

SUPREME COURT OF NIGERIA
FRIDAY 1ST MARCH, 2013. SC. 124/2012
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, N. S. NGWUTA,
S. S. ALAGOA, JJSC**

SENATOR DAHIRU BAKO GASSOL APPELLANT
AND
1. ALHAJI ABUBAKAR UMAR TUTARE
2. PEOPLES DEMOCRATIC PARTY RESPONDENTS
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

COURTS - Federal HC - Jurisdiction - By 1999 Constitution s. 251(1)(P)(r) - Exclusive jurisdiction is vested in the court in civil causes and matters - Affecting the administration and management of the Federal Government (H1)

STATUTES - Interpretation - Elect. Act etc - Words used in the provision clearly expressed intention of legislature - Hence court must give same its ordinary meaning - Unless where such is inconsistency with the rest of the legislation (H2)

JURISDICTION - Election - Pre election matters - Jurisdiction conferred on Federal High Court by NA under Electoral Act s. 87(9) - Has not been taken away by 1999 Constitution (H3)

ELECTIONS - Federal HC - Jurisdiction - Expansion - 1999 Constitution ss. 4 & 228 empowers NA to add to jurisdictional limit of the court - To entertain pre election matters - And Electoral Act s. 87(9) is an addition contemplated by the sections (H4)

ACTIONS - Necessary party - Joinder - As the trial court's judgment would affect 3rd respondent - It is desirable that 3rd respondent be heard - So that court can effectively settle all questions in the matter (H5)

FACTS

Plaintiff/1st respondent instituted this action via originating summons filed at the Federal High Court Yola, seeking for the determination of the of the following questions inter alia, whether 1st respondent who was the aspirant of 2nd respondent and the one that scored the highest number of votes cast at the special congress of 2nd respondent held to select a candidate to be sponsored by 2nd respondent for the Taraba Central Senatorial District in the general election, is entitled to have his name submitted by 2nd respondent to 3rd respondent as its candidate. 1st respondent sought for the following reliefs a declaration that he is entitled to have his name submitted by 2nd respondent as its candidate for the general election and for an order restraining appellant from parading himself as candidate of 2nd respondent and the INEC from according him recognition as candidate of 2nd respondent.

On his part, appellant relied on section 251(1) of the 1999 Constitution and section 87(9) of the Electoral Act 2010 (as amended) to attack the jurisdiction of the trial court to entertain the action (being pre-election matter). The court reviewed the cases of the parties, assumed jurisdiction in the matter and entered judgment in favour of 1st respondent. Dissatisfied, appellant filed appeal before the Court of Appeal Yola. The court affirmed the judgment of the trial court and went further to hold that that the National Assembly in the exercise of her legislative power derived from Section 4(1) (2) and (3) of the 1999 Constitution, added to the jurisdictional limit of the Federal High Court to entertain pre-election matters as it pertains to nomination and election of candidates at political parties' primaries. The appeal was thus dismissed. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"1. Did the learned Justices of the Court of Appeal properly apply Section 251(1) Constitution of the Federal Republic of Nigeria (1999) in holding that the Federal High Court was competent to adjudicate on the fact presented in the case.

2. Were the learned Justices of the Court of Appeal wrong in upholding the decision of the trial judge nullifying the decision of the National Assembly Electoral Appeal of the Peoples Democratic Party (PDP) and the resultant re-run of the primary Election for Taraba

Central Senatorial District on the basis that Section 87 (9) of the Electoral Act, 2010 precluded the panel from inquiring into the validity of the initial primary.”

HELD (Unanimously dismissing the appeal per GALADIMA JSC)

Federal HC - Jurisdiction

1. It is clear by virtue of Section 251 (1) (p) and (r) of the 1999 Constitution, exclusive jurisdiction is vested in the Federal High Court in civil causes and matters arising from the administration management and control of administration of the Federal Government, the operation and interpretation of the Constitution as it affects Federal Government as well as any action or proceedings for declaration or injunction affecting the validity of any executive or administrative action or decision of the Federal Government. (p. 4479 G)

STATUTES - Interpretation - Elect. Act etc

2. However, in the circumstance of this case, both the trial Federal High Court and the Court of Appeal were both right in holding that the said trial court has jurisdiction, legal capacity and the competence to determine the matter as constituted and presented by the 1st Respondent.

However, for the avoidance of doubt Section 87 (9) of the Electoral Act 2010 (as amended) is reproduced.

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

It is very clear that the words used in expressing the intention of the legislature in the above provision are plain and unambiguous. In interpreting the intention of the Statute or Constitution, the Court must endeavour to give the words used in the Constitution or Statute its ordinary, natural and grammatical construction unless such interpretation would

lead to absurdity or inconsistency with the rest of the legislation.

Having found that the provision of section 87(9) of the Electoral Act (supra) is clear and unambiguous this Court has the duty to give it literal interpretation.

- B The provisions of any law made by the legislatures must be studied carefully. They are neither made for mere fun of it, nor for the purpose of satisfying the whims and caprices of the interpreter. The provisions must be given their natural meaning and the expression of the legislature. The provisions must be interpreted and applied to meet the circumstances, or situations for which they are made. (pp. 4480 A/4481 B/4482 H)**

Election - Pre election matters - Jurisdiction

- D 3. I agree with the learned counsel for the 3rd Respondent that the basic principles of interpretation of all Constitutions and Statutes, which have received numerous judicial approval, is to the effect that the law makers will not give a right in one section and turn around to take same in another. In that regard, in the case at hand it is a misconception for the Appellant to contend that the Constitution by its Sections 4 and 228 (a) and (b), which empowers the National Assembly to make laws with respect to political parties primaries elections and thereby conferring jurisdiction on the Federal High Court under Section 87(9) of the Electoral Act 2010 (as amended) will turn around to take away such jurisdiction. In the instant case therefore, I am of the view that it cannot be rightly assumed that the same Constitution of the 1999 (as amended) by Section 4 and 228 (a) and (b) which gave the National Assembly the power to make laws for the peace order and good Government of the Federation and laws with respect to political parties, on the other hand, will in a swoop take away absolutely the powers it conferred on the National Assembly. To accede to this position will produce an unsavoury result in the circumstances of this case.**
- H Having expressly listed the courts with the jurisdiction respecting to pre-electoral matters, therefore, there cannot be any legally constituted body either by a political party nor subject**

to the fulfillment of any condition before the matter may be instituted before the Federal High Court. (pp. 4480 F/4481 C)

ELECTIONS - Federal HC - Jurisdiction - Expansion

4. The restrictions contemplated in the exercise of jurisdiction under Section 251(1) of the 1999 Constitution by the Federal High Court with regards to Federal Government agency as prequalification does not extend to the provision of Section 87(9) of the Electoral Act (supra). It is on this score that from the beginning of Section 251(1) of the Constitution it is clearly stated that:

“In addition to such other jurisdiction as may be conferred on it by the National Assembly...”

