

SUPREME COURT OF NIGERIA
25TH OCTOBER, 2012. SC. 369/2012
CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA- ENEH, B.
RHODES-VIVOUR, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC

1. DR. IMORO KUBOR
2. CHANGE ADVOCACY PARTY APPELLANTS
AND
1. HON. SERIAKE HENRY DICKSON
2. PEOPLES DEMOCRATIC PARTY
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENTS

APPEALS - Cross-appeal - Purpose - Respondent who is dissatisfied with finding of court - Is not to raise preliminary objection - But to file a cross-appeal (H1)

PLEADINGS - Binding nature - Issues for trial are joined in pleadings - And parties as well as court - Are bound by pleadings (H2)

INJUNCTIONS - Meaning - Injunction is judicial process operating in personam - By which upon certain principles of equity - A party is to do or refrain from doing a thing (H3)

ORDERS OF COURT - Interim order - Duration - Such order exists pending determination of suit or motion on notice - And its expiration does not affect the purpose thereof (H4)

ELECTIONS - Nomination - Proof - Evidence of nomination lies in declaration of winner of primary election - As well as forwarding of the winner's names to INEC (H5)

DOCUMENTS - Electronic document - Admissibility - By s.84(2) Evidence Act 2011 - Such document is admissible where inter alia - It was produced while a computer was put to regular usage (H6)

EVIDENCE - Admissibility - Basis - Election petition - Relevancy

determines admissibility - Hence withdrawal of ground 2 of the petition - Renders Exhibit D irrelevant (H7)

DOCUMENTS - Public documents - Admissibility - The admissible secondary evidence of such documents - Are the certified true copies of same (H8)

COURTS - Evidence - Inadmissible evidence - Power to expunge - Court can expunge from its record - Evidence or document earlier admitted (H9)

FACTS

1st appellant and 1st respondent contested on the platforms of 2nd appellant and 2nd respondent respectively in the gubernatorial election conducted by 3rd respondent for Bayelsa State. After the election, 1st respondent was returned as the winner of the said election. Appellants being dissatisfied with the results thereof, presented this petition against same before the Governorship Election Tribunal, Holden at Yenagoa. They prayed inter alia for a declaration that 1st respondent was not qualified to contest the election and accordingly was not duly returned as the winner.

Appellants contended that prior to and up to the date of the election, there was a pending litigation in court over the question of who was the candidate of 2nd respondent for the gubernatorial election. In the end, the Tribunal in its judgment found no merit in the petition and dismissed same. Appellants appealed to the Court of Appeal and the appeal was also dismissed. Aggrieved further, appellants filed appeal at Supreme Court.

ISSUE FOR DETERMINATION

Whether the order of the court restoring the names of 1st respondent to the list of candidates for the election in question which was duly carried out by 3rd respondent who was ordered or commanded so to do and which became spent after the withdrawal of the suit in which it was made, took along with it the action already completed by the 3rd respondent while the order in question was in operation

HELD (Unanimously dismissing the appeal per ON-
NOGHEN JSC)

Cross-appeal - Purpose

1 .If 1st respondent or any respondent is dissatisfied with the above finding/holding by the lower court, the proper thing to do in law, is not to raise the same preliminary objection before this court but to appeal by way of cross appeal against the above finding/holding by that court as that is the only acceptable way to challenge any decision of a court of law or tribunal.(p. 3134 H)

PLEADINGS - Binding nature

2. I have to state from the onset that it is settled law that issues for trial are joined in the pleadings and that parties and indeed the court are bound by the pleadings of the parties.
(p. 3139 D)

INJUNCTION - Meaning

3. It is settled law that an injunction is a judicial process or mandate operating in personam by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. An injunction is also a writ framed according to the circumstances of the case, commanding an act which the court regards as essential to justice or restraining an act which it deems contrary to equity and good conscience. (p. 3142 B)

Interim order - Duration

4. Generally speaking interim orders are not permanent as they are made to last for a while - usually pending the determination of the suit or motion on notice as in this case. The legal question in this issue is whether whatever such interim orders achieved in the interim can be ignored or considered nonexistent after the expiration of the time it was in operation particularly when the order is mandatory in nature and the command had been obeyed? Can the law undo what had been done in obedience of court order in the circumstances of this case? I do not think that the coming to an end of an interim order adversely affects whatever that order was meant to achieve or achieved. If the order was a restraining order you cannot say that while

it lasted or remained in operation, the party sought to be restrained was never restrained. It only means that the restrain is now at an end and that the party is free of the restraint. (p. 3142 F)

ELECTIONS - Nomination - Proof

B 5. Finally there is the sub-issue of publication of the names of candidates for election by 3rd respondent as a condition precedent for valid nomination. I have pondered over the submissions of counsel for appellants on this sub-issue and have not clearly seen the connection
C between publications of the names of candidate by 3rd respondent and qualification to contest any election to which the publication or non publication relates. I hold the view that publication of names of candidates by 3rd respondent is not evidence of sponsorship by a political party which nominated the candidates. Evidence of nomination and sponsorship of a candidate by a political party
D lies in the declaration of the winner of the party’s primary election conducted to elect the party’s candidate for the general election in question coupled with the political party forwarding the names of the said elected candidate to the 3rd respondent as its nominated candidate for the election. Publication of the name of a candidate
E cannot validate an otherwise invalid nomination and sponsorship of a candidate. In a situation where the 3rd respondent fails or neglects to publish the names of an otherwise validly nominated candidate of a political party for an election, the failure cannot be visited on
F the candidate to deprive him of the right conferred on him by the nomination to contest the election in question. Once a candidate has been nominated and his name sent by his political party to the 3rd respondent as its candidate for the election, the candidate remains a candidate and cannot be changed or substituted, as long as he remains alive after the submission of his name, unless the candidate
G voluntarily withdraws from the race - See Section 33 of the Electoral Act, 2010, as amended. Publication by 3rd respondent therefore is truly an administrative act with no serious legal consequences on the nominated and sponsored candidate in case of failure to publish the name. (p. 3144 G)

H Electronic document - Admissibility

6. Granted, for the purpose of argument, that Exhibits “D” and “L”

being computer generated documents or e-documents down loaded from the internet are not public documents whose secondary evidence are admissible only by certified true copies then it means that their admissibility is governed by the provisions of section 84 of the Evidence Act, 2011.

Section 84 (1) provides thus:

“(i) In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the condition in sub-section (2) of this section is satisfied in relation to the Statement and the computer in question”.

The conditions are:-

(a) that the documents containing the statement was produced by the computer during a period over which the computer was used regularly to store or process the information for the purpose of any activities regularly carried on over that period, whether for profit or not, by anybody whether corporate or not or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or if not that in any respect in which it was not operating properly or was out of operation during that point or that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the Statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

There is no evidence on record to show that appellants in tendering Exhibits “D” and “L” satisfied any of the above conditions. In fact they did not as the documents were tendered and admitted from the bar. No witness testified before tendering the documents so there was no opportunity to lay the necessary foundations for their admission as e-documents under Section 84 of the Evidence Act, 2011. (p. 3147 G)

EVIDENCE - Admissibility - Basis

7. It is settled law that what determines the issue of admissibility of evidence is relevancy. What is the relevance of Exhibit “D” in the proceedings? The lower court found/held and I agree with the court that it was intended to prove that 1st appellant scored the highest number of valid votes cast in the election in the event the 1st respondent is declared not qualified to contest the election; that with the withdrawal of Ground 2 of the petition to which Exhibit “D” is relevant, the document became irrelevant and consequently inadmissible in evidence. (p. 3149 A)

Public documents - Admissibility

8. However, looking closely at Exhibits “D” and “L”, they are clearly public documents and it is settled law that the only admissible secondary evidence of public documents is a certified true copy of same. Exhibits “D” and “L” not being certified true copies of the Punch Newspaper and the list of candidates which 3rd respondent is mandated to keep in the course of the performance of its official duties, are clearly inadmissible in evidence and the lower courts are right in so holding. The fact that the exhibits are computer print outs or e-documents does not change their nature and character as public documents. (p. 3149 E)

COURTS - Evidence - Inadmissible evidence - Power to expunge

9. On the sub issue as to whether the court has the power to expunge from its record evidence or documents earlier admitted without objection by counsel, it is settled law that the courts can do that and has been doing that over the years. (p. 3149 H)

NOTABLE POINT OF INTEREST

OGUNBIYI JSC

1. Decision – Meaning of

I hasten to add that Exhibit ‘N’ was a decision of the Federal High Court within the meaning of Section 318 (1) of the 1999 Constitution where the word ‘Decision’ is defined to mean:-
“any determination of that court and includes judgment; decree,

order conviction, sentence or recommendation. (p. 3163 C)

REPRESENTATION

Ricky Tarfa SAN; Chief Emeka Ngige, SAN; A.H Owankoko, SAN; with O. Jolaawo, Felix Tyokase, B. Aduloju, M. I. Ogunworiju, Joshua Okah, Onyeka Biajulu, Emeka Okakpo and A. Olukosi, for the Appellants B

Tayo Oyetibo SAN with Preye Agedah; Sylvester Imahanobe; B. A. Azebi, Olamide Akinlae and Ekieboye M. Figilo. Chief (Mrs.), for the 1st respondent

V. O. Awomolo with S. A. Somiari, Samuel Brisibe and Akinyoboye Arosayin, for the 3rd respondent/applicant C
 Chief J. K. Gadzama, SAN with Messrs G. I. Abibo, SAN, Magai V. Magai; F.N. Nwosu; Wilson Ajwa; A. S. Akingbade, S. P. Johnbull, D. H. Bwala, U. M. Jawur and P. C. Igwenazor, for the 2nd respondent D

CASES REFERRED TO

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

Okoya v. Santilli (1990) 2 NWLR (pt. 131) 172

Ude v. Nwara (1993) 2 NWLR (Pt. 278) 638 E

Oredoyin v. Arowolo (1989) 4 NWLR (pt. 114) 172

Adegoke Motors Ltd v. Adesanya (1989) 3 NNLR (pt. 109) 250

Ajide v. Kelani (1985) 3 NWLR (pt. 12) 248 at 248.

