

SUPREME COURT OF NIGERIA
1ST NOVEMBER, 2012. SC. 10/2012
CORAM:- M. MOHAMMED, M. S. MUNTAKA-COO-
MASSIE, B. RHODES-VIVOIRS, N. S. NGWUTA,
S. ALAGOA, JJSC

SENATOR NKECHI
JUSTINA NWAOGU

.....APPELLANT

AND

1. HON. EMEKA ATUMA
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
3. PEOPLES DEMOCRATIC PARTY

AND

1. HRH EZE PROFESSOR
SUNDAY OWUALA
2. MAZI EMEKA MGBEAHU
3. CHIDI ONYEUKWU AJAEGBU
4. ROWLAND AHUAMA
5. CHINYERE ONYIKE
6. ALFRED NEWMAN
7. INNOCENT UBA ALOZIE
8. GRACE AGUAH
9. EMMA CHIBUNNA AMAECHI

.....RESPONDENTS

(For themselves and on behalf of the
People of Osisioma Ngwa Local Govt.
Area of Abia State)

APPEALS - Parties - Interested party - Qualification - Re Ugadu - For such party to appeal - His interest must be genuine and legally recognizable - In respect of a decision which prejudicially affects him (H1)

ELECTIONS - Pre-election matters - Courts - Jurisdiction - Joinder of electorates - Electorates cannot be rightly joined - In suit involving candidates in primary election (H2)

ELECTIONS - Pre-election matters - Proper parties - By s.87(1)(9)

Electoral Act 2012 - The parties are political party - Candidates at the election - And Independent National Electoral Commission (H3)

APPEALS - Nature & purpose - Appeal is a continuation of original action - The nature of which cannot be changed on appeal (H4)

FACTS

By this motion on notice filed under sections 36(1) and 233(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Order 2 rules 12, 28(1)(2), 31 and Order 6 rule 1 of the Supreme Court Rules, applicants/respondents (who were merely electorates for a Senatorial primary election in Osisioma Ngwa L.G.A of Abia State) sought the following reliefs inter alia, extension of time within which to apply for leave to appeal as interested party against the decision of the Court of Appeal, Abuja Division.

The reliefs were being sought on the grounds among others that the applicants were not party to the appeal in which a decision adversely affecting their interest was made by the said Court of Appeal. Applicants' contention is that they were not given opportunity to participate in the judicial proceedings in order to present their position. They further contend that their rights to participate in politics and be fairly represented in accordance with section 71 of the 1999 Constitution, were breached.

HELD

(Unanimously dismissing the application per

MOHAMMED JSC)

APPEALS - Parties - Interested party - Qualification

1. The law is indeed well settled that the nature of interest to qualify a party to appeal as person interested or as person having interest in the matter, is as defined by my learned brother, Karibi-White J.S.C who put it thus: In Re Ugadu (1988) 5 N.W.L.R. (Pt.93) 189 at 202-

“Concisely stated, the interest which will support an application under the Provisions must be genuine and legally recognisable interest, in respect of a decision which prejudi-

cially affects such witness.”

This statement of the law is in line with a plethora of decided cases on the subject and I hereby accept it as representing the law in those cases which interpreted the nature of interest to qualify a party to appeal as person having interest in the matter as prescribed under Section 222(a) of the 1979 Constitution which is in pari materia with the present provision in Section 233(5) of the 1999 Constitution now under consideration in the present application. It is also the law that for person to qualify as a person interested, the applicant must show not only that he is a person having interest in the matter but also that the order or judgment of the Court below he is seeking leave to appeal against, prejudicially affects his interest. In other words to succeed in the application, the Applicants must show that they are persons who are aggrieved, or persons who have suffered legal grievances; or persons against whom decisions have been pronounced which have wrongfully deprived them of something or wrongly refused them something or wrongly affected their title to something.

