

**SUPREME COURT OF NIGERIA**

FRIDAY 12TH APRIL, 2013. SC. 261/2012

**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, S. GALADIMA, N. S. NGWUTA, M. U. PETER-  
ODILI, M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC**

1. CHIEF S. O ADEBAYO

(State Chairman, Peoples Democratic  
Party, Kwara State)

2. ALHAJI BAALE ADESINA

(State Chairman, Peoples Democratic  
Party, Kwara State)

3. HON. BASHIR O. BOLARINWA

AND

1. PEOPLES DEMOCRATIC PARTY

2. DR. BELLO HALIRU MOHAMMED

(Acting National Chairman, Peoples  
Democratic Party)

3. ALHAJI ABDULFATAI AHMED

..... APPELLANTS

..... RESPONDENTS

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SUPREME COURT - Judgment - Setting aside - Instances - The court may overrule its previous decision - Where the decision was given per incuriam - Or has become an instrument of injustice (H1)

SUPREME COURT - Judgment - Departure from - Procedure - The court examines facts of the decision it is called upon to reverse - In the light of facts of the case calling for reversal (H2)

EVIDENCE - Evaluation - Trial court ascribes probative value to evidence - And appellate court does not interfere - Save where the evaluation was perverse - Or not supported by evidence on record (H3)

LEGAL DRAFTING - "Notwithstanding" - Effect of use of the word in Article 17.2 of 1<sup>st</sup> respondent's constitution - Makes the Article self fulfilling - That no other provision therein shall subjugate it (H4)

COURTS - Issue - Suo motu raising - Court can raise issue suo motu

- But must call on parties to address it on the said issue - Otherwise it would be breach of fair hearing - And decision reach thereat is liable to be set aside (H5)

JUDGMENTS - Obiter dictum - In resolving an issue - The Judge can make comment which is usually harmless - And such is considered as obita dictum - That does not constitute the decision of court (H6)

### **FACTS**

On the 9<sup>th</sup> January 2011, defendant/1<sup>st</sup> respondent (Peoples Democratic Party) appointed National Electoral Panel which conducted the State congress for the election of 1<sup>st</sup> respondent's gubernatorial candidate for Kwara State in the April 2011 general elections in Nigeria. At the end of the exercise, 3<sup>rd</sup> respondent emerged winner by the majority of the votes cast by the accredited delegates. 3<sup>rd</sup> respondent's name was thereafter forwarded to the Independent National Electoral Commission (INEC) as 1<sup>st</sup> respondent's candidate. Plaintiff's/appellants' contention is that the State Executive Committee of 1<sup>st</sup> respondent had conducted a gubernatorial primary election on that same 9<sup>th</sup> January 2011 but at another venue, wherein 3<sup>rd</sup> appellant emerged winner.

Appellant therefore claim that the State Executive Committee of the party being the duly recognized body for the Kwara State branch of the party, the result of its electoral process should be the recognized primary election. Consequently, appellants commenced this action by originating summons filed in the Federal High Court Abuja for determination of some question based on the Constitution of 1<sup>st</sup> respondent i.e. the proper party officers to conduct primary election to nominate gubernatorial candidate for 1<sup>st</sup> respondent in the State. The suit was later transferred to the Federal High Court Ilorin. Necessary processes were filed in the matter. After hearing submissions from both sides, the trial court found no merit in the originating summons and dismissed same. Aggrieved, appellants appealed to the Court of Appeal and in a considered judgment, the court dismissed the appeal. Still not satisfied, appellants filed appeal to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"3.1 Whether or not the lower court was right in its conclu-*

*sions that the trial court properly and correctly evaluated and drew correct inferences from the affidavit and documentary evidence placed before it and that by the tenure of Exhibits 1, 2, 3 & 4 and Articles 2, 12.1(i) & (j); 14.1 and 14.5 of Exhibit 1 (PDP Constitution) the 1st appellant's led State Executive Committee of the 1st respondent is not the authentic Kwara State Executive Committee*

*3.2 Whether or not the lower court was right in its conclusions that by Articles 12.72; 17.1 and 17.2 of the constitution of the 1st respondent (Exhibit 1), the powers of the State Chairman and the State Executive Committee under Articles 12.3 (b) & (d); 12.41(c) and 13.22 of Exhibit 1 with respect to the congress for the election or nomination of the governorship candidates of the party have been taken away.*

*3.3 Whether or not the lower court was right in its conclusions that the holdings of the trial court on issues raised suo motu by it were inconsequential and did not occasion a miscarriage of justice on the appellants who were said to have been tardy in not addressing the issues."*

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

*SUPREME COURT - Judgment - Setting aside - Instances*

**1. Generally speaking the Supreme Court may depart from or overrule its previous decision under certain circumstances and in accordance with laid down principles of law, such as where it is shown or demonstrated that the earlier decision is either erroneous in law, or given per incuriam or that it has become an instrument of injustice etc.**

***In addition to the above, where the decision complained of hinders the proper development of the law in which a broad issue of public policy was involved, the Supreme Court may depart from such a decision.***

***It flows from the above that the reasons for the invitation to depart from a previous decision must be strong, coherent and adequate.***

***It should be pointed out that the provisions of Order 6 Rule***

**5(4) of the Supreme Court Rules does not confer a right of appeal on a party or any person for that matter to complain about a decision which does not favour his case!! However, the Supreme Court has no power, extra judicially to overrule, reverse or nullify its previous decisions whether on questions**  
B **of substantive or procedural law. Such decisions may, however, only be annulled by legislation or by a judicial decision of the court given intra judicially when the court is satisfied that the previous decision was given per incuriam. (p. 1539 A)**

C *SUPREME COURT - Judgment - Departure from - Procedure*  
**2. A reversal of an earlier decision of the Court can give rise to instability in the rules of judicial precedent, particularly the rules governing stare decisis, hence the court must be satisfied or convinced that the earlier decision was clearly and**  
D **patently wrong. How does the court go about doing so? I agree with the view expressed by this court in the case of Veepee Industrial Ltd vs Cocoa Industrial Ltd supra that the court will closely examine the facts of the decision it is called upon to**  
E **reverse in the light of the facts of the case calling for reversal, because facts are the foundation of the law and case are not decided in vacuo but in relation to the particular facts of the case before the court.**

**I must point out the obvious which is that no effort was**  
F **made by counsel for appellants to relate the facts of this case to those of Lado vs C.P.C, which he seeks departure from. In conclusion I hold the view that no case has been made out by appellants to warrant this court exercising its powers to**  
G **depart from previous decision in Lado vs C.P.C, supra as a result of which the invitation is declined. (pp. 1540 B/1544 C)**

*EVIDENCE - Evaluation*

**3. It is settled law that ascription of probative value to evidence is a matter primarily for the trial court. Where a trial**  
H **court unquestionably evaluates the evidence and appraises the facts, it is no business of the appellate court to substitute its own views of undisputed facts with the views of the trial court.**

**Also settled is the principle of law to the effect that an appellate court can only interfere with such findings after evaluation by the trial court where the said findings are perverse, i.e. not supported by the evidence on record or is based on wrong evaluation or not based on the evidence led at all.**

**I have carefully gone through the affidavits deposed to in this proceeding and the documents exhibited thereto and am in a position to affirm that the trial court did a very good job of evaluating the evidence before it and ascribed the proper probative value to it in coming to the conclusion it did and that the lower court equally and exhaustively reviewed the evidence painstakingly before coming to the above conclusion.**

**What more can a court do in balancing the judicial scale between the parties which was not done in his case? I find none.**

**It is therefore my view that the lower court was perfectly in order in affirming the evaluation of evidence by the trial court and the conclusion it reached after the exercise and I see no reason whatsoever why this court should interfere with the sound concurrent findings of facts as no exceptional circumstance has been made out to warrant such interference. I consequently resolve issue 1 against appellants.**

(pp. 1546 H/1548 C)

*LEGAL DRAFTING - "Notwithstanding" - Effect of use*

**4. It is very clear from the above that the lower court affirmed the finding of the trial court on the issue under consideration. This amounts in law to concurrent findings. I hold the considered view that the views expressed supra by the lower courts are very sound and are very much supported by the provisions of the relevant articles of the Constitution of the 1st respondent, Exhibit 1. The whole thing boils down to the effect of the use of the word "notwithstanding" as it appears in Article 17 of Exhibit 1 on other provisions of the said constitution.**

**In the case of Peter Obi vs INEC (2007) ALL FWLR (Pt.378) 1116 at 1166 this court interpreted the word as excluding any impending effect of any other provision of the statute or other subordinate legislation so that the said section**

**may fulfill itself.**

**The above being the true state of affairs, it follows that the use of the word “notwithstanding” in Article 17.2 of Exhibit 1 makes the article self fulfilling and as such no other provision in Exhibit 1 shall be capable of subjugating or rank**  
B **pari parsu with the said Article 17.2, including Article 12 of the said Exhibit 1.**

**It should be noted that Article 17 comes much after Article 12 therefore its provisions are deemed to supersede those of Articles 12, 13 etc, etc. I therefore find nothing wrong with the decision of the lower court on the matter as same is well grounded in law and consequently unassailable. In the circumstances issue 2 is also resolved against appellants.**  
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(p. 1552 F)

D  
*COURTS - Issue - Suo motu raising*

**5. It is trite law that a court of law is not permitted to raise an issue suo motu and proceed to determine the case before it on the issue so raised without calling on the parties or counsel representing them to address it on the said issue. It follows therefore that it is not the raising of the issue suo motu that is frowned upon by the law but the failure of the court to hear parties on the issue in question before proceeding to determine the case on the issue. Where the court fails to listen to the parties, particularly the party to be adversely affected by the decision on the issue so raised, it is said to have fallen foul of the principles of the rules of fair hearing, and such a decision is liable to be set aside.** (p. 1554 E)  
E  
F

G  
*JUDGMENTS - Obiter dictum*

**6. However, in the process of deciding a matter or resolving an issue the judge is at liberty to make comments which is usually harmless and made by the way. Such comments or views or opinions are considered in law as obiter dictum or dicta- things said by the way. They do not constitute the decision of the court which is usually referred to as the ratio decidendi - the reason for the decision. I have carefully gone through the record and the judgment of the trial judge as well as that**  
H

***of the lower court and have come to the conclusion that the lower court is right in its decision that the issues raised suo motu are inconsequential having regards to the issues submitted by counsel for appellants for determination. Even in this court, the two issues have been found to be of no substance and have been resolved against appellants which confirms the inconsequentiality of the alleged issues raised suo motu.*** B

***In any event, a court is permitted by law to draw inferences from evidence on record such as documents. Such inferences cannot be regarded as raising issues suo motu, by the court. In the circumstance I find no merit in the issue which is accordingly resolved against the appellants.*** C  
(p. 1555 C)

## NOTABLE POINT OF INTEREST D

### **ONNOGHEN JSC**

#### ***1. Judicial precedents – Principles***

The issue as to whether or not the Supreme Court, being the final court of appeal in the land should depart from its previous decision is linked up with the principles of judicial precedents particularly the principle of stare decisis which is a principle by which a court is bound to follow decisions in previous cases otherwise known as precedent. The principles are thus interrelated. The use of precedent is an indispensable foundation upon which to decide what the law is and its application to individual cases. E F

*“Stare decision et non quela movere” therefore means, literally “To stand by what has been decided and not to disturb and unsettle things which are established”.*

The term stare decisis thus means to abide by former precedents where the same points come again in litigation. (p. 1538 D) G

### **REPRESENTATION**

Salman Jawondo Esq. with Messrs. Saka R. Ayodeji and Idris A. Abdullahi, for the appellants H

A. A. Ibrahim Esq. with A. M. Lawal Esq., for 1st & 2nd respondents

B. R. Gold Esq. with T. A. Hammed Esq., for the 3rd respondent

**CASES REFERRED TO**

- Lado vs C.P.C (2012) ALL FWLR (pt. 607) 598  
 Onuoha vs Okafor (1983) SCNLR 244  
 Dalhatu vs Turaki (2003) FWLR (pt. 174) 247  
 Omoju vs FRN (2008) ALL FWLR (pt. 415) 1656  
 B Ugwu vs. Ararume (2007) ALL FWLR (pt. 377) 807  
 Odi vs Osafile (1985) 1 NWLR (pt. 1) 17  
 Broniks Motors vs Wema Bank (1983) 1 SCNLR 296  
 Tewogbade vs Obadina (1994) 4 SCN (pt. 1) 161  
 C Emenike vs PDP (2012) ALL FWLR (Pt. 640) 1261  
 Oshoboja vs Amida (2002) ALL FWLR (pt. 505) 1606  
 Clement vs Iwuanyanwu (1989) 3 NWLR (pt. 107) 39  
 Veepes Ind. Ltd vs Cocoa Ind. Ltd (2008) ALL FWLR (pt. 425) 1667  
 Obu vs NNPC (2003) FWLR (pt. 146) 959  
 D Maclean vs Inlaks Ltd (1980) 8-11 SC 1  
 Disu v. Ajilowura (2006) 14 NWLR (pt. 1600) 783

**STATUTES & RULES REFERRED TO**

- Electoral Act 2010, s. 87(7)(10)  
 E Constitution of the Federal Republic of Nigeria 1999, ss. 222(c), 223(r)(a)  
 Supreme Court Rules, O. 6 r. 5(4)

**LEAD JUDGMENT BY ONNOGHEN JSC**

- F This is an appeal against the judgment of the Court of Appeal, Holden at Ilorin in appeal No.CA/IL/31/2011 delivered on 5th March, 2012 in which the court dismissed the appeal of the appellants against the judgment of the Federal High Court, Abuja Division,  
 G Holden at Ilorin in suit Nos.FHC/ABJ/CS/71/2011 and FHC/IL/CS/11/2011 delivered on 7th April, 2011 in which the court dismissed the claims of appellants, then plaintiffs.

