

SUPREME COURT OF NIGERIA
FRIDAY 17TH MAY, 2013. SC. 10/2012
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

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

EVIDENCE - Inadmissible document - Fate - Such document is invalid for all intents and purposes - As it cannot form the basis of any competent finding of court (H1)

COURTS - Document - Wrongful admission - Where document is wrongly admitted - Court has jurisdiction to expunge it at judgment - Since judgment can only be based on legally admissible document (H2)

DOCUMENTS - Public document - Certification - Exhibit EA3 being uncertified public document - Is inadmissible in law and should not be countenanced (H3)

ELECTIONS - Court - Pleadings - Binding nature - It is not the duty of CA to fish for disqualifying factors for senatorial office - Which were not specifically raised in the question for determination (H4)

COURTS - Order - Proclamation - Basis - Court should not make unsolicited orders - Or grant prayers not sought by parties - As it is not a charitable organization (H5)

COURTS - Declaratory reliefs - Grant - Condition - Plaintiff must establish the reliefs to satisfaction of court - As such reliefs are not

granted even on admission by defendant (H6)

COURTS - Discretion - Declaratory reliefs - Consideration of the reliefs calls for exercise of discretion - Which must be carried out judicially and judiciously (H7)

ELECTIONS - Evidence - Uncontroverted - Weight - Evidence of Osioma Ngwa LGA being part of Abia Central Senatorial District in previous elections - Remains unchallenged and should be acted upon by court (H8)

FACTS

Plaintiff/1st respondent/cross-appellant instituted this action at the Federal High Court Abuja by way of originating summons challenging the nomination of defendant/appellant/cross-respondent by the Peoples Democratic Party - PDP (3rd respondent) as its candidate to represent the Abia Central Senatorial District in the National Assembly. 1st respondent and appellant along with some other persons participated in the primary election conducted by PDP to nominate its candidate for general election into office of senator representing Abia Central Senatorial District. Appellant was declared the winner of the election and 1st respondent was the 1st runner-up. 1st respondent raised some questions for determination by the court and sought that where the answers are in the negative, he is entitled to a declaration of the court that pursuant to the delineation of Senatorial Districts in Abia State by 2nd respondent, Osioma-Ngwa Local Government Area of Abia State of Nigeria, does not fall within the Abia Central Senatorial District. Appellant and 3rd respondent raised objection against the hearing of the originating summons. The objection was overruled by the court.

2nd respondent filed counter-affidavit wherein it exhibited Exhibit INEC 1 (the Nigeria Atlas of Electoral Constituencies) which points to the fact that Abia Central Senatorial District is comprised of six (6) and not five (5) Local Government Areas which included Osioma Ngwa Local Government Area. 3rd respondent and appellant also filed counter-affidavits each. Appellant contended in her counter-affidavit that 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 2nd respondent. At the end, the court dismissed the claims of 1st respondent. Aggrieved, 1st respondent appealed to the Court of Appeal. The court allowed the appeal and held that appellant was not a candidate for the Senatorial general elections. It also held that 3rd respondent had no candidate in law to be sponsored for the said general election. The court however did not declare 1st respondent as the winner of the aforementioned primary election. Dissatisfied, appellant filed main appeal while 1st respondent cross-appealed.

ISSUES FOR DETERMINATION

1. Whether Exhibit EA3 which formed a major fulcrum of the lower court's judgment is a valid and admissible document in law.

2. Whether the Court of Appeal has both the jurisdiction and competence to base its judgment on a different case from the one presented by the Plaintiff's originating summons at the trial high court and which was not considered by and available to the trial high court to nullify the candidature of the Appellant.

3. Considering the claim of the Plaintiff (1st Respondent) at the trial high court which were refused by the said court (coupled with the fact that the lower court also dismissed/refused all the main reliefs of the Plaintiff), whether:

(i) The lower court was not in grave error by not dismissing the appeal before it:

(ii) The lower court did not breach the Appellant's right to fair hearing in its reliance on extraneous materials/reasons to nullify the Appellant's nomination.

4. Did the lower court, by its judgment rightly exercise jurisdiction over the matter before it and correctly apply the relevant unambiguous provisions of the 1999 Constitution, Electoral Act and Evidence Act to the materials qua evidence before it, including its reliance on Exhibit EA2 as central reference point for the determination and delineation of which Local Government constitutes the Abia Central Senatorial District for the purpose of the nomination of the Appellant herein.

HELD (Unanimously allowing the appeal and dismiss-

ing the cross-appeal per **FABIYI JSC**)

EVIDENCE - Inadmissible document - Fate

- 1. It is now trite that a document that is inadmissible in law is invalid for all intents and purposes. It cannot form the basis of any competent finding of a court of record. Where the law declares a document, like Exhibit MA3 inadmissible, it cannot be admitted in evidence even where there was no objection or even where parties consent to its admission.** (p. 4504 F)

Document - Wrongful admission

- 2. It should be pointed out here that where a document is wrongly admitted, the same court has the power and jurisdiction to expunge it at the judgment stage since it can only base its judgment on legally admissible evidence and documents.** (p. 4504 G)

DOCUMENTS - Public document - Certification

- 3. It is not in dispute that Exhibit EA3 is a public document which was not certified. It is clearly inadmissible in law. There was no tenable argument made to the contrary. Even if the author of Exhibit EA3 did not dispute the authorship of same, the Appellant who was affected by its contents disputes same. 'Passing reference by the lower court to Exhibit EA3' according to the senior counsel to the 1st Respondent, was made to no avail. This is because an uncertified document like Exhibit EA3 should not be countenanced for any reason whatsoever or under any guise.** (p. 4504 H)

Court - Pleadings - Binding nature

- 4. This court will continue to maintain the stance 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 fish for 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 who lacked the 'power of clairvoyance' must, only by operation of law, join issues upon the pleaded case of the 1st Respondent served on her. (p. 4507 E)

B

COURTS - Order - Proclamation - Basis

5. To make the matter worse, the court below dished out orders which were not prayed for by any of the parties. Without jurisdiction, it made orders that the 3rd Respondent had no candidate in law and that the Appellant 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. (p. 4507 H)

C

D

COURTS - Declaratory reliefs - Grant - Condition

6. Earlier in this judgment, I set out the reliefs claimed by the 1st Respondent, as Plaintiff, before the trial court. The claims, in the main, relate to declaratory reliefs by their nature and purport. The court must appreciate that it is for the Plaintiff to establish his claim on the strength of his case. He cannot rely on the weakness of the opponent's case. See: Dumez Nig. Ltd. v. Nwakhoba (2008) 12 S.C. (Pt. III) 142; where it was pronounced with force 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 entitlements to the declaration by his own evidence. (p. 4509 G)

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G

COURTS - Discretion - Declaratory reliefs

7. Considering of declaratory reliefs will always call for a sober exercise of discretion which must be carried out not only judicially but judiciously as well. Discretion is the art of being discrete in the extreme. And where there appears to be a tie, the judex is obliged to apply the sixth sense. (p. 4510 B)

H

ELECTIONS - Evidence - Uncontroverted - Weight

8. In respect of previous elections in Abia Central Senatorial District which show that Osioma Ngwa Local Government Area was part of the District. She also deposed to a counter-affidavit that in 1999 election, Senator Bob Nwanunu was elected to represent Abia Central Senatorial District with Osioma Ngwa Local Government being part of the District. As well, in 2003 election, Senator Chris Adighije was also elected to represent Abia Central Senatorial District with Osioma Ngwa Local Government Area forming part of Abia Central Senatorial District. The evidence remains unchallenged and should be accepted and acted upon by the court.

The 3rd Respondent felt that there was a slip in Exhibit EA2. It issued Exhibit 3DC which shows that Osioma Ngwa Local Government is in Abia Central Senatorial District. It also tendered Exhibit INEC 1 referred to by the senior counsel to the 1st Respondent. Exhibit INEC 1 is the Nigeria Atlas of Electoral Constituencies in which INEC claimed that Osioma Ngwa Local Government is in Abia Central Senatorial District.