(p. 3196 G)

Pre-election matter - Courts - Jurisdiction

2. In other words, having regard to the nature of the case being strictly a pre-election dispute between two aspirants struggling to become candidates of their political party to contest the Senatorial election of 9th April, 2011 election, does the law prescribing the jurisdiction of Courts in dealing with the matter permit the intervention or participation of persons who are to exercise their right to vote for the successful candidates of the political parties election primaries in the subsequent general election? The answer in my view is certainly in the negative. That law does not give any right to any electorate who is expected to exercise his right to vote at election to join any suit involving dispute between the aspirants arising from primaries conducted by political parties. To allow the electorates to join in such disputes in Court, will definitely change the character of the dispute, the settlement of which is reserved for law Courts under the Electoral Act. From the

judgments of the courts below, the picture of the dispute between the parties in the present appeal before this Court has been clearly printed. The dispute involves the processes of nomination of candidates by political parties to participate in the National Assembly election scheduled to hold on 9th April, 2011. (pp. 3201 C/3201 G)

Pre-election matter - Proper parties

3. The only parties envisaged under the provisions of section 87(1) and (9) of the Electoral Act 2012 as amended earlier quoted in this judgment, are the political parties who are enjoined to conduct or hold primaries for the aspirants, the aspirants candidates themselves and the Independent National Electoral Commission to which the names of the successful candidates following the primaries conducted by the political parties, are submitted by the candidates in the elections. (p. 3201 E)

APPEALS - Nature & purpose

4. The law is trite that an appeal is generally regarded as a continuation of the original action, the nature and character of which cannot be changed on appeal. (p. 3202 B)

REPRESENTATION

Chief Wole Olanipekun (SAN) with J. N. Egwuonwu, Olugbenga Adeyemi, Chris Kelechi Udeoyibo, A. S. Akingbade, D. H. Bwala, U. M. Jawar, Aisha Ali (Miss), Olubuola Araromi (Mrs.), Dayo Adesina, Emeka Eze and Abraham Anyanwu, for the Appellants

Chief Akin Olujinmi (SAN) with Akinsola Olujimi, Ayodele Akinsanya Oluseyi Adetami and Ibukun Fasanmi, for the 1st Respondent/Cross-Appellant

Dr. Onyechi Ikpeazu (SAN) with Lynda Chuba Ikpeazu and Mavis Ekwechi, for the 2nd Respondent. R. A. Lawal Rabbana (SAN) with Nnamdi Nwokocha Ahaaiwe, Nnedinma Harry (Mrs.) Wale Odeleye and T. Busari, for 3rd respondent

Paul Chibuike Ananaba (SAN) with Chief Theo Nkire, Dr. Eze C. Ngwakwe, Nwala Chudie Oracle, Ogbonna Ogechi, Joel Nwachukwu and Samuel O.F. Iheonunekwu, for the interested parties to be joined

in the appeal as Appellants

A.I. Aderogba with H.A. Osigbemhe, for the other parties seeking to join the appeal as respondents

CASES REFERRED TO

Ikonne v. Commissioner of Police (1935) 14 N.W.L.R. (Pt.36) 473; B
Usanga and Ors. v. Okada & Ors. (1964) 1 All N.L.R. 35

Afolabi (1987) 4 N.W.L.R. (Pt.63) 18

Ademola v. Sodipo (1992) 7 N.W.L.R. (Pt.253) 251

Oredoyin v. Arowolo (1989) 4 N.W.L.R. (Pt.114) 172

C

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999 (as amended), ss.36(1) and 233(5)

Electoral Act 2010, ss.87(1) and (9)

D

Supreme Court Rules, O.2 r.12, 28(1)(2), 31 and O.6 r.1

Federal High Court Rules 2009, O.3 r.8

LEAD RULING BY MOHAMMED JSC

By a motion on notice filed on 30th March, 2012 under Sections 36(1) and 233(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Orders 2 Rules 12, 28(1) and (2); 31 and 6 Rule 1 of the Supreme Court Rules and the Inherent Jurisdiction of the Court, the Applicants sought the following reliefs - E

(a) Extension of time within which to apply for leave to appeal as an interested Party against the decision of the Court of Appeal, Abuja Division, given on 13th December, 2012 in suit No. CA/A/264/2011. F

(b) Leave to appeal as an interested party interested in the subject matter; G

(c) Extension of time within which to file and serve the Notice of Appeal;

(d) An order Deeming the Notice of Appeal already filed and served as properly filed and served; H

(e) Leave to appeal on grounds of fact and mixed law and fact;

(f) Leave to adduce additional evidence.

The above reliefs were being sought on the grounds among

others that:

1. The Applicants were not party to the appeal in which a decision adversely affecting their interest was made by the Court below.

B 2. Applicants fundamental Rights to be informed, to participate, be heard and to equal treatment and fair hearing among others were breached thereby.

