

SUPREME COURT OF NIGERIA
FRIDAY 17TH MAY, 2013. SC. 56/2012
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

INDEPENDENT NATIONAL
ELECTORAL COMMISSION APPELLANT
AND
1. HON. EMEKA ATUMA
2. PEOPLES DEMOCRATIC PARTY RESPONDENTS
3. SENATOR NKECHI NWAOGU

COURTS - Academic issue - Where a question before court is entirely speculative - Court will decline to decide the point - As same does not aid in determining live issues in the matter (H1)

PLEADINGS - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - And such relief is not granted either in default - Or on admission by defendant (H2)

COURTS - Issue - Determination - Court should not make case different from the one made by parties - Hence since question 2 was not founded on any material evidence - It ought not to have been entertained by CA (H3)

COURTS - Function - Court is simply an arbiter that decides matter as presented by parties - Thus it is not to examine disqualifying factors for senatorial office - Which were not specifically raised in issue (H4)

COURTS - Order - Basis - CA was wrong to have ordered that 2nd respondent had no candidate - And that 3rd respondent was not qualified to contest - As the order was not sought by the parties (H5)

DOCUMENTS - Disclaimer - Effect - Disclaimer does not destroy document on which it appears - Rather it limits the scope and operation - For the express purpose tied to the disclaimer (H6)

ELECTIONS - Documents - Disclaimer - Exhibit INEC 1 - Limitation of the exhibit is that it should not be used by persons - In order to foster boundary and political claims (H7)

COURTS - Declaratory relief - Grant - Principles - Court must exercise its discretion judicially and judiciously - And should carefully weigh evidence on imaginary scale (H8)

FACTS

Plaintiff/1st respondent and 1st defendant/3rd respondent contested 2nd defendant/2nd respondent's (PDP) primary election held on 8th January 2011 for the nomination of PDP's Senatorial candidate for Abia Central Senatorial District. 3rd respondent was declared winner of the election while 1st respondent was the runner up. 1st respondent subsequently instituted this action at the Federal High Court Abuja, challenging the nomination of 3rd respondent as a candidate for the election to the Senate Seat for Abia Central Senatorial District. In his originating summons, 1st respondent sought for a determination of the following questions inter alia, whether by the combined provisions of Section 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Osisioma L.G.A. of Abia State can fall both into the Abia South Senatorial District and the Abia Central Senatorial Districts.

Based on the questions, 1st respondent claimed inter alia, a declaration that pursuant to the delineation of Senatorial District in Abia State by 3rd defendant/appellant (INEC), Osisioma-Ngwa L.G.A. does not fall within the Abia Central Senatorial District and an order declaring 1st respondent as the winner of 2nd respondent's primary election. Appellant on the other hand contended that Osisioma-Ngwa L.G.A. was in Abia Central Senatorial District. In its judgment, the court resolved question 3 in originating summons against 1st respondent, but stated that questions 1 and 2 could not be resolved without oral evidence as facts was in dispute. Aggrieved, 1st respondent appealed to the Court of Appeal Abuja, which allowed the appeal and held that the said L.G.A. does not form part of Abia Central Senatorial District. The court therefore granted the 1st, 2nd and 3rd declaratory reliefs. Dissatisfied, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“1. Was the Court of Appeal wrong to have entertained question one (1) of the questions for determination in the Originating Summons and to answer it in the negative when the question was an invitation to indulge in an academic exercise.

2. Was the Court of Appeal wrong to have entertained question two (2) of the questions for determination in the Originating Summons and to answer it in the negative, when there was no evidence that a delineation of boundaries was effected pursuant to Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria, 1999.

3. Was the Court of Appeal wrong when in answer to question three (3) of the questions for determination in the Originating Summons, it held that the nomination of the 3rd respondent was void as the 3rd respondent and her nominators were not registered to vote in the Abia Central Senatorial District.

4. Was the Court of Appeal wrong when it held that Exhibit INEC 1 was unreliable for the Purpose of determining whether Osioma Ngwa Local Government Area is within Abia Central Senatorial District.

5. Was the Court of Appeal wrong when it invoked Section 15 of the Court of Appeal Act, 2009 and Order 19 Rule 11, Court of Appeal Rules, 2011 and relied on Exhibit EA2 to hold that Osioma Ngwa Local Government Area was not in Abia Central Senatorial District of Abia State.”

HELD (Unanimously allowing the appeal per **FABIYI**

JSC)

COURTS - Academic issue

1. There is no gain saying the point that where a question before the court is entirely academic or speculative, an appellate court in accordance with the well settled principle of this court will decline to decide the point. This is because academic and hypothetical issues or questions do not assist the court in the determination of the live issues in the matter. They are merely on frolic as they do not touch or affect material aspects in the adjudication process. They add nothing to the

truth searching process in the administration of justice. They tend to lead to confusion as they do not relate to any relief. The court should not bother to entertain any issue that would amount to a mere academic discourse.

A careful juxtaposition of the 1st respondent's reliefs with his question one (1) for determination shows that the question is not remotely related to any of his reliefs as claimed at the trial court. As none of the parties contended that Osioma Ngwa Local Government fell within two (2) Senatorial Districts, the question whether by virtue of Sections 71 and 72 of the Constitution, it can fall into two districts does not relate to the dispute in the matter as well as the reliefs sought by the 1st respondent. I strongly feel that question one (1) as posed, is clearly hypothetical, academic and speculative as it presents no live issue in the case. However, the 1st respondent should note that it is question one (1) and the issue thereon raised that sound academic and speculative; not the suit as a whole. In effect, question one (1) is hereby struck out.

(pp. 2389 C/2390 E)

PLEADINGS - Declaratory relief - Proof

2. It was the 1st respondent who posed question 2 for determination. He must stand or fall by the determination of his poser. The main relief which is his relief 1 is declaratory by nature and purport. It is for him to establish his claim on the strength of his case. He cannot rely on the weakness of the opponent's case.

It has been stated in clear terms that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence. A court does not grant declaration of right either in default or on admission without taking evidence and being satisfied that the evidence led is credible. (p. 2392 H)

COURTS - Issue - Determination

3. A clear reading of question two (2) posed by the 1st respondent shows that the case is founded on the basis that a particular delineation was made by the appellant pursuant to the amended 1999 Constitution. The court must base its determination on the case as presented and must not deviate therefrom. A court should not make a case different from the one made by the parties. No evidence was offered upon which the question can be answered. It cannot be rightly inferred that a delineation was made by reference to the defence of the defendants. The 1st respondent failed to provide evidence of his alleged delimitation upon which question 2 and his relief 1 are foisted, to establish his case. Since question 2 was not founded on any material evidence, it ought not to have been entertained and determined by the court below. In short, the issue is resolved in favour of the appellant. (p. 2393 D)

COURTS - Function

4. This court will continue to pronounce it that the constitutional function of a court of record is well circumscribed and defined. It is simply an arbiter. It is for the parties to present their case and it is for the court to decide the matter as presented by them. It was not the business of the court below to proceed 'like a knight errand' to examine disqualifying factors for the office of Senator which were not specifically raised in the question for determination. The issues the 1st respondent 'had in mind' which were not embedded in question 3 for determination are immaterial as the appellant which lacked the 'power of clairvoyance' must only by operation of law, join issues upon the pleaded case of the 1st respondent served on it. (p. 2397 B)

COURTS - Order - Basis

5. To make the matter worse, the court below dished out orders which were not prayed for by the parties. It made orders that the 2nd respondent had no candidate and the 3rd respondent was not qualified to contest. A court should not make unsolicited orders or grant prayers not sought by the parties.

This is because the court is not a charitable organization. Courts are bound to decide the case of the parties, based on their presentation. (p. 2397 E)

DOCUMENTS - Disclaimer - Effect

6. Let me state it right away that I cannot see in Exhibit INEC 1 where it was expressed to be unreliable. The term cannot be rightly inferred by the appearance of ‘disclaimer’ on it. I agree with the senior counsel for the appellant that rather than embarking on mere definition of the term ‘disclaimer’, the more appropriate venture by the court below ought to be to understand and appreciate the term in which it appeared on the document. The appearance of a disclaimer on a document is not as important as what was expressed to be disclaimed. It is not the case that a disclaimer destroys outrightly the document on which it appears. A more correct approach is that it limits the scope and operation of the document, for the express purpose tied to the disclaimer. (p. 2400 G)

ELECTIONS - Documents - Disclaimer

7. In the above context, the limitation of Exhibit INEC 1 was expressed to be that the document should not be used by persons in order to foster ‘boundary and political claims’ which are not functions assigned to INEC under Section 153 of the 1999 Constitution and item 15 of part 1 of the Third Schedule to same. There was no disclaimer with respect to any function assigned to the appellant and the disclaimer cannot be justifiably read as such. The primary function of INEC as disclosed in Section 71 (a) of the Constitution is to ‘divide each State of the Federation into three Senatorial Districts for purpose of elections to the Senate; subject to the provisions of Section 72 of the Constitution. It is clear to me that in the circumstance of the position of things as depicted above, Exhibit INEC 1 serves no other purpose, other than for election. In other words, the document cannot be employed by litigious communities or individuals for boundary or political claims. This is the perspective from which the document should be viewed. To do otherwise ‘will introduce an unnecessary and unantici-

pated distortion into a serene situation.’ (p. 2401 A)

COURTS - Declaratory relief - Grant - Principles

8. Let me start by observing that since the reliefs claimed are basically declaratory in their purport and intendment, the court was bound to exercise its discretion in the matter judicially and judiciously as well. B

I need to further point out another relevant guiding principle that a court should keep in view in tackling this type of matter herein, which has been closely contested on behalf of the parties. It is that the court should carefully weigh evidence with productive value on an imaginary scale to see the side where the pendulum swings. (p. 2404 B) C

