

SUPREME COURT OF NIGERIA
FRIDAY 14TH FEBRUARY, 2014. SC. 476/2012
CORAM:- J. A. FABIYI, B. RHODES-VIVOUR,
N. S. NGWUTA, M. U. PETER-ODILI, J. I. OKORO, JJSC

IBEGWURA ORDU AZUBUIKE AND 1. PEOPLES DEMOCRATIC PARTY 2. RIVERS STATE INDEPENDENT ELECTORAL COMMISSION 3. HON. RAYMOND NWOKOCHA 4. HON. DOUGLAS IFEANYI CHUKWU UZAH 5. HON. (SIR) FIDELIS OBIOSA 6. HON. HARCOURT AMUA (Suing for themselves and on behalf of the members of the Ogba/Egbema/ Ndoni Legislative Council) APPELLANT RESPONDENTS
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ACTIONS - Party - Necessary party - Is one who being closely connected to law suit - Should be included in the case if feasible - But whose absence will not require dismissal of proceedings (H1)

COURTS - Action - Party - Joinder of - It is duty of courts to ensure that parties that are likely to be affected by result of action - Are joined accordingly (H2)

PARTIES - Necessary party - Joinder of - Necessity - Such party should not be shut out - As judgment made with an order against person who was not party to a suit - Is to no avail and cannot stand (H3)

COURTS - Discretion - Joinder of party - Grant or refusal of application for joinder is at discretion of court - Which must be exercised judicially and judiciously - And not to be interfered with on appeal - Unless it was made upon wrong principles (H4)

APPEALS - Court - Joinder of party - CA rightly interfered with discretion of trial court that refused application for joinder of 1st respon-

dent - As 1st respondent disclosed sufficient interest in its application (H5)

FACTS

Before the High Court of Rivers State Port Harcourt, plaintiff/appellant brought this action by way of originating summons seeking for the determination of whether by the provisions of Rivers State Independent Electoral Commission (RSIEC) Law (as amended), elections shall hold in Ogba/Egbema/Ndoni L.G.A. of the State in 2011 and whether by the provisions of the said law, a vacancy shall exist in Ogba/Egbema/Ndoni L.G.A. in 2011. Appellant therefore sought inter alia for order directing the RSIEC to conduct L.G.A. elections in Ogba/Egbema/Ndoni L.G.A. in 2011 on a day to be fixed by RSIEC. In March 2008, 2nd respondent conducted the Local Government general elections in the State. One Hon. Chris Ochiye emerged as the Chairman and 17 others were elected as Councilors from each of the 17 Wards in Ogba/Egbema/Ndoni L.G.A. Their term of office was for three years. However, upon the request of the State Governor, the House of Assembly dissolved the said L.G. Council, leading to the setting up a caretaker committee pending the conduct of bye election for the council.

Subsequently, the bye election was conducted in 2010 by 2nd respondent wherein the 3rd set of respondents was elected into positions of Chairman and Councilors. They were different from the members of the dissolved council. Appellant therefore commenced this action at the expiration of the tenure of the 21 other L.G. Councils elected in March 2008. 2nd respondent filed counter-affidavit to the originating summons, contending that the election it conducted in 2010 which brought the 3rd set of respondents into power was a general election. Hence, they argued that the tenure of office of the said respondents will not expire in 2011 but in 2013. At the hearing, 1st respondent (originally not a party) applied to be joined as a party. Appellant filed counter-affidavit opposing the application for joinder. The court heard the application and dismissed same on the ground that 1st respondent is not a necessary party to the action. Aggrieved, 1st respondent appealed to the Court of Appeal Port Harcourt Division. The court allowed the appeal and held that 1st respondent is a necessary party for the effectual adjudication of the case. Dissatisfied,

appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

“2.1. Whether the Court of Appeal was right in setting aside the decision of the learned trial judge which dismissed the application for joinder of the 1st respondent to the suit on the ground that the appellant (sic) was not a necessary party to be joined in the suit.

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

Party - Necessary party

1. It is at this point apt to find out who is a necessary party to an action. A necessary party is one who, being closely connected to a law suit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings. (p. 497 E)

Action - Party - Joinder of

2. Let me make the point that it is the duty of the courts to ensure that parties that are likely to be affected by the result of an action are joined accordingly. (p. 498 C)

PARTIES - Necessary party - Joinder of - Necessity

3. It should also be noted that a necessary party should be allowed to have his fate in his own hands. He should not be shut out to watch through the window. Judgment made with an order against a person who was not a party to a suit is to no avail. It cannot be allowed to stand. (p. 498 D)

COURTS - Discretion - Joinder of party

4. It is basic that the grant or refusal of an application for joinder is an exercise at the discretion of the court. There is however, the rider that such exercise must be carried out judicially and judiciously, as well. Discretion is the art of being discrete.

The appellate court will be reluctant to interfere with the discretionary power of the trial court unless it was made upon

APPEALS - Court - Joinder of party

5. It is not in contest that the 1st respondent sponsored the 3rd set of respondents in the election conducted by the 2nd respondent in 2010. In effect, the 1st respondent won the election which tenure is the subject mater of the action at the trial court. There is no valid excuse for the non-joinder of the 1st respondent being the winner of the election which the appellant wants to surreptitiously set aside.

It should be noted that the appellant in his brief at page 8 paragraph 3.11 re-echoed this sentiment which is not backed up by any judicial authority, either case law or statute. The view of the trial judge which was supported by the appellant's counsel equates with what one may refer to as mere postulation. In the light of the provisions of section 221 of the 1999 Constitution, as amended: section 23 (2) (b) of the Rivers State Independent Electoral Commission Law, 2000 and the decision of this court in Amaechi v. INEC (supra) as discussed above, the view of the trial judge and position taken by him, with respect, do not represent the correct position of the law. The decision of the trial judge was based upon wrong principles and/or assumption. The court below, no doubt, was on a firm stand when it rightly interfered with the exercise of discretion which was not carried out judicially and judiciously, as well. The 1st respondent disclosed sufficient interest in its application before the trial court and ought not to have met a brick wall thereat.

The presence of the 1st respondent is necessary for the effectual and complete adjudication of questions involved in the matter. The 1st respondent will be seriously affected by the outcome of the case. (pp. 499 F/500 B)

H NOTABLE POINT OF INTEREST

FABIYI JSC

1. Determination of effect of non joinder of a party

This court per Oputa, JSC in the same case of Green v. Green (1987)

3 NWLR (Pt. 60) 480 laid it down that in order to decide the effect of non-joinder or mis joinder of a party, the court should ask itself the following questions:-

(a) Is the cause or matter liable to be defeated by non joinder?

(b) Is it possible to adjudicate on the cause or matter unless the 3rd party is added as a defendant? **B**

(c) Is the 3rd party a person who should have been joined in the first instance?