3. The judgment sought to be appealed against denied Applicants of their right to participate in politics and be fairly and equitably represented in accordance with section 71 of the Constitution.

C 4. The Applicants had no opportunity to participate in the proceedings and Present their position in the matter.

D 5. If the Applicants are not heard in the present Appeal their right to be heard in a judgment permanently exercising the people of Osisioma Ngwa Local Government Area from their present Senatorial District which is a matter adversely affecting their fundamental human rights to fair and equal treatment and to be informed to participate and be heard will be finally lost.

E 6. Judgment of the lower court was in flagrant disregard of Section 71, 73, 74 and particularly Section 72 of the 1999 Constitution as amended.

7. The Court below acted without and beyond its jurisdiction.

F 8. The Applicants' earlier application for leave to appeal could not be filed and heard before the expiration of time limited for appeal.

G This application is supported by a 35 paragraph affidavit to which a number of relevant documents have been exhibited including the judgment of the court of Appeal Abuja Division being appeal against which was delivered on 13th December, 2011, judgment of the trial Federal High court, Abuja delivered on 21st April, 2011, the Applicants proposed Notice of appeal and the applicants brief of argument in support of the application. Learned senior counsel contended for the Applicants that from available records and uncontroverted facts, Osisioma Ngwa Local Government Area has from inception in 1996 been delineated part of Abia Senatorial District Central and the Applicants have continuously registered and participated in elections; that the fundamental rights of the Applicants, have grossly been abused by the judgment of the Court below and that there are substantial grounds of appeal which clearly elucidated the grievances

of the Applicants. Learned senior counsel who explained that this application was not sought at the Court below because the record of appeal had already been transmitted to this Court after the judgment, maintained that having regard to the averments in the affidavit in support of the application, the Applicants have shown that they are necessary parties in this appeal who ought to have been joined at the trial Court and the Court below thus satisfying the requirements of the law that they are parties interested in the case who will be adversely affected by the outcome of the appeal in this Court thereby justifying the grant of their application on the authority of the case of *Ojora v. Odunsi* (1964) 1 All N.L.R. 55. B
C

Learned senior counsel for the Appellant does not oppose this application which he saw as an opportunity for the Applicants to exercise their Constitutional right of appeal.

Learned senior counsel for the 1st Respondent, however, is of a different view. The application was therefore opposed by the 1st Respondent and a counter-affidavit in this respect was filed on 24th April, 2012 and a further affidavit on 27th April, 2012. A written address was also filed on 24th April, 2012. Relying on all these processes, learned senior counsel submitted that the Applicants have no genuine interest at all in this appeal as their grounds in support of the application are unfounded having regard to the judgment of the Court below which did not exercise any Local Government Area from any Senatorial District. Learned senior counsel explained that the political rights of the Applicants have not been affected by the judgment to justify granting them leave to appeal against it relying on a number of cases including *In Re Ugadu* (1988) 5 N.W.L.R. (pt.93) 189 at 199 and 202 and *Ojora Agip* (2005) 4 N.W.L.R. (Pt.915) 515 at 532. With regard to the Applicants' last relief asking to be allowed to adduce additional evidence, learned senior Counsel for the 1st Respondent observed that the relief is rather premature which must await the grant of the application first before that relief can arise for consideration and therefore urged this court to dismiss the application. D
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Learned senior counsel for 2nd Respondent was also of the view that the Applicants have a constitutional right which is not within the discretion of the court, to appeal against the judgment of the court below and therefore does not oppose the application, pointing out that time is not ripe for the grant of the last relief on additional H

evidence.

The learned senior Counsel for the 3rd Respondent also does not oppose the application having taken into consideration that the judgment of the Court below affected the right of the Osisioma Ngwa Local Government Area Community regarding their rights of choice of candidate and that, the Applicants' application is in order and can be granted in the interest of justice. In their affidavit in support of their application, the Applicants through their representative His Royal Highness Eze Professor Sunday Owuala had deposed as follows -

"1. I am the Traditional Ruler of Umuobasi Autonomous Community in Osisioma Ngwa Local Government Area of Abia State and by virtue of which I am conversant with the facts herein deposed.