REPRESENTATION

Dr. Onyechi Ikpeazu, SAN with Ogechi Ogbonna, Esq. and Tobechukwu Nweke, Esq., for the Appellant
Chief Akin Olujinmi, SAN with Akinshola Olujinmi, Esq., Olufemi Atetedaye, Esq., Ayodele Akinsanya, Esq. and Oluwole Ilori, Esq., for the 1st Respondent. E
Nnamdi Mwkocha - Ahaiye, Esq. with Nwala Orade, Esq., Emeka Eze, Esq., Anyanwu Abraham. Esq., Harry Nnedinma, Esq. and Sam Iheonnaekwu, Esq., for the 2nd Respondent.
Joshua E. Alobo, Esq., with Aisha Ali (Miss), for the 3rd Respondent F

CASES REFERRED TO

Plateau State of Nig v. A-G Federation (2006) 3 NWLR (pt. 967) 346
Olafisoye v. FR.N (2004) NWLR (pt. 864) 580
Olaoye v. Administrator Osun State (1996) 10 NWLR (pt. 476) 38 G
Bamgboye v. University of Ilorin (1999) 10 NWLR (pt. 622) 290
Morik v. Adamu (2001) 15 NWLR (pt. 737) 666
Kentebe v. Isangedighi (2002) 8 NWLR (pt. 768) 134
Adeogun v. Fashogbon (2008) 17 NWLR (pt. 1115) 146
Adepoju v. Yinka (2012) 3 NWLR (pt. 1258) 567 H
Agbakoba v. INEC (2008) 18 NWLR (pt. 1119) 489
Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 1
Ogunlowo v. Ogundare (1993) 7 NWLR (pt. 307) 610
Okwejinminor v. Gbakeji (2008) 5 NWLR (pt. 1079) 172

Ndulue v. Ibezim (2002) 49 WRN 130

Ojukwu v. Yar'Adua (2009) 12 NWLR (pt. 1154) 50

Ndulue v. Ibezim (2002) 49 WRN 130

STATUTES & RULES REFERRED TO

- B Court of Appeal Act 2004, s. 15
- Constitution of Federal Republic of Nigeria, ss. 71, 72
- Electoral Act 2010, ss. 31(6), 32(1), 37
- Supreme Court Rules 2009, O. 3 r. 8
- C Court of Appeal Rules 2011, O. 19 r. 11

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Abuja Division (the court below) delivered on 13th December, D 2017. Therein, the appeal by the 1st respondent against the judgment of the Federal High Court (the trial court) delivered on 21st April, 2011 was allowed and the decision was ultimately set aside.

It is apt to state the relevant facts leading to this appeal which arose from a dispute between the 1st respondent on the one part E and the 2nd and 3rd respondents on the other part, as to whether or not Osisioma Ngwa Local Government Area was in Abia Central Senatorial District for the purpose of the 2011 general election for the said Senatorial District. On 9th July, 2010, the 1st respondent wrote Exhibit EA1 to the appellant wherein he sought clarification on the Local Government Areas that comprised Abia Central Senatorial District. He received the appellant's letter of clarification - Exhibit EA2 F which disclosed the five (5) Local Government Areas as Ikwuano LGA, Isiala Ngwa North LGA, Isiala Ngwa South LGA, Umuahia North G LGA and Umuahia South LGA.

The 1st respondent contended that the appellant established the National Advisory Committee on Delimitation of Constituencies in 2008 which submitted a report - Exhibit EA3 in July, 2009 and listed the above stated Local Government Areas in Abia Central Senatorial District. H

He maintained that though the committee considered a proposal to include Osisioma Local Government Area in Abia Central, the report of the Committee had not been approved. Each of the 1st respondent and the 3rd respondent desired to represent the Peoples

Democratic Party (PDP) as the candidate for the Abia Central Senatorial District. At the primaries which was conducted on 8th January, 2011 the 3rd respondent was returned, having scored majority of the votes cast. The 1st respondent came second. The 1st respondent also claimed that the 3rd respondent represented the Osisioma/Obingwa/Ugwunagbo Federal Constituency at the National Assembly in 2003 and that the Federal Constituency is within Abia South Senatorial District. The 1st respondent placed further reliance on Exhibit FA4, his Expression of Interest Form and Exhibit EA5- his Nomination Form 000496. B

Based on the above, the 1st respondent sought from the trial court, the determination of the following questions, to wit: C

“1. Whether by the combined provisions of Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Osisioma Local Government Area of Abia State of Nigeria D can fall both into the Abia South Senatorial District and the Abia Central Senatorial District.

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

3. Whether the 3rd defendant who at all material time is an indigene of and resident within Osisioma Ngwa Local Government Area of Abia State of Nigeria within the Abia South Senatorial District F can lawfully contest for the position of a Senator in the Abia Central Senatorial District of Abia State of Nigeria.”

The 1st respondent contended that if answers to the above questions are in negative, he is entitled to the following reliefs namely:- G

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

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

3. An order of this Honourable Court declaring as unconstitu-

tional, null and void and of no legal effect whatsoever the nomination of the 3rd defendant by the 2nd defendant to run for and/or contest for the Post of a Senator representing the Abia Central Senatorial District in the 2011 general elections to be conducted by the 1st defendant, based on false information/declarations on oath submitted to the 2nd defendant.

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

At the trial court, both 2nd and 3rd respondents had cause to raise objections to the competence of the Originating Summons; inter alia. The objections were overruled by the trial judge who assumed jurisdiction in the matter. In a counter affidavit filed by the appellant, it exhibited Exhibit INEC 1, the Nigeria Atlas of Electoral Constituencies which point to the fact that Abia Central Senatorial District is comprised of six (6) and not five (5) Local Government Areas which included Osisioma Ngwa Local Government Area. The appellant maintained that it never altered the composition of the Senatorial District, subsequent to exhibit INEC 1.

The 2nd respondent filed a counter affidavit and contended that the current state of the Nigerian Law did not impose the requirement that an aspirant for an office of Senator must be an indigene of the affected area. The 3rd respondent filed a counter affidavit and contended that the 1st respondent's Exhibit EA2 was a false document and that there was a need to subpoena the author to testify in the light of the contention of the appellant as well as the numerous electoral documents, to the effect that Osisioma Ngwa Local Government Area was within Abia Central Senatorial District. The 3rd respondent annexed the following exhibits, viz:

1. Exhibit 3DA-EC8C which disclosed that Osisioma Ngwa Local Government was at all times material within Abia Central Senatorial District.

2. Exhibit 3DB-EC8D the summary of result, wherein she was elected Senator for Abia Cental Senatorial District in 2007 which included Osisioma Local Government Area.

3. Exhibit 3DC- Letter of the Appellant to the effect that Osisioma Ngwa Local Government was within Abia Central Senato-

rial District.

The 3rd respondent further disclosed that Senator Bob Nwanunu was elected a Senator to represent Abia Central Senatorial District, with Osisioma Ngwa forming part of the Senatorial District in 1999; while Senator Chris Adighije was elected the Senator to represent Abia Central Senatorial District in 2003; with Osisioma Ngwa Local Government forming part of Abia Central Senatorial District. B

The 1st respondent filed a further counter affidavit wherein he refuted Exhibit INEC 1 and referred to page 418 which he claimed embodied a disclaimer. He also contended that Exhibit EA3 which was made subsequent to Exhibit INEC 1 should be preferred. The trial judge identified two issues for determination. The first issue relates to the mode of commencing the action by Originating Summons and the propriety of same in the circumstances of the case. He found contradictions in all the contents of the documents put in by the parties and that same could only be resolved by oral evidence. He invoked the provision of Order 3 Rule 8 of the 2009 Rules of this court to decline to determine questions 1 and 2 as reproduced above in this judgment. The learned trial judge identified issue 2 before him as follows:- C

“Whether there is any provision of the Constitution — the Electoral Act or any other legislation which stipulates that a candidate for election into the office of Senator representing a Senatorial District must be resident in or an indigene of that district.” E

In considering the 2nd issue, the trial judge, in holding that the 3rd respondent was not disqualified from contesting in Abia Central Senatorial District, stated as follows:- F

“It is therefore my considered view that a citizen of Nigeria with the required qualifications as listed in Section 65 (1) (supra) and is not disabled under Section 66 of the Constitution can contest for membership of the Senate in any part of Nigeria provided he is accepted by the people. If the framers of the Constitution intended that residency and/or indigeneship should be one of the yardsticks or qualifications for membership into the National Assembly, they should have included it under Section 65 (1) as one of the qualifications but they did not.” G

The learned trial judge then concluded that the claim of the 1st respondent had no merit and dismissed it. It seems as if the trial H

judge embarked upon what is referred to as the 'line of least resistance' to set a stage for an appeal to the court below. The 1st respondent, as expected, appealed to the court below which heard same and allowed it. In its real essence, the court below found as follows:-

B 1. The learned trial judge was wrong to have refused to answer questions 1 and 2 in the Originating Summons.

C 2. The court below invoked Section 15 of the Court of Appeal Act to review the affidavit evidence and the documents tendered, and found that Exhibit INEC 1 contained a disclaimer and together with the conflict found in pages 418 and 419 of the record, was an unreliable document.

D 3. The court below found a conflict between 1st respondent's Exhibit EA2 on the one hand and 3rd respondent's Exhibit 3DC. The court below examined Exhibits 3DA and 3DB, results in previous elections held at Abia Central Senatorial District and held that Exhibit EM had a 'stronger and more superior probative value than 3rd respondent's Exhibit 3DC read together with exhibits 3DA and 3DB'.

E 4. The court below then examined 3rd respondent's Exhibit EA7-her nomination form and held that the 3rd respondent was domiciled at Ward 2 Osisioma Ngwa Local Government together with eleven (11) out of thirty-two (32) of her nominators which vitiated her nomination.

F The court below ultimately allowed the appeal and held that the 3rd respondent was not a candidate de jure for the Senatorial Elections scheduled for 9th April, 2011. It also held that the 2nd respondent - PDP, had no candidate in law to be sponsored for the said election in Abia Central Senatorial District. The appellant felt G unhappy with the decision of the court below. It filed a Notice of Appeal on 17th January, 2012 in which it complained of seventeen (17) grounds of error in law and misdirection.

