the decision of the 2nd Respondent's Screening Electoral and Electoral Appeal Panels disqualifying him from contesting the 2nd Respondent's primaries could turn around to complain or extricate itself from the effect of the said decision. It is noteworthy that the trial

court relied on Exhibits H, I and K attached to the Originating Summons to have held that since the 1st Respondent did not challenge the alleged decision in these Exhibits to the effect that the 1st Respondent was not qualified to contest the primaries, he was estopped from denying or challenging the decision in Exhibit H, I and K. However, the court below, as it was entitled so to do, rightly considered the affidavit and documentary evidence on record to hold that the finding by the trial court was perverse and occasioned miscarriage of justice.

Ordinarily, and as contended before the court below, the 1st Respondent, aside from not having knowledge of the alleged reports, had no reason whatsoever to challenge the 2nd Respondent (PDP). The 1st Respondent had submitted that the 2nd Respondent at all material times to the appeal did not take any adverse decision against him. It was contended that upon a successful screening of the 1st Respondent and the issuance of Exhibit GU1 (same as PDP1) - Certificate of Clearance, the 1st Respondent participated and won the primary election with 222 votes while the Appellant came 4th with only 93 votes. See Exhibit GU8, the result of the primary election which was endorsed by all the agents of the candidates and the electoral Committee members. It was further contended that subsequently after the primary election, the name of the 1st Respondent was forwarded to the 3rd Respondent (INEC) by the 2nd Respondent (PDP). The name of the 1st Respondent was published by the 3rd Respondent in accordance with the provisions of Section 31(3) of the Electoral Act, 2010 (as amended). The Respondents contended that it is on record that the name of the 1st Respondent was published in the final list of candidates of all the political parties nominated for the contest of the election into the office of member representing the Federal Constituency in question in Kebbi State. The Respondent however, conceded that not until the 9th April, 2011 the date of the election in question when the 3rd Respondent substituted the name of the 1st Respondent with that of the Appellant on the basis of the judgment of the trial court of 30th March, 2011 which was later set aside by the court below on the 8th September 2011 and which has led to this appeal.

***Generally, estoppels means “a bar that prevents one from asserting a claim or right that contradicts what one has***

***said or done before or what has been legally established as true. A bar that prevents the re-litigation of issues.”***

***Therefore, estoppels by silence means “estoppels that arises when a party is under a duty to speak but fails to do so.”*** See Black’s Law Dictionary, Ninth Edition pages 629 and 630 respectively. B

From the available affidavit and documentary evidence before the trial court which the Judge failed to consider but which were rightly considered as they should by the court below to dispel the injustice done to the 1st Respondent, the trial court wrongly applied the doctrine of estoppels against the 1st Respondent. The 1st Respondent can therefore not be said to have kept silent when he was expected to talk nor stood by and watch things happen against or for him without taking action. In other words, the doctrine is inapplicable, to say the least. In the circumstance, this issue is also resolved against the Appellant. C

In effect, the appellant has failed to show that the 2nd Respondent violated the provisions of its guidelines for the conduct of the primaries, The court below was therefore justified to so conclude. As a result, the Appellant was not entitled to the Declaratory and injunctive reliefs granted by the trial court. E

In the final analysis, this appeal therefore fails in its entirety and it is accordingly dismissed. The decision of the court below which set aside the judgment of the trial court is affirmed. There shall be no order as to costs. F

### **MUKHTAR JSC**

I have read in advance the lead judgment delivered by my learned brother Ariwoola, JSC. I am in complete agreement that the notice of preliminary objection should be overruled, as the argument proffered to cover it cannot sustain it. In this wise I also refuse to uphold the preliminary objection. As for the appeal proper, I am satisfied that the learned lower court was on firm ground when it interfered with the decision of the learned trial court, on the ground that it did not as enjoined by the law effectively evaluate the evidence before it, so perform the duty of the lower court. The primary duty of a trial court is to consider and evaluate all relevant evidence before H

it in order to arrive at a just determination of the case before it, for if it fails in this duty then miscarriage of justice will occur. That was exactly what happened, and the Court of Appeal correctly discharged that duty, as empowered by the law and arrived at the right conclusion as the justice of the suit demands. See *Ishola v. U.B.N. Ltd* 2005 B 6 NWLR part 922 page 422, and *Balogun v. Agboola* 197 4 10 SC.111.

In the circumstances I am fully in agreement with my learned brother that this appeal is devoid of merit and substance and deserves to be dismissed. I also dismiss the appeal in its entirety and abide by the consequential orders made in the lead judgment.

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**CHUKWUMA-ENEH JSC**

I have read in draft the judgment of my learned brother Ariwoola JSC in this matter and I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. On 5/7/2012 that is the date judgment in this appeal has been scheduled; the appellant has brought an application for the following reliefs: To set aside the Notice of Appeal filed in this appeal and consequently to set aside all the proceedings predicated thereupon. The core issue is whether or not the Counsel who filed the Notice of Appeal and appeared to argue the appeal in the court below and this court has been so instructed by the PDP that is to do so on its behalf.

The matter has to be adjourned to 9/7/2012 to enable the parties and counsel to file and serve their processes as the court was not minded even at that stage of the proceedings to shut out the appellant in the adjudication of all controversies between the parties in this matter in the interest of justice even though the appellant to all intents and purposes was minded belatedly to “arrest” the judgment in this matter by this process. On 9/7/2012 after hearing the arguments on both sides to the application the court in a short ruling overruled the application and dismissed the same in its entirety for lack of standing (locus) to maintain the application. It then has proceeded to deliver the substantive judgment dismissing the appeal and affirming the decision of the lower court. All the same, I think it is important to throw some light on the grounds for the dismissal of the appeal. Coming to the issue in the substantive appeal consisting in

the question as to “whether the 1st respondent’ was duly cleared to contest the primary elections” (i.e. 1st respondent in the court below; in the context of this matter she is the instant appellant). This point has been resolved ultimately in this appeal in favour of the 1st respondent herein who has contested the primaries with the appellant and has come up tops. But for reasons not all together clear the 1st respondent’s name has not been forwarded to INEC as the successful candidate for the said elective office. This action therefore comes within section 87(9) of the Electoral Act 2010 in which the 1st respondent herein as the plaintiff at the trial court rightly has come under Section 87(9) of the said Act to contest this matter as an aspirant. This case has borne out the fact that the court acting within its narrowed jurisdiction as conferred on it under Section 87(9) of the said Act can prevent a political party contravening its constitution and guidelines in the sponsorship of its candidate for elective offices hence the intervention of the court to precluded it from doing so in this matter against a successful aspirant at the party primaries. It must be noticed that even in the exercise of this narrowed power under section 87(9) of the said Act the court has not infringed the discretion of a political party in the choice of its candidates for elective offices as an internal matter otherwise non justiciable in a court of law. See Onuoha v. Okafor (1985) NSCC 494 per Obaseki JSC and Dalhatu v. Turaki (2002) 15 NWLR (Pt.845) 310.

For ail this and the fuller reasons contained in the lead judgment of my Lord Ariwoola JSC I too dismiss the appeal and affirm the decision of the lower court. I also endorse all the orders contained in the lead judgment.

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### **MUNTAKA-COOMASSIE JSC**

I read in draft this all encompassing leading judgment of my learned brother Olukayode Ariwoola JSC. His lordship has gone to town and brought to us the result of his in-depth research which I believe is correct.

I have no cause to disagree with his illuminating judgment. I agree entirely with the conclusions reached. There is no need for me to chip in anything. My lord has done a good job. I too based on his articulate reasons which I adopt as mine hold that the appeal lacks

merit it cannot be otherwise. Appeal is therefore dismissed. The finding of the trial court is clearly perverse that makes me to preserve the judgment of the court below in disturbing the decision of the trial court. I agree that the two issues distilled by appellant shall and are hereby resolved against the appellant. The appellant, as held by my brother Olukayode Ariwoola JSC, was not entitled to the declaratory and injunctive reliefs as granted by the trial court. The decision of the lower court is restored and affirmed.

C

**PETER-ODILI JSC**

This is an appeal against the decision of the Court of Appeal, Sokoto Division delivered on 8th September 2011, in an appeal No CA/A/34/2011 wherein it set aside the judgment of the Federal High Court, Sokoto Judiciary Division delivered on 30th March 2011 in Suit No.FHC/S/CS/8/2011.