Consequently, the Federal High Court, apart from being vested with jurisdiction over cases and matters listed in subsections (1) (a) - (s) of Section 251, therefore, the National Assembly had the power to “add” to the jurisdiction of the Federal High Court and S. 87(9) of the Electoral Act is an addition contemplated by the said provision.

Learned counsel for the 3rd Respondent has therefore rightly submitted that the provisions of Section 87(9) (supra) which stipulate “notwithstanding the provisions of the Act or rules of a political party an aspirant who complains that any of the provisions of the Electoral Act or guidelines of a political party has not been complied with the selection or nomination of a candidate of political party for election may apply to the Federal High Court or the High Court of State or High Court of FCT for redress”, is an offshoot of the power vested by the Constitution on the National Assembly under Sections 4, 228 (a) and (b) of the Constitution. Hence, the provisions of S. 251 (1) of the Constitution and Section 87(9) of the Electoral Act, in pursuant of Section 4(1) (2), and (3) and Section 228 of the Constitution all become important cartilage supporting and empowering the National Assembly to “add” the jurisdictional limit of the Federal High Court to entertain electoral matters as it pertains to issues of nomination or selection by candidates by political parties’ primaries in respect of general elections. Therefore, the enactment of

the provision of Section 87(9) of the Electoral Act 2010 by the National Assembly was clearly not in contradiction or contravention, neither in subjugation to the provisions of Section 251 (1) of the Constitution. (p. 4481 H)

B ***ACTIONS - Necessary party - Joinder***

5. On whether or not the 3rd Respondent is a party to the action, the blue litmus test for the determination of who may be a necessary party to a suit is predicated on whether the judgment will affect the party; and one of the reasons which makes it necessary to make a particular person a party to an action is that he will be bound by the result of the action and to put an end to parallel litigations. In the case at hand, any judgment by the trial court would affect the 3rd Respondent and the court might often think is most convenient and desirable that the 3rd Respondent should be heard so that the trial court should be sure that it has effectively and completely adjudicated or settle all the questions in the cause before it.
(p. 4484 C)

E

REPRESENTATION

Dr. Onyechi Ikpeazu OON, SAN with Iyke Ogbogu Esq., Prisca Ozoilesike Esq., Tochukwu Nweke Esq., Ifeyinwa Nwabueze Esq. and Mavis Ekwechi (Miss), for the Appellant

F Ibrahim Isiyaku, SAN with O. O. Ifijeh (Miss), for the 1st Respondent
S. Oyawote Esq. with Frank Daniel, for the 2nd Respondent
Ibrahim K. Bawa Esq. with A. D. Auta Esq. & F. Amanzi, for 3rd Respondent

G **CASES REFERRED TO**

Sha'aban v. Sambo (2010) 10 NWLR (pt. 1226) 353
Dangote v. CSC Plateau State (2010) 9 NWLR (pt. 717) 132
NDIC v. Okems Enter. Ltd. (2004) 10 NWLR (pt. 886) 107
Onuoha v. Okafor (1983) 10 SC
H Dalhatu v. Turaki (2003) 15 NWLR (pt. 843)
Ugwu v. Ararume (2007) 12 NWLR (pt. 1048) 365
Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227
Adisa v. Oyinwola (2000) 10 NWLR (pt. 67) 116
Uwazurike v. AGF (2007) 25 CNJ 369

PDP v. Silva (2010) 13 NWLR (pt. 1316) 85

Marwa v. Nyako (2012) 6 NWLR (pt. 1296) 199

Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 517

Uku v. Okumagba (1974) 3 SC 35

Oduola v. Coker (1981) 5 SC 197

B

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 4, 228, 251(1)

Electoral Act 2010 (as amended), s. 87(1)(2)(7)(9)

C

LEAD JUDGMENT BY GALADIMA JSC

This is an appeal against the decision of the Court of Appeal, Yola Judicial Division in Appeal No. CA/YL/31/2011 delivered on 13th September 2011, wherein the Court below affirmed the decision of the Federal High Court, Yola Division in Suit No. FHC/YL/CS/17/2011, delivered on 1st April, 2011.

This action was initiated vide an Originating Summons by the 1st Respondent herein at the said Federal High Court, Yola Judicial Division seeking the determination of the following questions:

E

“1. Is the Plaintiff (i.e. the 1st Respondent) who was the Aspirant of the 1st Defendant (2nd Respondent) and the one that scored the highest number of votes cast at the special congress of the 1st Defendant (2nd Respondent) held on the 7th and 8th of January, 2011 to select a candidate, to be sponsored by the 1st Defendant (2nd Respondent) to represent the Taraba Central Senatorial District in the election sponsored by the 1st Defendant (i.e. 2nd Respondent) in the elections to the Senate of the National Assembly of the Federal Republic of Nigeria holding in April, 2011 entitled to have his name submitted by the 1st Defendant (i.e. 2nd Respondent) to the 3rd Defendant (i.e. 3rd Respondent) as its candidate having regard to the provisions of the ARTICLE 31 and 32 of the Electoral Guidelines for Primary Elections 2010 of the People Democratic Party and Section 87(a) (c) (ii) of the Electoral Act 2010 (as amended)?

F

G

H

2. Is the purported submission of the name of the 2nd Defendant (i.e. Appellant) to the 3rd Defendant (3rd Respondent) by the 1st Defendant (i.e. 2nd Respondent) as its candidate to represent Taraba Central Senatorial District in the election to the Senate of the

National Assembly of the Federal Republic of Nigeria to be held in April, 2011 not a violation of the Electoral Guidelines for Primary Elections 2010 of the People Democratic Party and Section 87(4) (c) (ii) of the Electoral Act 2010 (as amended) and therefore null and void having regards to the fact that the 2nd Defendant (i.e. Appel-
lant) participated in the said Special Congress Primary Election of the 1st Defendant (i.e. 2nd Respondent held on the 7th and 8th of January, 2011 and failed to score the highest vote cast at the said elections?