Since the Appellant tendered Exhibits 3DA and 3DB, previous election results in the Senatorial District to support the content of Exhibit 3DC, the onus of proof shifts to the 1st Respondent to tender result sheets which show that Osioma Ngwa Local Government Area was part of Abia South Senatorial District. But he did not. With due diffidence to the court below, I do not see the magic that Exhibit EA2 can conjure to have more or higher probative value than all the exhibits tendered by the Appellant and the 3rd Respondent - INEC, as well as evidence in respect of previous elections in the said Senatorial District. (p. 4510 F)

REPRESENTATION

**H Chief Wole Olanipekun, SAN, with Joshua Alobo, Aisha Ali and Prince Olagunsoye Oyinlola, for the Appellant/Cross-Respondent
Chief Akin Olujinmi, SAN., with Akinsola Olujinmi, O. Atetedaiye, A. Akinsanya and Oluwole Ilori, for 1st Respondent/Cross-Appellant
Dr. O. Ikpeazu, SAN., with O. Ogbonna and T. Nweke, for the 2nd**

Respondent

R. A. Lawal-Rabana, SAN., with N. Nwokocha Ahaiwe, Emeka Eze, Adewale Odeleye, A. Anyanwu and Sam Iheonunekwu, for the 3rd Respondent

CASES REFERRED TO

Anatogu v. Iweka II (1995) 8 NWLR (pt. 415) 547

Minister of Lands Western Nig v. Azikiwe (1969) 16 NSCC 31

Alao v. Akano (2005) 4 SC 25

Shittu v. Fashawe (2005) 7 SC (pt. II) 107

Buhari v. INEC (2008) 12 SC (pt. I) 1

Buhari v. Obasanjo (2005) 7 SC (pt. I) 1

Olukade v. Alade (1976) 1 SC 183

Araka v. Egbue (2003) 7 SC 75

Ozigi v. UBN (1994) 3 NWLR (pt. 333) 385

Anakwueze v. Aneke (1985) 6 SC (Reprint) 38

Oredoyin v. Arowolo (1989) 7 SC (pt. II) 1

Amaechi v. INEC (2008) 1 SC (pt. I) 38

Agbakoba v. INEC (2008) 12 SC (pt. III) 171

Egonu v. Egonu (1978) 11-12 SC 111

STATUTES & RULES REFERRED TO

Evidence Act 2011, ss. 89(e)(f), 90(1)(c), 102

Constitution of the Federal Republic of Nigeria 1999, s. 243

Electoral Act 2010, s. 31(1)(6), 32(1)

Court of Appeal Rules 2011, O. 6 r. 2

LEAD JUDGMENT BY FABIYI JSC

The appeal and the cross-appeal herein are against the judgment of the Court of Appeal, Abuja Division (the court below) delivered on 13th December, 2011. Therein, the appeal by the 1st Respondent/Cross-Appellant 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 necessary to state the relevant facts leading to the appeal and the cross-appeal. A dispute arose between the 1st Respondent/Cross-Appellant on the one part and the Appellant/Cross-Respondent and 2nd Respondent 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.

B On 9th July, 2010, the Respondent/Cross-Appellant wrote Exhibit EA1 to the 2nd Respondent by which he sought clarification on the Local Government Areas that comprised Abia Central Senatorial District. He received the 2nd Respondent's letter of clarification - Exhibit EA2 which disclosed five Local Governments that did not include Osisioma Ngwa Local Government Area.

C The Respondent/Cross-Appellant Contended that the 2nd Respondent established the National Advisory Committee on Delineation of Constituencies in 2008 which submitted a report - Exhibit E&3 in July 2009 which listed five (5) Local Government Areas in Abia Central Senatorial District. He maintained that though the D Committee considered a proposal to include Osisioma Ngwa Local Government Area in Abia Central Senatorial District, the report of the Committee had not been approved.

E The close hegemony between the Respondent/Cross-Appellant and the Appellant had to do with the desire by each of them to represent the 3rd Respondent (PDP) as candidate for the plum job of Senator for the Abia Central Senatorial District. At the primaries conducted on 8th January, 2011, the Appellant was returned; having scored majority of the votes cast. The Respondent/Cross-Appellant came second. He placed further reliance on Exhibit EA4, his F expression of interest form and Exhibit EA5- his Nomination Form 000496.

G Based on the above, the 1st Respondent/Cross-Appellant sought from the trial court, the determination of the following questions:-

H *"1. Whether by the combined provisions of 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 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 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 Ngwa Local Government Area of Abia State

of Nigeria, is part of the Abia Central Senatorial District.

3. *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.*” B

The Respondent/Cross-Appellant contended that if the answers to the above questions are in the negative, he is entitled to the following reliefs, namely:-

“1. *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.*” C

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

3. *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 1st Defendant, based on false information/declarations on oath submitted to the 2nd Defendant.* E

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 8th, 2011 at the Umuahia Township Stadium, Abia State of Nigeria.*” F

At the trial court, the 3rd Respondent and the Appellant/Cross Respondent 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. G

In a counter-affidavit filed by the 2nd Respondent, it exhibited Exhibit INEC 1, the Nigeria Atlas of Electoral Constituencies which points 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. It maintained that it never altered the composition of the Senatorial District, subsequent to Ex- H

hibit INEC 1.

The 3rd 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.

B The Appellant/Cross-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 2nd Respondent as well as the numerous electoral documents, to the effect that Osisioma Ngwa Local Government was within Abia Central Senatorial District. She annexed the following exhibits, viz:-

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

2. Exhibits 3DB - EC8D - the summary of results wherein she was elected Senator for Abia Central Senatorial District in 2007 which included Osisioma Ngwa Local Government Area.

3. Exhibit 3DC - Letter from the 2nd Respondent to the effect that Osisioma Ngwa Local Government was within Abia Central Senatorial District.

The Appellant/Cross-Respondent further disclosed that Senator Bob Nwanunu was elected a Senator to represent Abia Central Senatorial District, with Osisioma Ngwa Local Government forming part of the Senatorial District in 1999. As well, Senator Chris Adighije was elected the Senator to represent Abia Central Senatorial District in 2003 with Osisioma Ngwa Local Government forming part of the Abia Central Senatorial District.

G The Respondent/Cross-Appellant filed a further affidavit in which 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.

H The trial judge found contradictions in the contents of the documents put in by the parties and declined to determine Questions 1 and 2 as reproduced above in this judgment. He went on to consider the 2nd issue before him based on the 3rd question for determination raised by the 1st Respondent/Cross-Appellant. He found as follows:-

“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 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.”

The trial judge then concluded that the claim of the 1st Respondent/Cross-Appellant has no merit and dismissed it. This stance set a stage for an appeal to the court below. The 1st Respondent/Cross-Appellant, as expected appealed to the court below which heard same and allowed it. In its real essence, it found as follows:-

1. The learned trial judge was wrong to have refused to answer Questions 1 and 2 in the originating summons.

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.

3. The court below found a conflict between 1st Respondent/Cross-Appellant’s Exhibit EA2 on the one hand and the Appellant/Cross-Respondent’s Exhibit 3DC. The court below examined Exhibits 3DA and 3DB, results in previous elections held in Abia Central Senatorial District and held that Exhibit EA2 read along with Exhibit EA3 had a ‘stronger and more superior probative value than Exhibit 3DC read together with Exhibit 3DA and 3DB.’

4. The court below then examined the Appellant/Cross-Respondent’s Exhibit EA7 - her nomination form and held that she was domiciled at Ward 2 Osioma Ngwa Local Government together with eleven (11) out of thirty-two (32) of her nominators which vitiated her nomination.

The court below ultimately allowed the appeal and held that the Appellant/Cross-Respondent was not a candidate de jure for the Senatorial elections scheduled for 9th April, 2011. It also held that the 3rd Respondent (PDP) had no candidate in law to be sponsored for the said election in Abia Central Senatorial District. It however

declined to declare the 1st Respondent/Cross-Appellant as the winner of the 3rd Respondent's election primaries for the Abia Central Senatorial District held on Saturday, January 8th, 2011, at the Umuahia Township Stadium.

The above stance of the court below precipitated the appeal and the cross-appeal before this court. In this court, briefs of argument were filed and exchanged in respect of the appeal and the cross-appeal. On 21st February, 2013, when the appeal was heard, senior counsel adopted the briefs filed on behalf of the Appellant/Cross-Respondent, 1st Respondent/Cross-Appellant as well as the 3rd Respondent. Each of them made oral submissions to further prop his stand point.

