

SUPREME COURT OF NIGERIA
FRIDAY 31ST JANUARY, 2014. SC. 193/2012
CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
C. B. OGUNBIYI, K. B. AKA'AH,
K. M. O. KEKERE-EKUN, JJSC

1. ORHENA ADUGU GBILEVE
2. ALL PROGRESSIVE CONGRESS APPELLANTS
AND
1. MRS. NGUNAN ADDINGI
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENTS

APPEALS - Evidence - Evaluation - Where trial court unquestionably evaluates evidence - CA cannot interfere once there is sufficient evidence on record - From which trial court arrived at its findings of facts (H1)

JURISDICTION - Federal HC - 1999 Constitution s. 251(1)(r) - Relief 5 directly affects INEC - And the section vests exclusive jurisdiction on FHC - To entertain actions affecting validity of executive acts of such Federal Govt. agencies (H2)

ELECTIONS - Pre-election matter - Jurisdiction - By Electoral Act s. 87(9) - Benue State HC did not have jurisdiction to determine all issues on the primaries - Including granting injunction to restrain INEC - From recognizing 1st appellant as successful candidate (H3)

POLITICS - Election - Political party - Substitution of candidate - Properly nominated candidate should not be whimsically substituted - Otherwise he has right to go to court - And if court is unable to rule before actual election takes place - He can be declared winner (H4)

FACTS

By an originating summons filed before the Federal High Court Abuja, plaintiff/1st respondent instituted this action against 1st & 3rd defendants/appellants claiming inter alia for a declaration that 1st respondent is the lawful candidate of 2nd appellant for the general elec-

tion fixed on 26th April 2011 into the Benue State House of Assembly for Buruku constituency. The suit was thereafter transferred to the Makurdi Division of the court. 1st respondent's case is that she was the winner of the primary election conducted by 2nd appellant for the above mentioned general election, but that her names were unlawfully substituted by 2nd appellant with that of 1st appellant.

The court considered the affidavit and documentary evidence in the matter and found for 1st respondent. The court granted the reliefs sought by 1st respondent. It was ordered that 1st respondent be issued with the certificate of return, as 2nd appellant emerged successful in the general election. Dissatisfied, appellants appealed to the Court of Appeal, Makurdi Division. The court dismissed the appeal which led appellants to appeal further to Supreme Court, raising the issue of jurisdiction of the trial court to entertain the matter.

ISSUES FOR DETERMINATION

1. Whether the lower court was correct to have affirmed the jurisdiction of the trial court to entertain 1st Respondent's suit.

2. Having regards to the facts and evidence adduced in this case couple (sic) with the applicable law, did the 1st Respondent prove her case to be entitled to judgment as decided by the trial court and affirmed by the lower court?

3. Whether the lower court acted correctly in agreeing with the trial court when it failed or refused to order pleadings and/or take oral evidence to resolve the obvious material conflicts in the competing affidavits and counter affidavit of the parties before proceeding to judgment against the appellants.

HELD (Unanimously dismissing the appeal per

AKA'AH'S JSC)

Evidence - Evaluation

1. Where a court of trial unquestionably evaluates the evidence and justifiably appraises the facts, what the Court of Appeal ought to do is to find out whether there is evidence on record on which the trial Court could have acted. Once there is sufficient evidence on record from which the trial court arrived at its findings of fact, the appellate court cannot interfere.

(p. 294 E)

JURISDICTION - Federal HC

2. Relief 5 in the Originating Summons directly affects the Independent National Electoral Commission which is an Agency of the Federal Government. The 1999 Constitution (as amended) vests exclusive jurisdiction in the Federal High Court to entertain 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. See: Section 251(1)(r) of the 1999 Constitution. Granted that reliefs 1, 2, 3, 4 and 7 are against the 2nd appellant which is not an agency of the Federal Government, if the argument of learned counsel for the 1st appellant should be sustained it will result in the amorphous situation of having to split the actions between the State High Court to accommodate reliefs 1, 2, 3, 4 and 7 and going to the Federal High Court to ventilate arguments on reliefs 5 and 6. (p. 296 B)

ELECTIONS - Pre-election matter - Jurisdiction

3. The High Court of Benue State did not have any jurisdiction to hear and determine all issues arising from the conduct of the party primaries by virtue of section 87(9) of the Electoral Act 2010 (as amended) including granting an injunction to restrain INEC from recognizing and acting on the name of the 1st appellant as the candidate who won the party primaries to stand for election for the Benue State House of Assembly in respect of the Buruku Constituency. (p. 296 G)

Election - Political party - Substitution of candidate

4. It should be stressed that where a party abides by the Electoral Act and Party Guidelines to conduct its primaries and a candidate emerges as the winner of the said primaries, the party or any of its officials cannot whimsically substitute the candidate who emerged the winner of the primaries. If that happens, the candidate substituted has a legal right to go to court. Where it happens as it transpired in this case that the court is unable to rule on the illegal substitution before the

actual election takes place, if the candidate who became the beneficiary of the substitution wins the election, the candidate substituted can be declared the winner of the election.

In the result this appeal lacks merit and it is accordingly dismissed. It is hereby ordered that the 1st appellant should immediately vacate his seat as the honourable member representing Buruku Constituency in the Benue State House of Assembly. It is further directed that the 2nd Respondent should forthwith issue a certificate of Return to the 1st Respondent as the winner of the election for the Buruku Constituency in the Benue State House of Assembly and be sworn in by the Speaker as the Hon. Member representing Buruku Constituency in the Benue State House of Assembly.
(p. 299 E)

NOTABLE POINTS OF INTEREST

OGUNBIYI JSC

1. Competence of court – Guiding principles

The jurisdictional competence of a court has been well spelt out in the locus classicus case of *Madukolu Vs. Nkemdilim* (1962) 1 All NLR (Pt.4); (1962) 2 SCNLR 34 where this court laid down the proper guideline in determining the issue of jurisdiction of a court of law and stating that a court is competent when:-

- F** *“(a) It is properly constituted as regards members of the Bench, and no member is disqualified for one reason or another;*
- (b) The subject matter of the case is within its jurisdiction and no feature in the case which prevents the court from exercising its jurisdiction; and*
- G** *(c) The case comes before the court initiated with due process of law and upon fulfillment of a condition precedent to the exercise of jurisdiction.”* (p. 303 G)