- By an originating summons filed at the trial court on 18th February, 2011, to be found at pages 14 to 16 of the record, the appellants sought the determination of the following questions:

*“(i) Whether or not in view of the provision of Articles 12.(1); 12.36 and 14.1 of the Constitution of the Peoples Democratic Party (PDP) of 1st defendant, on the election and tenure of office of party officers and letter dated 14th January, 2002 from the then National*



*Chairman of the 1st defendant to then Kwara State Chairman of the 1st defendant letter dated 8th August, 2005 from the National Chairman of the 1st defendant to the Governor of Kwara State and letter dated 29th February, 2008 from the then out-going Chairman and Secretary of the Kwara State Chapter of the 1st defendant to the National Chairman of the 1st defendant and other correspondences* <sup>B</sup> *(sic) on and in respect of the position of the leadership of the Kwara State Chapter of the 1st defendant, the Kwara State Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs are not the duly elected and authentic Kwara State Party Executive Committee of the 1st Defendant entitled to run and manage the affairs of the* <sup>C</sup> *Kwara State Chapter of the 1st defendant in accordance with the provisions of the Constitution of the 1st defendant.*

*(ii) Whether or not in view of the provisions of Articles 12.1(i); 12.36, 13.37 and 14.1 of the Constitution of the Peoples Democratic Party (PDP), the 1st defendant, on the election and tenure of office of party officers, Section 87(1) and (4)(b) of the Electoral Act 2010 and letter dated 14th January, 2012 from then National Chairman of the 1st defendant to the then Kwara State Chairman of the 1st defendant, letter dated 8th August, 2005 from the National Chairman of the 1st defendant to the Governor of Kwara State and letter dated 29th February, 2008 from the then out-going Chairman and Secretary of the Kwara State Chapter of the 1st defendant to the National Chairman of the 1st defendant, the result of the Gubernatorial Primary Election of the Peoples Democratic Party held on 9th* <sup>E</sup> *January, 2011 and letter dated 15th January, 2011 from the plaintiffs to the Secretary, Gubernatorial Primaries Appeal Panel of the 1st defendant and letter dated 15th January, 2011 from the 1st and 2nd plaintiffs to the 3rd defendant and other correspondences* <sup>F</sup> *(sic) on and in respect of the position of the leadership of the Kwara State Chapter of the 1st defendant, the 3rd plaintiff is not the duly elected and authentic governorship candidate of the 1st defendant in Kwara State for the forth-coming April, 2011 governorship election and whose name is to be submitted to the 3rd defendant for the purpose of the* <sup>G</sup> *governorship election.* <sup>H</sup>

*(iii) Whether or not in view of the provisions of the Articles 12.1(i); 12.36, 13.37 and 14.1 of the Constitution of the Peoples Democratic Party (PDP) the 1st defendant, on the election and ten-*

ure of office of party officers, Section 87(1) and (4) (b)(ii) of the Electoral Act, 2010 and letter dated 14th January, 2002 from then National Chairman of the 1st defendant to the then Kwara State Chairman of the 1st defendant, letter dated 8th August, 2005 from the National Chairman of the 1st defendant to the Governor of Kwara State and letter dated 29th February, 2008 from the then outgoing Chairman and Secretary of the Kwara State Chapter of the 1st defendant to the National Chairman of the 1st defendant and letter dated 8th January, 2011, from the 1st and 2nd plaintiffs to the National Chairman of the 1st defendant, the result of the Gubernatorial Primary Election of the Peoples Democratic Party (PDP) held on 9th January, 2011 and letter dated 15th January, 2011 from the plaintiffs to the Secretary, Gubernatorial Primaries Appeal Panel of the 1st defendant and letter dated 15th January, 2011 from the 1st and 2nd plaintiffs to the 3rd defendant and other correspondences (sic) on and in respect of the position of the leadership of the Kwara State Chapter of the 1st defendant, the 1st and 2nd defendants have the constitutional vires to accept, adopt and submit to the 3rd defendant as the 1st defendant's governorship candidate for Kwara State at the forthcoming April, 2011 governorship election, the name of the 4th defendant."

The plaintiffs/appellants then sought the followings reliefs:-

"1. A declaration that under and by virtue of Articles 12.1(i); 12.36; 12.37 and 14.1 of the constitution of the Peoples Democratic Party (PDP) the 1st defendant, the Kwara State Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs is the duly elected and authentic State Executive Committee of the 1st defendant in Kwara State and therefore entitled to run and manage the affairs of the 1st defendant in Kwara State.

2. A declaration that the gubernatorial primary of the 1st defendant held in Ilorin on 9th January, 2011 organized and concluded by the State Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs is the authentic governorship primary of the 1st defendant for the purpose of nomination and submission of names of governorship candidate to the 3rd defendant.

3. A declaration that the 3rd plaintiff is the duly elected and authentic governorship candidate having won the governorship primary of the 1st defendant held on 9th January, 2011 and he is the

only person entitled to have his name accepted and submitted to the 3rd defendant as the 1st defendant's governorship candidate for Kwara State for the forthcoming April, 2011 governorship election.

4. An order of the court restraining, the 1st and 2nd defendant from recognizing adopting and or accepting or submitting or sending to the 3rd defendant the name of the 4th defendant or any person other than the name of the 3rd plaintiff as the 1st defendant's governorship candidate for Kwara State for the forthcoming April, 2011 governorship election.

5. An order of the court nullifying/setting aside the submission of the name of the 4th defendant by the 1st defendant to the 3rd defendant as the 1st defendant's governorship candidate for Kwara State for the forthcoming April, 2011 governorship election.

6. An order of the court restraining the 3rd defendant from accepting, recognizing and/or treating as the 1st defendant's governorship candidate for Kwara State for the forthcoming April, 2011 governorship election the 4th defendant or any other person than the 3rd plaintiff submitted or sent to the 3rd defendant by the 1st and 2nd defendants."

At the trial and as can be seen at pages 312 - 313 of the record being part of the judgment of the trial court, the following two issues were submitted to the court for determination by learned counsel for the plaintiffs:

"(1) Whether under and by virtue of the Constitution of the Peoples Democratic Party (PDP), the Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs are the rightful persons that are constitutionally empowered to run and manage the affairs of the Peoples Democratic Party (PDP) in Kwara State.

(2) If issue no. 1 is answered in the affirmative, then whether or not the gubernatorial primary of the Peoples Democratic Party (PDP) held in Ilorin on 9th January, 2011 organized and conducted by the State Executive Committee led by the 1st and 2nd plaintiffs is the authentic governorship primary that ought to be recognized by the 1st defendant for the purpose of the 2011 general election in Kwara State".

As stated earlier in this judgment, both issues were resolved against the plaintiffs hence the appeal to the Court of Appeal which was found to be without merit and consequently dismissed. The in-

stant appeal is therefore a further appeal by the appellants.

In the appellants' brief of argument filed on 17th July, 2012 and adopted in argument of the appeal on the 28th day of January, 2013, learned counsel for appellants, SALMAN JAWONDO ESQ. formulated the following three issues for the determination of the appeal:-

*"3.1 Whether or not the lower court was right in its conclusions that the trial court properly and correctly evaluated and drew correct inferences from the affidavit and documentary evidence placed before it and that by the tenure of Exhibits 1, 2, 3 & 4 and Articles 2, 12.1(i) & (j); 14.1 and 14.5 of Exhibit 1 (PDP Constitution) the 1st appellant's led State Executive Committee of the 1st respondent is not the authentic Kwara State Executive Committee (Grounds 1 and 2).*

*3.2 Whether or not the lower court was right in its conclusions that by Articles 12.72; 17.1 and 17.2 of the constitution of the 1st respondent (Exhibit 1), the powers of the State Chairman and the State Executive Committee under Articles 12.3 (b) & (d); 12.41(c) and 13.22 of Exhibit 1 with respect to the congress for the election or nomination of the governorship candidates of the party have been taken away. (Grounds 3 and 4).*

*3.3 Whether or not the lower court was right in its conclusions that the holdings of the trial court on issues raised suo motu by it were inconsequential and did not occasion a miscarriage of justice on the appellants who were said to have been tardy in not addressing the issues. (Grounds 5 and 6)."*

Apart from the above issues, learned counsel for appellants has invited the court to depart from its decision in the case of Lado vs C.P.C (2012) ALL FWLR (Pt.607) 598 and decisions in that line pursuant to Order 6 Rule 5(4) of the Supreme Court Rules.

The said Rule provides as follows:-

*"(4) If the parties intend to invite the court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the brief, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons".*

The grounds on which the above invitation is extended to the court are stated to be:-

*"1. The decisions of the court overlooked the status, aim and*

*intendments and effects of the constitution of a political party.*

2. *The decisions have the likely effect of allowing the party leadership to foist on the party candidates of their choice in flagrant disregard and violation of the constitution of the party and Section 87(7) and (10) of the Electoral Act, 2010, thereby leaving the aggrieved members without redress.* B

3. *Adherence to the decisions is likely to cause and or perpetuate injustice.”*

In urging the court to depart from the decision in Lado vs C.P.C (supra) learned counsel agreed that the said decision is “a re-statement of the position of the court in the line with the cases of Onuoha vs Okafor (1983) SCNLR 244 and Dalhatu vs Turaki (2003) FWLR (Pt.174) 247, (2003) 15 NWLR (Pt.843) 310” but submitted “that the court may “for compelling reasons, depart from the principle of law which it has previously laid down per AKINTAN JSC, in Omoju vs FRN (2008) ALL FWLR (Pt.415) 1656 at 1677”. C D

It is very clear from the above submission that learned counsel is in effect calling for departure from, not only Lado vs C.P.C which he concedes follows the principles of law laid down in the earlier two cases of Onuoha vs Okafor and Dalhatu vs Turaki, but the review or departure from the said earlier decisions of this court. E

Proceeding further with the argument, learned counsel conceded that “the court will depart from its previous decisions only where it is shown that the earlier decision is wrong or erroneous in law or that it is per incuriam or it has become an instrument of injustice”; that the instant case qualifies for the exercise of the power of this court to depart from its earlier decisions in that the constitution of a political party is a document of contract with binding force between the party and its members inter- see; relying on the case of Ugwu vs. Ararume (2007) ALL FWLR (Pt.377) 807 at 875 - 876 in which an opinion was expressed by OGUNTADE, JSC to the effect that Onuoha vs Okafor has ceased to be a useful guiding light in view of the present state of our political life, and called for a review of the said decision or its modification; that “where a complaint of a member or a group of members of a political party bothers on or is found on breach(s) of an or non-compliance with the provisions of the constitution of the party, it is submitted that such a complaint is justifiable and the court will have jurisdiction in such a matter.” F G H

Counsel then referred to Articles 12.1(i) and (j), 121.37(b) and (d); 12.41 and 13.22 of the Constitution of 1st respondent and submitted that it is clear that the position and role of the State Chairman and the entire State Executive Committee or members of the 1st respondent in the process of nomination of the party's governorship candidate are very crucial and that only the executive committee constituted in line with the Constitution of 1st respondent can form the congress for the nomination of a governorship candidate of the party; that *"where the complain of a group of members of a political party is that they are the duly elected principal officers and members of executive committee of the party elected in accordance with provisions of the constitution of the party and ipso facto entitled to manage, run and conduct the affairs of the party including the convening of the congress for the nomination of the party candidates for executive offices as against another group parading itself as principal officers and members of executive committee of the same party with the concomitant constitutional powers and privileges, it is submitted, that the court will have jurisdiction as the issue(s) involved is/are interpretation and application of the constitution of the party; that for the court to decline jurisdiction in such circumstances is to surrender the running and management of political parties, including nomination of candidates to the whims and caprices of the political warlords and money bags contrary to the constitution of the parties and the provisions of Section 87 of the Electoral Act, 2010 aimed at "enthroning the principle of internal democracy in the election of party candidates"*.

It is the further submission of learned counsel that *"if the decision of the court in Lado vs C.P.C. ...and decisions in that line to the effect that the power of nomination of candidates for elective offices and in particular, the office of Governor of a State is that of the national body of the party and that the court cannot interfere to determine which of the factional candidates of a political party is in accordance with the provisions of the constitution of the party, are not departed from, it means that the election of candidates for elective offices can even be done without due regard and respect for the rights of the State Executive Committee of the party as provided for and presented by the constitution of the party.."*

Finally counsel urged the court to depart from the decision in

Lado vs C.P.C and decisions in that line “so as to avert perpetuation of injustice, protect the social contracts created by the constitutions and rules of political parties and promote good democratic culture and consequently assume jurisdiction in matters of this nature by determining which of the two contending candidates of the party was/is produced by a group or faction that has its root in the constitution of the party”.

On his part, learned counsel for 1st and 2nd respondents, ABDUL A. IBRAHIM ESQ in the brief filed on 18th September, 2012 submitted that though the supreme court is vested with powers to review, depart or overrule its previous decisions, such power is exercised with the greatest hesitation, caution and or established guiding principles in relation thereto, so as to allow for consistency in the decisions of the courts, relying on Odi vs Osafire (1985) 1 NWLR (Pt.1) 17 at 34; that the principles that guide the court in the matter include:-

(a) That the decision is impeding the proper development of the law;

(b) The decision has led to results which are unjust or undesirable or which are contrary to public policy;

(c) That the previous decision was reached per incuriam and which if followed, would inflict hardship and injustice upon generations in the future.

(d) Cause temporary disturbance of rights acquired under such a decision; or

(e) If the decision is inconsistent with the Constitution or erroneous on points of law or that it is according a miscarriage of justice or perpetuating injustice, relying on Broniks Motors vs Wema Bank (1983) 1 SCNLR 296: Tewogbade vs Obadina (1994) 4 SCN (Pt.1) 161 at 180:

That appellants have not demonstrated how the decision in Lado vs C.P.C. has perpetrated injustice neither have they shown how the decision is per incuriam and/or inconsistent with the constitution; that statutory provisions have been made for dissatisfied aspirants as a result of the conduct of primary elections by their political parties to seek redress under Section 87(9) and (10) of the Electoral Act, 2010, as amended and urged the court not to disturb the decision in Lado vs C.P.C supra, as same has not been shown to have

resulted in any injustice.