The issues crafted for determination on behalf of the Appellant/Cross-Respondent read as follows:-

1. Whether Exhibit EA3 which formed a major fulcrum of the lower court's judgment is a valid and admissible document in law. (Grounds 2 and 11)

2. Whether the Court of Appeal has both the jurisdiction and competence to base its judgment on a different case from the one presented by the Plaintiff's originating summons at the trial high court and which was not considered by and available to the trial high court to nullify the candidature of the Appellant. (Grounds 1, 7 and 13)

3. Considering the claim of the Plaintiff (1st Respondent) at the trial high court which were refused by the said court (coupled with the fact that the lower court also dismissed/refused all the main reliefs of the Plaintiff), whether:

(i) The lower court was not in grave error by not dismissing the appeal before it:

(ii) The lower court did not breach the Appellant's right to fair hearing in its reliance on extraneous materials/reasons to nullify the Appellant's nomination.

4. Did the lower court, by its judgment rightly exercise jurisdiction over the matter before it and correctly apply the relevant unambiguous provisions of the 1999 Constitution, Electoral Act and Evidence Act to the materials qua evidence before it, including its reliance on Exhibit EA2 as central reference point for the determination and delineation of which Local Government constitutes the Abia Central Senatorial District for the purpose of the nomination of the

Appellant herein. (Grounds 3, 8, 9, 10 and 12)

To balance the equation, so to speak, I wish to reproduce the issues decoded on behalf of the 1st Respondent/Cross-Appellant at this point. The three issues read as follows:-

“(i) Whether having regard to the materials before the lower court, the court was right in not granting the fourth relief claimed by the Cross-Appellant - Covers Grounds 1 and 2.

“(ii) Whether in the light of the evidence on the records, the lower court was right in its holding that the PDP had no candidate to be sponsored for the election held on 9th April, 2011, in Abia Central Senatorial District - Covers Grounds 3...”

“(iii) Whether the lower court was right in the way it construed Section 31 (2) of the Electoral Act - Covers Ground 2.”

The Appellant/Cross-Respondent, on her part, adopted the three issues formulated by the Cross-Appellant as reproduced above. D

I shall now treat the main appeal and the cross-appeal in serial. In respect of the main appeal, I wish to rely on the issues couched on behalf of the Appellant.

The Appellant’s Issue 1 is whether Exhibit EA3 which formed a major fulcrum of the lower court’s judgment is a valid and admissible document in law. E

Arguing Issue 1, senior counsel to the Appellant referred to Sections 89 (e) and (f), 90 (1) (c) and 102 of the Evidence Act, 2011. He submitted that the obvious deduction from the joint reading of the said sections is to the effect that the only admissible evidence in respect of public documents is a certified true copy of same. F
He cited the cases of: *Dagaci of Dere v. Dagaci of Ebwa* (2006) 1 S.C. (Pt. I) 87; *Anatogu v. Iweka II* (1995) 8 NWLR (Pt. 415) 547 at 57; *The Minister of Lands Western Nigeria v. Azikiwe* (1969) 16 NSCC G 31 at 38; (1969) 1 All MLR 49.

Senior counsel observed that there is no doubt that Exhibit EA3 is a public document as all parties and the two courts below agree on the point. He maintained that there is no dispute about the fact that it was not certified. He submitted that as the document was not certified, it is inadmissible in law and invalid for all intents and purposes. He maintained that it could not confer any benefit in law and cannot form the basis of any competent finding of any court. He submitted that a party cannot by consent, failure to deny, acquies- H

cence, or under any guise or excuse confer legitimacy on an inadmissible document. He further referred to *Alao v. Akano* (2005) 4 S.C. 25; *Shittu v. Fashawe* (2005) 7 S.C. (Pt. II) 107.

Senior counsel submitted that an inadmissible evidence, where wrongly admitted should be expunged by the appellate court or disregarded. He cited *Buhari v. INEC* (2008) 12 S.C. (Pt.I) 1; *Buhari v. Obasanjo* (2005) 7 S.C. (Pt.I) 1; *Olukade v. Alade* (1976) 1 S.C. 183; (1976) 2 S.C. (Reprint) 83; *Araka v. Egbue* (2003) 7 S.C. 75; S.C. 75; *Ozigi v. UBN* (1994) 3 NWLR (Pt. 333) 385 at 402.

Senior counsel stressed the point further that an uncertified public document is not only inadmissible but incompetent to prove the contents of the said document and no court of law has the jurisdiction to countenance a document like Exhibit EA3 for any reason whatsoever or under any guise. He asserted that any decision based on same is liable to be set aside. He urged the court to resolve issue 1 in favour of the Appellant.

On behalf of the 1st Respondent/Cross-Appellant, senior counsel maintained that there was only a passing reference by the lower court to Exhibit EA3. He observed that the court below placed reliance on other documents like Exhibit EA2. He further unnerved that the 2nd Respondent who was the author of Exhibit EA3 did not dispute the authorship and contents of same. He felt that all the authorities cited on behalf of the Appellant are inappropriate to the circumstance of this case.

It is now trite that a document that is inadmissible in law is invalid for all intents and purposes. It cannot form the basis of any competent finding of a court of record. Where the law declares a document, like Exhibit MA3 inadmissible, it cannot be admitted in evidence even where there was no objection or even where parties consent to its admission. See: *Alao v. Akano* (supra) and *Olukade v. Alade* (supra).

It should be pointed out here that where a document is wrongly admitted, the same court has the power and jurisdiction to expunge it at the judgment stage since it can only base its judgment on legally admissible evidence and documents. See: *Buhari v. INEC* (supra) and *Ozigi v. UBN* (supra).

It is not in dispute that Exhibit EA3 is a public document which was not certified. It is clearly inadmissible in law. There

was no tenable argument made to the contrary. Even if the author of Exhibit EA3 did not dispute the authorship of same, the Appellant who was affected by its contents disputes same. 'Passing reference by the lower court to Exhibit EA3' according to the senior counsel to the 1st Respondent, was made to no avail. This is because an uncertified document like Exhibit EA3 should not be countenanced for any reason whatsoever or under any guise. B

In short, this issue is resolved in favour of the Appellant without much ado.

I now move to Issue 2. It is *'whether the Court of Appeal has both the jurisdiction and competence to base its judgment on a different case from the one presented by the Plaintiff's originating summons at the trial high court and which was not considered by and available to the trial high court to nullify the candidature of the Appellant.'* As Issue 3 relates to the same point, I shall treat them together. C D

Senior counsel to the Appellant submitted that it is the claim as presented in the originating process at the trial high court that determines and delineates the jurisdictional limit of the said court. He submitted further that since an appeal is by way of rehearing and also a continuation of hearing, an appellate court will only have jurisdiction to determine an appeal within the confines of the claim presented to the lower court. He referred to Order 6 Rule 2 of the Court of Appeal Rules, 2011 and also cited the case of Jadesinmi v. Okotie-Eboh (1986) 10 S.C. (Reprint) 99. E F

Senior counsel submitted that the court below will not have the jurisdiction to deviate from the reasons which propelled a party to institute an action as contained in the statement of claim to give judgment for different reasons as a court of law is only reactive to what is presented to it and not proactive - He cited: Shell Company of Australia v. Federal Commissioner of Taxation (1931) AC 275 at 295; Anakwueze v. Aneke (1985) 6 S.C. (Reprint) 38; Oredoyin v. Arowolo (1989) 7 S.C. (Pt. II) 1. G H

Senior counsel observed that the central and core issues that formed the fulcrum and basis of the Plaintiff's complaint were the indigeneship and residency of the Appellant as depicted in the core relief before the trial court. He felt that the eligibility or otherwise of

the Appellant based on her place of origin and residency was the main complaint of the Plaintiff which the trial judge considered and dismissed the claim on the ground that they were not qualifying or disqualifying conditions for membership of the National Assembly. He observed that the court below agreed with same; but instead of
B dismissing the claim, the decision of the court below was based on the ineligibility, indigeneship and residency of the nominators who subscribed to the Appellant's nomination form.

Senior counsel submitted that the court below acted without
C jurisdiction in setting up a case different from the one presented by the Plaintiff and thereby nullifying the candidature of the Appellant for a reason different from the one presented by the Plaintiff himself. He submitted that the court below exceeded the jurisdiction donated to it by Section 243 of the 1999 Constitution of the Federal Republic
D of Nigeria. He opined that the court below cannot give a decision which was not only unavailable to the lower court but also for a reason not available to, and also not contested before the high court. He urged the court to resolve the issues in favour of the Appellant, set aside the decision of the court below and allow the appeal.