H In this court, briefs of argument were filed and exchanged. On 21st February, 2013 when the appeal was heard, learned senior counsel for the appellant, 1st respondent and 2nd respondent made oral submissions to further prop their respective stand points. The issues formulated on behalf of the appellant read as follows:-

"1. Was the Court of Appeal wrong to have entertained question one (1) of the questions for determination in the Originating

Summons and to answer it in the negative when the question was an invitation to indulge in an academic exercise. GROUND 15.

2. *Was the Court of Appeal wrong to have entertained question two (2) of the questions for determination in the Originating Summons and to answer it in the negative, when there was no evidence that a delineation of boundaries was effected pursuant to Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria, 1999. GROUND 16.* B

3. *Was the Court of Appeal wrong when in answer to question three (3) of the questions for determination in the Originating Summons, it held that the nomination of the 3rd respondent was void as the 3rd respondent and her nominators were not registered to vote in the Abia Central Senatorial District. GROUNDS 11, 12, 13 and 14.* C

4. *Was the Court of Appeal wrong when it held that Exhibit INEC 1 was unreliable for the Purpose of determining whether Osisioma Ngwa Local Government Area is within Abia Central Senatorial District. GROUNDS 1 and 2.* D

5. *Was the Court of Appeal wrong when it invoked Section 15 of the Court of Appeal Act, 2009 and Order 19 Rule 11, Court of Appeal Rules, 2011 and relied on Exhibit EA2 to hold that Osisioma Ngwa Local Government Area was not in Abia Central Senatorial District of Abia State. GROUNDS 3, 4, 5, 6, 7, 8, 9 and 10.”* E

On behalf of the 1st respondent, five (5) similar issues were also crafted for determination. They read as follows:- F

“(i) *Whether question one of the questions for determination in the Originating Summons raised only an academic issue. Covers ground 15.*

(ii) *Whether the lower court was not right in its decision on question 2 on the Originating Summons having regard to the materials on record. Covers ground 16.*

(iii) *Whether having regards to all the circumstances of this case, including the provisions of Sections 32 (1) and 37 of the Electoral Act, the lower court was not right in voiding the nomination of the 3rd respondent as a candidate for election to the Senate seat for Abia Central Senatorial District. Covers grounds 11, 12, 13 and 14.* H

(iv) *Whether the lower court was not right in its evaluation of Exhibit INEC 1. Covers grounds 1 and 2.*

(v) *Whether having regard to the materials on record, this was an appropriate case for the lower court to invoke its jurisdiction under Section 15 of the Court of Appeal Act in deciding the appeal before it. Covers grounds 3, 4, 5, 6, 7, 8, 9 and 10.*"

In treating the issues for determination, I wish to rely on the issues decoded on behalf of the appellant. The issues shall be treated by me in seriatim. Issue 1 reads as follows:-

"Was the Court of Appeal wrong to have entertained question one (1) of the questions for determination in the Originating Summons, and to answer it in the negative, when the question was an invitation to indulge in academic exercise."

With respect to this issue, learned senior counsel for the appellant contended that question 1 as framed by the 1st respondent in the Originating Summons is purely hypothetical, academic and speculative. He maintained that the dispute is that whereas the 1st respondent contends that Osioma Ngwa Local Government is in Abia South Senatorial District, the appellant and the 2nd and 3rd respondents on the other part are emphatic that Osioma Ngwa Local Government Area falls within Abia Central Senatorial District of Abia State. Senior counsel felt that since none of the parties contended that Osioma Ngwa Local Government fell within two Senatorial Districts, the question whether by virtue of Sections 71 and 72 of the Constitution, it can fall into two districts, does not relate to the dispute in the case as well as the reliefs sought by the 1st respondent at the trial court.

Senior counsel urged the court to hold that there was no live issue between the parties as to whether Osioma Ngwa Local Government Area fell within two Senatorial Districts and in that context, question 1 is simply hypothetical, academic and at best speculative. He cited the cases of *Plateau State of Nigeria v. Attorney-General of the Federation* (2006) 3 NWLR (Pt. 967) 346 at 419; *Chief Olafisoye v. FR.N* (2004) NWLR (Pt. 864) 580 at 654 - 655; *Olaoye v. Administrator Osun State* (1996) 10 NWLR (pt. 476) 38; *Bamgboye v. University of Ilorin* (1999) 10 NWLR (pt. 622) 290; *Morik v. Adamu* (2001) 15 NWLR (Pt. 737) 666; *Kentebe v. Isangedighi* (2002) 8 NWLR (Pt. 768) 134; *Adeogun v. Fashogbon* (2008) 17 NWLR (Pt. 1115) 146 at 180 and *Adepoju v. Yinka* (2012) 3 NWLR (Pt. 1258) 567. Learned senior counsel finally urged that the question be struck

out by the court.

Learned senior counsel to the 1st respondent maintained that the suit is not hypothetical, academic or speculative. Senior counsel referred to the cases of Agbakoba v. INEC & Ors. (2008) 18 NWLR (Pt. 1119) 489 at 549; Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 1 and 7UP Bottling Co. v. Abiola v. Sons Ltd. (2001) 13 NWLR (pt. 730) 469 at 495. Senior counsel maintained that it was wrong for the appellant to isolate question one for attack and urged the court to dismiss the appellant's issue one and the related ground of appeal No. 15.

There is no gain saying the point that where a question before the court is entirely academic or speculative, an appellate court in accordance with the well settled principle of this court will decline to decide the point. This is because academic and hypothetical issues or questions do not assist the court in the determination of the live issues in the matter. They are merely on frolic as they do not touch or affect material aspects in the adjudication process. They add nothing to the truth searching process in the administration of justice. They tend to lead to confusion as they do not relate to any relief. The court should not bother to entertain any issue that would amount to a mere academic discourse. See: Adeogun v. Fashogbon (supra) at page 180; Ndulue v. Ibezim (2002) 49 WRN 130 at 152 and Ojukwu v. Yar'Adua & Ors. (2009) 12 NWLR (pt. 1154) 50 at 142.

Let me say it again that the 1st respondent contends that Osisioma Ngwa Local Government is in Abia South Senatorial District; whereas the appellant as well as the 2nd and 3rd respondents maintained that Osisioma Ngwa Local Government Area falls within Abia Central Senatorial District. It is clear that none of the parties contended that the appellant placed Osisioma Ngwa Local Government Area in two Senatorial Districts as to infer the infringement of Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which read as follows:-

“71 Subject to the provision of Section 72 of the Constitution, the Independent National Electoral Commission shall divide each state of the Federation into three senatorial districts for purposes of elections to the Senate.

72 No senatorial district shall fall within more than one State and the boundaries of each district - shall be as contiguous as possible and be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably Practicable. ”

It is at this point again apt to quote for an adequate focus
B question 1 posed by the 1st respondent at the trial court. It reads as follows:-

*“Whether by the combined provisions of Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Osisioma Local Government Area of Abia State of Nigeria
C can fall both into the Abia South Senatorial District and the Abia Central Senatorial District. ”*

It is to be noted here that the 1st respondent’s relief 1 is for a declaration that pursuant to the delineation of Senatorial Districts in
D Abia State of Nigeria by the appellant, Osisioma Ngwa Local Government Area of Abia State of Nigeria does not fall within the Abia Central Senatorial District. Relief 2 is for a declaratory Order that the 3rd defendant (3rd respondent herein) is ineligible to aspire to be sponsored by the 2nd defendant. Reliefs 3 and 4 are for the court to
E set aside the nomination of the 3rd respondent and for the 1st respondent to be declared the duly nominated candidate of the 2nd respondent.

***A careful juxtaposition of the 1st respondent’s reliefs with his question one (1) for determination shows that the
F question is not remotely related to any of his reliefs as claimed at the trial court. As none of the parties contended that Osisioma Ngwa Local Government fell within two (2) Senatorial Districts, the question whether by virtue of Sections 71
G and 72 of the Constitution, it can fall into two districts does not relate to the dispute in the matter as well as the reliefs sought by the 1st respondent. I strongly feel that question one (1) as posed, is clearly hypothetical, academic and speculative as it presents no live issue in the case. However, the 1st
H respondent should note that it is question one (1) and the issue thereon raised that sound academic and speculative; not the suit as a whole. In effect, question one (1) is hereby struck out.***

Let me now move to issue 2 which reads as follows:-

“Whether the Court of Appeal was wrong to entertain question two (2) for determination and answer it in the negative when there was no evidence that a delineation of boundaries was effected pursuant to Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999.”

The said question two (2) for determination reads as follows:- B

“Whether by the delineation of Senatorial District in Abia State of Nigeria by the 1st Defendant acting pursuant to Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Osisioma Local Government Area of Abia State of Nigeria is part of the Abia Central Senatorial District.” C

Arguing issue 2, senior counsel on behalf of the appellant submitted that the court below was wrong to have embarked on entertainment of question 2 in the absence of evidence of the delineation effected by the appellant, pursuant to the amended Constitution. He opined that to succeed on his assertion, it was incumbent on the 1st respondent to produce evidence of delineation effected pursuant to the amended Constitution which formed the foundation on which question 2 was erected; and on which the principal relief 1 was established as well. E

Senior counsel maintained that the 1st respondent is bound to establish his entitlement to the case which he presented for determination and must supply the material facts and evidence on which the court will make a determination. He cited the cases of Dumez (Nig.) Ltd. v. Nwakhoba (2008) 18 NWLR (pt. 1119) 361; Akaninwo v. Nsirim (2008) 9 NWLR (Pt. 1093) 439; Olubodun v. Lawal (2008) 17 NWLR (Pt. 1115) 1 at 37; Motunwase v. Sorungbe (1988) 5 NWLR (pt. 92) 90; Udo v. C.R.S.N.C (2001) 14 NWLR (Pt 732) 116; Bello v. Ewaka (1981) 1 SC 101; Ogunjumo v. Ademolu (1995) 4 NWLR (Pt. 389) 254. F G

Senior counsel further submitted that a court of law must base its determination on the case as presented by the plaintiff and should not deviate therefrom. He cited the cases of Ojo-Osagie v. Adonri (1994) 6 NWLR (Pt. 349) 131 at 154; George v. Dominion Flour Mills Ltd. (1963) 1 NWLR (Pt. 99) 514; Ogunlowo v. Ogundare (1993) 7 NWLR (Pt. 307) 610 at 624; Okwejinor v. Gbakeji (2008) 5 NWLR (pt 1079) 172. Senior counsel urged the court to hold that question 2 was not founded on any evidence and ought not to have H

been entertained. He felt that the 1st respondent must succeed on the strength of his own case; not by reference to the case of the defendants.

