

SUPREME COURT OF NIGERIA
14TH DECEMBER, 2012. SC. 127/2012
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, B. RHODES-VIVOUR, N. S. NGWUTA,
S. S. ALAGOA, JJSC**

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|--|-------------------|
| 1. MR. PERES PERETU | |
| 2. MR. EDDY JULIUS | |
| 3. EBIKITIN SUNDAY DIONGOLI | APPELLANTS |
| 4. BAYELSA STATE INDEPENDENT
ELECTORAL COMMISSION | |
| 5. CHIEF RUFUS ABADI | |
| AND | |
| 1. CHIEF KOKO GARIGA | |
| 2. CHIEF INEYE INGBAIFEGHA | |
| 3. SELEKEBINA SABOR | RESPONDENTS |
| 4. CHIEF DARIUS OBIENE | |
| (Sued in his capacity as erstwhile
Chairman of PDP Ad-hoc
Electoral Panel) | |
| 5. MR. JAMES AGARI | |
| (Sued in his official capacity as the
Secretary of the PDP State Executive
Committee in Bayelsa State) | |

ELECTIONS - Courts - Jurisdiction - Pre-election matter - Court can determine whether a political party - In taking any action - Complied with or violated its own constitution (H1)

WORDS & PHRASES - Elections - "Substitute" - Definition - Substitute means person or thing that is used - Instead of the one normally used (H2)

APPEALS - Court of Appeal - Powers - By s.15 of Court of Appeal Act - The court is empowered to assume jurisdiction - Where trial court erroneously declines jurisdiction (H3)

FACTS

1st, 2nd and 3rd plaintiffs/respondents were aspirants wishing to contest Local Government election scheduled for Bayelsa State. They aspired to contest for the position of Chairmen of their various Local Government Areas under the platform of the Peoples Democratic Party (PDP). They participated in the PDP primary elections and emerged victorious as Chairmanship candidates for their respective Local Government Areas. The State Chairman of the party in compliance with the PDP's Constitution, forwarded respondents' names to the State Independent Electoral Commission, for screening as the party's candidates at the election.

However, the State electoral commission ignored the names of respondents. The body rather accepted the names of 1st, 2nd and 3rd appellants forwarded to the Commission by the State Secretary of the party as the candidates for the election. Being dissatisfied, respondents commenced this action at the High Court of Bayelsa State by originating summons, seeking to be recognized as the lawful candidates of PDP at the election. The trial High Court however declined jurisdiction by holding that the matter was an entirely intra-party dispute in which courts have no jurisdiction. Respondents thus appealed to the Court of Appeal, Port Harcourt. The court assumed jurisdiction by invoking its powers under section 15 of Court of Appeal Act. The appeal was allowed. Being aggrieved, appellants filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“Issue One: Whether the Court below was right in applying/ relying on the provisions of the Electoral Act 2010 (as amended) in this case to give judgment against the appellants.

Issue Two: Whether the court below was right in holding that the trial court had jurisdiction to entertain this case on the ground that the claim of the respondents bordered on substitution of candidates.

Issue Four: Whether the Court below was right in holding that the trial court made some findings, which the parties did not appeal against.

Issue Five: Whether the court was not wrong in invoking section 15 of the Court of Appeal Act to give judgment to the 1st to 3rd respondents declaring them as chairmen of the respective Local Gov-

ernments in Bayelsa State in place of the appellants.”

HELD (Unanimously dismissing the appeal per NGWUTA JSC)

Courts - Jurisdiction - Pre-election matter

1. An ouster clause, if there is one in the Constitution of the PDP and all the parties in the case are members of the PDP, may exclude the jurisdiction of the Court from questioning any action of the party based on its Constitution. See Taylor’s case (supra). However, the courts are not precluded from determining any questions as to whether the act of the party is in consonance with its own Constitution. The Court can entertain a question as to whether the party, in taking any action, complied with or violated its own constitution.

(p. 4558 E)

Elections - “Substitute” - Definition

2. Issue 2 which includes appellants’ issue 3 deals with the issue of substitution. This issue arose from a misunderstanding of the word “substitute” and its derivative “substitution”. Substitute, a noun, means “a person or thing that you use or have instead of the one you normally use or have.” See Oxford Advanced Learner’s Dictionary, 7th Edition p. 1476. Black’s Law Dictionary, 9th Edition defines the word “substitute” as inter alia: “one who stands in another’s place”. It defines “substitution”, a derivative of the word “substitute” as, inter alia:

“A designation of a person or thing to take the place of another person or thing; the process by which one person or thing takes the place of another person or thing.”