KEKERE-EKUN JSC

2. Jurisdiction – Fundamental nature

The issue of the jurisdiction of the trial court to entertain the originating summons ab initio is fundamental to the competence of the appeal before this court. Where the originating process at the trial court

is found not to confer jurisdiction on the court, the proceedings are a nullity. The absence of jurisdiction has a ripple effect and taints the appellate courts, which would equally lack jurisdiction to entertain appeals arising from the null proceedings. (p. 307 C)

3. Parties cannot confer jurisdiction on court

It is also trite that where the court lacks jurisdiction, parties cannot confer jurisdiction by consent or acquiescence. (p. 307 D)

REPRESENTATION

A. I. Wombo with Omale Omale, for the Appellants

C. A. Gbehi with Chris Umar, P. T. Torkyem and K. D. Ugbodaga (Miss), for 1st Respondent

Akinyemi Aremu, for 2nd Respondent

CASES REFERRED TO

Akpagbue v. Ogu (1976) 6 SC 63

Woluchem v. Gudi (1981) 5 SC 291

Enang v. Adu (1981) 11-12 SC 25

Amadi v. Nwosu (1992) 5 NWLR (pt. 241) 273

Ezekwesili v. Agbapuonwu (2003) 9 NWLR (pt. 825) 337

Oloruntoba-Oju v. Dopamu (2008) 7 NWLR (pt. 1085) 1

University of Abuja v. Ologe (1996) 4 NWLR (pt. 445) 706

PDP v. Sylva (2012) ALL FWLR (pt. 637) 606

Lado v. CPC (2012) ALL FWLR (pt. 607) 601

Madukolu v. Nkemdilim (1962) 2 SCNL 341

Emeka v. Okadigbo (2012) 18 NWLR (pt. 1331) 55

Onyejekwe v. State (1992) 3 NWLR (pt. 230) 444

Onuoha v. Okafor (1983) 14 NSCC 494

SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (pt. 1252) 317

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 153, 251(i)(r)

Electoral Act 2010 (as amended), ss. 87(4)(9)

LEAD JUDGMENT BY AKA'AHs JSC

The appellants in this appeal are the 1st and 3rd Defendants

respectively in the Originating Summons filed before the Federal High Court Abuja in Suit No. FHC/ABJ/CS/201/2011 on 14/2/2011 wherein the 1st respondent (as Plaintiff) raised five (5) questions for determination and sought for seven (7) reliefs based on section 153 of the 1999 Constitution (as amended), Section 87 of the Electoral Act, 2010 and the 1st Defendant's (2nd Appellant's) Guidelines for Nomination of candidates. On 3rd March, 2011, the suit was transferred by B. B. Aliyu J to the Federal High Court Makurdi and re-numbered FHC/MKD/CS/24/2011. The gist of the action was predicated on the claim by the 1st Respondent (Plaintiff) that after the party primaries she emerged the winner but the 1st appellant was declared the winner as the candidate to contest the election for the Buruku constituency in the Benue State House of Assembly slated for 6th April, 2011 on the platform of the Action Congress of Nigeria.

The questions which the Plaintiff submitted for determination are:-

1. Considering the clear provisions of the Electoral Act 2010 and the fact that the 1st Defendant conducted its Primary Election in Benue State on the 12th January, 2011 for the purpose of nominating its House of Assembly Buruku constituency candidate slated for 14th April, 2011 and announced its result, whether it is not mandatory for the 1st Defendant to nominate its House of Assembly Buruku constituency candidate for the April 2011 on the basis of the said Primary Election.

2. Having regard to the provisions of section 153 of the Constitution of the Federal Republic of Nigeria 1999 as amended and all other provisions of the same Constitution setting out the powers and functions of the 2nd Defendant, and section 87 of the Electoral Act 2011 mandating all political parties to conduct Primary Elections and the recent circular of the 2nd Defendant dated 27th January 2011 directing all the parties to comply with section 87 of the Electoral Act 2010, whether it is not mandatory for the 1st Defendant to nominate the Plaintiff as its House of Assembly candidate for Buruku constituency of Benue State held on 14th April 2011?

3. Considering the express provisions of section 87 of the Election (sic) Act 2010 and the timetable of activities for the 2011 General Elections, whether the 1st Defendant can submit the name of

the 3rd Defendant as its candidate for the House of Assembly General Election of Buruku Constituency; the 3rd defendant not being the winner of the House of Assembly Primary Election of Buruku Constituency of Benue State held on the 12th January 2011 which election was monitored and supervised by the officials of the 2nd Defendant? B

4. Having regards to the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended and the Electoral Act 2010, whether the 1st Defendant having screened and cleared the plaintiff to participate in the 1st defendant's House of Assembly primary election for Buruku constituency of Benue State held on the 12th January 2011 and having contested and won the said Primary Election, whether the 1st Defendant can refuse to submit the name of the Plaintiff as the House of Assembly candidate of the 1st Defendant for the April General Elections into the Bukuru constituency of Benue State. C D

5. Having regard to section 87 of the Electoral Act 2010 and the Primary Election conducted in Benue State by the 1st Defendant, whether it is within the powers of the Board of Trustees of the 1st Defendant to submit the name of the 3rd Defendant to the 2nd Defendant as the 1st Defendant's House of Assembly Candidate of Buruku Constituency of Benue State for the General Elections slated for 6th April, 2011, the 2nd Defendant not having won the January 12th, 2011 Primary Election of Buruku Constituency of Benue State monitored and supervised by the officials of the 2nd Defendants. E F

She then sought for the following reliefs:-

1. A DECLARATION that having conducted a primary election in the Buruku constituency of Benue State on the 12th January, 2011, for the purpose of nominating the 1st Defendant's candidate for the General Election slated for the 6th April, 2011, it is mandatory for the 1st Defendant to nominate the winner of the said Primary Election, as the party's flag bearer for the purpose of participating and contesting in the Buruku Constituency of Benue State slated for 6th April 2011 in accordance with the Electoral Act 2010 and the 1st Defendant's guidelines for the nomination of candidates. G H

2. A DECLARATION that the Plaintiff having scored the highest number of votes and declared winner by the electoral officer in the 12th January 2011 Primary Election of the 1st Defendant she is

entitled to fly the 1st Defendant's House of Assembly flag for Buruku Constituency for the 6th April Election in the General Election in Benue State in accordance with section 87 of the Election (sic) Act, 2010.

B 3. A DECLARATION that the refusal of the 1st Defendant to submit the name of the Plaintiff to the 2nd Defendant as the 1st Defendant's flag bearer for the General Election into the Makurdi South Constituency House of Assembly in Benue State slated for the 6th April, 2011 after winning the Primary Election is contrary to the provisions of the Electoral Act, 2010 and the 1st Defendant guidelines for nomination of candidates.