On behalf of the 1st respondent, senior counsel maintained that the line of arguments manifested under the appellant's issue two is completely new. He maintained that it was not the case of the appellant in the trial court that for question two, the 1st respondent must produce proof of delineation done after the 2010 amendments to the 1999 Constitution. He maintained that parties must be consistent in the way they state their cases through the hierarchy of the courts. He referred Attorney-General Anambra State v. Onuselogu (1987) 3 NWLR (Pt. 66) 547 at 564 and urged the court to strike out this issue on the ground of incompetence.

In the alternative, senior counsel pointed it out that it is a matter of common knowledge that since 1999, general elections have been held into the Senate of the National Assembly based on the division of each State of the Federation into three Senatorial Districts by INEC. He felt that as a result, INEC issued Exhibit EA2 to the 1st respondent on demand vide Exhibit EA1. He maintained that question 2 does not require proof by the 1st respondent that delineation of Senatorial Districts was done in Abia State pursuant to the 2010 amendments to the 1999 Constitution. He urged that issue 2 should be dismissed along with the corresponding ground of appeal No. 16 for lack of merit.

It has been stated earlier on in this judgment that the trial court declined to determine question No. 2 posed by the 1st respondent for determination. It was the court below which considered and determined same by virtue of its powers under Section 15 of the Court of Appeal Act, 2004. I cannot see the rationale for trying to challenge the appellant's right to raise issue 2 as stated above which is whether the court below was wrong to entertain it and rendered an answer in the negative when there was no evidence on delineation. With respect, I should point it out that the argument touching on consistency in prosecuting cases through the courts is not apt here. I feel issue 2 under consideration is competent.

It was the 1st respondent who posed question 2 for determination. He must stand or fall by the determination of his poser. The main relief which is his relief 1 is declaratory by

nature and purport. It is for him to establish his claim on the strength of his case. He cannot rely on the weakness of the opponent's case. See: Nwokidu v. Okanu (2010) 3 NWLR (Pt. 1181) 362; Dantata v. Mohammed (2000) 7 NWLR (Pt. 664) 176; Ekundayo v. Baruwa (1965) 2 NLR 211; Ali Ucha v. Martins Elechi (2012) MRSCJ Vol. 79 at 104 and Dumez Nig. Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361 at 373-374. ***It has been stated in clear terms that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence. A court does not grant declaration of right either in default or on admission without taking evidence and being satisfied that the evidence led is credible.*** See: Mogo v. Mbamali & Anr. (1980) 13-4 SC 31; Motunwase v. Sorungbe (supra); Bello v. Eweka (supra); and Olubodun v. Lawal (supra) at page 37.

A clear reading of question two (2) posed by the 1st respondent shows that the case is founded on the basis that a particular delineation was made by the appellant pursuant to the amended 1999 Constitution. The court must base its determination on the case as presented and must not deviate therefrom. A court should not make a case different from the one made by the parties. No evidence was offered upon which the question can be answered. It cannot be rightly inferred that a delineation was made by reference to the defence of the defendants. The 1st respondent failed to provide evidence of his alleged delimitation upon which question 2 and his relief 1 are foisted, to establish his case. Since question 2 was not founded on any material evidence, it ought not to have been entertained and determined by the court below. In short, the issue is resolved in favour of the appellant.

I move to issue 3 which reads as follows:-

“Was the Court of Appeal wrong when in answer to question three (3) of the questions for determination in the Originating Summons, it held that the nomination of the 3rd respondent was void as the 3rd respondent and her nominators, were not registered to vote in Abia Central Senatorial District. Grounds 11, 12, 13 and 14.”

As a follow up, it is apt to reproduce question 3 which was put up by the 1st respondent for determination. It reads as follows:-

*“Whether the 3rd defendant who at all material time is an indigene of and resident within Osisioma Ngwa Local Government Area of Abia State of Nigeria within the Abia South Senatorial District
B can lawfully contest for the position of a Senator in the Abia Central Senatorial District of Abia State of Nigeria.”*

Arguing issue 3, learned senior counsel for the appellant observed that the question on which determination was sought is
C founded on two points - whether 3rd respondent was an indigene of Osisioma Ngwa Local Government Area and whether she was resident within the said Local Government Area. Senior counsel contended that the determination of the court below completely ignored the question submitted for determination and amounted to making
D out a case different from that which the 1st respondent presented. Further, he maintained that based on the state of the law, whether or not the 3rd respondent was an indigene of Osisioma Ngwa Local Government Area or resident thereat, are not qualifying factors for her candidacy.

E Senior counsel maintained that from a serene appreciation of question 3, there is absolutely nothing therein which alludes to validity of the nomination paper filed by the 3rd respondent. He felt that the court will not be entitled, like a knight errand to proceed to
F examine all disqualifying factors for an office against the facts of the case, unless the plaintiff had specifically put same in issue. He maintained that the question posed did not call for any consideration as to whether the 3rd respondent was a registered voter in Abia Central Senatorial District. It also did not call for determination of whether
G her nominators were registered to vote within the Senatorial District.

Senior counsel asserted that the court had no business remoulding the case presented for determination by the parties and embarking upon a voyage of discoveries aimed at mercilessly scrutinizing and devastating the position of the 3rd respondent or the
H appellant, who had honoured the nomination presented by the 2nd respondent. He felt that it will amount to an abandonment of the sacred, enviable and exalted position reserved for the arbiter, for the adjudicator to alter the question presented before him at the stage of writing a judgment and then make pronouncement on it. He main-

tained that same is a deprivation of the basic principle and benefit of fair hearing. He cited *Iwuoha v. NIPOST Ltd.* (2003) 8 NWLR (Pt. 822) 308 at 324; *State v. Oladimeji* (2003) 14 NWLR (pt 839) 57 at 74; *Commissioner for Works, Benue State & Anr v. Devcon Development Consultants Ltd. & Anr* (1988) 3 NWLR (pt. 83) 407, *ACB Ltd. v. Attorney-General Northern Nigeria* (1967) NMLR 231; *Oje v. Babalola* (1991) 4 NWLR (Pt. 185) 267 at 286; *Saude v. Abdullahi* (1989) 4 NWLR (Pt. 115) 387 and *Ebba v. Ogodo* (1984) 4 SC 84 at 112 to buttress his stand point.

Senior counsel maintained that the court below was fully resolved that question 3 did not involve the matter on which the decision turned and same is manifest on pages 789-790 of the Record where the court held thus:-

“The appellant seems to have in mind Section 31(6) of the Electoral Act, 2010 as amend, in urging the nomination of the 3rd respondent as the PDP candidate for the election to the post of Senator representing Abia Central Senatorial District to be declared unconstitutional, null and void and of no legal effect whatsoever on the ground that the false information/declaration she made and submitted to the 2nd respondent, the PDP..”

Senior counsel maintained that the court, with respect, exceeded the scope of its authority by delving into the matter and ascertaining what the 1st respondent ‘had in mind’. He felt that the mind of the 1st respondent which is not expressed in any of the questions submitted for determination is immaterial to the adjudication of the matter presented. He asserted that the appellant is handicapped in the matter of ascertaining the mind of an opponent, for besides its lack of the power of clairvoyance, it must by operation of law join issues only on the pleaded case of the 1st respondent that was served on it. He further submitted that the courts are bound to decide the case on the presentation of the parties. He cited the cases of *Ekpeyong v. Nyong* (1975) 2 SC 71; and *Government Gongola State v. Tukur* (1989) 4 NWLR (Pt. 117) 592.

Senior counsel maintained that for the purpose of the appeal there was no live issue on the two points forming the basis of question 3. He opined that the court below embarked on a rather tenuous exercise of redrafting both question 3 as presented for determination of the court as well as reliefs 3 & 4 which, not being

proved, ought to have been dismissed. He felt the court below made it worse, when it gratuitously held that the 2nd respondent had no candidate for the election when none of the parties presented that case before it. He maintained that the court is bereft of the vires to grant that which the plaintiff did not seek in the case. He again referred to Ekpeyong v. Nyong (*supra*).

Senior counsel finally urged the court to set aside the determination made by the court below as to the nullity of the nomination of the 3rd respondent, being founded on question and relief extraneous to the questions for determination, as well as the reliefs sought by the 1st respondent in the Originating Summons.

On behalf of the 1st respondent, senior counsel observed that under this issue, the complaint of the appellant relates to the effect given to Section 32 (1) of the Electoral Act, 2010 by the lower court. He maintained that by the 1st respondent's notice of appeal before the lower court, he complained against the refusal of the trial court to determine questions 1 and 2 and reliefs based thereon and its decision dismissing his case based solely on a resolution of question 3. He asserted that from the particulars in support of the grounds of appeal, it is clear that the validity of the nomination of the 3rd respondent to contest the election as a candidate for Abia Central Senatorial District was the central issue in dispute in the case. He maintained that parties argued same before the lower court and that it is idle to now argue backwards that the issue of the validity of the nomination of the 3rd respondent was not before the lower court. He submitted that the point was properly raised and correctly decided by the court below. He urged that the appellant's issue 3 should be dismissed along with the grounds relating to it.

I wish to say it right away that question 3 on which determination was sought is founded on two points-whether the 3rd respondent was an indigene of Osisioma Ngwa Local Government Area and whether she is resident within the said Local Government Area. Based on the state of our law, the two points are not disqualifying factors for her candidacy.

Senior counsel for the 1st respondent maintained that the validity of the nomination of the 3rd respondent to contest the election as a candidate was made a ground of appeal before the court below and was hotly contested thereat. This sounds curious as the

validity of the nomination of the 3rd respondent is not remotely raised in question 3 for determination before the trial court. The court below should not have allowed it to come in through back door; as it were. It was brought in by the court below when in its judgment, it said ‘the appellant seems to have in mind Section 31(6) of the Electoral Act, 2010, as amended in urging the nomination of the 3rd respondent as the PDP candidate for the election to the post of Senator representing Abia Central Senatorial District to be declared unconstitutional, null and void and of no legal effect.’