3. Is the purported Special Congress convention or meeting however styled or called convened by the 1st Defendant (2nd Respondent herein) on the 26th January, 2011 by the publication made on the 22nd January, 2011 for the purpose of the nominating candidates for the elective offices specified in the Electoral Act including elections into membership of the Senate of the National Assembly of the Federal Republic of Nigeria without 21 days prior notice to the 3rd Defendant (3rd Respondent) not a contravention of S. 35(i) of the Electoral Act 2010 (as amended) and S. 228 of the Constitution of the Federal Republic of Nigeria (as amended) and therefore invalid?

4. Is the purported Special Congress, Convention, Conference or Meeting however styled or called convened by the 1st Defendant (2nd Respondent) on the 26th January or 29th January 2011 by the publication made on the 22nd January, 2011 for the purpose of nominating the candidates for the elective offices specified in the Electoral Act including elections into membership of the Senate of the National Assembly of the Federal Republic of Nigeria without the monitoring of the 3rd Defendant (3rd Respondent) not a contravention of S. 85 (2) of the Electoral Act 2010 (as amended) and S. 228 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore invalid?

5. Can the 1st Defendant (2nd Respondent) validly ignore, disregard, cancel, or annul the result of the said Special Congress Primary Election of the 1st Defendant (2nd Respondent) held on the 7th and 8th January, 2011 wherein the plaintiff scored the highest number of votes cast when the plaintiff:

(i) Is not dead;

(ii) Has not withdrawn his candidature and

(iii) *Was not given any hearing on the decision (if any) to ignore cancel or disregard or annul the result of the Primary election aforesaid contrary to Article 31, 32, 33 and 50 of the Electoral Guidelines for Party Elections, 2010 of the People Democratic Party and Section 87 of the Electoral Act 2010 as amended and S. 36 of the Constitution of the Federal Republic of Nigeria, 1999.* B

In the main 1st Respondent sought for the following reliefs:

1. A declaration that having won the primary election held on 7th and 8th January 2011, and was issued Respondent's Form PD 004/NA/2010, he is entitled to have his name submitted as candidate. C

2. An Order restraining the Appellant from parading himself as candidate and the INEC from according him recognition as candidate.

All the parties herein, filed their necessary processes including D written addresses in support of their contentions and duly adopted same during the hearing of the substantive matter. After careful review of the various affidavits and written addresses filed by the parties, the trial Federal High Court entered judgment in favour of the 1st Respondent declaring as follows: E

"1. I declare that the submission of the name of the 2nd Defendant (i.e. Appellant) by the 2nd Defendant (i.e. 2nd Respondent) to the 3rd Defendant (i.e. 3rd Respondent) as the candidate of the 1st Defendant (2nd Respondent) to represent Taraba Central Senatorial District in the elections to the senate of the National Assembly of the Federal Republic of Nigeria at the general elections to be held in April, 2011 is a violation of the Electoral Act, 2010 as amended and the rules made by the 1st Defendant (i.e. 2nd Respondent) for the primaries and the Electoral Guidelines for the Primaries Elections F 2010 of the People Democratic Party and therefore illegal null and void and of no effect. G

2. I hereby declare that the 1st Defendant (i.e. 2nd Respondent) cannot ignore or refuse to recognize the result of the special congress primary election of the 1st Defendant (i.e. 2nd Respondent) held on the 7th and 8th of January, 2011 to select or nominate candidates contained in Form PD004/NA/2010 dated the 7th of January, 2011. H

3. I hereby order that the 3rd Defendant (i.e. 3rd Respon-

dent) to recognize the Plaintiff (i.e. 1st Respondent) as the candidate of the 1st Defendant (i.e. 2nd Respondent) for the election into the Senate of the National Assembly of the Federal Republic of Nigeria to represent the Taraba Central Senatorial District in the elections to be held in April, 2011 and to extend and accord the Plaintiff (i.e. 1st Respondent) all rights and privileges of a candidate.

4. The 2nd Defendant (i.e. the Appellant) by the order of this court is hereby restrained from parading himself as the candidate of the 1st Defendant (2nd Respondent) for election to the Senate of the National Assembly of the Federal Republic of Nigeria to represent Taraba Central Senatorial District in the elections to be held in April, 2011.

5. The 1st and 2nd Defendants (2nd and 3rd Respondents) are by the order of this Honourable Court hereby restrained from recognizing, accepting or treating the 2nd Defendant (Appellant) as the candidate of the 1st Defendant (i.e. 2nd Respondent) for the election into the senate of the National Assembly of the Federal Republic of Nigeria to represent Taraba Central District in the election to be held in April, 2011.

6. I make no order as to cost”.

Aggrieved by the decision of the trial court the Appellant filed an appeal before the Court of Appeal, Yola, challenging that decision. In its considered Judgment the Court below held that the trial Federal High Court was right and accordingly affirmed the decision of the trial High Court.

In dismissing the appeal the lower court held inter alia thus:-
 “I therefore understand by a community reading of Section 251 (1) of the 1999 Constitution and Section 87 (9) of the Electoral (amendment) Act No. 10 of 2010, that the National Assembly in the exercise of her legislative power derived from Section 4(1) (2) and (3) of the 1999 Constitution, “added to” the jurisdictional limit of the Federal High Court, to enable the latter entertain pre-election matters as it pertained to nomination and election of the candidates at political parties’ primaries in respect of general elections. This understanding is made clearer upon careful perusal of sub-section (r) and (s) of Section 251(1) of the 1999 constitution, to the effect that where the “validity of any executive or administrative action or decision by the Federal Government or any of its agencies” is in issue it can be

challenged in the Federal High Court or any other court seeking declarative injunctive reliefs, against such executive, administrative, action or decision of the Federal Government... (See pages 1125 - 1126 of the record of appeal). ”

The court further viewed the National Assembly Appeal panel set up by the 2nd Respondent which ordered a re-run primary Election won by the Appellant as “a clog to access to court as far as Section 87(9) of the Electoral Act is concerned”.

Dissatisfied with this decision of the court below, the Appellant has further appealed to this Court on 4 Grounds, having been granted leave to appeal out of time by this Court on 25th June, 2012. Having regard to these Grounds of Appeal the Appellant formulated 2 issues for determination in his brief of argument filed on 29/6/2012 as follows:

“1. Did the learned Justices of the Court of Appeal properly apply Section 251(1) Constitution of the Federal Republic of Nigeria (1999) in holding that the Federal High Court was competent to adjudicate on the fact presented in the case. Grounds 1, 2 and 3.

2. Were the learned Justices of the Court of Appeal wrong in upholding the decision of the trial judge nullifying the decision of the National Assembly Electoral Appeal of the Peoples Democratic Party (PDP) and the resultant re-run of the primary Election for Taraba Central Senatorial District on the basis that Section 87 (9) of the Electoral Act, 2010 precluded the panel from inquiring into the validity of the initial primary.” Ground 4

In his brief of argument filed on 6th of December 2012, the 1st Respondent has adopted the two issues formulated by the Appellant for determination.