E On behalf of the 1st Respondent, senior counsel felt that under the issues, 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 at the
F lower court, he complained against the refusal of the trial court to determine Questions 1 and 2 and reliefs based thereon; as well as its decision dismissing his case based solely on a resolution of Question 3. He maintained that from the particulars in support of the grounds of appeal, it is clear that the validity of the nomination of the Appel-
G lant to contest the election as a candidate for the Abia Central Senatorial District was the central issue in dispute in the case. He asserted 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 Appellant was not before the lower court. He felt that the point
H was properly raised and correctly decided by the court below. He cited the cases of: *Amaechi v. INEC & Ors.* (2008) 1 S.C. (Pt. I) 38; and *Agbakoba v. INEC* (2008) 12 S.C. (Pt. III) 171. He urged the court to resolve the issues against the Appellant.

It should be stated in clear terms that Question 3 on which

determination was sought is founded on two points - whether the Appellant 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. The court below agreed with same as pronounced by the trial court. There and then, the court below should have put an end to the Plaintiff's claim. B

Senior counsel for the 1st Respondent maintained that the validity of the nomination of the Appellant to contest the election as a candidate was made a ground of appeal before the court below and was hotly contested thereat. This assertion sounds curious as the validity of the nomination of the Appellant is not remotely raised in Question 3 for determination before the trial court. The 1st Respondent as Plaintiff thereat did not ask for the construction of Section 32 (1) of the Electoral Act, 2010. The court below should not have allowed it to come in through the back door; as it were - See: Oredoyin v. Arowolo (supra). It is clear that it was imported by the court below when it said *'the Appellant (1st Respondent herein) seems to have in mind Section 31 (6) of the Electoral Act, 2010, (as amended) in urging the nomination of the 3rd Respondent (Appellant herein) 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...'* C D E

This court will continue to maintain the stance 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: Ebba v. Ogodu (1984) 4 S.C. 84 at 112; (1984) 4 S.C. (Reprint) 71; Oredoyin v. Arowolo (supra). F G

It was not the business of the court below to proceed 'like a Knight errand' to fish for 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 who lacked the 'power of clairvoyance' must, only by operation of law, join issues upon the pleaded case of the 1st Respondent served on her. H

To make the matter worse, the court below dished out

orders which were not prayed for by any of the parties. Without jurisdiction, it made orders that the 3rd Respondent had no candidate in law and that the Appellant 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

B not a charitable organization. See the cases of: Ekpenyong v. Nyong (1975) 2 S.C. 71; (1975) 2 S.C. (Reprint) 65; Egonu v. Egonu (1978) 11-12 S.C. 111; (1978) 11-12 S.C. (Reprint) 82; Edebiri v. Edebiri (1997) 2 SCNJ 177; (1997) 4 NWLR (Pt. 498) 165.

C No doubt, the complaints of the Appellant were well taken. I resolve the issues in her favour.

I now move to the last issue which is issue 4 that was ferociously contested by the parties with utmost force of forensic ability.

D Senior counsel to the Appellant observed that the lower court ascribed superiority of probative value to the uncertified Exhibit EA2 over and above Exhibit 3DA and 3DB without any justifiable reason since the documents emanated from INEC. He observed that Exhibit EA2 is not by any stretch of imagination evidence of delineation of constituencies pursuant to Section 71 of the 1999 Constitution.

E He further submitted that if it is assumed that Exhibit EA2 represents any proof of delineation of constituencies to shift the evidential burden away from the Plaintiff, that burden was sufficiently discharged by Exhibits 3DC, 3DA and 3DB.

F Senior counsel observed that the court below itself at Page 777 of the record agreed that there was a contradiction in the pieces of evidence and rightly noted that Exhibits 3DA and 3DB proved that Osisioma Ngwa Local Government has always been treated as part of Abia Central Senatorial District but still choose to ascribe higher

G probative value to Exhibit EA2 on the basis that it was written by a superior officer of INEC and any contrary evidence according to the court below, would amount to unlawful insubordination. He submitted that the decision of the court below was perverse in wrongly fixing the burden of proof permanently on the Respondents before

H it. He cited the cases of: PHMB v. Ejigbar (2000) 6 S.C. (Pt. II) 1 and Onobruhere v. Esegine (1986) 2 S.C. (Reprint) 285.

Senior counsel observed that the court below did not avert its mind to the fact that Exhibits 3DA and 3DB are official acts, being election results which are presumed regular on the basis of Section

168 (1) of the Evidence Act. He cited: Chime v. Onyia (2009) 2 NWLR (Pt. 1124) 1 at 70 and Buhari v. Obasanjo (2005) 7 S.C. (Pt. I) 1. He asserted that since the Plaintiff did not impugn the presumption of regularity in Exhibits 3D A and 3DB, they have higher probative value than Exhibit EA2 and the court below was therefore wrong in its evaluation of evidence. B

Senior counsel urged the court to resolve this issue in favour of the Appellant and set aside the decision of the lower court.

Senior counsel to the 1st Respondent observed that in coming to its conclusion to void the nomination of the Appellant, the court below thoroughly evaluated Exhibits EA2, 3DG, 3DA, 3DB and INEC 1; among others. He maintained that none of the exhibits was challenged on any ground by the Appellant whether in the lower court or in the appeal to this court. He maintained that the passing remark by the Appellant in her brief that Exhibit EA2 was not certified is not an issue in the ground of appeal to this court. Senior counsel maintained that it is not a document which requires certification just like Exhibit 3DC issued by INEC to the Appellant. C D

Senior counsel observed that the issue raised by this case, as contended by the Plaintiff has, from the beginning, been that Osisioma Ngwa Local Government Area is not in Abia Central Senatorial District. He maintained that it is strange that while the Appellant is canonizing her Exhibit 3DC issued by a lowly placed official of INEC to her as evidence that Osisioma Ngwa Local Government Area is in Abia Central Senatorial District, she has in her submissions consigned to Exhibit EA2 issued by a very high officer, the secretary of INEC which shows that the said Local Government is not in Abia Central Senatorial District. He felt that the lower court considered both exhibits and gave more weight to Exhibit EA2 than Exhibit 3DC and concluded that Osisioma Ngwa Local Government Area is not in Abia Central Senatorial District. He felt that presumption of regularity urged in favour of Exhibits 3DA and 3DB was misplaced. E F G

Earlier in this judgment, I set out the reliefs claimed by the 1st Respondent, as Plaintiff, before the trial court. The claims, in the main, relate to declaratory reliefs by their nature and purport. The court must appreciate that it is for the Plaintiff to establish his claim on the strength of his case. He cannot rely on the weakness of the opponent's case. See: H

Nwokidu v. Okanu (2010) 1 S.C. 25; Ekundayo v. Baruwa (1965) 2 NLR 211; and **Dumez Nig. Ltd. v. Nwakhoba (2008) 12 S.C. (Pt. III) 142; where it was pronounced with force 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**
 B **such declaratory reliefs are not granted even on admission by the Defendant where the Plaintiff fails to establish his entitlements to the declaration by his own evidence.**

Considering of declaratory reliefs will always call for a
 C **sober exercise of discretion which must be carried out not only judicially but judiciously as well. Discretion is the art of being discrete in the extreme. And where there appears to be a tie, the judex is obliged to apply the sixth sense.** Refer to: University of Lagos v. Olaniyan (1985) 1 S.C. (Reprint) 199 and
 D Eronini v. Iheuko (1989) 3 S.C. (Pt. I) 30.

At the on-set, I stated the relevant facts as much as practicable. The crux of the matter relates to which Senatorial District of Abia State, Osisioma Ngwa Local Government Area belongs. The 1st Respondent, as Plaintiff before the trial court, maintained that Osisioma
 E Ngwa Local Government Area falls into Abia South Senatorial District. At a time when action was anticipated, he procured Exhibit EA2 from INEC - the 2nd Respondent herein. In this exhibit, Osisioma Ngwa Local Government Area is not one of the Local Governments
 F listed as part of Abia Central Senatorial District. In effect, this exhibit is 1st Respondent's 'joker', as it were.

The Appellant maintained that Exhibit EA2 is not correct. She tendered Exhibits 3DA and 3DB, result sheets.