Respondents’ case is that they were nominated as the candidates of the Party for election as chairmen of their various Local Government Areas in the coming election. Their names were dropped and names of other candidates submitted and new nominees took part in the election. They were on record as the PDP nominees in the election, later the list con-

taining their names were swapped with the list containing the names of the 2nd to the 6th Respondents. If this is not substitution, then maybe learned Counsel for the appellant will help me to update my knowledge of the two words. (p. 4559 C)

B Court of Appeal - Powers

3. Issue 4 is on the invocation of Section 15 of the Court of Appeal Act. The resolution of this issue naturally and logically flows from the resolution of the first three issues. The lower court found and rightly so, that the trial court had jurisdiction to determine matter before it. The invocation of s.15 of the Court of Appeal Act places the lower Court in the shoes of the trial Court as it empowers it to do what the trial Court would have done if it did not erroneously decline jurisdiction. Even by the decision in the case relied on by the appellant, Ezeigwe v. Nwawulu (2010) All FWLR (Pt.518) 794 at 825 paras. D-F, the conditions for the invocation of s.15 of the Court of Appeal Act are present in this case. Having invoked its powers under s.15 of the Act, the lower Court assumed jurisdiction and examined the relevant facts of the case and gave judgment setting aside the judgment of the trial Court and decided in favour of the respondents. I resolve issue 4 in favour of the Respondents and against the appellants.
(p. 4561 A)

REPRESENTATION

Abdul Mohammed with A. S. Arthur, Clement S. Burubyete and O. J. Makhere, for the Appellants

G Festus Keyamo with O. Otema, for the Respondents

CASES REFERRED TO

Dalhatu v. Turaki (2003) 15 NWLR (pt. 343) 2 SCNLR

Onuoha v. Okafor (1983) 2 SCNLR 244

H Lado v. CPC (2012) All FWLR (pt. 607) 601

Ohwovoriole SAN v. FRN (2003) FWLR (pt. 141) 2019

Ezeigwe v. Nwawulu (2010) All FWLR (pt. 518) 794

Ivienagbo v. Bazuaye (1999) 6 SCNJ 235

Fubara v. Ogolo (2003) FWLR (pt. 169) 1285

Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 267

Ojukwu v. Obasanjo (2004) 12 NWLR (pt. 886) 69

Oyebamiji v. Lawanson (2008) 15 NWLR (pt. 1109) 134

Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 423

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

Adewunmi v. A-G Ekiti State (2002) 1 SC 10

B

STATUTES & RULES REFERRED TO

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

Court of Appeal Act, s.15

Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 6(6)(b), 137(1)(b)

Court of Appeal Rules 2011, O.4 rr.3 and 4

C

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BOOKS REFERRED TO

Oxford Advanced Learner's Dictionary 7th Ed p. 1476.

Black's Law Dictionary 9th Ed

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LEAD JUDGMENT BY NGWUTA JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division delivered on the 10th day of February, 2012. The Respondents who were the plaintiffs in the trial court asked the Court to determine, in the originating summons, the following questions:

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"1. Whether the 1st Defendant is not under a legal obligation by the combined provisions of Articles 13.1(c) and 13.22 of the Constitution of the People Democratic Party 2009 (as amended) and all other provisions of the said Constitution, to screen the claimants as the lawfully nominated candidates of the Peoples Democratic Party for Sagbana, Kolokuma/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas, respectively, of Bayelsa State in respect of the forthcoming Local Government Election in Bayelsa State for 3rd of April 2010 having been presented to it by the 9th Defendant.

2. Whether by the provisions of Article 13.22 and Article 13.1 and all other provisions of the Constitution of the Peoples Democratic Party 2009 (as amended) the 9th Defendant, as against the 8th

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Defendant, is not the one legally empowered to issue Certificate of Return and present the names of the validly nominated candidates of the Peoples Democratic Party for Sagbama, Kolokum/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas respectively of Bayelsa State to the 1st Defendant for screening in respect of the forthcoming Local Government elections in Bayelsa State slated for 3rd of April 2010.

3. Whether by the provisions of Article 13.22 and Article 13.1 and all other provisions of the constitution of the Peoples Democratic Party (2009) as amended) the 8th Defendant is legally empowered to overturn Certificates of Return already issued by the 9th Defendant to the plaintiffs by issuing subsequent certificates of Return to the 2nd - 6th Defendants.”

Predicated on the anticipated resolution of the above questions in their favour, the Respondents (as plaintiffs) sought the following declarations:

“1. A declaration that the 1st Defendant is under a legal obligation by the combined provisions of Articles 13.1.(c) and 13.22 of the Constitution of the Peoples Democratic Party 2009 (as amended) to screen the claimants as the lawfully nominated candidates of the Peoples Democratic Party for Sagbama, Kolokima/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas respectively of Bayelsa State in respect of the forthcoming Local Government elections in Bayelsa State slated for 3rd of April 2010.

2. A declaration that the purported screening of the 2nd to 6th Defendants as Chairmanship candidates of the Peoples Democratic Party by the 1st Defendant is illegal, null and void.

3. A declaration that by the provisions of Article 13.22 and Article 13.1 and all other provisions of the Constitution of the Peoples Democratic Party 2009 (as amended) the 9th defendant, as against the 8th defendant, is the one legally empowered to issue Certificate of Return and present the names of the validly nominated candidates of the Peoples Democratic Party for Sagbama, Kolokuma/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas respectively of Bayelsa State to the 1st defendant for screening in respect of the forthcoming Local Government elections in Bayelsa State slated for 3rd of April 2010.