The appellant had taken out an originating Summons as amended at the trial court which are as follows: In the said Amended originating Summons the following questions were raised for determination:

*“1. Whether a person disqualified or declared ineligible by his political party to contest an election can participate in party primaries organized or conducted by the same political party.*

*2. Whether by the clear provisions of Section 87 of the Electoral Act, 2010, it is not mandatory for the 1st Defendant to nominate its House of Representatives candidate/Flag bearer for Yauri/Shangal Ngaski Federal Constituency of Kebbi State for the April 2011 National Assembly on the basis of the result of the said Primary Election.*

*3. Whether by the provisions of Section 87 (1) (c) (iv) of the Electoral Act, 2010, it is not mandatory for the 1st Respondent to nominate the Plaintiff as its House of Representatives candidate/flag bearer for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State, in the April 9, 2011, General Election, the Plaintiff having won the direct primary election held on January 6, 2011.*

*4. Whether having regard to the express provisions of Section 87 of the Electoral Act, 2010, the 1st Defendant can submit the name (sic) non contestant in the primary election as its candidate/flag bearer*

*for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State, for the said April 2011 General/National Assembly Election.*

5. Having regard to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010, whether the 1st Defendant having screened and disqualified an aspirant from participating in the primaries can turn around to submit the name of the disqualified aspirant/non contestant as its candidate for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State for the April 9, 2011 General Election/National Assembly Election”

Upon being served with the amended originating processes, the 2nd respondent entered appearance by filing the memorandum of appearance reproduced at page 895 of Vol.1 of the Record even though it had earlier filed the one at page 470 of the same volume of the Record, The 1st respondent also entered appearance by a Memorandum of Appearance reproduced at page 900 of vol.1 of the Record and filed a Counter-Affidavit and written address to the amended originating summons. The said Counter- Affidavit and written addresses are at pages 901 - 930 of the same volume of the Record of Appeal. The 2nd respondent filed a Counter- Affidavit and written address.

In further response to the processes filed by the respondent, the appellant filed a further affidavit on 23/3/2011 and a reply address. Further response by way of affidavit and written address also came from 1st respondent. The further responses from the 2nd respondent can be found at pages 1030 - 1036 of the same volume of the Record. Before the suit could be heard by the Abuja Division of the Federal High Court (Coram: G. O. Kolawole J) before whom it was originally filed, it was transferred to the trial court (i. e. Federal High Court, Sokoto Judicial Division) for adjudication. On 14th March 2011, the matter was mentioned before the trial court. The trial court heard the amended originating summons on 28th March during which proceedings counsel to the parties adopted their written addresses and made additional oral submission, whereupon the trial court reserved judgment to 30th March 2011. On 30th March 2011 the trial court delivered its judgment wherein it found for the appellant and granted all the reliefs sought in her amended originating summons.

Following the judgment, the appellant's name was forwarded to the 3rd respondent as candidate of the 2nd respondent and she

contested the General Election into the National Assembly on 9th April, 2011 and won. She was thereafter issued with a Certificate of Return and has since become a Member of the House of Representatives representing the Constituency. Aggrieved by the said judgment, the 1st respondent lodged an appeal against it at the court below by a Notice of Appeal filed on 1st April 2011. Another Notice of appeal was filed by 1st and 2nd respondents acting through the same counsel dated 29th April, 2011, and filed on 5th May, 2011. The 3rd respondent aligned itself with the appellant and the court struck out the preliminary objection raised in her Brief on the ground that it was not moved at the earliest opportunity. Following the adoption of the briefs of argument, the Court of Appeal on 8th September, 2011 delivered a judgment setting aside the judgment of the trial court and dismissed the appellants' suit. It is against that judgment of the Court of Appeal that the appellant has filed this appeal first by Notice of Appeal on 8th September 2011 and a second Notice of Appeal on 24th November, 2011.

#### BRIEFLY THE FACTS

The appellant herein and the 1st respondent are members of the same political party, the Peoples Democratic Party (PDP) the 2nd respondent in this appeal. In preparation for the General Elections held in April 2011, the 2nd respondent as a Political Party, pursuant to its right under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act 2011 (as amended) and its guidelines for the conduct of Primaries, organized and conducted Primaries for the election of candidates to contest various elective offices.

Sequel to the above, the appellant, the 1st respondent with other members of the 2nd respondent expressed their intention to contest for the office of member representing Yauri/Shanga/Ngaski Federal Constituency of Kebbi State under the platform of the 2nd respondent. The 2nd respondent then organized for the screening of the candidates for the purpose of participating in the said primaries where the candidate for the PDP (2nd respondent) was elected. It is not disputed that at the conclusion of the primaries held on the 6th January 2011, the 1st respondent emerged with the highest number of votes, scoring 222 (Two hundred and Twenty two.) while the appellant came 4th with 93 votes only. The appellant contended that

notwithstanding the votes scored by the 1st respondent and his emergence as the winner of the said primaries, she was entitled to be nominated as the candidate of the 2nd respondent because according to the 2nd respondent, the 1st to 3rd candidates at the primaries had been disqualified by the screening committee of the 2nd respondent and as such ought not to have participated in the primaries. B Following her complaint, the 1st to 3rd candidates at the primaries were not cleared to contest and the Screening Committee, the Electoral Committee and the Electoral Appeal Committee of the 2nd respondent declared her the winner of the primaries but her name C was not submitted to the 3rd respondent as candidate of 2nd respondent contesting in the General Election, instead the name of 1st respondent was.

The appellant feeling aggrieved instituted an action at the Federal High Court challenging the nomination of the 1st respondent. D The version as put forward by the 1st and 2nd respondent is captured in the counter affidavit of the 2nd respondent at the court of trial as follows:

In reaction to the claim by the appellant as plaintiff that the 1st respondent was disqualified by the screening committee and as such E was not eligible to have contested the primary election, the 2nd respondent (1st respondent before the trial court) stated thus in paragraph a, c - (e) of its counter affidavit;

*“4. That I have read the plaintiffs Originating Summons and F the Supporting Affidavit and was informed by Mr. Olusola Oke, the National legal Adviser of the 1st defendant of the following facts at the 1st defendant’s secretariat on the 7th March, 2011 at about 3.00pm which facts I verily believe to be true as follows:*

*c. That in specific response to the said paragraphs, Garba Umar G Uba was cleared by the 1st defendant’s screening committee to contest in the primaries and was accordingly issued with a clearance certificate to that effect on 31st December, 2010. A copy of the said clearance certificate is attached herewith and marked as Exhibit “PDP 1” H*

*d. That the clearance certificate issued to Garba Umar Uba referred to in paragraph (c) above was duly signed by the authorized officers of the 1st defendant, the chairman and secretary of the Screening Committee, Dr. Edison Ojukwu and Barr, Garba Ibrahim respec-*

tively.

*e. That the Electoral Appeal committee's terms of reference do not include/extend to entertaining complaints relating to eligibility of the aspirants arising from decisions of the screening committee. The electoral committee was to address complaints arising from the conduct/procedure adopted at the primary elections."*

In contest to the appellant's contention that, she was declared the winner of the primary election by the reports attached to the affidavit in support of the amended originating summons as Exhibits H, I, and K, the 2nd respondent (1st defendant) reacted in its counter affidavit thus:

*"5. That I was informed by Dr. Ojukwu, the Chairman of the State Screening Committee for Kebbi of the following facts at the 1st defendant's National Headquarters on the said 7th of March, 2011 at about 3.30pm which facts I verily believe to be true that*

*a. The Screening Committee received a petition from the plaintiff informing the committee that some aspirants had not resigned their appointments 7 days to the primary election in contravention of section 24(e) of the 1st defendant's guidelines. A copy of the said petition is attached herewith and marked as exhibit PDP "2"*

*b. That the screening exercise started on the 30th December, 2010 wherein the plaintiff and Ado Sani were cleared to contest the primaries for the Yauri/Shanga/Ngaski Federal Constituency.*

*c. That the other aspirants who could not produce evidence of resignation from public service and Code of Conduct clearance were not cleared by the committee but the aspirants insisted that they had these documents, hence the committee informed them to produce same before the committee wind up their assignment if really they had the said documents.*