This court will continue to pronounce it that the constitutional function of a court of record is well circumscribed and defined. It is simply an arbiter. It is for the parties to present their case and it is for the court to decide the matter as presented by them. See: Iwuoha v. NIPOST Ltd. (supra) at page 32; The State v. Oladimeji (supra) at page 74; Ebba v. Ogododo (supra) at page 112. ***It was not the business of the court below to proceed ‘like a knight errand’ to examine disqualifying factors for the office of Senator which were not specifically raised in the question for determination. The issues the 1st respondent ‘had in mind’ which were not embedded in question 3 for determination are immaterial as the appellant which lacked the ‘power of clairvoyance’ must only by operation of law, join issues upon the pleaded case of the 1st respondent served on it.***

To make the matter worse, the court below dished out orders which were not prayed for by the parties. It made orders that the 2nd respondent had no candidate and the 3rd respondent was not qualified to contest. A court should not make unsolicited orders or grant prayers not sought by the parties. This is because the court is not a charitable organization. See: Ekpenyong v. Nyong (supra). ***Courts are bound to decide the case of the parties, based on their presentation.*** See: Government Gongola State v. Tukur (supra). The complaints of the appellant were well taken; no doubt. I feel I have said enough on this issue. It is hereby resolved in favour of the appellant.

I now move to issue 4 which reads as follows:-

“Was the Court of Appeal wrong when it held that Exhibit INEC 1 was unreliable for the purpose of determining whether Osisioma Ngwa Local Government Area is within Abia Central Sena-

torial District? Grounds 1 and 2.”

On behalf of the appellant, senior counsel contended that the court below was wrong when it condemned Exhibit INEC 1 which was the best evidence presented in the case, made at a time when the case was not anticipated between the parties. He maintained that
 B it was not made for the purpose of trapping any of the parties into a corner so as to found a cause of action on a slip, inadvertence or any other type of lapse. He maintained that the said exhibit was the only authentic document emanating from the appellant which embodied
 C the Electoral Constituencies in Nigeria. It is titled the Nigeria Atlas of Electoral Constituencies and was published by the appellant in 2008, four (4) years before the dispute arose.

Senior counsel maintained that the initial reason why the court below found Exhibit INEC 1 unworthy of probative value and unre-
 D liable was that it contained a disclaimer. He maintained that there is no place where Exhibit INEC 1 was expressed to be unreliable. He felt that the term cannot be found on it and cannot rightly be inferred by the appearance of the term ‘disclaimer’ on it. He opined that rather than embarking on mere definition of the term ‘disclaimer’,
 E the more appropriate venture ought to be to understand and appreciate the term in the context in which it appeared on the document. He observed that the appearance of a disclaimer on a document is not as important as what was expressed to be disclaimed. A disclaimer
 F limits the scope and operation of the document for the express purpose tied to the disclaimer. In this context, senior counsel felt that the limitation of the operation of Exhibit INEC 1 was clearly expressed to be, that the document should not be used by persons in order to foster ‘boundary and political claims’. He submitted, with respect,
 G that the court below erred when it circumscribed the import of the terms ‘boundary’ or ‘political’ as boundary or political disputes or claims are clearly not electoral matters.

Senior counsel felt that there was no disclaimer with respect to any function assigned to INEC and it cannot be justifiably read as
 H such. He maintained that the primary function assigned to INEC as contained in Section 71 (a) of the Constitution is to ‘divide such State of the Federation into three Senatorial Districts for purposes of elections to the Senate’. Thus, Exhibit INEC 1 serves no other purpose, other than for election. Senior counsel felt that it is from this perspec-

tive that the disclaimer must be viewed and understood. He asserted that to do otherwise will introduce an unnecessary and unanticipated distortion into a serene situation. He submitted that it is this distortion and undue adherence to definition of the term 'disclaimer' without applying it to the context in which it was used, that robbed the court below the benefit of the authentic documentary evidence available to it. He observed that the Exhibit was produced long before the dispute arose and did not just embody the situation in Abia State but all the States of the Federal Republic of Nigeria. He further observed with respect, that this error grossly devastated the case of the appellant as the court below regarded the document as totally bereft of any credibility, having by itself 'supplied a self inflicted malady'.

Senior counsel observed that the decision of this court in *Attorney-General Oyo State v. Fairlakes Hotel (No. 2) (1989) NWLR (Pt. 121) 5* relied on by the court below is most inapplicable in the context it was used. He maintained that it was the rather fleeting conclusion that Exhibit INEC 1 expressed its unreliability which dictated the pace for the other defect which the court below claimed to exist. That defect, according to the senior counsel, was the presumed inconsistency between pages 418 and 419 of the record. He contended that no such conflict exists as the map on page 418 which was limited by space, still had Osisioma within Abia Central Senatorial District. Page 419 of the record contains a tabulation of the Local Government Areas in the respective Senatorial Districts.

Senior counsel urged the court to hold that Exhibit INEC 1 is not unreliable as there is no disclaimer on the basis for which the document was produced. He felt that rather than present a conflict, page 419 puts the matter beyond the shadow of doubt that Osisioma Ngwa Local Government Area is in Abia Central Senatorial District.

On behalf of the 1st respondent, senior counsel maintained that the quarrel of the appellant in issue 4 has to do with the conclusion of the court below on Exhibit INEC

1. He observed that the court below considered the disclaimer in Exhibit INEC 1 and based upon the definition of the term-disclaimer and the decision of this court in *Attorney-General Oyo State v. Fairlakes Hotels (No. 2) supra*, it held that a disclaimer in a document robs the document of any probative value.

Senior counsel maintained that the appellant is not saying

that the disclaimer does not exist in the exhibit. Rather, it tries to explain that the disclaimer was necessitated by ‘honesty and need to ensure that its documents are not invidiously used to propagate boundary disputes’ or boundary claims by any community. He maintained that the contents of a document cannot be contradicted, altered, B added to or varied by oral evidence. He cited *Agbakoba v. INEC* (2008) 18 NWLR (Pt. 1119) 489 at 539.

Senior counsel further submitted that the appellant did not take account of limitations imposed on giving of evidence to explain C the purpose of the disclaimer in Exhibit INEC 1. He maintained that the brief of argument is not the place to give evidence but only to make legal submissions based on evidence on record. Senior counsel maintained that there is visible conflict between pages 418 and 419 of Exhibit INEC 1. He maintained that at page 418, Osisioma Ngwa D Local Government Area appears in Abia South Senatorial District while at page 419; it is listed with Abia Central Senatorial District. He submitted that the court should give a document the ordinary meaning to be gathered from the words used. He referred to *Animashanu v. Osuma & Ors.* (1972) SC 363 at 372-373.

E Senior counsel finally urged the court to dismiss the appellant’s issue 4 along with the related grounds of appeal numbers 1 and 2.

In respect of the term ‘disclaimer’ which generated a lot of heat on both sides; the initial reason assigned by the court below was F that:-

“In Exhibit INEC 1 there is a disclaimer at page 400 of the record to the effect that the document is unreliable in that:-

‘The map and other contents of this ATLAS should not be referred to as legal or administrative documents for the purpose of G boundary and political claim...’

Let me state it right away that I cannot see in Exhibit INEC 1 where it was expressed to be unreliable. The term cannot be rightly inferred by the appearance of ‘disclaimer’ on it. I agree with the senior counsel for the appellant that H rather than embarking on mere definition of the term ‘disclaimer’, the more appropriate venture by the court below ought to be to understand and appreciate the term in which it appeared on the document. The appearance of a disclaimer on a document is not as important as what was expressed to

be disclaimed. It is not the case that a disclaimer destroys outrightly the document on which it appears. A more correct approach is that it limits the scope and operation of the document, for the express purpose tied to the disclaimer.

In the above context, the limitation of Exhibit INEC 1 was expressed to be that the document should not be used by persons in order to foster 'boundary and political claims' which are not functions assigned to INEC under Section 153 of the 1999 Constitution and item 15 of part 1 of the Third Schedule to same. There was no disclaimer with respect to any function assigned to the appellant and the disclaimer cannot be justifiably read as such. The primary function of INEC as disclosed in Section 71 (a) of the Constitution is to 'divide each State of the Federation into three Senatorial Districts for purpose of elections to the Senate; subject to the provisions of Section 72 of the Constitution. It is clear to me that in the circumstance of the position of things as depicted above, Exhibit INEC 1 serves no other purpose, other than for election. In other words, the document cannot be employed by litigious communities or individuals for boundary or political claims. This is the perspective from which the document should be viewed. To do otherwise 'will introduce an unnecessary and unanticipated distortion into a serene situation.

There is still more to be said on this point. The court below relied on the decision of this court in Attorney-General Oyo State v. Fairlakes Hotel (No.2) supra. In that case, the issue before the court involved proof of loss of profit. Exhibit B which embodied an estimate of loss, was tendered, in proof of the loss of profit. The same Exhibit B categorically stated that the authors did not warrant that the estimate could be attained. In other words, Exhibit B defeated the purpose for which it was tendered, since it stated that the projected profit, on which the case was based, could not be attained.

In this case at hand, there is no disclaimer concerning the accuracy of the composition of the Senatorial Districts contained in the document. All that INEC did was to alert the public that its document was for election purposes only. I am at one with senior counsel for the appellant that it was the undue distortion and undeserved adherence to definition of the term 'disclaimer' without applying it to

the context in which it was used, as well as the wrong reliance placed on the above stated authority that robbed the court below of the authentic document available to it. After all, the document was produced in 2008, long before the dispute arose. It did not just embody the situation in Abia State but in all the States of the Federal Republic of Nigeria. The error grossly devastated the case of the appellant as the court below wrongly regarded the document as being unreliable.