2. That I have the consent of the Applicants and the people of Osisioma Ngwa to make this deposition.

3. That I am eligible and registered voter and traditional ruler of a Community of Persons eligible to participate as registered voters in Osisioma Ngwa Local Government Area. Annexed hereto and Marked ANNEXURE OSNRV-IO is a resolution of the meeting authorizing the Applicants to file the present Processes to protect the interest of the people of Osisioma Ngwa.

4. That sometime about 12th December, 2011, my Community and the entire people of Osisioma Ngwa Local Government Area were surprised on the NEWS that the Court of Appeal, Abuja held that Osisioma Ngwa Local Government Area was no longer in Abia Central Senatorial District of Abia State.

5. Before this NEWS, the Applicants and the Osisioma people never knew and had no notice that any matter where such issue of delineation that will adversely affect them was pending in Court

6. That I know that the judgment does not represent the true state of the facts and position but based on a single document made in 2010 ostensibly an act of political gerrymandering.

7. That I know that in 1998 the National Electoral Commission of Nigerian (NECON) in exercise of powers conferred on it by law placed Osisioma Ngwa Local Government Area in Abia Central Senatorial District to make the six Local Government Areas in that Senatorial District marked and attached as Exhibit OSNRV-6 and 7 are the letters confirming the delineation of the Senatorial District in Abia State respectively

8. *That Abia State is made up of 17 (Seventeen) Local Government Areas with six each for South and Central Senatorial Districts and 5 in Abia North Senatorial District. In 1998 the population of Abia South Senatorial District was 939,590 while Abia Central (including Osisioma Ngwa Local Government Area) had a population of 621,403 and that of Abia North was 608,629 as shown in Annexure OSNRV-1.* B

9. *That adding Osisioma Ngwa Local Government Area (with an estimated population of 200,000 people at that time) to Abia South Senatorial District would raise the population of Abia South to a figure larger than Abia North and Abia Central combined and lead to unfair and unequal participation and representation* C

10. *I know the delay in bringing this application was due to difficulty in accessing relevant documents as the Applicants were not parties to Proceedings at the lower Courts* D

11. *That it is in the interest of justice that this application is granted since the Part of the decision of the lower Court complained against affect the Applicants individually and collectively as a people.* ”

Although the 1st Respondent also filed a counter affidavit and further counter affidavit in opposing this application, I do not regard it necessary to quote fully the contents of the counter affidavit except to note the contents of the most relevant paragraphs thereof in paragraphs 4 and 8 of the counter affidavit. It was deposed in those paragraphs that the question of whether or not Osisioma-Ngwa Local Government Area is part of Abia Central Senatorial District forms part of the Originating Summons filed at the trial Federal High Court which subsequently came to the Court of Appeal and all the same the Applicants did not consider it necessary to join in the matter. It was also deposed in those relevant paragraphs that the Applicants are not necessary nor even desirable parties to this appeal as the same can be effectively and effectually be determined without the applicants. E F G

Although this application was brought under Section 36(1) and 233(5) of the 1999 constitution and various provisions of the rules of this Court, the most relevant provisions of statute is the provisions of Section 233 of the 1999 Constitution of the Federal Republic of Nigeria dealing with the Appellate jurisdiction of this court where subsection (5) thereof prescribed who may exercise the right to appeal H

to this court under the section. The section reads -

“233(1) The Supreme Court shall have jurisdiction, to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Court of Appeal

(5) Any right of appeal to the Supreme Court from the decision of the Court of Appeal conferred by this Section shall be exercisable in the case of civil proceedings at the instance of a Party thereto or with the leave of the Court of Appeal or the Supreme Court at the instance of any person having an interest in the matter and in the case of criminal proceedings at the instance of an accused person, or subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or person as may be prescribed.”

In the present application therefore where the Applicants are not parties in the case, have brought their application seeking the extension of time to seek the leave of this Court to appeal, leave to appeal and extension of time within which to file and serve the Notice of Appeal as persons having interest in the matter, that is to say, the appeal now pending in this Court.

Before proceeding to consider the application on the merit, it is necessary to note that the learned senior Counsel for the Applicants having withdrawn the last relief of leave to adduce additional evidence, that relief is accordingly hereby struck out.