*d. That as facts, Garba did produce evidence of his resignation and the acknowledgment of the Kebbi State Government with respect to his resignation and also certificate of clearance by the Code of Conduct, Kebbi State on the 31st December, 2010.*

*e. That the screening committee accordingly issued Garba Umar Uba with a certificate of clearance on the 31st December, 2010*

*"6. That I was further informed by the National Legal Adviser of the 1st Defendant, Chief Olusola Oke that:*

*a. All the aspirants that were allowed to participate at the pri-*

*mary elections were aspirants who had been cleared by the screening committee as no amount of protest from disqualified aspirants could make the electoral officers allow such aspirants to participate in the election.*

*b. Garba Umar Uba, having been duly cleared by the screening committee, participated in the primary election and scored the highest number of votes at the primaries, was duly nominated, and his name was accordingly forwarded to the Independent National Electoral commission, the 2nd defendant. Attached herewith and marked as Exhibit PDP “3” is a copy of the INEC acknowledgment of 3rd defendant’s form CF 001*

*c. That at no time did the 1st defendant offer the plaintiff form CF 001 and EC 4B nor allow the plaintiff to fill her name in any list of PDP’s candidate as the plaintiff never won the primary election.*

*d. At no time was the name of the plaintiff forwarded to the 3rd defendant talk less of being substituted with that of Garba Umar Uba.*

*e. That Garba Umar Uba emerged the winner of the 1st defendant’s primary election held on 6th January, 2011.*

*f. That the 1st defendant complied with the provisions of the guidelines, its constitution and the Electoral Act in the conduct of its primaries.*

*g. That at no time did the 1st defendant receive the reports of the screening committee, Electoral Committee and Electoral Appeal Committee attached to the plaintiff’s affidavit”.*

The 1st respondent also exhibited Certified True Copy of the letter of clearance from the Code of Conduct Bureau as Exhibit GU9 (see page 916 of vol.1 of the record). The acknowledgment of the 1st respondent’s Notice of resignation was Exhibit GU10. (See page 917 of vol.1 of the record). In what appeared to be a desperate move by the appellant to defeat the 1st respondent’s victory at the primaries at all cost, she (appellant) introduced a purported application for resignation allegedly written by the 1st respondent which was marked Exhibit E in the further Affidavit of the appellant as plaintiff. It is at page 977 of vol. 1 of the record. It was to justify the appellant’s claim that the 1st respondent did not resign his appointment as Special Adviser to the Executive Governor of Kebbi State 7 days before the date of the primary election in contravention of Article 24(e) of

the Electoral Guidelines for Primary Elections 2012 of the 2nd respondent (PDP). To debunk the appellant's claim and to show that Exhibit E was not made by the 1st respondent, the 1st respondent filed Exhibit GU14, being a certified True copy of his letter of resignation, Exhibit GU15 is the certified True copy of Exhibit GU10.

B Respondent's Notice of resignation is at page 1029 of vol.1 of the record of appeal. Other documents filed by the 1st respondent (as 3rd defendant) are:

1. His Tax Clearance Certificate (Exhibit GU11 page 918 of Vol.1 of the record).

C 2. Request for waiver made by the Kebbi State Chapter of the 2nd respondent (Exhibit GU12, page 919 of Vol. 1 of the record).

3. Approval of waiver by the National Headquarters of the 2nd respondent, Exhibit GU13 vol. 1 of the record.

D The respondent alluded to the fact that the 2nd respondent (PDP), on the basis of the result of the Primaries above mentioned, forwarded his name (1st respondent) to the 3rd respondent (INEC) as the candidate of the 2nd respondent for the office of member representing Yauri/Shanga/Ngaski Federal constituency of Kebbi State.

E This was clearly and unequivocally stated by the 2nd respondent in its counter affidavit where it attached Exhibit PDP3, the acknowledgment by the 3rd respondent of the submission of FORM CF 001 for the 1st respondent.

F The 2nd respondent also stated that the 1st respondent was its candidate and that it did not at any time nominate the appellant. Also, contrary to the claim by the appellant that she was declared winner of the primaries vide Exhibits H, I, K, attached to the affidavit in support of the Originating Summons, the 2nd respondent (PDP)

G denied the existence of the said reports attached to the appellant's amended originating summons and maintained that the only complaint received by the screening committee from the appellant was Exhibit PDP2. (See page 949 of volume 1 of the record), where the appellant alleged that the persons mentioned herein (the 1st respondent inclusive) did not resign their appointments within 7 days to the primary elections. The 2nd respondent (as 1st defendant) noted in

H its counter affidavit that:

*"d. that as facts, Garba Uba did produce evidence of his resignation and the acknowledgment of the Kebbi State Government with*

*respect to this resignation and also certificate of clearance by the Code of Conduct, Kebbi State on the 31st December, 2010.*

*e. That the Screening Committee accordingly issued Garba Umar Uba with a Certificate of Clearance on the 31st December, 2010"*

The suit at the trial court was contested on the basis of the facts presented by the parties as highlighted in the processes mentioned above. At the conclusion, the trial court in its judgment which is at pages 1068 to 1081 of Vol.1 of the record, held thus:

*"The plaintiff's action therefore succeeds. All the questions for determinations in the originating summons are resolved in favour of the plaintiff. All the declaratory and injunctive orders are granted in favour of the plaintiff."*

The 1st respondent was aggrieved by the decision of the trial court whereupon a Notice of Appeal was filed on the 1st day of April 2011. Another Notice of Appeal was filed to the Court of Appeal on 5th May, 2011 by 1st and 2nd respondents herein. The court below found that the redress which an aspirant can seek under Section 87 (9) of the Electoral Act 2010 (as amended) was an action in damages. That court allowed the appeal by the 1st and 2nd respondents herein, set aside the judgment of the trial court delivered on the 30th of March 2011 and dismissed the claim of the appellant before the trial court in Suit No.FHC/S/CS/8/2011.

It is against that decision of the Court of Appeal that the appellants have come before the Supreme Court by Notice of Appeal of 9th September, 2011 containing 2 grounds of appeal and another Notice of Appeal of 24th November, 2011 of seven grounds of appeal. On the 16th April 2012 date of hearing, the appellant through counsel adopted their amended appellant's brief settled by S. I. Ameh (SAN) and filed on 7th February 2012. In it were raised four issues for determination from the two Notices of appeal and they are as follows:

1. Whether the Court below was right in holding that the jurisdiction vested by and the redress provided under Section 87(9) of the Electoral Act, 2010 (as amended) are limited to award of damages and did not include jurisdiction to accord recognition to the order the appellant as candidate of the 2nd Respondent. (Grounds 2 of the Appellant's first Notice of Appeal and Grounds 1, 2 and 3 of

the Second Notice of Appeal).

2. Whether the court below was right in disturbing the finding of the trial court to the effect that the 1st Respondent was not cleared to contest the 2nd Respondent's primary election held on Thursday 6th January, 2011 for the purpose of picking the 2nd Respondent's candidate for Yauri/Shanga/Ngaski Federal Constituency in the April, 2011, general Election (Grounds 4 and 5 of the Appellant's second Notice of Appeal).

3. Whether the court below appreciated the basis for the trial court's application of principle of estoppels and this notwithstanding, whether the 1st Respondent's screening, Electoral and Electoral Appeal Panels disqualifying him from contesting the 2nd Respondent's primaries could turn around to complain or extricate itself from the effect of the said decision. (Ground 6 of the Appellant's second Notice of Appeal).

4. Whether in view of the facts established by affidavit and documentary evidence, in this case, the court below was correct in holding that the Appellant did not prove that the 2nd Respondent violated its Electoral Guidelines 2010 by nominating the 1st Respondent as its candidate for the election into membership of the House of Representatives for the Yauri/Shanga/Ngaski Federal Constituency. (Ground 1 of the Appellant's first Notice of Appeal and Ground 7 of the Second Notice of Appeal).

