

**SUPREME COURT OF NIGERIA**  
FRIDAY 31ST JANUARY, 2014. SC. 589/2013  
**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,**  
**C. B. OGUNBIYI, K. B. AKA'AH,**  
**K. M. O. KEKERE-EKUN, JJSC**

NICHOLAS CHUKWUJEKWU

UKACHUKWU

..... APPELLANT

AND

1. PEOPLES DEMOCRATIC PARTY

2. ALHAJI BAMANGA TUKUR

3. DR. TONY NWOYE

..... RESPONDENTS

4. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

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FAIR HEARING - Breach - Effect - Proceedings conducted in breach of a party's right to fair hearing - Would be rendered a nullity - No matter how well conducted (H1)

FAIR HEARING - Breach - Allegation of - The circumstances in the case show that appellant's right to fair hearing was not breached - As the court ensured that justice was done to both sides (H2)

STATUTES - Interpretation - Principle - Where words used in statutes are clear and unambiguous - They must be given their natural and grammatical meaning - Unless it would lead to absurdity (H3)

ELECTIONS - Political party - Nomination - Right of - Membership or sponsorship of candidate at election is internal affairs of the party - And therefore not justiciable (H4)

ELECTIONS - Political party - Substitution of candidate - Electoral Act s. 34 - INEC must be informed in writing not later than 60 days to election - And the party must give cogent and verifiable reasons for the change - Except in the case of death or withdrawal (H5)

ELECTIONS - Pre-election matter - Justiciability - Electoral Act s. 87(9) - For the complaint to be justiciable - Complainant must be an

aspirant who participated in the primary - That produced the sponsored candidate (H6)

APPEALS - Judgment - Unchallenged - As appellant did not challenge the crucial findings on the merit of the appeal - The Orders made by Court of Appeal subsist (H7)

### ***FACTS***

This action was commenced by petitioner/appellant before the Federal High Court Port Harcourt claiming among other things that 3<sup>rd</sup> respondent was not qualified to participate in 1<sup>st</sup> respondent's primary election. 1<sup>st</sup> respondent organized primaries to select its candidate for the 16<sup>th</sup> November 2013 gubernatorial elections in Anambra State. 3<sup>rd</sup> respondent was initially disqualified by 1<sup>st</sup> respondent's screening committee on the ground of irregular payment of taxes. 3<sup>rd</sup> respondent took the matter up to 1<sup>st</sup> respondent's screening appeal panel. The panel considered the appeal and eventually cleared 3<sup>rd</sup> respondent to participate in the primary election. Appellant and 3<sup>rd</sup> respondent participated in the primary and at the end of which 3<sup>rd</sup> respondent emerged as the winner. 1<sup>st</sup> respondent therefore forwarded the name of 3<sup>rd</sup> respondent to 4<sup>th</sup> respondent as its gubernatorial candidate. Appellant being aggrieved filed this action. In its judgment, the court found in favour of appellant and declared him the candidate of 1<sup>st</sup> respondent.

Following the judgment, 3<sup>rd</sup> respondent's name was therefore substituted with that of appellant. Aggrieved, 1<sup>st</sup> – 3<sup>rd</sup> appealed to the Court of Appeal Port Harcourt Division seeking to set aside the judgment of the trial High Court on the ground of lack of jurisdiction. Due to the urgency needed to dispense with the appeal in view of the forthcoming governorship election in the State, the court abridged the time for filing of briefs. The time for appellant to file his brief of argument lapsed as a result of several delays arising from interlocutory proceedings in the matter. Appellant therefore brought application for enlargement of time along with his brief of argument. When asked to move the application, appellant asked for an adjournment. The court refused the prayer for adjournment. Appellant in protest left the court. The court relying on its power under O. 20 r. 3 of its Rules, deemed appellant as having argued the appeal as per his filed

brief. The court eventually declared 3<sup>rd</sup> respondent as the candidate of 1<sup>st</sup> respondent and dismissed the judgment of the trial court. Dissatisfied, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the judgment of the Court of Appeal leading to this Appeal hinged on non-existent Brief of Argument in particular the 1st Respondent's (Appellant's) Brief of Argument, which had in the course of the proceedings been struck out is not a breach of the present Appellant's (then 1st Respondent) right to fair hearing, thereby nullifying the judgment of the court below?

2. Whether the Court of Appeal was right when it held that the trial Federal High Court lacked jurisdiction to adjudicate on the complaint of the Appellant on the basis that his complaint did not come within the ambit of Section 87 (9) of the Electoral Act, 2010 as in the court's view the reliefs sought were predicated on matters that were solely internal party matters and therefore not justiciable?

**HELD** (Unanimously allowing the appeal in part per

**KEKERE-EKUN JSC)**

*FAIR HEARING - Breach - Effect*

**1. It is also well settled that any proceedings conducted in breach of a party's right to fair hearing, no matter how well conducted would be rendered a nullity.** (p. 427 H)

*FAIR HEARING - Breach - Allegation of*

**2. The facts and circumstances of this case show that there was no denial of the appellant's right to fair hearing. The court went over and beyond the call of duty to ensure that justice was done to both sides within a reasonable time. This issue must therefore be and is hereby resolved against the appellant.** (p. 436 A)

*STATUTES - Interpretation - Principle*

**3. The golden rule of interpretation of statutes is that where the words used are clear and unambiguous they must, prima facie, be given their natural and grammatical meaning unless**

**it would lead to absurdity.** (p. 445 A)

*ELECTIONS - Political party - Nomination - Right of*

**4. In the realm of electoral matters it has been held in a plethora of decisions of this court that the membership of a political party or the sponsorship of a candidate at an election is internal affairs of the party and therefore not justiciable.**  
(p. 445 C)

*ELECTIONS - Political party - Substitution of candidate*

**5. However, the absolute powers of political parties in relation to the nomination of their candidates were curtailed slightly by the introduction in the Electoral Act 2006 of section 34, which made specific provisions for a political party wishing to substitute or change a candidate whose name had already been forwarded to INEC to inform the electoral body of such change in writing not later than 60 days to the election and must give cogent and verifiable reasons for the intended change except in the case of death of the party or his withdrawal.** (p. 445 D)

*ELECTIONS - Pre-election matter - Justiciability*

**6. The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the purview of section 87 (4) (b) (ii); (c) (ii) and (9) of the Electoral Act, 2010 (as amended) supra. 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: that power still resides in the political parties to exercise. The enactment is not designed to encourage factions emerging from the political parties with each electing its candidate but claiming same to be candidates of the political party concerned.**

**The point being made by this court is that section 87(9) of the Electoral Act is very narrow in scope as to the jurisdiction exercisable by the courts. The literal interpretation of**

**Section 87 (9) of the Electoral Act is that an aspirant has a right to complain where the provisions of the Electoral Act and/or the guidelines of a political party have not been complied with in the selection or nomination of a candidate for election. He may exercise the right to seek redress notwithstanding the provisions of the said Act or rules of a political party. In other words no provision of the Electoral Act or any rule of a political party can take away this right. However, the provision is not at large. The complainant must be an aspirant who participated in the primary that produced the sponsored candidate.** (p. 446 D) B  
C

*Judgment - Unchallenged*

**7. The findings of the Lower Court are reproduced in extenso to show the crux of the appellant's appeal before that court. In the appeal before us, the appellant did not challenge these crucial and far-reaching findings on the merit of the appeal. In his wisdom, the appellant abandoned his issue 3, which challenged the merit of the Lower Court decision. The effect is that the orders made by the Lower Court subsist.** (p. 451 C) D  
E

### **REPRESENTATION**

J. B. Daudu, SAN; with Prince Orji Nwafor-Orizu, B. C. Igwilo Esq., Chief Henry Akunebu, S. N. Anichebe Esq., U. C. Ndubuisi Esq., Mrs. Esther Abbey-Ollo, Mrs. Nnenna Nicholas Ukachukwu, Mrs. Ogechi Igwe, Mrs. H. M. Usman, Ugochukwu Ifeakandu Esq., Oguaju Nnaemeka Esq., P. B. Daudu Esq., Adedayo Adedeji Esq., Oledinmah Chiugo (Miss), Miss Nnenna Nwafor-Orizu (Miss), Eno Etienam (Miss), S. N. Obinna Esq., Miss Netochukwu Nzewi, Mrs. B. Alasi, Raheema Abdullahi (Miss), Miriam Ojiah (Miss), Uduak Moses (Miss), Nnamdi Nweke Esq. and Ugochukwu Onyejiuto Esq., for the Appellant  
Chief Joe-Kyari Gadzama, SAN; with Dr. (Sir) Amaechi Nwaiwu, SAN, Paul Erokoro, SAN, Prof. Andrew I. Chukwuemerie, SAN, M. A. Abubakar Esq., J. N. Egwuonwu Esq., Henry Michael-Ihunde Esq., Miss Nachamada Shaltha, Michael Ajara Esq., A. S. Akingbade Esq., Godwin Diugwu Esq., U. M. Jawur Esq., Barbara Omosun Esq., Kingsley Odey Esq., Mrs. Chiamaka Onwuegbuchelem, Ikenna Achara Esq., Chinonso Anozie Esq., Miss E. O. Ekhafafe, C. P. Nzedebe F  
G  
H

Esq., Miss Stephanie Ere Tobi, Miss Victoria Agu, Miss Tina Eto and Miss Blessing Erokoru for the 1st and 2nd Respondents

G. S. Pwul, SAN; with Dr. V. O. Azinge (Mrs.), Clement Ezika Esq., Ernest Nwoye Esq., Bitrus Fwangskak Esq., F. S. Jimba Esq., Chief Okey Aroh Esq., Patrick Agu Esq., Onyechi Araka Esq., Chukwu B Chikelue Esq., Vincent Ofumelu Esq., Ikechukwu Obianyo Esq., F. Nnaba Esq., Chike Nwosu Esq., O. O. Agu Esq. and H. Akunne for the 3rd Respondent

Ibrahim K. Bawa Esq., with T. M. Inuwa Esq., Alhassan A. Umar Esq., Tobechukwu Nweke Esq., Mrs. Rahima Aminu, Okeke C Okechukwu Esq., Ahmed I. Goni Esq., Bashir Mohammed Esq., Olawale Dawodu Esq., Mrs. Hadiza Abba and Mrs. Bukunola Bada for the 4th Respondent

**D CASES REFERRED TO**

UBA v. Nwaora (1978) NSCC (Vol.11) 519

Nwankwo v. Kanu (2010) 6 NWLR (pt. 1189) 62

Tunbi v. Opawole (2000) 2 NWLR (pt. 644) 275

Okonkwo v. Okonkwo (1998) 10 NWLR (pt. 571) 554

E Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 427

Okafor v. A.G. Anambra State (1991) 6 NWLR (pt. 200) 627

Usani v. Duke (2006) 17 NWLR (pt. 1009) 610

Omo v. J.S.C. Delta State (2000) 12 NWLR (pt. 1008) 436

A.G. Rivers State v. Ude (2006) 17 NWLR (pt. 1008) 436

F Tsokwa Motors (Nig.) Ltd. v. U.B.A. Plc. (2008) All FWLR (pt. 403) 1240

Adigun v. A.G. Oyo State (1987) 1 NWLR (pt. 53) 674

Leaders Ltd. v. Bamaiyi (2010) 18 NWLR (pt. 1225) 329

G Amanchukwu v. FRN (2009) 2 SCNJ 33

Nwokoro v. Onuma (1990) 3 NWLR (pt. 136) 22

Uzodinma v. Izunaso (2011) 17 NWLR (pt. 1275) 60

**STATUTES & RULES REFERRED TO**

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

Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 36(1)

Court of Appeal Rules 2011, O. 7 r. 1, O. 18 r. 9 (4), O. 20 r. 3

**LEAD REASONS FOR JUDGMENT DELIVERED ON 4TH  
NOVEMBER 2013 BY KEKERE-EKUN JSC**

**REASONS FOR THE JUDGMENT**

On 4th November 2013 we heard this appeal and delivered judgment allowing the appeal in part. We adjourned till today to give reasons for the judgment. B

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division delivered on 23/10/2013 setting aside the judgment of the Federal High Court sitting in Port Harcourt delivered on 17/9/2013. The facts leading to the appeal are as follows: C  
On 24/8/2013 the National Executive Committee of the 1st Respondent organized primaries to select its candidate for the Anambra State Gubernatorial Elections scheduled to take place on 16/11/2013. At the initial screening exercise the 1st respondent's screening committee disqualified the 3rd respondent on the ground of irregular payment of taxes. He failed to produce receipts showing payments made as and when due. The matter was referred to the 1st respondent's screening appeals panel for Anambra State, which after examining receipts subsequently submitted by him, allowed his appeal and cleared him to contest the primary election. Both the appellant and the 3rd respondent participated in the said primaries. The 3rd respondent emerged the winner with the highest number of votes. The appellant came second. The 1st respondent therefore on 29/8/2013 issued the 3rd respondent with a certificate of return and his name was forwarded to the 4th respondent as its gubernatorial candidate F  
in respect of the upcoming election.

The appellant was dissatisfied with the decision of the gubernatorial appeal panel and instituted an action by way of originating summons before the Federal High Court sitting in Port Harcourt G (henceforth referred to as the trial court) claiming inter alia that the 3rd respondent was not qualified to participate in the August 24th primaries. In a considered judgment delivered on 17/9/2013 the court found in favour of the appellant and declared him the 1st respondent's candidate for the election slated for 16/11/2013. The 4th respondent thereupon substituted the 3rd respondent's name with that of the appellant. Dissatisfied with this state of affairs the 1st-3rd respondents approached the Court of Appeal, Port Harcourt Division (henceforth referred to as the Lower Court) seeking to set aside the decision H

of the trial court on the ground of lack of jurisdiction. The appeals were consolidated. Having regard to the fact that the date for the Anambra State Gubernatorial Election was fast approaching the lower court abridged the time for the filing of briefs. A series of interlocutory applications filed on behalf of the appellant were heard and  
 B dismissed or struck out and the appeal set down for hearing. On account of the interlocutory proceedings the time within which to file the appellant's (then respondent's) brief of argument lapsed. The brief of argument was filed along with an application for enlargement  
 C of time within which to file same. When the application was to be moved, learned counsel for the appellant sought an adjournment, which was refused by the court. He was called upon to move the application and when he refused to do so it was struck out. Learned counsel for the appellant then left the court room. Having filed a  
 D separate brief of argument along with the motion paper, the court in the exercise of its discretion and relying on Order 20 Rule 3 of the Court of Appeal Rules 2011 deemed the appellant as having argued the appeal based on the brief filed and adjourned the matter for judgment to be delivered on a date to be communicated to the parties. The Lower Court eventually delivered its judgment on 23/10/  
 E 2013 wherein it set aside the judgment of the trial court delivered on 17/9/2013 and declared the 3rd respondent, the 1st respondent's candidate for the upcoming election.

The appellant was thoroughly dissatisfied with this decision  
 F and appealed to this court via two notices of appeal. The first was filed on 24/10/2013 (see pages 307 - 310 of Vol. 3 of the record of appeal) while the second was filed on 29/10/2013 (see pages 1 - 9 of the supplementary record). The appellant abandoned the notice of  
 G appeal filed on 24/10/2013 (see paragraph 3 pages 5 - 6 of the appellant's brief filed on 30/10/2013) and argued the appeal based on the notice of appeal filed on 29/10/2013 containing 6 grounds of appeal.