(d) Is the 3rd party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the cause or matter? (p. 497 H) **C**

REPRESENTATION

C. I. Enweluzo, for the Appellant

S. A. Somiari, for 1st Respondent

E. N. Ebete, for 2nd Respondent

E. C. Aguma with U. B. Eyo, Esq., for 3rd set of respondent

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CASES REFERRED TO

C.M.I. Trading Services Ltd. v. Yuri (1994) 11 NWLR (pt. 573) 284

Yakubu v. Governor Kogi State (1995) 8 NWLR (pt. 414) 386

Bisimillahi v. Yagba East LGA (2003) All FWLR (pt. 141) 1939

Uku v. Okumagba (1974) 3 SC 35 (1974) 1 All NLR 475

Green v. Green (2001) FWLR (pt. 76) 795

Okukuje v. Akwido (2001) FWLR (pt. 39) 1487

Amaechi v. INEC (2008) FWLR (pt. 407) 1

E.F.P. Co. Ltd. v. NDIC (2007) NWLR (pt. 1039) 216

The Rgd. Trustees of Christ Apostolic Church of Nig. v. Sadiku (2002) FWLR (pt. 95) 238

Akanobi v. Fabunmi (1986) 2 SC 431

Nwite v. Michael (2008) 15 NWLR (pt. 1109) 149

Buhari v. Yusuf (2003) 14 NWLR (pt. 841) 446

Buhari v. Obasanjo (2003) FWLR (pt. 186) 709

Eronini v. Iheuko (1989) 2 NSCC (pt. 1) 503

University of Lagos v. Olaniyan (1985) 16 NSCC (pt. 1) 98

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STATUTES REFERRED TO

Rivers State Local Government Law 1999 (as amended), ss. 65, 66(1)-(3)

Rivers State Independent Electoral Commission Law No. 2 of 2000, ss. 13(1), 23(2)(b)

B Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 221

BOOK REFERRED TO

C Black's Law Dictionary 9th Edn. p. 1232

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division (the court below) delivered on March 15, 2012. Therein, the Ruling of the trial High Court of Rivers State, Port Harcourt, per Aprioku, J. delivered on February 14th, 2011 was set aside.

It is apt to state the brief facts concerning this appeal. In March 2008, the 2nd respondent conducted the Local Government Election in Rivers State. One Hon. Chris Ochiye emerged as the Chairman and 17 others were elected as Councilors from each of the 17 Wards in Ogba/Egbema/Ndoni Local Government Area of Rivers State. They were to hold office for three (3) years. The Rivers State House of Assembly dissolved the said Local Government Council upon the request of the Executive Governor of Rivers State. A caretaker committee was set up to over-see the affairs of the Council pending the conduct of a bye election.

On March 3, 2010, the 2nd respondent conducted the said bye election and the 3rd set of respondents was elected into the positions of Chairman and Councilors. They were different from the members of the dissolved council. At the expiration of the tenure of the 21 other Local Government Councils elected in Rivers State in March, 2008, the appellant filed an Originating Summons at the trial court. Therein, the following questions were raised for determination. viz:-

(a) Whether by the provisions of the Rivers State Independent Electoral Commission Law of Rivers State; Local Government Law 1999 as amended, Elections shall hold in Ogba/Egbema/Ndoni Lo-

cal Government Area of Rivers State in 2011.

(b) Whether by the provisions of the said laws a vacancy shall exist in Ogba/Egbema/Ndoni Local Government Area of Rivers State in 2011.

The appellant then asked for the following reliefs, to wit:

(a) A declaration that by virtue of the combined provisions of sections 65 and 66 (1) - (3) of the Rivers State Local Government Law, 1999 as amended, the tenure of the Ogba/Egbema/Ndoni Local Government Area shall expire by March 2011. B

(b) A declaration that pursuant to section 13 (1) of Rivers State Independent Electoral Commission Law No. 2 of 2000, Elections shall hold in Ogba/Egbema/Ndoni Local Government Area in 2011 (on a day to be fixed by RSIEC). C

(c) An order directing the RSIEC to conduct Local Government Area elections in Ogba/Egbema/Ndoni Local Government Area in 2011 on a day to be fixed by RSIEC. D

The 2nd respondent - RSIEC opposed the said Originating Summons and contended that the election it conducted in 2010 which brought the 3rd set of respondents into power was a general election and as such the tenure of office of the 3rd set of respondents will not expire in 2011 but in 2013. At the hearing of the Originating Summons, the 1st respondent which was not a party from the on-set applied to be joined as a party to the suit via a motion on notice filed on 7th February, 2011. The appellant filed a counter affidavit to oppose the application. E F

After hearing parties in respect of the application for joinder, the trial court in the Ruling delivered on February 14, 2011, dismissed the application. The trial judge maintained that the 1st respondent - Peoples Democratic Party, which sponsored the 3rd set of respondents, was not a necessary party to the action. G

The 1st respondent appealed to the court below which heard the appeal. In its judgment delivered on March 15, 2012 it found as follows:-

“...the presence of the appellant/applicant is necessary for the effectual and complete adjudication of the questions involved in the cause or matter. The applicant is also likely to be affected by the proceedings... I therefore resolve the issue in favour of the appellant. This appeal has merit. It is hereby allowed.” H

In effect, the 1st respondent was found to be a necessary party for the effectual adjudication of the case. The appellant felt unhappy with the stance of the court below and has decided to appeal to this court.

B On 19th November, 2013 when the appeal was heard, each learned counsel to the parties adopted and relied on the brief of argument filed on behalf of his client. The appellant's counsel made oral submissions and urged that the appeal be allowed. Each of the respondent's counsel urged that the appeal should be dismissed.

C On page 5 of the appellant's brief, the sole issue couched for determination of the appeal reads as follows:

"2.1 Whether the Court of Appeal was right in setting aside the decision of the learned trial judge which dismissed the application for joinder of the 1st respondent to the suit on the ground that the D appellant (sic) was not a necessary party to be joined in the suit. (This is distilled from grounds 1 and 2 of the Notice and Grounds of Appeal)."

On behalf of the 1st respondent, the issue decoded for determination reads as follows:-

E *"Whether the Court of Appeal was right in setting aside the judgment and/or ruling of the learned trial judge in respect of the 1st respondent's application for joinder."*

F For all intent and purpose, the issue formulated on behalf of the 2nd respondent is similar to that of the appellant. It reads as follows:-

"Whether the Court of Appeal was right in setting aside the decision of the learned trial judge which dismissed the application for joinder of the 1st respondent to the suit on the ground that the 1st G respondent was not a necessary party to be joined to the suit."

For the 3rd set of respondents, the issue raised for determination reads as follows:-

H *"Whether the Court of Appeal was right when it found that the 1st respondent, the Peoples Democratic Party that is bound to be affected by the proceedings in the High Court was a necessary party for the effectual adjudication of the questions in issue."*

On behalf of the appellant, learned counsel observed that the grant or refusal of joinder of a party is based on exercise of discretion which must be carried out judicially and judiciously by the

court. He referred to the case of *C.M.I. Trading Services Ltd. v. Yuri* (1994) 11 NWLR (Pt. 573) 284 at 300.