On his part, learned counsel for 3rd respondent, B. R GOLD ESQ in the brief of argument filed on 10th September, 2012 submitted that the invitation to depart from the decision in Lado vs C.P.C is unfounded and made in vacuo; that the invitation is not rooted in the appeal before the court; that the decision of the lower courts were based on the interpretation of the Constitution of 1st respondent and never based on the decision of this court over party affairs, as stated in Lado vs. C.P.C; that the lower courts did not decline jurisdiction on the matter before them. It is the further submission of counsel that appellants have failed to show that the decision in Lado vs C.P.C is an instrument of injustice in the decision of the lower court giving rise to this appeal or that it has become an instrument of injustice as rightly held in Shamshudeen Abolore Bakare vs Nigerian Railway Corporation (2007) ALL FWLR (Pt.391) 1579 at 1603, and urged the court to decline the invitation, relying on Oshoboja vs Amida (2002) ALL FWLR (Pt.505) 1606 at 1627 -1628.

The issue as to whether or not the Supreme Court, being the final court of appeal in the land should depart from its previous decision is linked up with the principles of judicial precedents particularly the principle of stare decisis which is a principle by which a court is bound to follow decisions in previous cases otherwise known as precedent. The principles are thus interrelated. The use of precedent is an indispensable foundation upon which to decide what the law is and its application to individual cases.

*“Stare decision et non quela movere” therefore means, literally “To stand by what has been decided and not to disturb and unsettle things which are established”.*

The term stare decisis thus means to abide by former precedents where the same points come again in litigation - See Clement vs Iwuanyanwu (1989) 3 NWLR (Pt.107) 39.

However, it is not everything stated in the decision/judgment that constitutes the stare decisis. What is binding in the previous decision as precedent is the enunciation of the reason or principle upon which the question before the court was decided. Any other thing said by way of arriving at that decision is usually referred to as obiter dicta which is not binding, though they may have persuasive efficacy. Where however, an obiter dictum is based on the ratio decidendi of



the Supreme Court, it will be regarded as binding.

***Generally speaking the Supreme Court may depart from or overrule its previous decision under certain circumstances and in accordance with laid down principles of law, such as where it is shown or demonstrated that the earlier decision is either erroneous in law, or given per incuriam or that it has become an instrument of injustice etc.*** See *Veepes Industries Ltd vs Cocoa Industries Ltd* (2008) ALL FWLR (Pt.425) 1667 at 1687; *Bakare v. NRC* (2007) ALL FWLR (Pt.391) 1663. B

***In addition to the above, where the decision complained of hinders the proper development of the law in which a broad issue of public policy was involved, the Supreme Court may depart from such a decision.*** C

***It flows from the above that the reasons for the invitation to depart from a previous decision must be strong, coherent and adequate.*** See *Idoniboye - Obu vs NNPC* (2003) FWLR (Pt.607) 959, *Maclean vs Inlaks Ltd* (1980) 8 - 11 S.C. 1; *Disu v. Ajilowura* (2006) 14 NWLR (Pt.1600) 783. D

The question now is what are the reasons for the invitation by counsel for appellants for the court to overrule/depart from the previous decision in *Lado vs C.P.C* (supra)? I had earlier reproduced them in this judgment. I will however repeat them hereunder for purposes of clarity:- E

#### ***“GROUNDS FOR THE INVITATION***

***1. The decisions of the court overlooked the status, aim and intendments and effects of the Constitution of a political party.*** F

***2. The decisions have the likely effect of allowing the party leadership to foist on the party candidates of their choice in flagrant disregard and violation of the Constitution of the party and Section 87(7) and (10) of the Electoral Act, 2010, thereby leaving the aggrieved members without redress.*** G

***3. Adherence to the decisions is likely to cause and or perpetuate injustice”***

I had also reproduced the submissions of counsel for the parties supra. The question is whether this is a proper case for the court to depart from its earlier decision? H

***It should be pointed out that the provisions of Order 6 Rule 5(4) of the Supreme Court Rules does not confer a right***

*of appeal on a party or any person for that matter to complain about a decision which does not favour his case!! However, the Supreme Court has no power, extra judicially to overrule, reverse or nullify its previous decisions whether on questions of substantive or procedural law. Such decisions may, however, only be annulled by legislation or by a judicial decision of the court given intra judicially when the court is satisfied that the previous decision was given per incuriam etc.*

*A reversal of an earlier decision of the Court can give rise to instability in the rules of judicial precedent, particularly the rules governing stare decisis, hence the court must be satisfied or convinced that the earlier decision was clearly and patently wrong. How does the court go about doing so? I agree with the view expressed by this court in the case of Veepee Industrial Ltd vs Cocoa Industrial Ltd supra that the court will closely examine the facts of the decision it is called upon to reverse in the light of the facts of the case calling for reversal, because facts are the foundation of the law and case are not decided in vacuo but in relation to the particular facts of the case before the court.* See *Ekwunife v. Wayne (NA) Ltd* (1989) 5 NWLR (Pt.607) 422.

*I must point out the obvious which is that no effort was made by counsel for appellants to relate the facts of this case to those of Lado vs C.P.C, which he seeks departure from.*

In *Lado vs C.P.C* supra, two primaries were held and it was the stand of the appellants that the only valid primary elections conducted by the party was that of the 15th of January, 2011, in which they emerged as winner of the posts and their names ought to have been forwarded to INEC as the duly nominated candidates to contest the April, 2011 election; that the party flagrantly refused to send their names contrary to the Constitution of the 1st respondent the electoral law and guidelines.

On the other hand, the 1st - 3rd respondents maintained the position that there was no primary election on the 15th of January, 2011 as the valid primaries was that conducted by the party on the 13th January, 2011 in, which the appellants lost; that the names of those nominated in the said primaries of 13th January, 2011 were forwarded to INEC as the candidate of the party for the election of

April, 2011 in compliance with the laid down statutory provisions. There was therefore an intra party dispute or disagreement as regards names of party members nominated for election into the national and state legislatures emanating from an inconclusive and conflicting primaries by the party and non-compliance with laid down procedure for nomination of candidates by law. The appellants alleged that the primaries of 13th January, 2011 was inconclusive and had to be cancelled whilst the 1st - 3rd respondents stated that the primaries was properly conducted, and was conclusive. B

The trial judge based its decision on the primaries of 15th January, 2011 which decision was reversed by the Court of Appeal which held that it was the primaries of 13th January, 2011 that was valid. C

On a further appeal to the Supreme Court the court held that the jurisdiction of the courts on issues of nomination of parties/ candidates can only be invoked where there is a single primaries conducted by the party-National Executive Committee of the party- in accordance with the provisions of the Electoral Act, 2010, as amended, the constitution of the party and party guidelines regulating the party primaries; that where a party to an action cannot bring himself within the narrow compass of the jurisdiction as conferred under Section 87 of the Electoral Act, 2010, as amended, the courts will have no jurisdiction to entertain the action. D E

The facts in this case are very similar to those in Lado vs C.P.C supra. Like in Lado's case, appellants included an aspirant who lost the primary election to nominate the Kwara State Governorship candidate conducted by the National Executive Committee of the party but purportedly won the primary election conducted by the Kwara State Executive Committee of the party. In this case the 1st respondent's National Electoral Panel conducted State congress on the 9th day of January, 2011 for the election of its governorship candidate for Kwara State for the April, 2011 general elections, in which the 3rd respondent emerged as winner by majority of votes cast as a result of which his name was forwarded to INEC as the candidate of the party in accordance with the law. F G H

Thereafter, appellants contended that the State Executive Committee of the party, 1st respondent, headed by the 1st and 2nd appellants was the recognized State Executive Committee which had,

on the same 9th January, 2011 conducted primaries for the election of the state gubernatorial candidate of the 1st respondent in which the 3rd appellant allegedly emerged winner. This resulted in the institution of the action for the determination of the questions and reliefs earlier reproduced in this judgment.

B The trial court dismissed the action which decision was affirmed by the lower court resulting in the instant further appeal.

However, the difference between this case and Lado's case lies in the fact that whereas Lado's case is limited to the issue of nomination of party candidates for elections, the present case goes far beyond that as it includes the question as to who is the authentic State Executive committee of the Peoples Democratic Party in Kwara State etc.

It should be noted that Lado's case did not decide that the courts have no jurisdiction to determine any issue relating to the provisions of the constitutions of political parties particularly as it relates to the rights and privileges of the organs of the parties and the members inter se, etc, etc. The question however is whether appellants have satisfied the legal requirements needed for this court to depart from its decision in Lado's case? The answer is clearly in the negative. It has not been demonstrated that the decision in Lado's case is wrong in law neither has it been shown to have been given per incuriam. In any event, appellants' case was heard and determined by the lower courts though against appellants. What we should understand is that a party, in an action founded on party nomination for elections who fails to bring himself within the provisions of Section 87 of the Electoral Act, 2010, as amended, has no cause of action to be enforced in the courts and as such the courts will have no jurisdiction to entertain such an action particularly as the issue as to who should be a candidate of a political party remains a political question within the domestic jurisdiction of the political parties and as such not justiciable.

There were preliminary objections raised by the defendants (respondents in this appeal) at the trial court challenging the competence of the action and the court to hear and determine same. One of the grounds of objection was that the court had no jurisdiction to hear and determine the matter in which learned counsel for the plaintiffs/appellants submitted, as summarized by that court in its judgment at pages 304 - 305, as follows:-

*“ON ISSUE No. 1*

*Whether having regards to the claims of the plaintiffs and the facts of this case, the court has no jurisdiction to entertain the claims of the plaintiffs.*

*Counsel submitted that plaintiffs’ claim bothers on conduct of governorship congress and interpretation of the Constitution of the 1st defendant. It calls to determine who, as between the 3rd plaintiff and 4th defendant is the validly elected governorship candidate of the PDP in Kwara State. The suit is not pursuant to Section 251 of the 1999 Constitution but Section 87(7), (9) and (10) of the Electoral Act, 2010. The Federal High Court has jurisdiction to hear the matter under Section 87(10). Relief 6 is also directed at 3rd defendant in its performance of its statutory and public duty to accept from political parties names of candidates sponsored for elections.*

*The 3rd plaintiff was an aspirant for governorship nomination of 1st defendant and the suit is therefore within the competence of the court pursuant to Section 87(7), (9) and (10) of the Electoral Act, 2010”.*

What did the trial court rule on the issue? It can be found at page 311 of the record, where the court held thus:

*“On the issue of constitutional/statutory jurisdiction, I agree with plaintiffs counsel that this suit was filed pursuant to Section 87(10) of the Electoral Act, 2010 as it relates to a contravention of the provisions of the Electoral Act, 2010 on the nomination of candidate and either the Federal High Court or State High Court can adjudicate on same. The 6th Relief also relates to the constitutional role of 3rd defendant who is a Federal Government Agency. I therefore find and hold that this court has constitutional and statutory jurisdiction over this matter. This matter is not just an intra-party dispute but relates to the interpretation of the party’s Constitution as regards primaries or congress for the election of candidates”*

It should be noted that there was no cross-appeal against the ruling of the trial court on the preliminary objection supra which means that parties accept same as the true position of the law. One therefore finds it difficult to understand the basis of the invitation to depart from Lado’s case. The courts, including the Supreme Court regards any purported primary election conducted by a State Executive committee of a political party contrary to the party Constitution, Electoral

Act and party guidelines, on conduct of primary elections as an illegal primary and therefore not justiciable. See *Emenike vs PDP* (2012) ALL FWLR (Pt. 640) 1261.

It should be observed that appellants' counsel by seeking departure from Lado's case after the trial court had ruled in favour of the appellants on the issue of jurisdiction to entertain the action, which decision had not been appealed against amounts to seeking a reversal of that ruling, which was in their favour without, in actual fact appealing against same. It amounts to a probating and reprobating, which is frowned upon by law.

***In conclusion I hold the view that no case has been made out by appellants to warrant this court exercising its powers to depart from previous decision in Lado vs C.P.C, supra as a result of which the invitation is declined.***

On the merits of the appeal, it is the submission of learned counsel for appellants on issue 1, that the lower court was in error in its conclusion that the trial court properly and correctly evaluated and drew correct inferences from the affidavit and documentary evidence placed before it and that by the tenor of Exhibits 1, 2, 3 and 4 and Articles 2, 12.1(i) and (j) and 14.5 of Exhibit 1 (PDP Constitution) the 1st appellant's led State Executive Committee of the 1st respondent is not the authentic Kwara State Executive Committee of the Peoples Democratic Party; that appellants traced their by authenticity as the state party leadership from the year 2000 to date through the election of successive state executive committees while 3rd respondent traced the root of the parallel congress that produced him to the executive committee led by late Alhaji A. A. Patigi who was not a founding member of the party in the state; that the trial court did consider Exhibits 1, 2, 3 and 4 and Articles 12.1(i), 12.36, 12.37 and 14 of Exhibit 1 (PDP constitution) but that the court did not refer to the evidence as deposed to in paragraphs 6, 7, 11, 13, 16, 18, 19, 20, 22, 23, 24, 25 and 26 of the affidavit in support of the originating summons, and paragraphs 7 - 13, 18 - 20 of the 3rd respondent's counter-affidavit before coming to the conclusion that the Kwara State Executive Committee of the 1st respondent led by 1st appellant is not the duly elected and authentic state executive of the party; that the lower court was also in error in affirming the above holding.

Learned counsel then reproduced the relevant provisions of the Articles of the Constitution of the 1st respondent and submitted that a community reading of the Articles in question shows that the 1st appellant's led State Executive Committee of the party is the authentic State Executive Committee and consequently the committee with the constitutional vires to convene and hold state congress for the election of the party's governorship candidate. B

On Exhibits 3 and 4 counsel submitted that Exhibit 4 in particular shows that "*all the decisions*" reached in meeting called to resolve the crisis resulting from the then removed executive committee of the state were not implemented and that "*the non-mentioning of these decisions is of no moment*"; that the issue of duplication of State Executive Committee as highlighted in Exhibit 4 forms the central issue in the case and that a correct reading of the said exhibits shows sufficient basis for Exhibit 3; that the lower court equally erred in affirming the holding of the trial court that how previous executive committees of the 1st respondent in Kwara State emerged was irrelevant when from the facts deposed to in the affidavits and submissions of counsel, it is clear that parties found the constitutionality and legality of their respective groups or faction on the previous State Executive Committee elected in accordance with the provisions of the Constitution of the party; that decision that how the previous executive committees came into existence is not relevant is therefore perverse as same is contrary to evidence and has occasioned a miscarriage of justice, relying on *Odojin vs. Ayoola* (1984) 11 S.C 72; *Bunyan vs. Akingboye* (1999) 7 NWLR (Pt.607) 31; *Sale vs N.C.S* (2012) ALL FWLR (Pt.607) 1328 at 1345. C D E F

It is the further submission of learned counsel that the lower court drew wrong conclusion from accepted credible evidence and took erroneous view of the evidence adduced before the trial court etc which has occasioned a miscarriage of justice thereby necessitating the interference of this court in the concurrent findings of the lower courts; that this court is in as good a position as the trial court and lower court in evaluating the evidence on record as same is primarily documentary and urged the court to so act, relying on *Shola vs UBN Ltd* (2005) 6 NWLR (Pt.607) 422 at 443. Finally counsel urged the court to resolve the issue in favour of appellants. G H

In arguing issue 1, learned counsel for 1st and 2nd respon-

dents submitted that the submission of his learned friend on the issue is erroneous as the lower court properly evaluated the evidence on record, before coming to the conclusion it reached; that the lower court evaluated the evidence at pages 530 - 534 in respect of the appellants and pages 539 - 541 in respect of the respondents; that Exhibits 2, 3 and 4 were reviewed; that it was after exhaustive consideration of the case of the parties that the lower court proceeded to hold that the trial court did a good job and affirmed its decision; that the lower court even went further to consider Exhibits 9 and 10 which the trial court forgot to evaluate.