In compliance with the rules of this court the parties duly  
 H filed and exchanged their respective briefs of argument. The appellant's brief, settled by J. B. DAUDU, SAN was filed on 30/10/2013. The 1st and 2nd Respondents' brief filed on 1/11/2013 was settled by CHIEF JOE-KYARI GADZAMA, SAN. The 3rd respondent's brief was also filed on 1/11/2013. It was settled by G. S. PWUL, SAN. The 4th

respondent equally filed its brief on the same day, 1/11/2013. It was settled by IBRAHIM BAWA ESQ. In reaction to the aforementioned briefs the appellant filed a Reply brief on 4/11/2013. The appellant formulated 3 issues for the determination of this appeal as follows:

1. Whether the judgment of the Court of Appeal leading to this Appeal hinged on non-existent Brief of Argument in particular the 1st Respondent's (Appellant's) Brief of Argument, which had in the course of the proceedings been struck out is not a breach of the present Appellant's (then 1st Respondent) right to fair hearing, thereby nullifying the judgment of the court below? (Ground 1)

2. Whether the Court of Appeal was right when it held that the trial Federal High Court lacked jurisdiction to adjudicate on the complaint of the Appellant on the basis that his complaint did not come within the ambit of Section 87 (9) of the Electoral Act, 2010 as in the court's view the reliefs sought were predicated on matters that were solely internal party matters and therefore not justiciable? (Grounds 2, 3, 5 and 6)

3. Whether the Court below was right in holding on the one hand that the trial Federal High Court lacked jurisdiction to have adjudicated on the dispute between the parties, and on the other hand went ahead to consider the matter on its merits and proceeded to make Orders and consequential Order? (Ground 4)

Issue 3 was subsequently abandoned. It is accordingly struck out.

The 1st and 2nd respondents formulated two issues for determination thus:

1. Whether the decision of the Court of Appeal to adopt the 1st respondent's (now appellant) brief, in favour of the 1st respondent (now appellant), his counsel having abandoned his matter in court, amounts to a breach of the appellant's right to fair hearing.

2. Whether the Court of Appeal rightly held that the Federal High Court lacked jurisdiction to entertain Suit No. FHC/PH/CS/296/2013 (Nicholas Chukwujekwu Ukachukwu Vs Dr. Tony Nwoye & 3 Ors) on the ground that it was an intra-party matter.

The 3rd respondent also distilled two issues from the grounds of appeal as follows:

1. Whether the Appellant's right to fair hearing was breached in the circumstances when:

a. The Appellant's Learned Counsel, Prince Orji Nwafor Orizu walked out of the Lower Court without leave, abandoned the Appellant's Brief of Argument and refused to proceed with hearing thereby refusing to utilize the opportunity to present his client's case.

b. The Court of Appeal took the Appellant' Brief of Argument into consideration and used it in determining the appeal on the merit.

2. Whether the Lower Court was not right in holding that the complaint of the Appellant, as Plaintiff before the Court of first instance, did not fall within the ambit of Section 87 (9) of the Electoral Act, 2010, thereby rendering the case non-justiciable.

The 4th respondent adopted the two surviving issues formulated by the appellant. The appeal was determined on the two issues formulated by the appellant. At the hearing of the appeal Learned Counsel adopted and relied on their respective briefs of argument and made some additional submissions in further adumbration thereof. On the issue of fair hearing MR. J. B. DAUDU, SAN, learned counsel for the appellant, referred to the submissions contained at pages 15 - 18 of the appellant's brief with particular emphasis on page 16. On the issue of jurisdiction he submitted that the trial court had jurisdiction to entertain the suit on the strength of Section 87 (9) of the Electoral Act 2010 (as amended). He argued that there is no distinction in the provision between pre-primary issues and issues that arise during the conduct of the primaries. He submitted that an aspirant is entitled to complain if he believes that his party's guidelines have been breached. He submitted that in the instant case payment of tax constitutes part of the 1st respondent's guidelines and that a party is entitled to seek redress if the said guidelines have been breached. He submitted that the Lower Court erred in holding that the Federal High Court lacked jurisdiction to entertain the matter. He urged the court to allow the appeal.

In addition to the arguments contained in the 1st and 2nd respondents' brief, CHIEF JOE-KYARI GADZAMA, SAN submitted, on the issue of fair hearing, that having regard to the facts and circumstances of the case, it is the respondents who ought to complain when learned counsel for the appellant walked out the court unceremoniously. On the Lower Court's adoption of the appellant's brief of argument even though counsel was not present and his applica-

tion had been struck out, learned senior counsel cited the cases of UBA Vs Nwaora (1978) NSCC (Vol.11) 519 @ 585 and Nwankwo Vs Kanu (2010) 6 NWLR (Pt.1189) 62 @ 91 on the exercise of the court's discretion, where a process before it is irregular, to deem it as properly filed. He relied on the combined effect of Order 18 Rule 9 (4) and Order 20 Rule 3 of the Court of Appeal Rules 2011. On the issue of jurisdiction he contended that Section 87 (9) of the Electoral Act envisages a distinction between eligibility to contest, which is a pre-primary issue and the actual selection of the candidate to participate in the election. He contended that in the instant case there is no allegation against the conduct of the election. He submitted that where there are conflicts between a party's guidelines and the law, the guidelines would be invalid to the extent of the inconsistency. He cited several cases on the conditions to be satisfied before a person could be said to have paid his taxes "as and when due" and submitted that none of the conditions was proved. He urged the court to dismiss the appeal and affirm the judgment of the Lower Court.

MR. G. S. PWUL, SAN, learned counsel for the 3rd respondent aligned himself with the submissions of learned senior counsel to the 1st and 2nd respondents. On the issue of fair hearing he submitted that the only duty of the court is to afford a party the right to be heard. He submitted that it could not force the party to avail himself of the right. He referred to page 9 of his brief and the authorities cited on the point. On the issue of jurisdiction he submitted that Section 87 (9) of the Electoral Act is designed to protect the winner of the primary and not to give an advantage to the loser. He submitted that even if an irregularity exists, the remedy of the aggrieved person is in damages as the court cannot compel a party to sponsor a candidate. He noted that the Lower Court did not shut out the appellant as it went ahead to consider the case on its merits and held, rightly in his view, that the 3rd respondent rightly emerged as the winner of the primary. He submitted that there is a presumption that the decision is correct and that no cogent reason has been advanced to set it aside. He urged the court to dismiss the appeal and affirm the judgment of the Lower Court.

IBRAHIM K. BAWA ESQ. adopted and relied on his brief of argument and stated that the 4th respondent had not taken a position in the appeal and would be bound by whatever decision the

court shall reach in the matter.

### ISSUE 1

In support of the appellant's contention that he was denied fair hearing, J. B. DAUDU, SAN referred to the proceedings of the Lower Court as contained at pages 275 F - 275 I of volume 3 of the printed record and submitted that the appellant's complaint is that the Lower Court in one breath struck out the 1st respondent's (now appellant's) application for leave to file his brief of argument out of time and shortly afterwards, when the appeal was to be argued, in the absence of the appellant resuscitated the brief and treated it as having been argued. He argued that the resultant judgment was irredeemably bad and a nullity. He set out the relevant portion of the court's proceedings and contended that the court below tainted its judgment and the entire proceedings before it, by utilizing a non-existent brief of argument in deciding the appeal. He submitted that that the Lower Court per Adah, JCA could not have been right when it held thus:

*"At the hearing of these consolidated appeals, the learned counsel for the appellants respectively adopted their respective briefs of argument and urged the Court to allow this appeal and grant them the consequential reliefs sought in their notice of appeal. The learned counsel for the Respondents filed their briefs and they were duly adopted in this appeal."*

He referred to the cases of: *Tunbi Vs Opawole* (2000) 2 NWLR (Pt.644) 275 @ 288 A - D; 288 - 289 H - B, *Okonkwo Vs Okonkwo* (1998) 10 NWLR (Pt. 571) 554 at 570; *Abubakar Audu Vs FRN* (2013) 53 NSCQR 456. He noted that in *Abubakar Audu's* case (*supra*), this court remitted the appeal to the Court of Appeal for re-hearing in order to give the Appellant in that case the opportunity to file his Respondent's Brief and to be heard. He submitted that that there is no provision in the Court of Appeal Rules 2011 which would have allowed the appeal to have been argued or taken to have been argued pursuant to Order 18 Rule 9(4). He submitted that the consequence of striking out the motion to regularize the appellant's (then 1st respondent's) brief of argument is that there was no respondent's brief of argument filed in the proceedings. He submitted that the extant rules of the court below are only applicable when the Briefs are properly before the court but not argued on the

date of hearing by counsel. He argued that a motion to put the brief of argument before the court having been struck out, there was no brief to deem as argued. He submitted that the entire appeal is a nullity.

In reaction to the above submissions, CHIEF GADZAMA, SAN submitted that the appellant's right to fair hearing was never breached at any time during the proceedings at the Lower Court. He submitted that the position of the law is that where a party is accorded an opportunity to be heard by the court and he fails to avail himself of same, he cannot be heard to complain of being denied fair hearing. He referred to: *Inakoju Vs Adeleke* (2007) 4 NWLR (Pt.1025) 427 @ 621-622, A-H per Niki Tobi, JSC. He referred to the proceedings of the Lower Court at pages 275 A- 275 H of volume 3 of the record of appeal and submitted that having regard to all that transpired the Lower Court was right in adopting the appellant's (then 1st respondent's) brief in his favour following the abandonment of proceedings by his counsel. He submitted that the Lower Court was right to rely on Order 20 Rule 3 of the Court of Appeal Rules 2011, which provides:

*"The court may in an exceptional circumstance and where it considers it in the interest of justice to so do, waive compliance by the parties with these Rules or any part thereof".*

He noted that the respondent's brief had been filed as a separate process and submitted that the Lower Court could not have done more for the appellant in ensuring that justice was done in the matter. He referred to: *Okafor Vs A.G. Anambra State* (1991) 6 NWLR (Pt.200) 627 @ 675 G-B and submitted that the rules of the Court of Appeal permit it to regularise a defective process in the interest of justice, as was done in this case. He submitted that the alternative would have been for the court to shut the door completely against the appellant (then 1st respondent), following his abandonment by his counsel. He submitted that the facts of *Nwokoro Vs Onuma* (supra) relied upon by learned senior counsel for the appellant are distinguishable from the facts of the instant case, as in *Nwokoro's* case the appellant had two briefs of argument, one of which was held to be defective by the Lower Court and expressly rejected, and an amended brief of argument. He noted that at no time did the Court of Appeal, Port Harcourt Division hold that the 1st respondent's (now

appellant) brief of argument was defective. He submitted that it is trite that a brief of argument is *prima facie* the argument of a party intended to be presented and is deemed argued even in the absence of the parties. He referred to the dictum of Karibi-Whyte, JSC in Nwokoro's case (*supra*) @ 32 A - B and submitted that the authority, rather than support the appellant's case, is against him.

On the test of fair hearing he referred us to the decision of this court in: *Okafor Vs A.G. Anambra State* (*supra*) @ 678 D per Omo JSC and submitted that in the instant case, a reasonable man, upon viewing the proceedings, would appreciate the fact that the court bent over backwards to accommodate the appellant despite the disruptive acts of his counsel. He also relied on: *M.M.S. Limited Vs Oteju* (2005) 4 NWLR (Pt.945) 517 @ 541 B - C; *Usani Vs Duke* (2006) 17 NWLR (Pt.1009) 610 @ 653 F - H.

As observed earlier, G.S. PWUL, SAN, learned counsel for the 3rd respondent aligned himself with the submissions of learned counsel for the 1st and 2nd respondents. He reiterated the contention that it was the appellant, through his counsel, who denied himself the right to fair hearing by refusing every opportunity given to him to present his case. He argued that this position was made manifest through the following acts of his counsel who:

a. Positively refused to proceed with his motion after the refusal of a request for adjournment, which was not anchored on any reason.

b. Threatened and intimidated both the learned justices of the Lower Court and the learned Senior Counsel for the 1st and 2nd Respondents.

c. Disrespectfully walked out of the court without leave.

He submitted that there is a plethora of judicial authorities to the effect that once the court has afforded a party the opportunity to be heard, the right to be heard is met. He referred to: *M.M.S. Limited Vs Oteju* (2005) 4 NWLR (Pt.945) 517 @ 541 A - D; E - H; *Newswatch Comm. Ltd Vs Attah* (2006) 12 NWLR (Pt.993) 144 @ 171 B - G; *Bill Const. Co. Ltd Vs Imani & Sons Ltd.* (2006) 19 NWLR (Pt. 1013) 1 @ 14 C - G; *Omo Vs J.S.C, Delta State* (2000) 12 NWLR (Pt 1008) 436 @ 456; *A.G. Rivers State Vs Ude* (2006) 17 NWLR (Pt,1008) 436 @ 456. He submitted further that fair hearing is not a technical term but a substantive and demonstrable or

visible phenomenon. That it is the impression of a reasonable bystander observing the proceedings. He submitted that in the case at hand, the Lower Court, despite the conduct of the appellant still bent over backwards to ensure that his brief of argument was considered, being mindful of the importance of his right to fair hearing. He referred to the proceedings of the day in question reproduced in the appellant brief and submitted that the appellant was wrong to contend that the Lower Court utilized a non-existent brief. He noted that what was struck out was the motion for extension of time, which the learned counsel refused to move, and not the respondent's brief. He noted that the brief which was separately filed, was neither withdrawn nor struck out. That the brief was found to have been filed three days out of time, an irregularity in filing which did not render it non-existent. He submitted that the Lower Court was right to consider the brief by relying on Order 20 Rule 3 of the Court of Appeal Rules 2011. He also distinguished the cases of Tunbi Vs Opawole (supra), Okonkwo Vs Okonkwo (supra) and Abubakar Vs FRN (supra) on the similar grounds as advanced by learned senior counsel for the in and 2nd respondents.

The appellant's reaction to the submissions on behalf of the respondents in his reply brief, is mainly a re-hash of the submissions made in the main brief. The only additional submission is the contention that the Lower Court ought to have sought the concurrence or otherwise of the appellant's (then 1st respondent's) counsel before applying the provisions of Order 20 Rule 3 of the Court of Appeal Rules.

The fundamental issue to be considered in the resolution of this issue is what is meant by fair hearing? The constitutionality of the right to fair hearing is not in doubt. Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

*"36 (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality."*

***It is also well settled that any proceedings conducted in breach of a party's right to fair hearing, no matter how well***

**conducted would be rendered a nullity.** See *Tsokwa Motors (Nig.) Ltd. Vs U.B.A. Plc*, (2008) All FWLR (Pt.403) 1240 @ 1255 A - B; *Adigun Vs A.G. Oyo State* (1987) 1 NWLR (Pt.53) 674; *Okafor Vs A.G. Anambra State* (1991) 3 NWLR (Pt.200) 59; *Leaders & Co. Ltd. Vs Bamaigi* (2010) 18 NWLR (Pt.1225) 329.

