

SUPREME COURT OF NIGERIA
7TH DECEMBER, 2012. SC. 272/2012
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, S. GALADIMA, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC**

1. HON. PROF. CHUDI UWAZURIKE
2. PEOPLES DEMOCRATIC PARTY APPELLANTS
AND
1. CHIEF AUSTIN NWACHUKWU
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENTS

APPEALS - Grounds - Issues - Formulation - Appellant may raise an issue from grounds of appeal - But is not permitted to raise more than an issue from a ground (H1)

APPEALS - Courts - Findings - Binding nature of - Holding by court which is not appealed against - Is binding on party against whom it was made (H2)

JURISDICTION - Fundamental nature - Once issue of jurisdiction is raised - Court must determine same - Before proceeding with the matter on merit (H3)

JURISDICTION - Determination - Basis - It is plaintiff's claim as stated in originating processes - That determines jurisdiction of court (H4)

FACTS

Before the Federal High Court Owerri, plaintiff/1st respondent claimed that he and 1st appellant are members of 2nd appellant (Peoples Democratic Party) who contested the party's primary election to select the candidate for Ehime Mbano/Ihite Uboma/Obowo, a.k.a. Okigwe South Federal Constituency of Imo State. 1st respondent claimed that he scored the highest number of votes cast at the said election. However, rather than forward his name as the duly elected candidate to 2nd respondent (Independent National Electoral

Commission - INEC), 2nd appellant sent the name of 1st appellant who, according to 1st respondent, was not qualified to contest the election.

On the other hand, appellants contended that 1st respondent withdrew his candidacy in favour of 1st appellant and that the latter eventually contested the primary election and won same. According to them, 1st appellant's name was duly forwarded to 2nd respondent. 1st appellant filed an application seeking for the court to strike out the action for want of jurisdiction. The grounds for the application are inter alia, that pursuant to section 87(9) of the Electoral Act 2010 (As amended), the court cannot validly entertain pre-election matters bordering on submission of name to INEC. In its ruling, the court dismissed the application. Appellants were aggrieved and thus filed appeal at the Court of Appeal Owerri. The court also dismissed the appeal and appellants appealed to Supreme Court.

ISSUE FOR DETERMINATION

"1. Whether by the combined effect of the provisions of sections 31 (1), 33 and 35 of the Electoral Act, 2010 (as amended) the lower court has jurisdiction to entertain a suit brought pursuant to section 87(9) of the Electoral Act, 2010 (as amended) or on any matter or complaint arising from a party primary Election in view of the fact that the name of the Appellant had already been submitted by the 2nd Appellant to the 2nd Respondent as a candidate before the suit challenging the party primary was instituted.

HELD (Unanimously dismissing the appeal per

ONNOGHEN JSC)

APPEALS - Grounds - Issues - Formulation

1. Looking closely at the above issues, it is clear that there is only one issue for determination as what learned Senior Counsel calls issue No. 2 can only be considered in the alternative. It is only if that issue is considered as an alternative to issue No. 1 that it can be valid as the law is long settled that though an appellant or party may raise an issue for determination in an appeal from either a single ground or combination of grounds of appeal, he is not permitted to raise more than an

issue from a ground or combination of the same grounds of appeal, as in the instant appeal where the same grounds 1, 2, 3, 4 of the grounds of appeal are said to support issues 1 and 2 formulated for determination. In the circumstance of this case only issue No. 1 can and will be considered in this judgment as I consider same to be the only valid issue arising for determination. (p. 3255 B)

Courts - Findings - Binding nature of

2. It is unfortunate that despite the above finding/holding on proliferation of issues, learned Senior Counsel without contesting that holding in this appeal, has repeated the same thing before this Court. This practice is not only contrary to law and practice but in very bad taste as it is settled law that a holding by a court which is not appealed against is binding on the party against whom it was made. (p. 3255 H)

JURISDICTION - Fundamental nature

3. It is settled law that jurisdiction is a peripheral matter which must be determined, when raised, by the court before proceeding to determine the matter on the merit if need be. (p. 3259 D)