The court below then looked at Exhibit INEC 1 after expressing its unreliability and found inconsistency between pages 418 and 419 of the record. Page 418 relates to the map of Abia State Senatorial Districts while page 419 contains the tabulation of Local Government Areas in the Senatorial Districts along with other facts like polling unit numbers and population. Documentary evidence as contained on page 418 and 419 of the records do not require any oral evidence in appraising same. On page 418, Osisioma, the headquarters of the Local Government is clearly within Abia Central Senatorial District. Page 419 contains a tabulation of the Local Government Areas in the respective Senatorial Districts along with polling units in each Local Government. Osisioma Ngwa Local Government is in Abia Central Senatorial District. Since Exhibit INEC 1 came into existence in 2008, four years before the case commenced, it should be appreciated that the furore generated to impugn Exhibit INEC 1 is not really deserving it; after all. This issue is also resolved in favour of the appellant, as well.

I now finally move to issue 5 which reads as follows:-

“Was the Court of Appeal wrong when it invoked Section 15 of the Court of Appeal Act, 2009 and Order 19 Rule 11 Court of Appeal Rules 2011 and relied on Exhibit EA2 to hold that Osisioma Ngwa Local Government Area was not in Abia Central Senatorial District of Abia State Grounds 3, 4, 5, 6, 7, 8, 9 and 10”

Arguing the issue, senior counsel to the appellant submitted that in a proper case, the court below reserves the right to invoke the provision of Section 15 of the Court of Appeal Act, 2009 as well as Order 19 Rule 11 of the Court of Appeal Rules. But in so doing, the court below should comply with the dictates of Section 36 of the Constitution relating to right to hearing. Senior counsel observed that it was instructive that the court below found a conflict between 1st respondent’s Exhibit EA2 and 3rd respondent’s Exhibit 3DC. He felt

that it was a welcome development that the court considered Exhibit 3DA and 3DB as documents produced to break that tie. He asserted that the initial problem was that the most crucial evidence which was Exhibit INEC 1 was totally ignored by the court below. The denigration of the document, according to senior counsel, led to all other errors. He observed that both Exhibits EA2 and 3DC were letters B produced at the heat of the moment when conflict had arisen unlike Exhibit INEC 1. He opined that there was nothing sacrosanct about Exhibit EA2, the letter of Administrative Secretary who, if he had consulted Exhibit INEC 1 to which he was bound, could not deviate C from it.

Senior counsel observed that Exhibits 3DA and 3DB are evidence of National and not State elections and they represent the status quo ante bellum. He asserted that Exhibits 3DA and 3DB conclusively established the course of dealings in previous elections. He D observed that no document was produced by the 1st respondent to counter these Exhibits or show that from previous elections, results from Osisioma Ngwa Local Government Area have been computed under Abia South Senatorial District. He felt that it is surprising how Exhibit EA2 can attain such a magical status above Exhibits INEC 1, E 3DA, 3DB and 3DC.

Senior counsel felt that it was wrong for the court below to say that the appellant did not disown Exhibit EA2. He asserted that the content of Exhibit EA2 was disowned by Exhibits INEC 1, 3DA F 3DB and 3DC. He opined that the court below appeared to have taken into consideration, matters it should not have, in denigrating the most vital documents placed before it. Those documents, according to senior counsel, were in existence years before the dispute arose. He felt that the court below preferred a document produced G at the time the proceedings were anticipated which essentially amounted to an entrapment of the appellant. He opined that this led to the unfortunate journey to the Supreme Court. He urged that the legitimate documents of the appellant should be honoured.

On behalf of the 1st respondent, senior counsel submitted H that the court below painstakingly considered the effect of Exhibits EA2, 3DC, 3DA, 3DB, EA6, EA7 and EA9. He felt that the court below was right when it found that Exhibit EA2 has stronger and more probative value than the 3rd respondent's Exhibits 3DC, 3DA

and 3DB and that Exhibit INEC 1 has no probative value.

Senior counsel maintained that the attempt made to disown Exhibit EA2 is very feeble. He maintained that there should have been proper evidence in the trial court to disown Exhibit EA2. He observed that the appellant owned up the authorship of Exhibit EA2, thus upholding its authenticity.

Senior counsel urged the court to dismiss the appellant's issue 5 and its related grounds of appeal.

Let me start by observing that since the reliefs claimed are basically declaratory in their purport and intendment, the court was bound to exercise its discretion in the matter judicially and judiciously as well. This is as pronounced by this court in *University of Lagos v. Olaniyan* (1985) INEC (Pt. 1) 98 at 113; *Eronini v. Iheuko* (1989) 2 N.S.C.C. (Pt. 1) 503 at 513; (1989) 3 SC (pt. 1) 30.

I need to further point out another relevant guiding principle that a court should keep in view in tackling this type of matter herein, which has been closely contested on behalf of the parties. It is that the court should carefully weigh evidence with productive value on an imaginary scale to see the side where the pendulum swings. This is as pronounced by this court in *Mogaji v. Odofoin* (1978) 4 SC 91 at 93; *Bello v. Eweka* (1981) 1 SC 101; to mention just a few.

Earlier in this judgment when treating issue 4, I pronounced that the court below erred when it found that Exhibit INEC 1 was unreliable and has no probative value. So, under this issue 5, the documents to be considered are Exhibit EA2, heavily relied on by the 1st respondent and Exhibits INEC 1, 3DA, 3DB and 3DC which were relied upon by the appellant and the 3rd respondent. Exhibit EA2 was procured by the 1st respondent from the appellant at a time when proceedings were anticipated. It did not include Osisioma Ngwa Local Government Area as part of Abia central Senatorial District. Exhibit INEC 1- the Atlas of Electoral Constituencies in Nigeria was made in 2008, four years before the dispute arose. It was not made to entrap any of the parties; as it were. It shows that the said Local Government is part of Abia Central Senatorial District. Exhibits 3DA and 3DB contain results of previous elections held in the Abia Central Senatorial District. Results of votes cast in the exhibits include

those of Osisioma Ngwa Local Government Area. Same conclusively established the course of dealings in the previous elections. The content of Exhibit EA2 was clearly disowned by the contents of Exhibits INEC 1, 3DA, 3DB and 3DC respectively. There is no way by which the content of Exhibit EA2 can have such magical powers to demolish or obliterate the contents of Exhibits INEC 1 3DA, 3DB and 3DC with the scenario above, as established. ^B

If the evidence on both sides is viewed with due discretion judicially and judiciously as well, that of the appellant, the 2nd and 3rd respondents should outweigh the evidence of the 1st respondent. No doubt, the court below erred to have found otherwise. This issue is also resolved in favour of the appellant and against the 1st respondent without any shred of equivocation. ^C

I come to the final conclusion that the appeal is meritorious. It is hereby allowed. The judgment of the court below is hereby set aside. The trial court stumbled to arrive at a correct decision and same is hereby restored. The 1st respondent shall pay N100,000 costs to the appellant. ^D

^E

MOHAMMED JSC

This appeal is by Independent National Electoral Commission (INEC) which is also the 2nd Respondent in appeal No. SC.10/2012 heard the same date by this Court. The same appeal is also against the judgment of the Court of Appeal Abuja of 13th December, 2011. The main aim of this appeal is for the Appellant to protect its stand at the trial Federal High Court in the hearing of the 1st Respondent's action by Originating Summons seeking the resolution of the question of whether or not Osisioma Ngwa Local Government Area of Abia State, is in Abia Central Senatorial District of Abia State from where the 3rd Respondent contested the 8th January, 2011 People Democratic Party (P.D.P) primaries and emerged the winner. ^F

At the trial Court the Appellant filed a counter affidavit with Exhibit INEC 1, the Nigerian Atlas of Electoral Constituencies which disclosed that Abia Central Senatorial District comprised of 6 Local Government Areas including Osisioma Ngwa Local Government Area being disputed. This position of the Appellant did not change throughout the case at the trial Court. The 2nd Respondent, the Peoples ^H

Democratic Party at the trial filed a counter affidavit to say that the law in Nigeria particularly the Constitution of Federal Republic of Nigeria 1999 and the Electoral Act 2010 (As Amended), do not impose the requirements or conditions that an aspirant for an elective office must be an indigene of the affected area or Local Government Area.

The 3rd Respondent on her part at trial Court filed counter-affidavit to say that Exhibit EA2 written by the Secretary of the Appellant relied upon by the Plaintiff/1st Respondent was a false document and urged the trial Court to call the author of the document to give oral evidence. The counter-affidavit also contains exhibits 3DA - INEC Form EC8C showing that Osisioma Ngwa Local Government Area is in Abia Central Senatorial District. Exhibit 3DB which is also INEC Form EC8D being summary of Election results also shows that Osisioma Ngwa Local Government Area is in Abia Central Senatorial District. On these undisputed documentary evidence alone coming from INEC which are documents used in previous general elections, the Court below ought to have found that Osisioma Ngwa Local Government Area had all along been in Abia Central Senatorial District to have made it quite unnecessary to have made it an issue for resolution in the appeal before that Court thereby resulting in heap- ing the same unnecessary burden on this Court.

It is for the above reasons and more detailed reasons given in the lead judgment of my learned brother Fabiyi, JSC which I was privileged to have read before today and with which I entirely agree, that I also find merit in this appeal which is hereby allowed. Consequently, the judgment of the Court below of 13th December, 2011 is hereby set aside. The judgment of the trial Court is hereby restored and affirmed with N100,00.00 costs to the Appellant.

RHODES-VIVOUR JSC

I entirely agree with the leading judgment of my learned brother Fabiyi, JSC., and have nothing to add.

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother John Afolabi Fabiyi, JSC. To register my support I shall make some comments.

This is an appeal against the decision of the Court of Appeal, Abuja Division delivered on 13th December, 2011. The appellant was the 1st respondent in the Court of Appeal while the 1st respondent herein was the appellant in the lower court and plaintiff in the trial court.

FACTS

The 1st and 3rd respondents had contested the 2nd respondent's (PDP) Primary Election held on 8th January, 2011 for the nomination of the PDP Senatorial candidate for Abia Central Senatorial District. The 3rd respondent was declared winner of the election while the 1st respondent was the runner up. The 1st respondent subsequently instituted this action to challenge the nomination of the 3rd respondent as a candidate for the election to the Senate Seat for Abia Central Senatorial District. The 1st respondent in his originating summons dated and filed on the 14th January, 2011 sought a determination of the following questions:

(i) Whether by the combined provisions of Section 71 and 72 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, Osisioma Local Government Area of Abia State of Nigeria can fall both into the Abia South Senatorial District and the Abia Central Senatorial Districts.