D 4. A DECLARATION that it is illegal, unlawful and contrary to both the Electoral Act 2010 and the 1st Defendant's guideline for the 1st Defendant to submit the name of the 3rd Defendant to the 2nd Defendant as the House of Assembly candidate for Buruku constituency of Benue State in the General Election slated for 6th April 2011 after the Plaintiff emerged as the winner of the House of Assembly Election Primaries of Buruku Constituency of Benue State conducted by the 1st Defendant to pick its House of Assembly candidate for the said election.

F 5. AN ORDER of injunction restraining the 2nd Defendant either by itself, officers or agents, privies, staff or through any person or persons howsoever from recognizing, accepting or dealing with the 3rd Defendant as flag bearer of the 1st Defendant in the April 6th 2011 General Election having not emerged in accordance with the Electoral Act, 2010.

G 6. AN ORDER directing the Defendants particularly the 2nd Defendant to recognise, accept, and deal with the Plaintiff as the flag bearer of the 1st Defendant in the Buruku House of Assembly constituency of Benue State slated for 6th April 2011 having emerged as the winner of the 1st Defendant's Primary Election held on the 12th day of January 2011 in accordance with the Electoral Act 2010.

H 7. AN ORDER directing the 1st Defendant to submit the name of the Plaintiff who got the highest number of votes at the 1st Defendant's House of Assembly Primary Election for Buruku constituency of Benue State to the 2nd Defendant as the validly nominated candidate to represent the 1st Defendant at the April 6th 2011 General Election.

The trial court resolved the matter based on the affidavit and documentary evidence before it. That court after making a finding as to the victory of the 1st Respondent in the primaries found for the 1st Respondent and answered the questions formulated for determination in favour of the 1st Respondent and granted all the reliefs sought. It specifically made orders for the return of the 1st Respondent's name as the lawful aspirant of the 2nd appellant to be nominated as candidate of the Action Congress of Nigeria in the April General Election 2011 for Buruku House of Assembly seat and to be issued the certificate of return by the 2nd respondent, the 2nd Appellant having emerged successful in the general elections. The judgment was delivered on 9/6/2011. B
C

Following this judgment the Appellants who were dissatisfied appealed to the Court of Appeal, Makurdi. The appeal was dismissed on 16/3/2012 and the judgment of the trial court affirmed. The appellants have further appealed in the Notice of Appeal dated 5th June, 2012 containing 8 grounds. The appellants filed an amended brief of argument on 12/9/2013. The 1st respondent's brief was filed on 20/6/2012 while the 2nd respondent's brief was filed on 21/11/2012. All the briefs were deemed duly filed on 4/11/2013, the date the appeal was heard. D
E

In the amended appellants' brief the appellants formulated three issues for determination namely:-

1. Whether the lower court was correct to have affirmed the jurisdiction of the trial court to entertain 1st Respondent's suit. (Grounds 6 & 7) F

2. Having regards to the facts and evidence adduced in this case couple (sic) with the applicable law, did the 1st Respondent prove her case to be entitled to judgment as decided by the trial court and affirmed by the lower court? (Grounds 1, 5 & 8) G

3. Whether the lower court acted correctly in agreeing with the trial court when it failed or refused to order pleadings and/or take oral evidence to resolve the obvious material conflicts in the competing affidavits and counter affidavit of the parties before proceeding to judgment against the appellants. (Grounds 2) H

In her brief, the 1st respondent presented the following two issues for determination:-

1. Whether the learned Justices of the Court of Appeal were

right in upholding the jurisdiction of the Federal High Court.

2. Whether the learned Justices of the Court of Appeal were right in holding that the trial court had properly evaluated the evidence adduced before the court both affidavit and documentary evidence in the light of the pleadings before it in the lower court before arriving at its findings and conclusion and affirming the judgment of the lower court.

The 2nd appellant framed three issues for determination as follows:-

1. Whether the lower court was right to have affirmed the jurisdiction of the trial court (Grounds 6 and 7).

2. Whether having regard to the evidence before the court, the Court of Appeal was wrong when it upheld the decision of the trial court that 1st respondent won the primary election conducted by the 2nd Defendant (Grounds 1, 2 and 4).

3. Whether having regard to the nature of the case as well as its subject matter, the appellants suffered any miscarriage of justice when the learned trial Judge abridged the time for parties to file necessary papers in defence of the case (Grounds 3).

Before counsel for the parties adopted their briefs and made oral submissions, learned counsel for the appellants applied orally to substitute the name of the 2nd appellant because of the merger of the Action Congress of Nigeria (ACN) with Congress for Progressive Change (CPC) and other parties to form the ALL Progressive Congress (APC). The application was granted and the 2nd Appellant became "All Progressive Congress (APC)".

The arguments advanced by learned counsel for the appellants on the issues of jurisdiction, proof and deciding the case by originating summons instead of pleadings and calling of oral evidence may be summarized as follows:-

1. That since the principal claims in reliefs 1, 2, 3, 4 and 7 are against the 2nd appellant which is not an agency of the Federal Government and it is only the ancillary reliefs in claims 5 and 6 that affected the 2nd respondent, the lower court was in error to have affirmed the jurisdiction of the Federal High Court to entertain the action of the 1st respondent since a court cannot hear and determine ancillary claims if it has no jurisdiction to entertain the main claim.

2. That for the 1st respondent to succeed in her claim and be

granted any of the reliefs sought, she was bound to plead and produce the scores of the aspirants at the said primary election and also plead and prove that she had a simple majority of the total votes cast in more than half of the wards within the Buruku State Constituency over and above any other aspirant.