On their part, the 3rd Respondent, regards being had to the facts of this case and the grounds of appeal, in the Notice of Appeal they also formulated the following sole issue for determination:

“Whether regard being had to the provisions of Section 4, 228 and 251 (1), 4(1) (2) and (3) of the 1999 Constitution of the Federal Republic of Nigeria and Section 87 (9) of the Electoral Act 2010 (as amended) the Court of Appeal was right when it affirmed the decision of the Federal High Court that it is vested with the jurisdiction to entertain pre-election matters pertaining to nomination, selection and or election of a candidate at political party’s primaries in respect of

general elections? (Distilled from Grounds 1, 2, 3 and 4). ”

May it be noted that the 2nd Respondent at the Court below did not file any brief of argument. However, they filed a separate appeal No. CA/YL/31/2011 against the Judgment of the trial High Court delivered on 1/4/2011, which is anchored on the same Record of Appeal. The court below for the convenience and to save time of the court, with the consent of all counsel in both appeals, consolidated the appeal for hearing. Hence, in this appeal, no brief has been presented by the 2nd Respondent.

ISSUE 1

It is the contention of the learned Senior Counsel for the Appellant that from the consideration of the totality of the case instituted at the Federal High Court, the court lacked jurisdiction to adjudicate on the dispute as well as the parties present before it. Reliance was placed on the cases of *SHA'ABAN V. SAMBO* (2010) 10 NWLR (Pt. 1226) 353 at 360 and *DANGOTE V. CSC PLATEAU STATE* (2010) 9 NWLR (Pt.717) 132 at 150.

It is further contended that, in the instant case, the cause of action was outside the scope of authority of the Federal High Court, but that notwithstanding, both courts below overruled the Appellant and proceeded into the hearing of the case on its merit.

It is submitted by the learned Senior Counsel that even though S. 87 (9) of the Electoral Act 2010 (as Amended) mandates an aggrieved person to seek redress at the Federal High Court or the High Court of the State or Federal Capital Territory over violation of the provisions of Electoral Act, the said Section must be read subject to Section 251 (i) (p) (g) and (r) of the 1999 Constitution to mean that if where the cause of action involves a Federal Government Agency that a resort for adjudication can be made to the Federal High Court, otherwise an aggrieved party should approach the State High Court to ventilate his grievances. He submitted that since there is no cause of action against the 3rd Respondent the Federal High Court is divested of jurisdiction to adjudicate over the 1st Respondent's claim. Having set out the Reliefs sought in the Originating Summons and detail facts on which the reliefs are based in the Appellant's brief, learned senior counsel has contended that essentially, the dispute is between the 1st Respondent and the Appellant over who should be sponsored by the 2nd Respondent. That no where did the 1st Re-

spondent allege that the 3rd Respondent which is an agency of the Federal Government did anything contrary to the aspirations of the 1st Respondent. That indeed, the 1st Respondent relied, rather heavily on the Report, said to have been written by the 3rd Respondent to the 2nd Respondent projecting the 1st Respondent as the person who won the primary and whose name ought to be forwarded as the candidate for the Taraba Central Senatorial District. In other words, the Learned Senior Counsel has argued, that from the facts of this case no issue of substitution was ever in contemplation, as the 1st Respondent's name was never at any stage forwarded to the 3rd Respondent as a nominated candidate. It is, therefore, submitted that the further jurisdiction created by the National Assembly by virtue of Section 87(9) of the Electoral Act, 2010 relates to cases where the conduct of INEC forms part of the challenges of the nomination process. That this must not be extended to instances such as in this case where reliance is placed on the conduct of a political party. On this score alone this Court is urged to allow the appeal.

Learned Senior Counsel for the 1st Respondent, on this issue, having carefully set out the arguments and submissions and the relevant passages in the findings of the two lower courts submitted that the jurisdiction vested in the High Court's vide S. 87(9) of the Electoral Act 2010, (as amended) is an added jurisdiction and is not exercisable subject to the items listed in S. 251 (1) of the 1999 Constitution. It is therefore submitted that there was cause of action against the conduct of 3rd Respondent for acceptance and publishing the Appellant's name as candidate and therefore the 1st Respondent's suit was covered by S.251 (i) (r) of the 1999 Constitution since the 3rd Respondent is a Federal Agency, the trial court has jurisdiction over the 1st Respondent's claims, more particularly reliefs 4 and 6.

Learned Counsel for the 3rd Respondent, on this issue, has submitted that the provision of Section 251(1) of the 1999 Constitution allows the National Assembly to confer additional jurisdiction on the Federal High Court in addition to the matters specified or presented by the provisions of the constitution, pursuant to Section 4(1) (2) and (3) and 228 of the 1999 Constitution (as amended). It is urged on this Court for this reason to hold that the 1st Respondent's case before the trial Federal High Court was within the purview of the provisions of Section 87(9) of the Electoral Act 2010 (as

amended).

ISSUE II

Under this issue, the learned senior counsel for the Appellant has submitted that the learned Justices of the Court below were wrong in upholding the decision of the trial Judge nullifying the decision of the National Assembly Electoral Appeal of the 2nd Respondent party (PDP) and the resultant re-run of the primary Election for Taraba Central Senatorial District on the basis that Section 87(9) of the Electoral Act 2010 precluded the panel from inquiring the validity of the initial primary.

While the learned senior counsel has conceded that Section 87 of the Electoral Act is an innovation, he thinks it will be taking it a bit too far to hold that it eradicated the right of a political party in determining its internal affairs. That the said Section deals with nomination of candidates by political parties' and by Section 87 (1) and (2) political parties are mandated to produce candidates by adopting direct or indirect primaries. That subsections (4) (5), (6), (7), and (8) deal with details of the emergence of candidates through indirect primaries, which by definition means an intra party election conducted by a political party for the party's candidates. It is therefore categorical that those who must participate are the delegates at the congress of a political party. It is argued that since the complaint of the Appellant was that the delegates of the 2nd Respondent were excluded from the congress, situation as this clearly cannot qualify as a congress of the party; and therefore the political party is most competent to determine this initial party dispute. Referring to Section 87(7) learned senior counsel argues that the complaint of the Appellant was not founded on noncompliance with Section 87 of the Electoral Act, 2010 but firmly on non-compliance with the Constitution and rules of the 2nd Respondent party as to who should participate at the congress for the selection of a candidate. It is submitted that this matter is intra-party affairs which is not within the ambit of Section 87 of the Electoral Act. Even if it could be argued, learned counsel contended, that the complaint of the Appellant is within the confines of Section 87 of the Electoral Act 2010; that subsection 9 of Section 87 does not in any way abrogate the right of an aspirant to seek redress under the Constitution or rules of a political party. The learned senior counsel takes on two operative terms in the said subsection (9) i.e.