Finally learned counsel submitted that appellants have not demonstrated that this is a proper case for the court to interfere with concurrent findings of facts by the lower courts as such findings are supported by the evidence on record which was evaluated by the court; relying on *Ezeoke vs Nwagbo* (1988) 1 NWLR (pt.72) 616; *Durosaro vs Ayorinde* (2005) 3 - 4 S.C. 14; *Akeredolu v. Akinyemi* (1989) 3 NWLR (Pt.607) 164: learned counsel then urged the counsel to resolve the issue against appellant.

On his part, learned counsel for 3rd respondent submitted that the lower courts evaluated the evidence before them and came to the right decision; that the 1st appellant led State Executive Committee of the 1st respondent is not the authentic Kwara State Executive Committee of the 1st respondent.

It is the further submission of counsel that where an appellate court is confronted with the issue of proper evaluation of evidence, the court has the simple duty to scrutinize the record before deciding the issue, that once the appellate court finds evidence in support of the conclusions made by the lower court, it would not interfere with the findings, relying on *Obi vs Uzoewulu* (2009) ALL FWLR (Pt.607) 518 at 525; that the court should not interfere with the concurrent findings of fact by the lower courts as there is nothing to warrant same, relying on *Amasike vs The Registrar General, Corporate Affairs Commission* (2010) ALL FWLR (Pt.607) 1406 at 1451. Counsel finally urged the court to resolve the issue against appellants.

***It is settled law that ascription of probative value to evidence is a matter primarily for the trial court. Where a trial court unquestionably evaluates the evidence and appraises***



**the facts, it is no business of the appellate court to substitute its own views of undisputed facts with the views of the trial court.** See Balogun vs Agboola (1974) 1 ALL NLR (Pt.2) 60; Fatoyinbo vs Williams (1959) 1 FSC 87.

**Also settled is the principle of law to the effect that an appellate court can only interfere with such findings after evaluation by the trial court where the said findings are perverse, i.e. not supported by the evidence on record or is based on wrong evaluation or not based on the evidence led at all.** See Peterside v. Oligakwe 11 NLR 41; Woluchem v. Chief Gudi (1981) 5 S.C. 291; Ebba v. Ogodo (1984) 4 S.C. 84.

I had earlier in this judgment stated that learned counsel for appellants submitted two issues to the trial court for determination, which issues I must repeat, are as follows:-

*“(1) Whether under and by virtue of the Constitution of the Peoples Democratic Party (PDP), the Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs are the rightful persons that are constitutionally empowered to run and manage the affairs of the Peoples Democratic Party (PDP) in Kwara State.*

*“(2) If issue no. 1 is answered in the affirmative, then whether or not the gubernatorial primary of the Peoples Democratic Party (PDP) held in Ilorin on 9th January, 2011 organized and conducted by the State Executive Committee led by the 1st and 2nd plaintiffs is the authentic governorship primary that ought to be recognized by the 1st defendant for the purpose of the 2011 general election in Kwara State”.*

The question is: what is the finding of the trial court after evaluation of the evidence in respect of issue 1/question 1. The answer is at page 324 of the record where the court held as follows:-

*“In view of the way question 1 was couched and the instruments put before me for consideration, I must hold that the plaintiffs have not shown why the question should be answered in their favour. I therefore answer question 1 as follows:-*

*In view of Articles 12.(i), 12.36, 12.37 and 14.1 of the PDP Constitution as well as Exhibits 2 - 4 herein and since the other correspondences were not mentioned, the Kwara State Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs is not the duly elected and authentic Kwara State Party Executive committee*

*of the 1st defendant entitled to run and manage the affairs of the Kwara State chapter of the 1st defendant”.*

What did the lower court have to say on the above findings?

At pages 548 of the record, the court found as follows:-

*“It has to be noted that before the learned trial judge came in with the findings, he did evaluate the provisions of these Articles of pages 322 to 323 of the record so carefully and dispassionately along with the documents tendered as Exhibits 2, 3, 4 and rightly in my view, held that those documents and the section or Articles of Exhibit 1 above mentioned, conferred no legitimacy on the appellants”.*

**I have carefully gone through the affidavits deposed to in this proceeding and the documents exhibited thereto and am in a position to affirm that the trial court did a very good job of evaluating the evidence before it and ascribed the proper probative value to it in coming to the conclusion it did and that the lower court equally and exhaustively reviewed the evidence painstakingly before coming to the above conclusion.**

In reviewing the evidence, the lower court at page 548 noted that the trial judge omitted to evaluate Exhibits 9 and 10 and proceeded to do so, as follows:-

*“The learned trial judge must have forgotten to mention Exhibits 9 and 10 in his evaluation of the affidavit and documentary evidence before him and since this is a question of drawing inference from documentary evidence which are part of the record of appeal, I have duly re-evaluated those documents and commented on them and their respective purports. The submission by the learned counsel for the appellants that the court below did not evaluate the affidavit and documentary evidence tendered by the appellants or that the case of the appellants was misconstrued is therefore unfounded”.*

**What more can a court do in balancing the judicial scale between the parties which was not done in his case? I find none.**

**It is therefore my view that the lower court was perfectly in order in affirming the evaluation of evidence by the trial court and the conclusion it reached after the exercise and I see no reason whatsoever why this court should interfere with the sound concurrent findings of facts as no excep-**

***tional circumstance has been made out to warrant such interference. I consequently resolve issue 1 against appellants.***

In respect of issue 2, it is the submission of learned counsel for appellants that the lower court was wrong in its conclusion that Articles 12.72, 17.1 and 17.2 of the Constitution of the 1st respondent (Exhibit 1) the powers of the State Chairman and the State Executive Committee under Articles 12.3(b) and (d), 12.41 (c), 13.1 and 13.22 of Exhibit 1 with respect to the congress for the election or nomination of the governorship candidate of the party have been taken away. Learned counsel then proceeded to reproduce the relevant Articles of Exhibit 1 and submitted that Article 17.1 and 17.2 (b) of the Constitution of the party does not derogate from the power/ functions of the State Chairman such as the appellant to convene and preside at the state congress for the election of the party's gubernatorial candidate; that the State Executives Committee of the 1st respondent led by the State chairman has the power to convene the state congress of the party for the election of the party's governorship candidate and urged the court to resolve the issue in favour of the appellants.

In his reaction to issue 2, learned counsel for 1st and 2nd respondents submitted that it is not the duty of appellants to conduct primary election for the purpose of nominating the candidate of the 1st respondent as the duty/function is vested on the 1st respondent acting through Electoral Panel, relying on *Emenike vs. PDP (2012) 5 SC (Pt.1) 113 at 165*. Learned counsel further relied on Article 17.1 and 17.2 of the Constitution of the 1st respondent (Exhibit 1) in support of the above submission.

It is also the submission of counsel that by the provisions of Article 12.37 of Exhibit 1, the functions of the State Executive Committee of 1st respondent are limited to undertaking the general administration of the party in the state, implement decisions of the state congress and in addition implement the decisions of the National Executive Committee or National Convention. Finally counsel urged the court to resolve the issue against appellants.

It is the submission of learned counsel for the 3rd respondent that with the finding that the 1st appellant led executive committee is not the authentic State Executive Committee of the 1st respondent, issue 2 has become academic. In the alternative counsel

submitted that whatever power the State Executive Committee of the party might have had under the constitution of the 1st respondent particularly Article 12.41(c) and 13.22, cannot co-exist with Article 17.2 of the same constitution (Exhibit 1); that the powers of the State Executive Committee is general in nature while the power conferred under Article 17.2 of Exhibit 1 specifically singled out the congress for the conduct of primaries for the party's governorship candidate, which is a function of the National Executive Committee.

It is the further submission of counsel that the use of the word "Notwithstanding" in Article 17.2 means that all the provisions of Article 12 of Exhibit 1 are excluded in the operation of Article 17.2 of the said Exhibit 1. To further support the contention that it is the National Executive Committee of the 1st respondent that has the power of nomination etc, counsel referred the court to the decision of the Court in appeal no.SC/69/2012: Emeka vs Okadigbo delivered on the 6th day of July, 2012, and urged the court to resolve the issue against the appellants.

Upon a consideration of the issue under consideration by the trial court, the court came to the following conclusion at pages 328 - 330 inter alia:

*"It is clear from Article 12.37 of the PDP Constitution that the state executive has no power to conduct primaries for election into an elective public office like that of Governor. That is the function of the state congress under Article 12.41 (c) of the constitution. The state congress meets once in two years on a date and at a venue to be determined by the State Executive Committee. It is however the function of the State Executive Committee to prepare the agenda for the state congress.*

*By virtue of Article 17.1 the National Executive Committee has power to formulate guidelines and regulations for the nomination of candidates for election into public offices. This power is however subject to the provisions of the same PDP Constitution. What this means is that where Article 17.1 conflicts with any other provision of the constitution that other provision shall prevail and Article 17.1 is subjugated to that provisions.*

*Article 17.2 make provision notwithstanding Article 12 which deals with composition, functions, tenure etc, of party organs. Article 12 being a general provision is therefore subordinate to Articles 17.2*

*which makes specific provisions regulating the procedures for selecting the party's candidates for elective office. For the post of Governor, the primaries shall be held at the state congress of the party specially convened for the purpose. What this therefore means is that all the powers of the state executive and congress in relation to the holding of state congress are subject to Article 17.2 which gives the National Executive Committee power to regulate the procedure for selecting the party's candidate as sated therein. It says there shall be a special congress i.e. specially convened for the purpose of choosing the party's candidate but seems silent on who will convene the said special congress.*

*Since Article 17.2 gives the national body power to regulate the procedure at the special congress, it seems that the State Executive or congress has no powers in relation even to the convocation or convening of the special congress. That was apparently why the 1st defendant directed the state chapter to conduct primaries for that purpose...*

*I must therefore find that the holding of a special congress for the purposes of primaries for elected candidates for a public office is not the responsibility of the state executive even if the 1st and 2nd plaintiffs led executive qualifies as such.*

*It is the same national body which has powers to issue guidelines and regulations for the conduct of primaries that also has powers which in my view overrides the powers of the state executive and congress in respect of primary elections. Pursuant to the powers to make such regulations, Exhibit KWDP2 was promulgated with specific provisions on primary elections..."*

The trial court concluded the consideration of question 2 at pages 332 - 333 as follows:-

*"I therefore answer question 2 as follows:-*

*In view of the provisions and statutes and documents referred to in question 2, the 3rd plaintiff is not the duly elected and authentic governorship candidate of 1st defendant in Kwara State for the forthcoming governorship election. His name should therefore not be submitted to the 3rd defendant for the purpose of the governorship election."*

What was the reaction of the lower court to the above findings/holding by the trial court? The reaction can be seen at pages

552, 554 - 555 of the record where the court has these to say; inter alia:-

“In other words, by use of that word [i.e. notwithstanding], no matter what has been provided in Articles 12.1(i); 12.36; 12.37 of the constitution, they shall give way to the provisions of Article 17 of same constitution and accordingly, whichever way the provisions are looked at, they inexorably lead to the conclusion that the power to conduct primaries or state congress for the nomination or election of gubernatorial candidates of the 1st respondent vests exclusively in the 1st respondent and its National Executive Committee...

With the above provisions and the awesome powers conferred on the national executive of the party by the constitution of the party, the guidelines Exhibit KWPD2, the learned counsel for the appellant cannot seriously contend on the authority on *Olorunfoba Oju vs. Abdu-Raheem* that Article 17.1 and 17.2B of the Constitution of the party do not derogate from the power of the state chairman to convene and preside over congress for the nomination or election of the parties gubernatorial candidate.

Having convened a congress for that purpose without the consent and approval nay participation of the 1st respondent's National Executive Committee, that congress and the purported election of the 3rd appellant is null and void as in the first place, the 1st appellants led state Executive council (sic) is not recognized by the national body. The court below was therefore right in concluding/deciding that the State Executive Committee of the 1st respondent had no powers to hold the state congress of the party for the election or selection of the governorship candidate for the party”.