JURISDICTION - Determination - Basis

4. Also trite, is the principle of law that it is the case of the plaintiff as stated in the writ of summons or statement of claim or any originating process that determines the jurisdiction of the court. (p. 3259 E)

REPRESENTATION

Chief Chukwuma Ekomaru, SAN with Messrs E. A. Nnabue and C. O. Mbam, for 1st appellant

Jerry E. Egemba Esq., for 2nd appellant

K. C. Nwufo Esq. with J. U. Eke Esq., for 1st respondent

I. K. Bawa Esq. with Rahima Aminu Esq., for 2nd Respondent

CASES REFERRED TO

Ehinlanwo v Oke (2008) 16 NWLR (pt.1113) 357

Mohammed v. Resident Electoral Commissioner, Kaduna State (2009)
All FWLR (Pt.468) 355

Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 367

Onuoha v. Okafor (1983) 2 SCNLR.

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

B Uzodinma v. Izunaso (2010) 17 NWLR (Pt.1275) 30

Hassan v. Aliyu (2010) All FWLR (pt.539) 1007

STATUTE REFERRED TO

C Electoral Act 2010 (as amended), ss.31(1), 33, 35 and 87(9)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Owerri Division in Appeal No.CA/OW/164/2011, delivered on the 28th day of May, 2012 in which the court dismissed the appeal of the appellants against the ruling of the Federal High Court in Suit No.FHC/OW/CS/75/2011 delivered on the 1st day of April, 2011 in which the court overruled the preliminary objection of the appellant against the jurisdiction of that court to hear and determine the matter.

On the 14th day of March, 2011, the 1st respondent caused a writ of summons to be issued against the appellants and 2nd respondent in which he claimed the following reliefs:-

F “(a) *An order of the court restraining the 2nd Defendant from submitting to the 1st Defendant, the name of the 3rd Defendant or any other name except the name of the Plaintiff as the PDP candidate at the forth coming election into the Federal House of Representatives for Ehime Mbano/Ihitte Uboma/Obowo aka Okigwe South Federal Constituency.*

G (b) *An order of the Hon. (sic) restraining the 1st Defendant from recognising or accepting any other name from the 2nd Defendant as her candidate for the forth coming election into the Federal House of Assembly (sic) as representing Ehime Mbano/Ihitte Uboma/Obowo aka Okigwe South Federal constituency of Imo State accept (sic) the name of the plaintiff.*

H (c) *A perpetual order restraining the Defendants, their agents, privies, assigns or other person acting for, through or by them however constituted from doing any act inimical to the position of the*

plaintiff as PDP candidate for Ehime Mbano/Obowa aka Okigwe South Federal Constituency House of Assembly (sic)”

It is the case of the 1st respondent who was the plaintiff in the trial court that he and the 1st appellant are members of the 2nd appellant and contested the party's primary election to select the candidate for Ehime Mbano/Ihite Uboma/Obowo, aka Okigwe, South Federal Constituency of Imo State election scheduled for 2nd April, 2011 which took place on 6th January, 2011, that he scored the highest number of votes cast at the said primary election but rather than forward his name as the duly elected candidate to Independent National Electoral Commission (INEC) (2nd respondent herein) 2nd appellant sent the name of 1st appellant who, according to the 1st respondent, was not qualified to contest the election. B C

On the other hand, the case of the appellants is that at the venue of the primary election on 6th January, 2011, 1st respondent, Dominic A. Nwachukwu, Emmanuel Okewulonu, Innocent Nwokorie stepped down, after accreditation of delegates and announced to the gathering that they had stepped down for the 1st appellant in the interest of the party and that the only candidate who did not withdraw and thus contested the primary election with the 1st appellant was Obe Francis C. Ibezim; that 1st appellant won the election with a landslide of 510 votes as against 10 votes scored by the opposing candidate; that as a result of the declaration of results, the name of 1st appellant was duly forwarded to the 2nd respondent as the candidate of the 2nd appellant for the election in question, on the 31st day of January 2011; that the appellants were surprised when they received court processes filed on 14th March, 2011 by the 1st respondent claiming the reliefs earlier reproduced in this judgment. The appellants are contesting the authenticity of the primary election documents which 1st respondent contends evidenced his participation and victory in the primary election. However, on the 21st day of March, 2011, CHIEF C. EKOMARU, SAN for the 1st appellant filed a motion on notice praying the court to strike out the suit for want of jurisdiction on the following grounds: E F G H