4. A declaration that by the provision of Article 13.22 and

Article 13.1 and all other provisions of the constitution of the Peoples Democratic Party 2009 (as amended) the 8th defendant is not legally empowered to overturn Certificates of Return already issued by the 9th Defendant to the plaintiff by issuing subsequent Certificates of Return to the 2nd - 6th defendants.

5. *An order setting aside the certificates signed and issued to the 2nd - 6th defendants by the 8th defendant herein in his capacity as Secretary of the State Executive Committee of the Peoples Democratic Party in Bayelsa State for same was a nullity and ultra vires.* ^B

6. *An order setting aside the screening exercise carried out by the 1st defendant between the 16th and 18th of December, 2009 on the 2nd to the 6th defendants among others, as Peoples Democratic Party flagbearers or nominees for Sagbama, Kolekuma/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas in the forthcoming elections as same was an exercise futility.* ^C

7. *An order of perpetual injunction restraining the 2nd to 6th defendants either by themselves and/or through their agents, privies and/or servants jointly and/or severally from parading themselves as PDP Chairmanship candidates for the forthcoming Local Election in Bayelsa State in Sagbama, Kolokuma/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas respectively of Bayelsa State.* ^D

8. *An order of perpetual injunction restraining the 1st defendant from according recognition to the 2nd to 6th defendants as Chairmanship candidates duly returned by the Ad-hoc Electoral Panel of the Peoples Democratic Party for Sagbama, Kolokuma/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas respectively in Bayelsa State to contest the forthcoming Local Government election on the platform of PDP.* ^E

9. *An order of perpetual injunction restraining the 1st defendant from organizing, supervising and/or conducting any local Government election(s) in Bayelsa State in respect of the forthcoming Local Government Elections slated for 3rd April 2010 without the inclusion of the plaintiffs as the validly nominated candidates of the Peoples Democratic Party.* ^F

10. *An order compelling the 1st defendant herein to accept and screen the plaintiffs as the validly nominated Chairmanship candidates duly returned by the Ad-hoc Electoral Panel of the Peoples* ^G

Democratic Party for Sagbama, Kolokuma/Opokuma, Ogbai, Ekeremor and Yenagoa Local Government Areas respectively of Bayelsa State..”

In its judgment, the trial Court presided over by Ugo J., reviewed the case of the parties. In its conclusion, laced with comic relief, the trial Court held:

“The net result of all I have said if expressed in our local parlance would come to this: that claimants have come to Sokoto to look for what is exclusively in their Sokoto trouser; that is that party’s National Executive Committee. Their case is non justiciable here and is accordingly struck out. There shall be no order as to costs.” (See page 489 of the record).

Aggrieved by the said judgment, Respondents appealed to the Court of Appeal, Port Harcourt Division, on two grounds. In its judgment, based on the subsequently amended notice of appeal the court below concluded thus:

“The 3-4-2010 Local Government Elections which the instant appeal relates to have been conducted and the PDP has won same. It has been demonstrated in this judgment that it is the appellants who being the lawful candidates for the election that won the election for their party. The justice the appellants deserve and indeed the determination of the real issue in controversy between the parties in the appeal require that the appellants be and are hereby declared the lawfully elected chairpersons of their respective Local Government Councils. Parties are to bear their respective costs.” (See page 635 of the record).

Against the said judgment, appellants appealed to this Court on 10 grounds. Upon service of the notice and grounds of appeal on the respondents, the parties, in compliance with the rules, filed and exchanged briefs of argument. From his 10 grounds of appeal learned Senior Counsel leading for the appellants distilled the following issues for determination:

“Issue One: Whether the Court below was right in applying/ relying on the provisions of the Electoral Act 2010 (as amended) in this case to give judgment against the appellants.

Issue Two: Whether the court below was right in holding that the trial court had jurisdiction to entertain this case on the ground that the claim of the respondents bordered on substitution of candi-

dates.

Issue Three: Whether the court below was right to raise the issue of substitution of chairmanship candidate in this case on appeal before it suo motu without affording the parties the opportunity to address the Court on it before pronouncing on it.

Issue Four: Whether the Court below was right in holding that the trial court made some findings, which the parties did not appeal against.

Issue Five: Whether the court was not wrong in invoking section 15 of the Court of Appeal Act to give judgment to the 1st to 3rd respondents declaring them as chairmen of the respective Local Governments in Bayelsa State in place of the appellants.

Learned counsel for the 1st to 3rd Respondents raised the following four issues for determination:

“1. Whether from the facts of this case, the High Court had the requisite jurisdiction to entertain the claims of the 1st - 3rd respondents’ (Ground 1, 2 and 3).

2. Whether the Court of Appeal was right to conclude that the 1st - 3rd Respondents were illegally substituted as chairmanship candidates for the Peoples’ Democratic Party. (Grounds 4, 5, 6 and 7).

3. Whether there were concurrent findings of facts by the High Court and the Court of Appeal which are perverse and liable to be set aside. (Grounds 8, 10 and 14).