3. In view of the fact that the proceedings were hostile in nature and the parties had alleged divergent facts in their affidavits, the only way in which the conflicts could be resolved was by adducing oral evidence. B

The 1st respondent sought to distinguish the arguments put forward by the appellants that the trial court lacked jurisdiction to hear and determine the nomination of candidates by political parties on the premise that the relief sought is whether there was a breach of the provision of the Electoral Act and since jurisdiction is determined by the relief sought, the trial court was right in assuming jurisdiction. C

The 1st respondent's counsel submitted on the issue of the court assuming jurisdiction that the reliefs are predicated on the non compliance with the Electoral Act or Party Guidelines; consequently the court's jurisdiction can be invoked. It was further submitted that since the 1st respondent sought an injunctive relief against the 2nd respondent which is envisaged by section 251(i)(r) of the Constitution, he could institute the action in the Federal High Court. D

Turning to the issue of the conflict in the affidavits filed and the need to resolve the conflicts through oral evidence, learned counsel argued that there was no conflict in the affidavits filed. He said that what the appellants filed was affidavit evidence which was directed at distinct set of facts and did not controvert the facts which 1st respondent deposed to in her affidavit. E

It was submitted on behalf of the 2nd respondent that being an Agency of the Federal Government and the reliefs sought at the trial court touched on the administration and management of the agency, the proper court to adjudicate on same especially as it relates to restraining the 2nd respondent from recognizing, accepting or dealing with the 3rd defendant/appellant as prayed for in relief 5 of the Originating Summons is the Federal High Court. F

The facts as deposed to by the Plaintiff /1st Respondent in her affidavit are as follows:-

Following the time table issued by INEC on the 2011 General

Elections, the Action Congress conducted direct primary election for the purpose of picking the candidates who will contest for the House of Assembly seats into the Benue State House of Assembly. The Party sent from the National Headquarters an election team comprising of three members who were to conduct the said primaries. They consisted of Hon. Ayuba Butswat, Rev. Dr. Shamma and Hon. Onoja Okpe. The primaries were monitored by officials of INEC. After the said primaries had been concluded, it was the Plaintiff /1st Respondent who emerged the candidate who would contest the election for the Buruku State Assembly Seat of Benue State. The team sent from the National Headquarters of the Party issued a press release dated 13th January, 2011 confirming the emergence of the Plaintiff/1st Respondent as the winner of the 12th January, 2011 primary election. It transpired later that it was the name of the 3rd Defendant/Appellant sent by the State Secretariat of the Party that was announced on the radio as the winner of the primaries and was issued a certificate of return by the State Party Chairman. Following the complaint lodged by the Plaintiff against the declaration, the election committee was requested by the National headquarters to submit a detailed report of what took place in Makurdi during the primaries. The committee submitted its report on 20th January, 2011 showing that it was the State Chairman of the Party who single handedly created, constructed and signed a certificate of return which he issued to the aspirants without recourse to the electoral committee.

The 1st Appellant who was announced as the winner of the primaries and subsequently issued a certificate of return to contest the election stated that he scored the highest number of votes cast and was thus returned as the winner of the said primary election to contest for the Buruku Constituency of the Benue State House of Assembly. He maintained that it was one Tersoo Haa - Orpin who was appointed as the Returning Officer for the primaries and not Engineer Mouza as claimed by the 1st Respondent. He averred that the summary of the results showed that he won the primaries having polled a total of 9,880 votes as against 1,729 votes which the 1st Respondent got to emerge second and it was this result that was forwarded to the Electoral Committee appointed by the National Secretariat and it was on the basis of this score that the Party Leadership in Benue State issued a certificate of return to the 1st appellant

and forwarded his name to the 2nd Respondent as the duly nominated candidate of the Party for Buruku Constituency.

The 1st appellant's strongest wicket in his claim to being the candidate who was nominated to contest the election for the Buruku Constituency of the Benue State House of Assembly and the argument that the proceedings are of a hostile nature, the resolution of which could not be determined by originating summons procedure, is hinged on the staggering votes which he garnered at the primaries. That claim was effectively debunked by the learned trial Judge who subjected the votes allegedly scored by the 1st appellant and were annexed as Exhibits B - B12 to scrutiny. The court found that there was no signature of any agent on the purported scores.

In dealing with the issue the court said at page 506 of the records:-

"I have reviewed the entire papers filed by both parties, they are merely documentary. Respondents have not shown in what manner it is contentious and all the court has to do is to serve and evaluate the evidence therein and arrive at a solution. I do not see how hostile and contentious the suit is. It is straightforward and I so hold".

The court compared the register of voters submitted by the 1st respondent which tallied with the one used in an earlier case in Suit No. FHC/MKD/CS/19/2011 - Sekay Iortom vs Barr. Oker Jev. and the one which the 1st appellant used and found that the latter one was different and rejected it. The trial court rejected the register of voters which the 1st appellant used to obtain the 9,880 votes to have scored to secure the nomination.

The lower court considered the issue on why it was not necessary to call oral evidence to resolve the conflict in the affidavit evidence. In the lead judgment of Nwodo, J.C.A (of blessed memory) she rightly stated the legal position thus at page 752 of the records:

"Where proceedings in a court are by affidavit evidence it is important that conflicts in such affidavits are not glossed over. The court is enjoined to look at the nature of the conflict. When facts are deposed in an affidavit the purpose of a counter affidavit is to contradict those facts and not to merely set up a distinct fact as defence. Where the conflict arising from affidavit and counter affidavit depositions are not on material issues, the court calling for oral evidence becomes unnecessary.

In effect where the conflicts are not material to the case or where the facts are inadmissible in evidence the court should not be saddled with the responsibility of calling oral evidence to resolve the conflict- See: LSDPC vs Adold/Stamm. Int. (Nig.) Limited (2005) 2 NWLR (Pt.910) 603...

B *Furthermore, where the conflicting evidence can be resolved from the documentary evidence the need to call oral evidence becomes unnecessary. See: Fashanu vs Adekoya (1974) 6 SC 84; (1974) 1 ALL NLR (Pt.1) 35; Bunge vs Gov. River State (2006) 12 NWLR (Pt. 995) 573"*

C As documentary evidence is used as a hanger from which to test the veracity of the evidence whether given orally or by deposition, the learned trial Judge evaluated the evidence and refused to accept the register which the appellants produced but relied on the D one used for another case in the same ward. He found that the votes ascribed to the contestants were more than the registered members in the authentic register. As there was nothing perverse in the findings made by the learned trial Judge, the Court below refused to disturb the said findings. Those findings have become concurrent findings of E the trial court and the court below and there is nothing perverse in them that will warrant this Court to interfere.

Where a court of trial unquestionably evaluates the evidence and justifiably appraises the facts, what the Court of Appeal ought to do is to find out whether there is evidence on F record on which the trial Court could have acted. Once there is sufficient evidence on record from which the trial court arrived at its findings of fact, the appellate court cannot interfere. See Akpagbue vs. Ogu (1976) 6 SC. 63. Woluchem vs Gudi G (1981) 5 SC 291; Enang vs. Adu (1981) 11-12 SC 25; Amadi vs Nwosu (1992) 5 NWLR (Pt.241) 273; Ezekwesili vs Agbapuonwu (2003) 9 NWLR (Pt.825) 337.