Learned counsel maintained that the question in controversy which relates to the interpretation of sections 13, 65 and 66 of the Electoral Law of Rivers State as it affects the conduct of elections in ONELGA and tenure of the 3rd set of respondents does not require the presence of the 1st respondent in the suit. He submitted that the 1st respondent has no interest which will be irreparably prejudiced if it is not joined in the action. He cited the case of *Col. Hassan Yakubu (Rtd.) v. Governor, Kogi State & 3 Ors. and Ejeh of Ankpa* (1995) 8 NWLR (pt. 414) 386 at 402-403. B C

Learned counsel further submitted that the 1st respondent cannot be a party as there are no questions for resolution that will affect its interest. He referred to *Bisimillahi v. Yagba East Local Government Area* (2003) All FWLR (Pt. 141) 1939 at page 1958. D
Learned counsel opined that the court will refuse the joinder of a party when it is satisfied that the case could be effectively and completely determined without the joinder of such a party. He referred to *Bisimillahi v. Yagba East Local Government Area* (supra) and *Uku v. Okumagba* (1974) 3 SC. 35 (1974) 1 All NLR 475. He maintained that the interest of the 1st respondent or any other political party is too remote since it is not an office holder and not charged to conduct the election like the 2nd respondent. He finally urged that the judgment of the court below be set aside. E

On behalf of the 1st respondent, learned counsel submitted that it is a necessary party and that the lower court was right in setting aside the ruling of the learned trial judge. For the definition of necessary party, he referred to *Black's Law Dictionary*, 9th Edition at page 1232. F G

Learned counsel maintained that the 1st respondent was not only a proper party but a necessary party. He cited the case of *Green v. Green* (2001) FWLR (pt. 76) 795 at 814. He further submitted that it is the duty of the court to ensure that parties that are likely to be affected by the result of an action are accordingly joined. He cited *Okukuje v. Akwido* (2001) FWLR (Pt. 39) 1487 at page 1523. H

Learned counsel observed that from the reliefs sought by the appellant, the matter is of a political nature which involves conduct of election for Chairmanship and Councilors in Ogba/Egbema/Ndoni

Local Government Area of Rivers State by the 2nd respondent. He referred to section 221 of the 1999 Constitution of the Federal Republic of Nigeria and the decision of this court in *Amaechi v. INEC* (2008) FWLR (Pt. 407) 1 at 97-98 to the effect that it is the party that sponsors candidates and wins an election.

B Learned counsel asserted that this is a case where there is no valid excuse for the non-joinder of the 1st respondent being the winner of the election which the appellant wants to surreptitiously set aside. He maintained that the 1st respondent is the surety of the 3rd set of respondents and primarily liable for their obligations. As well, it can without recourse, voluntarily intervene in the affairs of the 3rd set of respondents even in matters such as in the claims of the appellant in the trial court.

D Learned counsel asserted that the 1st respondent is not only a desirable party but a necessary party which ought to be joined. He referred to the cases of *E.F.P. Co. Ltd. v. NDIC* (2007) NWLR (Pt. 1039) 216; *The Registered Trustees of Christ Apostolic Church of Nigeria & Anr v. Alhaji Sadiku & Anr.* (2002) FWLR (Pt. 95) 238 at 243; *Akanobi v. Fabunmi & Anr.* (1986) 2 SC 431. He urged that E the lone issue be resolved in favour of the respondents and the appeal be dismissed as lacking in merit.

Learned counsel for the 2nd respondent made similar submissions with force. I need not recast same. He urged the court to hold that the court below was right to have set aside the decision of F the trial court because the decision of the trial court was based on wrong principles for which an appellate court has the right to interfere. He maintained that the 1st respondent disclosed sufficient interest in its application before the trial court and ought to have been G joined by the trial court.

As well, learned counsel for the 3rd set of respondents made similar submission like those of the learned counsel to the 1st respondent. He urged that the appeal be dismissed for want of merit because:

H 1. The appellant in his brief did not address the ratio decidendi of the decision of the court below which is the decision in *Amaechi v. Independent National Electoral Commission & 2 Ors* and the provisions of section 23 (2) (b) of the Rivers State Independent Electoral Commission Law;

2. It is the 1st respondent whose legal rights as the sponsor of the 3rd set of respondents that is ultimately in issue in the suit;

3. The 1st respondent who, in the eyes of the law contests and wins election, is a necessary party to this suit.

The learned counsel for the appellant also filed a Reply brief in which he maintained that section 221 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, section 23 of the Rivers State Independent Electoral Law and the case of Amaechi v. INEC, heavily relied upon by the respondents, were cited out of context.

He referred to the cases of Nwite v. Michael (2008) 15 NWLR (pt. 1109) 149 at 164; Buhari v. Yusuf (2003) 14 NWLR (Pt. 841) 446 at 505; Buhari v. Obasanjo (2003) FWLR (Pt. 186) 709 at 727. He maintained that the decisions are to the effect that political parties are not necessary parties to an election petition. Learned counsel agreed that in this matter, election is not a live issue as none has been conducted by RSIEC. What was in issue is whether or not an election ought to be conducted in the stated Local Government Council of Rivers State. He stressed that the decisions in the above authorities cited by him still remain the position of the law with respect to necessary parties in an election related matter and that the relief sought by the appellant at the trial court can be determined without joining the 1st respondent.

It is at this point apt to find out who is a necessary party to an action. A necessary party is one who, being closely connected to a law suit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings. (Black's Law Dictionary, 9th Edition at page 1232).

In Green v. Green (2001) FWLR (Pt. 76) 795 at 814, this court held that:

"A necessary party is one who is not only interested in the subject matter of the proceedings but whom in his absence, the proceedings cannot be fairly and judiciously decided. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless the necessary party to the particular claim is joined in the action..."

This court per Oputa, JSC in the same case of Green v. Green (1987) 3 NWLR (Pt. 60) 480 laid it down that in order to decide the effect of non-joinder or mis joinder of a party, the court should ask

itself the following questions:-

(a) Is the cause or matter liable to be defeated by non joinder?

(b) Is it possible to adjudicate on the cause or matter unless the 3rd party is added as a defendant?

B (c) Is the 3rd party a person who should have been joined in the first instance?

(d) Is the 3rd party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectively and completely adjudicate or settle all the questions involved in the cause or matter?

Let me make the point that it is the duty of the courts to ensure that parties that are likely to be affected by the result of an action are joined accordingly. Refer to Okukuje v. D Akwido (supra) at page 1523.

It should also be noted that a necessary party should be allowed to have his fate in his own hands. He should not be shut out to watch through the window. Judgment made with an order against a person who was not a party to a suit is to no avail. It cannot be allowed to stand. See: Uku v. Okumagba (supra).

It is basic that the grant or refusal of an application for joinder is an exercise at the discretion of the court. There is however, the rider that such exercise must be carried out judicially and judiciously, as well. Discretion is the art of being discrete. See Eronini v. Iheuko (1989) 2 NSCC (Pt. 1) 503 at 513; 1989) 3 SC (Pt. 1) 30; University of Lagos v. Olaniyan (1985) 16 NSCC (Pt. 1) 98 at 113.

G ***The appellate court will be reluctant to interfere with the discretionary power of the trial court unless it was made upon wrong principles.*** See: Ige v. Farinde (1994) 20 LRCN 323 at 342.

H The court below, in setting aside the Ruling of the trial court, held as follows per Awotoye, JCA:-

“The learned trial judge after hearing the parties dismissed the application. Was the appellant/applicant a necessary party having regard to the facts deposed to in the affidavit and the provisions of Rivers State Independent Electoral Commission Law No. 2 of 2000?”