4. Whether, having regard to the facts and circumstances of this case, the Court of Appeal rightly relied on Section 15 of the Court of Appeal Act to decide in favour of the 1st - 3rd Respondents. (Grounds, 8, 11 and 12)”

Appellant’s counsel filed a reply brief in answer to the preliminary objection raised by the 1st - 3rd Respondents. The said reply brief is no longer relevant to this appeal, it having been overtaken by the withdrawal of the preliminary objection by learned counsel for the 1st - 3rd Respondents. The reply brief is hereby struck out. In his argument in issue 1 in his brief, learned Counsel for the appellant said that the Court below based its decision on Section 87 (a) of the Electoral Act 2010 (as amended). He said that the disagreement of the candidates of the Party leading to this appeal occurred in 2009 while the Local Government election in Bayelsa State was held in

April 3rd, 2010. He said that the amended Electoral Act of 2010 which introduced Section 87 (a) upon which the lower court assumed jurisdiction in the matter did not become operative until December 29th, 2010 and that the Act as amended has no retrospective effect.

Based on the above and the authorities he relied on such as ^B Dalhatu v. Turaki (2003) 15 NWLR (Pt.343) 2 SCNLR; Onuoha v Okafor (1983) 2 SCNLR 244; Lado & ors. v. CPC & ors (2012) All FWLR (Pt.607) 601 at 629, he urged the Court to answer issue 1 in the negative.

^C In issue 2, learned counsel referred to the claims in the originating summons and contended that the lower court misapprehended the issues in contention between the parties. The main thrust of the appellant's argument is on the issue of alleged unlawful substitution, an issue he said the Court below raised suo motu and failed to afford ^D the parties opportunity to address same before determining the appeal on it. He relied on Ukpong v. Commissioner, Finance & Economic Development Akwa Ibom State (2007) All FWLR (pt.350) 1273-1274, among others. He contended that the Respondents never made a case based, or bordering on, substitution.

^E Issue 3 is substantially the same as issue 2 and ought to have been argued together. Learned Counsel stressed that the lower court should not have raised an issue outside the Respondent's case and that the lower Court should not have raised the issue suo motu and decided on it without affording the parties opportunity to address it if ^F they so desired. He contended that the judgment of the lower Court occasioned grave miscarriage of justice to the appellants.

In issue 4, learned counsel for the appellant reproduced a portion of the judgment at page 630 of the records, thus:

^G *"I hasten to restate that the lower Court has made a very crucial finding in respect of which none of the respondents have appealed. It is in the Court's decision that the appellants have participated and affidavits for and against the appellants' originating summons sustain these findings, in their party's congress, and emerged ^H the party's candidates,"*

He referred to pages 477 to 489 of the record and contended that the trial Court made no such finding, as the trial Court did not review the facts of the case. He argued that the finding of the Court below was not based on the judgment of the trial Court. He

relied on Ohwovoriole SAN v. Federal Republic of Nigeria & 3 ors (2003) FWLR (Pt.141) 2019 at 2036 wherein the Court cautioned that:

“It is not the duty of the Court of Appeal to fish or scuttle around for evidence or to go to the extent of pursuing same when a party fails to produce it.” Per Kalgo, JSC. B

For similar opinion, he referred to Dennis Ivienagbo v. Henry Osato Bazuaye (1999) 6 SCNJ 235 at 243, paras 23-30; Fubara & ors v. Ogolo & Ors (2003) FWLR (pt.169) 1285 at 1312 to 1313 paras H-A. On the basis of the authorities he submitted that there was no basis for the finding of the lower Court. In view of that fact that there are conflicts in the affidavit evidence, Counsel argued, this is not a proper case for the application of Section 15 of the Court of Appeal Act or the case of Amaechi v. INEC (2008) 5 NWLR (Pt.1080) 227. He urged us to answer issue 4 in the negative. C D

In issue 5, learned counsel dwelt at length on the invocation of S.15 of the Court of Appeal Act to which he referred in his argument in issue 4. He relied on Ezeigwe v. Nwawulu (2010) All FWLR (Pt.518) 294 at 828 paras. D-F for conditions for invocation of s.15 of the Act as: E

“(a) that the lower court or trial court must have the legal power to adjudicate in the matter before the appellate court can entertain it;

(b) that the real issue by the claim of the appellant at the lower court or trial court must be seen to be capable of being distilled from the grounds of appeal; F

(c) that all the necessary materials must be available to the court for consideration;

(d) that the need for expeditious disposal of the case or suit to meet the ends of justice must be apparent on the face of the materials presented, and G

(e) that the injustice or hardship that will follow if the case is remitted to the court below must be clearly manifest.”

Learned Counsel contended that the Court below failed to consider the above requirements before it invoked section 15 of the Court of Appeal Act. He argued that even if the lower Court could invoke s.15 of the Act, the Court did not evaluate the evidence before reaching a decision in a matter that relates to the domestic affairs H

of the party and over which no court has jurisdiction to entertain. He urged the Court to resolve the issue in favour of the appellants. He urged the court to allow the appeal.

Arguing issue 1 in his brief, learned counsel for the 1st - 3rd respondent relied on *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 for conditions for the jurisdiction of a Court in a matter before it:

“(a) The Court is properly constituted as regards numbers and qualifications of the Members of the bench, and no Member is disqualified for one reason or the other.