Ohakim v. Agbaso (2010) 19 NWLR (pt. 1226) 172 F

Okoye v. Obiaso (2010) 8 NWLR (pt. 1195) 145

N.I.P.C. Ltd. v. Thompson Organization Ltd. (1966) 1 NMLR 99

Kankia v. Maigemu (2003) 6 NWLR (pt. 817) 496.

NIPC Ltd. v. Thompson Organization Ltd. (1966) 1 NMLR 99

Kotoye v. CBN (1989) 1 NWLR (pt. 98) 419 G

ACB Ltd v. Awogbooro (1996) 3 NWLR (Pt.437) 383

Group Danone v. Voltic (Nig) Ltd (2008) 7 NWLR (Pt. 1087) 637

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss.177, 182, 287, 318(1) H

Electoral Act 2010 (as amended), ss. 31, 33, 34, 84, 139

Evidence Act 2011, ss. 85, 87(a), 90(1)(c), 102(b), 167(d)

National Library Act Cap N56 LFN 2004, ss.4(1), 7(c)

Federal High Court (Civil Procedure) Rules 2010, O.26 rr.11, 13 & 20

LEAD JUDGMENT BY ONNOGHEN JSC

B This appeal is against the judgment of the Court of Appeal Holden at Port Harcourt in appeal no. CA/PH/EPT/10/2012 delivered on the 31st day of August, 2012 in which the court affirmed the decision of the Bayelsa State Governorship Election Petition Tribunal, Holden at Yenagoa in petition no. EPT/BYS/GOV/01/2012, delivered on the 11th July, 2012.

C On the 1st day of March, 2012 the appellants presented a petition before the Governorship Election Tribunal, Holden at Yenagoa, against the respondents in which they claimed the following reliefs in paragraph 9 thereof.-

D “(a) Your petitioners pray for a declaration of the Honourable Tribunal that the 1st respondent was not qualified to contest the election into the Office of Governor of Bayelsa State conducted by the 3rd respondent on the 11th February, 2012, and accordingly, the return of 1st respondent as the elected Governor of Bayelsa State at the said election is null and void

E (b) A declaration that the 1st petitioner is the qualified candidate who scored the majority of lawful votes at the election into the Office of Governor of Bayelsa State conducted by the 3rd respondent on 11th February, 2012, and accordingly the 1st petitioner is entitled to and should be returned as the duly elected Governor of Bayelsa State in the said Bayelsa State Governorship Election held on 11th February, 2012.

G (c) In the alternative of relief (b), an order nullifying the election into the Office of Governor of Bayelsa State conducted by the 3rd respondent on 11th February, 2012, and directing the 3rd respondent to conduct a fresh election for the said office.”
The grounds for the petition are stated in paragraph 6 of the petition as follows:-

H “(a) That the 1st respondent was not qualified to contest the election into the Office of Governor of Bayelsa State conducted by the 3rd respondent on 11th February, 2012, and accordingly was not duly returned as the winner of the said election.

(b) That the 1st petitioner scored the majority of lawful votes cast at the said election into the Office of Governor of Bayelsa State

conducted by the 3rd respondent on 11th February, 2012".

In the final address of the petitioner, learned counsel for the petitioner jettisoned relief no. (b) by urging on the Tribunal thus:-

"We urge the tribunal to grant the reliefs set out in paragraphs 9(a) and 9(c) of the petitioner."

In paragraph 7 of the petition, the petitioners listed what they considered to be the facts in support of the grounds upon which the election of the 1st respondent is being questioned as follows:-

"a. Your petitioners State that the 1st petitioner was the candidate and contested the above election into the Office of Governor of Bayelsa State on the platform of the 2nd petitioner, having been duly nominated, screened, and cleared for the said election in accordance with the provisions of the Electoral Act, 2012 as amended and the Regulations and Guidelines issued by the 3rd respondent for the conduct of the said election. Your 1st petitioner is also a registered voter in Ward 16, Southern Ijaw Local Government Area of Bayelsa State and was qualified to vote and be voted for in the said election. The Certificate of Return issued to the 1st petitioner by the 2nd petitioner for the said election is hereby pleaded.

b. Your petitioners plead that Chief Timipre Sylva, the immediate past Governor of Bayelsa State had sued the 2nd and 3rd respondents before the Federal High Court Abuja in Suit NO. FHC/ABJ/CS/931/2011 contending that he is the person qualified to contest under the platform of the 2nd respondent in the election into the Office of Governor of Bayelsa State to be conducted by 3rd respondent to fill the said office at the expiration of the 2007/2011 Tenure of Office of Governor Timipre Sylva.

c. Your petitioners plead that the Federal High Court Abuja made an Order in the said Suit No. FHC/ABJ/CS/931/2011 restraining the 2nd respondent from conducting any fresh primaries to choose a candidate for the said election, whereof the 2nd respondent appealed to the Court of Appeal Abuja in Appeal No. CA/A/599/2011. While the restraining Order of the Federal High Court was still subsisting, the 2nd respondent conducted fresh primaries where it purported to choose 1st respondent as its candidate at the said election.

d. Your petitioners plead that the Court of Appeal, in its judgment delivered on 7/1/2012 in Appeal No. CA/A/599/2011 set aside the said Order of Federal High Court and directed the Parties

in the matter to go and conclude the case at the Federal High Court. The said judgment is hereby pleaded.

e. Your petitioners plead that the 2nd respondent and Chief Timipre Sylva appealed and/or cross-appealed to the Supreme Court of Nigeria against the decision of the Court of Appeal and the Appeals
B are still pending. The Notice of Appeal and Cross-Appeal are hereby pleaded.

f. Your petitioners plead that the 3rd respondent published the list of qualified candidates for the said election in the media,
C including the internet. The name of 1st respondent was not on the list and 2nd respondent had no candidate on the said list. A copy of the list printed from the internet on 12th January, 2012 and the list obtained from the office of the 3rd respondent are hereby pleaded.

g. Your petitioners plead that the 2nd respondent did not obtain any Order from the Supreme Court of Nigeria suspending
D the said election until its Appeal to the Supreme Court is decided or giving directions as to who should stand as the candidate of the 2nd respondent in the election into the Office of Governor of Bayelsa State held on 11th February, 2012. Instead, the 1st respondent obtained an Order Ex-parte at the Federal High Court Abuja in Suit
E No. FHC/ABJ/CS/3/2012 to include the name of 1st respondent as the candidate of the 2nd respondent at the said election.

h. Your petitioners plead that in view of the pending litigation at the Supreme Court in Appeal No. SC/9/2012 over the question of
F who is qualified to contest the said election on the platform of the 2nd respondent, and the said question having not been resolved in favour of 1st respondent as at the date of the holding of the election on 11th February, 2012, the 1st respondent was not qualified to contest the said election, and the inclusion of the name of 1st respondent as a candidate in the said election was against the Rule of Law, unconsti-
G tutional and therefore null and void. The court processes concerning the said pending litigation are hereby pleaded.

i. Your petitioners plead that the 1st petitioner was the qualified candidate who scored the majority of lawful votes cast at the said election and ought to be returned as duly elected into the Office of Governor of Bayelsa State.”
H

The case, as made out supra is simply that the 1st respondent was not qualified to contest the election into the Office of Governor of

Bayelsa State which was held on 11th February, 2012 because prior to and up to the date of the election there was a pending litigation in court over the question of who is/was the candidate of the 2nd respondent for the election.

In reaction to the facts pleaded in the petition, the 3rd respondent filed a reply in which it pleaded; inter alia as follows:- B

“14. Paragraph 7(4) of the petition is false and vehemently denied by the 3rd respondent. In further reply to that paragraph the 3rd respondent avers as follows:-

i. The name of the 1st respondent was sent to the 3rd respondent by the 2nd respondent as its candidate for the February 11, 2012 Governorship Election in Bayelsa State. C

ii. Pursuant to the provisions of the law, the 1st respondent's personal particulars Forms CF001 were published for public scrutiny. Certified copy of the Form CF001 and nomination Form of the 1st D respondent is hereby pleaded.

iii. No complaint was received from anybody by the 3rd respondent against the candidature of the 1st respondent.

iv. When the final list of candidates was published, the name of the 1st respondent was missing as candidacy of the party was said to be “subject of litigation.” E

v. The 1st respondent sued the 3rd respondent for the restoration of his name as the 2nd respondent's candidate for the election in Suit No. FHC/CS/3/2012. F

vi. On the 1st of January, 2012, the Federal High Court, Abuja ordered the 3rd respondent to restore the name of the 1st respondent as the 2nd respondent's candidate for the Governorship Election of Bayelsa State which order was complied with by the 3rd respondent. G

15. In answer to paragraph 7(g) and (h), the 3rd respondent avers that there was no order of any court, stopping the candidature of the 1st respondent for the election. Pendency of a suit in court is not a ground of qualification or disqualification for an election”

The Tribunal, at the pre-hearing session in which all preliminary issues were resolved, isolated three issues for the trial of the petition to wit. H

“(a) Whether the 1st respondent was/is qualified to contest the Bayelsa State Governorship Election held on 11th February, 2012.

(b) Whether the 1st petitioner scored the majority of lawful votes cast at the said election and therefore entitled to be returned as the duly elected Governor of Bayelsa State.

(c) Whether the election into the Office of Governor of Bayelsa State held on 11th February, 2012 is liable to be nullified”

B Following the conclusion of hearing, a fourth issue was added, to wit:-

Whether the Exhibits “D” and “L” being internet print outs are admissible in evidence.

C In the end, the Tribunal in its judgment found no merit in the petition and dismissed same. In the appellants’ brief before the lower court, learned senior counsel for the appellants raised the following issues for the determination of the appeal:

D “3.01. Whether the Trial Tribunal rightly countenanced Exhibit “N” and ignored the fact of the discontinuance of Suit No. FHC/ABJ/CS/3/2012 on the qualification of the 1st respondent to contest the Bayelsa State Gubernatorial Election (Grounds 1, 7, 10).

3.02, Whether the Trial Tribunal was wrong in rejecting Exhibits “D” and “L” tendered from the bar and admitted in evidence by the appellants’ counsel (Ground 2).