The question for determination in the application is whether or not having regard to all the circumstances of this case the Applicants can qualify as persons having interest in the pending appeal No.SC.10/2010 in which they are not parties. ***The law is indeed well settled that the nature of interest to qualify a party to appeal as person interested or as person having interest in the matter, is as defined by my learned brother, Karibi-White J.S.C who put it thus: In Re Ugadu (1988) 5 N.W.L.R. (Pt.93) 189 at 202-***

“Concisely stated, the interest which will support an application under the Provisions must be genuine and legally recognisable interest, in respect of a decision which prejudicially affects such witness.”

This statement of the law is in line with a plethora of

decided cases on the subject and I hereby accept it as representing the law in those cases particularly, *Ikonne v. Commissioner of Police and Nnanna Wachukwu* (1935) 14 N.W.L.R. (Pt.36) 473; *Usanga and Ors. v. Okada & Ors.* (1964) 1 All N.L.R. 35; *Dairo v. Gbadamosi*; *In re Afolabi* (1987) 4 N.W.L.R. (Pt.63) 18 and *Ademola v. Sodipo* (1992) 7 N.W.L.R. (Pt.253) 251 at 264-261 ^B
which interpreted the nature of interest to qualify a party to appeal as person having interest in the matter as prescribed under Section 222(a) of the 1979 Constitution which is in pari materia with the present provision in Section 233(5) of the 1999 Constitution now under consideration in the present application. It is also the law that for person to qualify as a person interested, the applicant must show not only that he is a person having interest in the matter but also that the order or judgment of the Court below he is seeking leave to appeal against, prejudicially affects his interest. In other words to succeed in the application, the Applicants must show that they are persons who are aggrieved, or persons who have suffered legal grievances; or persons against whom decisions have been pronounced which have wrongfully deprived them of something or wrongly refused them something or wrongly affected their title to something. ^C ^D ^E

It is not at all in dispute from the record of this appeal that the dispute between the parties in this appeal started at the trial Federal High Court, Abuja as a pre-election dispute between the parties as to who was the winner of the Peoples Democratic Party now 2nd Respondent's election primaries for the Abia Central Senatorial District held on Saturday 8th January, 2011 in preparation for the 9th April, 2011 Senatorial election in this Country. ^F ^G

The parties in the action which was began by originating summons, were Hon. Emeka Atuma who was the plaintiff and an aspirant candidate for the election; the Independent National Electoral Commission, the agency charged with the statutory responsibility of conducting the election as 1st Defendant, the People Democratic Party (PDP), a political party eligible to sponsor candidates to contest the election as 2nd Defendant and Senator Nkechi Justina Nwaogu, who was also an aspirant candidate to contest the same election. ^H

There is no doubt whatsoever that the case being a pre-elec-

tion matter was filed in the trial Federal High Court pursuant to the Provisions of Section 87(1) and (9) of the Electoral Act 2010 as amended which conferred jurisdiction on that court with other courts to hear and determine such disputes, The Section of the Act conferring jurisdiction on the trial Court reads -

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

C *(9) Notwithstanding the provisions of the Act or rules of a Political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political Party has not been complied with in the selection or nomination of a candidate of a political Party for election, may apply to the Federal High Court or the High Court of a State or F.C.T. for redress.”*

D The questions submitted by the plaintiff for determination by the trial Court in exercise of this special jurisdiction are-

E *“1 Whether by the combined provisions of Sections 71, 72 of the Constitution of the Federal Republic of 1979, as amended, Osisioma Local Government Area of Abia State of Nigeria can fall both into the Abia South Senatorial District and the Abia Central Senatorial Districts.*

F *2. Whether by the delineation of Senatorial Districts in Abia State of Nigeria by the 1st Defendant acting pursuant to Section 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 as amended Osisioma Ngwa Local Government Area of Abia State of Nigeria is part of the Abia Central Senatorial District.*

G *3. Whether the 3rd Defendant who at all material times is an indigene of and resident with Osisioma Ngwa Local Government Area of Abia State of Nigeria within the Abia South Senatorial District can lawfully contest for the Position of a Senator in the Abia Central Senatorial District of Abia State of Nigeria.”*

H It was the case of the plaintiff in his originating summons that upon the determination of the 3 questions reliefs being sought by him include-

“1. A Declaration of this Honourable Court that pursuant to the delineation of senatorial Districts in Abia State of Nigeria by the 1st Defendant, ‘Osisioma-Ngwa Local Government Area of Abia State of Nigeria does not fall within the Abia Central Senatorial District.