B There are several components to this definition including “*fair hearing*”, “*within a reasonable time*”, “*by a court or tribunal established by law*”, “*constituted in such a manner as to secure its independence and impartiality*”. For the purposes of this appeal the relevant consideration is what constitutes “*fair hearing*” and “*within a reasonable time*.” In the case of: *Amanchukwu Vs FRN* (2009) 2 SCNJ 33 @ 39 - 40 this court per Ogbuagu, JSC interpreted Section 33 (1) of the 1979 Constitution, which is in pari materia with Section 36 (1) of the 1999 Constitution (as amended) thus:

D “*Fair hearing within the meaning of Section 33(1) of the 1979 Constitution, means a trial conducted according to all legal rules formulated to ensure that justice is done to the parties. It encompasses not only the compliance with the rules of natural justice, but also audi alteram partem. It also entails doing in the course of trials, whether*  
 E *civil or criminal trial, all the things which will make an impartial observer, leave the court room to believe that the trial has been balanced and fair on both sides to the trial. See the case of Alhaji Isiyaku Mohammed Vs Kano Native Authority (1968) 1 ALL NLR 424 at 426; (1968) ALL NLR 411 at 413 where Ademola, CJN said inter alia as follows:*

F *‘It has been suggested that a fair hearing does not mean a fair trial. We think a fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing. The true test of a fair*  
 G *hearing, it was suggested by counsel, is the impression of a reasonable person who was present at the trial whether, from his observation, justice has been done in the case. We feel obliged to agree with this’ “.*

H In the case of *Pam & Anor. Vs Nasiru Mohammed & Anor.* (2008) 16 NWLR (Pt.1112) 1 @ 48 E - G the concept of fair hearing was explained by Oguntade, JSC as follows:

*“The question of fair hearing is not just an issue of dogma. Whether or not a party has been denied of his right to fair hearing is to be judged by the nature and circumstances surrounding a particu-*

*lar case. The crucial determinant is the necessity to afford the parties every opportunity to put their case to the court before the court gives its judgment. ... A complaint founded on denial of fair hearing is an invitation to the court hearing the appeal to consider whether or not the court against which a complaint is made has been generally fair on the basis of equality to all parties before it.*” B

His Lordship stated further at page 49 B - C (supra):

*“It is wrong and improper to approach the meaning of fair hearing by placing reliance on any a prior assumptions as to its technical requirements. The simple approach is to look at the totality of the proceedings before the court and then form an opinion on objective standards whether or not an equal opportunity has been afforded to parties to fully ventilate their grievance before a court.*” C

*The principle of fair hearing cannot be applied as if it were a technical rule based on prescribed pre-requisites. It seems sufficient satisfaction of the principle if parties were afforded an equal opportunity without any inhibition to put across their case.*” D

These principles shall now be applied to the instant case. Learned counsel for the appellant reproduced the proceedings of 8/10/2013 in paragraph 24 of his brief. They are found at pages 275 F E to 275 I of volume 3 of the record of proceedings. In order to properly appreciate what transpired before the Lower Court I find it appropriate to reproduce the said proceedings hereunder:

*“CHIEF J. K. GADZAMA SAN with him are Dr. (Sir) Amaechi Nwaiwu SAN, Paul Erokoro SAN, Prof. A. I. Chukwuemerie SAN, Ken O. Eke Esq., A. S. Akingbade Esq., S. C. Enwere Esq., Ekere E. Bassey Esq. and I. C. Achara for the Appellant* F

*PRINCE ORJI NWAFOR ORIZU Esq. for the 1st Respondent in the two Appeals with him is B. C. Igwilo Esq.* G

*CHIMA OGUEJIOFOR Esq for the Appellant in the 2nd Appeal and 2nd Respondent in the 1st Appeal with him is Ernest Nwoye Esq, C. Ezika Esq and I. Onuamah Esq.*

*ALHASSAN A. UMAR Esq for the 3rd Respondent in 695 and for 4th Respondent in 696. I appear with Tobechukwu Nweke Esq and I. O. Ezea Esq.* H

*MR. ORIZU: We filed our motion on 7/10/2013 for extension of time to file brief. I am asking for adjournment.*

*CHIEF GADZAMA: I ask the Court to refuse the application*

for adjournment.

MR. OGUEJIOFOR: *I opposed for adjournment (sic). I ask the Court to refuse it.*

MR. ALHASSAN: *I leave it to the Court.*

B COURT: *Application for adjournment is not automatic, there must be a cogent reason for it.*

*In this circumstance there is no such reason therefore it is refused. The Counsel may proceed with the motion.*

(SGD)

C M. L. TSAMIYA  
PRESIDING JUSTICE  
COURT OF APPEAL  
8/10/2013

ORIZU: *I will not proceed because with the motion (sic).*

D CHIEF GADZAMA: *I urge the Court to strike it out.*

MR. OGUEJIOFOR: *I urge the Court to deem the motion as abandoned.*

ALHASSAN: *We are neutral.*

E COURT: *Application filed on 7/10/2013 for extension of time to file brief is deemed as abandoned and is struck out.*

(SGD)

F M. L. TSAMIYA  
PRESIDING JUSTICE  
COURT OF APPEAL  
8/10/2013

MR. ALHASSAN: *We filed two applications on 4/10/2013 praying same i.e. extension of time to file 3rd Respondent's brief. I move in term (sic).*

G CHIEF GADZAMA: *No objection.*

PRINCE ORIZU: *No objection.*

MR. OGUEJIOFOR: *No objection.*

H COURT: *Order as prayed in the two applications. Time to filed 3rd Respondents brief extended to today. The 3rd Respondent brief extended filed on 4/10/2013 is deemed as properly filed and served.*

(SGD)

M. L. TSAMIYA  
PRESIDING JUSTICE

*COURT OF APPEAL*

*8/10/2013*

*CHIEF GADZAMA (SAN): We filed our appellants' brief on 30/9/2013. But before that I wish to draw the attention of the Court on the 2 pending motions of Preliminary objection filed on 7/10/2013 by 1st respondent, I urge the Court to call upon the Counsel to* B  
*either move or withdraw them.*

*COURT: The Respondent Counsel Prince Orizu deserted without the permission of this Court.*

*CHIEF GADZAMA: In view of the fact that the Counsel left* C  
*the Court without permission he seems to have abandoned the motion. I urge the Court to strike them out.*

*MR. OGUEJIOFOR: I urge the Court to strike out the motion for want of prosecution.*

*MR. ALHASSAN: I associate myself with the Learned* D  
*Counsel's submission.*

*COURT: The motion for leave to adduce additional evidence is struck out for want of diligent prosecution. So also Notice of Preliminary Objection.*

*(SGD)* E

*M. L. TSAMIYA*

*PRESIDING JUSTICE*

*COURT OF APPEAL*

*8/10/2013*

*MR. GADZAMA (SAN): We filed our appellants brief on 30/* F  
*9/2013. I adopt the entire brief and the Court to resolve all the issues in our favour. I urge the Court to allow the appeal set aside the judgment of the trial court and order INEC to publish the name of the 2nd Respondent Dr. Tony.* G

*Similarly I urge the Court to deem the 1st Respondent's brief as properly field in the interest of justice. I urge the Court to invoke O.20 r.10 of this Court Rules 2011.*

*COURT: Our attention has been drawn to the 1st* H  
*Respondent's brief filed on 7/10/2013.*

*The brief was filed out of time, 3 days for that time (sic). But in the interest of justice and in view of the conduct of his Counsel, I invoke order 20 Rule 10 (supra) and the brief is deemed as properly filed and served and argued.*

(SGD)

M. L TSAMIYA

PRESIDING JUSTICE

COURT OF APPEAL

8/10/2013"

B (Emphasis supplied)

Certain facts are relevant here. The record of proceedings from pages 275A up to 275F (where the portion reproduced above commenced) shows that the appellant (then 1st respondent) through his counsel, PRINCE ORJI NWAFOR ORIZU had filed several applications before the Lower Court the previous day i.e. 7/10/2013. One of the applications sought an order disqualifying J. K. Gadzama, SAN and his legal team from continuing to prosecute the appeal on the ground that his clients had withdrawn his brief. After moving the application, PRINCE NWAFOR ORIZU sought an adjournment on the ground that he required time to react to the counter affidavit served on him by Chief Gadzama, SAN. The application for adjournment was refused. After considering the responses of all counsel involved in the matter on the merit the court struck out the application for being incompetent having been filed in contravention of Order 7 Rule 1 of the Court of Appeal Rules 2011 and paragraph 5 (a) of the Practice Directions 2013. Alternatively the application was dismissed for lacking merit. Another application sought the disqualification of the Hon. Justices of the Lower Court on grounds of bias. It was dismissed. After the disposal of the two applications the following transpired:

"Mr. ORIZU: I wish to inform the court that 6 Justices have gone because of this matter between these parties that Gadzama did not know the person he is dealing with.

MR. OGUEJIOFOR: I heard him saying so.

MR. PAUL EROKORO (SAN): I heard what Prince Orizu said in this court.

ALHASSAN UMAR: I heard what Orizu said and it is true he said it.

COURT: This threat to our lives and the lives (sic) of a Learned Senior Counsel is serious and should not be taken lightly. Accordingly since ourselves and the Bar belong to a noble profession we are reporting this threat to the appropriate body of our profession for

*disciplinary action rather than reporting the matter to the Police.*

*(SGD)*

*M. L. TSAMIYA*

*PRESIDING JUSTICE*

*COURT OF APPEAL*

*8/10/2013*

B

*PRINCE: I wish the Court to excuse me to go away.*

*COURT: Since the Counsel is holding the brief of his client and his client is not present it is not right to allow him to abandon the case moreover the application is oral. Application to go out of court is refused. The counsel may proceed.*

C

*(SGD)*

*M. L. TSAMIYA*

*PRESIDING JUSTICE*

*COURT OF APPEAL*

*8/10/2013"*

D

It was after this exchange that the appellant's (then 1st respondent's) counsel introduced his application for enlargement of time to file his brief and immediately requested an adjournment without giving any reason. The Court refused the application and directed learned counsel to proceed with the application. He refused to do so. It was on this basis that the application was deemed abandoned and struck out. After attending to some other pending applications, the court's attention was drawn to an application for leave to adduce additional evidence and a notice of preliminary objection also filed on behalf of the 1st respondent the previous day. Chief Gadzama SAN urged the court to call upon the 1st respondent's counsel to move or withdraw the motions. It was at this stage that the court noted that Prince Orizu had deserted the court without permission. He was deemed to have abandoned the said processes and they were accordingly struck out. The Court then proceeded to hear the appeal.

E

F

G

There is no doubt that learned counsel for the appellant (then 1st respondent) tested the patience of the Lower Court to its limits. This is bearing in mind the fact that time was of the essence in the proceedings with the Anambra State Gubernatorial election scheduled to hold in about a month's time. The court also realized that unless it exercised its discretion under the Court of Appeal Rules in

H

favour of the 1st respondent, he would be denied the opportunity of being heard. The application that was struck out was filed to regularize the filing of the 1st respondent's brief that was already part of the court's record although filed out of time. Having been filed as a separate process, it remained part of the court's record unless specifically  
 B struck out by the court. The striking out of the application for extension of time did not extend to the brief that had been filed separately. It would have been a different matter if the only brief before the court had been attached to the application as an exhibit. In that case  
 C its fate would have been tied to the application. In the instant case the necessary filing fees had been paid for the separately filed brief. See pages 272 and 231 of volume 3 of the record of proceedings.

Order 20 Rule 3 (1) and (2) of the Court of Appeal Rules 2011 (not Order 20 Rule 10 erroneously cited by Chief Gadzama,  
 D SAN at the Lower Court) provides:

*"3 - (1) The Court may in exceptional circumstances, and where it considers it in the interest of justice so to do, waive compliance by the parties with these Rules or any part thereof.*

*(2) Where there is such waiver of compliance with the Rules,*  
 E *the Court may, in such manner as it thinks right, direct the Appellant or the Respondent as the case may be, to remedy the noncompliance or may, notwithstanding order the appeal to proceed or give such directions as it considers necessary in the circumstance."*

In employing the above provisions the Lower Court had two  
 F considerations. The first was the nature of the appeal before it. It was an election related matter in which time was of the essence. The appellant counsel was clearly employing delay tactics secure in the knowledge that his client's name had been forwarded to the 4th respondent as the candidate for the election, which status quo would remain if the appeal was not determined before November 16, 2013.  
 G Secondly, having filed a brief of argument, albeit out of time, the right of the party whose counsel had unceremoniously walked out of the court not to be shut out but to have the appeal determined on its  
 H merits. There has been no complaint throughout the submissions on behalf of the appellant before us that the brief deemed adopted and relied upon by the Lower Court was not the brief the then 1st respondent intended to rely on. It is thus not correct, as submitted by Learned Senior Counsel for the appellant, that the appeal was heard

on a non-existent brief. In further proof of the fact that the Lower Court leaned over backwards to accommodate the 1st respondent notwithstanding the most unbecoming behaviour of his counsel, it refrained from imposing any penalty for the lateness in filing the brief provided for in Part II of the Third Schedule of the Rules of that court, as it was entitled to do under Order 20 Rule 3 (2). Having B  
waived compliance with the rules on the time for filing the brief of argument, the court was entitled to deem the 1<sup>st</sup> respondent as having argued the appeal based on the said brief in accordance with the provisions of Order 18 Rule 9 (4) of the Rules. See: Nwokoro Vs C  
Onuma (1990) 3 NWLR (Pt.136) 22 @ 32 A - B.

I agree with learned counsel for the respective respondents that the facts of Tunbi Vs Opawole (supra), Okonkwo Vs Okonkwo (supra) and Audu Vs FRN (supra) are distinguishable from the facts of this case. In the instant case, as opposed to the situation in Tunbi's D  
and Okonkwo's cases, there was no other brief before the court other than the one utilized. The brief, separately filed was never deemed abandoned. It was the motion that was deemed abandoned. Audu's case (supra), is inapplicable in the instant case because it was the appellant's counsel who had been served with the 1st respondent's E  
brief who applied that the brief be deemed properly filed in the interest of justice, in order for the hearing of the appeal to proceed. If he required time to file a reply thereto he would have made the request.