“1. By the combined effect of section 31 (1), section 33 and section 35 of the Electoral Act, 2010 (as amended), this Honourable Court has no jurisdiction to entertain as a suit brought pursuant to section 87(9) of the Electoral Act, 2010 (As amended) or any matter

or complaint relating to or arising from a Party Primary in view of the fact that the name of the 3rd Defendant/Respondent had already been submitted by the Peoples Democratic Party to the 1st Defendant/Respondent as a candidate.

B 2. *The plaintiff having not taken part in the voting at the party primaries, have (sic) no locus standi to being in this suit, in the first stance.*

C 3. *This suit, filed on 14th March, 2011, is an abuse of court process in that the subject matter and the parties in (this suit are the same with suit NO. FHC/ABJ/CS/124/2011 Hon. Austin Nwachukwu vs INEC filed on 3rd February, 2011 pending before Hon. Justice Adamu Bello at Federal High Court, Abuja.*

D 4. *There is no political party in Nigeria known as the “People Democratic Party of Nigeria,” the 2nd Defendant in this suit.*

5. *The writ of summons was not properly issued as required by ORDER 3 Rule 4 of the Federal High Court (Civil Procedure) rules (sic), which gives a defendant 30 days to enter appearance and not 8 days as shown on the writ of summons in this case.”*

E The application was supported by an affidavit of 24 paragraphs on which the 1st appellant relied in moving the court. As stated earlier in this judgment, the trial court, in a considered ruling, overruled the objection resulting in an appeal to the lower court which was dismissed by that court giving rise to the instant further appeal. The issues for the determination of which have been formulated by F Learned Senior Counsel for the 1st appellant, Chief Chukwuma Ekomaru, SAN in the 1st appellant’s brief filed on 13/8/12 as follows:-

G “1. *Whether by the combined effect of the provisions of sections 31 (1), 33 and 35 of the Electoral Act, 2010 (as amended) the lower court has jurisdiction to entertain a suit brought pursuant to section 87(9) of the Electoral Act, 2010 (as amended) or on any matter or complaint arising from a party primary Election in view of the fact that the name of the Appellant had already been submitted by the 2nd Appellant to the 2nd Respondent as a candidate before the suit challenging the party primary was instituted*” (Grounds 1, 2, H 3, 4, of the Appeal).

ISSUE NO. 2

If the answer to issue No.1 is in the negative, whether this suit

filed on 14th March, 2011, against the primary election held on 6th January, 2011 is maintainable against the Appellant whose name was submitted by the 2nd Appellant to the 2nd Respondent as a candidate on 31st January, 2011 or any other date whatsoever, in view of the provisions of sections 31 (1), 33 and 35 of the Electoral Act, 2011 (as amended) (Grounds 1, 2, 3, 4 of the appeal)." B

Looking closely at the above issues, it is clear that there is only one issue for determination as what learned Senior Counsel calls issue No. 2 can only be considered in the alternative. It is only if that issue is considered as an alternative to issue No. 1 that it can be valid as the law is long settled that though an appellant or party may raise an issue for determination in an appeal from either a single ground or combination of grounds of appeal, he is not permitted to raise more than an issue from a ground or combination of the same grounds of appeal, as in the instant appeal where the same grounds 1, 2, 3, 4 of the grounds of appeal are said to support issues 1 and 2 formulated for determination. In the circumstance of this case only issue No. 1 can and will be considered in this judgment as I consider same to be the only valid issue arising for determination. C D E