E 3.03. Whether the 1st respondent was validly sponsored by the 2nd respondent to render him qualified to contest at the 11th February, 2012 Governorship Election having regard to Section 177 of the Constitution and extant provisions of the Electoral Act (Grounds F 3, 4, 5, 6, 8).

3.04. If this Honourable Court resolves all the previous issues, in favour of the appellants whether the consequential order to make in this case is one for a fresh election (Ground 9)”.

G As stated earlier in this judgment, the lower court resolved the issues against appellants and consequently dismissed the appeal resulting in the instant further appeal to this court, the issue for determination of which have been formulated in the appellants brief filed on 25th September, 2012 as follows:-

H “Issue One - Whether the lower court rightly affirmed the decision of the Trial Tribunal which countenanced Exhibit “N” as proof that 1st respondent was validly sponsored and thus qualified to contest the Bayelsa State Gubernatorial Election, when the said Exhibit was an interim order made in a pre-election suit No. FHC/

ABJ/3/2012 filed by 1st respondent, but discontinued by him after the interim order was obtained (Ground 1).

Issue Two - Whether the lower court rightly affirmed the decision of the Trial Tribunal which rejected Exhibit “D” and “L” tendered from the bar and admitted in evidence by the appellants’ counsel (Ground 2). B

Issue Three - Whether on a proper appreciation of the reasoning in the unreported case of Dangana v. Usman in Appeal No. CA/A/EPT/582/2011 and the Supreme Court decision thereon on further appeal, the lower court rightly distinguished same in affirming the contrary decision of the Trial Tribunal that 1st respondent was validly sponsored by the 2nd respondent to render him qualified to contest at the 11th February, 2012 Governorship Election having regard to Section 177 of the Constitution and extant provisions of the Electoral Act (Grounds 3, and 4). C D

Issue Four - If Honourable Court resolve all the previous issues in favour of the appellants, whether the consequential order which the lower court should have made in this matter is one for return or (sic) 1st respondent as winner of the Bayelsa State Gubernatorial Election held on 11th February, 2012 or one for a fresh election. (Ground 5)” See pages 1 - 10 of the appellants brief.” E

At this stage, it is important to note that the 1st respondent has raised preliminary objections to some of the grounds of appeal and issues arising therefrom which objections have been argued in the brief of argument and reacted to by learned senior counsel for the appellants in the reply brief filed on 5th October, 2012. The objection is that:- F

“A sub-paragraph iv of Ground 1 and sub-paragraph vi of Ground 3 of the appellants’ Notice of Appeal be struck out. G

B. Paragraphs 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.25 and 4.28 of the appellants’ brief be struck out”.

The grounds in support of the above objection are as follows.-

1. The question of discontinuance by the 1st respondent of Suit No. FHC/ABJ/CS/3/2012 was not pleaded by the appellants in their petition nor did it form part of their appeal to the Court of Appeal. H

2. A party is not allowed to depart in the Supreme Court from the case set up in the trial court and in the Court of Appeal.

3. The Court of Appeal specifically found at pages 832 - 833 of the Record of Appeal that parties did not join issue on the discontinuance of Suit No. FHC/ABJ/CS/3/2012 and that the appellants were forbidden to go outside the issues joined between the parties.

B 4. There is no ground of appeal in this court against the decision of the Court of Appeal referred to in 3 above.

5. This court has no jurisdiction to entertain the points sought to be struck out (sic).

C I have carefully gone through the arguments against the grounds of the objection and have come to the conclusion that the objection is of no substance since even if it is upheld, it will have no substantial effect on the main issue before us, which is whether 1st respondent was qualified to contest the gubernatorial election into the Office of Governor of Bayelsa State conducted/held on 11th February, 2012; What concerns this court is that substantial justice D be done to parties seeking justice accordingly to law, not technicality.

It is important to note that similar objections were raised by the respondents before the lower court which court after exhaustive considerations held, at page 826 as follows:-

E “On the totality of the foregoing therefore, the preliminary objections of the respondents fail in their entirety and all are hereby overruled in favour of the appellants”

F If 1st respondent or any respondent is dissatisfied with the above finding/holding by the lower court, the proper thing to do in law, is not to raise the same preliminary objection before this court but to appeal by way of cross appeal against the above finding/holding by that court as that is the only acceptable way to challenge any decision of a court of law or tribunal. In the circumstances, I hold the considered view that the objections are without merit and should be dismissed and order accordingly.

G In arguing issue One, learned senior counsel for the appellants RICKEY TARFA, SAN in the appellants brief submitted, by way of summary, that the lower court wrongly upheld the acceptance of the Trial Tribunal of Exhibit “N” as a valid and subsisting judgment which validated the Bayelsa State Gubernatorial Election H held on 11th February, 2012 contrary to the combined provisions of Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 and 34 of the Electoral Act, 2010 as amended; that an interim

order in the like of Exhibit “N” which was made prior to the discontinuance of Suit No. FHC/ABJ/CS/3/2012 becomes spent by reason of the discontinuance; that the discontinuance of the suit is fatal to the continued existence of Exhibit “N” and the lower court ought not to have shut its eyes from its record particularly as the respondents alleged an original list which included 1st the respondent as a validly sponsored candidate but failed to tender the said list which failure should be visited by an invocation of the provisions of Section 167(d) of the Evidence Act against the respondents. B

For the above submissions, learned senior counsel cited and relied on the case of: Kotoye v. CBN (1989) 1 NWLR (pt. 98) 419 at 440; ACB Ltd v. Awogbooro (1996) 3 NWLR (Pt.437) 383 at 392; Group Danone v. Voltic (Nig) Ltd (2008) 7 NWLR (Pt. 1087) 637 at 675). C

It is the further submission of learned senior counsel that a distinction between an interlocutory or interim order on the one hand and a final decision on the other does not invite the concept of preservative or executory order; that an executory character of an order is only relevant in contradistinction with a declaratory order, made in a final judgment not in an interim or interlocutory decision, relying on Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 517; Okoya v. Santilli (1990) 2 NWLR (pt. 131) 172 at 228; that upon the discontinuance of the Suit Exhibit “N” become spent and become a null order, thereby having the effect of taking along with it, the name of the 1st respondent which it compelled the 3rd respondent to include in the list of candidates for the election in question; that the valid list of candidates for the election as at the date of the election is the 3rd respondent’s list published on 11th January, 2011 which did not include the name of 1st respondent; that the provisions of Section 34 of the Electoral Act, 2010, as amended is mandatory and failure to comply strictly with same is fatal to the case of 1st and 2nd respondents. D E F G

On his part, learned senior counsel for the 1st respondent TAYO OYETIBO, SAN in the 1st respondent brief filed on 2nd October, 2012 submitted that it is not open for the appellants to now contend that the 1st respondent was not validly sponsored by the 2nd respondent or that the 2nd respondent did not conduct primary elections which produced the 1st respondent because the case of the H

appellants in their pleadings was that the 1st respondent was sponsored by the 2nd respondent at the election and that whilst litigation was pending, the 2nd respondent conducted fresh primaries where 1st respondent was chosen as its candidate for the election. For this learned senior counsel referred to paragraphs 3 and 7(c) of the petition at pages 12 - 14 of the record; that the case of appellants was that 1st respondent was not qualified to contest the election because there was pending litigation at the Supreme Court in Appeal No. SC/9/2012 over the question who was qualified to contest the election on the platform of the 2nd respondent. Learned senior counsel also referred the court to paragraphs 4 and 7(b), (c) and (h) of the petition in further support of his contention and submitted that parties are bound by their pleadings and are not allowed to approbate and reprobate, relying on *Ude v. Nwara* (1993) 2 NWLR (Pt. 278) 638 at 662; *Oredoyin v. Arowolo* (1989) 4 NWLR (pt. 114) 172 at 208.

It is the further submission of learned counsel that there is a difference between publication of the names of candidates for an election by the 3rd respondent and sponsorship of candidates for an election for which learned senior counsel referred the court to Section 221 of the Constitution and Section 31(1) of the Electoral Act, 2010 (as amended by Section 10 of the Electoral Amendment Act 2010); that 1st respondent proved that he was sponsored by 2nd respondent for the election vide Exhibit "Q" and "R" which are documents submitted to 3rd respondent by 2nd respondent in manifestation of its intention to sponsor 1st respondent; that a candidate whose name has been submitted by a political party as its candidate for an election has a vested right to contest the said election irrespective of the fact that 3rd respondent did not or failed to publish his name as a candidate for the election because the 3rd respondent has no power to reject any candidate so nominated.

Turning to the provisions of Section 34 of the Electoral Act, 2010 as amended, counsel submitted that failure by the 3rd respondent to comply with the said provision is not a ground for disqualification of a candidate for an election because qualification or non-qualification for an election is governed by Sections 177 and 182 of the Constitution; that an order made by a court of competent jurisdiction must be obeyed as same remains valid until set aside by an appellate court; that even if there was non-compliance with Section

34 of the Electoral Act, 2010, appellants have not shown that it was a substantial non-compliance to justify a nullification of the election of the 1st respondent; relying on Section 139 of the Electoral Act, 2010, as amended. Learned senior counsel then urged the court to resolve the issue against appellants.

With regards to the submission of learned senior counsel for the 2nd and 3rd respondents on the issue No. 1, it is note worthy that the submissions are very similar to that of senior counsel for 1st respondent. However, learned senior counsel for 2nd respondent contended that Exhibit “N” is an order of court which the Trial Tribunal and the lower court were bound to obey as its efficacy is not determined by whether it was interim or interlocutory or final; that there was no issue joined on the pleading at the trial relating to the withdrawal of the suit in which Exhibit “N” was made and as such the lower courts were right in giving effect to the said Exhibit “N”. D

On his part, learned senior counsel for the 3rd respondent submitted that 1st respondent was validly nominated by 2nd respondent and his name submitted to 3rd respondent which published same within seven (7) days as required by Section 31 of the Electoral Act, 2010; that the fact that the name of 1st respondent was later removed by the 3rd respondent but restored by the order of the Federal High Court did not have anything to do with whether or not the 1st respondent was not qualified at the time of the election; that non-compliance with the Electoral Act, 2010 is not one of the listed qualifications of a candidate for Governorship Election under Section 177 of the 1999 Constitution; that publications of names of candidates in an election is the domestic decision of the 3rd respondent and a candidate cannot be punished for the default of the 3rd respondent in publication of names of candidates; that the election was not challenged on the ground of non-compliance with the provisions of the Electoral Act, 2010; that appellants should not be allowed to continue to change their case from court to court relying on *Adegoke Motors Ltd v. Adesanya* (1989) 3 NNLR (pt. 109) 250 at 266: *Ajide v. Kelani* (1985) 3 NWLR (pt. 12) 248 at 248. H

In their reply on points of law learned senior counsel for appellants submitted that it is true that an order of court need not be final or interlocutory for it to be obeyed but that the order in question must be subsisting for it to be obeyed as an interim order

is not binding in perpetuity; that it is predicated on the pendency of a case, which if terminated takes along the said interim order.