“notwithstanding” and “may”. That the import of the terms were amply illustrated by this Court in *NDIC V. OKEMS ENTER LTD.* (2004) 10 NWLR (Pt.886) 107 at 185 - 187. That in its very clear term “may” implies optional. Thus when the term “notwithstanding” is read with “may” then the provisions of the guidelines of the 2nd Respondent, the subsection acknowledges that though the guidelines had provided internal means of conflict resolution, an aggrieved aspirant had an option of resorting to the Federal High Court, State High or High Court of the F.C.T. to ventilate his complaint. B

It is argued that the term “notwithstanding” is on the other hand qualified by the term “shall” the opposite will be the case. That is to say that an aggrieved aspirant must sort to the Federal High Court or High Court of the State or of Federal Capital Territory (FCT) notwithstanding the provisions of the guidelines of the political party. The Court is urged to adopt the plain meaning of the terms used in their ordinary usage as they are clear. C D

Referring to Exhibit ‘B’ (the Guidelines of the 2nd Respondent) on which the 1st Respondent case was based, it is contended that what the 1st Respondent has sought to achieve was a limited approach to Exhibit ‘B’. The Court on its part disregarded the internal mechanism set up by the 2nd Respondent to regulate proceedings. It is conceded however, that in the absence of very clear statutory provisions, the court will not make it a practice of dictating to a political party how it will run its affairs, nor will the court substitute the rules of engagement as established by a political party. It is submitted therefore that to this extent the age long principles on which cases like *ONUOHA V. OKAFOR* (1983) 10 SC. *DALHATU V. TURAKI* (2003) 15 NWLR (Pt. 843) and *LADO V. CPC* (supra) were founded remain sacrosanct. That is to say that it is within the rights of any voluntary Association to make rules regulating its members. It is submitted that the decision of this Court in *UGWU v. ARARUME* (2007) 12 NWLR (Pt. 1048) 365: *AMAECHI v. INEC* (2008) 5 NWLR (Pt. 1080) 227 are not applicable to this case. It is for this reason that the 2nd Respondent did not, like in these two cases, simply substitute an aspirant who won an election with one who never contested. That the 2nd Respondent simply followed the decision of the Electoral Appeal Panel to hold a re-run of an election. E F G H

On this issue, learned counsel for the 1st Respondent has sub-

mitted that the use of word “Notwithstanding” has subordinated, beyond any doubt the provisions of the Electoral Act and party guideline in relation to the forum where complaints may be redressed, if any aggrieved contestant decides to challenge the outcome of a primary election. This is so because any impeding effect or limitation in
B or by any other provision of the Electoral Act or party Guidelines regarding the forum has been excluded. Refers NDIC V. OKEM (2004) 10 NWLR (Pt. 880) 107. It is therefore submitted that the word “Notwithstanding” used in S. 87(9) of the Electoral Act 2010 (as amended)
C implies that the power to decide any dispute with regard to a complaint by an aspirant who claims that the provisions of the Electoral Act and the party Guidelines had been breached or not complied with, during the primary election is vested in the judicial institutions named in the said section.

D It is further submitted that the phrase “*may apply to the Federal High Court...*” is not to give the complainant discretion as to which forum to apply for a redress, that is whether he could apply to the High Court or to a Committee of the party. It is urged on this Court to uphold the decision of the court below which had upheld
E the decision of the trial court, therefore resolving this issue in favour of the Respondents.

On their part the learned counsel for the 3rd Respondent has submitted that the 1st Respondent’s case before the trial court is within
F the purview of the provisions of Section 87(9) of the Electoral Act 2010 (as amended).

After careful consideration of this matter, I am of the view that the crux of this appeal as presently constituted is predicated upon the contention of the Appellant that the Federal High Court lacks the
G requisite jurisdiction to adjudicate on the matter as presented by the 1st Respondent before the trial Federal High Court. The summation of his argument is premised on the fact that the Originating Summons initiating the proceedings vis-à-vis the nature of the reliefs sought by the 1st Respondent before the Federal High Court whittle down
H that court’s jurisdiction, therefore making it lacking the pre-requisite life wire and legal capacity to determine the dispute before it. It is also the contention of the Appellant that there is no claim and/or order sought against the 3rd Respondent being an agency of the Federal Government before the Federal High Court in the proceeding or

that there was no cause of action against the 3rd Respondent warranting the joining of the 3rd Respondent in the proceedings. It was the argument of the Appellant that the jurisdiction to determine the proceedings would have properly vested in the Federal High Court by joining the 3rd Respondent where the 1st Respondent disclosed a cause of action against the 3rd Respondent and that by joining the 3rd Respondent in the proceedings, it does not necessarily donate jurisdiction to the Federal High Court to adjudicate over the matter. B

The Appellant further submitted that the Federal High Court yet lacks the jurisdiction to determine the proceedings in spite of and irrespective of Section 87(9) of the Electoral Act 2001, (as amended). C

In arguing the case for the Appellant, learned senior counsel divided the foregoing issues into two hereof contending that the Federal High Court jurisdiction is limited to the determination of intra party dispute notwithstanding the provision of Section 87(9) of the Electoral Act (supra). On one hand that this provision must be read in conjunction or in subjugation strictly to Section 251 (1) of the 1999 Constitution and in ejusdem generis, to mean that it is only where the cause of action involves the Federal Government Agency, then resort must be made to the Federal High Court. D E

Learned Counsel for the Appellant has quite rightly expressed his views on the role and importance of jurisdiction in the exercise of adjudicative process by the Court. However, the learned counsel, with respect, was clearly wrong to have submitted that the Federal High Court lacks the requisite jurisdictional capacity to determine the proceedings initiated by the 1st Respondent basing his argument on the none existence of a cause of action against the 3rd Respondent being an agency of the Federal Government of Nigeria and by further placing reliance on the provisions of Section 87(9) of the Electoral Act (supra). F G

It is clear by virtue of Section 251 (1) (P) and (r) of the 1999 Constitution, exclusive jurisdiction is vested in the Federal High Court in civil causes and matters arising from the administration management and control of administration of the Federal Government, the operation and interpretation of the Constitution as it affects Federal Government as well as any action or proceedings for declaration or injunction affecting the validity of any executive or administrative action H

or decision of the Federal Government.