2. *A Declaratory order of this Honourable Court that the 3rd Defendant is ineligible to aspire to be sponsored by the 2nd Defendant to contest the 2011 general elections to represent the Abia Central Senatorial District.*

3. *An order of this Honourable Court declaring as unconstitutional, null and void and of no legal effect whatsoever the nomination of the 3rd Defendant by the 2nd Defendant to run for and/or Contest for post of a senator representing the Abia Central Senatorial District in the 2011 General elections to be conducted by the 1st Defendant, based on false information/declaration on oaths submitted to the 2nd Defendant.*

4. *An order of this Honourable Court declaring the Plaintiff, the winner of the 2nd Defendant's election primaries for the Abia Central Senatorial District held on Saturday January 8th, 2011 at the Umuahia Township Stadium, Umuahia, Abia State of Nigeria."*

In the course of the hearing of the case at the trial Court, preliminary objections were raised by the three Defendants some which were determined in the Ruling of that Court of 14th March, 2011, while ruling on two other issues were reserved for determination at the end of the hearing of the substantive case. The two issues are -

"(a) Whether the mode of commencing this suit by Originating Summons is proper in the circumstances of this case.

(b) Whether there is any provision in the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act or any other legislation which stipulates that a candidate for election into the office of Senator representing a Senatorial District must be resident in or an indigene of that District."

While the learned trial Judge left the first issue (a) above unresolved by invoking the provision of Order 3 Rule 8 of the Rules of the Federal High Court 2009, in exercise of his discretion, the second issue (b) was resolved in the negative in favour of the Defendants in that the factors of being a resident in or an indigene of a Senatorial District, is not a Constitutional or legal requirement for a person to contest as either a member of the Senate or House of Representatives. In this respect the learned trial Judge proceeded to answer question 3 in the Originating Summons in the affirmative that the 3rd Defendant who at all material times was an indigene of and resident of Osisioma Ngwa Local Government Area of Abia State of Nigeria

within the Abia south senatorial District, can lawfully contest for the position of a senator in the Abia central Senatorial District of Abia state of Nigeria. In the final result, the trial Court dismissed the Plaintiffs case with the following remarks -

- “Proceeding from this unchallenged affidavit evidence by the*
- B *3rd Defendant in paragraph 12 of her counter affidavit she has established the fact that she is an indigene of Isiala Ngwa South Local Government Area in the Abia State Central Senatorial District by birth having been born to the Nwokocha family of Umuapo Ovungwu.*
- C *So even if we accept the argument and position of the Plaintiff that for a Person to contest a seat in the Senate he must be an indigene or resident in the Senatorial District, the 3rd Defendant having established her indigeneship of Abia Central Senatorial District, is amply qualified to contest the Senate seat in Abia Central Senatorial District.*
- D *So the substratum of the Plaintiffs case has collapsed and is therefore without foundation or fulcrum upon which to stand. On this 2nd score the Plaintiffs question No.3 is also answered in the affirmative. On the whole, I hold that the Plaintiffs case has no merit at all. I dismiss it accordingly.”*
- E On the whole therefore, it is not in doubt that the Plaintiff who is now the Appellant in this court, was at the trial court having dragged the Independent National Electoral commission, the agency statutorily charged with the responsibility of conducting of the April, 2011
- F general election, the 1st Defendant now 1st Respondent in this court, the Peoples Democratic Party (PDP), the political party under which platform the Plaintiff/Appellant and the 3rd Defendant/Respondent were struggling to contest the election. The main dispute between the Plaintiff/Appellant the 3rd Defendant/Respondent was the Peoples
- G Democratic Party election primaries for the Abia Central Senatorial District conducted on 8th January, 2011 which the Plaintiff/Appellant urged the trial court to declare him the winner. Thus, having failed to secure the declaratory reliefs sought, the plaintiff/Appellant then appealed to the court of Appeal.
- H The Court of Appeal after hearing the appeal, allowed the appeal in part and the concluding part of the judgment reads -
- “The Appellant, as the Plaintiff did not prove that on 8th February 2011, he won the nomination of the PDP, 2nd Respondent, for election for the post of Senator in Abia Central Senatorial District.*

Relief A on the Originating Summons ought to be and it is hereby dismissed.

The totality of all I have said in effect is that the 3rd Respondent as at the date of her purported nomination was not a candidate de jure for the Senatorial elections scheduled for the 9th April, 2011. The 2nd Respondent P.D.P. also had no candidate in law to be sponsored for the said 9th April, 2011 election in Abia Central Senatorial District. Appeal succeeds in part.”