I had earlier in this judgment reproduced the grounds on which appellants sought the nullification of the election and the reliefs claimed. The grounds were two initially:

B (a) non-qualification of 1st respondent to contest the election and,

(b) that 1st respondent did not score the majority of lawful votes at the election.

C Later in the proceedings ground (b) was abandoned thereby leaving only ground (a). The facts which supported the grounds are stated in paragraph 7 of the petition, also reproduced in this judgment, particularly 7(b)(c)(f)(g) and (h). The main plank on the facts supporting the ground is that there was a restraining order made in Suit No:- FHC/ABJ/CS/931/2011 restraining the 2nd respondent
D from conducting any fresh primaries to choose a candidate for the said Election, whereof the 2nd respondent appealed to the Court of Appeal Abuja in Appeal No. CA/A/599/2011. While the restraining order of the Federal High Court was still subsisting the 2nd respondent conducted fresh primaries where it purported to choose 1st respondent as its candidate at the said election; that the “the 3rd respondent
E published the list of qualified candidates for the said election in the media, including the interest.

The name of the 1st respondent was not on the list and
F 2nd respondent had no candidate on the said list....” and that:- “.... The 1st respondent obtained an order ex parte at the Federal High Court, Abuja in Suit No. FHC/ABJ/CS/3/2012 to include the name of 1st respondent as the candidate of the 2nd respondent at the said election”.

G Finally appellants pleaded in sub-paragraph (h) of paragraph 7, inter alia that in view of the pending litigation at the Supreme Court in Appeal No. SC/9/2012 over the question of who is qualified to contest the said election on the platform of the 2nd respondent and the said question having not been resolved in favour of 1st respondent as at the date of the holding of the election on 11th February, 2012,
H the 1st respondent was not qualified to contest the said election, and the inclusion of the name of 1st respondent as a candidate in the said election was against the Rule of Law, unconstitutional and therefore

null and void....”

I have to state from the onset that it is settled law that issues for trial are joined in the pleadings and that parties and indeed the court are bound by the pleadings of the parties.

The appeal have arisen from the decision of the lower courts on the ground as to whether 1st respondent was qualified to contest the Governorship Election of Bayelsa State held on 11th February, 2012, it is necessary for us to know what the law/constitution provides as the requirement that a candidate for that office must possess. In that respect, we have to take a look at Section 177 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, (hereinafter referred to as the 1999 Constitution, as amended) which provides as follows:-

“A person shall be qualified for election to the Office of Governorship of a state if:

- (i) He is a citizen of Nigeria by birth;
- (ii) He has attained the age of thirty-five (35) years;
- (iii) He is a member of a political party and is sponsored by that political party, and;
- (iv) He has been educated up to at least School Certificate Level or its equivalent”.

From the argument of learned senior counsel for appellants, it is clear that they are contending that the 1st respondent, though a member of a political party was not sponsored by that political party as its candidate for the election in issue, in breach of Section 177(iii) supra.

The other Section of the 1999 Constitution as amended relevant to the issue of qualification or non qualification of a candidate for the office of Governor of a state is Section 182 of that constitution which enacts as follows:-

“182(1) No person shall be qualified for election to the office of Governor of a State if:-

(a) subject to the provisions of Section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or

(b) he has been elected to such office at any two previous

elections; or

(c) under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

B (d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment for any offence involving dishonesty or fraud (by whatever name called) or any other offence imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or

C (e) within a period of less ten years before the date of election to the Office of Governor of a State he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or

(f) he is an un-discharged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria; or

D (g) being a person employed in the public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days to the date of the election; or

E (h) he is a member of any secret society; or

(i) he has presented a forged certificate to the Independent National Electoral Commission.”

However, it is not the contention of appellants that 1st respondent has fallen foul of the above provisions. (i.e. Section 182). The question is whether 1st respondent was sponsored by 2nd respondent as its candidate for the election in issue. While appellants contend that he was not, the respondents maintain that he was. The case of the appellants is simply that the controversy surrounding the primaries of the 2nd respondent which would have resulted in the nomination of its candidate for the election in question was not resolved that is why no name of a candidate of the 2nd respondent was ever published by 3rd respondent for the said election; that the 3rd respondent only included the name of 1st respondent as candidate for the election after the receipt of Exhibit “N”, which they argue became spent with the withdrawal and striking out of the action in which the interim order was made, *ex parte*. However, it is very important to note that appellants admitted that 1st respondent was nominated/chosen at the primaries conducted by 2nd respondent to choose its candidate

for that election during the pendency of an action to determine the proper candidate of the 2nd respondent - see paragraph 7 of the petition supra. I have looked carefully at Exhibit "N". Two orders or reliefs granted by the Federal High Court in that order and relevant for our purpose are nos. 2 and 4 which are as follows:-

"(2) An order that the leave of this Honourable Court so granted shall operate as an order of interim injunction directing the respondent to restore the name of the applicant as the candidates of the peoples Democratic Party (PDP) in the 2012 Gubernatorial Election in Bayelsa State scheduled to hold in the 11th day of February, 2012, pending the determination of the motion on notice..."

(4) An order that the leave of this Honourable Court so granted shall operate as an order of INTERIM INJUNCTION restraining the respondent from further removing or excluding the name of the applicant and his running mate as the duly nominated candidates of the Peoples Democratic Party (PDP) in the 2012 Gubernatorial Election in Bayelsa State scheduled to hold on the 11th day of February, 2012, pending the determination of the motion on notice."

It is very clear from the above that while order/relief No. 2 "restored" the name of 1st respondent as the candidate of the 2nd respondent to the list of candidates to contest for the Office of Governor of Bayelsa State, relief No. 4 "restrained" the 3rd respondent from further removing or excluding the name of the 1st respondent and his running mate as the duly nominated candidates of the 2nd respondent.

There is no doubt that the orders contained in Exhibit "N" are ex parte and made in the interim. Also clear from the orders is the fact that while relief (2) is mandatory or restorative in nature, No. 4 is prohibitive.

It is settled law that an injunction is a judicial process or mandate operating in personam by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. An injunction is also a writ framed according to the circumstances of the case, commanding an act which the court regards as essential to justice or restraining an act which it deems contrary to equity and good conscience.- See Ohakim v. Agbaso (2010) 19 NWLR (pt. 1226) 172 at 228.

The simple issue or question arising for determination is –

whether the order of the court restoring the names of 1st respondent to the list of candidates for the election in question which was duly carried out by 3rd respondent who was ordered or commanded so to do and which became spent after the withdrawal of the suit in which it was made, took along with it the action already
B completed by the 3rd respondent while the order in question was in operation.

Put another way does the death of Exhibit “N” following the striking out of the suit mean that whatever it effected while alive, such
C as the restoration of the name of 1st respondent should be considered as having never existed in the eyes of the law?

Generally speaking interim orders are not permanent as they are made to last for a while - usually pending the determination of the suit or motion on notice as in this case. The legal question in this issue is whether whatever such interim orders achieved in the interim
D can be ignored or considered nonexistent after the expiration of the time it was in operation particularly when the order is mandatory in nature and the command had been obeyed? Can the law undo what had been done in obedience of court order in the circumstances of this case? I do not think that the coming to an end of an interim
E order adversely affects whatever that order was meant to achieve or achieved. If the order was a restraining order you cannot say that while it lasted or remained in operation, the party sought to be restrained was never restrained. It only means that the restrain is now
F at an end and that the party is free of the restraint.

The same applies where the order is restorative or mandatory in terms of relief No. 2 supra. In this case, the order was obeyed by restoring the name of 1st respondent in the list of candidates and the election in question was subsequently conducted and 1st respondent declared the winner thereof before the coming to an end of the reign
G of the order. If the contention of appellants is accepted it means that whereas at the time the said election was conducted, 1st respondent was the sponsored candidate for that election by 2nd respondent and he won it - both completed acts, the court should pretend that these things never happened because the interim order which allegedly
H gave legality or validly to the act has ceased to exist. Unfortunately for the case of appellants Exhibit “N” had achieved its purpose before becoming extinct. It was obeyed by 3rd respondent as it is

constitutionally required of every person or authority in this country to do so.

I hold the considered view that the extinction of Exhibit “N” following the striking out of the suit in which it was made and after it was carried out does not retrospectively affect whatever the order secured or effected at the time it existed. If it conferred any right on a party that right remains valid and subsisting unless set aside on appeal by a court of competent jurisdiction. In this case, the 3rd respondent who was affected by the order never challenged it but obeyed same. The above notwithstanding there is the issue of Exhibits “Q” and “R” which were tendered by 3rd respondent through DW1 under cross-examination in the following terms:-

“I am aware that the 1st respondent filed (sic) Form CF001 at INEC Office. He also filed (sic) Form EC46 (ii) - Nomination Form. At pages 1 - 17 of the document given to me by counsel are Form CF001 and Form EC4B (ii). The document relates to the 1st respondent 2 Forms.

Chief Awomolo - I seek to tender the 2 Forms.

Mr. Adedipe: No objection.

Chief Gadzama: No objection

Mr. Alali; No objection.

Tribunal: The two documents are admitted in evidence as Exhibits “Q” and “R” respectively” — see page 452 of the record.