(b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

(c) The case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of its jurisdiction.”

He referred to the objection to the jurisdiction of the trial Court to entertain the matter on the ground that the matter is an internal affair of the Party, PDP, but submitted that the case of the 1st-3rd respondents is not limited to party and its officials but also involves the Bayelsa State Independent Electoral Commission (4th Appellant), a non-member of the PDP. Learned Counsel submitted that in addition to other reliefs the Court is called upon to determine whether or not the 4th respondent has power to ignore the list of candidates sent to it by the 5th appellant - the Party Chairman on behalf of the party in preference to the list sent by the Secretary of the Party without express delegation instruction of the Chairman. He contended that the main claim of the 1st - 3rd Respondents affects the legal duties of the 4th appellant and is outside the party's executive powers to resolve. He referred to page 673 of the record, S.34 of the Electoral Act 2006 and *Ugwu v. Ararume* (2007) 12 NWLR (Pt.1048) 267 at 475 paras. D-H in his submission that the issue of the internal affairs of political parties is not longer strictly a non-justiciable issue.

He referred to the complaint of the 1st - 3rd respondent that they were lawfully nominated, but excluded from the election and on the authority of *Ojukwu v. Obasanjo* (2004) 12 NWLR (Pt.886) 69 at 2221 para. E. and S.137 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). He contended that

election is not the actual voting but all the processes leading up to the election. He argued that the failure of the 4th Appellant to perform its legal duty to the detriment of the political ambitions of the 1st-3rd respondents resulted to a cause of action for which the 1st - 3rd respondents are entitled to invoke s.6 (6) (b) of the 1999 Constitution (as amended). He argued that the cases of *Lado & 42 ors v. CPC* (supra); *Dalhatu v. Turaki* (supra); *Onuoha v. Okafor* (supra) relied on by the appellant to the effect that a Court of law has no jurisdiction to adjudicate on the issue of which candidate a political party should nominate and sponsor and submitted that the principle is not applicable to this case as the names of the 1st-3rd Respondents had already been submitted to the 5th Respondent. He urged the Court to hold that the cases cited by the appellants are not applicable to this case. B C

In issue 2, he contended that the Court of Appeal was right in its conclusion that the 1st-3rd Respondents were illegally substituted as Chairmanship candidates for the Peoples' Democratic Party. Learned Counsel referred to sequential and chronological order of events from the screening of the 1st-3rd Respondents to the submission of the names of 1st-3rd Appellants to the 4th Appellant as the party's chairmanship candidates. He argued that in Articles 13.1 and 13.22 of the Constitution of the PDP, issuance of Certificate of Return is the function of the State Chairman of the Party and not that of the Secretary except where he has been expressly delegated or mandated in that regard. D E F

On the complaint that the Court below raised the issue of unlawful substitution suo motu, Counsel submitted that a Court of law is perfectly placed to come to a conclusion of law and facts based on all materials placed before it. He concluded that the issue of unlawful substitution is a summation of the fact placed before the court below. He referred to paragraphs 9.1 to 9.5 of his brief and adopted the argument therein on substitution. He urged the Court to discountenance the issue raised by the appellants on unlawful substitution. G H

On issue 3, learned counsel reproduced pages 478 to 479 of the record for the summary of the facts of the case by the trial Judge. He argued that the lower Court, in spite of the crucial findings of the trial court, made its own independent deductions from the facts and

materials placed before it as is evident at pages 630 - 631 of the record. He cited the case of Oyebamiji v. Lawanson (2008) 15 NWLR (Pt.1109) 134 para 13 and urged the court not to interfere with concurrent findings of facts by the two courts below as the findings have not been shown to be perverse. He relied on Inakoju v. Adeleke B (2007) 4 NWLR (Pt.1025) 423 at 662 paras. B - C and contended that Court of Appeal can make findings based on facts upon which trial Court failed to make findings. He relied on Order 4 Rules 3 and 4 of the Court of Appeal Rules, 2011 for the power of the Court of C Appeal to draw inferences of fact and give any judgment or make any order which the trial court ought to have given or made and said this was what the Court of Appeal did. He urged us to so hold.

In issue 4, learned counsel reproduced in full section 15 of the Court of Appeal Act and relied on Inakoju v. Adeleke (supra) for D conditions for the invocation of the section of the Act. He argued that the indices set out in the case as well as in Okoya v. Santilli (1990) 2 NWLR (Pt.131) 172 are present in this case. In view of the fact that the case has to do with a term of office of which three quarters are already spent, he contended that if the matter is remitted to the High E Court and the 1st - 3rd Respondent won, they will go home empty. He urged the Court to resolve the issue in favour of the 1st - 3rd Respondents and to dismiss the appeal.

Issue 1 is the same in both briefs. Issues 2 and 3 in the appel- F lants' brief will be merged leaving the appellants with four issues which are in substance the same as the four issues in the Respondent's brief. I will determine the appeal on the four issues in the appellants' brief.