The 1st and 2nd respondents counsel on their behalf adopted their of argument settled by Y. C. Maikyau SAN and filed on 16/1/2012. The 1st and 2nd respondents hereby give notice that at the hearing of this appeal, they shall challenge the competence of the appeal and will urge this Honourable Court to strike out the appeal on the following grounds:

a. The appellant filed two Notices of Appeal on the 8th of September, 2011 respectively.

b. The grounds in the two Notices of Appeal were argued by the Appellant in the Appellant's Brief of Argument dated 12th of December, 2011 and filed on the 13th of November, 2011.

c. Grounds 1 and 2 in the first Notice of Appeal dated and filed on the 8th of September 2011, are grounds of mixed law and fact requiring the leave of the lower court or this court in order to be competent.

d. Grounds 4, 5, 6 and 7 contained in the second Notice of Appeal filed on the 24th day of November, 2011 are grounds of fact or of mixed law and fact which required the leave of the lower court or of this court in order to be competent.

e. The Appellant did not seek the leave of either the lower court or this court to file the Notices of Appeal filed on the 8th of September, 2011 and 24th November, 2011 respectively. B

f. The maintaining of the two Notices of Appeal by the Appellant constitutes an abuse of the process of this court.

g. Issue No. 1 in the Appellant's Brief of Argument did not arise from any of the grounds of appeal and the judgment of the lower court delivered on the 8th of September, 2011. C

h. All the submissions made on the basis of issues formulated out of incompetent grounds of appeal are themselves incompetent and liable to be struck out. D

Mr. Y. C. Maikyau SAN for the respondents 1st and 2nd arguing the Preliminary objections contended that the Notice of Appeal filed on the 8th of September 2011 is incompetent. That the two grounds of appeal contained in the Notice are grounds of mixed law and fact and by virtue of the provisions of Section 233 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) leave of either the lower court or this court is necessary for the appeal to be competent. He cited *Ugboaja v. Sowemimo* (2008) 39 WRN 1 at 15. E

That the first ground on this Notice of Appeal of 8/9/11 complained about the evaluation of evidence by the lower court. He stated that a complaint of an alleged improper or wrongful evaluation of evidence is a ground of mixed law and fact in respect of which leave must first be sought for and obtained by the appellant. That where there is such failure of leave, the ground of appeal would be incompetent and liable to be struck out. He cited several authorities like *BASF (Nig.) Ltd v. Faith Enterprises Ltd* (2010) 24 WRN 26 at 51 to 52, *Williams v Mokwe* (2005) 14 NWLR (pt.945) 249 at 261; *Abidoeye v. Alawode* (2001) 6 NWLR (pt.709) 463 at 472. Mr. Maikyau, senior counsel went on to state that with respect to the second ground of appeal and its particulars, the complaint relate to the remedy available to the appellant who complained about the alleged breach of 2nd respondent's guidelines. He said the breach or F

G

H

otherwise of the guidelines of the 2nd respondent is a question of fact which must be established by evidence. This in view of the fact that in the case at hand, the allegation of the breach of the guidelines was made in an Originating Summons supported by affidavit to which documents were attached as Exhibits. That the 1st and 2nd respondents hotly contested and denied the allegations in the affidavit of the appellant by filing counter affidavits to which documents were also attached to buttress the opposition to the case of the appellant.

Senior counsel said it follows that, whether or not the remedy available to the appellant lies in damages depends on the resolution of the contested facts in the affidavit of the parties one way or the other, as to whether or not there was a breach of the guidelines of the 2nd respondent. Therefore this question raised a question of mixed law and fact and thereby the necessity for leave to be first sought for and obtained. He cited *BASF (Nig.) Ltd v Faith Enterprises Ltd* (supra). In the matter of the second Notice of Appeal, Mr. Maikyau said the Notice of Appeal filed on 24th November, 2011 contained seven grounds of appeal. That grounds four, five, six and seven read together with their particulars reveal that they complain about facts or at best raise matters of mixed law and facts. This is so, learned counsel for respondent said stem from the fact that grounds four and five raise a complaint on evaluation of evidence by the lower court. That ground 6 raises the question as to the applicability of the provisions of section 151 of the Evidence Act (now Section 169 of the Evidence Act 2011) to the alleged conduct of the 1st respondent as to the existence or otherwise of the alleged reports attached to the affidavit in support of the originating summons as Exhibit H, I, and K. A matter of pure evaluation of the affidavit evidence to determine whether the trial court properly held that the 1st respondent was caught by the doctrine of estoppels an issue of mixed law and facts.

For the respondents 1st and 2nd was further posited that ground 7 complains about the finding by the lower court that the appellant failed to show the violation of the 2nd respondent's guidelines and thus was not entitled to the declarations sought in the Originating summons which is an issue of fact. Also it is matter that requires proof to entitle the appellant to the grant of the declaratory and injunctive reliefs. That the conclusion is that the Notice of Appeal is incompetent and ought to be struck out. Going on further, Mr. Mikyau sub-

mitted that the Notice of Appeal dated and filed on the 24th of November, 2011 is an abuse of the process of this court. That even though the appellant has the right to file numerous Notices of Appeal subject to compliance with the requirements of the law as to their competence, maintaining this second Notice in the light of the Notice of Appeal filed on 8th September, 2011 constitutes an abuse of the process of court. That the court should note that the appellant had utilized the two grounds from the two Notices to argue in their brief. That the two Notices are therefore invalid and liable to be struck out or the appeal dismissed for abuse of court process. He cited *Dingyadi & Anor v. INEC* (2010) 4 - 7 SC (Pt.1) 32. B  
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In reply sequel to their reply brief filed on 7/12/12, Mr. S. 1. Ameh SAN contended that, the 1st and 2nd respondents filed a Notice of Preliminary Objection pursuant to Order 2 Rules 9 of the Rules of this court on 16th January, 2012 and incorporated their argument in their brief. That the appellant had filed a motion on Notice for leave to appeal on grounds other than grounds of law alone and for leave to amend the appellant's brief. That it is submitted that the prayers in the motion on Notice takes care of the contentions of the 1st and 2nd respondents in their preliminary objection save for the 1st and 2nd respondents' contention that maintenance of two (2) Notices of appeal constitute abuse of court process. That if the motion of the appellant is granted then the other contention of the 1st and 2nd respondents would have been overtaken by events. D  
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Learned counsel for the appellant stated on that this court in *Dingyadi & Anor v INEC* (2010) 18 NWLR (Pt. 1224) had only treated a situation where the two notices of appeal emanated from Abuja and Sokoto respectively an abuse of court process whereby there was likelihood of two conflicting decisions emerging, which is not the case here. That this court had held severally that an appellant is at liberty to file two (2) or more notices of appeal within time and is at liberty to choose whether to use all or some of the notices or stick to one and withdraw or abandon the rest and that the filing and maintenance of more than one notice of appeal in the same matter before the same court does not render any of the notices incompetent. He referred to *Registered Trustees of Amorc v. Awoniyi* (1994) 7 NWLR (pt. 355) 154 at 191; *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt. 68) 39 at 49 & 54; *Onwe v. The State* G  
H

(1975) 9 11 SC 41; *Harriman v. Harriman* (1987) 3 NWLR (Pt.60) 244. *First Bank of Nigeria Plc. v. TSA Industries Ltd* (2010) 15 NWLR (pt. 216) 247 at 290.

Senior counsel, S. I. Ameh said assuming without conceding that the 1st and 2nd respondents are right in making this contention, or that this court finds merit in the argument of the respondents 1st and 2nd in this regard then appellant would apply to abandon the 1st Notice of appeal filed on 8th September 2011 and to amend the appellant's brief to remove or sever any reference to grounds of the said Notice of Appeal under Issues 1 and 4 of their brief. Learned counsel for the 3rd respondent had however filed a brief settled by Ahmed Raji and deemed filed on 19/3/12. Learned counsel had taken position with the appellant and in their brief had gone straight into the merits of the appeal and done nothing of use in the discourse in this preliminary objection which is whether or not there is competence in the appeal. The preliminary objection of the 1st and 2nd respondents had been anchored on two prongs of attack. Firstly, that leave was not sought and obtained before grounds of mixed law and facts or those of facts were argued since the complaint of the appellants had complaints on evaluation of evidence and the nature of remedy available to appellant which would require to be established by evidence even though the initiating process in this matter was an originating summons. That part of the grouse of the respondents' 1st and 2nd seem now moot in view of what is crucial and I dare say fundamental, which is whether there is even a valid appeal in the first place. This nagging situation has arisen on account of the two Notices of appeal of the appellant on 8th September 2011 and 24th November 2011 respectively.