The answer is yes with due respect. By virtue of section 23 (2) (b) of the Rivers State Independent Electoral Commission Law, a person shall not be qualified to contest a Local Government Election unless he is a member of a political party and is sponsored by that political party. The word 'sponsor' as used is defined in the Black's Law Dictionary (with pronunciation) 6th Edition as surety - one who makes a promise or gives security for another. B

It can be said in other words that the appellant (1st respondent herein) was the surety for 3rd set of respondents herein at the election... I am not in doubt that the application of the appellant (1st respondent herein) to be joined was wrongly refused and dismissed. C

The presence of the appellant/applicant (1st respondent herein) is necessary for the effectual and complete adjudication of the question involved in the cause or matter. The applicant (1st respondent herein) is also likely to be affected by the proceedings..." D

I agree with the reasoning and findings of Awotoye, JCA as reflected above. I shall add just a few points in support.

The party which desired to join - The Peoples Democratic Party is a political party. Section 221 of the Constitution of the Federal Republic of Nigeria 1999, amended provides that:- E

"...No association other than a political party, shall canvass for votes for any candidate at an election or contribute to the funds of any political party or to the election expenses of any candidate at an election..."

In Amaechi v. INEC (2008) FWLR (Pt. 407) 1 at 97 - 98, this court, per Oguntade, JSC pronounced that without a political party, a candidate cannot contest and that it is a party that wins an election. F

It is not in contest that the 1st respondent sponsored the 3rd set of respondents in the election conducted by the 2nd respondent in 2010. In effect, the 1st respondent won the election which tenure is the subject mater of the action at the trial court. There is no valid excuse for the non-joinder of the 1st respondent being the winner of the election which the appellant wants to surreptitiously set aside. G H

The trial judge at page 243 of the Records of Appeal stated as follows:-

"...the 3rd set of respondents were joined in this suit because upon election and taking the oath of office, they transcended the

interest of representing the parochial interest of a political party but are on seat as chairman and councillors respectively, representing the whole people of Ogba/Egbema/Ndoni Local Government Area of Rivers State of Nigeria, and as such any issue that will call for the termination of their tenures require their presence as defendants and not that of the 1st respondent or any other political party.”

It should be noted that the appellant in his brief at page 8 paragraph 3.11 re-echoed this sentiment which is not backed up by any judicial authority, either case law or statute. The view of the trial judge which was supported by the appellant’s counsel equates with what one may refer to as mere postulation. In the light of the provisions of section 221 of the 1999 Constitution, as amended: section 23 (2) (b) of the Rivers State Independent Electoral Commission Law, 2000 and the decision of this court in Amaechi v. INEC (supra) as discussed above, the view of the trial judge and position taken by him, with respect, do not represent the correct position of the law. The decision of the trial judge was based upon wrong principles and/or assumption. The court below, no doubt, was on a firm stand when it rightly interfered with the exercise of discretion which was not carried out judicially and judiciously, as well. The 1st respondent disclosed sufficient interest in its application before the trial court and ought not to have met a brick wall thereat. See: Ige v. Farinde (supra) at page 348.

The presence of the 1st respondent is necessary for the effectual and complete adjudication of questions involved in the matter. The 1st respondent will be seriously affected by the outcome of the case. See: E.F.P. Co. Ltd. v. NDIC (2007) NWLR (Pt. 1039) 216; Amaechi v. INEC (supra), The Registered Trustee of Christ Apostolic Church of Nigeria & Anr. v. Alhaji Sadiku & Anr. (supra) at page 247 and Akanobi v. Fabunmi (supra) at page 535.

The appellant’s position is that the tenure of the 3rd set of respondents has expired. He urged the trial judge to compel the 2nd respondent to conduct fresh elections for the positions of Chairman and Councilors in the said Local Government Area of Rivers State of Nigeria. The 1st respondent, on its part contends that having sponsored the 3rd set of respondents and indeed won the election which tenure is sought to be put at an end surreptitiously by the appellant,

it should be heard in the matter that would relate, pertain, concern and/or touch on the said election; particularly on the determination of same. It felt that denial of such audience would cause it great hardship and difficulty.

Let me observe briefly here that I note it that the appellant's counsel in his Reply Brief maintained that the provisions of section 221 of the 1999 Constitution, as amended, section 23(2) (b) of Rivers State Independent Electoral Commission Law, 2000 and the case of Amaechi v. INEC heavily relied upon by the respondents were cited out of context. He cited inter alia, the cases of Buhari v. Yusuf (supra) Buhari v. Obasanjo (supra) and maintained that they decide that political parties are not necessary parties to an election petition. Learned counsel however agreed that in this matter, election is not a live issue as none has been conducted by RSIEC. What was in issue is whether election ought to be conducted in the stated Local Government Council of Rivers State of Nigeria. In effect, learned counsel for the appellant conceded that he stood on shifting sand. The authorities cited and relied upon by him in this respect failed to hit the target. If he was able to wrongly tilt the trial judge, he should not exhibit such mundane pranks before this court.

In conclusion, it must be stressed that the 1st respondent is not only a desirable party but a necessary party in whose absence the matter involved in this action cannot be effectively and effectually resolved. It is a party, which as clearly demonstrated ought to be joined as a party to the suit in the first instance as it will be affected by the outcome of the suit and bound by same. The decision of the trial court was based on wrong principles and/or self created postulations. The court below was right to have interfered with a woolly exercise of discretion by the trial court which made it to wrongly refuse the deserving application by the 1st respondent to be joined as a party.

In conclusion, there is no shred of doubt that the appeal is devoid of merit and must be dismissed. The judgment of the court below delivered on March 15, 2012 is hereby affirmed as the appeal is accordingly dismissed. The 1st respondent is joined to the suit at the trial court. The appellant shall pay N100,000 as costs to each set of respondent(s).

RHODES-VIVOUR JSC

This is an interlocutory appeal that became necessary because the learned trial judge refused to join the Peoples Democratic Party, (PDP) as a defendant/respondent in this suit.

The appellant as claimant before a Port Harcourt High Court
B filed an Originating Summons for the following:

(a) A Declaration that by virtue of the combined provisions of sections 65 and 66 (1) - (3) of the Rivers State Local Government Law, 1999 as amended, the tenure of the Ogba/Egbema/Ndoni
C L.G.A. Council shall expire in March 2011.

(b) A Declaration that pursuant to section 13 (1) of the Rivers State Independent Electoral Commission Law, No.2 of 2000 Law, Elections shall hold in Ogba/Egbema/Ndoni L.G.A. in 2011 (on a day to be fixed by RSIEC).

(c) An Order directing the RSIEC to conduct L.G.A elections in Ogba/Egbema/Ndoni L.G.A in 2011 (on a day to be fixed by RSIEC).
D

On these claims the issue for determination in the suit is:

Whether or not an election ought to be conducted in the
E L.G.A Council of Rivers State.

The position of the claimant/appellant is that the tenure of the 3rd set of respondents has expired and so the trial judge should compel the 2nd respondent (the Regulatory body charged with the conduct of Local Government Elections) to conduct fresh elections
F for the positions of Chairman and Councilors in the said Local Government Area of Rivers State. The 1st respondent (PDP) sponsored the 3rd set of respondents. They won the election, and it is their tenure the claimant/appellant wants the court to declare ended in
G March 2011.

The simple question for determination is:

Whether on these facts the 1st respondent (PDP) should be a party in this suit.

The learned trial judge dismissed the application by PDP to
H be joined as a defendant. The judge ruled that the 1st respondent, PDP, the party that sponsored the 3rd set of respondents was not a necessary party to the action. This decision was upset on appeal. In a well considered judgment delivered on 15/3/12 Court of Appeal said:

"The presence of the appellant/applicant is necessary for the

effectual and complete adjudication of the questions involved in the cause or matter. The applicant is also likely to be affected by the proceedings...”