Issue 1 questions the jurisdiction of the High Court of Bayelsa State to entertain the matter. A locus classicus on the jurisdiction of a G Court to entertain a matter before it is Madukolu v. Nkemdilim (1962) All NLR 1 in which it was held that a Court is competent when:

- H “(a) *it is properly constituted as regards numbers and qualification of the members on the bench, and no member is disqualified for one reason or another;*
 (b) *the subject matter of the case is within its jurisdiction, and*
 (c) *the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.*” See Abdulsalam v. Salawu (2002) 6 SC (Pt.2) 196; Adewunmi v. A-G Ekiti State (2002) 1 SC 10; NDIC v. CFN (2002) 3

SC 10; A-G. Ogun State v. Coker (2002) 17 NWLR (Pt.269) 304; a few of the cases based on the decision in Madukolu's case (supra).

Irrespective of whatever law or provision of law the lower Court applied in arriving at its decision can it be said that in the light of claims of the Respondents as plaintiffs in the trial Court, the High Court of Bayelsa had no jurisdiction in the matter? The appellants rest their case on the second arm of the decision in Madukolu's case to the effect that the subject matter of the case is not within the jurisdiction of the High Court of Bayelsa State. It is their case that the case, founded on the internal or domestic affairs of their party, PDP, is not justiciable in any Court. I have already set out the claims before the trial Court. Contrary to the submission of learned Counsel for the appellants, the issues before the trial Court go beyond the now over flogged domestic jurisdiction of political parties.

The 1st defendant in the trial Court is Bayelsa State Independent Electoral Commission. The questions for determination and the reliefs sought in the trial Court show that the 1st defendant is not just a nominal defendant but has a duty to justify its action in the subject matter of the originating summons. In any case, and more importantly, the Respondents' case is predicated on alleged violation, or non-compliance with, the provisions of Articles 13.1 and 13.22 of the Constitution of the Peoples' Democratic Party, PDP, 2009 (as amended). Learned Counsel for the Appellants had argued that there is no provision in the Constitution of the PDP to support the claim of the Respondents that they are/were the validly nominated candidates of the party for the said election. However, learned Counsel carefully and deliberately refrained from making any reference to either Article 13.1 or 13.22 of the Party's Constitution on which the respondents founded their case.

Chief Rufus Abadi was the Chairman of the PDP at the material time. This fact is not in dispute. On pages 9, 12, 13, 14 and 15 are certified copies of the congratulatory letters sent by the PDP Chairman, 9th defendant to each of the four plaintiffs. See Exhibits AA8, AA9, AA10, AA11 and AA12. Exhibits AA3, AA4, AA5, AA6 and AA7 are certified true copies of certificates dated 10th December 2009 and issued and signed by the 9th defendant in his capacity as the Chairman of PDP to the plaintiffs. See paragraphs 13 and 14 of the supporting affidavit in the originating summons. Exhibit AA1 in para-

graph 11 of the affidavit is a certified copy of the list of the PDP nominees sent by the 9th defendant to the 1st defendant. It contains the names of the five plaintiffs with their respective Local Governments. The authenticity of the exhibits referred to in the plaintiffs' supporting affidavit was not questioned nor was any cogent reason advanced, based on Articles 13.1 and 13.2 of the party's constitution 2009 (as amended) why the list prepared and submitted by one James Agari described as the Secretary of Electoral Panel should be preferred to that submitted by the 9th defendant.

Apart from the argument to the effect that the matter is internal affairs of the PDP, learned counsel for the appellant did not refer to any specific ouster clause in the Party's Constitution, nor would such a clause avail the appellants based on the facts of this case. Dealing with ouster clauses in *Taylor v. National Assistance Board* (1957) 1 All ER 18B at 185 para. E - F, it was decided that:

"The remedy is not excluded by the fact that the determination of the Boards is by Statute made final. Parliament only gives the impress of finality to the decision of the Board on the condition that they are reached in accordance with the law and the Queen's Courts can issue a declaration to see that condition is fulfilled." See Lord Denning's "The Discipline of Laws" 1979 Edition, p.69.

An ouster clause, if there is one in the Constitution of the PDP and all the parties in the case are members of the PDP, may exclude the jurisdiction of the Court from questioning any action of the party based on its Constitution. See Taylor's case (supra). **However, the courts are not precluded from determining any questions as to whether the act of the party is in consonance with its own Constitution. The Court can entertain a question as to whether the party, in taking any action, complied with or violated its own constitution.** In *Lado v. CPC* (supra) and others relied on by the appellants, this Court held that a Court of law has no jurisdiction to adjudicate on the issue of which candidate a political party should nominate and sponsor. With profound respect to learned counsel for the appellants, he does not seem to appreciate the import of this court's decision in *Lado's* case vis-a-vis the facts of this case.

In their originating summons, the plaintiffs did not seek to be nominated and sponsored by the PDP and so did not seek the assis-

tance of this Court in that respect. Their case is that they were already nominated and a replacement of their names with the names of other people was not in compliance with Articles 13.1 and 13.22 of the Party's Constitution. As I said earlier, the court has jurisdiction to look into the facts before it to determine whether the action of the officers of the party in replacing the plaintiffs with other candidates was in compliance with the party's Constitution. It is my view that the trial High Court erred in declining, and the Court below was right in assuming jurisdiction to entertain the matter. I resolve issue 1 against the appellants.