In respect of previous elections in Abia Central Senatorial District which show that Osisioma\Ngwa Local Government Area was part of the District. She also deposed to a counter-affidavit that in 1999 election, Senator Bob Nwanunu was elected to represent Abia Central Senatorial District with Osisioma Ngwa Local Government being part of the District.
 G
 H **As well, in 2003 election, Senator Chris Adighije was also elected to represent Abia Central Senatorial District with Osisioma Ngwa Local Government Area forming part of Abia Central Senatorial District. The evidence remains unchallenged and should be accepted and acted upon by the court.**

See: Omoregbe v. Lawani (1980) 4 -5 S.C. 108 at 117; (1980) 4-5 S.C. (Reprint) 70; and Fasoro v. Beyioku & Ors. (1988) 4 S.C. (Reprint) 149.

The 3rd Respondent felt that there was a slip in Exhibit EA2. It issued Exhibit 3DC which shows that Osisioma Ngwa Local Government is in Abia Central Senatorial District. It also tendered Exhibit INEC 1 referred to by the senior counsel to the 1st Respondent. Exhibit INEC 1 is the Nigeria Atlas of Electoral Constituencies in which INEC claimed that Osisioma Ngwa Local Government is in Abia Central Senatorial District.

Since the Appellant tendered Exhibits 3DA and 3DB, previous election results in the Senatorial District to support the content of Exhibit 3DC, the onus of proof shifts to the 1st Respondent to tender result sheets which show that Osisioma Ngwa Local Government Area was part of Abia South Senatorial District. But he did not. With due diffidence to the court below, I do not see the magic that Exhibit EA2 can conjure to have more or higher probative value than all the exhibits tendered by the Appellant and the 3rd Respondent - INEC, as well as evidence in respect of previous elections in the said Senatorial District. Probably, I should add that to find otherwise, as done by the court below, runs contrary to the dictate of this court in Mogaji v. Odojin (1978) 4 S.C. 19 at 93; (1987) 4 S.C. (Reprint) 53: and Bello v. Eweka (1981) 1 S.C. (Reprint) 63. From a clear appraisal of the unadulterated evidence, Osisioma Ngwa Local Government Area is in Abia Central Senatorial District.

I feel that I am done with this issue. It is hereby resolved in favour of the Appellant as well.

In conclusion, the appeal is meritorious and it is hereby allowed. The judgment of the court below is hereby set aside while that of the trial court is accordingly restored.

And with the above conclusion in respect of the main appeal, the cross-appeal should be, and it is hereby dismissed. The 1st Respondent/Cross-Appellant shall pay N100,000.00 costs to the Appellant/Cross-Respondent.

MOHAMMED JSC

I have been privileged before today of reading the judgment of my learned brother, Fabiyi, JSC., which has just been delivered. I completely agree with him that this appeal has merit and therefore deserves to be allowed. I also agree with my learned brother that the success of the Appellant’s appeal resulted in the collapse of the 1st Respondent’s cross-appeal.

The dispute between the parties arose from the Peoples Democratic Party’s (P.D.P) primaries conducted on 8th January, 2011, to elect its candidate for the Abia Central Senatorial District for the April 9th, 2011, general election in which the Appellant emerged the winner as the candidate to participate in the senatorial election on the platform of the Peoples Democratic Party (PDP). The 1st Respondent who came second in the votes scored at the primaries, felt aggrieved and filed an action at the Federal High Court by originating summons and sought for a number of reliefs fully quoted in the leading judgment. It is significant to note that there was no dispute even by the 1st Respondent that the Appellant was the winner of the primaries in which the 1st Respondent came second. The main complaint of the 1st Respondent who was the Plaintiff at the trial court was that the Appellant who was an indigene of and resident within Osisioma Ngwa Local Government Area of Abia State of Nigeria which was alleged to be within Abia South Senatorial District, could not have lawfully contested for the position of a Senator in the Abia Central Senatorial District of Abia State. The learned trial judge resolved this question in his judgment dismissing the Respondents/Plaintiff’s action as follows -

“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 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.”

It is my view that the main claim of the 1st Respondent as the Plaintiff at the trial court having been dismissed in very clear lan-

guage by the trial court above, the issue of whether the Appellant was resident or indigene of Osisioma Ngwa Local Government Area has no place whatsoever as a ground for challenging the emergence of the Appellant from the primaries conducted on 8th January, 2011, as the candidate of the P.D.P. from the Abia State Central Senatorial District to contest the Senatorial Election of 9th April, 2011 of equal insignificance in this respect is the Senatorial District of Abia State to which Osisioma Ngwa Local Government Area belongs. This is because the results of the previous election contained in INEC Forms EC 8C and EC 8D received in evidence at the trial court as Exhibits 3DA and 3DB, ought to have answered this question once and for all to make it unnecessary for the Court of Appeal to have dwelled on it so much in its judgment resulting in derailing that court from the real case of a pre-election dispute that was before it. In other words, what the court below did was to formulate a completely different case from the one brought before it on appeal by the parties and give judgment which none of the parties to the appeal could have claimed victory including the 3rd Respondent which was purportedly deprived of a candidate for the Senatorial election of April, 2011 in Abia State Central Senatorial District. Definitely the court below exceeded its powers under the Constitution and had ceased to be the arbiter it was supposed to be in the discharge of its judicial powers. See the case of *Oredoyin v. Arowola* (1989) 7 S.C. (Pt. II) 1.

In the result, I also allow the appeal, dismiss the cross-appeal and abide by the other orders in the leading judgment including the order on costs.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment of my learned brother, Fabiyi, JSC., I agree with the conclusions therein.

The Appellant and the 1st Respondent, members of the Peoples Democratic Party (PDP) contested the party's primaries election held on the 8th of January, 2011, to elect the candidate for the Abia Central Senatorial District for the 9th of April, 2011, General Elections. The Appellant won, while the 1st Respondent came second. Dissatisfied, the 1st Respondent filed an action in court claiming that

since the Appellant was an indigene of and resident within Osisioma Ngwa Local Government Area of Abia State of Nigeria she could not contest the position of a Senator in the Abia Central Senatorial District of Abia State. The trial court dismissed the 1st Respondent's claim reasoning, thus:

B *"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 people... if the framers of the Constitution intended that*
 C *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."*

D The trial court was correct. The 1st Respondent questioned and relied on the residency and indigeneship of the Appellant to seek her disqualification. Such issues have no place in election matters in Nigeria. They are alien to the Constitution. See Section 65(1) of the Constitution. The Appellant is the authentic candidate of the PDP,
 E and where she comes from is irrelevant in deciding who a party's candidate is. The judgment of the trial court is correct and is hereby restored.

F **PETER-ODILI JSC**

I am in total agreement with the judgment and reasoning of my learned brother, John Afolabi Fabiyi, JSC. I shall make some comments.

G This is an appeal against the decision of the Court of Appeal, Abuja Division delivered on 13th December, 2011. The Appellant was the 3rd Respondent in the lower court while the Cross-Appellant/1st Respondent was the Appellant in the lower court and Plaintiff in the trial court.

H The Appellant filed her notice of appeal on 21st December, 2011, while the 2nd and 3rd Respondents also individually appealed against the decision of the lower court. The 1st Respondent cross-appealed.

Facts:

The Appellant and the 1st Respondent had contested PDP Primary Election held on the 8th January, 2011, for the nomination of the PDP senatorial candidate for Abia Central Senatorial District. Appellant was declared winner of the election while the 1st Respondent was the runner up. The 1st Respondent instituted this action challenging the candidature of the Appellant for the election to the senate seat for Abia Central Senatorial District. B

The questions raised in the originating summons dated and filed on the 14th January, 2011, are as follows:

(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 can fall both into the Abia South Senatorial District and the Abia Central Senatorial Districts. C

(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 Nigeria, 1999 (as amended), Osisioma Local Government Area of Abia State of Nigeria is part of the Abia Central Senatorial District. D

(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. E

The reliefs claimed are stated hereunder, viz: F

(i) 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. G

(ii) A declaration 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 Senatorial 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 1st H

Defendant, based on false information/declarations 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 8th, 2011, at the Umuahia Township Stadium, Umuahia, Abia State of Nigeria.

In the main, the substance of the question raised in the originating summons are whether the Osisioma-Ngwa Local Government Area is one of the constituent local governments of Abia Central Senatorial District or Abia South Senatorial District. While the 1st Respondent holds the stance that Osisioma-Ngwa LGA is in Abia South Senatorial District, the Appellant Osisioma-Ngwa LGA is in Abia Central Senatorial District.