And so PDP became the 1st respondent. The claimant has come here saying that the Court of Appeal was wrong.

My learned brother, Fabiyi, JSC in his leading judgment which I had the advantage of reading in draft covered the issue of joinder comprehensively. I do not in the circumstances want to be repetitive so I shall only make some observations. B

The grant or refusal of joinder of a party as plaintiff or defendant is entirely at the discretion of the judge, and it has been said in a plethora of cases that the appellate court will not interfere with the way a trial judge exercise his discretion, unless: C

(a) the discretion is known to have been wrongly exercised,
(b) or the exercise was tainted with some illegality or substantial irregularity. D

(c) it is in the interest of justice. See *Salu v. Egeibon* 1994 6 NWLR pt.348 p.23

The well settled position of the law for making a person, either natural or legal to be a party to an action is that he should be bound by the result of the action. The questions to be settled in the action must be questions which cannot be effectually and completely settled unless he is a party. The court is expected in the interest of justice to join as plaintiff or defendant anyone who may have a stake in the subject matter of the suit or may be affected by the decision. See *Green v. Green* 1987 3 NWLR pt.61 p.480, *Uku & ors. v. Okumagba & ors.* 1974 3 SC p. 35. E
F

There is no provision for Independent Candidates in our constitution or Electoral Laws. Consequently anyone contesting for elected office must belong to a political party. It is the tenure of the 3rd set of respondents that is to be decided in this suit. The PDP sponsored the 3rd set of respondents for an election they won. They are in office. Anything to do with their tenure in office must be of serious concern to the party that sponsored them. The PDP, the party that sponsored the 3rd set of respondents definitely has a stake in the suit and would be affected by the ultimate decision if not given an opportunity to be heard in a matter that concerns its members in political office. H
To my mind the 1st respondent, PDP is not only a necessary party

but a desirable party who the Court of Appeal was right to join as a party in this suit.

An Appeal Court is always slow to interfere with the discretion of a trial judge but would be compelled to do so if the exercise of discretion was in clear breach of the law. I am satisfied that the Court of Appeal was correct to interfere with the discretion of the trial judge as the discretion was wrongly exercised, was in breach of the law, and not in the interest of justice. Not making the PDP a party in an action that is to determine the tenure of its members in office may very well amount to a denial of fair hearing. The PDP can only be properly bound by the result of the action if made a party. The PDP is a necessary party for the effectual and complete adjudication of the question involved in the case.

For this brief observation I agree with my learned brother Fabiyi, JSC that the appeal be dismissed with costs as proposed. The discretion exercised by the learned trial judge has been shown to be flawed to my satisfaction.

NGWUTA JSC

I have had the privilege of considering the exhaustive reasons prepared by my learned brother Fabiyi, JSC and I am in complete agreement with the views which His Lordship expressed.

I desire to add only a few brief observations by way of emphasis.

The question posed herein is whether or not the 1st Set of Respondents, the PDP ought to be joined as a party in a suit involving the 3rd Set of Respondents who were elected under its platform?

The law as stated by the Supreme Court in the case of *Amaechi v. INEC & Ors* (2008) FWLR (Pt.407) 1 at 97 to 98 that it is a political party through the instrumentality of its sponsored candidates that wins election. A candidate cannot stand election without being sponsored by a political party nor can a political party win a seat in an election except through a candidate it sponsored.

It therefore follows that what affects one affects the other also. Both must swim or sink together. A person likely to be affected by a decision reached in a matter ought to be joined as a party. The 1st set of respondents will be affected one way or the other by the decision

in the dispute in which its elected candidates the 3rd Respondents are parties. See *Carlen Nig. Ltd. v. University of Jos & ors* (1994) 4 NWLR (Pt. 323) 61; *Peenok Investment Ltd v. Hotel Presidential Ltd* (1982) 12 SC 1.

There is no doubt that the 1st Set of Respondents, as a political party that sponsored the 3rd Set of Respondents, stands to gain or lose, depending on the outcome of the litigation, and ought to be joined as a party upon its own application for joinder. B

It is for the above and the fuller reasons in the lead judgment that I also dismiss the appeal as devoid of merit. I adopt the consequential orders in the lead judgment including order as to costs. C

PETER-ODILI JSC

I agree in totality with the judgment and reasoning from which the decision came about of my learned brother, John Afolabi Fabiyi, JSC and I shall show my support with some comments.

This is an Appeal against the Judgment of the Court of Appeal, Port Harcourt Division delivered on 15th March, 2012 in Appeal No. CA/PH/175/2011 between PEOPLES DEMOCRATIC PARTY E
v IBEGWURA ORDU AZUBUIKE and OTHERS where the Court of Appeal set aside the Ruling of the High Court of Rivers State delivered by Hon, Justice S. H. Aprioku on the 14th day of February 2011 in Suit No. PHC/2852/2010 between IBEGWURA ORDU F
AZUBUIKE v RIVERS STATE INDEPENDENT ELECTORAL COMMISSION AND 3 ORS.

FACTS BRIEFLY STATED:

Sometime in March 2008, the 2nd set of Respondents, Rivers State Independent Electoral Commission (RSIEC) conducted the Local Government Election in Rivers State whereby one Chris Ochiye emerged as the Chairman and 17 others as Councilors from each of the 17 Wards in Ogba/Egbema/Ndoni Local government Area of Rivers State. They were to hold office for three years. However, the Rivers State House of Assembly dissolved the said Ogba/Egbema/Ndoni Local Government Council, ONELGA for short, upon the request of the Governor of Rivers State. H

With the dissolution of the Council, a caretaker Committee was set up to oversee the affairs of the council, pending the conduct

of a bye election to be conducted by the 2nd set of Respondents which bye election was conducted on the 6/3/10 and the 3rd set of Respondents elected into office as Chairmen and councilors respectively, They were given a mandate of a term of three years.

At the expiration of tenure of 21 other Local Government Councils elected in Rivers State in March, 2008 the Appellant brought an originating summons for the trial court to determine the following questions to wit:

a) Whether by the provisions of the Rivers State Independent Electoral Commission Law of Rivers State, Local government Law 1999 as amended, Elections shall hold in Ogba/Egbema/Ndoni L.G.A. of Rivers State in 2011.

b) Whether by the provisions of the said Laws a vacancy shall exist in Ogba/Egbema/Ndoni LGA of Rivers State, in 2011. The Appellant then asked for the following reliefs to wit:

a. A declaration that by virtue of the combined provisions of Sections 65 & 66(1) - (3) of the Rivers State Local Government Law, 1999 as amended, the tenure of the Ogba/Egbema/Ndoni LGA Council shall expire by March 2011.

b. A declaration that pursuant to Section 13(1) of Rivers State Independent Electoral Commission Law No, 2 of 2000, Elections shall hold in Ogba/Egbema/Ndoni LGA in 2011 (on a day to be fixed by RSIEC).

C. An Order directing the RSIEC to conduct LGA elections in Ogba/Egbema/Ndoni LGA in 2011 on a day to be fixed by RSIEC.

The 2nd set of Respondents opposed the said originating summons by filing a counter affidavit and a written address contending that the election it conducted in 2010 which brought the 3rd set of Respondents into power was a general election and as such the tenure of office of the 3rd set of Respondents would not expire in 2011. The parties consented to accelerated hearing as Local Government election in Rivers State would take place in the near future.