The view expressed by Tobi, JSC in Inakoju Vs Adeleke (2007) F  
4 NWLR (Pt.1025) 427 @ 621 - 622 G - A is quite apposite to the facts of this case. His Lordship opined thus:

*"I said it in the past and I will say it again that the duty of the court, trial and appellate, is to create the atmosphere or environment for a fair hearing of a case but it is not the duty of the court to make G  
sure that a party takes advantage of the atmosphere or environment by involving himself in the fair hearing of the case. A party who refuses or fails to take advantage of the fair hearing process created by the court cannot turn around to accuse the court of denying him fair H  
hearing. After all, there is the adage that the best the owner of the horse can do is to take it to the water, he cannot force it to drink the water. The horse has to do that itself and by the act of sipping. If the horse is unwilling to sip, that ends the matter. The horse will not blame anybody for death arising from the lack of water or hydrate."*

***The facts and circumstances of this case show that there was no denial of the appellant's right to fair hearing. The court went over and beyond the call of duty to ensure that justice was done to both sides within a reasonable time. This issue must therefore be and is hereby resolved against the appellant.***

## ISSUE 2

Under this issue learned Senior Counsel for the appellant submitted that the reasoning of the court below was that the plaintiff's claim did not fall within the ambit of Section 87 (9) of the Electoral Act 2010 (as amended) (henceforth referred to as the Electoral Act), as a complaint of breach of party guidelines relating to primaries leading up to an election, such as in the instant case, is a 'pre-primary issue' and therefore not justiciable. He contended that the reasoning is erroneous and faulty. He submitted that the appellant complaint that the 3rd Respondent paid irregular taxes is a complaint rooted in the guidelines of the 1st Respondent. He submitted further that the Appellant had fulfilled all the relevant conditions necessary to bring an action under Section 87 (9) of the Electoral Act, namely: (i) that there was a primary for the selection or nomination of a candidate by a political party; (ii) that the primary was in respect of an election; (iii) that the complainant must have been an aspirant in his party's primaries and (iv) that the said party did not comply with a provision of the Electoral Act or its guidelines for the selection carried out.

He submitted that there is common ground among all the parties that there was a primary election conducted by the 1st Respondent on 24/8/2013 for the selection or nomination of its candidate for the Anambra State Governorship Election scheduled to hold on the 16th day of November, 2013, wherein the appellant and the 3rd Respondent herein were aspirants. He submitted further that it is equally not in doubt that the complaint of the appellant was that a provision of the 1st respondent's guidelines (Article 14 (a)) was not complied with in the selection or nomination of the 3rd Respondent. He set out the provision of Article 14 (a) of the peoples, Democratic Party (PDP's) Guidelines, which states:

*"An aspirant to the gubernatorial primary election shall not be qualified to be nominated to contest the primary election if he/she fails to produce his Personal Income Tax Certificate or any evidence*

*that he has paid his income tax as at when due for the last three years or evidence of exemption from payment of Personal Tax.”*

Learned senior counsel argued that the court below erred in compartmentalizing complaints referred to in Section 87(9) of the Electoral Act into questions of eligibility and qualification to contest in primary elections. He contended that the section relates to the entire process leading to the primaries as well as the actual conduct of the primaries. He submitted that the Electoral Act is explicit in the grant of jurisdiction to the Federal High Court in respect of such matters and that the court would not shut its eyes to any non-compliance but would intervene to determine or remedy the infraction. He relied on the decision of this court in: *Uwazurike Vs Nwachukwu* (2013) 3 NWLR (Pt.1342) 503 @ 530 C - D and 523 G. He also referred to *Uzodinma Vs Izunaso* (2011) 17 NWLR (Pt.1275) 60 per Rhodes-Vivour, JSC. He submitted that the facts of this case are identical with those in *Uzodinma Vs Izunaso* (Supra); that the issue in that case was whether the appellant was properly cleared to contest the primaries of his political party. He submitted that the court below erred in applying the decision to the facts of the instant case. He submitted that it is only where a political party conducts its primaries in strict compliance with either the Electoral Act or its party guidelines, that the jurisdiction of the court under section 87(9) of the Electoral Act would be ousted. He argued that even in that case, a disgruntled aspirant is not shut out from approaching the court to redress a perceived wrong rooted in the breach of the party's guidelines. He submitted that in this case the Peoples' Democratic Party (PDP) failed to comply with Article 14 (a) of its party guidelines in arriving at its choice of the 3rd Respondent as its candidate for the said election thereby giving the court jurisdiction to inquire into the alleged noncompliance to ascertain the claim or otherwise. He urged the court to resolve this issue in the appellant favour.

In response, CHIEF GADZAMA, SAN, learned Senior counsel for the 1st and 2nd respondents submitted that the Lower Court rightly held that the trial court lacked jurisdiction to entertain the appellant's (then plaintiff's) originating summons and that the orders made by that court were incompetent. He submitted that the PDP Electoral Guidelines for Primary Election 2010 (henceforth referred to as the 1st respondent's guidelines) in their entirety are regulatory

provisions for the eligibility and qualification of aspirants to participate in and contest the party's gubernatorial primary election. He submitted that it is an intra-party matter over which the Federal High Court had no jurisdiction. He submitted that the wordings of Section 87 (9) of the Electoral Act are unambiguous and must therefore be given their natural and literal interpretation or meaning. He referred to: *Uwazurike Vs Nwachukwu* (2013) 2 NWLR (supra) @ 528 F. He submitted that by the ordinary, literal and natural meaning of Section 87(9) of the Electoral Act 2010 (as amended) the courts have jurisdiction to entertain complaints of aggrieved aspirants arising from the conduct of primary elections but only when there was non-compliance with the provisions of the Act or Electoral Guidelines and not in respect of any other issue or matter that may arise from the provisions of the political party's electoral guidelines or constitution, such as the eligibility of an aspirant to contest the primary election, as was the case at the trial court.

He submitted that in interpreting Section 87(9) of the Electoral Act the courts have held in a plethora of cases, that where a political party conducts primaries and a dissatisfied contestant complains about the conduct of the primaries, the courts have jurisdiction to examine whether the primaries were conducted in accordance with the Electoral Act, the constitution and guidelines of the party. He cited several cases in support: *Emeka Vs Okadigbo* (2012) 18 NWLR (Pt.1331) 55 @ 88-89 per Rhodes-Vivour JSC; *PDP Vs Sylva* (2012) 13 NWLR (Pt.1316) 85 @ 126 C; *Uwazurike Vs Nwachukwu* (supra); *Uzodinma Vs Izunaso (No.2)* (2011) 17 NWLR (Pt.1275) 30. He submitted that the jurisdiction conferred by Section 87 (9) does not extend to the process of screening aspirants in terms of eligibility for the primary election, as occurred in this case. He submitted that the complaint of the appellant (plaintiff at the trial court and 1st respondent at the Lower Court) is on eligibility, which could only have arisen during the screening process before the conduct of the primaries. He argued that the jurisdiction of the trial court to entertain same was thus lacking since the complaint did not arise from the conduct of the primaries held on August 24, 2013.

He submitted that aggrieved aspirants or candidates must avail themselves of the internal dispute resolution mechanism set up by the party's constitution and the guidelines of the political parties

for the purpose. He referred to: Nyako Vs Ardo (2013) (citation not provided but reported in (2013) LPELR - 20848 CA) per Ignatius I. Agube JCA citing with approval Lado v. C.P.C. (2012) All FWLR (Pt.607) 598 @ 623 G - H to 624 A; 627 F - H; 638 A - G; Emenike v. PDP (2012) 12 NWLR (Pt.1315) 556; Onuoha v. Okafor (1983) 2 SCNLR 244; Okadigbo v. Emeka (2012) 18 NWLR (Pt.1311) 237; Uzodinma v. Izunaso (No.2) (supra).

He submitted that subsection (9) of Section 87 of the Electoral Act must not be read in isolation but together with other subsections and must be interpreted and construed to relate only to procedures laid down for the conduct of primary elections and not generally to apply to every other provision of the Act. He submitted that the opening clause of the subsection (9) which reads,

*“Notwithstanding the provisions of the Act or rules of a 29 political party...”* should be construed to apply to provisions of the Act and party guidelines bordering on the conduct of primary elections for the nomination or selection of party candidates. In support of this submission he relied on: NDIC Vs Okem Enterprises (2004) 10 NWLR (Pt.880) 107 @ 182 H per Uwaifo JSC. He submitted that the effect of the use of the word. *“notwithstanding”* in the opening clause of Section 87(9) of the Electoral Act (supra) is to limit or make subordinate to the aggrieved aspirant’s right of recourse to a court of law, any other alternative source for such an aspirant to ventilate his grievance(s) arising from the conduct of a primary election as may be provided either by the Act or the guidelines or rules of a political party. He submitted that the said Section 87(9) has no relevance or application to Article 14(a) of the PDP Electoral Guidelines, which formed the crux of the appellant’s complaint at the trial court. He contended that the trial court was, thus wrong in construing Section 87(9) of the Electoral Act as applying to and incorporating the applicant’s complaint on eligibility of the 3rd respondent to participate in the gubernatorial party primaries of August 24, 2013.

Learned senior counsel submitted that by participating in the election, the appellant had waived his right to any complaint he might have had against the 3rd respondent’s qualification. He maintained further that his participation in the election was an indication that he had nothing against the 3rd respondent’s aspiration. He referred to Section 169 of the Evidence Act 2011; Joe Iga & Ors Vs Ezekiel

Amakiri & Ors (1976) 11 SC 1 @ 12 & 13 and Shell Petroleum Development Company Nig. Ltd. Vs Edamkue (2009) 14 NWLR (Pt.1160) 1 @ 27 B-D on estoppel by conduct.

Learned senior counsel submitted that based on the outcome of the primaries conducted by the 1st respondent, it issued a certificate of return to the 3rd respondent and submitted his name to the 4th respondent for the Anambra State Governorship Election as its flag bearer and that the effect in law is that the 4th respondent is bound by the list submitted and the 1st respondent cannot retract it or substitute the name of the 3rd respondent with any other name unless the 3rd respondent withdraws his candidature or dies. He submitted that this is the purport of Sections 31(1), 33 and 35 of the Electoral Act 2010 (as amended). On the interpretation of the sections he referred to: Uwazuruike Vs Nwachukwu (supra) @ 527-528 D H - C; 532 C - H. He submitted that nobody can question a party on who to choose as its candidate, not even the court. He relied on: Emeka Vs Okadigbo (2012) 18 NWLR (Pt.1331) 55 @ 98 D - C and 104 E; Eyiboh Vs Abia (2012) 16 NWLR (Pt.1325) 51 @ 87 E - F; PDP v. Sylva (2012) 13 (Pt.1316) 85 @ 125 C & 146 B - E; Emenike E Vs PDP (2012) 12 NWLR (Pt.1315) @ 599 F - G.

He submitted that where an action is predicated on a non-justiciable subject matter the court has no jurisdiction to entertain it and it is liable to be dismissed in limine. He referred to: Emenike Vs PDP (supra) @ 597 per Chukwuma-Eneh JSC citing with approval F Okolo Vs Union Bank of Nigeria Ltd. (2004) 3 NWLR (Pt.859) 87; Ikweki Vs. Ebele (2005) 11 NWLR (Pt.936) 297; Abiola v. Olawoye (2006) 13 NWLR (Pt.996) 1.

Learned senior counsel submitted in conclusion that when a G court lacks the jurisdiction to hear a suit and it goes ahead to determine same no matter how well conducted, the entire proceedings and the judgment would amount to a nullity. He relied on: Emeka Vs. Okadigbo (supra) @ 83 E - F per Rhodes-Vivour JSC, citing with approval Bronik Motors Ltd. Vs Wema Bank Ltd. (1983) 1 SCNLR H 296; Okoya Vs Santili (1990) 2 NWLR (Pt.131) 172; A.G. Federation Vs Sode (1990) 1 NWLR (pt.128) 500 and Osafire Vs Odi (No.1) (1990) 3 NWLR (Pt.137) 130. He urged the court to resolve this issue against the appellant.

G.S. PWUL, SAN, learned senior counsel for the 3rd respon-

dent reiterated the facts that led to the institution of the originating summons before the trial court, which are largely undisputed, and submitted that the appellant's submissions are based on a misconception that the cause of action hinges on a breach of Article 14 (a) of the 1st respondent's guidelines. He contended that the appellant did not seek the interpretation of Article 14 (a) of the guidelines so as to determine the qualification to contest the primary election, having regard to the fact that the originating summons was filed on 28/8/13, four (4) days after the primary election and emergence of the 3rd Respondent as the winner thereof. He submitted that filing an action after the primary election cannot be used to achieve the purpose of preventing or disqualifying the 3rd Respondent from contesting the said concluded primary election. He noted that the power to deal with clearance is vested in the screening committee in the first instance. He referred to Article 16 (c) of the 1st respondent's guidelines, which he noted, is subject to the decision of the screening appeal committee as provided for in Article 16 (d). He noted further that Article 16 (f) provides thus:

*"Only aspirants cleared by gubernatorial screening committee or whose appeal the gubernatorial screening appeal panel has upheld shall be qualified to participate in the primary election."*

He submitted that the 3rd Respondent was disqualified by the screening committee on 6/8/13 but cleared by the screening appeal panel on 14/9/13.

He referred to pages 860 - 864 of Volume 1 of the record of proceedings and submitted that the clearance of the 3rd respondent by the appeal panel of the 1st Respondent has finally stamped a seal of approval on the 3rd Respondent. He relied on: Tukur Vs Uba (2013) 4 NWLR (pt.1343) 90 @ 135. He contended that it is significant that the appellant did not seek to set aside the clearance issued to the 3'd Respondent prior to or even after his contest and victory at the primary election. He submitted that with a valid clearance and victory the 3rd Respondent had gone beyond the application of Article 14 (a), which is a pre-qualification requirement for the primary.

Learned senior counsel noted that this court has held that the jurisdiction created by Section 87 (9) of the Electoral Act, 2010 is statutory and very limited in scope and that Section 87 (9) is structured on Section 87 (4) (b) and (c) which provides that the aspirant

with the highest number of votes at the end of the voting “*shall be declared the winner of the primaries of the party and the aspirant name shall be forwarded to the Independent National Electoral Commission as a candidate of the party.*” He submitted that it is not the intendment of section 87 (9) to take away the victory from the person with the highest vote but to protect the person who won. He relied on the recent decision of this court in: Lado Vs CPC (2011) 18 NWLR (Pt.1279) 689 @ 717-718; (2012) ALL FWLR (Pt.607) 598 @ 622 - 623; Emenike Vs PDP (2012) 5 SCNJ (Pt. II) 373 @ 399, He submitted that the right to clear or nominate a person to contest an election is vested in the political party and has not been taken away by Section 87 (9) of the Electoral Act or any other statute. He referred to: Uzodinma Vs Izunaso (Supra). He submitted that since the 3’d Respondent was cleared following which he contested the primary election, unless and until the clearance is successfully challenged or set aside, his victory cannot be undermined or subverted by asserting, as the appellant has done, that he was not qualified to contest the primary election. He reiterated the fact that there is no challenge to the clearance issued on 14/8/13 even though the suit was instituted on 28/8/13. In conclusion he submitted that it would be unjust and undemocratic to take victory away from the 3rd respondent who was chosen by the majority of voters and give it to the appellant who was defeated on the merit of the votes cast at the primary election. He urged the court to resolve this issue against the appellant and in favour of the 3rd respondent.

In his reply brief, J. B. DAUDU, SAN distinguished some of the authorities relied upon by the respondents. He submitted that in PDP VS Sylva (supra) the 1st respondent’s (Governor Sylva’s) complaint was against his party’s decision not to allow him to contest the primaries. He submitted that this court held that his complaint was not justiciable because he was not an aspirant. He noted that in the present case the appellant was an aspirant. He further submitted that in Emeka Vs Okadigbo (supra) there were two parallel primary elections, one by the National Executive of the party and the other by the State Executive and that this court held that it is prerogative of the political party to identify which of the primaries was organized by the party and that the other primary election was invalid and any action by a candidate from the illegal primary was not justiciable. He

noted once again that this is not the situation in the instant appeal.