H The resolution of this issue also answers the question whether the 1st respondent proved her case to entitle her to judgment. From the affidavit she deposed to and the documents she annexed she proved her case and therefore was entitled to judgment.

On whether the Federal High Court had jurisdiction to entertain the claim, section 87(9) of the Electoral Act 2010 (as amended) provides as follows:-

“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 a Federal High Court or the High Court of a State for redress”. B

The arguments advanced by learned Counsel for the appellants in saying that the trial court had no jurisdiction to entertain the action are two pronged namely:-

(a) That the claims against 2nd Respondent were ancillary and the Federal High Court lacked jurisdiction to entertain the main claim; and C

(b) It was premature for the 1st respondent to go to court since she had not exhausted the internal mechanisms put in place by the party to resolve any dispute arising from the nomination exercise. In other words the dispute was an intra-party affair and the court could not intervene to impose a candidate on the party. D

It was argued on behalf of the appellants that even though Section 87 of the Electoral Act 2010 (as amended) confers jurisdiction on the courts to hear and determine pre-election matters, the power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate is limited to section 87(4)(c) (ii) and (9) of the Electoral Act, 2010 (as amended). E

Learned counsel contended that the Court cannot still decide as between two or more contending parties, which of them is the nominated candidate of a political party since the power still resided in a political party to exercise. He submitted that an aspirant in political party primaries can only seek redress in a court of law if his complaint is that he had the highest number of votes at the said primaries of the political party but his name was not forwarded to INEC as the candidate of the party. He said that the 1st respondent did not state anywhere in her pleadings the scores of the aspirants who participated in the primaries of the 2nd appellant, so as to make her claims justiciable. F G H

In reliefs 5 and 6 of the Originating Summons, the plaintiff/ 1st Respondent prayed for an order of injunction restraining the 2nd defendant either by itself, officers, agents, privies, staff or through any person or persons howsoever from recognizing, accepting or

dealing with the 3rd defendant as flag bearer of the 1st Defendant in the April 6, 2011 General Election having not emerged in accordance with the Electoral Act, 2010; and for the 2nd defendant to recognise, accept and deal with the plaintiff as the flag bearer of the 1st Defendant in the Buruku Constituency of the Benue State House of Assembly.

Relief 5 in the Originating Summons directly affects the Independent National Electoral Commission which is an Agency of the Federal Government. The 1999 Constitution (as amended) vests exclusive jurisdiction in the Federal High Court to entertain 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. See: Section 251(1)(r) of the 1999 Constitution. Granted that reliefs 1, 2, 3, 4 and 7 are against the 2nd appellant which is not an agency of the Federal Government, if the argument of learned counsel for the 1st appellant should be sustained it will result in the amorphous situation of having to split the actions between the State High Court to accommodate reliefs 1, 2, 3, 4 and 7 and going to the Federal High Court to ventilate arguments on reliefs 5 and 6. In *Oloruntoba-Oju vs Dopamu* (2008) 7 NWLR (Pt. 1085) 1 this Court per Oguntade, JSC following *University of Abuja vs Ologe* (1996) 4 NWLR (Pt. 445) 706 at 722 held that the combined effect of the provisions of section 251(1)(p)(q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 which are in substance the same with section 230(1) (q)(r) and (s) of the Constitution of Nigeria, 1979 as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993, is that the Federal High Court is vested with power to enter into adjudication of any action or proceeding seeking declaratory and injunctive reliefs.

The High Court of Benue State did not have any jurisdiction to hear and determine all issues arising from the conduct of the party primaries by virtue of section 87(9) of the Electoral Act 2010 (as amended) including granting an injunction to restrain INEC from recognizing and acting on the name of the 1st appellant as the candidate who won the party primaries to stand for election for the Benue State House of

Assembly in respect of the Buruku Constituency.

The second leg of the argument is that the subject matter of this appeal is not a case of substitution or change of candidate by a political party since the 1st respondent's name had never been submitted to 2nd respondent (INEC) as the successful candidate at the primaries of the 2nd appellant. It is also not the case of the 1st respondent that INEC was involved in the breach of section 87 of the Electoral Act 2010 (as amended) nor any provision of the APC (2nd appellant) Guidelines for nomination. And relying on PDP vs Sylva (2012) ALL FWLR (pt. 637) 606, learned counsel submitted that since this is a case of nomination and sponsorship of a candidate for election, it is a political matter which is solely within the discretion of the party and so is non justiciable. Learned counsel further submitted that although section 87 of the Electoral Act 2010 (as amended) confers jurisdiction on the courts to hear and determine pre-election matters, the power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate is limited to section 87(4) (c) (ii) and (9) of the Electoral Act 2010 (as amended). It is only if he can come within the provisions of those subsections that his complaints can be justiciable, as the courts cannot still decide as between two or more contending parties, which of them is the nominated candidate of a political party as the power still resides in the political party to exercise. Reliance was also placed on the case of Lado vs. CPC (2012) ALL FWLR (Pt.607) 601 at 629.

A distinction should be drawn between this case and that of Lado vs. CPC supra. In her originating summons, the 1st respondent did not seek to be nominated and sponsored by the APC. Her case is that she won the nomination of the primaries but the State Chairman replaced her name by cooking up a result to show that it was the 1st appellant who won the nomination and based on that, he issued the 1st appellant with a certificate of return and then forwarded his name as the candidate nominated by the party to contest the election.

Section 87(4)(c) (ii) and (9) of the Electoral Act 2010 (as amended) states:-

“87(4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below -

(c) In the case of nominations to the position of a Senatorial candidate, House of Representatives and State House of Assembly a political party shall, where they intend to sponsor candidates:-

(i) Hold special congresses in the Senatorial District, Federal Constituency and the State Assembly Constituency respectively, with delegates voting for each of the aspirants in designated centres on specified dates;

(ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party;

(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 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”.

According to the Party Guidelines the electoral process that is adopted for aspirants to House of Assembly, National Assembly and Governorship is through the holding of special congress employing direct open ballot in which members line up behind an aspirant or his/her representative. The results shall be announced immediately at the ward.

After the 1st respondent had been screened she contested the primaries and won and a press release issued to that effect. Thereafter the Chairman of the Party in the State substituted her name with the 1st appellant as the winner of the primaries and his name forwarded to the 2nd respondent as the candidate who won nomination to contest the election.