In the course of hearing of the Originating Summons, the 1st set of Respondents who was not a party at the beginning applied to be joined as a party to the suit by a Motion on Notice dated 4th February, 2011 and filed on the 7th day of February, 2011. The Claimant now Appellant filed a counter affidavit to the application.

In a considered ruling, the learned trial judge dismissed the

application for joinder which decision was made on the 14th day of February, 2011.

Dissatisfied with the Ruling, the 1st set of Respondents appealed to the Court of Appeal and after hearing thereof, the Court below allowed the appeal holding that the 1st set of respondents is a necessary party. The Appellant not happy with the judgment of the Court of Appeal has appealed to the Supreme Court. B

The hearing at the Apex Court took place on the 19th day of November, 2013 at which learned counsel for the Appellant, Mr. C.E. Enweluzo adopted their Brief of Argument settled by him and filed 2012 and a Reply Brief of 3/2/13. In the Brief of Argument was raised a single question stated as follows:- C

Whether the Court of Appeal was right in setting aside the decision of the learned trial Judge which dismissed the application for joinder of the 1st set of Respondents to the suit on the ground that the Appellant was not a necessary party to be joined in the suit. (From grounds 1 and 2 of the Notice and Grounds of Appeal). D

Mr. S. A. Somiari of counsel for the 1st set of Respondents adopted their Brief of Argument he had settled and filed on 30/1/13. In the Brief was couched a sole issue stated thus:- E

Whether the Court of Appeal was right in setting aside the judgment and/or ruling of the learned Trial Judge in respect of the 1st Respondent's application for joinder.

From the 2nd set of Respondents, Mr. Emenike N. Ebete adopted their Brief of Argument, he himself had settled and filed on 31/1/13. He also raised a single issue, viz F

Whether the Court of Appeal was right in setting aside the decision of the learned trial Judge which dismissed the application for joinder of the 1st Respondent to the suit on the ground that the 1st Respondent was not a necessary party to be joined in the suit. G

Mr. Emmanuel C. Aguma, learned counsel for the 3rd set of Respondents asked a lone question as follows:-

Whether the Court of Appeal was right when it found that the 1st set of Respondents, the Peoples Democratic Party that is bound to be affected by the proceedings in the High Court was a necessary party for the effectual adjudication of the questions in issue. H

In effect each of the parties ask the same question though crafted in the style of the learned counsel representing the respective

party. At the bottom of it all is whether the 1st set of Respondents', the People's Democratic Party (PDP) is a necessary party to be sued ab initio. It is for that reason that I will reframe the differently crafted sole issue simply for my use in this way:-

SINGLE ISSUE:

B Whether the Court of Appeal was right to hold that the 1st set of Respondent was a necessary party for the full, effectual and final determination of the question in issue for it to be joined as a party.

C Learned counsel for the Appellant, Mr. Enweluzo submitted that in the determination of an application for joinder that it is common and trite law that the grant or refusal of joinder of a party is exercised at the discretion of the court. The only caveat being that in the exercise of this judicial discretion, the Court must exercise it judicially and judiciously. He cited *C.M.I. Trading Services Ltd v Yuri* (1994) 11 NWLR (Pt. 573) 284 at 300.

He said for a trial court to exercise its discretion, either to join or not to join an applicant to a suit, there are three relevant questions that will be determined which are as follows:-

E a. Is it possible for the Court to adjudicate upon the cause of action set up by the Claimant, if the Applicant/1st respondent is not added as a party?

F b. Is the Applicant seeking to join as a party ought to have been joined in the first instance, and;

G c. Is the Applicant seeking to join someone whose presence before the Court as a Defendant will be necessary in order for the court to effectually and completely adjudicate upon and settle all the questions involved in the cause. He referred to *Onyedeki Akanbi Ors v. Fabumi & Anor* (1986) 17 NSCC (Pt. 1) & 7 364 at 370; (1986) 2 SC 431.

H That the principle of law is now settled that it would only be necessary to join a person (an applicant) as a Defendant if the Claimant has a case against the applicant as the principle of joinder is to effectually and completely adjudicate upon and settle all the questions in the suit, He relied on *Ajayi v. Ors v Jolayeni* (2001) 5 SC (Pt. II) 31 at 36 & 44.

Mr. Enweluzo of counsel for the Appellant stated on that to determine whether the Claimant/Appellant has a claim against the

Applicant/1st set of Respondents, it is better to objectively construe the affidavit evidence and the reliefs sought in the originating summons and scrutinize them to ascertain whether there is any relief sought against the 1st set of Respondents. He cited *Adefarasin v Dayekh & Anor* (2007) All FWLR (Pt. 348) 911 at 934 & 937; *Ecobank Nig. Plc. v Gateway Hotel Ltd* (1999) 11 NWLR (Pt 627) 397 at 417. B

For the Appellant was further submitted that in the case at hand the questions of law raised by the Claimant/Appellant in the originating summons and the reliefs sought, the main or sole question the Claimant/Appellant wants the trial court to resolve in his favour is that the tenure of the 2nd set of Defendants now 3rd set of Respondents ought to expire in March 2011 and that the 1st set of Defendants now 2nd set of Respondents was in error to have excluded the Ogba/Egbema/Ndoni Local Government Area in the Local Government Election it had rescheduled to conduct in April, 2011 for all the Local Government Area Councils in Rivers State. C D

That from a community reading of the facts deposed to by the Appellant in the supporting affidavit and the reliefs sought upon the question for determination, the trial court can effectively determine the issues in the controversy between the Appellant and the 2nd and 3rd set of Respondents as there is no relief or facts requiring the presence of the 1st set of Respondents as a party in adjudicating the issues between the Lower court. That the fact that the 3rd set of Respondents were sponsored as candidates of the Peoples' Democratic Party which they won as Chairman and Councillors is not sufficient cause to make their Political Party, a party in this case. E F

Mr. Enweluzo submitted that the 1st Respondent has no interest which will be irreparably prejudiced if it is not joined in the action. He placed reliance on *Col. Hassan Yakubs (Rtd.) v Governor of Kogi State & 3 Ors AND Ejeh of Ankpa* (1995) 8 NWLR (Pt. 414) 386 at 402 & 403. G

He said it is now settled that an intervener to be joined the Applicant must disclose cogent reasons that he has an existing interest in respect of the issues in controversy which the court is to resolve as a result of the action is likely to affect him. He referred to *Peenock Investment Ltd v Hotel Presidential Ltd* (1982) 12 SC 1; *Registered Trustees of CAC & Anor v Sadiku & Anor* (2002) FWLR (Pt. 95) 238 at 248; *Walden Holdings Ltd & Ors v Akpainenon & Anor* (2003) H

FWLR (Pt. 177) 854 at 899.

That once the Applicant is not able to show why he should be joined it is only open to the court to refuse the joinder sought. He referred to *Bisimillahi v. Yagba East Local Government Area* (2003) All FWLR (Pt. 141) 1939; *Uku v. Okumagba* (1974) 3 SC 35.

B Responding for the 1st Respondent, learned counsel on their behalf, Mr. S.A. Somiari defined the concept of a necessary party with reference to *Black's Law Dictionary* 9th Edition, Page 1232 and the cases of *Green v Green* (1001) FWLR (Pt. 76) 795 at 814; *Okukuje v Akwido* (2001) FWLR (Pt. 39) 1487 at 1523.