He submitted that the main issue in contention in this appeal is the complaint by the appellant that the 1st and 2nd respondents did not comply with the provisions of Article 14 (a) of the party's guidelines in the selection or nomination of the 3rd respondent as the gubernatorial candidate of the party in the Anambra State Governorship election slated for 16th November 2013 and not the conduct of the said primary election. He submitted that there is nowhere in Section 87 (9) of the Electoral Act where the word "conduct" is expressly mentioned and therefore the reliance placed on the word "conduct" by the 1st and 2nd respondents to argue that the court lacks jurisdiction to inquire into a complaint brought by an aspirant relying on the said provision is grossly misconceived. He cited several authorities wherein this court has held that the courts have jurisdiction to entertain matters brought under Section 87 (9) of the Act. He submitted that it cannot be correct to argue that it lies within the powers of a political party to pick and choose which of its guidelines a court can consider in order to determine whether it is acting with impunity or arbitrarily upon the complaint of an aggrieved aspirant. He submitted that under Section 87 (9) of the Act, the selection or nomination of a candidate envisaged under the Act and guidelines of a political party is a process and not just the culminating event. He submitted that this is made clear by Article 14 of the 1st respondent's guidelines, which provide preconditions to be satisfied by aspirants seeking nomination such as the requirement that an aspirant must have paid his taxes for three years preceding the election as and when due. He submitted that the original jurisdiction conferred on the High Court or Federal High Court is to check the impunity and arbitrariness of the political parties.

By his originating summons filed on 28/8/2013 the appellant therein (then plaintiff) at the trial court sought the determination of the following question:

*"Whether having regards to Section 87 of the Electoral Act, 2010 (as amended), paragraph 4 (a) of Part IV of the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party (PDP) and Exhibits C D, E & F before the Honourable Court, the 1st Defendant was qualified to participate and or take part in the gubernatorial primary election conducted by the 2nd Defendant (PDP) for*

*the selection of its candidate for the Anambra State Governorship Election scheduled to hold on November 16, 2013 or any other date?”*

In the event that the question was answered in the negative the appellant sought inter alia:

B (1) *“A DECLARATION that based on the dictate of paragraph 4 (a) of Part IV of the Electoral Guidelines for Primary Elections 2010 of the Peoples’ Democratic Party (PDP), the 1st Defendant (Dr. Tony Nwoye) was not eligible to participate and or take part in the Gubernatorial Primary Election conducted on the 24th day of August, 2013 by the 2nd Defendant for the selection of its candidate for the Anambra State Governorship Election scheduled to hold on November 16, 2013 or any other date.*

C (2) *A DECLARATION that by virtue of Section 87 of the Electoral Act 2010 (as amended), the plaintiff, being the only qualified aspirant of the 2nd Defendant that scored the highest number of valid votes cast at the party’s Gubernatorial Primary Election held on August 24, 2013, is the duly elected candidate of the Peoples’ Democratic Party (PDP) to contest for the Anambra State Governorship Election Scheduled to hold in November 16, 2013 or any other date.”*

He also sought various injunctive reliefs against the 3rd respondent herein (then 1st respondent). A careful perusal of paragraphs 3 - 7 of the affidavit in support of the originating summons reveals that the appellant’s complaint was that the 1st respondent failed to comply with its guidelines in the selection or nomination of the 3rd respondent as its candidate for the Anambra State Governorship election scheduled for 16/1/2013, having regard to the fact by Article 14 (a) of the said guidelines an aspirant who failed to produce his personal income tax certificate or failed to show that he had paid his income tax as and when due for the last three years preceding the primary or failed to provide proof of exemption, was liable to be disqualified from participating in the said primary. See pages 5 - 7 of Volume 1 of the record and Exhibit G (1st respondent’s guidelines) attached to the originating summons.

Section 87 (9) of the Electoral Act 2010 (as amended) provides:

*“87 (9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions*

*of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or the High Court of a State, for redress.” (Emphasis mine)*

***The golden rule of interpretation of statutes is that where the words used are clear and unambiguous they must, prima facie, be given their natural and grammatical meaning unless it would lead to absurdity.*** See: Ugwu Vs Ararume (2007) ALL FWLR (Pt.377) 807 @ 884 A - D; Marwa Vs Nyako (2012) 1 SC (Pt. III) 44; Nafiu Rabiun Vs The State (1980) 8 - 11 SC 130 @ 149.

***In the realm of electoral matters it has been held in a plethora of decisions of this court that the membership of a political party or the sponsorship of a candidate at an election is internal affairs of the party and therefore not justiciable.*** See Onuoha Vs Okafor (1983) 2 SCNLR 244; (1983) NSCC 494. ***However, the absolute powers of political parties in relation to the nomination of their candidates were curtailed slightly by the introduction in the Electoral Act 2006 of section 34, which made specific provisions for a political party wishing to substitute or change a candidate whose name had already been forwarded to INEC to inform the electoral body of such change in writing not later than 60 days to the election and must give cogent and verifiable reasons for the intended change except in the case of death of the party or his withdrawal.*** See: Lado Vs C.P.C. (2012) ALL FWLR (Pt.607) 598 @ 622 - 623 F - H; (2011) 12 SC (Pt.III) 113 @ 139 - 140, per Onnoghen, JSC. His Lordship noted that the provision was designed to bring sanity to an otherwise chaotic situation hitherto existing in the electoral system whereby the political parties could arbitrarily change candidates even on the eve of the election. He stated further:

*“It is however, very important to emphasize the point here that Section 34 of the Electoral Act, 2006, did not interfere with nor did it alter or modify the principle that the question as to who is a candidate of a political party for any election is a political question within the domestic jurisdiction of political parties and consequently not justiciable. What Section 34 did was to restrict the power of the political parties to change or substitute their candidates at will and at any time. However the present Electoral Act, 2010 (as amended) does*

*not contain any provision for substitution or change of a nominated candidate once the nomination is made.”*

On the applicability of Section 87 (9) of the Electoral Act he stated thus:

B *“In the present Electoral Act, Section 87 deals with the process leading to the nomination of a candidate by a political party for any election and provided in subsection (4) (b) (ii) and (c) (ii) that the aspirant who emerges at the primaries with the highest number of votes “shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the Independent National Electoral Commission as the candidate of the party,” whether*  
C *the nomination relates to the office of Governorship of a State, Senatorial or House of Representatives or State House of Assembly seats, respectively.*

D ***The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the purview of section 87 (4) (b) (ii); (c) (ii) and (9) of the Electoral Act, 2010 (as amended) supra. It is only if he can come within the provisions of those***  
E ***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: that power still resides in the political parties to exercise. The enactment is not designed to encourage factions***  
F ***emerging from the political parties with each electing its candidate but claiming same to be candidates of the political party concerned. (Emphasis mine)***

***The point being made by this court is that section 87(9)***  
G ***of the Electoral Act is very narrow in scope as to the jurisdiction exercisable by the courts. The literal interpretation of Section 87 (9) of the Electoral Act is that an aspirant has a right to complain where the provisions of the Electoral Act and/or the guidelines of a political party have not been complied with in the selection or nomination of a candidate for election. He may exercise the right to seek redress notwithstanding the provisions of the said Act or rules of a political party. In other words no provision of the Electoral Act or any***  
H ***rule of a political party can take away this right. However, the***

**provision is not at large. The complainant must be an aspirant who participated in the primary that produced the sponsored candidate.** See *Uwazurike Vs Nwachukwu* (2013) 3 NWLR (pt.1342) 503 @ 526 E - G.

With regard to the Governorship, Senatorial, National or State House of Assembly elections, an aspirant is a person who comes within the purview of Section 87 (4) (b) (ii), (c) (ii) of the Electoral Act, which provide:

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

*(b) in the case of nomination to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates -*

*(ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries and the aspirant name shall be forwarded to the Commission as the candidate of the party, for the particular State.*

*(c) in the case of nomination of a candidate to the positions of Senate, House of Representatives and State House of Assembly, a political party shall, where it intends to sponsor candidates -*

*(ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries and the aspirant’s name shall be forwarded to the Commission as the candidate of the party.”*

In the case of *PDP VS Sylva* (2012) 13 NWLR (Pt.1316) 85 @ 148 C - D; 149 A - E, it was held that the 1st respondent, TIMIPRE SYLVA, not having been screened by his party for its primaries and not having participated therein, failed to bring himself within the ambit of Section 87 (9) of the Electoral Act. He had been excluded from the primary and therefore was not an aspirant. It was held that he had no locus standi to institute an action relying on Section 87 (9) of the Act. In *Lado’s case* (supra), it was held that where different factions of a political party hold two separate primaries and there is a dispute as to which of the two primaries produced the nominated candidate the dispute would not be justiciable as it does not fall within the purview of Section 87 (4) (b) (ii) and (c) (ii) of the Electoral Act. It was for this reason that suit at the trial court, the appeal to the

Court of Appeal and the appeals to this court arising therefrom were struck out on the ground that the courts lacked jurisdiction to entertain the matter. However, it is a different matter where a political party nominates a candidate for an election contrary to its own guidelines. In the case of *Uzodinma Vs Izunaso (No.2) (2011) 17 NWLR* B (Pt.1275) 30 @ 60 C - E, His Lordship, Rhodes-Vivour, JSC had this to say:

*“But where the political party nominates a candidate for an election contrary to its own constitutional guidelines, a dissatisfied candidate has every right to approach the court for redress. In such a situation, the courts have jurisdiction to examine and interpret relevant legislations to see if the political party complied fully with legislation on the issue of nomination. The courts will never allow a political party to act arbitrarily or as it likes. Political parties must obey their own constitution and once this is done there would be orderliness and this would be good for politics and the country.”*

Learned senior counsel for the 1st and 2nd respondents has argued that the plaintiff's case at the trial court was predicated on eligibility to contest, which could only have arisen during the screening process before the conduct of the primaries. In other words he contended that Section 87 (9) of the Electoral Act only confers jurisdiction on the court where the complaint is in respect of the conduct of the primaries and is not applicable to the screening process that takes place before the primaries. I agree with learned counsel for the appellant that there is not such distinction in the provision. So long as there is a complaint that the party's guidelines were not followed in the selection process, as in this case, and the complainant is an aspirant, the courts would have jurisdiction to entertain the matter.

The contention on behalf of the 1st - 3rd respondents, that it is too late in the day for the appellant to complain having participated in the primary or that the clearance and victory of the 3rd respondent and the forwarding of his name to the 4th respondent as the 1st respondent's candidate had taken the matter beyond Article 14 (a) of the 1st respondent's guidelines, is with respect to learned senior counsel, misconceived. This court held in: *Uwazurike Vs Nwachukwu (supra) @ 522 G and 533 A - B* that Section 87 (9) of the Electoral Act operates independently and is therefore neither limited to time nor circumscribed between the holding of the primary

election and the submission of the name of the sponsored candidate by the political party concerned. However, as emphasized earlier, the scope of the application of the section is very limited. Once the court is satisfied that the guidelines were followed, that would be the end of the matter. The court cannot inquire into the ultimate decision reached by the party as to which candidate to sponsor after following its own guidelines. B

The effect of all that I have been saying is that having regard to the fact that the appellant was an aspirant who participated in the primary election held on 24th August, 2013, the trial court had jurisdiction under Section 87 (9) of the Electoral Act, 2010 (as amended) to entertain the originating summons complaining of non-compliance with the 1st respondent's guidelines for party primaries in the selection and or nomination of the 3rd respondent for the Anambra State Governorship election scheduled for 16th November, 2013. D This issue is accordingly resolved in the appellant's favour. It was for this reason that I allowed the appeal in part.

It is however important to note that although the Lower Court resolved the issue of jurisdiction (issue 1) against the appellant, out of abundance of caution and conscious of the fact that it is not the final court, it also considered the merits of the appeal. It considered issues E 2 and 3 together.

The issues are:

2. Whether the trial Court rightly disqualified the 2nd respondent (3rd respondent herein) on the basis of alleged breach of clause 14 (a) of the Electoral Guidelines for Primary Election, 2010 of the Peoples Democratic Party. F

3. Whether the Court was right to have entered judgment for the 1st respondent in the originating summons proceedings without properly and dispassionately considering the affidavit evidence of the appellants and documentary exhibits attached thereto. G

At pages 301 - 302 of Vol. 3 of the record the Lower Court held thus:

*"In the instant case, it is evidently clear that the issue of tax of the 2nd respondent was resolved by the appeal panel in the screening exercise. The learned trial Judge was not called for judicial review of the screening panel's report. The appeal panelists had satisfied themselves that the tax profile of the 2nd respondent was alright and H*

*had cleared him for the primaries. That is where it ought to and should stop. The Courts have in the cases of Lanto Vs Wowo (supra) and Ikumola Vs Ige (supra) laid out conditions for proof of tax where that is a requirement That is proof of failure to pay tax as and when due:*

- B *a. That the person earned a taxable income during the period in question;*
- b. That there was a proper assessment of the tax covering that period;*
- C *c. That notice of assessment was served on the person to pay his tax and he defaulted; and*
- d. That the person failed to pay tax assessed within two months after the service of notice of assessment.*

*The learned trial Judge in his judgment did not call on the D plaintiff to prove allegation that the tax was not paid as and when due and there is no evidence from the affidavit in support of the originating summons to establish systematically the ingredients of proving that tax was not paid as and when due. There is therefore no basis for the Lower Court to act on that issue of tax and prohibit the E 2nd respondent who genuinely won the primary election conducted by the appellants.*

*From the record of appeal at pages 182 - 211; 829 - 847 and 499 to 515, there were apart from the affidavit in support of the originating summons, the appellants' counter affidavit, further-further affidavit and about 8 documentary exhibits. There was clearly F an uncontroverted evidence that the 1st respondent although was not cleared by the screening panel, was subsequently cleared by the G Gubernatorial screening Appeal panel after he presented his tax receipts. He contested the primary and won with 498 votes. These facts were not in any way controverted yet the trial court made findings for the 1st respondent and declared him the Governorship Candidate for the PDP for the Anambra State Governorship Election scheduled for November 16th, 2013. Those findings made by the H trial court are perverse. The trial court was therefore not right to have entered judgment for the 1st respondent in Appeal No. CA/PH/695/2013.*

*It is from the foregoing that I come to the conclusion that the decision of the Lower Court in Suit No. FHC/PH/CS/296/2013 be*

*set aside and it is hereby set aside along with all the orders made therein.*

*This appeal succeeds. I allow the appeal and I order as follows: -*

(1) *“That the Judgment of the Federal High Court in Suit No.FHC/PH/CS/296/2013 delivered on 1st September 2013 be set aside and it is hereby set aside along with all the interim and interlocutory orders made therein.*

(2) *That the appellant Dr. Tony Nwoye is the 2nd respondent’s (that is PDP’s) Governorship Candidate for the 16th November, 2013 Anambra State Governorship Election.”*

***The findings of the Lower Court are reproduced in extenso to show the crux of the appellant’s appeal before that court. In the appeal before us, the appellant did not challenge these crucial and far-reaching findings on the merit of the appeal. In his wisdom, the appellant abandoned his issue 3, which challenged the merit of the Lower Court decision. The effect is that the orders made by the Lower Court subsist.*** See S.P.D.C. Nig. Ltd. Vs Edamkue & Ors. (2009) 14 NWLR (Pt.1160) 1; Ogunyade Vs Oshunkeye & Anor. (2007) 15 NWLR (Pt.1057) 218 @ 257; (2007) 7 SCNJ 170.