The 1st respondent wrote a protest to the National Chairman of the Party. The said protest was annexed as Exhibit D. The Chairman then directed the Electoral Committee to submit a report which was annexed as Exhibit E. Subsequently the 1st respondent wrote to the Chairman Legal Services and Clearance Committee of the 2nd appellant to stop recognizing the 1st appellant as the candidate nominated to contest the election for the Buruku Constituency of the Benue State House of Assembly. Despite this protest, it was the 1st appellant who contested the election and won. A similar scenario

occurred in the case of Peter Peretu & 4 others vs Chief Koko Gariga & 4 others in SC.127/2012 decided on 14/12/2012 where the respondents who had been substituted by the appellants for the Chairmanship seats for Sagbama, Kolokuma/Okpokuma, Ogbia, Ekeremor and Yenagoa Local Government Areas of Bayelsa State contested and won the Chairmanships of those Local Governments under the PDP. They filed an originating summons seeking several declaratory reliefs and for an order compelling the Bayelsa State Independent Electoral Commission to accept and screen the plaintiffs as the validly nominated chairmanship candidates duly returned by the Ad-hoc Electoral Panel of the PDP in the various Local Governments listed. The trial High Court declined to adjudicate on the complaint, holding that it had no jurisdiction to entertain the case. Their appeal to the Court of Appeal was allowed. The Court proceeded to hold that it was the appellants who had won the election for their party since the election had taken place and went further to declare them as the lawfully elected chairpersons of their respective Local Government Councils. An appeal by appellants to this court failed on 14/12/2012 and the judgment of the lower court was affirmed.

It should be stressed that where a party abides by the Electoral Act and Party Guidelines to conduct its primaries and a candidate emerges as the winner of the said primaries, the party or any of its officials cannot whimsically substitute the candidate who emerged the winner of the primaries. If that happens, the candidate substituted has a legal right to go to court. Where it happens as it transpired in this case that the court is unable to rule on the illegal substitution before the actual election takes place, if the candidate who became the beneficiary of the substitution wins the election, the candidate substituted can be declared the winner of the election.

In the result this appeal lacks merit and it is accordingly dismissed. It is hereby ordered that the 1st appellant should immediately vacate his seat as the honourable member representing Buruku Constituency in the Benue State House of Assembly. It is further directed that the 2nd Respondent should forthwith issue a certificate of Return to the 1st Respondent as the winner of the election for the Buruku Constituency in the Benue State House of Assembly and be sworn in by the

Speaker as the Hon. Member representing Buruku Constituency in the Benue State House of Assembly.

The appeal is hereby dismissed with N100,000.00 costs awarded to the 1st respondent against the 1st appellant.

B

MOHAMMED JSC

This appeal arose from the judgment of the Court of Appeal Makurdi Division delivered on 16th March, 2012, affirming the judgment of the trial Federal High Court Makurdi of 9th June, 2011 which decided that the 1st Respondent was the duly elected candidate of the Action Congress of Nigeria (A.C.N) now All Progressive Change (A.P.C.) to contest the election into the House of Assembly of Benue State from the Buruku Constituency. The trial Court found that the 1st Respondent was the candidate that emerged victorious at the primaries conducted by the National Working Committee of the C.P.C. (now A.P.C) to contest the election from Buruku Constituency of the Benue State House of Assembly but the Chairman of the party in Benue State omitted the name of the 1st Respondent from the list of the candidates of the party for the election forwarded to Independent National Electoral Commission in flagrant violation of the provisions of the Electoral Act 2010 as amended. The Court of Appeal affirmed the findings of the trial Court and the Appellants who were aggrieved are now before this Court on appeal on three issues formulated in their Appellants' brief of argument. The issues as can be seen at page 7 of the Appellants' Amended brief of argument read -

"1. Whether the lower Court was correct to have affirmed the jurisdiction of the trial Court to entertain 1st Respondents' suit (Grounds 6 and 7).

2. Having regard to the facts and evidence adduced in this case coupled with the applicable law, did the 1st Respondent prove her case to be entitled to judgment as decided by the trial Court and affirmed by the lower Court (Grounds 1, 6 and 8).

3. Whether the lower Court acted correctly in agreeing with the trial Court when it failed or refused to order pleadings and/or take oral evidence to resolve the obvious material conflicts in the competing affidavits and counter-affidavit of the parties before proceeding to judgment against the Appellants (Ground 2)."

Close examination of the evidence contained in the affidavits and counter-affidavit in support of and in opposing the Originating Summons filed by the 1st Respondent at the trial Federal High Court, reveals that the dispute between the parties in this case arose from the outcome of the primary election conducted by the 2nd Appellant on 12th January, 2011 in compliance with Section 87(4)(c)(i) and (ii) to nominate its candidate for election into the Benue State House of Assembly from the Buruku Constituency. The evidence on record also shows that the 1st Respondent is one of the aspirants who took part in the primary election for the Buruku Constituency and emerged the winner but her name was not forwarded to the 2nd Respondent as the candidate to contest the April, 2011, House of Assembly Election in Benue State. No doubt the 1st Respondent as one of the aspirants in the primary election, had acquired the right to approach the Federal High Court, Makurdi as she did in her Originating Summons to seek redress in that Court which is vested with jurisdiction by virtue of Section 87(9) of the Electoral Act 2010 as amended to hear and determine her claims against the Appellants as Defendants at the trial Court. Section 87(9) of the

Electoral Act 2010 as Amended reads -

“Notwithstanding the provisions of 87(9) 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 nature of the dispute in this case, the parties involved in the dispute and the applicable law to the dispute, I am in complete agreement with the two Courts below that by virtue of the provisions of Section 87(4)(c)(i) and (ii) and (9) of the Electoral Act 2010 as Amended, the Federal High Court, Makurdi has the jurisdiction to hear and determine the case of the 1st Respondent as was determined by it in favour of the 1st Respondent and affirmed by the Court below. See the cases of *Madukolu v. Nkemdelim & Ors.* (1962) 2 S.C.N.L.R. 341 and *Emeka v. Okadigbo* (2012) 18 N.W.L.R. (Pt. 1331) 55 at 88 - 89.

On the whole, from the foregoing stand on the issue of jurisdiction, and more particularly the stand on all the other issues raised

in this appeal which have been comprehensively determined in the lead judgment of my learned brother Aka'ahs JSC with which I also agree, I find no merit in this appeal which is hereby dismissed with N100,000.00 costs to the 1st Respondent against the 1st Appellant.

B

OGUNBIYI JSC

My learned brother Aka'ahs, JSC has, in his judgment comprehensively dealt with this appeal and I therefore adopt his reasoning and the conclusion arrived thereat that the appeal is lacking in merit and should be dismissed.