It should be noted that at page 463, the lower court held, on proliferation of issues as follows:-

"In the instant appeal, it is wrong for the Appellant to formulate two issues i.e. issues 1 and 2 both from Grounds 1, 2 and 3. It is also wrong to formulate issue No. 3 from Grounds 2 and 3 at the same time. The Appellant is not allowed to formulate several issues from one ground of appeal. This is clearly proliferation of issues which the court frowns at." F G

The consequences are that issues No. 2 and 3 having been formulated from grounds in respect of which issues have been raised are incompetent and are accordingly struck out along with argument canvassed thereunder..."

It is unfortunate that despite the above finding/holding on proliferation of issues, learned Senior Counsel without contesting that holding in this appeal, has repeated the same thing before this Court. This practice is not only contrary to law and practice but in very bad taste as it is settled law that a H

holding by a court which is not appealed against is binding on the party against whom it was made. On the other hand however, learned counsel for 2nd appellant, JERRY E. EGEMBA ESQ in the appellant's brief filed on 1/11/12 presented a single issue for determination to wit:

B *"Whether the lower court was right in holding that the trial court has jurisdiction to hear and determine the suit filed by the 1st Respondent (FHC/OWCS/75/2011) challenging the nomination and sponsorship of the 1st Appellant by the 2nd Appellant as its candidate in the April 26th, 2011 general election."*

C On his part, learned counsel for 1st respondent K. C. NWUFO, ESQ, also raised an issue for the determination of the appeal, in the 1st respondent brief filed on 20/9/12 to wit:-

D *"Whether the court below was wrong when it held that the trial court's jurisdiction to entertain suit No.FHC/OW/CS/75/2011 was not ousted merely because the 1st Appellant's name had already been purportedly submitted to the 2nd Respondent?"*

It should be noted, however, that the 2nd respondent filed no brief of argument in this appeal. In arguing the appeals, Counsel E for the appellants referred the court to the provisions of sections 31(1), 33 and 35 of the Electoral Act, 2010, as amended and submitted that in the light of the said provisions, the lower court has no jurisdiction to entertain a suit brought pursuant to section 87(9) of the Electoral Act, 2010 (as amended) or any matter or complaint arising F from a party's primary in view of the fact that the name of 1st appellant had already been submitted by the 2nd appellant to the 2nd respondent as a candidate for the election in issue; that once an aspirant becomes a candidate of a political party, the Electoral Act, G 2010, as amended protects the candidate from being changed or substituted for whatever reason by either INEC or the Political Party. It is the further submission of Counsel that though by the provisions of section 87 of the Electoral Act, 2010, as amended, an aspirant can file an action against a party's primary and a court of law can, pursuant to section 87(9) of the said Electoral Act, 2010 as amended, H assume jurisdiction to entertain same, the court can only do so if the name of a successful aspirant has not been forwarded to INEC by the political party as its nominated candidate for an election; the case of *Ehinlanwo vs Oke* (2008) 16 NWLR (pt.1113) 357; *Mohammed vs*

Resident Electoral Commissioner, Kaduna State (2009) All FWLR (Pt.468) 355, Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 367; Onuoha v. Okafor (1983) 2 SCNLR. Dalhatu v. Turaki (2003) 15 NWLR (Pt.843) 310 and Uzodinma v. Izunaso (2010) 17 NWLR (Pt.1275) 30 have been cited in support of the contention of the appellants; that the lower court failed to consider the effect of sections 31(1), 33 and 35 of the Electoral Act, 2010, as amended on the provisions of section 87(9) of the said Electoral Act, 2010 as amended, whether a suit brought pursuant to section 87(9) of the said Act can withstand the effects of sections 31(1), 33 and 35 thereof. I have to note at this stage, that the brief of 1st appellant is full of repetition of the same point(s) over and over again. It has been said that repetition does not improve an argument. Learned senior counsel also raised very hypothetical sub-issues in his brief such as *“The fine point to be decided in this appeal is whether, if a political party conducts a fresh primary election on the order of court, canceling an earlier party primary, a political party can change or substitute the name of the former candidate in INEC with the new candidate that won at the fresh primaries in view of section 31(1), 33 and 135 of the Electoral Act, 2010 (as amended)?”*

Another poser in this appeal is what is the effect of a court canceling a primary election and ordering a fresh primary election, if the General Election has been won by another political party or by a political party?...”