In conclusion, the appeal succeeds in part on the issue of jurisdiction only. That part of the judgment of the Court of Appeal, Port Harcourt Division delivered on 23/10/2013 wherein it held that the Federal High Court lacked jurisdiction to entertain the originating summons is hereby set aside. The part of the judgment wherein it held that Dr. Tony Nwoye (the 3rd respondent herein) is the candidate of the 1st respondent for the 16th November 2013 Anambra State Governorship election, not having been appealed against, stands.

The parties shall bear their respective costs in the appeal.

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### MOHAMMED JSC

On Monday the 4th day of November, 2013 when this appeal was heard, I delivered my own judgment fully agreeing with the lead judgment of my learned brother Kekere-Ekun JSC allowing this appeal in part on the issue of jurisdiction but dismissing the appeal on the remaining issues resulting leaving the 3rd Respondent Dr. Tony

Nwoye as the duly elected candidate of the Peoples Democratic Party (P.D.P) to take part in the Governorship Election coming up on 16th November, 2013 in Anambra State. On that day, I promised to give my full reasons for the judgment today. I now proceed to do so.

This appeal against the judgment of the Court of Appeal Port-Harcourt Division delivered on 23rd October, 2013 allowing the appeal of the present 1st and 3rd Respondents in particular and setting aside the decision of the trial Federal High Court in favour of the present Appellant and declared the 3rd Respondent Dr. Tony Nwoye as the candidate of the 1st Respondent (P.D.P) for the Anambra State Governorship Election scheduled for 16th November, 2013.

At the trial Federal High Court Port-Harcourt, the Appellant as plaintiff filed his action by Originating Summons and sought declarations among others :-

(i) That Dr. Tony Nwoye, the 3rd Respondent in this Court was not eligible to Participate or take part in the Gubernatorial primary election conducted by the Peoples Democratic Party (P.D.P) on the 24th August, 2013 for the selection of its Governorship candidate for the Anambra State Governorship election to be held on 16th November, 2013.

(ii) That the plaintiff (now Appellant) being the only qualified candidate or aspirant that scored the highest number of valid votes cast at the primary election held on 24th August, 2013, is the duly elected Candidate of the Peoples Democratic Party to contest the Anambra State Governorship election scheduled for 16th November 2013 or any other date.

The facts relied upon by the Appellant at the trial Court in support of the reliefs claimed by him in his Originating Summons include -

(i) That Dr. Tony Nwoye submitted irregular and contradictory tax certificates to the Peoples Democratic Party (P.D.P) for his clearance.

(ii) That Dr. Tony Nwoye did not pay his tax as and when due as mandatorily prescribed by the peoples Democratic party guidelines for the conduct of its primary elections and as such he was not qualified to contest the primary election.

The trial Federal High Court after giving the parties hearing, its judgment delivered on 17th September, 2013, found for the plain-

tiff now Appellant all the reliefs claimed by him and ordered Independent National Electoral Commission (INEC) now 4th Respondent to publish the name of the Plaintiff/Appellant as the candidate of the Peoples Democratic Party for the Anambra State Governorship election taking place on 16th November, 2013. This order was complied with by the 4th Respondent before the appeal by the 1st to 3rd Respondents could be heard and determined by the Port-Harcourt Division of the Court of Appeal which its judgment delivered on 23rd October, 2013, allowed the appeal and declared that the trial Federal High Court lacked jurisdiction to entertain the Plaintiff/Appellant's case under Section 87(9) of the Electoral Act 2010 as Amended, stressing that the plaintiff/Appellant's claims were not justiciable being matters exclusively within the preserve of political parties. The Court below not being a final Court in its decision on the issue of jurisdiction, proceeded to consider the case of the plaintiff/Appellant on the merit by considering and resolving issues (ii) and (iii) formulated by it resulting setting aside the judgment of the trial Court favour of the Plaintiff/Appellant and proceeded to find for the 3rd Respondents by declaring him the duly elected candidate for the 1st Respondent, Peoples Democratic Party to contest the Governorship election in Anambra State scheduled for 16th November, 2013.

Dissatisfied with that decision, the Plaintiff/Appellant is now before this Court on a further appeal. Three issues for the determination of the appeal were distilled from the 6 grounds of appeal filed for the Appellant by his learned senior Counsel. The 3 issues at pages 14 - 15 paragraphs 20, 21 and 22 of the Appellants brief of argument are -

*“20. Whether the judgment of the Court of Appeal leading to this appeal hinged on non-existent Brief of Argument in particular the 1st Respondent's (Appellant's) Brief of Argument, which had in the course of the proceedings been struck out is not in breach of the present Appellant's (then 1st Respondent's) right to fair hearing, thereby nullifying the judgment of the Court below? (Issue No.1) (Ground 1).*

*21. Whether the Court of Appeal was right when it held that the trial Federal High Court lacked jurisdiction to adjudicate on the complaint of the Appellant on the basis that his complaint did not come within the ambit of Section 87(9) of the Electoral Act, 2010 as*

*in the Courts view the reliefs sought were predicated on matters that were solely internal party matters and therefore were not justiciable? (Issue No. 2) (Grounds 2, 3, 5 and 5).*

22. *Whether the Court below was right in holding on the one hand that the trial High court lacked jurisdiction to have adjudicated on the dispute between the parties, and on the other hand went ahead to consider the matter on the merit and proceeded to make Orders and consequential Orders? (Issue No.3) Ground 4). ”*

It significant to note at this stage that the issue No. 3 in the Appellant’s brief of argument which was distilled from ground 4 contained the of the Appellant’s Notice and grounds of appeal which touched on the merit of the case determined by the Court below on whether or not the 3rd Respondent had complied with the provisions of paragraph 14(a) of the Peoples Democratic Party Guidelines in paying his tax as and when due to qualify in contesting the primary election, was abandoned by the learned senior Counsel for the Appellant the Appellant’s brief of argument. The abandonment of Appellant’s issue 3 of course left substantial part of the decision of the Court below contained in it resolution of issues 2 and 3 formulated by it apart from the issue of jurisdiction which were captured paragraphs 16, 17 and 18 in the Appellant’s brief of argument at pages 13-14 thereof, virtually untouched resulting in pushing out that part of the decision of the Court below from the present appeal. Paragraphs 16, 17 and 18 of the Appellant’s brief of argument containing the main findings of the Court below on the merit of the case decided at the trial Court are as below -

“16. *In resolving issues nos. 2 and 3 together, the Court below took the position that the legality of paragraph 14(a) of the P.D.P guidelines, which is lucid and clear and which deals with qualification for nomination of an aspirant to contest the Gubernatorial election of the 1st Appellant was not challenged in this case. The Court further held that as the issue of tax clearance was resolved by the P.D.P. Appeal Panel in the screening exercise and the learned trial Judge was not called for a judicial review of the screening panel’s report; that is where it ought to and should end.*

17. *The Court below took the view that the Federal High Court did not call the Plaintiff to prove the fact that tax was not paid and that there was no evidence from the affidavit in support of the*

*Originating Summons to prove the said fact; the Court below therefore held that there was no basis for the trial Court to act on the issue of tax such as to judicially prohibit the 1st Defendant who won the P.D.P Party primaries.*

18. *The Court below was also of the view that despite the uncontroverted evidence of the fact that the 1st Defendant though not cleared by screening panel he was subsequently cleared by the P.D.P. Appeal Panel after he presented his tax receipts, the trial court made findings for the Plaintiff. The Court held that as those findings have no foundation in credible evidence, they are perverse and the trial Court was not right to have entered judgment for the Plaintiff.* ”

All these vital findings of the Court below as captured in the Appellants brief of argument at pages 13 and 14 giving reasons why that Court allowed the appeal before it on the merit of the case leading to the setting aside of the judgment of the trial Court in favour of the present Appellant on the grounds among others that the judgment was perverse in the absence of credible evidence to support it that the 3rd Respondent was disqualified from contesting the primary election of 24th August, 2013 for failure to pay his tax as and when due, were not challenged at all any ground of appeal this appeal. It was also on basis of these findings that the Court below set aside the judgment of the trial Court and found on the evidence on record from the affidavits and counter-affidavit that the 3rd Respondent was the duly elected candidate of the 1st Respondent to contest the Governorship election Anambra State on 16th November, 2013. The law is trite that the findings of the Court of Appeal or trial Court in respect of which there is no appeal, the findings remain valid and full force. See the cases of Buhari vs. Obasanjo (2005) 13 N.W.L.R. (Pt.941) 1 at 138. In otherwords, this Court being an appellate Court deals with complaints of the Appellant against the judgment being appealed against. Where an issue has not been raised by the Appellant, it not the business of this court to concern itself with the issue chose to ignore or abandon. See Oyibo Iri & Others v. Eseroraye Emrhodare Anor. 3 S.C.N.J 1. Therefore the issue of whether or not the 3rd Respondent had complied with paragraph 14(a) of People Democratic Party Guidelines for primary elections by paying his tax as and when due, which was not placed before this Court by the Appellant for determination in this appeal, remains dormant and must

be ignored in the determination of this appeal.

The first issue raised by the Appellant in his Appellants brief of argument this appeal is a complaint of denial of fair hearing against the Court below which the Appellant claimed had rendered the judgment of the Court below now on appeal, a nullity. The complaint of the Appellant this issue arose from the proceedings of the Court below of 8th October, 2013 where for no apparent reason, the learned Counsel to the Appellant at the Court below refused to move the Appellant's application for extension of time to file the Appellant's/1st Respondent's brief of argument. Learned Counsel to the Appellant refused to move the motion for extension of time to file Appellant's/1st Respondent's brief of argument when that Court was prepared to take the motion in the absence of any objection from the other parties. The Appellant's Counsel instead of moving the motion, asked for adjournment which was refused by the Court below on being opposed by the other parties. There upon, the record of the Court below for proceedings of 8th October, 2013, recorded the following action for the learned Counsel to the Appellant then the 1st Respondent before that Court.

*"Court: The Respondent Counsel Prince Orizu deserted without the permission of the Court."*

Thus, the learned Counsel to the Appellant having his client to his fate by deserting the Court, the Appellant's motion for extension of time to file the 1st Respondent's brief of argument which his own Counsel refused to move, was struck out.

However, later in the same proceedings of the Court below of 8th October, 2013, on the application of the Learned Senior Counsel for the 3rd Respondent, then Appellant before that Court, the 1st Respondent now Appellant's briefs of argument was deemed properly filed and served by the Court below upon invoking its discretionary powers to waive compliance with the Rules of the Court below. Consequently, the pending appeal was heard by the Court on the 1st Respondent's/Appellant's brief of argument leading to the judgment of the Court allowing the appeal and setting aside the judgment of the trial Federal High Court to give rise to the present appeal which the Appellant is now complaining in this issue of denial of fair hearing.

The question to be determined now is whether in the circum-

stances of this Court taking into consideration of the conduct of the Appellant's learned Counsel on 8th October, 2013 at the Court below, it could be said that the Appellant was truly denied a fair hearing by the Court below in breach of his constitutional right under Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999.

The true test of fair hearing had long been laid down by this Court in *Alhaji Ishiyaku Mohammed v. Kano N. A.* (1968) *The All New Nigeria Law Reports*, 411 at 413 where Ademola C.J.N. (of blessed memory) said-

*"The true test of fair hearing, it was suggested by Counsel, is the impression of a reasonable person who was present at the trial whether, from his observation, Justice has been done in the case. We feel obliged to agree with this."*

Certainly, in the present case a reasonable person who was present at the Court below on 8th October, 2013 and who observed the proceedings that gave rise the Appellants complaint in this issue, would definitely not say that the Appellant had been denied a fair hearing by the Court below which took his respondent brief of argument into consideration in the hearing of the appeal in spite of the Appellant having been abandoned by his own Counsel.

The law is also trite that the burden is on the party alleging breach of fair hearing in a case to prove the breach, and he must do so the light of the facts and circumstances leading to the alleged breach. This is because the facts of the case and the facts only, determine acts which constitute non-compliance with the principles of fair hearing. See *Maikyo v. Itodo* (2007) 7 NWLR (Pt. 1034) 443. In the instant case, the Appellant who was given full opportunity to defend the appeal at the Court below as the Respondent but decided to throw away that opportunity through his learned Counsel who decided to abandon his case, cannot now turn round to claim that he was denied fair hearing by the Court below. This first issue must therefore be resolved against the Appellant.

The second and also the last issue that was raised and argued in this appeal, the issue of jurisdiction. In other words the question to be resolved in this issue is whether the trial Federal High Court has jurisdiction to entertain and determine the claims of the Appellant as Plaintiff against the Defendants/Respondents. The answer to this question is contained in the provisions of Section 87(9) of the Electoral

Act, 2010 as Amended which state -

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

From the record of this appeal, particularly the affidavits and counter-affidavit and the various documents exhibited therewith in support of the Originating Summons and in opposing the same, the dispute between the parties this appeal arose from the primary election conducted by the 1st Respondent to select or nominate its candidate for the Gubernatorial election taking place in Anambra State on 16th November, 2013. Thus, the Plaintiff now Appellant, being one of the aspirants and participant at the primary election was on the right course in taking his complaint regarding the outcome of the primary election to the Federal High Court Port-Harcourt for resolution and that that Court by virtue of Section 87(9) of the Electoral Act, 2010 as Amended, has the required jurisdiction to hear and determine the dispute between the parties. See the cases *Uzodinma v. Uzunaso* (2011) 17 NWLR (Pt. 1275) 60 and *Uwazurike v. Nwachukwu* (2013) 3 NWLR (Pt. 1342) 503 at 530. It for the foregoing reasons that I am of the strong view that the trial Federal High Court and the Court below have jurisdiction in entertaining the case of the Plaintiff/Appellant and the appeal that gave rise to present appeal this Court. The second issue is therefore resolved in favour of the Appellant.

In the final result, this appeal succeeds in part. The appeal against the decision of the Court of Appeal on the issue of jurisdiction succeeds and it is hereby allowed to the extent to say that the trial Court was right to say that it has jurisdiction to entertain and determine the Appellant's case while the Court below was in error to hold that the trial Court lacked jurisdiction. However, the appeal on the complaint of the Appellant that he was denied a fair hearing by the Court below which absolutely lacks merit, hereby dismissed as the evidence on record shows that the Appellant was given a fair hearing. Finally, the absence of any appeal against the findings of the Court below that the 3rd Respondent Dr. Tony Nwoye remained the

Peoples Democratic Party's candidate for the Gubernatorial election in Anambra scheduled for 16th November, 2013, that decision still remains valid and full force.