(ii) Whether by the delineation of Senatorial Districts in Abia State of Nigeria by the 1st Defendant acting pursuant to Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Osisioma Local Government Area of Abia State of Nigeria is part of the Abia Central Senatorial District.

(iii) Whether the 3rd defendant who at all material times is an indigene of and resident within Osisioma Ngwa Local Government Area of Abia State of Nigeria within the Abia South Senatorial District can lawfully contest for the position of a senator in the Abia Central Senatorial District of Abia State of Nigeria.

Based on these questions the 1st respondent claimed the following reliefs:

(i) A declaration of this honourable court that pursuant to

the delineation of Senatorial District in Abia State of Nigeria, by the 1st defendant, Osisioma-Ngwa Local Government Area of Abia State of Nigeria, does not fall within the Abia central Senatorial District.

(ii) A declaration Order of this honourable court that the 3rd defendant is ineligible to aspire to be sponsored by the 2nd defendant to contest the 2011 general elections to represent the Abia Central District.

(iii) An Order of this honourable court declaring as unconstitutional, null and void and of no legal effect whatsoever the nomination of the 3rd defendant by the 2nd defendant to run for and/or contest for the post of a senator representing the Abia Central Senatorial District in the 2011 general elections to be conducted by the defendant, based on false information/declaration on oath submitted to the 2nd defendant.

(iv) An Order of this honourable court declaring the plaintiff the winner of the 2nd defendant's election primaries for the Abia Central Senatorial District held on Saturday, January 8, 2011 at the Umuahia Township Stadium, Umuahia, Abia State of Nigeria.

The crux of the matter revolved around whether Osisioma-Ngwa LGA is one of the constituent Local Governments of Abia Central Senatorial District or Abia South Senatorial District. The 1st respondent maintained that Osisioma-Ngwa Local Government is in Abia South Senatorial District. The appellant, on the other hand filed no counter affidavit against the originating summons but only a further counter affidavit in answer to the further affidavit of the 1st respondent. The appellant however took the position that Osisioma-Ngwa Local Government was in Abia Central Senatorial District.

The trial court held in its judgment that the questions 1 and 2 of the originating summons could not be resolved without the benefit of oral evidence as facts was in dispute. Relying on Order 3 Rule 8 of the rules of the Federal High Court, the court declined to determine questions 1 and 2 and in respect of the third question the trial court felt it could be resolved without recourse to oral evidence and therefore held that the third question was resolved against the 1st respondent. The 1st respondent being dissatisfied with the judgment approached the Court of Appeal which allowed the appeal holding that by the combined provisions of Sections 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Osisioma-

Ngwa LGA cannot fall into both Abia South Senatorial District and Abia Central Senatorial District. That the Osisioma-Ngwa LGA does not form part of Abia Central Senatorial District and that the 3rd respondent could only be eligible to contest for the post of senator in Abia Central Senatorial District if she was registered to vote in that district and she was duly nominated to do so by nominators whose names all appear in the voters register for the said Abia Central Senatorial District. The court below relied on Section 32(1) of the Electoral Act. B

The Court of Appeal based on the answers to the questions granted the declaratory reliefs of 1st, 2nd and 3rd but refused relief 4. On the 21st day of February, 2013 when this appeal was heard, learned counsel for the appellant, Dr. Onyechi Ikpeazu SAN adopted the brief of argument of the appellant settled by him and filed on 12/4/12. C D

The appellant distilled five issues for determination, viz:

1. Was the Court of Appeal wrong to have entertained Question one (1) of the Questions for determination in the Originating Summons and to answer it in the negative, when the question was an invitation to indulge in an academic exercise. E

2. Was the Court of Appeal wrong to have entertained Question two (2) of the questions for determination in the Originating Summons and to answer it in the negative, when there was no evidence that a delineation of boundaries was effected pursuant to Section 71 and 72 of the Constitution of the Federal Republic of Nigeria 1999. F

3. Was the Court of Appeal wrong when in answer to question three (3) of the questions for determination in the Originating summons, held that the nomination of the 3rd respondent was void as the 3rd respondent and her nominators, were not registered to vote in Abia Central Senatorial District. G

4. Was the Court of Appeal wrong when it held that Exhibit INEC 1 was not reliable for the purpose of determining whether Osisioma-Ngwa Local Government Area is within Abia Central Senatorial District? H

5. Was the Court of Appeal wrong when it invoked Section 15 of the Court of Appeal Act, 2004 and Order 19 Rule 11 Court of Appeal Rules 2011 and relied on Exhibit EA2 to hold that Osisioma-

Ngwa Local Government Area was not in Abia Central Senatorial District of Abia State.

Chief Akin Olujinmi SAN, learned counsel for the 1st respondent adopted their brief of argument he settled, filed, on 29/8/12 and deemed filed on the 21/2/13. In the brief were framed five issues
B for determination stated hereunder thus:

(i) Whether Question one of the questions for determination in the originating summons raised only an academic issue. Covers ground 15.

C (ii) Whether the lower court was right in its decision on question 2 on the Originating summons having regard to the materials on the records. Covers ground 16.

(iii) Whether having regard to all the circumstances of this case, including the provisions of Section 32(1) and 37 of the Electoral Act, the lower court was not right in voiding the nomination of the 3rd respondent as a candidate for election to the Senate seat for Abia Central Senatorial District. Covers ground 11, 12, 13 and 14.

(iv) Whether the lower court was not right in its evaluation of Exhibit INEC 1 Covers grounds 1 and 2.

E (v) Whether having regard to the materials on record, this was not an appropriate case for the lower court to invoke its jurisdiction under Section 15 of the Court of Appeal Act in deciding the appeal before it. Covers grounds 3, 4, 5, 6, 7, 8, 9 and 10.

F Mr. Nwokocha-Ahaaiwe for the 2nd respondent adopted the brief of argument settled by R. A. Lawal-Rabana SAN which was filed on 18/9/12 and deemed filed on 21/2/13. He adopted the issues identified by the appellants.

ISSUE ONE

G The grouse of the appellant herein is whether the Court of Appeal in answering the 1st respondent's question 1 had not handled a matter that was purely academic. It was submitted for the appellant in answer therefore that there was no live issue between the parties as to whether Osioma-Ngwa LGA fell within two senatorial districts
H and in that context question 1 is simply hypothetical, academic and at best speculative. That the matter of the Local Government area of Osioma-Ngwa falling within two senatorial districts was extraneous to the dispute before the court and thereby not justiciable. He cited Plateau State of Nigeria v. A. G. Federation (2006) 3 NWLR (Pt.

967) 246 at 419; Oladisoye v. FRN (2004) NWLR (Pt. 864) 580; Adepoju v. Yinka (2012) 3 NWLR (Pt. 1288) 567 etc.

For the 1st respondent was contended that an appreciation of the case of the 1st respondent made in the originating summons it would be seen that there are live issues. That it is from the supporting affidavit that it is made clear that the suit was not academic, hypothetical or disclosed no cause of action. That the affidavits take the place of pleading from which the viability of the issues are discerned. He referred to Agbakoba v. INEC (2008) 18 NWLR (Pt. 1119) 489 at 549.

It was submitted for the 2nd respondent that the question one for determination is academic and so when the Court of Appeal answered the other three questions it was unnecessary to answer this aforesaid question one. Learned counsel for 2nd respondent said there must exist a case over an issue for the court to be able to determine the same. He cited Sections 71 and 72 of the Constitution (as amended); Ndulue v. Ibezim (2002) 49 WRN 130; Ojukwu v. Yar'Adua (2009) 12 NWLR (Pt. 1154) 50 at 142.

It is not difficult to accept the contention of the appellants that the issue of whether Osisioma- Ngwa Local Government area fell within two senatorial districts was not a matter relevant to the dispute between the parties and therefore is neither a live issue nor what this court should concern itself with. Simply put it is hypothetical and a pure idle academic journey which serves no purpose in this matter, this court being duly limited to causes of action not those that merely make an empty sound, imaginary in content and a mirage, giving the impression of what is in reality not a cause of action. Of course such an imaginary cause of action serves no practical utilitarian purpose leading in its limitless scope without end in sight to a journey without a destination. This court cannot be seduced into such a frolic and so the issue is answered in favour of the appellant. See Plateau State of Nigeria v. A. G. Federation (2006) 3 NWLR (Pt. 967) 246 at 419; Bamasoye v. University of Ilorin (1999) 10 NWLR (Pt.622) 290; Adeogun v. Fashogbon (2008) 17 NWLR (Pt. 1115) 46 at 180; Adepoju v. Yinka (2012) 3 NWLR (Pt. 1288) 567.

ISSUE TWO

The poser herein has to do with the Court of Appeal entertaining question two of the originating summons and answering in

the negative since there was no evidence that a delineation of boundaries was effected pursuant to Sections 71 and 72 of the Constitution.

Learned counsel for the appellant submitted that the Court of Appeal was wrong to have entertained the question in the absence of evidence of delineation effected by the appellant pursuant to the amended Constitution. That a court of law must base its determination on the case as presented by the plaintiff and must not deviate from it. That a plaintiff must succeed on the strength of his case in a declaratory action and so the admission of the defence would not avail a plaintiff in the circumstances as in this instance where the defence asserted that Osisioma-Ngwa LGA is within Abia Central Senatorial District. He relied on *Dumez (Nig) Ltd v. Nwakoba* (2008) 18 NWLR (Pt. 1119) 361; *Ojo-Osagie v. Adonri* (1994) 6 NWLR (Pt. 349) 131 at 154; *Ogunlowo v. Ogundare* (1993) 7 NWLR (Pt. 307) 610 at 624 etc.

It was argued for the 1st respondent that the appellant is introducing a new case in this issue outside the purview of the matter that first originated in the trial court. That parties are bound to be consistent in the presentation of their case throughout the movement from one court to the other. That the current turn around by the appellant is not permissible. He cited *A.G. Anambra State v. Onuselogu* (1987) 3 NWLR (pt. 66) 547 at 564.