**It is very clear from the above that the lower court affirmed the finding of the trial court on the issue under consideration. This amounts in law to concurrent findings. I hold the considered view that the views expressed supra by the lower courts are very sound and are very much supported by the provisions of the relevant articles of the Constitution of the 1st respondent, Exhibit 1. The whole thing boils down to the effect of the use of the word “notwithstanding” as it appears in Article 17 of Exhibit 1 on other provisions of the said constitution.**

**In the case of *Peter Obi vs INEC (2007) ALL FWLR***

**(Pt.378) 1116 at 1166 this court interpreted the word as excluding any impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself.**

**The above being the true state of affairs, it follows that the use of the word “notwithstanding” in Article 17.2 of Exhibit 1 makes the article self fulfilling and as such no other provision in Exhibit 1 shall be capable of subjugating or rank pari parsu with the said Article 17.2, including Article 12 of the said Exhibit 1.**

**It should be noted that Article 17 comes much after Article 12 therefore its provisions are deemed to supersede those of Articles 12, 13 etc, etc. I therefore find nothing wrong with the decision of the lower court on the matter as same is well grounded in law and consequently unassailable. In the circumstances issue 2 is also resolved against appellants.**

On issue 3 learned counsel for appellants submitted that when an issue is not placed before a court it has no business dealing with it as the court is confined to adjudicating on the questions/issues raised by the parties before it, relying on *Wilson Bank vs. United counties Ltd* (1920) AC 102 at 143; *Olufeagbu vs. Abdul Raheem* (2009) 12 MJS (Pt.1) 164 at 199; that the court raised and decided the issue as to whether the congress concluded by the 1st and 2nd plaintiff was proper for the election of gubernatorial candidate for non-compliance with section 87(4)(b) of the Electoral Act, 2010, suo motu; that the court also raised the issue of the result form signed by the national chairman and secretary of PDP who were not part of the state congress etc, and resolved all the issues against appellants; that the lower court was in error when it held that the issues so raised suo motu were inconsequential to have affected the judgment of the trial court; that what the trial judge did amounted to the court conducting the case for the respondents without calling on the appellants to join issues; that by so raising the issues, the trial judge infringed the appellant’s right to fair hearing and urged the court to resolve the issue in favour of appellants and allow the appeal.

Learned counsel for 1st and 2nd respondents concedes that a court must afford parties the opportunity to address if on any issue raised by the court suo motu, particularly where the issue will affect

the rights of the parties; that an issue is a point in dispute between the parties; that the trial court did not raise any issue suo motu neither did it base its decision on any such issue; that the trial judge did say specifically that he was making the comment in passing as none of the parties raised the sections in their addresses; that the reference to  
 B Section 87 (4) of the Electoral Act has not occasioned a miscarriage of justice; that appellants have failed to show how, if the court had allowed them to address on the issues, it would have affected the decision by resolving the issues submitted for determination in their  
 C favour. Learned counsel urged the court to resolve the issue against appellants.

On his part, learned counsel for 3rd respondent submitted that where a court acts on evidence which was espoused and canvassed in court, the court cannot be said to have raised an issue suo  
 D motu, relying on *Olufeagba vs Abdulraheem* (2009) 12 MJSC (Pt.1) 164 at 199; *Ikenta Best Nig. Ltd vs A-G Rivers State* (2008) ALL FWLR (Pt.417) 1 at 26: that what was being complained about arose from the evidence before the court and are passing comments made on the evidence and urged the court to resolve the issue against ap-  
 E pellants and dismiss the appeal.

***It is trite law that a court of law is not permitted to raise an issue suo motu and proceed to determine the case before it on the issue so raised without calling on the parties or counsel representing them to address it on the said issue.***  
 F ***It follows therefore that it is not the raising of the issue suo motu that is frowned upon by the law but the failure of the court to hear parties on the issue in question before proceeding to determine the case on the issue. Where the court fails***  
 G ***to listen to the parties, particularly the party to be adversely affected by the decision on the issue so raised, it is said to have fallen foul of the principles of the rules of fair hearing, and such a decision is liable to be set aside.***

We however have to remind ourselves that.-

H *"An issue in dispute is the subject of litigation. It is a matter for which a suit is brought and parties join issues for the determination of the dispute. Courts will only consider a justiciable controversy upon existing state of facts and not upon hypothetical dispute or 'academic moot'". See Trade Bank Plc vs Benilux (Nig.) Ltd (2003) ALL*



FWLR (Pt.162) 1874 at 1879.

I had earlier reproduced the questions raised for determination and the reliefs sought by the plaintiffs and the two issues formulated for the determination of the action by learned counsel for the appellants.

I have equally, while considering issues 1 and 2 *supra*, reproduced the resolution of the two issues by the trial court and their affirmation by the lower court. It is very clear from the exercise that the trial judge dealt exhaustively with the substance of the said issues and considered the contentions of both counsel in their resolution. All the materials needed for the resolution of the issues are on record as well as legal arguments from both counsel.

***However, in the process of deciding a matter or resolving an issue the judge is at liberty to make comments which is usually harmless and made by the way. Such comments or views or opinions are considered in law as obiter dictum or dicta- things said by the way. They do not constitute the decision of the court which is usually referred to as the ratio decidendi - the reason for the decision. I have carefully gone through the record and the judgment of the trial judge as well as that of the lower court and have come to the conclusion that the lower court is right in its decision that the issues raised suo motu are inconsequential having regards to the issues submitted by counsel for appellants for determination. Even in this court, the two issues have been found to be of no substance and have been resolved against appellants which confirms the inconsequentiality of the alleged issues raised suo motu.***

***In any event, a court is permitted by law to draw inferences from evidence on record such as documents - see Olorunkunle vs Adigun (2012) ALL FWLR (Pt.614) 139 at 148. Such inferences cannot be regarded as raising issues suo motu, by the court. In the circumstance I find no merit in the issue which is accordingly resolved against the appellants.***

All the issues haven failed, it is obvious that the appeal is without merit and is consequently dismissed by me.

I however order parties to bear their respective costs being members of the same political family to promote reconciliation.

Appeal dismissed.

**GALADIMA JSC**

This is an appeal against the Judgment of the Court of Appeal Ilorin delivered on 5/3/2012 affirming the Judgment of the Federal High Court, Ilorin delivered on 7/4/2011.

B The facts as laid bare by the Appellants as plaintiffs before the trial Federal High court are simple and straightforward. On 9/1/2011, the 1st Respondent (PDP) set up National Electoral Panel which conducted the State Congress for the election of the 1st Respondent's gubernatorial candidate for Kwara State in the April general elections. At the end of the exercise, the majority of the votes cast by the accredited delegates and the scores recorded for the aspirants were duly entered in the prescribed Form PD004/G. The name of the 3rd Respondent was thereafter forwarded to the Independent National Electoral commission (INEC) as the 1st Respondent's candidate.

D On 18/2/2011, the Appellants took out an Originating Summons before the Federal High Court Abuja, and the suit was later transferred to the Federal High Court, Ilorin. The basis of the Appellants approaching the court was that the state Executive Committee of the party being the duly recognized body for the Kwara State branch of the party its electoral process should be the recognized primary election and the result there of. From the THREE main questions the appellants presented to the trial court for determination SIX Reliefs were sought on the following terms:

F "1. A declaration that under and by virtue of Articles 12 1(i); 12. 36, 12.37 and 14.1 of the Constitution of the Peoples Democratic Party (PDP) the 1st defendant the Kwara State Executive Committee of the 1st defendant led by the 1st and 2nd plaintiff is the duly elected and authentic State Executive Committee of the 1st defendant in Kwara State and therefore entitled to run and manage the affairs of the 1st defendant in Kwara State.

G 2. A declaration that the gubernatorial primary of the 1st defendant held in Ilorin on 9th January, 2011 organized and concluded by the State Executive Committee of the 1st defendant led by the 1st and 2nd plaintiffs is the authentic governorship primary of the 1st defendant for the purpose of nomination and submission of names of governorship candidate to the 3rd defendant.

3. A declaration that the 3rd plaintiff is the duly elected and

*authentic governorship candidate having won the governorship primary of the 1st defendant held on 9th January, 2011 and he is the only person entitled to have his name accepted and submitted to the 3rd defendant as the 1st defendant's governorship candidate for Kwara State for the forthcoming April 2011 governorship election.*

4. An order of the court restraining the 1st and 2nd defendants from recognizing adopting and or accepting or submitting or sending to the 3rd defendant the name of the 4th defendant or any person other than the name of the 3rd plaintiff as the 1st defendant governorship candidate for Kwara State for the forthcoming April, 2011 governorship election

5. An order of the court nullifying/setting aside the submission of the name of the 4th defendant by the 1st defendant to the 3rd defendant as the 1st defendant's governorship candidate for Kwara State for the forthcoming April, 2011 governorship election.

6. An order of the court restraining the 3rd defendant from accepting, recognizing and/or treating as the 1st defendant's governorship candidate for Kwara State for the forthcoming April 2011 governorship election the 4th defendant or any other person than the 3rd plaintiff submitted or sent to the 3rd defendant by the 1st and 2nd defendants"

At the trial Federal High Court the two issues formulated for determination were resolved in favour of the Defendants. On an appeal to the Court of Appeal, it dismissed the appeal. Hence the instant appeal is a further appeal to this Court by the Appellants.

Appellants filed their brief of argument on 28/1/2013 and distilled (THREE ISSUES for determination as follows:

"3.1 Whether or not the lower court was right in its conclusions that the trial court properly and correctly evaluated and drew correct inferences from the affidavit and documentary evidence placed before it and that by the tenure of Exhibits 1, 2, 3 & 4 and Articles 2, 12, 1(i) & (j), 14.1 and 14.5 of Exhibit 1 (PDP Constitution) the 1st appellants led State Executive Committee of the 1st respondent is not the authentic Kwara State Executive Committee (Grounds 1 and 2).

3.2 Whether or not the lower court was right in its conclusions that by Articles 12.72; 17.1 and 12.2 of the constitution of the 1st respondent (Exhibit 1) the powers of the State Chairman and the

*State Executive Committee under Articles 12.3 (b) & (d); 12.41(c) and 13.22 of Exhibit 1 with respect to the congress for the election or nomination of the governorship candidates of the party have been taken away (Grounds 3 and 4).*

B *3.3 Whether or not the lower court was right in its conclusions that the holdings of the trial court on issues raised suo motu by it were inconsequential and did not occasion a miscarriage of justice on the appellants who were said to have been tardy in not addressing the issues (Grounds 5 and 6)."*

C In addition to these three issues formulated above, learned counsel for appellants has invited this Court to depart from its decision in the case of LADO V. CPC (2012) All FWLR (Pt.607) 598 and other decisions in that line pursuant to Order 6 Rule 5(4) of the Supreme Court Rules.

D The grounds upon which the invitation to depart from LADO's case (supra) are predicated are stated as follows:

*"1. The decisions of the Court overlooked the status, aim and intendments and effects of the Constitution of a political party*

E *2. The decisions have the likely effect of allowing the party leadership to foist on the party candidates of their choice in flagrant disregard and violation of the Constitution of the party and Section 87(7) and 10 of the Electoral Act, 2010 thereby leaving the aggrieved members without redress.*

F *3. Adherence to the decisions is likely to cause and or perpetuate injustice".*

G On his part, learned counsel for the 1st and 2nd Respondents filed their brief of argument on 18/9/2012. He submitted that the Supreme Court is invested with powers to review, depart or overrule its previous decisions, which power must be exercised with greatest hesitation and caution but in consideration of established guiding principles so as to allow for consistency in the decisions of the courts. Reliance was placed on the case of PAUL ODI v. OSAFILE (1985) 1 NWLR (Pt.1) 17 at 34. He however distilled a sole issue for determination thus:

*"Whether the lower court was not right when it held that the trial court evaluated the affidavit and documentary evidence placed before it."*

On his part learned counsel for 3rd Respondent in the brief

filed on 10/9/2012 has submitted that the invitation to this Court to depart from its decision in LADO V. G.P.C. is baseless and is not rooted in the appeal before the court, that the decisions of the lower courts were based on the interpretation of the Constitution of the 1st respondent and never based on the decision of this Court over party affairs as stated in LADO'S case (supra). Relying on SHAMSUDEEN ABOLORE BAKARE V. NIGERIAN RAILWAY CORPORATION (2007) All FWLR (Pt.391) 579 at 1603, it submitted further that the Appellants have failed to show that the decision in LADO v. CPC is an instrument of injustice. He urged the court to decline the invitation. However, learned counsel raised THREE issues for determination as follows.

*“(a) Whether the lower court was correct in holding that the trial court properly evaluated and drew inferences from the affidavit and documentary evidence placed before it to arrive at the conclusion that the 1st appellant’s led State Executive Committee is not the authentic and recognized Kwara State Executive Committee of the 1st respondent.*

*(b) Whether the lower court was right in its conclusion that with respect to the congress for the election or nomination of the Governorship candidate of the 1st respondent in a State, the powers of the State Chairman and its Executives under Articles 12 - 3 (b) & (d), 12.41 (c) and 13.22 of the 1st respondent’s constitution has been taken away by the provisions of Articles 12.72, 17.1 and 17.2 of the same constitution.*

*(c) Whether the alleged issue raises suo motu by the trial court were in fact issues raised suo motu and whether the lower court was right in its conclusion that the alleged issues were inconsequential to have affected the judgment of the trial court.”*

I shall consider first the Appellants’ invitation to this Court to depart from its earlier decision in LADO V. CPC (supra). Generally, this Court may depart from or overrule its previous decision under certain circumstances and in accordance with laid down principles of law, or given per incuriam or that it has become an instrument of injustice and so on. See: BAKARE V. NRC (2007) All FWLR (Pt.391) 1663; VEPEE INDUSTRIES LTD. V. COCOA INDUSTRIES LTD. (2008) All FWLR (Pt. 425) 1667 at 1687. It is also note-worthy that the Order 6 Rule 5(4) of the Rules of this Court provides as follows:

*“(4) If the parties intend to invite the court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the Brief, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons.”*

B From the above it is clear that reasons for invitation extended to court to depart from its previous decision must be strong, and coherent. See *IDONIBOYE V. NNPC* (2003) FWLR (Pt.146) 959, *MACLEAN V. INLAKS LTD.* (1980) 8 - 11 SC. 11.

C The provisions of Order 6 Rule 5(4) (*supra*) above does not confer a right of appeal on a party or any person for that matter to complain about a decision not favourable to his case. The court does not, as a matter of course overrule, reverse its previous decisions whether on questions of substantive or procedural law. The court must be satisfied or convinced that the earlier decision was clearly D and patently wrong. Well guided by a plethora of cases on this point, particularly in the case of *VEPEE INDUSTRIES LTD. V. COCOA INDUSTRIES LTD.* (*supra*) and in the circumstances of and facts of the case at hand which are similar to those in *LADO V. CPC* (*supra*), the Appellants in my view have not made a case for departure from the E decision of that case and other similar decisions of this court.