However, in the circumstance of this case, both the trial Federal High Court and the Court of Appeal were both right in holding that the said trial court has jurisdiction, legal capacity and the competence to determine the matter as constituted and presented by the 1st Respondent.

However, for the avoidance of doubt Section 87 (9) of the Electoral Act 2010 (as amended) is reproduced.

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

It is very clear that the words used in expressing the intention of the legislature in the above provision are plain and unambiguous. In interpreting the intention of the Statute or Constitution, the Court must endeavour to give the words used in the Constitution or Statute its ordinary, natural and grammatical construction unless such interpretation would lead to absurdity or inconsistency with the rest of the legislation. See ALHAJI ADISA V. OYINWOLA & ORS (2000) 10 NWLR (Pt.67) 116, (2000) 65 CNJ 290, RALPH UWAZURIKE & ORS. V. AGF (2007) 25 CNJ 369 at P. 378 and AMAECHI V. INEC (2008) 5 NWLR (pt. 1080) 227.

I agree with the learned counsel for the 3rd Respondent that the basic principles of interpretation of all Constitutions and Statutes, which have received numerous judicial approval, is to the effect that the law makers will not give a right in one section and turn around to take same in another. In that regard, in the case at hand it is a misconception for the Appellant to contend that the Constitution by its Sections 4 and 228 (a) and (b), which empowers the National Assembly to make laws with respect to political parties primaries elections and thereby conferring jurisdiction on the Federal High Court under Section 87(9) of the Electoral Act 2010 (as amended) will turn around to take away such jurisdiction. In the instant case therefore, I am of the view that it cannot be

rightly assumed that the same Constitution of the 1999 (as amended) by Section 4 and 228 (a) and (b) which gave the National Assembly the power to make laws for the peace order and good Government of the Federation and laws with respect to political parties, on the other hand, will in a swoop take away absolutely the powers it conferred on the National Assembly. To accede to this position will produce an unsavoury result in the circumstances of this case.

Having found that the provision of section 87(9) of the Electoral Act (supra) is clear and unambiguous this Court has the duty to give it literal interpretation. Having expressly listed the courts with the jurisdiction respecting to pre-electoral matters, therefore, there cannot be any legally constituted body either by a political party nor subject to the fulfillment of any condition before the matter may be instituted before the Federal High Court.

The Court below therefore was right to hold that:

“...by a community reading of Section 251(1) of the 1999 Constitution and Section 87(9) of the Electoral Act (Amendment) Act No. 10 of 2010, that the National Assembly in the exercise of her legislative power derived from Section 4(1) (2) & (3) of the 1999 Constitution “added to” the jurisdictional limit of the Federal High Court, to enable the latter entertain the pre-election matters as it pertain to nomination or election of candidates at political parties’ primaries in respect of general elections. This understanding is made clearer upon careful perusal of Sub-section (r) and (s) of Section 251 (1) of the 1999 Constitution, to the effect that where the “Validity of any executive or administrative action or decision by the Federal Government or any of its agencies” is in issue it can be challenged in the Federal High Court or any other court seeking declarative or injunctive reliefs, against such executive or administrative action or decision of the Federal Government or any of its agencies”. (See pages 1123 of the record).

The restrictions contemplated in the exercise of jurisdiction under Section 251(1) of the 1999 Constitution by the Federal High Court with regards to Federal Government agency as prequalification does not extend to the provision of Section 87(9) of the Electoral Act (supra). It is on this score

that from the beginning of Section 251(1) of the Constitution it is clearly stated that:

“In addition to such other jurisdiction as may be conferred on it by the National Assembly..”

Consequently, the Federal High Court, apart from being vested with jurisdiction over cases and matters listed in sub-sections (1) (a) - (s) of Section 251, therefore, the National Assembly had the power to “add” to the jurisdiction of the Federal High Court and S. 87(9) of the Electoral Act is an addition contemplated by the said provision.

Learned counsel for the 3rd Respondent has therefore rightly submitted that the provisions of Section 87(9) (supra) which stipulate “notwithstanding the provisions of the Act or rules of a political party an aspirant who complains that any of the provisions of the Electoral Act or guidelines of a political party has not been complied with the selection or nomination of a candidate of political party for election may apply to the Federal High Court or the High Court of State or High Court of FCT for redress”, is an offshoot of the power vested by the Constitution on the National Assembly under Sections 4, 228 (a) and (b) of the Constitution. Hence, the provisions of S. 251 (1) of the Constitution and Section 87(9) of the Electoral Act, in pursuant of Section 4(1) (2), and (3) and Section 228 of the Constitution all become important cartilage supporting and empowering the National Assembly to “add” the jurisdictional limit of the Federal High Court to entertain electoral matters as it pertains to issues of nomination or selection by candidates by political parties’ primaries in respect of general elections. Therefore, the enactment of the provision of Section 87(9) of the Electoral Act 2010 by the National Assembly was clearly not in contradiction or contravention, neither in subjugation to the provisions of Section 251 (1) of the Constitution.

The provisions of any law made by the legislatures must be studied carefully. They are neither made for mere fun of it, nor for the purpose of satisfying the whims and caprices of the interpreter. The provisions must be given their natural meaning and the expression of the legislature. The provisions

must be interpreted and applied to meet the circumstances, or situations for which they are made.

In addition to the above contentions the Appellant has contended in his brief that the originating summons disclosed only reliefs sought essentially against the 1st Respondent over who should be sponsored. He relied heavily on this contention that the 3rd Respondent which is an agency of the Federal Government of Nigeria did not do anything contrary to the aspirations of the 1st Respondent. B

In support of his contention the Appellant tried to create a nexus and relevance between this case and the cases of PDP V. SILVA & ORS (2010) 13 NWLR (Pt. 1316) 85 at 149; MARWA v. NYAKO (2012) 6 NWLR (Pt. 1296) 199 and TUKUR v. GOVT OF GONGOLA STATE (1989) 4 NWLR (Pt. 117) 517. These cases are distinguishable from the instant case. C

The first case is not on all four with the case at hand. The summary of the fact in SILVA'S case is that he was aggrieved by the declaration of INEC to hold Governorship election in April, 2011. He contended that his tenure as Governor started to run from the date he took the second Oath of Office after having won and obtained injunction to restrain INEC from conducting the Governorship election for Bayelsa State in April 2011. This is despite the fact that he had earlier won the PDP primaries to contest the April 2011 election. D E

Subsequently, INEC rescheduled the Bayelsa Governorship Election. Pursuant to this the PDP set up a screening Committee or Panel and the 1st Respondent took part in the screening but was not cleared to contest the primary election. He then commenced an action seeking to validate the previous primary action he had won. This Court held that having taken part in the screening for the fresh primary election, he had abandoned the earlier primary election he won, and that in any case that primary election for which the primary election was conducted i.e. in April 2012 election had been cancelled by INEC. In the instant case INEC had not rescheduled senatorial elections as to warrant the cancellation of primary election won by the 1st Respondent. Moreover, the 1st Respondent did not abandon his victory. The issue in the matter at hand was whether the PDP Appeal Panel was the proper forum for the Appellant herein to seek redress where his complaint rested on allegation of noncompliance F G H

with the provisions of the Electoral Act 2010 and the party Guidelines for primary election and not the Federal/State/FCT High Court.