However and just for purpose of emphasis, I wish to chip in a few words of mine especially on the question of whether or not the Federal High Court is clothed with the jurisdiction to hear and determine the case of the 1st Respondent herein. It is expedient to state that both the trial Federal High Court and the Court of Appeal Makurdi Division are concurrent in their judgments that the 1st respondent as the plaintiff at the trial court was properly before that court when she took out the Originating Summons by raising five questions for determination and sought for seven reliefs therein. Both the questions for determination as well as the reliefs have been well reproduced in the lead judgment of my learned brother.

The law is now fully established that the Supreme Court will not normally disturb the concurrent findings of two lower courts except it is shown that it has occasioned a miscarriage of justice or it is perversely arrived at. See the case of *Onyejekwe v. The State* (1992) 3 NWLR (Pt. 230) 444. Also in the case of *Posu v. State* (2011) All FWLR (Pt. 565) 234, this court held thus at page 249:

"The Supreme Court will not interfere with concurrent findings of lower courts unless compelling reasons are shown, In the instant case, the concurrent findings of the lower courts were not perverse, therefore the Supreme Court will not interfere with it."

The same principle was also enunciated by this court in the case of *Tiza v. Begha* (2005) 5 SC 1 at 17 where this court per Onu, JSC said:-

"It is now trite law that concurrent findings of the trial court and the Court of Appeal cannot be set aside by this court except such findings is not supported by evidence. See Emeagwara V. Stan PPL

(2000) 78 LRCN 1701 at 1720. The trial court found that the plaintiff is the owner of the land in dispute and that Orasoho is the natural boundary between the plaintiff and the defendants. The Court of Appeal confirmed this finding."

On a communal reading of the foregoing authorities, the appellants in this appeal have the responsibility to show forth special circumstance that will warrant the interference by this court of the judgment in question. B

For the determination of whether or not the subject matter at hand is within the trial court's jurisdiction, recourse was properly had to the provision of section 87(9) of the Electoral Act 2010 (as amended), and which reproduction states:- C

"Notwithstanding the provisions of the Act or rules of the 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." D

For the interpretation of the foregoing section, same stands to reason that neither the Act nor the rules of a political party could hinder an aspirant from seeking redress from the court, provided he could justifiably show forth that there is a breach of the Act or the rules in the selection or nomination of a candidate of a political party for election. E

The complainant as an aspirant also has an option to present his case either before the Federal High Court or the High Court of a State. In otherwords, the grounding factors determining the jurisdiction of the court in the case at hand were the reliefs sought before the trial Federal High Court and which are all clearly reproduced in the lead judgment. F

The jurisdictional competence of a court has been well spelt out in the locus classicus case of *Madukolu Vs. Nkemdili* (1962) 1 All NLR (Pt.4); (1962) 2 SCNLR 34 where this court laid down the proper guideline in determining the issue of jurisdiction of a court of law and stating that a court is competent when:- G

"(a) It is properly constituted as regards members of the Bench, and no member is disqualified for one reason or another;

(b) The subject matter of the case is within its jurisdiction and

no feature in the case which prevents the court from exercising its jurisdiction; and

(c) The case comes before the court initiated with due process of law and upon fulfillment of a condition precedent to the exercise of jurisdiction.”

B I hasten to state at this juncture that by the very nature of the reliefs sought in the case before us, it is not in question that 1st respondent is one of the aspirants who participated in the primary election being contested. That is to say that there was, in fact a primary
C election for the selection or nomination of a candidate by a political party and the exercise was in respect of an election into the Benue State House of Assembly for the Buruku Constituency. The alleged nature of the infraction on the 1st respondent’s pleadings was that, although she, (1st respondent) emerged as the winner of the primary
D election, her name was not forwarded by the 2nd appellant to the 2nd respondent as the winner of the election conducted on the 12/1/2011 for the general election of 14/4/2011. It is pertinent to further state that the main relief sought by the 1st respondent is founded on non-compliance with the provision of section 87(9) of
E the Electoral Act (as amended) with reference made also to section 87(4)(c) (i and ii) of the Electoral Act, which states:-

*“The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the Independent National
F Electoral Commission as the Candidate of the party.”* (Emphasis is mine).

It is clear from all indications that a political party is bound and has no option to present a separate candidate except that which
G is borne out of the primaries as stipulated by section 87 of the Electoral Act which, as rightly submitted by the 1st respondent empowers INEC to conduct elections and monitor the activities of political parties. Section 87(1)(2)(3) and (4) of the Act therefore stipulate how aspirants can emerge to be nominated by the party for the general
H election.

On the concurrent findings by the two lower courts, it is on record and confirmed by evidence that the 1st respondent’s name, despite her victory in the primary, was not forwarded to the 2nd respondent, which is the body charged with the responsibility of con-

ducting elections. The said breach is surely fundamental and contrary to the spirit of section 87 of the Electoral Act; it is therefore justiciable under section 87(9) of the Act.

Consequently, I hereby have no reason why the judgments of the two lower courts should be interfered with. In the result, I also concur with the lead judgment of my learned brother, Aka'ahs, JSC B that the appeal is devoid of any merit and is also dismissed by me. I further abide by all the orders made therein the lead judgment inclusive of costs.

C

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment just delivered by my learned brother, Aka'ahs, JSC. I agree that the appeal is devoid of merit and should be dismissed. I add a few comments in support of the lead judgment and for emphasis. D

The facts that gave rise to this appeal are that on 12/1/2011, the 2nd Appellant, formerly Action Congress of Nigeria (ACN), now All Progressive Congress (APC), conducted party primaries for nomination to the elective offices for the Governorship, Senate, House of Representatives and State House of Assembly in Benue State. E The 1st Respondent won the primary as the candidate to represent Buruku Constituency in the State House of Assembly general election. The primary was conducted by three officers of the 2nd appellant sent F from the National Headquarters and was duly monitored by officials of the 2nd Respondent, INEC. The head of the aforesaid electoral team announced the results of the primary and a press release was issued the next day confirming the 1st Respondent's emergence as the winner. However, to the 1st respondent's surprise, the State Secretary of the party announced the 1st appellant's name on the radio as having won the election and a certificate of return was issued G to him. She was dissatisfied with the turn of events and consequently filed an originating summons at the Federal High Court, Makurdi H (the trial court) for the determination of five questions and the grant of seven reliefs, which are fully set out in the lead judgment. The suit was resolved on the basis of the affidavit evidence before the court and judgment was entered in favour of the 1st Respondent. The court ordered that the 1st Respondent's name be returned as the

lawful aspirant of the 2nd respondent and that she be issued with a certificate of return. The appellants were dissatisfied with the judgment and appealed to the Court of Appeal, Makurdi Division (the lower court). The appeal was dismissed, hence the instant appeal. The appellants formulated three issues for determination:

- B 1. Whether the lower court was correct to have affirmed the jurisdiction of the trial court to entertain 1st Respondent's suit?
- 2. Having regards to the fact and evidence adduced in this case couple (sic) with the applicable law, did the 1st Respondent prove her case to be entitled to judgment as decided by the trial court?
- C 3. Whether the lower court correctly in agreeing with the trial court when it failed or refused to order pleadings and/or take oral evidence to resolve obvious material conflicts in the competing affidavits and counter affidavit of the parties before proceeding to judgment against the appellants.