The Court of Appeal found for the 1st Respondent holding thus:

(1) That 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 cannot fall into both Abia South Senatorial District and the Abia Central Senatorial District.

(2) That Osisioma-Ngwa LGA does not form part of the Abia Central Senatorial District.

(3) That the Appellant herein could only be eligible to contest election 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.

Sequel to those findings or answers of the court below, that court granted the Reliefs 1, 2 and 3 but refused the 4th relief.

At the hearing on the 21st day of February, 2013, Chief Wole Olanipekun, SAN adopted the brief of argument of the Appellant settled by himself and filed on the 19th April, 2012. In the brief, learned counsel crafted four issues for determination which are as follows:

1. Whether Exhibit EA3 which formed a major fulcrum of the lower court's judgment is a valid and admissible document in law. (Grounds 2 and 11)

2. Whether the Court of Appeal has both the jurisdiction and

competence to base its judgment on a different case from the one presented by the Plaintiff's originating summons at the trial high court and which was not considered by and available to the trial high court to nullify the candidature of the Appellant. (Grounds 1, 7 and 13)

3. Considering the claim of the Plaintiff (1st Respondent) at the trial high court which were refused by the said court (coupled with the fact that the lower court also dismissed/refused all the main reliefs of the Plaintiff), whether:

(i) The lower court was not in grave error by not dismissing the appeal before it.

(ii) The lower court did not breach the Appellant's right to fair hearing in its reliance on extraneous materials/reasons to nullify the Appellant's nomination.

4. Did the lower court, by its judgment rightly exercise jurisdiction over the matter before it and correctly apply the relevant unambiguous provisions of the 1999 Constitution, Electoral Act and Evidence Act to the materials qua evidence before it, including its reliance on Exhibit EA2 as central reference point for the determination and delineation of which Local Government constitutes the Abia Central Senatorial District for the purpose of the nomination of the Appellant herein. (Grounds 3, 8, 9, 10 and 12)

Chief Olanipekun also adopted Appellant's reply brief/Cross-Respondent's brief filed on 9th October, 2012 and deemed filed on 21st February, 2013, same day of hearing.

For the 1st Respondent, Chief Akin Olujinmi, SAN., adopted their 1st Respondent/Cross-Appellant's brief which was settled by learned counsel, filed on 29th August, 2012 and deemed filed on the same day of hearing, 21st February, 2013. Chief Olujinmi formulated four issues for determination, viz:

1. Whether in the circumstances of this case, the lower court was right to consider and decide the issue concerning the validity of the nomination of the Appellant to contest election for the position of Senator for Abia Central Senatorial District.

2. Having regard to the non-certification of Exhibit EA3, was the lower court not, on the other evidence on the records, right in its decision voiding the purported nomination of Appellant as candidate for election to the Senate seat for Abia Central Senatorial District.

3. Whether having regard to the evidence on record and the

provision of Section 32(i) of the Electoral Act, 2010, the lower court was not right in voiding the nomination of the Appellant as a candidate for election to the post of Senator for Abia Central Senatorial District.

4. Whether having regard to the issues raised in this case, it can be said that this did not disclose reasonable cause of action.

The 2nd Respondent filed no brief of argument. R.A. Lawal-Rabana, SAN., settled the brief of the 3rd Respondent filed on 18th September, 2012 and deemed filed on 1st November 2012. He adopted the issues as raised by the Appellant.

I shall confine my comments on Issue No. 1 of the 1st Respondent which really settles all worries in this appeal.

Issue 1

Whether in the circumstances of this case, the lower court was right to consider and decide the issue concerning the validity of the nomination of the Appellant to contest election for the position of Senator for Abia Central Senatorial District.

Learned counsel for the Appellant, Chief Olanipekun, SAN., said Exhibit EA3 was the core document that formed the central basis of the decision of the lower court. That the document is a public one and being uncertified was inadmissible and so the lower court had no business using it to reach its decision of voiding the nomination and election of the Appellant. That the document should be expunged and the decision based on it reversed. He cited: *Alao v. Akano* (2005) 4 S.C. 25, *Shittu v. Fashawe* (2005) 7 S.C. (Pt. II) 107, *Buhari v. INEC* (2008) 12 S.C. (Pt. I) 1, *Araka v. Egbue* (2003) 7 S.C. 75 etc.

It was further submitted for Appellant that the decision of the Court of Appeal was without jurisdiction and therefore a nullity. He referred to *Odojin v. Agu* (1992) 3 NWLR (Pt. 350); *A.G. Federation v. Sode* (1990) 3 S.C. (Pt. I) 1; *NDIC v. CBN* (2002) 3 S.C. 1; etc.

Learned counsel stated on for the Appellant that an appeal is akin to a rehearing and a continuation of the case from the court of first instance and so the jurisdiction of the Supreme Court can only inure when the appeal is within the confines of the claim presented at the court of first instance. That where the claim at the court of trial is different from what the court had adjudicated on, then there was a lack of jurisdiction which vacancy of jurisdiction continues up to the

Supreme Court. He relied on Order 6 Rule 2 of the Court of Appeal Rules, 2011; Jadesimi v. Okotie-Eboh (1985) 10 S.C. (Reprint) 99; Anakwueze v. Aneke (1985) 6 S.C. (Reprint) 38; Oredoyin v. Arowolo (1989) 7 S.C. (Pt.II) 1.

Learned Senior Advocate for the Appellant said that there is a need for this court to go back to the originating summons as a reference. He cited *African Newspapers of Nigeria Ltd. v. Federal Republic of Nigeria* (1985) 1 S.C. (Reprint) 88. B

Chief Olanipekun further said that a glance at the reliefs of the Plaintiff at the high court would show that the principal relief sought was to have him declared as the winner of the election primaries based on the ineligibility of the Appellant on the ground of indigeneship and residency as well as the unconstitutionality of her nomination by PDP. That with the failure of this principal relief, the other reliefs which were hinged on the principal one would naturally fail. He cited: *Awoniyi v. Registered Trustees of AMORC* (2000) 6 S.C. (Pt.I) 103; *Emerson Nig. Ltd. v. Pedrotch Nig. Ltd.* (1993) 3 NWLR (Pt. 283) 548 at 554; *A.G Ekiti State v. Daramola* (2003) 5 S.C. 70. C

In response, Chief Olujinmi, SAN., for the 1st Respondent said that it is clear from the question submitted to the trial court for determination and the reliefs sought including the affidavit that the validity of the nomination of the Appellant to contest election for Abia Central Senatorial District was the central issue raised in the case. That the 1st Respondent appealed against the trial court's decision in refusing to consider Questions 1 and 2 of the originating summons. That the Court of Appeal rightly invoked its undoubted jurisdiction pursuant to its powers under Order 19 Rule 11 of the Court of Appeal Rules, 2011 read along with Section 15 of the Court of Appeal Act, 2004. He said in consequence thereof the lower court rightly considered those questions which the trial court failed to do and thereby voided the nomination of the Appellant. D
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Learned senior counsel for 1st Respondent said the Appellant is in this court attempting to set up a case different from what was instituted in the originating summons. He cited *A.G. Anambra State v. Onuselogu* (1987) 9-11 S.C. (Reprint) 162. H

For the 1st Respondent was further submitted that the views of the lower court on when a decision may be held to be perverse does not and cannot mean that the lower court was basing its decision voiding

the nomination of the Appellant solely on Exhibit EA3 alone. That the lower court considered the effect of Exhibits EA2, 3DC, 3DA and DB, EA6, EA7 and EA9 on the nomination of the Appellant to contest the said senatorial election.

B Chief Olujinmi, SAN., said the central issues raised by 1st Respondent are that Osisioma/Ngwa Local Government is not in Abia Central Senatorial District and so the nomination of the Appellant for that seat was invalid and that reliance of the Court of Appeal was on Exhibit EA2 issued by INEC and Exhibit EA9, the Appellant's nomination form.

C He stated on that referring to the case of Agbakoba v. INEC & Ors. (2008) 12 S.C. (Pt. III) 171; that this is a pre-election matter and INEC failed to file a counter-affidavit and so the Plaintiff's depositions were deemed admitted by INEC (2nd Respondent). He said D the lower court merely made a passing reference to Exhibit EA3 though not certified. That since no appeal on the point was made at the lower court an appeal on the inadmissibility of that document now is incompetent. He referred to: Anyaduba v. N.R.T.C. (1992) 5 NWLR (Pt. 243) 535 at 553; Nwadike v. Ibekwe (1987) 12 S.C. E (Reprint) 12.