C He said the test to apply in joining a person as a party to an action is whether the person would have his interest irreparably prejudiced if he is not joined in the action. That in the instant case the party joined is the Peoples Democratic Party which is the political D party with which the votes were canvassed and so 1st Respondent is not only a proper party that ought to be joined in the suit but a necessary one in whose absence the suit cannot be resolved.

That the 1st Respondent having sponsored the 3rd set of Respondents and indeed won the election which tenure is sought to E be determined it should be heard in any matter that would relate, pertain, concern and/or touch on the said elections particularly on the determination of same as a denial of such audience to the 1st Respondent would cause great and untold hardship and difficulty it.

F Emenike Ebete Esq, learned counsel for the 2nd Respondent said the grant or refusal of an application for joinder is an exercise at the discretion of the court and the only rider being that such exercise must be judicial and judicious. He cited *C. M. T. Trading Service Ltd v Yuri* (1994) 11 NWLR (Pt. 573) 284 at 300; *Ige v. G Farinde* (1994) 20 LRCN 323 at 342.

H That by Section 221 of the 1999 Constitution, it is the political party who canvasses for vote at any election and not individual candidates for an election is either won or lost by a political party. He cited *Amaechi v INEC* (2008) FWLR (Pt.407) 1 at 97. Also that Sections 4 & 23(2)(b) of the Rivers State Independent Electoral Commission Law, 2000 provides that for a candidate to qualify to contest election into the Local Government Area Council he must be a member of a political party and is sponsored by that political party. That since the law is that the issues between the parties should be deter-

mined once and for all, and so as to avoid a multiplicity of proceedings, the 1st Respondent must be joined. He cited *Nabsous Ltd v Mobil Oil Nig. Ltd* (1995) 31 LRCN 178 at 191.

Learned counsel for the 3rd Respondent, Mr. Emmanuel Aguma went along the same path as counsel for the other two Respondents and said substantially that the 1st Respondent namely PDP B has a legal interest that would be affected by the outcome of the suit as a political party that won the election in the said Local Government Area. That the tenure sought to be truncated by the Appellant belongs to PDP who fielded the occupants of the seats namely the C 3rd set of Respondents.

That it is the legal right of PDP that Appellant seeks to curtail and so PDP is a necessary party and to have been joined ab initio.

The Reply on points of law of the Appellant is a mere reiteration of what was contained in the Appellant's main argument emanating from the Appellant's Brief of argument and so there is no need to effect a repetition herein. D

The question in contention between the Appellant on the one hand and the Respondents on the other, with particular reference to 1st Respondent, peoples Democratic party or PDP for short E is whether or not the PDP as applicant in the Court of trial to be joined is a necessary party who ought to have been a party to the suit, failing which the remedy was having the PDP joined.

To answer this question is to go back to what brought about F the dispute itself and that is, that the Appellant herein initiated by Originating summons a suit for the trial court to have declared that the tenure of the Ogba/Egbema/Ndoni Local government Council would expire by March, 2011 and so an election to fill the vacant positions in the Council would be in 2011 on a date to be fixed by G the Rivers State Independent Electoral Commission, RSIEC for short. The consequent order of Court directing the RSIEC to conduct the election on a day and month within 2011. Opposing the suit, the 2nd set of Respondents who is RSIEC in counter affidavit said the H tenure would not be expiring in 2011 and in the course of the hearing, the 1st set of Respondent the PDP applied to be joined on the ground that the election that brought in the 3rd set of Respondents was PDP who cannot be shut out in a dispute between the Appellant and the other sets of Respondents. The Appellant rejecting the stance

of PDP contended by asserting that PDP was not a necessary party and the dispute can be conclusively determined without the 1st set of Respondents.

The trial Court agreed with the Appellant and on appeal the Court of Appeal disagreed which has brought the matter before this court which has to decide which is the correct position in the light of the facts and the relevant laws applicable.

It is to be stated even though a settled matter, the fact that the grant or refusal of an application for joinder of a party has to be exercised by the court judicially and judiciously. In that exercise of jurisdiction, the court has to follow certain guides which are thus:-

1. Is it possible for the court to adjudicate upon the cause of action set up by the Claimant, if the Applicant/1st Respondent is not added as a party?
2. Is the Applicant asking to be joined as a party ought to have been joined in the first place?

3. Whether the Applicant seeking to be allowed in as a party whose presence before the Court of trial as a Defendant will be necessary in order for the court to effectually and completely adjudicate upon and settle all the questions involved in the cause.

I place reliance on the cases of:- C. M. I. Trading Services Ltd v Yuri (1994) 11 NWLR (pt. 573) 284 at 300; Onyedeji v Akanbi & Ors v. Fabunmi (1986) 17 NSCC (Pt.1) 364 at 370.

At this point needing to be brought in are the provisions of Section 221 of the 1999 Constitution which stipulate as follows:-

“No association other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any party or to the election expresses of any candidate at an election.”

Section 23 (2) (b) of the Rivers State Independent Electoral Commission Law provides thus:-

“Notwithstanding the provisions of any other law, a person shall not be qualified to contest a Local Government election unless -
(b) he is a member of a political party and is sponsored by that political party.”

Situating these relevant constitutional provisions and the Rivers State Electoral Act in perspective, it is necessary to quote the salient portion of the Court of Appeal judgment anchored by Awotoye JCA

and it is stated thus hereunder:-

“The learned trial Judge after hearing the parties dismissed the application. Was the Appellant/Applicant a necessary party having regard to the facts deposed to in the affidavit and the provisions of Rivers State Independent Electoral Commission Law No. 2 of 2001?

The answer is Yes with due respect. By virtue of Section 23^B (2b) of the Rivers State Independent Electoral Commission Law, person shall not be qualified to contest a Local government Election unless he is a member of a political party and is sponsored by that political party.

The word ‘sponsor’ as used is defined in the BLACK’S LAW^C DICTIONARY (with pronunciation) 6th Edition as ‘A surety one who makes a promise or gives security for another...’

It can be said in other words that the Appellant was the surety for the 2nd set of Respondents at the election and the 2nd set of Respondent could not have qualified for election without the Appellant see, paragraph 12 - 18 of the affidavit of the Appellant on page 186 of record. It needs to be noted that it is the term of office of the 2nd set of Respondent that is being sought to be determined if another election was ordered, the Appellant would have to sponsor^E candidates for the election. I am not in doubt that application of the Appellant to be joined at the Lower court was wrongly refused and dismissed. The presence of the Appellant/Applicant is necessary for the effectual and complete adjudication of the question involved in^F the cause or matter.

The Applicant is also likely to be affected by the proceedings.”

From the above can be seen that the 1st Respondent who was applicant at the Court of trial is an interested party who needed^G to be heard and if not would have the option at the end of the conclusion or perceived conclusion of the case to which it desired to be joined, to institute its own suit with the same facts so that its own side or grievance may be ventilated and adjudicated upon. That would then lead to a multiplicity of suits which is deprecated and the Court discourages such since it would bring about an unending plurality of suits.^H

To forestall that unhealthy, seamless adjudicatory scenarios with its equally sick fall out which no one would desire, it is only right and

proper that all questions that would arise in the initiated suit and the possible extra suit should be determined at the same hearing so that all parties would know where they stand and the outcome binding on all that should be bound.