On the issue of jurisdiction, it is the appellant's contention that having regard to the fact that the 1st Respondent's main complaint, as shown in Reliefs 1, 2, 3, 4 & 7 arises from the 2nd Appellant's failure to forward her name to the 2nd Respondent as the winner of the primary election, the trial court lacked jurisdiction to entertain the suit, the 2nd Appellant not being an agency of the Federal Government of Nigeria within the purview of Section 251(1)(r) of the 1999 Constitution (as amended). It was learned counsel's submission that even though Reliefs 5 & 6 are against the 2nd Respondent, they are ancillary reliefs to the main claim and cannot therefore confer jurisdiction on the court. Reliance was placed on *PD.P. vs. Sylva* (2012) All FWLR (Pt.637) 606; *Tukur vs. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517. It was argued that since the main claims of the 1st Respondent were in respect of the nomination and sponsorship of a candidate of a political party, which are not justiciable, having regard to the decision of this court in *Onuoha vs Okafor* (1983) 14 NSCC 494, it equally lacked jurisdiction to entertain the ancillary reliefs.

H It was further argued that by virtue of Section 87(9) of the Electoral Act 2010 (as amended), hereinafter referred to as the Electoral Act, the High Court of Benue State has jurisdiction to hear and determine all the issues raised by the 1st Respondent and therefore it is that court that has jurisdiction to try the case as opposed to the

Federal High Court that has jurisdiction to try only some aspects of the case. He referred to: *Tukur vs Government of Gongola State* (supra) at 549 A. Learned counsel also submitted that Section 87(9) of the Electoral Act would only apply if the 1st Respondent could bring herself within the narrow confines of Section 87(4)(c) (ii) thereof.

On the part of the 1st Respondent, it is contended that the case at the trial court was anchored on a breach of the provisions of the Electoral Act and paragraph 21.3(b) of the 2nd Appellant's Constitution thus bringing it within the purview of Section 87(9) of the Electoral Act and Section 251(1) and (4) of the 1999 Constitution.

The issue of the jurisdiction of the trial court to entertain the originating summons ab initio is fundamental to the competence of the appeal before this court. Where the originating process at the trial court is found not to confer jurisdiction on the court, the proceedings are a nullity. The absence of jurisdiction has a ripple effect and taints the appellate courts, which would equally lack jurisdiction to entertain appeals arising from the null proceedings. See: *SLB Consortium Ltd. vs NNPC* (2011) 9 NWLR (Pt.1252) 317.

It is also trite that where the court lacks jurisdiction, parties cannot confer jurisdiction by consent or acquiescence. See: *Adesola vs Abidoye* (1999) 14 NWLR (Pt.637) 28, *Jadesimi vs Okotie-Eboh* (1986) 1 NWLR (Pt.16) 264; *Obiuweubi v CBN* (2011) 7 NWLR (Pt. 1247) 465.

In determining this issue of jurisdiction, it is necessary to determine the nature of the 1st Respondent's claim as contained in the originating summons and the reliefs she seeks. Her complaint is that notwithstanding the fact that she emerged victorious in the primary election conducted by the 2nd appellant and her name duly announced as the winner, having scored the highest number of votes, the 2nd appellant submitted the name of the 1st appellant to INEC, as the party's flag bearer for the Buruku constituency of the State for election into the State House of Assembly, contrary to the provisions of Section 87 of the Electoral Act 2010, as amended. All the questions for determination are centred on this complaint. However, in seeking reliefs in the event that the questions were answered in her favour, she sought injunctive and mandatory reliefs, not only against the 2nd appellant but also the 2nd respondent (as 2nd defendant). She sought an order restraining the 2nd respondent either by itself its

officers, agents etc. from recognizing, accepting or dealing with the 1st appellant as the 2nd appellant's flag bearer in the general election. She also sought an order compelling the 2nd respondent to recognize, accept and deal with her as the party's flag bearer in the said election, In other words she would derive no benefit from the resolution of the questions for determination in her favour if the injunctive and mandatory orders were not made against the 2nd respondent, The court must therefore consider the entirety of the claim in determining the issue of jurisdiction. It is not in doubt that the Independent National Electoral Commission is an agency of the Federal Government. Section 251(1)(r) of the 1999 Constitution (as amended) provides:

"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 or matters -

(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(4)(c)(ii) of the Electoral Act provides:

"87(4) (c)(ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party."

In so far as the 2nd respondent (INEC) is under an obligation by virtue of Section 87(4)(c)(ii) of the Electoral Act to accept the submission of the name of the aspirant with the highest number of votes, having been declared the winner of the primary, it is carrying out an administrative function. The validity of its administrative action is certainly called into question where it acts outside the provisions of Section 87(4)(ii) of the Electoral Act. However, it is important to observe that Section 87(9) of the Electoral Act fully takes care of the situation that arises in this case.

Section 87(9) of the Electoral Act provides:

"87(9) Notwithstanding the provisions of this Act or the 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.”

In the instant case, the 1st respondent’s complaint was non-compliance with the provisions of the Electoral Act, specifically Section 87(4)(c)(ii) thereof. By the provisions of Section 87(9) of the Act she was entitled, being an aspirant, to seek redress either at the Federal High Court or the High Court of the State. B

The suit was therefore properly instituted before the Federal High Court sitting at Makurdi. I also resolve this issue against the appellants. C

My learned brother in the lead judgment has painstakingly considered and resolved issues 2 and 3 against the appellants. I agree entirely with his reasoning and conclusion. In effect, I also dismiss the appeal as lacking in merit. I abide by the consequential orders contained in the lead judgment including the order on costs. D

E

F

G

H