I have carefully gone through Exhibits “Q” and “R”. They are stamped received by INEC, 3rd respondent on 8th December, 2011. Exhibits “Q” and “R” include the nomination forms completed by 1st respondent in respect of the election in question. It is very clear therefore that by December 8, 2011, the name of 1st respondent had been submitted by 2nd respondent as its candidate for the election in issue thereby making 1st respondent one of the candidates for the said election. The above position is strengthened by Exhibit “N” which ordered 3rd respondent to “restore” the name of 1st respondent to the list of candidates contesting for the Office of Governor of Bayelsa State scheduled for 11th February, 2012 particularly as you can only restore what was earlier in existence but subsequently taken out or away. You cannot restore what was never there in the first place. The wording of Exhibit “N” lends credence to the case of the respondents that 1st respondent was the sponsored candidate of

2nd respondent for the election and that 1st respondent's name was on the earlier lists published by 3rd respondent but was later removed leading to Exhibit "N" ordering that the name be "restored" in the list. I therefore agree with the concurrent findings of fact on this point by the lower courts.

B In any event, paragraph 3 of the petition of the appellants at page 12 of the record puts the issues of nomination and sponsorship of 1st respondent by 2nd respondent beyond doubt, as the appellants pleaded inter alia as follows:-

C "The 1st respondent who was sponsored by the 2nd respondent at the said Election was declared the winner of the said election by the 3rd respondent..."

D Finally there is the sub-issue of publication of the names of candidates for election by 3rd respondent as a condition precedent for valid nomination. I have pondered over the submissions of counsel for appellants on this sub-issue and have not clearly seen the connection between publications of the names of candidate by 3rd respondent and qualification to contest any election to which the publication or non publication relates. I hold the view that publication of names of candidates by 3rd respondent is not evidence of sponsorship by a political party which nominated the candidates. Evidence of nomination and sponsorship of a candidate by a political party lies in the declaration of the winner of the party's primary election conducted to elect the party's candidate for the general election in question coupled with the political party forwarding the names of the said elected candidate to the 3rd respondent as its nominated candidate for the election. See Section 31 of the Electoral Act, 2010, as amended, which enacts thus.

G "(1) Every political party shall, not later than sixty (60) days before the date appointed for a general election under the provisions of this Act, submit to the commission, in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections, provided that the commission shall not reject or disqualify candidate(s) for any reason whatsoever.

H (2) The list of information submitted by each candidate shall be accompanied by affidavit sworn to by the candidate at the Federal High Court, High Court of a State or Federal capital Territory, indicating that he has fulfilled all the constitutional requirements for

election into that office”.

I had stated earlier that Exhibits “Q” and “R” were received by the 3rd respondent on 8th December, 2011 for an election slated for 11th February, 2012, a period of more than sixty (60) days as required by the above provisions of the Electoral Act, 2010, as amended. It is true that Section 34 of the Electoral Act, 2010, as amended makes provisions for or enjoins the 3rd respondent to publish names of candidates for election but I hold the view that the provision though employed the word “shall” is not mandatory but discretionary as its effect is the same as the word “may” which is permissive. Publication of the name of a candidate cannot validate an otherwise invalid nomination and sponsorship of a candidate. In a situation where the 3rd respondent fails or neglects to publish the names of an otherwise validly nominated candidate of a political party for an election, the failure cannot be visited on the candidate to deprive him of the right conferred on him by the nomination to contest the election in question. Once a candidate has been nominated and his name sent by his political party to the 3rd respondent as its candidate for the election, the candidate remains a candidate and cannot be changed or substituted, as long as he remains alive after the submission of his name, unless the candidate voluntarily withdraws from the race - See Section 33 of the Electoral Act, 2010, as amended. Publication by 3rd respondent therefore is truly an administrative act with no serious legal consequences on the nominated and sponsored candidate in case of failure to publish the name.

To my mind, what is crucial in this case is the issue of nomination and sponsorship as envisaged under Section 31 of the Electoral Act, 2010, as amended, not publication of the names of candidates under Section 34 of the said Act. Once it has been established by Exhibits “Q” and “R” that 1st respondent was nominated and sponsored by 2nd respondent for the election in issue and he contested same, the issue of his nomination and sponsorship has been established.

The next issue which also relates to Issue No. 1, already discussed is Issue No. 2 - whether the lower court rightly affirmed the decision of the Trial Tribunal which rejected Exhibits “D” and “L” tendered by the appellants counsel from the bar and admitted in evidence. It is the submission of learned senior counsel for appellants that admissibility of e-documents under the Evidence Act, 2010 is

governed by the provisions of Section 84 thereof; that Exhibits “D” and “L” are e-documents as they are internet print out from undisputed websites of the authors; that it was wrong for the tribunal to have expunged the exhibits from the record and the lower court to affirm their reasons for doing so - that is that they were not certified
 B true copies; that admissibility of a document at trial is determined by relevance, relying on *Okoye v. Obiaso* (2010) 8 NWLR (pt. 1195) 145 at 163.

It is the further contention of learned senior counsel that Exhibits “D” and “L” do not fall into the usual public documents which
 C require certification; that Exhibits “D” and “L” are admissible under Section 84 of the Evidence Act, 2010; as the documents being computer generated do not need to be certified to make them admissible in evidence; that the lower court was in error when it affirmed the decision of the trial tribunal on the matter and urged the court to
 D resolve the issue in favour of the appellants.

On his part, learned senior counsel for the 1st respondent stated that Exhibit “D” is an internet print out of the Punch Newspaper which makes it a secondary evidence of the original newspaper having
 E regards to the provisions of Sections 85 and 87(a) of the Evidence Act, 2011; that by virtue of the provisions of Sections 90(1)(c) and 102(b) of the Evidence Act, 2011 only a certified true copy of the document is admissible; that by the provisions of Section 4(1) and 7(c) of the National Library Act, CAPN 56 Laws of the Federation 2004,
 F copies of every newspaper published in Nigeria has to be deposited with the National Library by the publisher, which makes such copies public documents by virtue of Section 102(b) of the Evidence Act, 2011; that Exhibit “D” requires certification to make it admissible in evidence.

In the alternative, counsel submitted that for e-documents to
 G be admitted under Section 84 of the Evidence Act, 2011 subsection 4 thereof requires that there be a certificate identifying the document and describing the manner and the state of the devices through which they were produced; that since Exhibit “D” had no such certificate, it was inadmissible; that since Exhibit “D” was to establish the fact that
 H 1st appellant scored the highest number of valid votes if 1st respondent were to be held disqualified with the abandoning of Ground 2 of the petition, the document, Exhibit “D”, became irrelevant in the

proceedings and therefore inadmissible; that the court has power to expunge from the record document/evidence that it comes to know is legally inadmissible, relying on *N.I.P.C. Ltd. v. Thompson Organization Ltd.* (1966) 1 NMLR 99 at 104: *Kankia v. Maigemu* (2003) 6 NWLR (pt. 817) 496. The submission of learned senior counsel for the 2nd and 3rd respondents on this issues are very similar to that of senior counsel for 1st respondent and as a result I do not intend to reproduce them herein as that would serve no useful purpose. B

Granted, for the purpose of argument, that Exhibits “D” and “L” being computer generated documents or e-documents downloaded from the internet are not public documents whose secondary evidence are admissible only by certified true copies then it means that their admissibility is governed by the provisions of section 84 of the Evidence Act, 2011. C

Section 84 (1) provides thus: D

“(i) In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the condition in sub-section (2) of this section is satisfied in relation to the Statement and the computer in question”. E

The conditions are:-

(a) that the documents containing the statement was produced by the computer during a period over which the computer was used regularly to store or process the information for the purpose of any activities regularly carried on over that period, whether for profit or not, by anybody whether corporate or not or by any individual; F

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived; G

(c) that throughout the material part of that period the computer was operating properly or if not that in any respect in which it was not operating properly or was out of operation during that point or that period was not such as to affect the production of the document or the accuracy of its contents; and H

(d) that the information contained in the Statement reproduces or is derived from information supplied to the computer in the

ordinary course of those activities.

There is no evidence on record to show that appellants in tendering Exhibits “D” and “L” satisfied any of the above conditions. In fact they did not as the documents were tendered and admitted from the bar. No witness testified before tendering the documents so there was no opportunity to lay the necessary foundations for their admission as e-documents under Section 84 of the Evidence Act, 2011. No wonder therefore that the lower court held, at page 838 of the record thus:-

“A party that seeks to tender in evidence a computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the conditions set out under Section 84(2) of the Evidence Act, 2011”.

I agree entirely with the above conclusion. Since appellants never fulfilled the pre-conditions laid down by law, Exhibits “D” and “L” were inadmissible as computer generated evidence/documents.

It is settled law that what determines the issue of admissibility of evidence is relevancy. What is the relevance of Exhibit “D” in the proceedings? The lower court found/held and I agree with the court that it was intended to prove that 1st appellant scored the highest number of valid votes cast in the election in the event the 1st respondent is declared not qualified to contest the election; that with the withdrawal of Ground 2 of the petition to which Exhibit “D” is relevant, the document became irrelevant and consequently inadmissible in evidence. The court made the findings/holdings at pages 839 - 840 of the record as follows:-

“However, Exhibit “D” is meant to show that appellants scored the highest number of votes cast at the election in the event the 1st respondent was held to have been disqualified. Ground 2 of the petition which supported this contention was abandoned by the appellants.

Having abandoned Ground 2, Exhibit “D” which was produced in support of the ground had ipso facto become irrelevant even though it was admitted... I therefore agree with learned counsel for the 1st and 2nd respondents who submitted that the tribunal was right in striking them out for being irrelevant”.