It is very difficult to see how these sub-issues can be said to relate to the main issue earlier reproduced in this judgment. They are clearly hypothetical as they do not have any relationship with the facts of this case. In any event, Counsel for appellants urged the court to resolve the issue in favour of the appellants and allow the appeals. On his part, learned Counsel for the 1st respondent submitted that the trial court has the jurisdiction to hear and determine the suit in question by operation of section 87(9) of the Electoral Act, 2010, as amended irrespective of the fact that the 1st appellant's name was purportedly submitted to the 2nd respondent and that the 1st respondent's case was not belated as same was filed prior to the holding of the National Assembly General Elections in question, and urged the court to so hold and dismiss the appeals, relying on *Ehinlanwo vs Oke supra*; *Hassan vs Aliyu* (2010) All FWLR (pt.539) 1007 at 1046;

Uzodinma vs Izunaso (No 2) (2011) NWLR (Pt.1275) 30 at 60 and Ucha v. Onwe (2011) 4 NWLR (Pt.1237) 386 at 427. It is very important to note that from the arguments of both counsel for appellants, the issue before this Court has been narrowed down as follows:-

- B Whether the courts have jurisdiction to hear and determine an issue arising from a Political party's primary election under section 87(9) of the Electoral Act, 2010 after the name of the winner of the said primary election has been forwarded to INEC as its sponsored candidate for the general election in question. It is not the case of the appellants that the courts have no jurisdiction to determine issues arising from primary elections under section 87(9) of the Electoral Act, 2010 as amended but that the courts can only do so before the name of the successful candidate at the primary election is forwarded to INEC by a political party as its sponsored candidate for an election. However, we have not been referred to any authority for that proposition of the law by the appellants. The sections of the Electoral Act, 2010, as amended cited and relied upon by Counsel for appellants are sections 31(1), 33 and 35 and also section 87(9) thereof.
- E These provisions enact as follows:-

"31(1) Every political party shall not later than 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 candidates for any reason whatsoever..."

33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of the Act, except in the case of death or withdrawal by the candidate.

35. A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission not later than 45 days to the election."

On the other hand, section 87(9) of the said Act provides thus:-

"Notwithstanding the provisions of the Act or Rules of a Po-

litical 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 a High Court for redress.”

The question is whether a community reading of the above provisions of the Electoral Act, 2010 as amended could mean or it can be inferred therefrom that the jurisdiction conferred on the High Court by section 87(9) thereof is exercisable only when the name of the winner of the primary election in question has not been forwarded by the political party concerned to INEC (the Commission); or is there any time limit for exercise of the right of an aspirant to challenge the primary election under section 87(9) of the said Electoral Act, 2010 as amended? The lower courts have concurrently held that the trial court has jurisdiction to entertain the matter as constituted.

It is settled law that jurisdiction is a peripheral matter which must be determined, when raised, by the court before proceeding to determine the matter on the merit if need be. Also trite, is the principle of law that it is the case of the plaintiff as stated in the writ of summons or statement of claim or any originating process that determines the jurisdiction of the court. In the instant case, I had earlier in this judgment reproduced the reliefs claimed by the 1st respondent as plaintiff before the trial court, it is clear from the said reliefs that the matter before the court has nothing to do with substitution of a nominated candidate by a political party neither does it call for cancellation of the party's primary election for the nomination of the candidate for the election in question. The above being the case, it is very obvious that argument as to whether the court can cancel the result of a primary election and order a fresh primary election particularly after the conduct of a general election and declaration of result thereof do not arise at all. In any event, the jurisdiction conferred on the High Court under section 87(9) of the Act in question is limited to “*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...*” to apply to or seek redress of his grievances from the High Court.