Similarly, the issues decided in MARWA's case are not quite remotely connected with the issue in the instant case.

In any case, this Court held in Silva's case further that:

- B *"Section 87(9) of the Electoral Act confers jurisdiction on the Court to hear complaints from a candidate who participated at his party's Primaries and complains about the conduct of the party primaries... The 1st Respondent not being a candidate at the primaries cannot be heard to complain about the conduct of the primaries*
 C *Section 87(9) of the Election Act is not applicable."*

- On whether or not the 3rd Respondent is a party to the action, the blue litmus test for the determination of who may be a necessary party to a suit is predicated on whether the***
 D ***judgment will affect the party; and one of the reasons which makes it necessary to make a particular person a party to an action is that he will be bound by the result of the action and to put an end to parallel litigations. In the case at hand, any judgment by the trial court would affect the 3rd Respondent***
 E ***and the court might often think is most convenient and desirable that the 3rd Respondent should be heard so that the trial court should be sure that it has effectively and completely adjudicated or settle all the questions in the cause before it.***

- F I shall recapitulate briefly some very important background facts which necessitated the 1st Respondent action in the trial Federal High Court. These undisputed facts are as follows:

- (a) That the 1st Respondent having convincingly won the primary election conducted on the 7th and 8th January 2011 respectively and his name submitted by the 2nd Respondent (PDP) to the 3rd Respondent (INEC) and same published and without any notice of dispute over the said election, the 2nd Respondent caused to be published a notice that it was going to conduct a re-run election.

- (b) Aggrieved by this action of the 2nd Respondent, he commenced Suit No. TR SJ/6/11 at Taraba State High Court against the 2nd Respondent.

(c) That while the Suit was pending, the 2nd Respondent submitted the name of the Appellant to the 3rd Respondent which published the name of the Appellant as 2nd Respondent's candidate.

(d) That the submission of the Appellant's name by the 2nd Respondent to the 3rd Respondent and the latter's acceptance and publication of Appellant's name aggrieved the 1st Respondent.

(e) Consequently, the 1st Respondent withdrew Suit No. TRSJ/6/11 and instituted a fresh action in the Federal High Court seeking inter alia reliefs numbers 4 and 6 against the 3rd Respondent. B

It is this fresh suit that gave rise to this appeal. In the circumstance and regarding the foregoing sequence of events, there was clearly a cause of action against the INEC for accepting and publishing Appellant's name as candidate and the 1st Respondent's suit was covered by S 251(1) (r) of the 1999 Constitution INEC (3rd Respondent herein) being a Federal Agency, the trial court has jurisdiction over the 1st Respondent's claims especially reliefs 4 and 6. C

The second issue posed by the Appellant for determination of this appeal relates to the decision that s. 87 (9) of the Electoral Act 2010 vests jurisdiction to entertain complaints of infractions of the provisions of the said Act and 2nd Respondent's (PDP) Guidelines on primary election in the High Court, Federal High Court or High Court of the Federal Capital Territory only and NOT in the party's Appeal Committee or Panel. D E

In consideration of issue No.1, I had thought it apt to reproduce S. 87(9) of the Electoral Act 2010. I have as well dealt with the salient phrases in that Act, namely:

(a) Notwithstanding the provisions of the Electoral Act or party rules; F

(b) Allegation of non-compliance with the provisions of the said Act or party rules in the conduct of party primaries; and

(c) The forum for seeking redress

In the case at hand, it is not disputed that Appellant complained G of infractions relating to exclusion and substitution of delegates in violation of s. 87(4) (c) of the PDP Guidelines for primary election.

On this the trial court found thus:

"I find that the 2nd Defendant's complaint or appeal is captured by the provisions of S. 87 (9) of the Electoral Act 2010." H

Thus, these complaints which the 2nd Respondent's (PDP) Appeal Panel purported to have decided upon are "entrusted" to the Federal High Court or the High Court of a State or High Court of Federal Capital Territory.

I have found, and for the umpteenth time, held that the use of the word “Notwithstanding” has subordinated, beyond any doubt, the provisions of the Electoral Act and party Guidelines in relation to the forum where complaints may be addressed, if any aggrieved contestant decides to challenge the outcome of a primary election. The courts listed in the Section 87 (9) of the Electoral Act (supra) possess the judicial powers to address such grievances not Appeal Panel of the PDP which was neither established by law nor vested with judicial powers under SS. 87 (4) (c) (ii) and 87 (9) of the Act. Finally with the resolution of all the two issues formulated in this appeal against the appellant the appeal fails and must be dismissed. It is accordingly dismissed. The Judgment of the court below is hereby affirmed. I assess the costs at N100,000 in favour of the 1st Respondent.

D

MOHAMMED JSC

I have had the privilege before today of reading in draft the judgment just delivered by my learned brother Galadima, JSC. I entirely agree with him on the reasoning and the final conclusion he arrived at in dismissing this appeal after resolving the two issues arising for the determination of the appeal. The two issues formulated in the Appellant’s brief of argument which were in turn adopted in the Respondents brief of argument are-

“1. Did the Justices of the Court of Appeal properly apply Section 251(1) of the 1999 Constitution in holding that the Federal High Court was competent to adjudicate on the fact presented in the case.

2. Were the learned Justices of the Court of Appeal wrong in upholding the decision of the trial Court nullifying the decision of the National Assembly Election Appeal of the Peoples Democratic Party (P.D.P) and the resultant re-run of the primary election for Taraba Central Senatorial District on the basis that Section 87(9) of the Electoral Act (2010) precluded the Panel from inquiring into the validity of the initial primary.”