However, looking closely at Exhibits “D” and “L”, they are

clearly public documents and it is settled law that the only admissible secondary evidence of public documents is a certified true copy of same. Exhibits “D” and “L” not being certified true copies of the Punch Newspaper and the list of candidates which 3rd respondent is mandated to keep in the course of the performance of its official duties, are clearly inadmissible in evidence and the lower courts are right in so holding. The fact that the exhibits are computer print outs or e-documents does not change their nature and character as public documents. B

On the sub issue as to whether the court has the power to expunge from its record evidence or documents earlier admitted without objection by counsel, it is settled law that the courts can do that and has been doing that over the years. See NIPC Ltd. v. Thompson Organization Ltd. (1966) 1 NMLR 99 at 104 where LEWIS, JSC stated the law as follows:- C D

“It is of course the duty of counsel to object to admissible evidence and the duty of trial court any way to refuse to admit inadmissible evidence, but if notwithstanding this evidence is still through oversight or otherwise admitted then it is the duty of the court to when it comes to give judgment to treat the inadmissible evidence as if it had never been admitted”. E

In short, I resolve this issue against appellants. In conclusion, I see no reason, haven regards to the resolution of issues 1 and 2 which I consider crucial to the determination of the appeal against the appellants, to go into the remaining issues as the same have become irrelevant and of no moment; they have become hypothetical and are consequently discountenanced by me. I therefore find no merit whatsoever in the appeal which is accordingly dismissed by me. I however order that parties bear their costs. Appeal dismissed. F G

CHUKWUMA-ENEH JSC

This appeal it is agreed on both sides of the matter hinges on the trial Tribunal having countenanced Exhibit “N” an interim order made in a pre-election Suit No.FHC/ABJ/3/2012 - it has mandated the 3rd respondent to restore the 1st respondent in the list of candidates for the Gubernatorial election of 11/2/2012 as the 2nd respondent’s H

candidate.

The appellants have raised an interesting question to the effect that the 3rd respondent has included the 1st respondent's name in the said list of candidates after receiving Exhibit "N" which interim order has become exhausted as a spent force after the suit has been withdrawn and consequently has been struck out and it is upon that suit the said interim order has been premised. In other words, and in that event it is surmised that the name of the 1st respondent has been erased from the said list there being no final order in the said suit to include the 1st respondent in the said list of candidates as the said suit has not been proceeded with to its finality before the trial court having been discontinued. In short, that the 1st respondent cannot hide under Exhibit "N" i.e. the interim order to cover his non-qualification based on noncompliance with the provisions of Sections 31(1) and 34 of the Electoral Act 2010 (as amended). And that Exhibit "N" not being a final order of the trial court it cannot confer a substantive right on a party to the suit. And that this is so as the merit of the party's case in that situation for instituting the suit has not been determined. What the appellants seem to be saying is that Exhibit 'N' having been made in the nature of an interim order pending the hearing and determination of the substantive motion on notice and the substantive suit itself in which it has been issued and having been aimed at ensuring the preservation or protection of the "Res" has to last until the final determination of the suit and no more. See

A.C.B. Ltd. v. Awogboro (1996) 3 NWLR (pt.437) 383 at 392 paragraphs G-H,

Group Danone v. Voltic (Nig.) Ltd. (2008) 7 NWLR (Pt. 1087) 637 at 675,

Kotoye v. Saraki (1989) 1 NWLR (Pt.98) 419 at 440

Bolsin v. Altrincham U.D.C. (1903) 1 KB 547 per Lord Alvestone C.J.,

Chief Joseph Okon Edem v. Akamkpa L.G. (2004) 4 NWLR (Pt.651) 70 at 78 paragraphs D-H,

Nzeoke v. Nwagbo (1998) 1 NWLR (Pt.72) 617,

A.I.C. Ltd. V. N.N.P.C. (2005) 1 NWLR (Pt.937) 56 at 592 paragraphs D-E.

N.N.P.C. V. A.I.C. (2003) 2 NWLR (Pt.805) 560 at 588,

paragraphs C-E.

I say ex hypothesis that the appellants have misconceived the import and purport of Exhibit “N” in this matter. Based on the arguments raised by the appellants a number of questions have arisen to be closely scrutinized here and they include their contention that the interim order is to preserve the status quo and more importantly that it is not an executory order so to contend in the context of this matter. I think the appellants have premised this argument principally upon the form of the application filed by the 1st respondent in the said suit in this regard lending credence to the suggestion albeit on a wrong footing of course that the instant interim order is essentially a preservative order to maintain the status quo of the res until the final order of the court disposing of the suit and so cannot confer a right to a party and in the instant case not least on the 1st respondent. And so that Exhibit “N” cannot have qualified the 1st respondent name to be listed as a candidate of the 2nd respondent for the said election. It is quite clear that the appellants have not seen the interim order as first and foremost a decision vis-à-vis its effect and what it is intended to achieve. The true position of the law is that an order of a court whether it is to preserve the status quo or an executory order as such as the instant interim order to restore the name of the 1st respondent in the list of candidates for the aforesaid election clearly being an interim order with a mandatory character cannot be determined simply by looking at the form of the application or cause (from which it is generated) in order conclusively to say whether it is final or interlocutory but has further to be scrutinized from the view point of its intrinsic nature that is to say the nature of the order itself vis-à-vis the rights of the parties in the suit. It is furthermore my view that whether or not the instant order is final or interlocutory does not affect it being all the same a decision of a court of competent jurisdiction to be obeyed. The instant interim order in my view with a mandatory character is justified as the 3rd respondent has acted in total disregard indeed, with respect, recklessly in respect of the vested rights of the 1st respondent acquired as per Exhibits “Q” and “R” being the prescribed forms completed and submitted to INEC in respect of the sponsored candidate i.e. the 1st respondent by his political party i.e. the 2nd respondent.

The nature of the instant interim order, is comparable in

effect and purpose to the mandatory order in the case of Daniel v. Fergusson L.R. (1891) 2 Ch. 27 and Similar cases. In that cited case the defendant ran a wall fence to the height of 39 feet before the court ordered him to demolish the same and to restore the wall fence to its original state. There can be no doubt therefore that the instant interim order to all intents and purposes is an extant executory order and binding on the 3rd respondent. Hence the 3rd respondent has duly complied accordingly with the order and it has not been appealed the said order. In the context of my reasoning herein the trial Tribunal rightly in my view duly countenanced Exhibit “N” by judicially noticing it and giving it effect and of course it has no other option in the circumstances of the matter. It is trite law that unless and until an order of a court of competent jurisdiction is set aside it remains valid and enforceable and must be obeyed. There can be no doubt that the instant order is “a decision” within the contemplation of Section 318(1) of the 1999 Constitution (as amended). To have perceived the said interim order in another light outside also being a decision in the context is misconceived. The appellants are no party to that suit and have no basis to attack the decision in the manner they have done here. It is therefore misconceived for the appellants to have urged in this appeal that the trial Tribunal ought to have construed the discontinuance of the said suit by juxtaposing its effect on Exhibit “N” (i.e. interim order) and the subsequent striking out of the action vis-a-vis the qualification of the 1st respondent to contest the election because the 1st respondent’s name has been included in the list of candidates for the said election by virtue of Exhibit “N”. The discontinuance of the suit No.FHC/ABJ/3/2012 they have submitted has erased off the 1st respondent’s name from the said list - that is, being of spent force has ultimately resulted in the non-qualification of the 1st respondent ab initio. The appellants have again misconceived the fact that the trial Tribunal in spite of their attractive arguments in this regard is essentially set up to deal with election matters which are sui generis and is not to chase however fanciful other collateral matters not directly connected with nor indeed have formed legitimate issues in the election matters. It is clearly diversionary to so urge in the instant election case before it. It is settled that the trial Tribunal is not endowed in law with the power to adjudicate on other matters that are not election matters nor can it sit on appeal in the cause or

matter pertaining to the instant interim order issued by the Federal High Court in the said suit and so cannot vary or review the interim order in any manner whatsoever as has been respectfully insinuated by the appellants here.

The implication of the above reasoning is that Exhibit “N” as tendered in the context of this matter has been completely misconstrued by the appellants as a qualifying instrument for 1st respondent in the said election. This cannot be so and it is in that light that I have to examine their misconception of the sponsorship of the 1st respondent by the 2nd respondent as per Exhibits “Q” and “R” vis-a-vis the INEC’s responsibility to publish the list of candidates in the said election. And if I may add there are decisions of this court otherwise trite to the effect that non publication of a candidate’s name in the list of candidates for an election properly sponsored by a political party as per Sections 31(1) and 34 of the Electoral Act 2010 (as amended) may not ipso facto defeat the candidature of the candidate otherwise in an election as the instant one. This takes me to next question before making my conclusion in respect of this appeal.

The next important question raised by the appellants relates to a fundamental error wherefore they have confused the distinction between sponsorship and publication of names of candidates by INEC for an election; that is to say between section 31(1) and 34 of the Electoral Act 2010 (as amended) on the one hand and qualification of a candidate under sections 177 and 182 of the 1999 Constitution (as amended) on the other. What has emerged by the combined reading of Sections 31(1) and 34 of the Electoral Act 2010 (as amended) is that a political party is allowed to sponsor its candidates by submitting to INEC in the prescribed forms as per Exhibits “Q” and “R” in the instant case the names of the candidates sponsored by it.

Even though the appellants have not expressly pleaded invalid sponsorship, they have nonetheless raised this question. I must interpose here before examining further the question in hand that it is trite law that parties are bound by their pleadings and that facts not pleaded go to no issue and that where the unpleaded facts have been received in evidence in a proceeding they are bound to be discountenanced and indeed expunged from the record.

Be that as it may in the instant matter the 2nd respondent has submitted Exhibits “Q” and “R” to INEC in regard to the 1st

Respondent's sponsorship for the aforesaid election. That this is the position is not being challenged here by the appellants. Rather they have acknowledged the same. It is therefore conclusive of the sponsorship of the candidature of the 1st respondent by his political party the 2nd respondent and it needs no further proof. They cannot
 B he allowed to approbate and reprobate on the point.

Again this is so when that question is examined on the backdrop of the provisions of Section 34 of the Electoral Act 2010 (as amended) which has provided that unless and until a sponsored
 C candidate is dead or he withdraws his candidature that his political party that has sponsored him shall not otherwise be allowed to change or substitute another person for a sponsored candidate. This is a mandatory provision given the construction of the word "shall" as used in that provision. It all boils down to the fact-situation that once this Rubicon has been crossed, a political party having thus
 D performed its statutory function in the process (i.e. by submitting the prescribed forms as here as per Exhibits "Q" and "R" to INEC) the sponsored candidates acquires a vested right to contest in the election irrespective of INEC's failure to publish his name in the list of candidates for the election that is to say as prescribed by Section
 E 34 (supra).