I hold the considered view that the jurisdiction conferred on the High Court by the above section of the Act is not limited to time, let alone circumscribed between the holding of the primary election and submission of the name of the nominated or sponsored candidate by the political party concerned. The provisions of section 87(9) ^B supra is very clear and unambiguous and should be given its natural and plain meaning. Learned Senior Counsel for 1st appellant has argued that the provisions of section 87(9) supra cannot derogate from those of sections 31(1), 33 and 35 thereof which submission I ^C find not only strange but misconceived, particularly as the provisions of the said section 87(9) is not made subject to any provision of the Act. Rather it operates *“Notwithstanding the provisions of the Act or Rules of a political party...”*

In other words, it overrides any other provision of the said ^D Act, including sections 31(1), 33 and 35 thereof. In dismissing the objection, the trial court held at pages 189 and 190 of the record of appeal as follows:-

“While there are provisions in the Electoral Act 2010 as amended which are similar to or in pari material with the provisions ^E in the Electoral Act, 2006, there was no provision in the 2006 Act which resembles or is similar to S.87(9) of the 2010 Act (sic) as amended. S.87(9) having to come later in the said 2010 Act after sections 31, 33 and 35, and the said sub-section having commenced with the phrase “notwithstanding the provisions of the Act...” It has ^F taken into cognizance the provisions of sections 1 and section 87(9) of the said Act and the intention of the legislature is that notwithstanding those sections (i.e. Ss. 1-87(8), S.87(9) shall be applicable. In other words, the context of this suit particularly, notwithstanding ^G sections 31 (1), 33 and 35, an aspirant may complain to the court if any of the provisions of the Electoral Act and the guidelines of a Political Party have not been complied with.”

It would, in my humble view be wrong and indeed perverse to take the position of learned Senior Counsel for the 3rd Defendant ^H that *“A court of law cannot assume jurisdiction to entertain a complaint arising from a party’s primary after the name of a candidate had been submitted to INEC. EHINLANWO’S case (supra) on which he placed heavy reliance can be distinguished from this present suit since the 2006 Electoral Act did not contain a provision similar to*

S.87(9) of the 2010 Electoral Act as amended. Said decision of the Supreme Court is therefore not applicable in the peculiar circumstances of this suit. The court has jurisdiction to entertain this suit pursuant to S.87(9) of the Electoral Act 2010 as amended. Iso hold."

The lower court agreed with above holding and rightly too, in my view, I therefore adopt the above holding as representing the statement of the law applicable to the facts of this case. It is rather unfortunate that appellants have dragged this case, which is a pre-election matter all the way to this Court, not on any substantial point of law but purely, in my view, as a ploy to delay the hearing of the substantive matter by the trial court in a matter in which time is of the essence. The situation becomes more worrisome when we consider the fact that all the delay has been caused by very Senior Counsel, a Senior Advocate of Nigeria. It is clear that the term of office of the 1st appellant or any elected member of the House of Representatives is four years, which tenure cannot, being a Constitutional provision, be extended if 1st respondent, is at the end of trial, declared to be the nominated candidate for the election in question. In such a situation it is not only the 1st respondent who would be short changed but the constituency concerned. However, if it is 1st appellant who is the rightful candidate then it would be better if he continues to discharge his responsibilities to his constituency in the National Assembly in peace without the unnecessary detractions of a pending litigation. That is why the delay by appellants in the hearing and determination of the matter becomes very disturbing. The above notwithstanding there are serious allegations from both sides bordering on fraud and/or forgery which must be looked into by the court and resolved. It will be very beneficial to the political system if the issues involved in this case are gone into and resolved expeditiously.

In conclusion, I hold the considered view that this is a most useless appeal I have ever had the opportunity to hear and determine as the same is completely uncalled for, unmeritorious and unfortunate. The appeal is consequently dismissed with costs, which I assess and fix at N100,000.00 against each appellant and in favour of the 1st respondent. Appeals dismissed.