A point has been made here, however, that the difference between this case and Lado’s case lies in the fact that that case is limited to the issue of nomination of party candidate’s for elections, F the present case goes some steps further in that it includes the question as to who is the authentic State Executive Committee of the 1st Respondent (PDP) in Kwara State. Lado’s case did not decide that the courts have no jurisdiction to determine any issue relating to the provisions of the Constitutions of political parties, as it relates to the G rights and privileges of the organs of the parties and the members’ interest.

The question remains, however, whether Appellants have satisfied the legal requirements necessary for this Court to depart from its decision in Lado’s case. It is my view that they have not. They H have not shown that the decision in Lado’s case is wrong in law or it has been given per incuriam. It has been decided that a party in an action founded on party nomination for elections who fails to bring himself within the provisions of Section 87 of the Electoral Act 2010 (as amended), has no cause of action to be enforced in the courts

and as such the courts will have no jurisdiction to entertain such an action, particularly as the issue as to who should be a candidate in a political party still remains a political question within the domestic jurisdiction of the political parties, and therefore not justiciable.

It is my firm view that the sole issue formulated by the 1st and 2nd Respondents is apt and appropriate and sufficient to determine this appeal. It has been reproduced above. It is all about evaluation of the affidavit and documentary evidence at the trial. Whilst the appellants have contended that the learned trial judge failed to adequately evaluate the evidence on record and thereby drew wrong conclusion from accepted credible evidence and took erroneous view of the matter, the learned counsel for the Respondents have all submitted that the trial court properly and correctly evaluated the evidence on record by coming to the conclusion it arrived at; that it was after exhaustive consideration of the case of the parties that the lower court proceeded to hold that the trial court was thorough in its evaluation of both the affidavit and documentary evidence before it affirmed the decision. The lower court even went further to consider Exhibits 9 and 10 which the trial court failed to evaluate.

The Appellants have not demonstrated that this is a proper case for this Court to interfere with the concurrent findings of facts by the two lower courts. See: *EZEOKÉ V. NWABO* (1988) 1 NWLR (Pt.72) 616; *DURO SARO V. AYORINDE* (2005) 3 - 4 SC 14; *AKEREDOLU v. AKINYEMI* (1989) 3 NWLR (Pt.108) 164.

The ascription of probative value to evidence is a matter primarily before the trial court, where the trial court has thoroughly and unquestionably evaluated the evidence and appraised the facts, it is not the business of the appellate court to substitute its own views of undisputed fact with the views of the trial court. See *BALOGUN v. AGBOOLA* (1974) 1 ALL NLR (Pt.2) 60. Also *FATOYINBO v. WILLIAMS* (1959) 1 FSC 87. Appellate court can only interfere with such findings after evaluation by the trial court, where the said finding are perverse as it is not supported by the evidence on record or is based on wrong evaluation or not based on the evidence on record or is based on wrong evaluation, or not based on the evidence led at the trial at all. See: *WOLUCHEM v. CHIEF GUDI* (1981) 5 SC 291 and *EBBA V. OGODO* (1984) 4 SC 84.

It is my view that the lower court was perfectly in order in

affirming the evaluation of evidence by the trial court and the conclusion it arrived at. I do not see any reason why this court should interfere with the concurrent findings of facts.

For the above reasons and the fuller ones lucidly adumbrated in the leading Judgment, I too feel that this appeal should be dismissed.

I order accordingly, but I abide by order made as to costs.

### **PETER-ODILI JSC**

I am in total agreement with the judgment and reasoning just delivered by my learned brother W. S. N. Onnoghen, JSC, and in support I shall make some remarks.

This is an appeal against the judgment of the Court of Appeal, Ilorin Division Coram: Ignatius Agube, Ita George Mbaba, Obande Ogbuinya JJCA delivered on the 5th day of March, 2012 affirming the judgment delivered by Hon. Justice A. O. Faji of the Federal High Court Ilorin on the 7th day of April, 2011.

#### **FACTS BRIEFLY STATED**

On the 9th day of January, 2011 the 1st respondent, peoples Democratic Party (PDP) appointed National Electoral Panel which conducted the state congress for the election of the 1st respondent's gubernatorial candidate for Kwara state in the April 2011 general elections. At the end of the exercise, the 3rd respondent emerged winner by the majority of the votes cast by the accredited delegates and the scores recorded for the aspirants were duly entered in the prescribed Form PD004/G. The name of the 3rd respondent was thereafter forwarded to the Independent National Electoral Commission (INEC) as the 1st respondent's candidate.

The stance of the appellants is that the State Executive Committee of the 1st Respondent had conducted a gubernatorial primary election on that same 9th January, 2011 but at another venue at which the 3rd appellant emerged winner, claiming that the State Executive Committee of the party being the duly recognized body for the Kwara state branch of the party its electoral process should be the recognized primary election and result. This was the basis of the appellants taking out an Originating Summons in Suit No.FHC/ABJ/71/2011 before the Federal High Court, Abuja Division on the 18th



February, 2011 for determination of some question precisely there in number set out in the Originating Summons. The suit was later transferred to the Federal High court, Ilorin. Necessary processes were filed including written addresses and two sets of preliminary objection. On the 7th April 2011, the trial court overruled the two sets of Preliminary objection and on the consideration of the originating summons on the merit, the learned trial Judge found no merit in the originating summons and dismissed same. B

Aggrieved the plaintiff appealed to the Court of Appeal and in a considered judgment, the court below dismissed the appeal hence the present appeal. C

On the 28th January 2013 date of hearing, learned counsel for the appellants, adopted their brief of argument settled by Salman Jawondo and filed on 17/7/12. In the brief were formulated three issues for determination which are captured hereunder, viz: D

1. Whether or not the lower court was right in its conclusions that the trial court properly and correctly evaluated and drew correct inferences from the affidavit and documentary evidence placed before it and that by the tenure of exhibit 1, 2, 3 and 4 Articles 2, 12.1 (i) & (j), 14.1 of Exhibit 1 (PDP Constitution) the 1st appellant's led State Executive Committee of the 1st respondent is not the authentic Kwara State Executive Committee. E

2. Whether or not the lower court was right in its conclusions that by Articles 12.72, 17.1 and 17.2 of the Constitution of the 1st respondent (Exhibit 1) the powers of the State Chairman and the State Executive committee under Articles 12.3 (b) & (d), 12.41 (c) and 13.22 of Exhibit 1 with respect to the Congress for the election or nomination of the governorship candidate of the party have been taken away. F

3. Whether or not the lower court was right in its conclusion that the holdings of the trial court on issues raised suo motu by it were inconsequential and did not occasion a miscarriage of justice on the appellants who were said to have been tardy in not addressing the issues. G

In the said brief of argument learned counsel for the appellant raised an invitation to this court to depart from its decision in Lado v. CPC (2012) ALL FWLR (Pt.607) 598 pursuant to order 6 Rule 5(4) of the Supreme Court Rules. H

For the 1st and 2nd respondents learned counsel on their behalf adopted their brief of argument settled by Abdul A. Ibrahim Esq. and filed on 18/9/12. In the brief learned counsel argued in counter-ing response to the Notice of the Appellants for a departure from *Lado v. CPC* (supra). He however distilled a single issue for deter-mination which is as follows:

Whether the lower court was not right when it held that the trial court evaluated the affidavit and documentary evidence placed before it.

Learned counsel for the 3rd respondent adopted their brief settled by B. R. Gold Esq. and filed on 10/9/12. In the brief, learned counsel framed three issues for determination stated as follows:

(a) Whether the lower court was correct in holding that the trial court properly evaluated and drew inferences from the affidavit and documentary evidence placed before it to arrive at the conclu-sion that the 1st appellant's led State Executive Committee is not the authentic and recognized Kwara State Executive Committee of the 1st respondent.

(b) Whether the lower court was right in its conclusion that with respect to the congress for the election or nomination of the Governorship candidate of the 1st respondent in a state, the powers of the State Chairman and its Executives under Articles 12 - 3 (b) & (d), 12.41 (c) and 13.22 of the 1st respondent's Constitution has been taken away by the provisions of Articles 12.72, 17.1 and 17.2 of the same constitution.

(c) Whether the alleged issue raised suo motu by the trial court were in fact issues raised suo motu and whether the lower court was right in its conclusion that the alleged issues were inconsequential to have affected the judgment of the trial court.

The Notice of the Appellants inviting this court to depart from its earlier decision in *Lado v CPC* (supra) shall be taken first to clear the way before going into the main substance of the appeal.

#### NOTICE FOR DEPARTURE

Learned counsel for the appellants said they were making the invitation on the ground that the courts have jurisdiction to entertain cases relating to elections or selections of party candidates for elections by factions of a political party and that the State Executive Committee of a political party has power with respect to the conduct

of the congress for the nomination of candidates of the party.

He said contrary to the above, this court per *Lado v CPC* (2012) ALL FWLR (pt. 607) 598 overlooked the statutory aims and intendments and effects of the constitution of a political party. That the decision as *Lado v CPC* (supra) and such like have the likely effect of allowing the party leadership to foist on the party candidates of their choice in flagrant disregard and violation of the constitution of the party and Section 87 (7) and (10), thereby leaving the aggrieved members without redress. That adherence to those decisions is likely to cause and or perpetuate injustice. B

Learned counsel stated on that the decisions in *Lado v CPC* (supra) represent a restatement of the position of this court in line with the cases of *Onuoha v Okafor* (1933) SCNLR 244; *Dalhatu v Turaki* (2003) FWLR (Pt.174) 247. C

Going on learned counsel said that this court may depart from an earlier decision for compelling reasons where such decision is wrong or erroneous in law or that it is per incuriam or it has become an instrument of injustice. He cited *Omoju v FRN* (2008) ALL FWLR (Pt 415) 1656 at 1677; *Bakare v NRC* (2007) ALL FWLR (Pt.391) 1579 at 1603 etc. D

He said this is one of those occasions or instances when the court will depart from its previous decisions. That the constitution of a political party is a document of contract with binding force between the party and its members on one hand and amongst the members inter-se and must be obeyed by the party itself. He cited *Ugwu v. Ararume* (2007) ALL FWLR (Pt.377) 807 at 875 - 876; *Imonikhe v A. G. Bendel State* (1992) 7 SCNJ (Pt. II) 197 at 210. E

For the appellant it was further submitted that where the complaint of a member or a group of members of a political party bothers on or is founded on a breach of and or non-compliance with the provisions of the constitution of the party such complaint is justifiable and the court will have jurisdiction. That the provisions of Section 222(c) and Section 223(r)(a) of the Constitution of the Federal Republic of Nigeria 1999, a registered party is not only required to have a constitution but the party is expected to comply with its constitution and in particular with respect to the election of its officers at all levels. He referred to Articles 12.1(i) & (j), 12.37 (b) & (d), 12.41 and 12.22 of the party constitution. F

G

H

Contending further, learned counsel said for the court to decline jurisdiction on such matter is to surrender the running and management of political parties including the nominations of candidates for elective offices to the whims and caprices of the political warlords and money bags, a situation in complete negation of the party's constitution and Section 87 of the Electoral Act which is aimed at enthroning the principle of internal democracy in the election of party candidates. That to get back on course, the decision in *Lado v. CPC* (supra) should be departed from.

Responding learned counsel for the 1st and 2nd respondents submitted that this court has been called upon to over-rule itself, the following underlying considerations come into play:

1. That the decision is impeding the proper development of the law.
2. The decision has led to results which are unjust or undesirable or which are contrary to public policy.
3. That the previous decision was reached per incuriam and which if followed, would inflict hardship and injustice upon generations in the future.
4. Or course temporary disturbance of rights acquired under such a decision.

That the Supreme Court may also depart from its previous decision, if the previous decision is inconsistent with the constitution or erroneous on points of law or that it is occasioning miscarriage of justice or perpetuating injustice. See *Bronik Motors v. Wema Bank* (1983) 1 SCNLR page 296; *Tewogbade v Obadina* (1994) 4 SCNJ (pt.1) 161 at 180.

Learned counsel for the respondent 1st and 2nd went on to say that the decision in *Lado v CPC* (supra) is in line with the principles of law and there is no basis for the departure sought. He referred to section 87(7) & (10) of the Electoral Act, 2010; *Veepee Industries Ltd v Cocoa Industries Ltd* (2008) 4 - 5 SC (Pt.1) 116 at 140, 142.

That this court should decline the invitation and continue to follow the principle upon which *Lado v CPC* (supra) was decided. He cited *Asanya v State* (1991) 4 SC 40 at 55.

The main thrust of the invitation by the appellants for the departure from this court of its decision in *Lado v CPC* (2012) ALL

FWLR (Pt.607) 598 in order to go into the full consideration of which of the two congresses for the emergence of the Governorship candidate of the 1st respondent. In doing this to go right into the belly of the structure of the valid committee of the Peoples Democratic Party at the Kwara State level.

This posture of the appellants was fiercely resisted by counsel B for the respondents who contend that the basis for a departure from a previous decision did not arise here. Also that the case of Lado v CPC (2012) ALL FWLR (pt.607) 598 was not contrary to the prevailing principles of the law with respect to party primaries or congresses. C

The right of the appellants to call for a departure from an earlier judgment or principle is not in contest.

It is however a right that cannot be called up in vacuo or without the factors upon which this court would accede to such an invitation being absent. Those considerations that must exist before such a departure can be made are stated as follows:

1. That the decision is impeding the proper development of the law.
2. The decision has led to results which are unjust or undesirable or which are contrary to public policy. E
3. That the previous decision was reached per incuriam and which if followed, would inflict hardship and injustice upon generations in the future.
4. Or course temporary disturbance of rights acquired under such a decision. F
5. If the previous decision is inconsistent with the constitution or erroneous on points of law or that it is occasioning miscarriage of justice or perpetuating injustice. G

I place reliance on the cases of Bronik Motors v Wema Bank (1983) 1 SCNLR page 296; Tewobade v Obadina (1994) 4 SCNJ (pt.1) 161 at 180.