It is true as posited by the appellant's counsel, Mr. I. Ameh SAN and even agreed by Mr. Mikyau SAN for respondents 1st and 2nd that a party as appellant is at liberty to file any number of notices of appeal. The follow-up question is whether in going into the brief or the appeal hearing those numbers of Notices of appeal can be used instead of one since attempting the use of more than one would be an abuse of court process.

This preliminary objection is fought on two legs, the first on the basis that some of the grounds being of facts or mixed law and facts needed leave of court to proceed and that there was absence of such

leave as put forward by the 1st and 2nd respondents. The appellant in their reply say the leave was sought for and obtained and so were adequately covered so long as the competency of those grounds of appeal needing leave were concerned and in that regard had filed a motion on Notice for leave for those grounds other than grounds of law alone and had also thereby sought leave to amend appellant's brief which motion was granted. Indeed, this position is borne out of the records as the motion in issue was filed on 7/2/12 and granted on 19/3/12 and the amended appellant's brief deemed on that said 19/3/12 as properly filed and served. In fact that is the valid appellant's brief being utilized in this appeal. Therefore that leg of the objection goes to no issue. In respect of the other leg of the preliminary objection, the matter of two Notices of Appeal being in use in the appeal thereby bringing into being the incompetency of the two notices. However at some point in the defence of this objection learned counsel for the appellant had offered to abandon one of the notices so as to utilize the other if the two could not be used in prosecuting the appeal.

Clearly recourse has to be resorted to in the guiding principles as put in place by no less a court than Supreme Court. In the case of Tukur v. Government of Gongola State (1988) 1 NSCC 30 at 35 - 36 per Oputa JSC.

*"It has to be borne in mind that a right of appeal is a constitutional right Eyesan v. Sanusi (1934) 1 SCNLR 353 at 367. Section 220(1), of the 1979 Constitution as amended creates a constitutional right of appeal without leave from anybody. Under section 220(1) an aggrieved party appeals as of right from decisions of the High Court to the Court of Appeal. There is another qualified right of appeal created by S.220 (1) of the 1979 Constitution. This is right of appeal with leave. To utilize and exercise any right of appeal an appellant is obliged and obligated by the Rules to file a Notice of Appeal. Where therefore the Constitution gave one and the same appellant in one and same case two rights of appeal - one as of right, without leave, and the other qualified by and limited to the grant of leave - there and then it is logical to conclude that for each right of appeal being exercised one Notice of Appeal is required so that for the exercise of the two notices of appeal will technically be required. The answer to the question can an appellant file two notices of ap-*

peal with emphasis on the word “can” is obviously yes he can. In *Iteshi Onwe v. The State* (1975) 9 - 11 SC 41 three Notices of Appeal were filed all within time and the court per Sowemimo JSC (as he then was) held that “it was open to counsel for the appellant to choose which of them he intends to adopt.... We cannot seriously talk of  
 B and dwell on two Notices of Appeal when one has in fact been withdrawn. An appellant can validly withdraw one of two Notices of Appeal and then proceed to argue his appeal based on the other remaining Notice of Appeal.” Registered Trustee of AMORC v. Awoniyi (1994) 7 NWLR (Pt. 355) at 174 - 175 per Wali JSC.

C “The additional grounds filed within time will form part of the grounds of appeal filed along with the Notice of Appeal. The appellant does not require leave of the Court of Appeal to file. But it will be neater and make the work of the court much easier and smooth if  
 D the appellant applies to the court to amend his notice of appeal by incorporating therein additional grounds. The proposition of law in the case of *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt. 58) 39 supports this view, since in that case two Notices of Appeal filed differently within time were upheld to be valid and that the  
 E appellant could withdraw one of the Notices and merge the grounds of appeal. The Supreme Court even expressed the view that the appellant could argue the two Notices of Appeal with grounds of appeal filed under each one of them. The appellant will only require  
 F leave of the Court of Appeal where the additional grounds are to be filed out of time where additional grounds of appeal are filed within time, such additional grounds of appeal will in my view, form part of the notice of appeal and grounds of appeal filed thereunder. If an  
 G appellant can file as many notices of appeal as he wishes in one appeal provided that is done within 3 months period allowed for appealing as of right, nothing stops him from filing additional grounds to any of the Notices of Appeal if done within time.”

Iguh JSC at page 191 of Registered Trustees of AMORC v. Awoniyi (supra) stated the position thus:

H “I have given this matter a most careful consideration and it seems to me that where a proper appeal is filed, additional grounds filed within the time prescribed for appealing may rightly be deemed to form part of the original grounds of appeal filed along with the Notice of appeal. In my view, no leave of the appellate court appears

*necessary before such additional grounds of appeal may be validly entertained, so long as they are filed within the statutory period of 3 months allowed for appealing as of right against the decision of the High court as provided for under the constitution.....”*

It will certainly be more tidy and orthodox in such circumstances for the appellant to move the court for the amendment of his Notice of Appeal by incorporating the additional grounds there in. The Supreme Court went on in the case cited above, Registered Trustees of AMORC v. Awoniyi (Supra) at 191 to say that an appellant can file more notices and grounds of appeal in addition to the earlier one filed and either use all or adopt one. The court anchored this position on Tukur v. Government of Gongola State (supra). In laying down the rule of practice above it affirmed the position of the Court of Appeal per Katsina- Alu JCA (as he then was) in that case of Registered Trustess of AMORC v. Awoniyi (Supra) where that court below held that:

*“The need to seek the discretion of this court to add to or amend the grounds of appeal properly filed in the Notice of appeal can only arise when the time within which an appellant may file his appeal has expired. If it has not, he can withdraw his first notice of appeal and file another. He can even file more notices and grounds of appeal in addition to the earlier one and either use all or adopt one.”*

From these guides above, it is evident that the appellant ought not to be hustled into abandoning any of the Notices as he was within his right to file as many notices as he deemed fit and was equally at liberty to use any of them or both or more if there were. It is to be seen that it can be said that filing more than a notice of appeal and using more than one could be inelegant, untidy or even confusing, but the law and its practice have had it settled that the inelegance or un-tidiness are not enough reason for rendering those notices of appeal incompetent or invalid as to do that would be taking technicality too far and not covered by law.

The cases cited and followed above bear this stance out. See Tukur v. Government of Gongola State (1988) 1, NSCC 30 at 35 - 36; Registered Trustees of AMORC v Awoniyi (1994) 7 NWLR (Pt. 355) at 174 - 175. The situation on ground and without dispute is that the appellant had utilized the two notices together in formulating the is-

sues in their brief and in this; the brief and issues distilled from the grounds of appeal in the two notices are clearly stated. As I have said earlier, no one can challenge the filing of more than one notice of appeal as the particular circumstance may have made it difficult for the appellant not do so. An example being where an appellant is  
 B trying to be within time and in such a dire emergency would not have in the notice of appeal and its grounds said all that needed be said or brought in. Therefore he cannot be shackled in not setting the complaints properly and fully in any subsequent Notice and Grounds  
 C of Appeal. The conclusion that follows quickly is that the preliminary objection of 1st and 2nd respondents fail and therefore dismissed while the merit of the appeal the would be gone into.

### MAIN APPEAL

The appellant had crafted four issues for determination in this  
 D appeal and they have been also adopted by the respondents for argument. These are as follows:

*“1. Whether the court below was right in holding that the jurisdiction vested by and the redress provided under section 87(9) of the Electoral Act 2012 (as amended) are limited to award of damages and did not include jurisdiction to order the reinstatement of the appellant as candidate of the 2nd respondent as ordered by the trial court. (Grounds 2 of the appellant are first Notice of appeal and Grounds 1, 2 and 3 of the second Notice of appeal).*  
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*2. Whether the court below was right in disturbing the finding of the trial court to the effect that the 1st respondent was not cleared to contest the 2nd respondent’s primary election held on Thursday 6th January 2011 for the purpose of picking the 2nd respondent’s candidate for the Yauri/Shanga Ngaski Federal constituency in the  
 F April 2011 General Election. (Grounds 4 and 5 of the appellant’s second Notice of Appeal).*  
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*3. Whether the court below appreciated the basis for the trial court’s application of principle of estoppel and this notwithstanding, whether the 1st respondent who failed to challenge the decisions of  
 H the 2nd respondent’s screening, Electoral and Electoral Appeal Panels disqualifying him from contesting the 2nd respondent’s grounds of appeal are themselves incompetent and liable to be struck out.*