It is quite plain from the issues for determination of the appeal that the Appellant is essentially attacking the jurisdiction of the trial court under section 251(1) of the constitution of the Federal Republic of Nigeria 1999 and the jurisdiction of the same Court under Section 87(9) of the Electoral Act, 2010 as amended in entertaining the

case of the Plaintiff now Appellant in the Originating Summons filed in that Court. Section 251(1)(q)(r) of the Constitution which forms the basis of issue one reads:-

“251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters -

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.”

Section 87(1) and (9) of the Electoral Act 2010 as amended on the other hand which is the foundation of the attack of the judgment of the trial Court which was affirmed by the judgment of the Court of Appeal now on appeal before this Court states -

“87(1) A Political Party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.

87(9) Notwithstanding the Provisions of the Act or rules of a Political Party, an aspirant who complains that any of the Provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or High Court of a State or F.C.T. for redress.”

From the record and this appeal, it is not in dispute that the Independent National Electoral commission, a Federal Government agency was not only a party as the 3rd Defendant at the trial Court but that a specific injunctive claim had also been made against it in the action by the Plaintiff, now Appellant in the 6th relief of the Plaintiff where the claim said -

“6. An order restraining the 1st and 3rd Defendants from recognizing, accepting or treating the 2nd Defendant as the candidate of the 1st Defendant for election into the Senate of the National Assembly of Federal Republic of Nigeria to represent Taraba Central District in the election to be held in April, 2011.”

Therefore looking at the case of the Plaintiff now Respondent as presented at the trial court, that court clearly by virtue of the provisions of Section 251(1)(r) of the constitution of the Federal Republic of Nigeria, 1999, has jurisdiction to entertain and determine the case before it as it did.

B Turning to the other side of the attack on the jurisdiction of the trial Court by the Appellant in the second issue, the provisions of section 87(1) and (9) of the Electoral Act, 2010 as amended which enjoined political parties to conduct primaries between aspirants in nominating candidates to contest elections under the platform of the political parties, gave the Federal High Court unqualified jurisdiction to entertain any dispute that may arise between aspirants in the conduct of primaries by the Political Parties. This jurisdiction conferred on the Federal High Court by an Act of the National Assembly which D is what the Electoral Act, 2010 definitely is, is in line with the additional jurisdiction envisaged under Section 251(1) of the 1999 Constitution which the National Assembly is empowered to confer on the trial Court. In any case the fact that the learned counsel to the 2nd Respondent the Peoples Democratic Party (P.D.P) which cancelled E the primaries conducted by it on 7th and 8th January, 2011 which was won by the 1st Respondent on the complaint of the Appellant who was declared the winner of the re-run primaries of 26th January, 2011, did not file any brief of argument to express its views on the dispute caused by it in this appeal between the Appellant and the F 1st Respondent, the issue raised by the Appellant in the second issue in this appeal is hardly necessary. This is because the 2nd Respondent whose action gave rise to the dispute that brought the parties to this Court is not prepared to say anything on the dispute. This conduct on the part of 2nd Respondent is to say the least unfortunate. G

In the final analysis, it is my view that looking at the case of the Plaintiff brought before the trial court from both angles of section 251(1)(r) of the 1999 Constitution and section 87(9) of the Electoral Act 2010 as amended, the trial court correctly assumed jurisdiction H to hear and determine the claims in the originating summons and the court below was equally right in affirming the decision of the trial court. Consequently, I also see no merit whatsoever in this appeal which is hereby dismissed with N100,000.00 costs to 1st Respondent against the Appellant.

MUNTAKA-COOMASSIE JSC

This is an appeal filed against the decision of the Court of Appeal Yola Division delivered on 13/9/2011 affirming the judgment of the Federal High court.

I have seen the lead judgment of my learned brother Galadima JSC. The two issues formulated by my learned brother are similarly resolved against the appellant. The appeal fails thereby. Same is dismissed. The judgment of the lower court is hereby affirmed. I endorse the order as to costs.

B

C

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just read by My Lord Galadima, JSC and I agree with the reasoning and conclusion therein. I desire to add a few words by way of support.

D

With reference to Section 251 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 87 (9) of the Electoral Act 2010 (as amended) it was contended that the 3rd respondent INEC, a Federal Government Agency is not a party to the proceedings as it did not do anything contrary to the aspirations of the 1st respondent and that since the 3rd respondent is not a party the Federal High Court had no jurisdiction to hear and determine the matter.

E

It is necessary to make a person a party to an action if that person should be bound by the result of the action. See *Amon v. Raphael Truck & Sons Ltd* (1956) 1 QB 357 at 380; *Oriare v. Government of Western Nigeria* (1971) 1 All NLR 138; *Uku & ors v. Okumagba & ors* (1974) 3 SC 35; *Alhaji Raji Oduola & ors v. John Gbadebo Coker* (1981) 5 SC 197.

F

The 3rd respondent, as the Electoral Umpire, is bound by the decision in favour of either party to the proceedings. It is my view that in a case of disputed nomination of candidates for election by a political party, INEC is a necessary party as it is bound to accept one of the contestants adjudged to have been duly nominated for the election. Though no specific complaint is made against the 3rd respondent, it is bound by the result of the case and is therefore a necessary party.

H

Section 251(1) of the Constitution opened up, thus:

“In addition to such other jurisdiction as may be conferred on it by the National Assembly...”

This implies that the jurisdiction donated to the Federal High Court by Section 251 (1) of the Constitution is not a closed circuit, as it were. The National Assembly may add to, or expand, the jurisdiction enjoyed by the Federal High Court under Section 251 (1) of the Constitution and this the National Assembly has done by enacting Section 89 (9) of the Electoral Act 2010 (as amended).

For the above and the fuller reasons in the lead judgment I also dismiss the appeal. I abide by order for costs.

ALAGOA JSC

I read before now in draft form the lead judgment of my learned brother Suleiman Galadima, JSC and I agree with his reasoning and conclusion reached.

Section 251 (1) of the 1999 Nigerian Constitution reads,

“Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction...”

The purport of this provision is that quite apart from the jurisdiction exercisable by the Federal High Court under Section 251 (1) (a) - (s) of the Constitution, the National Assembly can add to that jurisdiction of the Federal High Court. Section 87(9) of the Electoral Act 2010 is such an addition, and should not therefore be seen as contradictory to the powers of the Federal High Court to entertain electoral matters as it pertains to issues of nomination or selection by candidates by political parties’ primaries with respect to election.

The trial court was right in assuming jurisdiction to hear and determine claims in the originating summons. The judgment of the lower court affirming the appeal lacking in merit is also dismissed by me. I abide by the fuller reasons contained in the led judgment including the order on costs.