GALADIMA JSC

I have read in draft the lead judgment just delivered by my Learned Brother Onnoghen, JSC. I agree with the reasoning and the conclusions leading to the dismissal of the appeal brought against the judgment of the Court of Appeal, Owerri Division, delivered on 28/5/2012. That Court dismissed the appeal of the Appellant against the ruling of the Federal High Court delivered on 1/4/2011 in which the court overruled the Preliminary Objection of the Appellants against the jurisdiction of that Court to hear and determine the matter. The Reliefs claimed by the 1st Respondent against the 2nd Respondent in the writ of summons and the facts of this matter are set out in the lead judgment. Sections 31(1), 33 and 35 of the Electoral Act 2010 upon which this appeal is based have been reproduced as well. The Sections should be read and interpreted alongside Section 87(9) of the same Act. Section 87(9) states that:

“Notwithstanding the provision 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 a High Court for redress”.

Learned Counsel for the respective parties submitted different interpretations of the said Section: the Appellants’ Counsel interpreted the section to completely oust the jurisdiction of the court after the name of a successful candidate at the primary election had been submitted to the second Respondent (INEC) by a Political Party. On the other hand the 1st Respondent’s Counsel submits that the court can extend its jurisdiction to determine such complaint even thereafter. Hence, the battle lines having been drawn by the parties, the sole issue for determination has to do with the interpretation of S. 87(9) of the said Electoral Act 2010. The 1st Appellant at the trial Court challenged the competence of the jurisdiction of that court. His ground of objection as stated above is that the jurisdiction of the trial court is ousted with his name having been submitted by the 2nd Appellant to the 2nd Respondent as a candidate. In other words by the combined effect of sections 31(1) 33 and 35 of the Electoral Act 2013 (as amended) the trial court has no jurisdiction to entertain a suit brought pursuant to S.87 (9) of the Election Act 2010 (as

amended). By Section 31(1) of the Act a party shall submit the list of candidates it intends or proposes to sponsor at the election. By the use of the word “shall” in the Section the 2nd respondent is restrained from rejecting or disqualifying candidate for any reason whatsoever. The Political Parties are given free hand to select the candidate they intend to sponsor. Clearly for all intent and purposes Section 33 of the Act is affirmative of Section 31(1) in other words the section is a safety measure, so to say, providing security to a candidate whose name has been submitted in accordance with S.31 (1), except however, in an unfortunate situation of death or voluntary withdrawal by a candidate. Section 35 of the Act prescribes the mode of withdrawal by a candidate which must be duly and personally conveyed to the Commission.

Now back to the critical analysis of sections 31(1), 33 and 35 of the Act. These Sections are closely related and deal with the relationship of a candidate and his Political Party on the one hand, and the extent of the responsibility and involvement of the 2nd Respondent (INEC) on the other hand. However, Section 87(9) squarely deals with the jurisdiction of the Court. I do not see any bearing this section has on sections 31(1) or 35 as misconceived by the Appellants. By the provision of S. 87(9) an aspirant who is aggrieved or unhappy with the process of the selection or nomination in contravention of his party guidelines or the provisions of the Electoral Act can approach the Federal High Court or the High Court for redress. There is no time limit for the exercise of the right of an aspirant to challenge the Primary Election under section 87(9) of the said Electoral Act 2010 as amended. The provision of Section 87(9) is clear and not ambiguous. It should be given its natural meaning. The jurisdiction of the Federal High Court or High Court is not ousted in dealing with the matters provided in that section.

In view of the foregoing and for further reasons in the leading judgment of my brother Onnoghen JSC, I dismiss the appeal and abide by the order made as to costs.

H

OGUNBIYI JSC

I read in draft the judgment just delivered by my brother Onnoghen, JSC and I agree that the appeal is devoid of any merit

and should be dismissed.