*4. Whether in view of the facts established by affidavit and documentary evidence in this case, the court below was correct in*

*holding that the appellant did not prove that the 2nd respondent violated its Electoral Guidelines 2010 by nominating the 1st respondent as its candidate for election into membership of the House of Representatives for the Yauri/Shanga Ngaski Federal Constituency.*

#### ISSUE ONE

Whether the court below was right in holding that the jurisdiction vested by and the redress provided under Section 87 (9) of the Electoral Act 2010 (as amended) are limited to award of damages and did not include jurisdiction to order the reinstatement of the appellant as candidate of the 2nd respondent as ordered by the trial court. B

Arguing the issue No. 1, learned counsel for the appellant submitted that the Court of Appeal was wrong in the interpretation it placed on the word “redress” used in Section 87 (9) of the Electoral Act 2010 as amended and also failed to appreciate the mischief sought to be cured by the law maker in enacting the provision of the entire Section 87 (9) of the Act that in interpreting the word “redress” the Court of Appeal restricted its meaning to monetary compensation or pecuniary damages which restriction cannot be justified. He cited *Awolowo v. Shagari* (1979) NSCC 87 at 112, *A.G. Abia State v. A.G. Federation* (2002) 6 NWLR (Pt. 763) 264; *Federal Republic of Nigeria v. Osahon* (2006) 5 NWLR (pt. 973) 361 at 436. Mr. Ameh SAN for the appellant contended that with the enactment of Section 87 (9) of the Electoral Act 2010 (as amended) an exception to the general rule in *Onuoha v. Okafor* (1983) 2 SCNLR 244 has taken place and so where a political party has failed to comply with provisions of the Act or its own electoral guidelines in the conduct of primary election for the selection of its candidate, the court will be able to interfere and redress the situation by mandatorily requiring that only a candidate selected in strict compliance with the Act and guidelines emerges. D

For the 1st and 2nd respondent, Mr. Maikyau SAN stated that the court of Appeal was right in its conclusion that the court of trial’s findings which proceeded from Exhibits H, I and K was perverse and occasioned a miscarriage of justice. That the 1st respondent was not precluded by the screening committee from participating in the Primary Election. That the 2nd respondent did not receive the alleged reports of the screening committee, Electoral Committee and Elec- E  
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toral Appeal committee and that the documents Exhibits H, I, K were contrived to jeopardize the interest of the 1st respondent. He further submitted that 1st respondent was not in any way disqualified from contesting the primaries and the provisions of Article 27 (v) of the 2nd respondent's guidelines were fully complied with when the 1st respondent participated and won the primaries. Also that there was compliance with the provisions of section 87(4) (c) (ii), the name of the 1st respondent was forwarded to the 3rd respondent being the winner of the primaries conducted by the 2nd respondent.

It was also canvassed for the respondents 1st and 2nd that it is settled that the jurisdiction of a court to entertain matter submitted for adjudication before it is determined by the relief sought in the Originating process and so by the reliefs in this instance the appellant purported to invoke the jurisdiction of the trial court under Section 87 (9) of the Electoral Act 2010 (as amended). Therefore that the court was within its authority to curtail the excesses and arbitrariness of the political parties but in doing so cannot transfer to itself the matter of choosing the candidate and foist same on the political party, rather it should grant the redress of compensation by way of damages.

Learned counsel for the 3rd respondent, Mr. Ahmed Raji agreed with the submission of the appellant on the matter of the correct interpretation of Section 87(9) of the Electoral Act, 2010 (as amended). That the submission of a candidate's name to the 3rd respondent by a political party is a prima facie evidence that the candidate is a member of the party and has been duly screened by the party as provided for in its constitution and Electoral Guidelines. I would like to quote Section 87(4) (c) (ii) of the Electoral Act, 2010 as amended and it is, viz:

*"87(4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below:*

*(c) In the case of nominations to the position of a senatorial candidate, House of Representatives and state House of Assembly a political party shall, where it intends to sponsor candidates:*

*(iii) 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.”*

To tackle the question I shall restate the questions for determination upon the Amended Originating Summons of the appellant as plaintiff at the Court of Trial and they are as follows:

**“QUESTIONS FOR DETERMINATION**

1. *Whether a person disqualified or declared ineligible by his political party to contest an election can participate in party primaries organized or conducted by the same political party.* <sup>B</sup>

2. *Whether by the clear provision of S. 87 of the Electoral Act, 2010 it is not mandatory for the 1st Defendant to nominate its House of Representatives candidate/flag bearer for Yauri/Shanga/Ngaski Federal constituency of Kebbi State for the 2nd April, 2011 National Assembly on the basis of the result of the said Primary Election.* <sup>C</sup>

3. *Whether by the provisions S.87 (1)(c) (iv) of the Electoral Act 2010, it is not mandatory for the 1st Defendant to nominate the Plaintiff as its House Representatives candidate/flag bearer for Yauri/Shanga/Ngaski Federal Constituency of Kebbi State in the April 2, 2011 General Election, the Plaintiff having won the direct primary election held on January 6, 2011.*

4. *Whether having regard to the express provisions of Section 87 of the Electoral Act, 2010, the 1st Defendant can submit the name a non-contestant in the primary election as its candidate/flag bearer for Yauri/Shanga/Ngaski Federal constituency of Kebbi state for the said April 2, 2011 General/National Assembly Election.* <sup>E</sup>

5. *Having regard to the provisions of the constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act, 2010, whether the 1st Defendant having screened and disqualified an aspirant from participating in the primaries can turn round to submit the name of the disqualified aspirant/non-contestant as its candidate for Yauri/Shanga/Ngaski Federal constituency of Kebbi State for the April 2, 2011 General Election/National Assembly Election.* <sup>F</sup>

The reliefs sought from the trial court were:

**“RELIEFS**

A. *A DECLARATION that it is mandatory for the 1st Defendant to nominate the winner at the said Primary Election, as its flag bearer/candidate for the purpose of participating and contesting in the national assembly election in Kebbi State slated for 2nd April, 2011.* <sup>H</sup>

*B. A DECLARATION that the plaintiff having scored the highest number of votes in the Primary Election of the 1st Defendant, is the rightful and lawful candidate of the 1st defendant for the April 2, 2011 national assembly election in respect of Yauri/Shanga/Ngaski Federal Constituency of Kebbi State.*

*B C. A DECLARATION that the refusal of the 1st Defendant to submit the name of the plaintiff to the 2nd Defendant as its candidate in respect of Yauri/Shanga/Ngaski Federal Constituency of Kebbi State for the April 2011 is unlawful, null and void and of no effect whatsoever.*

*C D. DECLARATION that the submission of the name of a disqualified aspirant/non-contestant to the 2nd defendant by the 1st defendant as its candidate for the said election of 2nd April, 2011 is illegal, unlawful, null and void and of no effect whatsoever.*

*D E. AN ORDER of injunction restraining the 2nd defendant either by itself, officers, agents, privies, staff or through any person(s) howsoever from recognizing, accepting or dealing with any other name submitted to it in anyway whatsoever as the 1st Defendant's candidate in the April, 2011 National Assembly Election save the name of the plaintiff.*

*F F. AN ORDER directing the 1st defendant to submit the name of the plaintiff as the validly nominated candidate for Yauri/Shanga/Ngaski federal constituency of Kebbi State at the April 2, 2011 General Election/National Assembly Election.*

*G G. An order directing the defendants particularly the 2nd defendant to recognize, accept and deal with the plaintiff as the flag bearer of the 1st defendant's for the April 2, 2011 election having emerged the winner of the 1st defendant's primary election."*

*G By the reliefs quoted above, the appellant purported to invoke the jurisdiction of the trial court under section 87(9) of the Electoral Act 2010 (as amended). The section stipulates that:*

*H "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 FCT, or redress."*

What is called for the attention of the court herein is that ex-

tent of the powers of court in a dispute that is squarely within internal political party affairs. In unraveling the web the court would do so within the purview of section 87(9) of the Electoral Act 2010 as amended and Section 46(1) of the 1999 Constitution as amended. While the appellant is insisting on the court in so interpreting to have declared the winner of the primaries in the disqualification of the 1st respondent and three others. The 1st and 2nd respondents reply is that the best the court can do for her is a remedy in damages. B