Learned counsel for the 2nd respondent said it is settled law that a claimant is only entitled to judgment for what he has claimed and proved on evidence before the court and where he has not proved his claim by evidence, such a claim would not be granted but rather dismissed. He placed reliance on *Mogo v. Mbamali & Anor* (1930) 3 - 4 SC 1; *Dumez (Nig) Ltd v. Nwakoba* (2008) 18 NWLR (Pt. 1119) 361 etc.

Indeed the case made out by the 1st respondent is based on the fact that a delineation was effected pursuant to the 1999 Constitution as amended. However no evidence to that effect was proffered and so the Court of Appeal ought not to have ventured into inferring that such delineation took place upon which it based the decision in favour of the 1st respondent. It is now well settled that a plaintiff as 1st respondent is bound to establish his entitlement from the case he has presented to court originating at the trial court. There

is no gainsaying that he then must supply the material facts and evidence to back up his case especially where he seeks declaratory prayers or reliefs. It therefore presupposes that the weakness of the defence cannot enhance the plaintiff's position which is not well supported. Plaintiff wins or fails on his steam and not because the opposing party did not proffer a strong contention. These are the features with which declaratory actions are identified with. I rely on *Olubodu v. Lawal* (2008) 17 NWLR (pt. 1115) 1 at 37; *Ogunjumo v. Ademolu* (1995) 4 NWLR (Pt. 389) 254; *Ojo-Osagie v. Adonri* (1994) 6 NWLR (Pt. 349) 131 at 154. B

It is clear that the Court of Appeal in making the decision it did, had unwittingly made out a case for the 1st respondent, different from the dispute before it as presented by the same 1st respondent to which it produced no evidence in proof. Therefore since there was no evidence to hold the ground for the delineation alleged, the court below was in error to have accepted such a delineation and acted on it to the advantage unmeritoriously derived of the 1st respondent. See *Okwejinor v. Gbakeji* (2008) 5 NWLR (Pt. 1079) 172, *Oniah v. Onyia* (1989) 1 NWLR (Pt. 99) 514, *George v Dominion Flour Mills Ltd* (1963) 1 SCNLR 242; *Ogunlowo v Ogundare* (1993) 7 NWLR (Pt. 307) 610 at 624. The question here raised is answered in favour of the appellant. C

ISSUE THREE

This issue questions the rightness or otherwise as to the validity of the nomination of the 3rd respondent as she and her nominators was not registered to vote in Abia Central Senatorial District. In answer therefore, learned counsel for the appellant said question 3 in the originating summons did not call for any determination as to whether the 3rd respondent was a registered voter in Abia Central Senatorial District. That the Court of Appeal had no business remoulding the case presented for determination by the parties. Also that the issue of giving false information did not arise and what the Court of Appeal should have done was to dismiss the prayer as not having been proved. See cited *Iwuoha v. NIPOST Ltd* (2003) 8 NWLR (Pt. 822) 308 at 342; *State v Oladumeji* (2003) 14 NWLR (Pt. 839) 57 at 74; *Ekpenyong v Nyong* (1975) 2 SC 71 etc. D

For the 1st respondent was contended that the validity of the nomination of the 3rd respondent for the election to the Senate seat E

for Abia Central Senatorial District was not only raised in this case but was properly and correctly decided by the lower court. Learned counsel for the 2nd respondent went along with the submission of the appellant to the effect that the Court of Appeal went outside the case presented before it and made a case for the parties. He cited *Saude v Abdullahi* (1989) 4 NWLR (Pt. 116) 387; *Ebba v Ogododo* (1984) 4 SC 84 at 112.

The issue here relates to whether, in the Originating summons question number 3, the court was called upon to determine whether the 3rd respondent was a registered voter in Abia Central Senatorial District. The answer to that is in the negative, and the same for whether there was a call for the determination of whether her nominators were registered within that same Senatorial District. Therefore when the Court of Appeal declared that “appellant seems to have in mind Section 31(6) of the Electoral Act, 2010 as amended in urging the nomination of the 3rd respondent as the PDP candidate for election to the post of senator representing Abia Central Senatorial District to be declared unconstitutional, null and void and of no legal effect whatsoever on the ground that the false information/declaration she made and submitted to the 2nd respondent, the PDP...” that court went outside the scope of what was before it and rather ventured into speculative adjudication. The reason is clear, that the court is confined to the hard facts or evidence and not what could be or imagined would have been situations contrary to the role of arbiter. I place reliance on *Iwuoha v NIPOST* (2003) 8 NWLR (Pt. 822) 308 at 342; *Oje v Babalola* (1991) 4 NWLR (Pt. 185) 267 at 280; *Ebba v Ogododo* (1984) 4 SC 84 at 112. Clearly, this issue 3 is resolved in favour of the appellant.

G ISSUE FOUR

This issue raised the question whether the Court of Appeal was wrong when it held that Exhibit INEC 1 was unreliable for the purpose of determining whether Osisioma-Ngwa Local Government is within Abia Central Senatorial District. It is submitted for the appellant that the Court of Appeal was wrong when it condemned Exhibit INEC 1 which was the best evidence in the case since it was made when litigation was not anticipated. That this court should hold that the Exhibit aforesaid is not unreliable as there is no disclaimer on the basis for which the document was produced.

It was submitted for the 1st respondent that no court has the authority to undertake a reconstruction of evidence as urged by the appellant so as to give it a meaning favourable to the appellant. That the court can only give a document the ordinary meaning to be gathered from the words use and that should apply to Exhibit INEC 1. He relied on *Animashaun v Osuma & Ors* (1972) SC 363 at 372 to 373. For the 2nd respondent it was contended that Exhibit EA3 relied on by the Court of Appeal is inadmissible having not been certified. He cited *Alao v Akano* (2005) 11 NWLR (pt. 935) 160 at 175. B

The rejection of INEC 1 by the Court of Appeal on the basis of inadmissibility on the ground that the disclaimer within the document had stated that , *“The map and other contents of this ATLAS should not be referred to as legal or administrative documents for the purpose of boundary and political claims.”* C

The court below in my humble view misunderstood either the purport of INEC 1 or the fact that the disclaimer within was to put the document properly in context for the use of the components of the Senatorial District and Federal Constituencies and not for the purpose of boundary claims of communities or states. That is merely a clarification of the purpose to which the document is to be deployed that is for election purpose only. It is apparent that in misreading the document aforesaid or reading its meaning outside what was therein contained, it was easy for the court below to reach a wrong decision in rejecting the document and the resultant effect being, a decision that came from taking a wrong route. I agree with learned counsel for the appellant that Exhibit INEC 1 is not unreliable and had no conflict within rather it cleared the point that Osisioma Ngwa Local Government Area is in the Abia Central Senatorial District. This issue is resolved in favour of the appellant. D E F G

ISSUE FIVE

Under this issue is asked the question whether the Court of Appeal was wrong when it invoked Section 15 of the Court of Appeal Act and Order 19 Rule II Court of Appeal Rules 2011 and relied on Exhibit EA2 to hold that Osisioma Ngwa Local Government Area was not in Abia Central Senatorial District of Abia. Learned counsel for the appellant submitted that the endorsement of Exhibit EA2 by the Court of Appeal based on non production by appellant of “Abia Delineation file” is not justified. H

Responding, learned counsel for the 1st respondent said the Court of Appeal properly invoked its jurisdiction to rehear the case in order to do justice between the parties in view of the failure of the trial court to consider the issue properly raised by the parties. He cited *Agbakoba v INEC* (2008) 18 NWLR (pt. 119) 489 at 533.

B Flowing from the answers in the other questions raised, this issue seems to have had its answer, that is that there was no justification for the court below to have invoked its powers under Section 15 of the Court of Appeal Act and Order 19 Rule II of the Court of Appeal Rules to have declared that Osisioma Ngwa Local Government Area
C was outside the Abia Central Senatorial District.

This issue effectively resolved in favour of the appellant, it can safely be said that based on the foregoing and the better reasoning in the lead judgment that this appeal is allowed.

D _____

AKA'AH'S JSC

My learned brother, Fabiyi JSC obliged me with the draft copy of his lead judgment in which he set out in a very admirable
E way the facts which brought about the appeal. I agree entirely with his resolution of the issues. I too find merit in the appeal and I accordingly allow it.

I wish to add that had the lower court limited itself to the issues for determination before the Federal High Court, it would not
F have set aside the decision which that Court gave to the effect that a candidate for election into the office of Senator representing a Senatorial District need not be resident in or be an indigene of that District. The lower court found as much but went completely off guard
G when it proceeded to peep into the issue of those who nominated the 3rd respondent and found that 11 (eleven) of them were not resident within Abia Central Senatorial District and on that basis nullified her nomination.

The question which went before the Federal High Court for
H determination was:

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

Senatorial District of Abia State of Nigeria”.

The determination by the Court of Appeal completely ignored the question submitted for determination and amounted to making out a case different from that which the 1st respondent as plaintiff presented. The issue of nominators was never in contention. Furthermore the disclaimer in Exhibit INEC 1 which the lower court unjustifiably lampooned the appellant was taken out of context. The delineation of constituencies cuts across administrative boundaries. It is the population of a place that determines how big or how small an area the constituency covers. While one Local Government Area that is thickly populated can constitute a Federal Constituency, there are areas where two or three Local Governments could be joined together to form a Federal Constituency. The delineation of constituencies is therefore not static. This is the reason why the disclaimer by INEC that -

“The map and other contents of this ATLAS should not be referred to as legal or administrative documents for the purpose of boundary and political claims” was inserted into INEC 1. In other words the ATLAS OF ELECTORAL DISTRICTS is only meant for elections which can be altered from time to time.

It is for this and the more detailed reasons contained in the lead judgment of my learned brother, Fabiyi JSC that I too find merit in the appeal and set aside the judgment of the court below delivered on 13th December, 2011 and to restore the judgment of the trial court. I too award N100,000.00 (One Hundred Thousand Naira) costs to the appellant against the 1st respondent.

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