The determinant legislations upon which the appeal is predicated are sections 31(1), 33 and 35 of the Electoral Act, 2010 as amended. The said foregoing sections have been reproduced in the lead judgment and should be read and interpreted alongside section B 87(9) of the same Act which reproduction states thus:-

“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 C for election may apply to the Federal High Court or a High Court for redress.”

While the appellants’ learned counsel interpreted section 87 (9) to oust the jurisdiction of the court after the name of a successful D candidate at the primary election had been forwarded to INEC by a political party, the 1st respondent’s counsel submits the contrary by interpreting the same provision and extending the jurisdiction of the court to hear and determine such complaint even thereafter. The issue for determination as propounded by the parties has to do with E the interpretation of section 87 (9) of the Act which effectual intent and purpose are to operate independently of sections 31(1), 33 and 35 thereof. The 1st appellant as the applicant at the trial Federal High Court in challenging the competence of the jurisdiction of that court at page 82 of the record of appeal predicated his 1st ground of objection on the notion that:- F

“By the combined effect of section 31(1), section 33 and section 35 of the Electoral Act, 2012 (As amended), this Honourable Court has no jurisdiction to entertain a suit brought pursuant to section 87(9) of the Electoral Act 2010 (As amended) or any matter or complaint relation to or arising from a party primary in view of the fact that the name of the 3rd Defendant/Respondent had already been submitted by the Peoples Democratic Party to the 1st Defendant/Respondent as a candidate.” G

H The critical poser raised before this court for consideration is whether or not the jurisdiction of the trial court and hence the lower court is ousted with the name of the 1st appellant having already been submitted by the 2nd appellant to the 2nd respondent as a candidate. In other words the solution lies in the phrase *“having al-*

ready been submitted.”

With reference to section 31(1) of the Act, it simply states in summary that a political party should submit the list of candidates it proposes to sponsor at the election. By the use of the word “shall” in the section, it portrays a mandatory adjourning caveat restraining the commission from rejecting or disqualifying candidates for any reason whatsoever. The section relates to a situation after the political parties must have conducted their primaries. The selection is not the concern of the commission and hence the caution against rejection or disqualification of a candidate for whatever reason. In other words the political parties are, by this section, given free hand to select the candidate they intend to sponsor.

I further hasten to add also that the deductive intent of section 33 of the same Act is affirmative of section 31(1). This is because the section makes secure a candidate whose name has been submitted in accordance with section 31(1); except however in a situation of death or withdrawal by the candidate. The provision of section 35 of the same Act also prescribes the mode of withdrawal by a candidate which must be conveyed personally to the party whose responsibility it is to communicate such withdrawal to the Commission.

The cumulative effect is that once a party nominates a candidate under section 31(1) of the Act, it has no corresponding power to withdraw his nomination except either by the candidate himself or upon his death when he ceases to exist. On a calculated analysis of sections 31(1), 33 and 35 of the Act supra, the pre occupation is centred on the relationship of a candidate and his political party vis a vis the extent of the commission’s involvement which has nothing to do with the court. The sections on the one hand are closely knitted with one following from the other. On the other hand however, section 87(9) squarely deals with the jurisdiction of the court and it has no bearing on either sections 31(1), 33 or 35 as wrongly conceived by the learned appellants’ counsel. Section 87(9) in other words, had given an operational latitude to an aspirant who is aggrieved to apply to the Federal or High Court for redress. This is in spite of the prevailing electoral provisions and the rules of political parties which are all subject to the said provision.

From all indications, the construing intendment and operational extent of section 87(9) is neither dependent upon the Act itself

nor the rules of political parties. The section operates independently and is therefore not limited to time as wrongly interpreted by the appellants' counsel. The jurisdiction of the court in other words can not be ousted. My brother Onnoghen, JSC has adequately dealt with the appeal and I agree with the reasoning and conclusion arrived thereof. I also adopt his judgment as mine and dismiss this appeal in the same terms as the lead judgment inclusive of the order made as to costs.

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