Therefore the 1st Respondent being the vehicle with which
 B the Appellant is to ride to victory and which the 3rd set of Respondents had ridden to victory cannot be sidelined nor can it be said that a dispute in which the 1st Respondent is not a party has been effectually and completely determined which would have 1st Respondent
 C bound to its outcome. I refer to the cases of the Registered Trustees of Christ Apostolic Church of Nigeria & Anor v. Alhaji Sadiku & Anor (2002) FWLR (Pt.95) page 238 at 247; Akanbi v. Fabunmi (1986) 2 SC 431; Mogaji v. Ishola & Anor (1986) 2 SC (Reprint) 321.

What I have been trying to say is that the 1st set of Respondents, PDP has a direct legal interest that would be seriously affected by the outcome of the suit as the political Government Area of Rivers State. The tenure sought to be truncated by the Appellant belongs to PDP who fielded the various occupants of the respective seats in the council and which is here as the 3rd sets of Respondents and so it
 E needs no saying that 1st Respondent, PDP is a necessary party which ought to have been made a party from the very beginning.

That having not happened, even on its application to be joined, the Court of Appeal was right not only in its decision but also
 F in the lucid, faultless reasoning which brought about the setting aside of the refusal to have 1st Respondent joined at the trial Court.

I agree with the Court of Appeal and with the fuller and better articulated reasoning of my brother, J. A. Fabiyi, JSC, I dismiss this appeal as lacking in merit.

G I abide by the consequential orders made.

OKORO JSC

Having had the advantage of a preview of the judgment of
 H my learned brother, JOHN AFOLABI FABIYI, JSC, just delivered, I am in entire agreement with his reasoning and conclusion that this appeal is devoid of any merit at all and ought to be dismissed. My learned brother has meticulously and quite efficiently resolved all the salient issues submitted for the determination of this appeal but I wish

to make a few comments in support of the judgment only. A synopsis of the facts will suffice.

The 2nd Respondent herein had in March, 2008 conducted Local Government Elections in Rivers State. Hon. Chris Ochijs emerged as Chairman with 17 others as councilors from the 17 wards of Ogba/Egbema/Ndoni Local Government Area. They were to hold office for three years but for whatever reason, the Rivers State House of Assembly dissolved the said Council on the request of the State Governor. In its place, a Caretaker Committee was set up to oversee the affairs of the Local Govt. pending the conduct of a bye election. B

On 3rd March, 2010, the 2nd Respondent conducted the bye election alluded to above. The 3rd set of Respondents were elected to man the Council. They were different from the members of the dissolved council. At the expiration of the tenure of the 21 other Local Government Councils elected in Rivers State in March 2008, the Appellant filed an originating summons at the High Court asking principally, whether by the provisions of the Rivers State Independent Electoral Commission: Local Government Law 1999 (as amended), election shall hold in Ogba/Egbema/Ndoni Local Government Area of Rivers State in 2011. He also asked the court to determine whether there is vacancy in Ogba/Egbema/Ndoni Local Government Council in 2011. C

The 2nd Respondent herein - Rivers State Independent Electoral Commission - opposed the originating summons and contended that the election it conducted in 2010 which brought the 3rd Set of Respondents into power was a general election and as such the tenure of office of the 3rd set of Respondents will not expire in 2011 but in 2013. At the hearing, the 1st Respondent which was not a party from the onset applied to be joined as a party in the suit via a motion on notice filed on 7th February, 2011. The Appellant filed a counter affidavit to oppose the application. D

The learned trial judge heard parties on the application for joinder and in his ruling delivered on 14th February, 2011, dismissed the application. The learned trial judge maintained that the 1st Respondent which sponsored the 3rd set of Respondents was not a necessary party to the action. E

Dissatisfied with the stance of the learned trial judge, the 1st Respondent appealed to the Court of Appeal which set aside the

judgment of the trial court and held that the 1st Respondent herein is a necessary party. The Appellant herein not being satisfied, has appealed to this court. All the parties to this appeal have queued behind the Appellant on the sole issue which he has distilled for the determination of this appeal. The said issue states:

B *“Whether the Court of Appeal was right in setting aside the decision of the learned trial judge which dismissed the application for joinder of the 1st Respondent to the suit on the ground that the Appellant (sic) was not a necessary party to be joined in the suit. (This*
 C *is distilled from grounds 1 and 2 of the Notice and Grounds of Appeal.)”*

Counsel for each party made submissions and arguments in favour of their various positions in the appeal. However, the resolution of the sole issue turns on the interpretation to be accorded Section 221, of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 23(2)(b) of the Rivers State Independent Electoral Commission Law and the effect of the decision of this court in the case of *Amaechi V. INEC* (2008) FWLR (pt. 407) 1 on the facts of this case.

E Now, Section 221 of the Constitution (supra) states:
“.... No association other than a political party shall canvass for votes for any candidate at an election or contribute to the funds of any political party or to the election expenses of any candidate on
 F *an election...”*

Also by Section 23(2)(b) of the Rivers State Independent Electoral Commission Law, No. 2 of 2000, a person shall not be qualified to contest a local government election unless he is a member of a political party and is sponsored by that party. There is a clear
 G message from both the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Rivers State Independent Electoral Commission Law, No. 2 of 2000, both alluded to above and it is that only a political party can sponsor a candidate at an election. In fact, it
 H is the political parties that contest elections along with their candidates. Thus whatever happens to a candidate of a party definitely affects the fortune of the party at the election and vice versa. The interest of one cannot be separated from the other. There is a symbiotic relationship between a party and its candidate. A party which sponsored a candidate at an election definitely has a stake on what

happens to the candidate during and even after the elections including his tenure of office.

In the celebrated case of *Amaechi V INEC* (supra), this court held that since by Section 221 of the Constitution (supra), it is only a political party that canvasses for votes, it follows that it is a political party that wins an election. Also that without a political party, a candidate cannot contest an election. Thus, whenever an office which a political party won is to be tampered with, that political party, in my opinion is a necessary party to such a determination. In *Green V Green* (2001) FWLR (pt. 76) p.795 at 814 paras G - H, this Court defined a necessary party to be:

“... A necessary party is one who is not only interestedly in the subject matter of the proceedings, but whom in his absence, the proceedings cannot be fairly and judiciously decided. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless the necessary party to the particular claim is joined in the action ...”

I need to say that this court, and indeed all courts have a duty to ensure that parties that are likely to be affected by the result of an action are joined in an action. See *Okukuje V Akwido* (2001) FWLR (pt 39) 1487 at 1523.

In the instant case, all parties are ad idem that the 1st Respondent sponsored the 3rd Set of Respondents in the said election. It is the position of the law that it is the 1st Respondent that won the election which brought the 3rd Set of Respondents to power. See *Amaechi V INEC* (supra). It follows therefore that the 1st Respondent becomes a necessary party to any suit which seeks to determine the tenure of the 3rd Set of Respondents since it seeks to put to an end the election won by the 1st Respondent. This is why I agree with the Court below when it set aside the judgment of the trial court which excluded the 1st Respondent from the suit.

The end result of the Appellant's enterprise in this appeal is that it is frivolous and lacks merit. It is accordingly also dismissed by me. I also order that the 1st Respondent be joined to the suit at the trial Court. I abide by the order as to costs made in the lead judgment.