In his own response, Mr. Lawal-Rabana, SAN., for the 3rd Respondent said the submissions of the Appellant represent the true position of the law regarding the admissibility of documents forming F part of public record and in that stance Exhibit EA3 was and remains inadmissible. He cited: Abubakar v. Joseph (2008) 5-6 S.C. (Pt. II) 146; Agbi v. Ogbeh & Ors. (2006) 5 S.C. (Pt. II) 129; Iteogu v. LPDC (2009) 12 S.C. (Pt. I) 1.

G Learned Senior Advocate for 3rd Respondent contented that the lower court fell into grave error when they delved into a complete different case from what was presented by the 1st Respondent at the trial court and which did not form part of the judgment of that trial court. He relied on: Adeniji & Ors. v. Adeniji & Ors. (1972) 4 S.C. 10; (1972) 4 S.C. (Reprint) 8; Olum Agba & Ors. v. Israel H Onwuzo & Anor. (2005) 14 NWLR (Pt. 945) 331 at 344 etc.

He said the 3rd Respondent had promptly raised an objection to the jurisdiction of the Court of Appeal to determine these new issues in that court, a situation in clear violation of Section 32(1) of the Electoral Act and Exhibit EA3 which never arose at the trial court.

That the lower court refused to rule on this preliminary objection and went ahead to make the new issue the fulcrum of its judgment which had caused a miscarriage of justice.

In reply on points of law, Chief Olanipekun, SAN., said the Court of Appeal misapplied Section 15 of the Court of Appeal Act read together with Section 32(1) of the Electoral Act. B

The core document that formed the basis of the decision of the lower court is Exhibit EA3, a public document that was not certified. When the 1st Respondent sought to tender it, the Appellant and other Respondents resisted it on the basis that it was inadmissible. That court in allowing its use stated as follows: C

“I had earlier stated that the 1st Respondent, at which instance the report, Exhibit EA3 was made does not dispute the authenticity of Exhibit EA3. The document is also being used against the 1st Respondent, being a Defendant in this suit. Exhibit EA3 tends to raise against INEC, 1st Respondent equity of estoppels by conduct or admission. The fact also that INEC did not object to its admissibility further re-enforces that estoppels... It is understandable that INEC is not complaining about EA3. It is their document and at the trial court, INEC had accepted and acquiesced in its admissibility. The law is settled that a party who has consented to a wrong procedure at trial court and who has in fact suffered no injustice is stopped from complaining about the wrong procedure subsequently.” D
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The Court of Appeal had deprecated the trial court's failure to consider Exhibit EA3 which the appellate court said rendered the decision of the trial court perverse. It needs be said that Exhibit EA3 being a public document and not the original was a secondary evidence, a situation provided for under Sections 89 and 90 of the Evidence Act. I shall recapture the provisions of those sections hereunder, thus: F
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“89 secondary evidence may be given of the existence, condition or content of a document when

e. The original is a public document within the meaning of Section 102. H

f. The original is a document of which a certified copy is permitted by this Act or

By any other law in force in Nigeria to be given in evidence.”
Section 90(1)(c) of the Evidence Act provides thus:

“90(1) the secondary evidence admissible in respect of the original document referred to in the several paragraphs of Section 89 is as follows

In paragraph (e) or (f) a Certified Copy of the document, but no other secondary evidence is admissible.”

B The posture of the 1st Respondent is that the 2nd Respondent, INEC had not objected to the document at the trial court upon which it was admitted and so had their right to object later at the Court of Appeal or at the Supreme Court foreclosed. That assertion is certainly not borne out of the law in consonance with its interpretation therefore. This is because by the Evidence Act, Sections 89 and 90, a document known to be inadmissible cannot have that position reversed merely because any of the parties had no objection or even if the parties had consented to its admission. This is one of the exceptions where estoppel by conduct cannot apply as the matter is such that an inadmissible document remains inadmissible and nothing can change that position. Reference therefore must at this point be made to earlier decisions of this court on the issues. In *Dagaci of Dere v. Dagaci of Ebwa* (2006) 1 S.C. (Pt. I) 87; *Tobi, JSC.*, said:

E *“I entirely agree with the submission of learned counsel for the Appellant that the above exhibits are public documents within the meaning of Section 108 of the Evidence Act as public documents, they ought to have been certified within the meaning of Section 111 before they could be produced in proof of their original content as required by Section 112 of the Act. See also: Anatogu v. Iweka II (1995) 8 NWLR (Pt. 415) 547 at 571; Western Nigeria v. Azikiwe (1969) 16 NSCC 31 at 38; Alao v. Akano (2005) 4 S.C. 25.*

F *This court in Shittu v. Fashawe (2005) 7 S.C. (Pt. II) 107, reaffirmed the position of things per Musdapher, JSC. (as he then was) at Page 117 as follows:*

H *“A court is expected in all proceedings before it to admit and act only on evidence which is admissible in law (i.e. under the Evidence Act or any relevant enactment in a particular matter) and so, if a court should inadvertently admit inadmissible evidence, it has the duty not to act on it. This rule is very strict. Thus, where a court wrongfully admits inadmissible evidence, it ought as a duty, to disregard the inadmissible evidence in the consideration of the judgment in the matter. Where such evidence has been wrongfully admitted*

and acted upon and whether or not the opposing party objects or not, an appellate court has the duty to exclude such evidence and decide the case only on the legally admissible evidence.”

The Supreme Court again with same frame of mind held in Buhari v. INEC (2008) 12 S.C. (Pt. I) 1 at 153; thus:

“Learned Senior Advocate for the 4th-5th Respondents pointed out that although the pleadings of the Appellant did not cover all the States of the Federation, Appellant tendered exhibits that covered the States that were not pleaded. He also pointed out that the witnesses' statements did not cover the States that were pleaded and that the documents tendered from the bar did not relate to any aspect of the pleadings of the Petitioner/Appellant. Learned Senior Advocate submitted that as parties cannot with consent foist on the court inadmissible evidence, the Court of Appeal rightly expunged them... In my humble view, the documents were rightly expunged.”

See also: Buhari v. Obasanjo (2005) 7 S.C. (Pt. I) 1; Olukade v. Alade (1976) 2 S.C. 183; (1976) 2 S.C. (Reprint) 83.

The full implication of the interpretation of these relevant evidence law provisions is that the law must have strict application and did not admit of any alterations to change the coloration of a document, albeit public document not certified from inadmissible to admissible. The situation being of such a nature as that which confers jurisdiction on a court to adjudicate and cannot by any means be regarded as an irregularity which can be bypassed or cured by whatever imagined process. I rely on: Okolo v. Union Bank of Nigeria (2004) 1 S.C. (Pt. I) 1; Araka v. Egbue (2003) 7 S.C 75.

To place the matter on its proper pedestal, assuming the court had wrongly admitted such a document the court must expunge it at the judgment state, as its utilization would jeopardize the work of the court which is to base its judgment only on legally admissible evidence and documents. I refer to Ozigi v. UBN (1994) 3 NWLR (Pt. 333) 385 at 402.

Taking another look at the reliefs of the Plaintiff at the high court as this court is wont to (sic) since the appeal whether at the lower court or this court is just a continuation of the originating summons process which initiated the case, one would easily discover from those prayers of the Plaintiff/1st Respondent herein that main relief sought was for 1st Respondent to be declared as the winner of the

election primaries for the Abia Central Senatorial District of the Peoples Democratic Party (PDP). This principal declaratory relief of the Plaintiff being based on the ineligibility of the Appellant to be sponsored based on indigeneship and residency, as well as the purported unconstitutionality of her nomination on false declaration to PDP which failed.

From the above scenario with the failure of those core reliefs the ancillary or associated reliefs would fail having no foundation. It follows therefore that the Court of Appeal nullifying the nomination of the Appellant based on the purported ineligibility of 11 out of 32 nominators in Appellant's nomination form went outside the case before the court granting a relief not asked for. This is a clear breach of that court's role as an arbiter not empowered to grant a prayer not sought for in the likeness of a gratuitous gift. I rely on: *Awoniyi v. Registered Trustees of AMORC* (2000) 6 S.C. (Pt. I) 103; *A-G Ekiti State v. Daramola* (2003) 5 S.C. 70; *Akapo v. Hakeem-Habeeb* (1992) 6 NWLR (Pt. 247) 266.