This reasoning follows naturally as INEC has no power to suo motu reject or disqualify a sponsored candidate whose name has been submitted to it accordingly. Their respondent's name having
 F been so submitted to INEC in accordance with Sections 31(1) and 34 the Electoral Act 2010 (as amended) by the 2nd respondent has acquired a vest right thus making him a legitimate candidate for the said election. And I so hold.

In the light of Exhibits "Q" and "R" still extant as the 1st respondent is not deceased or has not withdrawn his candidature he
 G remains a validly sponsored candidate in the said election. It then follows and indeed should be taken as flowing from my reasoning above that at best Exhibit "N" has only given judicial expression to the operation of Sections 31(1) and 34 of the Act and no more. What I am saying is that the 1st respondent has not been qualified to contest in the said election simply solely by virtue of Exhibit "N" but
 H by the implication of Exhibits "Q" and "R" as provided in Section 31(1) (supra) and Section 34 (supra). The appellants as can be seen

have totally misconceived the essence of Exhibit “N” in the context of the issue raised by them for determination in this appeal, and that is fatal to their case in that regard.

Before rounding off this matter there can be no doubt that the qualification or non-qualification of a candidate for election purposes as here is within the purview of sections 177 and 182 of the 1999 constitution (as amended) and not Section 34 of the Electoral Act as failure to comply with the provisions of section 34 (supra) cannot in my view succeed in disqualifying a candidate properly so sponsored by this political party. Howbeit, once a sponsored candidate has satisfied the provisions sections 177 and 192 (supra) he is qualified to stand election for the office of Governor. The 1st respondent is therefore qualified to stand election for the office of Governor for Bayelsa State having so qualified under the aforesaid provisions of the amended constitution. And I so hold.

Finally the appellants’ case viewed from the foregoing prisms shows clearly that it is not sustainable and must fail. I agree without going into any other questions raised in this appeal otherwise exhaustively dealt with in the lead judgment of my learned brother Onnoghen JSC that the 1st respondent has been properly sponsored by the 2nd respondent and that he has been successfully returned in the said Bayelsa Gubernatorial Election of 11/2/2012 as the Governor of Bayelsa State. The appellants’ case lacks merit and must therefore be dismissed. I too dismiss the appeal accordingly, and I abide by the orders contained in the lead judgment. Appeal dismissed.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment delivered by my learned brother Onnoghen, JSC. So completely do I agree with it that I was a bit reluctant to add to the quantum of view expressed by the Election Tribunal, the Court of Appeal and this Court? I propose accordingly to add only a few observations. This appeal is against the concurrent findings of fact of two courts. The law is long settled now, that this court would not upset concurrent findings of fact except the findings are perverse, or were not supported by credible evidence, or there was miscarriage

of justice or some principle of law or violation of procedure. See *Ogunsanya v. State* 2011 46 NSCQR p. 1083, *Dakolo v. Dakolo* 2011 46 NSCQR p. 669, *Makun v. F.U.T Minna* 2011 46 NSCQR p. 1035

B Concurrent findings of fact were well established that the 1st
respondent was duly nominated by the 2nd respondent to contest the
Gubernatorial election in Bayelsa State, and his name was restored
on the list of candidates by the 3rd respondent following an order
of the court compelling the 3rd respondent to do so (the order is
C Exhibit N. dated 18/1/12). The 1st respondent contested the Bayelsa
Gubernatorial Election held on 11/2/42 and won. He scored 417,500
votes, while the 1st appellant scored 22,534 votes. The 1st respon-
dent was declared the winner of the election by the 3rd respondent.
I am in the circumstances satisfied that the judgments of both courts
below are flawless and this court is doing the right thing by confirming
D concurrent findings of fact.

Finally, it has been said in a plethora of cases that if pleadings
are to be of any value at all parties must be held bound by them. See
Cardoso v. Doherty 1938 4 WACA P. 78,
Baliol Nig. Ltd v. Navcon Nig Ltd 2010 5-7 (pt. 11) p.1,
E Akpan v. BOB & 4 Ors 2010 4-7 SC (pt. 11) p. 57,
Ojiogu v. Ojiogu & anor 2010 3-5 SC (pt 11) p.1.

A petitioner (appellant) by his pleading will not be allowed
to set up a case different from his pleadings. In paragraph 3 of the
F petition the appellants averred that:

“The 1st respondent who was sponsored by the 2nd respon-
dent at the said election was declared the winner of the said election
by the 3rd respondent...”

G By this averment the issue of nomination and sponsorship
of the 1st respondent by the 2nd respondent is admitted by the ap-
pellants and well settled. No further proof is necessary. Once again,
for this and the comprehensive reasoning in the leading judgment
which confirms concurrent findings of the courts below I dismiss the
appeal. Parties to bear their costs.

H —

Having had a preview of the lead judgment of my learned brother Onnoghen, JSC I entirely agree with the reasonings therein leading to the conclusion that this appeal lacks merit and that it must be dismissed. The contribution that follows is purely for the sake of emphasis.

For the very reasons advanced by his Lordship, I also over-^Brule the preliminary objections raised and argued in the respective briefs of the Respondents against sub-paragraph IV of ground 1 and sub-paragraph VI of ground 3 of the Appellant's Notice of Appeal. The lower court has specifically made findings on the objections^C raised by the Respondents pertaining the complaints encapsulated in the sub-paragraphs and arguments thereon. The Respondents who have not appealed against these findings cannot at this level re-litigate same. The lower court's findings on the objections raised before it persist since no appeal has been lodged against them.^D

In my considered view, the only live issue formulated in the Appellant's brief for the determination of their appeal is the first one which reads:-

"1 Whether the lower court rightly affirmed the decision of the trial Tribunal which countenanced Exhibit N As proof that 1st^E Respondent was validly sponsored and thus qualified to contest the Bayelsa state Gubernatorial Election when the said Exhibit was interim order made in pre-election suit No.FHC/ABJ/CS/3/2012 held by the 1st Respondent but discontinued by him after the interim order^F was obtained."

I shall limit my amplification of the reasonings in the lead judgment to this overriding issue in the appeal. This, in my view, is all the more desirable following Appellants' abandonment of the second ground of their petition, to wit: that the 1st Respondent did^G not score the majority of lawful votes of the Election. I adopt the arguments of counsel for and against the appeal as summarised in the lead judgment. In determining the appeal, the question to answer is whether the two courts below, the tribunal as well as the Court of Appeal, are wrong in their concurrent finding, that on the^H facts before them, the Appellants have not established their case to entitle them to the reliefs they seek. To my mind, they are not. From the onset it must be emphasized that being a concurrent finding of fact by the two courts, this Court is very slow at intervening except

where the Appellants succeed in showing to us that notwithstanding the fact of concurrence in the decisions of both courts, the finding is perverse or that the finding has violated some essential principle of law or procedure and that the violation is substantial enough to lead to miscarriage of justice. See *Onowan v Isarhjen* (1976) 9-10 SC 95, *Fashanu v. Adekoya* (1974) 1 ALL NLR (PT. 1) 35 and *Onwuka v Ediala* (1989) 1 NWLR (pt.96) 182 at 202. It is only if this is demonstrated that this court will interfere.

See

C *Abinabina v Enyimadu* 12 WACA 171 at 173
Omoborinola II v Military Governor Ondo State (1998) 14 NWLR (pt 584) 89 at 107

U.A.C Nig. Ltd. v Fashoyiten (1998) 11 NWLR (pt.573) 199 at 185

Chinwedu v Mbamah & Or (1980) 3-4 SC 31 at 75

D I hasten to observe that the question of qualification of the 1st Respondent, if indeed that is Appellants case against the Respondents, comes squarely within the purview of Section 177 of the 1999 Constitution as amended. The section provides:-

E “177. A person shall be qualified for election to the office of Governor of a state if:-

(a) he is a citizen of Nigeria by birth

(b) he has attained the age of thirty five years

F (c) he is a member of o political party and is sponsored by that political party and

(d) he has been educated up to at least School Certificate level or its equivalent.”

G The foregoing mandatory requirements imposed by Section 177 (a) - (d), be it emphasized, must be conjunctively met. It follows that failure of a person to satisfy any of the four requirements out rightly disqualifies the person from being a candidate for the Election to the office of the Governor of a state. Appellants have strenuously argued that their case comes under Section 177 (c) of the 1999 Constitution as reproduced above. The facts available to the two courts and further placed before us suggest that Appellants’ case is not so categorized as they insist it is. Appellants’ case, from the totality of their pleadings and evidence is not that 1st Respondent is not a Nigerian by birth; that he has not attained the age of thirty five years or that

he has not been educated up to at least School Certificate level or its equivalent. Appellants seem also to have conceded the fact that 1st Respondent is a member of the 2nd Respondent and that the latter is a political party. Their grouse appears to be that, and here the law does not permit us to ignore the averment in paragraph 3 of Appellants petition, the 1st Respondent was not “sponsored” by the 2nd Respondent to contest the 11th February, 2012 Bayelsa State Gubernatorial Election conducted by the 3rd Respondent. Having so contested the Election, 1st Respondent’s purported return by the 3rd Respondent as the duly elected Governor of Bayelsa State is unlawful.

Paragraph 3 of the Appellant’s petition reads in part thus:-

“3. Your petitioners state that

The 1st Respondent who was sponsored by the 2nd Respondent at the said Election was declared the winner of the said election by the 3rd Respondent...”

Notwithstanding the foregoing, the Appellants proceeded to aver in subsequent paragraphs of their petition, particularly paragraphs 4 and 7 that the 1st Respondent “was not qualified to contest” the very same election for which in paragraph 3 supra the Appellants aver that 2nd Respondent had “sponsored” the 1st Respondent. It is undesirable to allow the Appellants rely on the foregoing contradictory and untenable pleadings for more reasons than one. I agree with Counsel to all the Respondents that it is now a trite principle, that parties are bound by their pleadings. See:

Fagbenro v. Arobadi (2006) 7 NWRL (pt.978) 172, at 194,

Ojo v Adejobi (1978) 3 SC 65 and

Olatunji v Adisa (1995) 2 NWLR (pt.375) 167.