I have taken time to closely examine the nature of the case that was filed by the plaintiff at the trial Court which found its way on appeal to the Court of Appeal and ultimately now in this Court, in order to determine whether or not the Applicants can find a place in the case to answer the description of being persons having interest in the matter. ***In other words, having regard to the nature of the case being strictly a pre-election dispute between two aspirants struggling to become candidates of their political party to contest the Senatorial election of 9th April, 2011 election, does the law prescribing the jurisdiction of Courts in dealing with the matter permit the intervention or participation of persons who are to exercise their right to vote for the successful candidates of the political parties election primaries in the subsequent general election? The answer in my view is certainly in the negative.***

The only parties envisaged under the provisions of section 87(1) and (9) of the Electoral Act 2012 as amended earlier quoted in this judgment, are the political parties who are enjoined to conduct or hold primaries for the aspirants, the aspirants candidates themselves and the Independent National Electoral Commission to which the names of the successful candidates following the primaries conducted by the political parties, are submitted by the candidates in the elections. That law does not give any right to any electorate who is expected to exercise his right to vote at election to join any suit involving dispute between the aspirants arising from primaries conducted by political parties. To allow the electorates to join in such disputes in Court, will definitely change the character of the dispute, the settlement of which is reserved for law Courts under the Electoral Act. From the judgments of the courts

below, the picture of the dispute between the parties in the present appeal before this Court has been clearly printed. The dispute involves the processes of nomination of candidates by political parties to participate in the National Assembly election scheduled to hold on 9th April, 2011.

- B The question now is whether the Applicants who are not necessary parties to such cases at the trial court can be accommodated in such cases coming up on appeal to the Court of Appeal and ultimately to this court where such pre-election cases by law terminate.
- C ***The law is trite that an appeal is generally regarded as a continuation of the original action, the nature and character of which cannot be changed on appeal.*** See *Oredoyin v. Arowolo* (1989) 4 N.W.L.R. (Pt.114) 172. Thus not being necessary or even desirable parties to the Appellant's appeal now pending in this Court,
- D the applicants cannot qualify as having interest in the matter within the requirement Section 233(5) of the 1999 Constitution under which the application was brought. I wish to emphasize that the dispute between the parties in the appeal being a pre-election dispute cannot be expanded or be transformed into an ordinary civil case to accom-
- E modate the Applicants simply because the question of whether Osisioma Ngwa Local Government Area is part of Abia Central Senatorial District or Abia South Senatorial District of Abia state of Nigeria, cropped up in the case. This situation certainly does not remove the case from realm of a pre-election dispute under the Electoral Act,
- F 2010 as amended. That being the case of course, the Applicants cannot answer the description of being persons whose interests were prejudicially affected by the decision of the court of appeal which in effect refused to uphold the Appellant or the 1st Respondent as the
- G winner of the primaries election conducted by the peoples Democratic party on 8th January, 2011 for Abia Central Senatorial District.

On the whole, I am of the firm view that the Applicants having failed to bring themselves within the requirement of section 233(5) of the constitution that they are parties having interest in the pre-election matter in the pending appeal, their application for the three reliefs sought for extension of time to seek leave to appeal against the judgment of the court of Appeal of 13th December, 2011, must fail. Equally, the Applicants having failed to show that they are persons whose interest has been prejudicially affected as aspirants in the elec-

tion primaries conducted on 8th January, 2011, the three trinity reliefs sought by them in their application cannot be even examined let alone granted. Accordingly the application having failed, the same is hereby refused and dismissed with no order on costs.

B

MUNTAKA-COOMASSIE JSC

The applicants, in this motion on Notice brought under Section 36 (1) and 233 (5) of the 1999 Federal Republic of Nigeria as amended Orders 2 R 12, 28(1) and 2(31) and 6 R. 1 of the Supreme Court Rules inherent jurisdiction of the court, following reliefs:- C

a. Extension of time within which to apply for leave to appeal as an interested party against the decision of Court of Appeal, Abuja Division, given on 13th December, 2011 in suit No.CA/A/264 /2011 D

b. Leave to appeal as an interested party interested in the subject matter;

c. Extension of time within which to file and serve the Notice of Appeal;

d. An order deeming the Notice of Appeal already filed and served as properly filed and served; E

e. Leave to appeal on grounds of fact and mixed law and fact;

f. Leave to adduce additional evidence.