Some basic position need be stated and that is that no aspirant is entitled to approach the court to force the political party to nominate him or her as candidate on the pretext that a breach of the party's guidelines had occurred. However, the court has been empowered by the introduction of Section 87 (9) of the Electoral Act to see that the guidelines of a political party are not breached albeit with impunity thereby ensuring that no excesses and arbitrariness of political parties are foisted on a member of their party. The above does not detract from the right of the political party in its sponsorship of a candidate of its choice. Previously as mirrored in the case of Onuoha v. Okafor (1983) SCNLR 244; (1983) NSCC 494, the court had no business whatsoever in entering into the process rightly or wrongly done by a political party in its selection of a candidate of its liking. The best the court could do where a breach had taken place lay in damages to assuage the candidate's grievance. That position was changed with the 2006 enactment of the Electoral Act, 2006 specially section 34 which gave the court the power to stop a political party to substitute its candidate who had emerged from its primaries with the name of another. Also when that had occurred to go back to the name of the candidate who had been removed if the political party cannot proffer cogent and verifiable reasons for the substitution. The situation on ground now is a little different with the current Electoral Act, 2012 as amended with its section 87(4) which does not contain a provision for substitution or change but while the matter is justiciable, the power is limited to the proceedings during the primaries election and a winner had emerged at which that winning would be supported and not allowed to go to another who had lost at the electoral process within the party. In the interplay that would ensue where a grievance has been established and the avenue open would be a redress in damages. See Section 87 (9) and (10) of the Electoral Act, C D E F G H

2010 as amended. The description of the prevailing circumstance is as briefly stated by my learned brother, Rhodes-Vivour JSC in *Hope Uzodinma v. Senator Osita Izunaso* delivered on the 20th day of May 2011 in Suit No. SC.177/2011 (Unreported) wherein he said:

B *“The courts will never allow a political party to act arbitrarily or as it likes. Political parties must obey their own constitution and once this is done there would be orderliness and this would be good for polities and the country.”*

C In the light of the foregoing I see no basis for disturbing the findings of the court below in its interpretation of section 87(9) of the Electoral Act 2010 as amended in that the power of court in this instance is limited to the award of damages and did not include the jurisdiction to order re-instatement of the appellant as the candidate of the 2nd respondent as had been done by the trial court. The D answer is positive to the question whether the interpretation was correct in what the Court of Appeal had done in appeal before it.

#### ISSUE NO. TWO

E Whether the court below was right in disturbing the finding of the trial court to the effect that the 1st respondent was not cleared to contest the 2nd respondent’s primary election held on Thursday 6th January 2011 for the purpose of picking the 2nd respondent’s candidate for the Yauri/Shanga/Ngaski Federal Constituency in the April 2, 2011 General Election.

F Senior counsel for the appellant submitted that the trial court in the determination of the sole issue before it considered the exhibits proffered and was correct in placing reliance on Exhibits H, I, and K over the exhibits of the 1st and 2nd respondent based on cogency and credibility and not a case of failure to evaluate evidence as posited by the court below. That the finding of the trial court that the 1st G respondent was not cleared to contest the primaries is not caught by any definition of perversity or a miscarriage of justice. That this court below ought not to have tampered or interfered with the findings or decision of the trial court. He cited *A. G. Federation v. Abubakar* H (2007) 10 NWLR (Pt.1041) 1; *Oniah v. Onyia* (1989) 1 NWLR (Pt. 99) 514. That on the contrary it was the finding of the Court of Appeal that 1st respondent was cleared on the strength of Exhibits GU1, GU14 and GU8 that is perverse and should be set aside. He referred to *Tanko v. Echendu* (2010) 18 NWLR (pt. 1224) 253 at

280. Countering the stand of the appellant, Mr. Maikyau SAN submitted that the trial court failed to evaluate the evidence of the parties rather it was the Court of appeal who corrected that anomaly. That the trial court made its findings without consideration of the unchallenged documentary evidence exhibited before the tribunal. That the Trial court shut its eyes to legally admissible evidence and rather utilized speculations to arrive at their findings which the law has not allowed. He placed reliance on *Olalomi Ind. Ltd. v. NIDB Ltd.* (2009) 16 NWLR (Pt. 1167) 266 at 303. B

To answer the question posed in this issue 2 on the evaluation of evidence whether done by the trial court and if so how properly I shall quote part of the relevant judgment of the Court of Appeal and it is as follows: C

*“What is missing is the evaluation of evidence. I have copiously quoted the judgment of the lower court earlier in this judgment. It is apparent from the judgment that apart from Exhibit GU1, the learned trial judge turns (sic) a blind eye to all the other exhibits placed before him by the defence. His judgment is based solely on Exhibits H, I, and K submitted by the 1st respondent.”*

The court of Appeal went on further to state thus: E

There is no doubt that the learned trial judge has failed to evaluate evidence of qualification placed before him by the 1st Appellant. It will be a travesty of justice for a court to set a task for itself and then embark on something else. The task set by the learned trial judge was that he was going to determine whether the Appellant was qualified to participate in the primary election leading to the choice of candidate for Yauri/Shanga/Ngaski Federal constituency. It will be observed from the record that the 1st Respondent had forwarded a petition to the Screening Committee, complaining that certain aspirants have not resigned their appointments. This petition was not copied to anyone, including the 1st Appellant that the Screening Committee has acted upon the petition without informing the aspirants of the existence of the petition. Also apparent from the record is the fact that all subsequent petitions written by the 1st Respondent followed the same pattern. They were not copied to the persons directly affected. It is, therefore, a little wonder that when this action was instituted, the 1st Appellant was not made a party thereto whereas the judgment was to be against him. F  
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It is in this light that one has to view the so called report of the screening committee and that of the Electoral Appeal Committee. Both reports were denied by the 2nd Appellant as having been submitted to it. This is contained in the affidavit of the 2nd Respondent in response to the 1st Respondent's further affidavit. By Article 27(1) of PDP's Electoral Guidelines, for Primary Elections, 2010, it is the National Executive committee of the party that has power to appoint screening committee. The National working committee's role, under the guidelines, does not go beyond recommending to the National Executive committee the persons to be appointed into various committees. All the so called reports were addressed to the National working committee. If the 2nd Appellant denied the receipt of the report of this committee, it only stands to reason that the 1st Appellant who claimed that he was not aware of it is telling the truth, more so as it was not copied to him.

It is evident and both sides agreed that the Screening was to take place for two days. The Screening started on the 31st day of December, 2010 and clearance certificate was endorsed for the 1st Appellant on the 31st day of December, 2010. It was endorsed by both the Chairman and the Secretary of the Screening Committee. Exhibit GU14, letter of resignation giving approval for resignation has also not been challenged. Exhibit GU8 at page 915 of the record is the result of the primary Election endorsed by the Electoral committee members and also endorsed by the aspirants' agents. This exhibit has not been challenged or denied.

In circumstance, it is difficult to see why these Exhibits and the others were not given any consideration by the learned trial judge. This has led to a perverse finding by the trial court which has occasioned a miscarriage of justice. It is in view of the above that I resolve this issue in favour of the Appellants. Since the Electoral Guidelines for Primary Elections are salient I shall have to quote Article 27(i) - (v) therefore which is germane for discourse and it is as follow:

*"27. There shall be for each State of the Federation and the Federal Capital Territory, a Screening Committee of five members (one Chairman and four others) and (one of whom shall be a woman) appointed by the National Executive Committee on the recommendation of the National Working of the party to screen the National Assembly aspirants.*

*ii. There shall be for each State of the Federation and the Federal Capital Territory, a Screening Appeal Panel, which shall comprise of three persons appointed by the National Executive Committee on the recommendation of the National Working Committee of the party.*

*iii. Any aggrieved aspirant shall have the right to appeal in writing to the State or FCT Screening Appeal committee within 24 hours from the time of receipt of the result of the screening.* <sup>B</sup>

*iv. The State or FCT screening Appeal Committee shall pronounce its decision on an appeal within 48 hours or soon thereafter.*

*v. Only aspirants cleared by the state screening committee or whose appeal is upheld by the Appeal committee shall be allowed to participate in the primary election.”* <sup>C</sup>

What comes out clearly are that the position of the 2nd respondent on the candidature of the 1st respondent was consistent with the fact that Exhibit GU1, Clearance Certificate issued to the 1st respondent which was properly issued and signed by the designated and authorized officers of the 2nd respondent. It was sequel to this that 1st respondent participated in the primaries emerging winner with the highest number of votes of 222 and the appellant with the score of 93 votes taking the fourth position. Thereafter, pursuant to the provisions of Article 27(v) of the 2nd respondent's guidelines, the 2nd respondent submitted the name of the 1st respondent to the 3rd respondent, INEC which then published the name in accordance with the provisions of section 31(5) of the Electoral Act 2010 (as amended). It can be seen vividly that it is the appellant who is imposing her will on the party and others. <sup>E</sup> <sup>F</sup>

The court below was on firm ground based on the evidence available to do, what the trial court had failed to do proceeding as it were from an imaginary speculative base. See *Olalomi Ind. Ltd. v. NIDB Ltd.* (2009) 16 NWLR (Pt.1167) 266 per Adekeye JSC. The issue is resolved for the 1st and 2nd respondent.