From their pleading, it is glaring that the Appellants have been most inconsistent in their case against the Respondents. The essence of pleadings remains what this Court restated it to be per Uwais JSC (as he then was) in Ashiru Noibi v. R. J. Fikolati & Ors (1987) 3 SC 105 at 119 that it is to enable the court and parties in the case to know from the joinder of issues the exact case the parties have to meet at the hearing of the dispute between them. The point here is which version of the Appellants pleadings the court and parties are to accept as Appellants case?

By Order 26 Rules 11 and 13 of the Federal High Court (Civil

Procedure) Rules 2010, made applicable to the proceedings at the Trial Tribunal by virtue of paragraph 54 of the Electoral Act 2010 as amended, parties must be consistent in their pleadings and where a party is inconsistent in his pleadings the tribunal or court is, by Rule 20 of Order 26, empowered to strike out the defective pleadings. I agree with Respondents' counsel that in the case at hand, for Appellants case to have come this far in spite of the inconsistency in their pleadings they have been overindulged. They have been unduly allowed to approbate and reprobate!

This is the last stop and the question to answer in the further bid of doing substantial justice, in spite of all the lapses manifest in Appellants' pleadings, remains whether facts abound on which basis the 1st Respondent can be adjudged disqualified to contest the 11th February, 2012 Election. The answer to this entails a re-evaluation of the evidence contained in Exhibits "N", "Q" and "R". Luckily these are documentary evidence assessment of which does not involve credibility. This court is on the same pedestal as the trial tribunal in the task of evaluating these pieces of evidence. See: *Are Vs Ipaye* (1990) 2 NWLR (part 132) 298.

Exhibits "Q" and "R" are the nomination particulars of the 1st Respondent in relation to the 11th February, 2012 Governorship Election tendered in evidence by the 3rd Respondent through DW1. Evidence abound in the testimony of this witness in furtherance of pleadings and particularly from these documents that indeed 1st Respondent's name had been submitted by the 2nd Respondent as its candidate to the 3rd Respondent; that the name was omitted from the list of candidates by the 3rd Respondent acting on the notion that 1st Respondent's candidature was a subject of litigation even though there was no order of any court arising from the related litigation to remove 1st Respondent's name from the list of candidates for the election. The further evidence that 1st Respondent had sued the 3rd respondent in suit No.FHC/ABJ/CS/3/2012 and obtained 'Exhibit N', an interim order, compelling 3rd Respondent to "restore" the name of 1st Respondent on the list of candidates to contest the Election also remains uncontroverted. Yet Appellants still insist that since the order in Exhibit 'N' is an interlocutory/interim one it ceases to be of any effect on the discontinuance of the suit from which it evolved. It cannot be! Firstly, it no longer lies in Appellants' mouth, with their

admission at paragraph 3 of their petition that 1st Respondent was “sponsored” to contest the 11th February, 2012 Election, to now say otherwise.

Secondly, Exhibit ‘N’, given the testimony of DW1 and Exhibits ‘Q and ‘R’, only “restored” 1st Respondent’s name on the list of candidates for the Election. This presupposes that the name was on the list earlier before it was removed by the 3rd Respondent. The restoration of 1st Respondent’s name following the issuance of Exhibit “N” which, being a decision of a court, by virtue of Section 318 of the Constitution must, under Section 287 of the same 1999 Constitution as amended, be “enforced by all authorities and persons”. And this clearly is what the 3rd Respondent asserts and in fact did. The further evidence supplied by the 3rd Respondent that it had published the particulars of the 1st Respondent’s nomination as contained in Exhibit “Q” and “R” also belies Appellants claim that the fact of the candidature of 1st Respondent for the election on 2nd Respondent’s platform had not been published. In any event, the 1st Respondent, as counsel to the Respondents rightly argued, cannot be made to suffer for any lapses on the part of the 3rd Respondent. I am unable to consider the remaining two issues of the Appellants. Appellants’ 2nd issue is particularly about documents, Exhibit “D” and “L”, which relate to who among the candidates that contested the 11th February, 2012 Bayelsa State Gubernatorial Election scored the highest lawful votes in the election.

The second ground in the petition which the Appellants abandoned at the tribunal raised this matter. A consideration of the correctness or otherwise of the lower courts finding that both Exhibits are inadmissible would be an academic exercise since the ground to which the documents relate has been abandoned by the Appellants. Courts do not indulge in such wasteful and futile exercise by giving judgment in respect of academic or hypothetical questions. See: *Saraki v. Kotoye* (1992) 9 NWLR (pt.264) 156. My resolution of Appellants first issue sufficiently covers Appellants lawful grievances. It is unnecessary to separately dwell on the others which are otherwise.

On the whole, for the foregoing but more so the reasonings more ably articulated in the lead judgment, I also dismiss the Appeal and abide by the consequential orders made therein.

OGUNBIYI JSC

I have read in draft the lead judgment just delivered by my learned brother Onnoghen, JSC and I agree with the reasonings and conclusions well arrived thereat that the appeal is devoid of any merit.

Briefly I would state just for purpose of emphasis that the merit of this appeal will largely succeed or fail in particular on the legal effect of the documents exhibits 'N', 'D' and 'L'. Suffice it to say that the only ground upon which the appellants are seeking the nullification of the election has been well spelt out in the lead judgment of my learned brother; the grouse which questions the non-qualification of the 1st respondent to contest the election. The question of qualification or non qualification of a candidate to contest an election into the office of a governor of a state is governed by sections 177 and 182 of the Constitution respectively. It follows therefore that for a candidate to qualify for an election he must come within the ambit of section 177 but not within section 182 of the constitution.

The interpretation and understanding of the two provisions are clear-cut and not ambiguous. It is also pertinent to state that the appellants are alleging and alluding tenaciously to the document Exhibit 'N' which is an interim order made in a pre-election Suit No. FHC/ABJ/CS/3/2012 filed by the 1st respondent. The said suit, appellants submitted, was discontinued after the interim order was made and hence is seeking reliance on the discontinuance. In other words the appellants argued that Exhibit 'N' was not a final order of court capable of conferring a substantive right on a party to the suit.

I hasten to add that Exhibit 'N' was a decision of the Federal High Court within the meaning of Section 318 (1) of the 1999 Constitution where the word 'Decision' is defined to mean:-

"any determination of that court and includes judgment; decree, order conviction, sentence or recommendation,"

Exhibit 'N' being an exparte order therefore is conclusively a judgment of the Federal High Court within the meaning of section 318(1) of the Constitution as defined supra. Its interim nature would not operate to deprive a party of the benefit in whose favour it is made. It is elementary to further emphasize that an order of a competent court of law, no matter its nature is absolute and binding

on all and sundry without question until it is legally and legitimately set aside by a competent court of appellate jurisdiction. The fact of its being final or interim did not therefore affect its application and effectiveness.

Suffice it also to further state that exhibit 'N' was an executive order made on the 18th January, 2012 compelling the 3rd respondent to restore the name of the 1st respondent on the list of candidates. It was therefore on the basis of the said Exhibit that the 3rd respondent restored the name of the 1st respondent on the list of candidates for the election. It is a conclusive fact as borne out on the record of appeal that there is no appeal against the restoring document exhibit 'N'. The appellants themselves are not also objecting to the contents of the document. Generally, by the use of the word restoration, it presupposes that something which was previously put in a particular place or position was displaced and eventually restored to its former place. The appellants are not denying that the name of the 1st respondent was initially on the list but along the way removed. The restoring order operated to return him to status quo ante. The 3rd respondent had no reason to disobey the Court order per exhibit 'N'. It is my humble opinion therefore that the submission made by the learned appellants counsel against the authority of Exhibit 'N' is grossly misconceived.

Furthermore, I also hold that the submission on the discontinuance of the suit did not affect the authority and the effect of Exhibit 'N' upon the 3rd respondent. This is because as at the time the suit was discontinued, Exhibit 'N' had accomplished the purpose for which it was to serve. In other words, that of restoring the name of the 1st respondent whose participation in the election had become a history and not affected in anyway by the discontinuance.

Furthermore and on the document exhibit 'D', which is an internet print out of the Punch Newspaper, it is by nature a secondary evidence of the original by reason of the provisions of sections 85 and 87(a) of the Evidence Act 2011. The law is trite on the admissibility of such category of secondary evidence. In other words and on the authority of sections 90(1) (c) and 102(b) of the Evidence Act, it is only the certified True Copy of the document as secondary evidence and non other that is admissible. It is my considered view therefore that the absence of certification had rendered Exhibit 'D' a worthless

document and inadmissible.

Also and on the same footing is the document exhibit 'L' which is a computer/internet generated document allegedly printed by the appellants from the website of the 3rd respondent? As rightly submitted on behalf of the respondents, by virtue of section 102 (ii) of the Evidence Act, such document is classified as public document and only a Certified True copy of same is admissible in law. It follows therefore that the two exhibits 'D' and 'L' share the same fate and are rendered of no legal effect. The lower court was therefore on a sound footing in upholding the Tribunal's stand by expunging the documents. The following authorities are relevant in support: -

N.I.P.C. Ltd V. Thompson Organization Ltd (1966) 1 NMLR 99 @ 104

Kankia V. Maigemu (2003) 6 NWLR (Pt. 817) 496

Owonyin V. Omotosho (1961) 2 SC NLR 53.

Finally and just to confirm from the record that the appellants appear confused or uncertain as to why they are in court, reference can be made to paragraph 3 of their petition at page 12 of the record of appeal. Certain aspect of the paragraphs states thus:

"The 1st respondent who was sponsored by the 2nd respondent at the said election was declared the winner of the said election by the 3rd respondent."

From the foregoing deposition, it did not appear that the appellants hesitated or doubted the fact that the 1st respondent was sponsored by them 2nd respondent for the election. One therefore wonders what the heavy weather by the appellants is all about. They cannot be allowed to approbate and also reprobate at the same time. That is to say: - eat their cake and have it.

The appellants have conceded to the 1st respondent's sponsorship by the 2nd respondent. The entire appeal on the deduction I hold is devoid of any merit and I also dismiss same in terms of the lead judgment of my learned brother Onnoghen JSC.

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