The grounds for seeking the above reliefs were neatly set out in the lead ruling and it is not necessary for me to repeat them here. F

The application is supported by a 35 paragraphs affidavit and a number of exhibits were tendered and admitted. I have a preview of this illuminating lead ruling rendered by my learned brother Mohammed JSC. I adopt the reasons and conclusion adumbrated therein as mine. The applicants totally failed to show that they are interested parties or their interests have been adversely affected during the election primaries conducted on 8/1/2011. The issue of joining them does not arise. G

For the same reasons his lordship dismissed the application I too hold that this application lacks merit and it woefully failed same is also dismissed by me with no order as to costs. H

NGWUTA JSC

Having been privileged to read the lead Ruling of My Lord, Mahmud Mohammed, JSC, I am entirely in agreement with the reasoning and conclusion therein contained. It is surprising that a simple pre-election matter between the appellant and the 1st Respondent has been turned into a protracted geopolitical dispute of delineation of Local Government Area in Abia state. The pre-election matter is entirely between the two disputants - the appellant and the 1st Respondent and their political parties - 3rd Respondent, with the 2nd Respondent as a nominal party.

Section 87 (9) of the Electoral Act 2010 as amended provides:

“Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied in the election or nomination of a candidate of a political party for election may apply to the Federal High Court or the High Court of a State or FCT for redress.”

In a contest as to who is the flag bearer of a political party in an election, the one complaining and the one complained against are necessarily members of the same political party. It is essentially an internal wrangling with the party and a non-party member cannot be heard to complain against the nomination of a candidate to stand an election on the platform of a party to which he is not a member.

The issue as to who is the authentic flag bearer of the 3rd Respondent is essentially between the appellant and the 1st Respondent. The applicants herein cannot be said to have “genuine and legally recognised interest, in a matter the resolution of which cannot affect them. See in *Re Ugadu* (1988) 5 NWLR (pt. 93) 189 at 202 cited and relied on in the lead ruling.

As I said earlier on in this ruling, this is not a matter of delineation of Local Government Areas fraught with political connotation, shorn of the garment of constitutionality and sectional sentiment vested in it, the main issue in the suit was captured by the trial court in the following clear and unambiguous term, hereunder reproduced:

“Whether there is any provision in the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act or any other registration which stipulates that a candidate for election into the office of Senator representing a senatorial District must be resident in or an

indigene of that District.”

I do not see the genuine and legally recognisable interest of the applicants in the above question or how the resolution of the issue will affect them. The applicants, none of whom is “an aspirant” within the meaning and intendment of section 87 (9) of the Electoral Act 2010 as amended and so have no interest in the matter, have no right of appeal with or without leave. See s.233 (5) of the constitution of the Federal Republic of Nigeria 1999 as amended. B

Applicants may have rights to vote at the nomination if they are of the 3rd Respondent and at the main election if they are registered their constituencies. Thus the applicants are king makers as it were and they cannot be allowed to usurp the position of those aspiring to be kings. C

For the above and the very comprehensive reasoning in the lead ruling, I also dismiss the motion as bereft of merit. The parties shall bear their respective costs. D

ALAGOA JSC

I read before now the lead ruling of my brother Mahmud Mohammed JSC dismissing this application. What interest do the applicants have in the pending appeal No.SC.10/2012 to be joined as Appellants? Is it a legally recognizable interest? Is it an interest in which when a decision is eventually arrived at, will prejudicially effect them? This matter began at the Federal High Court Abuja as a pre-election matter which has found its way through the High Court to the Court of Appeal and to this Court. The parties envisaged are the contestants themselves, the political parties and the Independent National Electoral Commission. E
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The electorate whose only right is to vote for contestants of their choice must be strange bed fellows to the suit, since the dispute of the contending parties are of little or no interest to them. Any order to join them would only have the resultant effect of changing the character of the suit, the applicants not being necessary parties to the suit. What is an appeal other than a continuation of the original action. An appeal is never a new action which the applicants are bound to bring about were their request to be joined as interested parties granted. H

The application lacks merit and should be dismissed. I also hereby dismiss same and align myself with all the fuller reasons given in the lead ruling. I also make no order as to costs.

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