I would not close the discourse without reference to what the Court of Appeal did at Page 783 of the record in its finding thus:

"The fact only that she is an indigene/resident of Osioma-Ngwa LGA outside Abia Central Senatorial District does not make her ineligible to contest election in the district or constituency."

That finding is in keeping, with Section 32 (1) of the Electoral Act which provides thus:

"32-(1) A candidate for an election shall be nominated in writing of such number of person whose names appear on the Register of Voters in the constituency as the commission may prescribe."

It is strange indeed that the Court of Appeal went on to construe this Section 32(1) of the Electoral Act, 2010 (as amended) which the Plaintiff had not referred to his originating summons and used that section against the Appellant. I cannot but agree that the court below went outside the scope of what was before it and with that expansion entered into an unknown terrain and came to the wrong decision that it made by nullifying the primary election of Appellant and with that attendant difficulty which ensued did not know what to do with 1st Respondent thus, the loose end that was the result.

Clearly from the above and the better articulated reasoning in the leading judgment I allow the appeal and set aside the judgment

of the Court of Appeal while restoring the judgment of the trial high court.

I abide by the consequential orders in the leading judgment.

Cross - Appeal:

From the five grounds of the cross-appeal, the Cross-Appellant distilled three issues for determination, viz: B

1. Whether having regard to the materials before the lower court, the court was right in not granting the fourth relief claimed by the Cross-Appellant.

2. Whether in the light of evidence on the records, the lower court was right in its holding that the PDP had no candidate to be sponsored for the election held on 9th April, 2011, in Abia Central Senatorial District C

3. Whether the lower court was right in the way it construed Section 31 (2) of the Electoral Act. D

Learned counsel for the Cross-Respondent adopted the issues as framed by the Cross-Appellant.

Arguing the issues, learned counsel for the Cross-Respondent adopted the issues as framed by the Cross-Appellant.

Appellant said the Court of Appeal having nullified the nomination and subsequent election of the Cross-Respondent ought to have declared the Cross-Appellant as the winner, he having been second in the nomination election and thereby the winner at the general election as senator. That the Court of Appeal was also wrong when it held that the PDP (3rd Respondent) had no candidate for the election. Chief Olujinmi, SAN., of counsel said in the eyes of the law the Cross-Appellant was the candidate of the PDP in that election for whom the PDP campaigned in the election. E
F

It was also submitted for the Cross-Appellant that the court below gave a wrong interpretation of Section 31(1) of the Electoral Act in relation to the false information or declaration on oath of the Cross-Respondent on her bio-data or personal profile as contained in the nomination form. Also on the premise that the nomination form must be the one submitted by the candidate to INEC and not to his political party. G
H

Learned counsel for the Cross-Appellant said the Cross-Respondent contrary to her deposition in Exh. EA9 did not fulfill the requirements for qualification into the office of Senator for Abia Cen-

tral Senatorial District she was seeking to be elected. The implication being that the nomination form Exh. EA9 contained false information or declaration deposed to by Cross-Respondent. That the lower court should have made the declaration sought by Cross-Appellant pursuant to Section 31(6) of the Electoral Act, 2010 (as amended).

B Chief Olanipekun, SAN., of the Cross-Respondent agreed with Cross-Appellant that the lower court was in serious error in holding that the PDP had no candidate to be sponsored for the election held on 9th April, 2011, in the said senatorial district. That the Cross-Appellant having not appealed the finding of the Court of Appeal that
C the Cross-Respondent not being an indigene/resident of Osisioma-Ngwa LGA which is outside Abia Central Senatorial District would not make her ineligible to contest election in the said constituency/district is taken as conceded and stands for all time. He cited:
D C.C.C.T.C.S. Ltd. v. Ekpo (2008) 1-2 S.C. 229; Umanah v. Attah (2006) 9 S.C. 151; Rossek v. ACB (1993) 8 NWLR (Ft. 312) 382.

He said the lower court was right in not substituting the Cross-Appellant for the Cross-Respondent as the candidate of the PDP thereof or as winner of the election. That Sections 65 and 66 of the
E Constitution should be followed on the qualification or grounds for disqualification of an elected person or candidate. He said no one or the court can go outside those provisions to rake up additional reasons to disqualify a candidate. He cited Obi-Odu v. Duke (2006) All
F FWLR (Pt. 337) 537 at 564.

Dr. Ikpeazu, SAN., learned counsel for the 2nd Respondent did not file a brief of argument.

I agree with learned counsel for Cross-Respondent that since the Cross-Appellant had not appealed against the finding of the Court
G of Appeal that the Cross-Respondent's indigeneship or residency of Osisioma - Ngwa LGA outside Abia Central Senatorial District did not make her ineligible to contest the election in that district or constituency is taken as admitted and conceded for all time. By the same token, his cross-appeal asking that the Cross-Appellant be declared
H as the rightful candidate and flowing therefrom the person who is deemed to have won the election of 11th April, 2011, is a pipe dream not supported either by evidence nor the ratio decidendi of the appeal before the Court of Appeal - See: C.C.C.T.C.S. Ltd. v. Ekpo (2008) 1-2 S.C. 229; Umanah v. Attah (2006) 9 S.C. 151; Rossek v.

ACB (1993) 8 NWLR (Pt. 312) 382.

From the foregoing and the better reasoned decision in the leading judgment, I dismiss this cross-appeal and abide by the consequential orders made by my learned brother, John Afolabi Fabiyi, JSC.

B

AKA' AHS JSC

The appeal and cross-appeal emanated from the judgment of the Court of Appeal, Abuja Division (herein referred to as the court below) delivered on 13th December, 2011. C

My learned brother, Fabiyi, JSC., has succinctly stated the facts leading to the appeal and cross-appeal. The court below ran into a cul-de-sac by nullifying the nomination of Appellant as the candidate who won the nomination conducted by the PDP to contest the election for the Abia Central Senatorial District seat in the 2011 General Elections and failed to declare Plaintiff/Respondent the winner of the primaries which were conducted on 8th January, 2011, at Umuahia Township Stadium, Abia State of Nigeria; hence the cross-appeal. D

The appeal and cross-appeal would have been unnecessary if the court below had limited itself to the issue which the Cross-Appellant presented for determination at the Federal High Court namely- E

“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” F

In resolving this issue the learned trial judge said:-

“This brings me to the issue number 2 raised by the Defendant which is: G

“whether there is any provision in the Constitution of the Federal Republic of Nigeria, 1999, 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” H

“The contention of the Defendants as could be discerned from their respective addresses is to the effect that a person does not have to be an indigene or resident in a Senatorial District before he or she

can contest election into the Senate of the Federal Republic of Nigeria. Therefore even if Osisioma Local Government Area is not part of the Abia State Central Senatorial District, the 3rd Defendant who claimed to be from Osisioma is qualified under the Constitution of the Federal Republic of Nigeria to contest the Senate seat in Abia
 B *Central Senatorial District. The Plaintiff contended otherwise”*

He examined sections 65(1) & (2) and 66 of the 1999 Constitution and concluded:-

“Having examined the above provisions of the Constitution I
 C *readily pitch my tent with the Defendants that the factors of being a resident in or an indigene of a Senatorial District, is not a constitutional requirement for a person to contest as either member of the Senate or House of Representatives. The only qualifications are as stipulated in Section 65(1) (supra) and the disqualifying factors are*
 D *as contained in Section 66 of the Constitution. In none of these sections is residency or being an indigene in the senatorial District, made a factor to be considered. 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 Constitu-*
 E *tion can contest for membership of the Senate in any part of Nigeria provided he is accepted by the people in the senatorial district concerned.”*

The court below could not fault this finding but instead went
 F into a voyage of discovery to pick holes about those who nominated the Appellant to contest for the nomination. The court below did not stop there. It proceeded in a rather uncomplimentary manner to castigate INEC and the documents it filed. This, to say the least, was
 G a wild goose chase which it ought not to have embarked upon. It is little wonder that all the parties directly affected felt dissatisfied with the final outcome thus, resulting in the appeal and cross-appeal.

My noble lord, Fabiyi, JSC., has dealt with all the issues and has arrived at the decision, with which I entirely agree that the main appeal has merit and it is accordingly allowed while the cross-appeal
 H lacks merit and it is dismissed. I also award N100.000.00 as costs in favour of the Appellant/Cross-Respondent against the 1st Respondent/Cross-Appellant.