It is for the above reasons and for the more comprehensive reasons given by my learned brother, Kekere-Ekun JSC, that I allowed this appeal in part on 4th November, 2013 and declared that the trial Court and the Court below have jurisdiction to entertain the Appellant's case and the Respondents' appeal but dismissed the appeal on the remaining issue and refused to disturb the decision of the Court below that the 3rd Respondent, Dr. Tony Nwoye remained the candidate of the Peoples Democratic party (P.D.P) in the Governorship Election scheduled for 16th November, 2013 in Anambra State.

I am not making order on costs.

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### **OGUNBIYI JSC**

On Monday the 4th day of November, 2013, the judgment in this appeal was pronounced upon wherein same was allow in part on the issue of jurisdiction whereby it was ruled that both the lower court and also the trial Federal High Court were properly with jurisdiction to entertain the appellant's case. In respect of the other issue however, an order of dismissal was entered and thus affirming the candidature of the 3rd respondent Dr. Tony Nwoye as the duly recognized flag bearer of the Peoples Democratic Party (PDP) who was fielded to participate in the Governorship Election scheduled for the 16th November, 2013. The foregoing are therefore the reasons predicated the judgment, with the brief facts of the case as follows:-

The National Executive Committee of the 1st Respondent organized its Anambra State Gubernatorial Primaries on August 24, 2013 for purpose of selecting its candidate for the November 16, 2013 Anambra State Gubernatorial Elections. Both the Appellant and the 3rd Respondent among others took part the said primaries which produced the 3rd Respondent as the winner. As a consequence, the appellant herein and also the others who had lost to the 3rd respondent all petitioned the 1st Respondent's Gubernatorial Appeal panel against the 3rd Respondent, alleging that he (3rd respondent) had breached the guidelines for primary Elections as laid down

by the 1st Respondent for the regulation of the party Elections. In other words, that the 3rd Respondent was not qualified to contest the said primaries due to his irregular payment of taxes. The allegation was without merit and the 1st Respondent's Gubernatorial Appeal panel, found in favour of the 3rd Respondent, who was on August 28, 2013, issued with a Certificate of Return by the 1st Respondent; he was accordingly confirmed as the 1st Respondent's candidate for the Anambra State Gubernatorial Election held on November 16, 2013, The 3rd respondent's name was as a result forwarded by the 1st respondent (PDP) to the 4th Respondent (INEC), being the body vested with the power to conduct elections.

The appellant was unhappy with the decision taken by the Gubernatorial Appeal Panel, and therefore instituted an action via an Originating Summons before the Federal High Court, Port Harcourt Division in Suit No. FHC/PH/CS/296/2013 (*Nicholas Chukwujekwu Ukachukwu v. Dr. Tony Nwoye & 3 Ors.*), claiming that the 3rd Respondent was not qualified to partake in the August 24, 2013 Gubernatorial primaries. The Federal High Court found merit the Appellant's suit and ruled in his favour by declaring him the 1st Respondent's candidate in place of the 3rd Respondent, as the candidate and the flag bearer of the 1st Respondent.

In compliance with the court's order, the 4th Respondent substituted the names and candidature of the 3rd Respondent with that of the Appellant as ordered by the Federal High Court. Following the substitution, the 1st-3rd Respondents, separate appeals challenged the jurisdiction of the trial Federal High Court, Port Harcourt Division to entertain the initial suit taken out on an Originating Summons. The two appeals were, on the application by counsel, consolidated and upon filing and exchanging of briefs, adjourned for hearing.

It is intriguing to note that there were a number of salient intervening factors resulting into numerous applications which totally found their way as far as to this court. Reference will in due course be made to certain aspects of the applications which produced behaviour that could not be divorced from, but serve a deciding factor the appeal at hand. What is of paramount interest however is the judgment of the Court of Appeal delivered on the 23rd, October, 2013 wherein it set aside the judgment of the Federal High Court

delivered on 17th September, 2013 and thus declaring the 3rd Respondent at the court below) as the 1st and 2nd Respondent's Anambra State Gubernatorial candidate.

The appellant herein is obviously dissatisfied with that decision and has come before us in this appeal by formulating three issues which have been reproduced in the lead judgment with the appellant having abandoned issue no 3. The issues by all the other parties are also reproduced. I will not deem it necessary to repeat the issues which essentially can be summarized into two. In other words, while the first issue borders on question of fair hearing, the second issue relates to the jurisdictional competence of the trial court in dealing with the subject matter; that is to say whether the plaintiff's claim did come within the province of Section 87(9) of the Electoral Act 2010 (as amended) and therefore justiciable? Put differently, the lower court the judgment appealed against declared the trial Federal High Court error by assuming jurisdiction over the subject matter under section 87(9) of the Electoral Act 2010 (as amended). Rather, it is the lower court's contention that the subject matter in question was purely within the party's control and did not fall under Section 87(9) of the Electoral Act, and thus bringing it within the jurisdiction of the court.

The 1st Issue raised in this appeal where the appellant is vehemently complaining of the absence of fair hearing which he alleged was denied him by the court below or in short a denial of fair hearing in the conduct of his case before that court. It is gratifying to note that the appellant, for purpose of establishing his complaint, is relying on the record of appeal which is the same document to be used for purpose of confirming whether or not the allegation levied is in fact sustainable. The question of fair hearing is a matter of fact which must be established by evidence. The Black's Law Dictionary, Ninth Edition at page 789 defines fair hearing as:-

*"A judicial or administrative hearing conducted in accordance with due process."*

Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 has provided for the various Fundamental Rights accruing to every person with section 36 providing for the Right to fair hearing, which is not without restraint but within bounds; it not in other words at large but must be contained within the scope of rea-

son to the extent of availing a party the liberty to conduct his case, subject however to the consideration of all the situational circumstance that may, or is likely to be an intervening factor. Therefore, a party, who given an ample and unhindered opportunity to conduct his case but refuses or fails to take advantage therewith for any reason, not being a just cause, cannot be heard to complain of a denial to his right of fair hearing. Parties to the litigation and also the court are all stake holders, who must ensure and adhere to the rules governing the cardinal principles as enshrined in the Constitution. The rules are either statutorily provided for or had their origin from the case laws: For instance, the learned jurist, Niki Tobi, JSC in *Inakoju v. Adeleke* (2007) 4 NWLR (Pt. 1025), Pg. 427 at 621 - 622 made the following pronouncement on the subject and said:-

*“Fair hearing is not a cut and dry principle which parties in the abstract always apply to their comfort and convenience. It is a principle which is based on the facts before the court. Only the facts of the case can influence and determine the application or applicability of the principle. The principle of fair hearing is helpless or completely dead outside the facts of the case”*

*The duty of the court, trial and appellate, is to create the atmosphere or environment for a fair hearing of a case but it is not the duty of the court to make sure that a party takes advantage of the atmosphere or environment by involving himself in the fair hearing of the case. A party who refuses or fails to take advantage of the fair hearing process created by the court cannot turn around to accuse the court of denying him fair hearing. After all, there is the adage that the best the owner of the horse can do is to take it to the water; he cannot force it to drink the water. The horse has to do that itself and by the act of sipping. If the horse is unwilling to sip, that ends the matter. The horse will not blame anybody for death arising from the lack of water or hydrate.”* (Emphasis supplied).

Suffice it to say that the record in the case at hand stands a good revelation whether or not the appellant has a justiciable complain that there was indeed an abuse of the right to fair hearing as he purports to show. This is especially in view of the facts on the proceedings which are not in dispute. It is on record for instance that the contested applications at the lower court, in respect of which the counsel sought for the disqualification of the court’s membership, were

duly heard, considered and accordingly disposed of against the applicants. It is also on record that on the refusal by the 1st respondent's counsel (now appellant) to move his motion for extension of time within which to file his clients brief of argument, the court below deemed same as abandoned. Counsel thereafter got engaged in disharmony with the court and in a bid to scuttle the hearing of the appeal proceeded to walk out on the court. B

It is intriguing to state further that despite the unwarranted and unseeing behavior exhibited by the appellant's learned counsel, the lower court on the authority of order 20 Rules 3 of its Rules 2011 and following the abandonment of the proceedings by the 1st respondent's counsel (now appellant), never the less deemed and adopted, in favour of the appellant, a brief which had been filed as a separate process. The reproduction of order 20 Rule 3(1) supra states as follows:- C

*"The court may in an exceptional circumstance, and where it considers it in the interest of justice to so do, waive compliance by the parties with these Rules or any part thereof."* D

The case of Okafor v. A.G. Anambra State (1991) 6 NWLR, (Pt.200), p.62 at 675 is also an authority authenticating the exercise of discretionary powers by this court in adopting and admitting process filed before it even in the absence counsel or application for purpose of doing justice. E

With the lower court having adopted the 1st respondent's (now appellant's) brief of argument before it, one wonders what level of fair hearing was expected by the appellant. In the case of Nwokoro v. Onuma (1990) 3 NWLR (Pt. 136) 22 a decision of this court and cited by the appellant's counsel for instance, the brief relied upon, contrary to the one at hand was defective and therefore invalid. The court could not have admitted same therefore for purpose of deciding the appeal and hence its rejection. The appellant's Reliance on that case was a misconception, which is a remarkable distinguishing factor from the appeal at herein. In stressing the point further, the appellant's counsel at the lower court, having decided on his own volition without any just cause to abandon his client's case by walking out on the court, cannot now be heard to complain that his client was refused a fair hearing. It was the counsel who denied the client an opportunity to address the court when he left without permission. F G H

Again in the case of *Nwokoro v. Onuma* (Onuma) Karibi-Whyte, JSC at pages 32 among others held and said:-

*“Where parties who have filed briefs of argument are absent at the hearing, the appeal will be treated as argued on the briefs filed. This is also the position where only one of the parties had filed his brief. Thus the obligation to hear the other side, i.e. audi alteram partem is observed by the filing of briefs which is taken to represent the case of the party in the litigation.”*

The true test of fair hearing was specified the view held by this court in the case of *Okafor v. A. G. Anambra State* supra wherein Omo, JSC at page 678 held and said:-

*“...the true test of fair hearing is the impression of a reasonable person who was present at trial whether from his observation, justice has been done in the case.”*

The enduring patience exhibited by the lower court justices is certainly commendable and it is a confirmation of the qualification expected of judicial officers, which go beyond the ordinary court proceedings and thus overriding the characteristics of the ordinary man’s natural behavior.

The re-action put forward by the senior counsel representing the appellant at the lower court was the least expected as it was unwarranted. This I hold was unfortunate. The learned senior counsel question completely misconceived and therefore failed to appreciate the position taken by the lower court in resolving the complex situation created by the very counsel. The counsel’s submission that the court below *“tainted its judgment and the entire proceedings before it”* is a complete misnomer. The 1st respondent’s right to fair hearing was not at any time either denied or breached as wrongly alleged.

The said issue hereby resolved against the appellant.

The 2nd issue poses the question, whether the court below rightly held that the Federal High Court lacked jurisdiction to entertain the subject matter of the suit on the ground that it was an intra - party matter.

In resolving the said issue, the Court of Appeal held that the trial court was bereft of jurisdiction to entertain the suit. The court went further to hold that the matter relates to pre-primary election of the political party and is an exclusive preserve of the party and which non-judicial; that the questions of eligibility and qualification to

contest primary elections are matters that arise or happen prior to the primary election itself. While the respondents, in particular the 1st and 2nd applauded the decision arrived thereat by the lower court on jurisdictional incompetence of the trial court, the appellant held the court the error and rooted his submission on the provision of section 87 - (9) of the Electoral Act 2010 (as amended); and the reproduction states as follows:-

*“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.”*

Also and to be read in conjunction with the foregoing provision, is Article 14(a) of the Peoples’ Democratic Party’s (PDP’s) Guideline as follows:-

*“An aspirant to the gubernatorial primary election shall not be qualified to be nominated to contest the primary election if he/she fails to produce his personal Income Tax Certificate, or any evidence that he has paid his income tax as at when due for the last three years or evidence of exemption from payment of Personal Tax.”*

As rightly submitted by the learned counsel for the appellant, the allegation levied against the 3rd Respondent relating payment of irregular taxes is a complaint rooted the guidelines of the 1st Respondent which has its origin from Article 14(a) of the Peoples’ Democratic Party’s (PDP’s) Guideline supra. On a critical analysis of the provision of Section 87(9) of the Electoral Act (supra), the following salient four conditions are necessary and ought to be fulfilled contingent to bringing an action there under the Section.

(1). There must first have been a primary for the Selection or Nomination of a candidate by a political party; (2) That the exercise for the primary must have been respect of an election; (3) that the complainant must be an aspirant who ought to have taken part his political party’s primaries; and (4) that the political party designate did not comply with a provision of the Electoral Act or its political Guidelines for the selection done. The 4th condition is an alternative wherein the infraction could be either of the Electoral Act or the party Guidelines.

It also noteworthy to state that by the use of the word Notwithstanding Section 87(9) of the Electoral Act (supra), it denotes that the aspirant/complainant cannot anyway be restrained by, any provision of the Act or the guidelines from instituting an action against perceived non compliance therewith. The appellant, having shown  
 B and satisfied the required conditions necessary for his instituting an action as he did, the Federal High Court was rightly seized of the subject matter which was within its jurisdiction as provided under Section 87(9) of the Electoral Act, 2010 (as amended). The lower  
 C court reversing that decision and stripping the trial court of had with all respect grossly misconceived the interpretation of Section 87(9) of the Electoral Act (supra). The said section, from all indications relates to the entire process of events leading to the primaries and also the conduct of the actual primaries itself for the nomination and selection  
 D of the party' candidate for an Election. The Electoral Act is clear on the jurisdiction vested in the Federal High Court and did not leave section 87(9) (supra) in any doubt in the event of non-compliance. The power to intervene and determine in the event of any infraction is fully within the jurisdiction of the said court. An authority in point is  
 E the case of *Uwazurike v. Nwachukwu* (2013) 3 NWLR (Pt. 1342) 503 at 530 where this court per Muhammad, JSC said:-

*"The import of the very clear and unambiguous words which make up Section 87(9) of the Electoral Act is that once the complaint  
 F of an aspirant is that in the selection or nomination of a candidate for election, a political party has breached any provisions of the Electoral Act and/or the party's guidelines, the aspirant is entitled to seek redress at either Federal High Court or a High Court notwithstanding any provision in the Electoral Act and/or the political party's guideline to the contrary."*  
 G

It is clear from the foregoing that a political party, no doubt has a right to nominate or select any candidate of its choice, without any hindrance, to contest an election on the platform of the party. That is an in house and the prerogative of the part, which not open  
 H as a subject of interference. Where however, such process of a nomination, a candidate is aggrieved as a result of an alleged infraction of non-compliance with the constitution or guidelines of the party, the jurisdiction of the court be shut out as wrongly interpreted by the respondent.