My understanding of the anxiety of the appellants for which they crave the departure of the principle as reiterated in Lado v CPC H (supra) is that in the course of who picks the political party ticket for contest in a general election and for our purpose here, the rightful governorship candidate, a person aggrieved with the conduct of the process has no relief whatsoever even if his basis for complaint ought

to be addressed. That would have been so but for the provision of Section 87(9) and (10) of the Electoral Act 2010 as amended. It is thus provided:

*“87 (9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidates of a political party for an election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.*

*(10) Nothing in this section shall empower the courts to stop the holding of primaries or general election under this Act pending the determination of a suit.”*

Taking the above provisions in context with the case of Lado v CPC which interpreted those statutory provisions that is Section 87(9) of the Electoral Act, it is that the case of Lado has stated that while it is recognised that the issue of who should be a candidate of a political party at any election is clearly a political one to be determined by the rules of the said political party, it is a domestic issue and not justiciable in law. However when in the course of the interplay prior to the election in keeping with the law and the party’s constitution and in the course of that primary a person who claims to have been the winner at that internal party election has his name missed out when the names of candidates to the National Electoral Body as INEC then he has a platform to cry out and be listened to. That is what Lado v CPC (supra) established and that is what I see unfold in the case in hand and so there is no justification for this call to depart from the case of Lado v CPC (supra).

It is in that light that I would like to refer to what this court said when so invited in the case of Asanya v The State (1991) 4 SC 40 at 55 per Nnaemeka-Agu JSC thus:

*“I wish to begin my consideration of this aspect of the appeal by restating the attitude of this court to the time honoured principle of stare decisis. This court respects precedents, even though it is not a court bound by precedent. It is, as here as in many other parts of the commonwealth, essential for the certainty of the law that it should generally follow its previous decisions. But as a court of ultimate resort, it need not do so when the interest of justice dictates otherwise. So it will not hold itself hamstrung by precedent when it has been*

*shown that an established principle is beset with a substantial error such that to follow it will amount to furthering injustice”*

I have cited and quoted the excerpts in *Asanya v The State* (supra) in an advisory way. Having done that I am of the same mind as my learned brother, Muhammad JSC in *Veepee Industries Ltd v cocoa Industries Ltd* (2008) 4 - 5 SC pt.1) 116 when he said:

*“The appellant in this appeal with due respect, has failed to show us that the decision in Ekwunife (supra), was reached per incuriam or that it perpetuated any injustice or that it has been annulled by legislation or by a judicial decision of this court given intra-judicially... I do not think following the decision in Ekwunife’s case will perpetuate injustice unless injustice is understood only in the way learned counsel for the appellant epitomized it.”*

It is clear to me that the appellants have not shown the merit in the invitation for this court to depart from the case of *Lado v CPC* (supra) since none of the factors that should enable such a move are absent. This point is resolved against the appellants.

The sole issue of the 1st & 2nd respondents seem appropriate in the determination of this appeal and would suffice. It is thus:

Whether the lower court was right when it held that the trial court evaluated the affidavit and documentary evidence placed before it.

Learned counsel for the appellant submitted that the lower court was wrong in its conclusions that the trial court properly and correctly, inferences from the affidavit and documentary evidence placed before it and that by the tenure of exhibits 1, 2, 3, and 4 and Articles 2, 12.1(i) & (j), 14.1 and 14.5 of Exhibit 1 (PDP constitution) the 1st appellant’s led State Executive Committee of the Peoples Democratic Party. In the supporting affidavit, the appellants traced the foundation of the state leadership of the party. He contended further that a community reading of the paragraphs of the affidavits and exhibits show clearly that the parties based the constitutionality and regality of their respective faction on succession to previous executive elected under the constitution of Peoples Democratic Party. That it is for that reason that the lower court’s affirmation of the holding of the trial court that how other executives came into being are irrelevant is a perverse conclusion which ran contrary to the evidence and thereby occasioned a miscarriage of justice to the appel-

lants which findings, concurrent as they are should be disturbed by this court. He cited *Odofin v. Ayoola* (1984) 11 SC 72; *Bunyan v. Akingboye* (1999) 7 NWLR (pt.609) 31; *Saleh v N. C. S.* (2012) ALL FWLR (Pt.620) 1328 at 1345; *G. M. O. Nworah & sons Ltd v. Akupa* (2010) 3 SC (Pt.1) 23 at 56-57; *Ebba v Ogodo* (2000) FWLR B (Pt.27) 2094.

For the appellants were further canvassed that evaluation of evidence by a court is of utmost importance in the adjudicatory process and where such exercise will not involve credibility of witnesses and or involves documentary evidence only, as in the case in hand C then this court as an appellate one is in a good position as the trial court to do its own evaluation. He cited *Ishola v UBN Ltd* (2005) 6 NWLR (Pt.992), 422 at 443.

Learned counsel submitted for the appellants that since the D parallel structures put in place, maintained and sustained by the 3rd respondent's ground is not rooted in the constitution of the party, the state executive of the 1st respondent paraded by the 3rd respondent's group, the congress of the 1st respondent convened for the election of the 1st respondents governorship candidate are E unconstitutional, baseless and null and void having no effect. Also that the mere fact that the Electoral Panel went to the illegal and unconstitutional structure to conduct a purported primary will not confer on the unconstitutional and illegal structure the status of legal- F ity and constitutionality. That it is trite that one cannot put something on nothing and expect it to stand since it will fall. He cited *Saleh v. Moneuno & Ors* (2006) 7 SC (Pt. 11) 121, *Macfoy v UAC* (1961) 3 WLR 1409.

Going on further learned counsel for the appellants said even G though the court has power to draw inferences from stated facts in a case and thereby arrive at conclusions, it cannot deal with a matter not before it. That the court must confine itself to only the questions raised before it to the exclusion of other questions which they do not advance. He referred to *Olorunkunle v Adigun* (2012) ALL FWLR H (Pt.614) 1.39 at 148-189, *Wilson Bank v United Countries Limited* (1920) AC 102 at 143.

He went on to say that the trial court delving into issues raised suo motu without giving the parties the opportunity of being heard infringed on their right of fair hearing. That since the issues were



weighty this court should not allow them to stand. He cited *Lawal v. A. G. Kwara State* (2012) ALL FWLR (Pt.618) 988 at 987; *Duke v Governor of Cross River State* (2010) ALL FWLR (Pt.488) 252 at 274; *Large v First Bank of Nigeria Plc* (2010) ALL FWLR (Pt.525) 258 at 277; *Adigun v Oyo State* (1987) 1 NWLR (Pt.53) 678; *Ekuma v Silver Eagle Shipping Agencies* (1987) 4 NWLR (Pt.65) 472 at 487; *INEC v ADC* (2009) ALL FWLR (Pt.490) 668 at 684. B

In response, learned counsel for the 1st and 2nd respondent said the power of this court to overrule its earlier decision or depart from one is normally exercised with great hesitation, caution and on established guiding principles in relation thereto. That to depart certain considerations come into play such as impeding the proper development of the law, that the decision has led to results that are unjust or undesirable or which are contrary to public policy. Also that the previous decision was reached per incuriam and if followed would inflict hardship and injustice upon generations in the future or cause temporary disturbance of rights acquired under such a decision. He said a departure from an earlier decision could also be made if the previous decision is inconsistent or erroneous on points of law or that it is occasioning a miscarriage of justice. He referred to *Odi v. Osafire* (1985) 1 NWLR (Pt.1) 17 at 34; *Bronik Motors v Wema Bank* (1983) 1 SCNLR page 296; *Tewogbade v. Obadina* (1994) 4 SCNJ (Pt.1) 161 at 180. That taking the principles above in mind it can be seen that the case of *Lado v CPC* (supra) does not fit the bill. He referred to *Veepee Industries Ltd v Cocoa Industries Ltd* (2003) 4 - 5 SC pt.1) 116 at 140 - 142. D E F

That Section 87(9), (10) of the Electoral Act 2010 as amended is an adequate provision for the ventilation of complaints in the matter of the nomination of candidates by a political party. G

In the matter of the substance of the appeal, learned counsel for the respondents 1st and 2nd said it is trite law that parties are bound by the Record of Appeal before it as it is a continuation of the process started at the court of trial. He said the records of appeal bear out the two lower courts in their respective evaluations, findings and conclusions. He relied on *Garuba v Omokodion & Ors* (2011) 6 - 7 SC (Pt.5) 89; *First Bank of Nigeria Plc v T. S. A. Industries Ltd* (2010) ALL FWLR (Pt.537) 633 at 637; *Mogaji v. Odofoin* (1978) 4 SC 91. H

It was further canvassed for the 1st and 2nd respondents that the appellants have not established why the court should grant the declaratory reliefs and prayers sought by them since such reliefs are not granted as a matter of course or for the asking. He relied on CBN v. Amao (2010) 5 - 7 SC (Pt.1) 1; Ladoja v INEC (2007) ALL B FWLR (Pt.377) 934 at 951.

He said there is no basis for the intervention of this court on those findings of the two courts below. He cited Ezeoke v. Nnagbo (1988) 1 NWLR (Pt. 72) 616; Durosaro v. Ayorinde (2005) 3 - 4 SC C 14; Akeredolu v. Akinyemi (1989) 3 NWLR (pt.108) 164.

For the 1st and 2nd respondents it was put forward that it is not the duty of the appellants to conduct primary election for the purpose of nominating the candidate of the 1st respondent for any political office including governorship candidate rather it is the duty D of 1st respondent through the appropriate organs such as the Electoral Panel. He cited Ikechi Emenike v PDP (2012) 5 SC (Pt.1) 113 at 1165.

That the provisions of Section 87 of the Electoral Act only come to play where an aspirant is aggrieved that the provisions of the E Act has not been complied with in the process of the selection of a candidate.

On the issue whether or not the trial court raised a substantial issue suo motu and without hearing from the parties considered and utilized it for its conclusion, learned counsel for 1st and 2nd respondent said it was not so. That the reference that court made on F Section 87 (4) of the Electoral Act was in passing and was not part of the issues utilized in the determination of this suit and no miscarriage of justice was occasioned.

G On his part, learned counsel for the 3rd respondent said nothing on the record supported a departure from the principles espoused in the case of Lado v CPC (supra). That the invitation to the court for the departure was for the exercise of the powers of the court in vacuo. He referred to Okafor v Onwe (2003) FWLR (pt.137) H 1155 at 1170; Taiye Oshoboja v Alhaji Surakatu Amida & Ors (2012) ALL FWLR (Pt.505) 1606 at 1627 - 1628.

That the case of Lado v CPC (supra) is distinguishable to the case at hand. Learned counsel went on to say that there is no basis for the interference of this court into the concurrent findings of the

two courts below. He relied on *Amasike v The Registrar General, Corporate Affairs Commission & Anor.* (2010) ALL FWLR (pt.541) 1406 at 1451.

That the question as to who convenes a specific or special congress for the election of the candidate of the political party has been answered in Article 17.2 of the PDP constitution to be the National Executive committee. He cited *Inakoju & ors v Adeleke & ors* (2007) ALL FWLR (Pt.607) 3 at 117; *Ibori v Ogboru* (2004) 15 NWLR (Pt.607) 154 at 194 - 195.

On whether or not the court at trial raised and utilized an issue suo motu, learned counsel for the 3rd respondent said that was not the case here as that court made use of the evidence which was espoused and canvassed in the court. He cited *Ikenta Best Nig. Ltd v A. G. Rivers State* (2008) ALL FWLR (Pt.607) 1 at 26; *Adeyemi works construction (Nig). Ltd v Omolehin* (2004) ALL FWLR (Pt.607) 1564.

Learned counsel said there is a distinction between an issue properly identified upon which a court may not delve into without its being raised or raising it by the court should have the parties counsel address the court. The other side being a passing remark from a court without substance which cannot be taken as raising an issue suo motu for which it can be said that the decision should be set aside. He relied in *Abacha v Gani Fawehinmi* (2000) FWLR (Pt. 4) 533 at 594, *Peter Amadi Nwankwo v Ecumenical Dev. Corp. Society* (EDCS) U. A. (2007) 5 NWLR (Pt. 1027) 377 at 395.

That the trial court is not guilty as alleged on raising the issue of Section 87 (4)(b) of the Electoral Act suo motu since that section was the pivot of questions 2 and 3 in the originating summons placed before the court for adjudication and parties at the trial court joined issues in their respective, addresses thereof.

Indeed the fulcrum of this Appeal is the issue of proper evaluation of evidence including documentary evidence by the trial court and also if the Court of Appeal was right to have upheld what the trial court did.

Then brought out in the appeal is whether or not the trial court raised the issue of Section 87(4) suo motu and utilized it to arrive at its decision and if this is re- examined here would not reverse the decision which had been earlier made.

To answer the earlier part of these divergent points of view of the appellants on one part and the respondents on the other side, I would refer to a part of the decision of the Court of Appeal which dealt with the matter of evaluation of the evidence being entirely documentary and quoted is as follows:

B *“The learned trial Judge must have forgotten to mention exhibits 9 and 10 in his evaluation of the affidavit and documentary evidence before him and since this is a question of drawing inferences from documentary evidence which are part the record of appeal, I have duly re-evaluated those documents and commented on them and their respective purports. The submission by the learned counsel for the appellants that the court below did not evaluate the affidavit and documentary evidence tendered by the appellants or that the case of the appellant was misconstrued is therefore un-*  
C *founded.”*  
D

There need to be restated that an appeal such as this one is a continuation from the original suit from the Originating summons, up to the Court of Appeal and now this. It is therefore in keeping with that principle that the parties, their counsel and the court are bound by the Record of appeal before the court. See first *Bank of Nigeria v T. S. A. Industries Ltd* (2010) ALL FWLR (Pt.537) 633 at 637; *Zakawanu I. Garuba & Ors v Bright Omokodion & Ors* (2011) 6 - 7 SC (Pt. v) 89.

F From the Record of Appeal I am one with the submission of learned counsel for 1st and 2nd respondents that a thorough and lawful evaluation was carried out by the trial court which was reviewed, endorsed and accepted by the Court of Appeal and there is no leg which this court can tamper with or interfere with the evaluation so properly made. I rely on *Durosaro v. Ayorinde* (2005) 3 - 4  
G SC 14; *Chief Edmund Obi v Chikezie Uzoewulu* (2009) ALL FWLR (Pt.499) 518 at 525, *Amasike v The Registrar General, Corporate Affairs Commission & Anor.* (2010) ALL FWLR (Pt.541) 1406 at 1451.