Issue 2 which includes appellants' issue 3 deals with the issue of substitution. This issue arose from a misunderstanding of the word "substitute" and its derivative "substitution". Substitute, a noun, means "a person or thing that you use or have instead of the one you normally use or have." See Oxford Advanced Learner's Dictionary, 7th Edition p. 1476. Black's Law Dictionary, 9th Edition defines the word "substitute" as inter alia: "one who stands in another's place". It defines "substitution", a derivative of the word "substitute" as, inter alia:

"A designation of a person or thing to take the place of another person or thing; the process by which one person or thing takes the place of another person or thing." See p. 1476. of the Dictionary.

Respondents' case is that they were nominated as the candidates of the Party for election as chairmen of their various Local Government Areas in the coming election. Their names were dropped and names of other candidates submitted and new nominees took part in the election. They were on record as the PDP nominees in the election, later the list containing their names were swapped with the list containing the names of the 2nd to the 6th Respondents. If this is not substitution, then maybe learned Counsel for the appellant will help me to update my knowledge of the two words. Substitution is the direct meaning of the entire process of the PDP for which the Respondents complained to the Court, even if the word did not appear in the proceedings. From the record the Court did not raise the issue of substitution suo motu, it was there in substance for all who

cared to see. Arguments of the parties in the two Courts below relate to substitution. The Court below has no business calling on the parties to address an issue on which they rested their respective cases. I resolve the issue against the appellant.

B Issue 3 on the propriety vel non of the finding by the lower court that the trial court made some findings which the parties did not appeal against. At page 478 of the record, the learned trial court found as a fact that:

C *“The plaintiffs and the 2nd-9th defendants are all members of the Bayelsa State branch of the Peoples’ Democratic Party PDP; the 9th defendant was the PDP’s Bayelsa State branch Chairman while the 8th defendant was its secretary at all material times. The 7th defendant was chairman of an ad-hoc electoral Panel set up by the Bayelsa State PDP for the conduct of its Local Government Council Party primaries.”*

D Also on the same page, the trial held:

E *“They were duly screened by their party and cleared to contest as chairmanship candidates of the party following their said party’s Local Government Area Congress held on the 28th day of November, 2009.”*

F These are findings of fact made by the trial Court on the materials before it. They are material to the case before the trial Court and though it was the respondents who appealed the decision of the trial Court the appellant did not cross-appeal those findings which support the case of the Respondent. The lower Court found as facts that the trial Court made the findings and that the said findings were crucial and that none of the parties appealed against the findings. Appellants have not disputed the said findings or appealed against G them. Since the lower Court affirmed the findings, they became concurrent findings of the two Courts below which this Court cannot disturb as there is sufficient evidence to support them. See *Njoku & ors v. Eme & ors* (1973) 5 SC 293 at 306; *Kale v. Coker* (1982) 12 SC 252 at 271 and the findings are not perverse nor is there a substantial error either in substantive or procedural law which if not corrected will lead to miscarriage of justice. See *Akinsanya v. UBA Ltd* (1986) 4 NWLR (Pt.35) 273; *Lokoyi & Anor v. Olojo* (1983) 8 SC 61 at 68. There is no substance in issue 3 and it is resolved against the H appellant.

Issue 4 is on the invocation of Section 15 of the Court of Appeal Act. The resolution of this issue naturally and logically flows from the resolution of the first three issues. The lower court found and rightly so, that the trial court had jurisdiction to determine matter before it. The invocation of s.15 of the Court of Appeal Act places the lower Court in the shoes of the trial Court as it empowers it to do what the trial Court would have done if it did not erroneously decline jurisdiction. Even by the decision in the case relied on by the appellant, Ezeigwe v. Nwawulu (2010) All FWLR (Pt.518) 794 at 825 paras. D-F, the conditions for the invocation of s.15 of the Court of Appeal Act are present in this case. Having invoked its powers under s.15 of the Act, the lower Court assumed jurisdiction and examined the relevant facts of the case and gave judgment setting aside the judgment of the trial Court and decided in favour of the respondents. I resolve issue 4 in favour of the Respondents and against the appellants.

My Noble Lords, this case is a fallout of battle for supremacy by two key officers of the PDP, each with the support of his acolytes, to the detriment of the party to which they belong. It is a sad commentary on a system wherein individuals who have managed to clutch to power in the system demand to be, and are actually, revered and honoured more than the system from which they derive their powers. It is the bane of any system or organisation to elevate any member thereof, no matter his status, over and above the system or organization in which he operates and to which he owes his power. An army is much more than the numerical strength of its soldiers. The same applies to any organization, including political parties. The interest of the Peoples' Democratic Party (PDP) or any other system or association should on no account be subrogated to the interest of any member or group of members. The interest of the party or system is supreme.

In conclusion, this appeal is bereft of merit. I dismiss the appeal and I adopt the conclusion reached by the lower court that:

“The justice the appellants deserve and indeed the determination of the real issue in controversy between the parties in the appeal require that the appellants be and are hereby declared the lawfully elected chairpersons of their respective Local Government

Councils.”