### ISSUE NO THREE

Whether the court below appreciated the basis for the trial court's application of principle of estoppel and this notwithstanding, whether the 1st respondent who failed to challenge the decisions of the 2nd Respondent's Screening, Electoral Panels Appeal disqualifying him from contesting the 2nd respondent's primaries could turn around to complain or extricate himself from the effect of the said <sup>H</sup>

elections.

S. I. Ameh SAN said there was nothing difficult to understand in the message sought to be passed by the trial court in a portion of its judgment and that is that 1st respondent was estopped by conduct from denying the adverse effect of the Reports of the Screening Panel, Electoral Panel and the Electoral Appeal Panel. That it was in this lack of comprehension of the lower court that made that court see that Section 151 of the Evident Act was applicable. He referred to *Ukaegbu v. Ugorji* (1991) 2 NSCC 298 at 319. Senior Advocate of Nigeria, Mr. Maikyau for the respondent 1st and 2nd said it was wrong to say 1st respondent was estopped from denying the existence of a state of affairs as allegedly contained in the purported report even though the 1st respondent was not aware of the existence of such state of affairs. That the name of the 1st respondent was published in the final list of candidates of all the political parties nominated for the General Election and it was not until the 9th of April 2011, the same date of the election in question when the 3rd respondent substituted the name of the 1st respondent with that of the appellant on the basis of the judgment of the trial of 30th March, 2011. He said it was clear that the 1st respondent did not stand by to watch any adverse decision taken against him and so the doctrine of estoppels was inapplicable.

The trial court had made the following findings upon which it came to the conclusion that the 1st respondent was not qualified to contest the primaries and had been estopped from denying or challenging the decisions in Exhibits H, I, and K. It is hereunder reproduced thus:

*“At this stage one would have expected the 3rd Defendant to challenge the decision of the National Assembly Appeal Report in the appropriate court of law. This is because the said decision of the National Assembly Appeal Panel was clearly against him in that it constituted an impediment to his valid participation in the primaries.*

*However and with this apparent clog to his right to participate in the primaries the 3rd Defendant went ahead to participate by disregarding this all important decision of the National Assembly Appeal report against him.*

*This issue could be likened to a situation where a person’s right to participate in a primary Election is taken away with his knowledge*

but decided to turn a deaf ear to the problem.

*Although it has been contended that the attention of the 3rd Defendant was not drawn to the various Panel referred to in the Plaintiff's Exhibits 'H' and 'I', but having submitted himself for screening and presented a photocopied Clearance Certificate to the Panel and with the guidelines clearly set out for the conduct of the Primary Election, the 3rd Defendant cannot deny knowledge of the various reports submitted."*

The summation of the Trial Court was rejected by the Court of Appeal which was of the view that the documents Exhibits H, I, K were unknown to the 1st respondent and even the 2nd respondent and so he could not be accused of standing by or being estopped from disputing the contents. Also found by the Court of Appeal are that the trial court had proceeded from speculative angles not buttressed by the evidence evaluated properly with the balancing act of what was put forward by the appellant seen side by side with the assertions of the 1st and 2nd respondents. This point of view of the Court of Appeal is adequately captured in this excerpt below thus:

*"The Supreme Court in AISE V. ILU (1965) NMLR 66 held that the principle of standing by can only apply in cases where the party sought to be stopped knew what was passing, and was content to stand by and let someone else in the same interest group champion his cause and fight his case. In the instant case, I do not see how section 151 of the Evidence Act is applicable. The 1st Appellant categorically stated that he was not aware of the various reports exhibited by the 1st Respondent. The learned trial judge said he ought to be aware. The reasons given for this finding are speculative which is not within the province of law. Cases are decided on the strength of the evidence placed by the parties before the court and no more."*

Indeed the finding and conclusion of the court below were rightly made in the face of what was before court. Also the trial court came from speculative perspectives to arrive at its own destination, thus endangering its work of adjudication and situating it within the ambit of such as are classified as perverse. In such a featuring the court below rightly denounced that miscarriage of justice while stating the points as they should. See Onu v. Idu (2001) 12 NWLR (pt. 915) 657 at 686.

The conclusion therefore is that the principle of estoppel can-

not operate here against the 1st respondent who was unaware of the existence of the facts he ought to have challenged early in time. The legal principle of estoppel does not operate without knowledge of the other party. It operates from when the party to be faulted became aware and did nothing. This issue is resolved against the appellant.

#### ISSUE NO FOUR

Whether in view of the facts established by affidavit and documentary evidence in this case, the court below was correct in holding that the appellant did not prove that the 2nd respondent violated its Electoral Guidelines 2010 by nominating the 1st respondent as its candidate for the election into membership of the House of Representatives for the Yauri/Shanga/Ngaska Federal Constituency.

Mr. Ameh SAN said the pieces of affidavit evidence were not controverted or contradicted by the respondents and so should be deemed admitted and so the trial court was right to utilize them as proof of the case of the appellant. He cited the relevant depositions, documents or exhibits and the cases of *Agbaje v. Ibru Sea Foods Ltd.* (1972) 7 NSCC 338 at 341; *FBN v Ndarake & Sons* (2009) 15 NWLR (pt. 1164) 406. Learned counsel for the respondents 1st and 2nd said the appellant failed to show that the 2nd respondent violated the provisions of its guidelines for the conduct of primaries. That the evidence before the trial court was that the 1st respondent was nominated by the 2nd respondent in strict compliance with the provisions of Article 27 (v) of the PDP Electoral Guidelines and the relevant provisions of the Electoral Act 2010 (as amended) more particularly Section 31(3) thereof.

That assuming for purposes of argument that appellant had a remedy, the option open to the appellant lay in damages pursuant to Section 87(10) of the Electoral Act. In answer to the question raised herein as to whether the 2nd respondent, the PDP acted in breach of the provisions of Article 27(v) of its Guidelines in the nomination of the 1st respondent. What sticks out is the fact undisputed I dare say that both 1st respondent and the appellant and others contested the primary election and the 1st respondent emerged the winner with the majority votes while the appellant was of the fourth position in that contest. The area of dispute is that appellant is insisting that by the time the primary election took place the 1st respondent was not

qualified to be part of the process. Also while the 2nd respondent which carried out the process of the primary election accepted 1st respondent as its candidate and forwarded the name to the 3rd respondent for the general election contest and the name of 1st respondent with those of other candidates of other political parties published those names and in the meantime appellant had headed for the court insisting that 1st respondent and those who were second and third in the primary election had been disqualified, a fact not accepted by the 2nd respondent. That court ordered the 3rd respondent to have the appellant sequel to the purported disqualifications of those with higher votes that she be the proper candidate in the general election. While the trial court had its views based on Exhibits H, I, and K the Court of Appeal disagreed on appeal on the basis that the 1st and 2nd respondents were not aware of the documents and had no impediment to the emergence of the 1st respondent.

In fact from what had been shown in the earlier questions and answers, this would go the same way and it is positive for the 1st and 2nd respondents in keeping with the findings of the Court of Appeal. The various issues resolved in favour of the 1st and 2nd respondents and the better articulated reasoning in the lead judgment. The various issues resolved in favour of the 1st and 2nd respondents and the better articulated reasoning in the lead judgment of my learned brother, Olukayode Ariwoola JSC I see no reason to depart from the findings and decision of the Court of Appeal. I dismiss the appeal and abide by the consequential orders made in the lead.

G

H