H The other angle raised in this appeal has to do with the contention of learned counsel for the appellants that the trial court brought out an issue suo motu and utilizing it came to its decision without a hearing from counsel. The matter so raised is to be found at page 328 of the Record, part of the judgment of the trial court. I shall

quote it for effect and it is thus:

*“One fact that stands out in all these is that 1st and 2nd plaintiffs led executive conducted primaries at which 3rd plaintiff was elected. Section 87(4) (b) Electoral Act stipulates that for governorship elections special congresses must be held in each local government area of the state. I say this in passing as none of the parties before me raised the specifics of the section in his address and would seem to be in agreement that the proper congress is a state congress. The question as couched however requires a consideration of the section. Out of abundance of caution therefore, I would find that the congress purportedly conducted by the 1st and 2nd plaintiffs was not the proper one for election of gubernatorial candidate.”*

From the comments or findings of the trial court as captured above, I agree with learned counsel for the 3rd respondent that a critical look at the case at the court of first instance showed that that court did not raise the issue of Section 87(4) (b) of the Electoral Act since that section was the pivot of questions 2 and 3 in the Originating Summons placed before it for adjudication. Since parties and counsel are bound by the Record including the originating summons which appellants as plaintiffs had crated, and put up questions for determination of that trial court which included the issues concerning section 87(4) of the Electoral Act. They cannot now come in this strange posturing to impugn what the trial court did in respect thereof which really was not to ignore the case the appellants put forward.

It is to be said therefore that the loud noise over a point raised suo motu by the trial court remains what it is, an empty noise not backed by anything.

To conclude is to say that the concurrent findings of the two courts below, that the primary which produced the 3rd respondent as the governorship candidates of the 1st respondent was the valid process since it was conducted by the National Executive of the 1st respondent through its appointed agents and not the one purportedly organized by the State Chapter of the 1st respondent on which the appellants are hanging on. The situation is in tune with the recent decision of this court faced with a similar scenario. That is *Ikechi Emenike v PDP* (2012) 5 SC (Pt.1) 113 at 165.

From the above and the well reasoned and articulated lead judgment, I also dismiss the appeal. I abide by the consequential

orders, my learned brother, Onnoghen JSC made.

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### **OGUNBIYI JSC**

The plaintiffs/appellants were first before the Federal High Court Ilorin wherein they sought by means of an originating summons for the determination of the questions which all relate to the interpretations of the Constitution of the Peoples Democratic Party (PDP) on the guidelines for primary elections. The reliefs are all reproduced in the lead judgment. The trial court on the 7th April, 2011 found no merit in the originating summons and dismissed same. Dissatisfied with the judgment, the appellants appealed to the Court of Appeal Ilorin division which in a considered judgment delivered on the 5th March, 2012 also dismissed the appeal and hence the appeal now before us.

The appellants as a prerequisite, has called on this court to depart from *Lado V. CPC* (2011) 11-12 (pt.1) (SCM) PAGE 149 on the ground that the decision has the likely effect of allowing the party leadership to foist on the party a candidate of their choice, in flagrant disregard and violation of the constitution of the party and Section 87(7) and (10) of the Electoral Act 2010. In otherwords that there is the fear that adherence to the decision is likely to cause the perpetuation of injustice.

The question whether this court is vested with the power and jurisdiction to depart and/or over-rule its previous decision has been well answered by the 1st and 2nd respondents' learned counsel in their brief of argument. In otherwords, in as much as the power is exercisable, the court is expected to be very hesitant and thus apply great caution and in line with established guiding principles in relation thereto. This is obvious especially where the courts are expected to be consistent in their decisions and also bearing in mind the principles of judicial precedents where the certainty of law as enunciated is to be followed as a rule of stare decisis. It has been declared times without number in plethora of authorities that precedent is an indispensable foundation on which to decide what is the law. However, there may be times when a departure from precedent is in the interest of justice and also the development of the law. Short of the foregoing situational circumstances, ordinarily this court as a matter of

policy is reluctant to reverse its previous decisions. The conditions laid down and necessitating such reversal have been spelt out by his Lordship Obaseki JSC in the case of Odi v. Osofile (1985) 1 NWLR (Pt.1)p.17 at pages 34 and 35 wherein he said:-

*“...the Supreme Court, as a court at the apex of the judicial hierarchy in this country has the jurisdiction and power, sitting as full court and overrule previous erroneous decisions on points of law given by a full court on constitutional questions or other wise. It will depart from such decisions and overrule them in the interest of justice and the law. These previous decisions must be clearly shown to be (1) vehicles of injustice or (2) given per incuriam or (3) clearly erroneous in law.”* (emphasis is mine)

The conclusion to be drawn from the foregoing authority is that, the decision, seeking departure must be, “on constitutional questions or otherwise”. The invitation by the appellants in the case of hand is seeking that this court should interpret certain provisions of the party’s Constitution as distinct from the Constitution of the Federal Republic of Nigeria which is envisaged by the court in the case of Odi V. Osofile supra.

The view held by this court in the case of Bronik Motors Ltd & Anor v. Wema Bank Ltd. 14 NSCC page 227 is also in confirmation that this court will not normally depart from a judicial precedent unless three prerequisite conditions are prayed for in aid and satisfied. The conditions are in consonance with those stipulated in the case of Odi V. Osofile supra.

A further related authority is a decision in the case of Tewogbode V. Obadina (1994) 4 SCNJ (pt.1) page 161 particularly of page 180 where this court on the same principle on departure also held that:-

*“Although it would do so with the greatest hesitation, this court has ample jurisdiction and power to depart from or overrule its previous decision.*

*The underlining considerations for departing from a previous decision by the Supreme Court are, inter alia, that the decision is impeding the proper development of the law or has led to results which are unjust or undesirable or which are contrary to public policy. See Egbe V. Yusuf (1992) 6 NWLR (pt.145) 1 @ 15 and Akinsanya v. U.B.A Ltd (1986) 4 NWLR (Pt.35) 237. This court may also depart*

*from its previous decision if such previous decision is inconsistent with the constitution or is erroneous on point of law or that it was given per incuriam or that it is occasioning miscarriage of justice or perpetrating injustice. See Odi v. Osofile (1985) 1 NWLR (Pt.1) 17 at 34 Cardoso v. Daniel (1986) 2 NWLR (Pt.20) 1, Bronik Motors B. Wema Bank (1983) 1 S.C.N.L.R. 296 and Rossek V. African Continental Bank Ltd (1993) 8 NWLR (pt.312) 382 @ 431."*

In the case of Lado V. C.P.C supra at page 159 of the report, this court per Onnoghen JSC had the following to say amongst others:-

*"The issue of jurisdiction raised in this case is therefore as it relates to the competence of the courts to hear and determine matters relating to the nomination of candidates by political parties for general elections was held as exclusive domestic jurisdiction of the political parties to the exclusion of the courts of law. It is in line with the above that the courts held that the question of the candidate a political party will sponsor in on election is in the nature of a political question which is not justiciable in a court of law, see Onuoha v. Okafor (1983) SCNLR 244; (1983) NSCC 494."*

As rightly submitted and argued on behalf of the respondents, the appellants have not demonstrated under the grounds upon which the application is predicated in what terms and manner the decision has perpetrated injustice. The fear of the unknown which is non existent and hypothetical cannot be entertained. The onus is, in otherwords, on the appellants to show in what way the earlier decision was reached per incuriam and/or inconsistent with the constitution. They not demonstrated this before us. Another additional back up authority is the decision by this court in the case of Veepee Industries Ltd. V. Cocoa Industries Ltd (2008) 4 - 5 SC (pt.1) p.116 at 140 where Muhammad JSC affirmatively held as:-

*".....a real hurdle for the appellant to convince this court to depart from its earlier decision..."*

It is pertinent to state that the law has in anticipation envisaged and thus provided for situations where aspirants and candidates who are dissatisfied with the conduct of their political parties in the process of nomination of candidates could seek for remedy. The caring provision is Section 87(9), (10) of the Electoral Act 2010 as amended. With reference to the invitation made by the appellants



learned counsel it has not been shown that the established legal principle laid down in *Lado V. C.P.C* is characterized with substantial error such that to follow same will amount to fostering injustice. For the court to give in as willed by the appellants, it will negate the principle of stare decision. In other words and although this court by its position is not bound by precedent, it nevertheless respects precedent B which is essential for the certainty of the law that it should generally follow its previous decisions, except of course where the justice of the earlier decision is in question; the interest of justice should rightly therefore dictate otherwise. See the case of *Asanya V. The State* (1991) C 4 SC page 40 @ 55 per Nnaemeka-Agu JSC.

I wish to further odd of this juncture that Lado's case is remarkably distinguishable from the case at hand; this, I say, because, while in that case there were two parallel primaries conducted on 13-01-2011 and 15-01-2011 respectively, there was in the case before D us only one primary conducted on 9-1-2011 by the National Executive Committee of the 1st Respondent. The purported primary conducted by the state chapter of the 1st Respondent on 9-1-2011, as rightly submitted by the respondents, was not a primary, same being E illegal and thus carried no right whatsoever. See the unreported case of *Prince John Okechukwu Emeka v. Lady Margery Okadigbo & 4 Ors.* 9 SC 69/2012) delivered on the 6th day of July, 2012.

In the result and on the invitation by the appellants that this court should depart from Lado's case, same I hold cannot be obliged F as there is no legal basis in doing so. It is accordingly refused.

On the merit of the appeal the prominent question for determination is:- who is the authentic and valid or duly elected State Executive Committee of Kwara State clothed with the constitutional powers to convene and hold state congress for the election of the G party's governorship candidate?

To buttress their arguments, the appellants submitted on irresistible conclusion that the 1st and 2nd appellants led Executive Committee is the authentic state Executive Committee of PDP in Kwara State one entitled to run and manage the affairs of the party H including convening and holding the congress for the election of the governorship candidate of the party.

It is on record that the appellants admitted the existence of two parallel groups and each paraded itself as the authentic State Execu-

tive Committee. One of the two primary elections conducted on the 9th January 2011 was by the National Executive of the PDP for the purpose of electing the party's candidate for the Governorship seat. On the same date, the 1st and 2nd appellants also claimed to have conducted another primary in their positions as the State Executive Chairman and Secretary respectively.

The bone of contention on the 1st issue, questions the propriety of the lower court in holding that the trial court properly and correctly evaluated and drew inferences from the affidavit and documentary evidence placed before it to arrive of the conclusion that the 1st appellant's led state Executive Committee is not the authentic and recognized Kwara State Executive Committee of the 1st respondent. The issue relates to evaluation of evidence and this is what the lower court had to say of page 548 of the record:

*"It has to be noted that before the learned trial judge came up with the findings, he did evaluate the provisions of these articles of pages 322 to 323 of the Record so carefully and dispassionately along with the documents tendered as Exhibits 2, 3, 4 and rightly in my view; held that those documents and the section or Articles of Exhibit 1 above mentioned conferred no legitimacy on the Appellants."*

The law is well settled that where an appellate court is confronted with the question of proper evaluation of evidence stemming from a related ground of appeal, the duty lies on the said court to have recourse to the record with the view to ensuring that the lower court in fact acted on an available evidence. The confirmation of such evidence will incapacitate the appellate court from interference with such findings. See the case of Chief Edmund Obi v. Chikezie Uzoe Wulu (2009) All FWLR (Pt.499) 518 at 525.

The appellate courts are also put on the guard to be wary and cautious and not to ordinarily interfere with concurrent findings of fact by the lower courts. The condition upon which such interference can be exercised is where for instance if is manifest that the trial court's finding is either perverse, and not supported by evidence or is based on wrong evaluation or that the conclusion arrived of was not predicated on any evidence of all. See also the case of Bernard Amasike v. The Registrar General, Corporate Affairs Commission 7 Anor. (2010) All FWLR (Pt. 541) 1406 at 1451.

The appellants had the onus of proving that their own group

was the one duly elected of the primary election for that purpose and was also the group recognized by the 1st Respondent (PDP) and the National Executive Committee of the 1st respondent.

The appellants in the case of hand, contrary to the submission by their learned counsel not shown any cogent and convincing reason or circumstances compelling enough to warrant the interference of this court with the concurrent findings of fact by the two lower courts. The concurrent findings are well supported by evidence; same are not also perverse; and it has not also been shown that any miscarriage of justice has occasioned there from. The said issue is therefore resolved against the appellants.

Issue 2 relates to the powers of the state chairman and its Executive under Articles 12.3(b) and (d) 12.41(c) and 13.22 of the 1st Respondents Constitution in relation to the congress for election or nomination of Governorship Candidate of the respondents. The question is whether the powers of the state Executive of the 1st Respondent to summon, preside over meetings of the state convention and elect Governorship candidate of the party under Articles 12.41(c) and 13.22 can co-exist with Article 17.2 of the same constitution.

On a community reading of the foregoing provisions, while Article 17.2 is special, clear and specific, the earlier articles 12 series are of a general nature and application. For example the provisions of Article 17.2 provides in part thus:-

*“In the conduct of primaries for the party’s candidate for the post of Governor of a state, the primary shall be held of the state congress of the party specifically convened for that purpose... the National Executive Committee shall regulate the procedure for selecting the party’s candidate for elective officers.”*

The provision did not leave any one in doubt on the question as to who should convene or summon the specific special congress in the conduct of primaries for the party’s candidate for the post of Governor of a state. In otherwords, the power to convene specific assignment is resident in the powers of the National Executive Committee of the 1st Respondent, who is solely responsible in formulating guidelines and regulating the procedure for selecting the party’s candidates for elective offices. The law is well settled that a specific provision prevails over and above that which is general. See Ibori V. Ogboru (2004) 15 NWLR (pt. 895) 154 at 194 - 195. As

rightly submitted on behalf of the respondents the lower court cannot therefore be faulted in affirming the trial court's decision that the provisions of Article 17.1 and 17.2 being specific provisions of the 1st respondent's constitution prevail over the provisions of Articles 12.41(c) and 13.22 of the same constitution to erode the State Executive Committee of the power in respect of the congress for election of governorship candidate of the 1st respondent in a state.

The said issue is also resolved against the appellants.

On the totality of the entire appeal, with the few words of mine and more particularly on the comprehensive reasoning and conclusions, very well articulated by my learned brother Onnoghen, JSC, I also concur that the appeal lacks any merit and is hereby dismissed by me in like terms as the lead judgment, inclusive of the order made as to costs.

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