Respondents are to assume their respective positions as Chairperson of their respective Local Government Councils forthwith. The 2nd to 6th Appellants are to pay costs assessed and fixed at N100,000.00 to the Respondents.

B

MOHAMMED JSC

This appeal involves a pre-election dispute relating to the Local Government conducted by the Bayelsa State Independent Electoral Commission on 3rd April, 2010. The 1st, 2nd and 3rd Respondents were aspirants wishing to contest that election as Chairmen of their various Local Government Areas under the platform of their party, the Peoples Democratic Party in their State. They participated in the P.D.P. primaries held on 28th November, 2009 and emerged victorious as Chairmanship candidates for their respective Local Government Areas. The State Chairman of the party in compliance with the Constitution of their Party, forwarded their names to the State Independent Electoral Commission by a letter dated 3rd December, 2009 to be screened to contest the election. The Respondents were later issued with Certificates of return by the Chairman of their Party on 10th December, 2009 who also duly notified the State Independent Electoral Commission which ignored the names of the Respondents after accepting the names of the 1st, 2nd and 3rd Appellants forwarded to the Commission by the State Secretary of the Peoples Democratic Party as the party’s candidates to contest the election.

The Respondents on realizing that they had been trapped in a power struggle between the Chairman and the Secretary of their Party in the State, rushed to the High Court with Originating Summons for reliefs before the date of the election on an action against the Defendants, now Appellants in this Court. The trial High Court however declined jurisdiction in the case, holding that it was an entirely intra-party dispute in which courts of law have no jurisdiction. The Court of Appeal thought otherwise on appeal by the Respondents and declared them the duly elected Chairmen of their respective Local Government Councils in Bayelsa State even though after the election had been held and the Appellants had been declared the winners of the election, hence the Appellants appeal now in this Court.

At the hearing of the appeal, the learned senior Counsel for the Appellants in the Appellants brief of argument had identified as many as 5 issues for determination from the 10 grounds of appeal filed by the Appellants. For the 1st, 2nd and 3rd Respondents however, 4 issues were distilled for the determination of the appeal. I have had the opportunity before today of reading in draft, the judgment of my learned brother Ngwuta, JSC. All the issues canvassed in the appeal have been ably treated in the leading judgment and properly resolved. I entirely agree that the appeal is without merit and consequently ought to be dismissed.

However, let me put a word or two on the Appellants second issue of whether the Court below was right in holding that the trial Court had jurisdiction to entertain the present case on the ground that the claim of the Respondents bordered on substitution of candidates. By the leading decision of this Court on the question or issue of jurisdiction in *Madukolu & Ors. v. Nkemdelim & ors.* (1962) 2 S.C.N.L.R. 341, the Appellants are saying that the subject matter of the action was not within the jurisdiction of the trial court. However, from the undisputed facts of this case which have been clearly narrated in the leading judgment, the names of the Respondents were first forwarded to the Bayelsa State Independent Electoral Commission as Chairmanship candidates of the Peoples Democratic Party for clearance to contest the Local Government Election by the Chairman of the Party in the State. It was after this action on the part of the Chairman of the party that the Secretary of the party decided to forward the names of the Appellants to the same State Independent Electoral Commission as his own candidates for the same election and it was that list that was honoured by the electoral body to contest the election thereby ignoring the earlier list sent by the Chairman of the party. This was a clear case of substitution with no cogent and verifiable reasons whatsoever. The Plaintiffs/Respondents' action was far from being an internal or domestic affair of the Peoples Democratic Party but rather, it was principally challenging the conduct of the 1st Defendant in the action being the Bayelsa State Independent Electoral Commission now 4th Appellant, for flagrantly refusing to honour the list of candidates of the Peoples Democratic Party sent to it by the State Chairman of the Party to participate in the Local Government Election in the State. Furthermore, the action at the trial

court also questioned the conduct and power exercised by the Secretary of the Peoples Democratic Party of Bayelsa State against the background of the provisions of Articles 13.1 and 13.22 of the Constitution of the Peoples Democratic Party. In this respect, I find no reason whatsoever to disagree with the Court below that the subject
B matter of the Respondent action was within the jurisdiction of the trial Court.

Taking into consideration the above reasons in addition to the more comprehensive reasons given in the leading judgment, I
C also find no merit in the appeal which I hereby dismiss and abide by the orders given in that judgment including the order on costs.

MUNTAKA-COOMASSIE JSC

D I read in advance the beautiful lead judgment of my learned brother Ngwuta JSC. He has exhaustively dealt with the issues raised before us and I have nothing more useful to add to his conclusions. I also dismiss the appeal and make the same order as to costs as made
E by him in the lead judgment.

ALAGOA JSC

F I read before now and in draft the judgment just delivered by my learned brother Nwali Sylvester Ngwuta, JSC. He has exhaustively dealt with all the issues most appropriately. I agree entirely with the reasoning and the conclusion reached. I have nothing more to add.

I too dismiss the appeal while abiding by all the other orders
G contained in the lead judgment including the order on costs.

H