The appellant's complaint at the Federal High Court was that the 3rd Respondent paid irregular taxes. This is squarely rooted the guidelines of the 1st Respondent per Article 14(a) supra and a condition contingent as qualification and must be fulfilled by an aspirant of the party to the Gubernatorial Election. The subject matter of the appellant's complaint was not to be regarded as a domestic affair and it was therefore wrongly treated as not justiciable. B

It is intriguing as could be observed on the record that the lower court, despite its findings that the trial Federal High Court lacked the jurisdiction to entertain the claim of the respondent, it did not foreclose and concludes the matter at that stage. In other words, it nevertheless proceeded and determined on the merit, the other two issues placed before it. C

The 2nd and 3rd issues therefore sought to question whether the trial court rightly disqualified the 2nd respondent/cross appellant on the basis of the alleged breach of clause 14(a) of the Electoral Guidelines for primary election, 2010 of the Peoples Democratic Party; and whether the trial court was right to have entered judgment for the 1st Respondent originating summons. D

Paragraph 14(a) of the Electoral Guidelines for primary Election, 2010 of the PDP had been reproduced earlier the course of this judgment. The Court of Appeal its judgment at pp. 200, 301-302 of the record of appeal held on the foregoing two issues and said:- E

In the instant case, it is evidently clear that the issue of the tax of the 2nd Respondent was resolved by the Appeal Panel in the screening exercise. The learned trial judge was not called for judicial review of the screening panel's report. The appeal panelists had satisfied themselves that the tax profile of the 2nd respondent was alright and had cleared him for the primaries. F G

The learned trial judge in his judgment did not call on the plaintiff to prove allegation that the tax was not paid as and when due and there is no evidence from the affidavit in support of the originating summons to establish systematically the ingredients of proving that tax was not paid as and when due. There is therefore no basis for the lower court to act on that issue of tax and prohibit the 2nd Respondent who genuinely won the primary Election conducted by the Appellants. H

There was clearly an uncontroverted evidence that the 1st

Respondent although was not cleared by the screening panel, was subsequently cleared by the Gubernatorial screening Appeal panel after he presented his tax receipts He contested the primary and won with 498 votes. These facts were not in anyway controverted yet the trial court made findings for the 1st respondent and declared him the  
 B Governorship candidate of the PDP for the Anambra State Governorship Election scheduled for November, 16th 2013. Those findings made by the trial court have no foundation in any credible evidence so they are perverse. The trial court was therefore not right to  
 C have entered judgment for the 1st respondent in Appeal No. CAPH/695/2013.”

The court therefore allowed the appeal and set aside the judgment of trial Federal Court in suit No. FHC/PH/CS/296/2013 and instead made the following orders:-

D “(1) *That the judgment of the Federal High Court in Suit No. FHC/PH/CS/296/2013 delivered on 17th September, 2013 is set aside and it is hereby set aside along with all the interim and interlocutory orders made therein.*

E (2) *That the appellant Dr. Tony Nwoye 2nd respondent’s (that is PDP’s) Governorship Candidate for the 16th November, 2013 Anambra State Governorship Election.”*

Interestingly, the appellant before us had earlier abandoned issue 3 formulated on his brief of argument. He can no longer be  
 F heard on the findings by the lower court which are unchallenged but conceded to. The law is well established on the effect of a decision of Court of Appeal/and trial court not appealed. In other words it remains valid and in full force. See *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 48; it is also settled that where issue has not been raised  
 G by the appellant, it is not the business of the court to concern itself therewith. Se *Oyibo Iriri & Ors. v. Eseroraye Emrhodare & Anor.* (1991) 3 SCNJ 1. The candidature of Dr. Tony Nwoye, 3rd respondent herein is hereby affirmed as the flag bearer of 1st respondent for 16th November, 2013 Anambra State Governorship election.

H On the totality of the appeal, therefore, I am in full agreement with the lead judgment of my learned brother Kekere-Ekun, JSC that the appeal should succeed in part only to the extent of the issue of jurisdiction. I therefore subscribe to all the orders made therein the lead judgment.

### AKA'AH'S JSC

This appeal was heard on Monday, 4th day of November, 2013. I agreed that the appeal be allowed in part on the issue of jurisdiction but dismissed it on the remaining issues.

The appeal is against the judgment of the Court of Appeal Port-Harcourt Division delivered on 23rd October, 2013 which allowed the appeal of Dr. Tony Nwoye, the 3rd respondent who is being sponsored by the 1st respondent for the Governorship Election in Anambra State Scheduled for 16th November, 2013. The appellant as Plaintiff took out an originating summons before the Federal High Court Port Harcourt seeking the following declarations predicated on Section 87 of the Electoral Act 2010 (as amended), paragraph 4(a) of party of the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party (PDP) and some exhibits on whether the 1st Defendant was qualified to participate and or take part in the gubernatorial primary election conducted by the 2nd Defendant (PDP) for the selection of its candidate for the Anambra State Governorship Election scheduled to hold on November 16th 2013 or any other date. The Plaintiff then claimed the following reliefs if the answer to the question is in the negative:

(1) *"A DECLARATION that based on the dictate of paragraph 4 (a) of Part IV of the Electoral Guidelines for Primary Elections 2010 of the Peoples' Democratic Party (PDP), the 1st Defendant (Dr. Tony Nwoye) was not eligible to participate and or take part in the Gubernatorial Primary Election conducted on the 24th day of August 2013 by the 2nd Defendant for the selection of its candidate for the Anambra State Governorship Election scheduled to hold on November 16, 2013 or any other date."*

(2) *A DECLARATION that by virtue of Section 87 of the Electoral Act 2010 (as amended), the plaintiff, being the only qualified aspirant of the 2nd Defendant that scored the highest number of valid votes cast at the party's Gubernatorial Primary Election held on August 24, 2013, is the duly elected candidate of the Peoples' Democratic Party (PDP) to contest for Anambra State Governorship Election Scheduled to hold (sic) November 16, 2013 or any other date."*

(3.) AN ORDER OF INJUNCTION restraining the 1st Defendant from parading himself and or representing or holding out him-

self as the candidate of the 2nd Defendant in the forthcoming Anambra State Governorship Election or otherwise representing that he was validly elected/chosen by the 2nd Defendant as its candidate for the Anambra State Governorship Election scheduled to hold in November 16, 2013 or any other date.

B (4.) AN ORDER OF INJUNCTION restraining the 2nd and 3rd Defendants from holding out, parading, recognizing or in whatever manner presenting to the 4th Defendant any person other than the Plaintiff as the candidate of the 2nd Defendant for the Anambra State Governorship Election scheduled to take place on November  
C 16,2013 or any other date.

(5.) AN ORDER OF INJUNCTION restraining the 4th Defendant from accepting, recognizing or acting upon, any other name other than the name of the Plaintiff as the PDP candidate for the  
D Anambra State 2013 Governorship Election or in any way publishing, displaying, screening, putting on the ballot paper or howsoever dealing with any person other than the Plaintiff as the 2nd Defendant's candidate for the Anambra State Governorship Election scheduled to take place on November 16, 2013 or any other date

E (6.) AN ORDER OF MANDATORY INJUNCTION compelling the 4th Defendant to recognise, screen the Plaintiff, publish and put his name on the ballot paper as the authentic candidate of the 2nd Defendant for the Anambra State Governorship Election scheduled to take place on November 16, 2013 or any other date.  
F

Although the declared results of the gubernatorial primary election indicated that the 1st Defendant who came first after scoring 498 votes and beating the Plaintiff to second position with 352 votes cast at the primary election, the Plaintiff based his claim in the originating summons on the fact that the 1st Defendant submitted irregular and contradictory tax certificates to the PDP for his clearance and also that the 1st Defendant did not pay his tax as and when due as mandatorily prescribed by the PDP Guidelines for the conduct of its primary elections; consequently he was not qualified to take part in  
G the primary election. In its judgment delivered on 17th September, 2013, the Federal High Court entered judgment in favour of the Plaintiff/Appellant and declared him the candidate of the PDP for the election slated for November 16, 2013. It ordered the Independent National Electoral Commission (INEC) now 4th respondent to pub-  
H

lish the name of the Plaintiff/Appellant as the candidate of the PDP. This order was complied with and the 4th respondent substituted Tony Nwoye (3rd respondent's) with that of the appellant. Dissatisfied with the judgment the 1st-3rd respondents appealed to the Court of Appeal Port-Harcourt Division which delivered its judgment on 23rd October, 2013 allowing the appeal and declaring that the Federal High Court lacked jurisdiction to entertain the case under section 87 (9) of the Electoral Act, 2010 (as amended) and stressing that the Plaintiff/Appellant's claims were not justiciable being matters exclusively within the preserve of political parties. Notwithstanding the fact that the Court of Appeal found that the Federal High Court lacked jurisdiction to entertain the claim, it nevertheless decided on the merit of the appeal before setting aside the judgment of the trial court and declaring the 3rd respondent the duly elected candidate of the PDP who would contest the Gubernatorial Election in Anambra State scheduled for 16th November 2013.

Being dissatisfied with the decision of the court below, the appellant appealed to this court by filing two notices of appeal on 24/10/2013 and 29/10/2013 respectively. The Notice of Appeal filed on 24/10/2013 was abandoned and the appeal was argued based on the second notice of appeal dated 29/10/2013 from which three issues were distilled from the six grounds of appeal as follows:-

1. Whether the judgment of the Court of Appeal leading to this appeal hinged on non-existent brief of argument in particular the 1st Respondent's (Appellant's) brief of argument which had in the course of the proceedings been struck out is not in breach of the present appellant's (then 1st Respondent's) right to fair hearing, thereby nullifying the judgment of the court below? (Ground 1)

2. Whether the Court of Appeal was right when it held that the Federal High Court lacked jurisdiction to adjudicate on the complaint of the appellant on the basis that his complaint did not come within the ambit of section 87(9) of the Electoral Act, 2010 as in the court's view the reliefs sought were predicated on matters that were solely internal party matters and therefore not justifiable? (Grounds 2, 3, 5 and 6)

3. Whether the court below was right in holding on the one hand that the trial Federal High Court lacked jurisdiction to have adjudicated on the dispute between the parties, and on the other

hand went ahead to consider the matter on its merits and proceeded to make order and consequential orders? (Grounds 4).

This 3rd issue which dealt with the merit of the appeal was abandoned and accordingly struck out. Thus the findings made by the lower court on the qualification for nomination of an aspirant to contest the Gubernatorial election of the 1st appellant and the issue of tax clearance which was resolved by the PDP Appeal Panel in the screening exercise were not challenged and they remain valid and in full force and this court cannot revisit them. See: *Buhari vs Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 138.

Mr. Daudu, learned senior counsel for the appellant complained about denial of fair hearing by the court below which rendered its judgment a nullity. In the proceedings of 8th October, 2013 in the court below Mr. Orizu who had filed several processes namely, motion for leave to adduce additional evidence; preliminary objection and extension of time to file brief of argument walked out of court when the court refused to grant his application for adjournment to move the application to file the brief but the other counsel in the appeal stayed back to continue with the appeal. Chief Gadzama, SAN, one of the other counsel who stayed back, drew the courts attention to the conduct of counsel in leaving the court without permission and observed that the motion had been abandoned. He applied that the motion be struck out. Other counsel, namely Mr. Oguejiofor and Mr. Alhassan associated themselves with the application made by Chief Gadzama. The Court in its ruling held that the application filed on 7/10/2013 for extension of time to file brief is deemed abandoned and is struck out. Subsequently the motion for leave to adduce additional evidence and Notice of Preliminary objection were also struck out for want of diligent prosecution. The brief for which counsel applied for extension of time to file had been filed three days out of time and when arguments on the appeal were being advanced, the court below took cognizance of the brief and decided to use it. Learned senior counsel for appellant argued that in view of what had transpired in the court below which led to the striking out of the motion, the brief also went with the motion. This is not the case because the brief was deemed filed on the application of counsel to 3rd respondent (who was appellant in the court below).

In view, of what happened, it cannot be seriously argued, as

learned senior counsel has contended, that there was a denial of fair hearing. The appellant was given fair hearing in the lower court.

I wish to state that the conduct displayed by Prince Orizu in the court below as produced in the record is to say the least unfortunate and ought to be condemned in the strongest terms.

Learned Senior counsel has raised the issue whether the B Lower Court was right to hold that the Federal High Court Port Harcourt lacked jurisdiction to entertain the Plaintiffs claim. Both the appellant and the 3rd respondent were screened by the 1st respondent to contest the primaries for the Gubernatorial Election for C Anambra State stated for 16th November, 2013. At the initial screening exercise the Committee set up by the 1st respondent disqualified the 3rd respondent on the ground of irregular payment of tax because he failed to produce receipts showing that he paid his tax as and when due. The 3rd respondent then appealed to the screening appeals panel for Anambra State. After examining the receipts which D the 3rd respondent subsequently submitted, his appeal was allowed and the appeals panel cleared him to contest the primaries which he won. The 1st respondent issued him with a certificate of return and forwarded his name to the 4th respondent as its gubernatorial candidate for the upcoming election. The appellant was dissatisfied with E the decision taken by the gubernatorial appeal panel and proceeded to institute the action by taking out an originating summons before the Federal High Court sitting in Port Harcourt which gave judgment F in favour of the Appellant then Plaintiff and the present respondents appeal to the court below which ruled that the Federal High Court lacked jurisdiction to entertain the claim.

Section 87(9) of the Electoral Act, 2010 (as amended) is clear and unambiguous and it provides:-

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

From the record of this appeal, it has been shown in the affidavits and counter affidavits and other documents exhibited there-with in support of the originating summons and in opposition to same

that the dispute which arose between the parties was from the primary election conducted by the 1st respondent to nominate its flag bearer for the Gubernatorial election scheduled for Anambra on 16th November, 2013. The Plaintiff/Appellant was one of the aspirants and he participated in the said primary election. Since he felt aggrieved that the 3rd respondent was subsequently cleared to participate in the said primary, he was right to challenge the clearance given to the 3rd respondent to take part in the said primaries. The Court was also seized with jurisdiction to entertain the action and determine it. The decision in *Onuoha v. Okafor* (1983) 2 SC. NLR 244; (1983) NSCC 494 is no longer the law on the matter because of the requirement under section 34 of the Electoral Act 2006 which stipulates that a political party wishing to substitute or change a candidate whose name has already been forwarded to INEC should do so in writing within 60 days to the election giving cogent and verifiable reasons for the intended change except in the case of death of the candidate which the party seeks to withdraw. The appeal on jurisdiction therefore succeeds and it is hereby allowed. The appeal therefore partially succeeds on the issue of jurisdiction.

The trial court was right to assume jurisdiction to entertain and determine the appellant's case. The appeal on denial of fair hearing is bereft of any merit and it is accordingly dismissed. As there is no appeal against the findings of the court below that the 3rd respondent, Dr. Tony Nwoye remained the candidate of the Peoples Democratic Party (PDP) for the Gubernatorial Election in Anambra State slated for 16th November, 2013, that decision stands.

It is for the above reasons and the more detailed reasons contained in the judgment of my Lord, Kekere-Ekun, JSC, that I allowed this appeal in part on 4th November, 2013 and declared that the trial court and the court below have jurisdiction to entertain the appellant's case and the respondents' appeal but dismissed the appeal on the remaining issue and affirmed the order made by the court below that the 3rd respondent, Dr. Tony Nwoye remained the candidate of the Peoples Democratic Party (PDP) in the Governorship Election scheduled for 16th November, 2013 in Anambra State. No order is made on costs.