

SUPREME COURT OF NIGERIA
FRIDAY 7TH FEBRUARY, 2014. SC. 20/2013
CORAM:- M. S. MUNTAKA-COOMASSIE,
J. A. FABIYI, S. GALADIMA, N. S. NGWUTA,
K. M. O. KEKERE-EKUN, JJSC

ALL PROGRESSIVE GRAND
ALLIANCE APPELLANT
AND
1. SENATOR CHRISTIANA
N. D. ANYANWU
2. HON. INDEPENDENCE
CHIEDOZIEM OGUNWE RESPONDENTS
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

JURISDICTION - Fundamentality of - Jurisdiction is so fundamental that absence of it renders proceedings a nullity - Hence it must be resolved first once it is challenged - And the issue can be raised at any time and at any stage of proceedings (H1)

COURTS - Jurisdiction - Absence of - Where court lacks jurisdiction - Parties cannot confer it on court by consent or acquiescence (H2)

JURISDICTION - Issue of - Determination - Processes to be considered in determining jurisdiction of court over a matter - Are the originating summons and its supporting affidavit - Filed by plaintiffs in present case (H3)

APPEALS - Judgment - Not challenged - Decision on any point of law or fact not appealed against - Is deemed to have been conceded by party against whom it was decided - And it remains valid and binding on all parties (H4)

POLITICS - Political party - Membership of - Question as to who is candidate of political party for election - Is within the domestic jurisdiction of the party concerned - And consequently not justiciable (H5)

ELECTIONS - Pre election - Jurisdiction - Under Electoral Act s. 87(9) - For complainant to ignite jurisdiction of court - He must be an aspirant who participated in the primary - And his complaint must relate to non compliance with the Act (H6)

ELECTIONS - Pre election - Jurisdiction - Electoral Act s. 138 - Plaintiff's case at trial court was pre election matter - And as such could not be accommodated under the section (H7)

FACTS

By originating summons filed before the Federal High Court Owerri, plaintiff/2nd respondent sought the determination of a number of questions and consequential reliefs in respect thereof against appellant, 1st respondent and 3rd respondent. 2nd respondent's contention is that he contested and won the primary election of appellant for the Imo East Senatorial District to represent the zone in the 2011 general elections. 2nd respondent contended further that 1st respondent whose name was although on the ballot paper for the primary election, was not a member of appellant when the primary election took place. 2nd respondent also stated that 1st respondent was in fact a member of the Peoples Democratic Party (PDP) as at the relevant point in time. Appellant and 1st respondent filed counter-affidavit to the effect that 1st respondent was already a member of appellant as at the day of the primary election, having duly resigned from PDP.

It was also averred by appellant that 1st respondent was present at the primary election and duly contested and won the election with the highest number of votes cast. In its judgment, the court noted that the originating summons was inappropriate in the circumstance of the contentious nature of the suit. The court however did not order for pleadings to be filed on the ground that the 2011 general election was scheduled to take place in seven days time and that nothing will be gained in the circumstance. On this basis, the court struck out the suit. 1st respondent felt dissatisfied with the order striking out rather than dismissing the suit. She lodged appeal in the Court of Appeal. 2nd respondent who was equally dissatisfied with the judgment of the trial court filed cross-appeal. At the end, the court dismissed the main appeal and resolved issues raised in the cross-appeal on behalf of 2nd respondent. Aggrieved, 1st respondent appealed to Supreme Court,

contending inter alia that the Court of Appeal failed to consider the issue of jurisdiction of the trial court to entertain the matter. Appellant being aggrieved too, appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Is it correct for the court below to determine this appeal on merit without settling the challenge of jurisdiction of the court below to hear and determine the suit itself?

2. Whether the question of membership of a political party is justiciable to invoke the jurisdiction of the court below to determine same under the procedure enacted by Section 31(5) of the Electoral Act, 2010 or at all?

HELD (Unanimously allowing the appeal per KEKERE-EKUN JSC)

JURISDICTION - Fundamentality of

1. The law is by now well settled that jurisdiction is the lifeblood of any adjudication and where it is lacking it would render any proceedings, no matter how well conducted, liable to be set aside for being a nullity. Jurisdiction is so fundamental that once the court's jurisdiction to hear a matter is challenged, it must be dealt with and resolved first before any other step in the proceedings. It is because it is so fundamental that it can be raised at any time, in any manner and at any stage of the proceedings.

It therefore behoved the lower court to consider and determine the issue of jurisdiction raised by the appellant before considering the merit of the cross appeal because if the trial court lacks jurisdiction to entertain the case, its proceedings are a nullity and the lower court would have no jurisdiction to entertain the appeal arising therefrom. Whether or not the appellant has suffered a miscarriage of justice by the omission of the lower court does not arise, the issue of jurisdiction raised in this case being one of substantive law.

(pp. 838 B/840 H)

Jurisdiction - Absence of

2. Where the court lacks jurisdiction parties cannot confer jurisdiction on the court by consent or acquiescence.

(p. 841 B)

JURISDICTION - Issue of - Determination

3. The law is settled that in determining the jurisdiction of a court to entertain a cause or matter, the processes to be considered by the court are the processes filed by the plaintiff or applicant i.e. the writ of summons and statement of claim, or as in the present case the originating summons and its supporting affidavit. (p. 846 A)

Judgment - Not challenged

4. It is a settled principle of law that a decision on any point of law or fact not appealed against is deemed to have been conceded by the party against whom it was decided and it remains valid and binding on all the parties. (p. 847 C)

POLITICS - Political party - Membership of

5. It is therefore settled beyond any discourse that the cause of action before the trial court related to membership of a political party. There is a plethora of decisions of this court to the effect that membership of a political party is the domestic affair of the party concerned and the courts will not be involved in deciding who the members of a political party are.

In Lado v. C.P.C. (supra), this court observed that with the introduction of Section 34 of the Electoral Act, the absolute powers of political parties had been curtailed slightly but emphasised the fact that the provision did not in any way 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.

In the instant case, the plaintiff before the trial court had no complaint about the conduct of the primary. His complaint is that his name ought to have been submitted to the 2nd defendant (3rd respondent herein) as the candidate for the party, APGA because the 3rd defendant (1st respondent herein) was not a member of the party as of the date when the primaries were held. The only way this issue could be resolved at the trial court would be for the court to determine whether or not the 1st respondent herein was a member of the appellant. The court has no jurisdiction to do so. It is the prerogative of every political party to determine who its members are. The courts have no business delving into the issue as clearly stated in the authorities

of Onuoha v. Okafor (supra), Lado V. C.P.C. (supra). P.D.P. V. Sylva (supra) referred to earlier.
(pp. 847 E/849 H)

ELECTIONS - Pre election - Jurisdiction

6. This brings me to Section 87 (9) of the Act, which provides:

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

It has been held that the jurisdiction of the court to entertain a complaint under this section is very narrow in scope. A complainant must bring himself squarely within the confines of the provision. He must be an aspirant who participated in the primary and his complaint must relate to non-compliance with the provisions of the Electoral Act or the guidelines of the political party. (p. 849 D)

Jurisdiction - Electoral Act s. 138 - Application

7. The plaintiff's cause of action at the trial court is a pre-election matter.

Section 138 (1) (a) of the Electoral Act 2010 (as amended), which provides that one of the grounds upon which an election may be questioned is that ***“a person whose election is questioned was, at the time of the election, not qualified to contest the election”*** is clearly not applicable in this case. Section 138 is contained in Part VIII of the Act, which makes provision for the determination of election petitions arising from elections. The plaintiff's case at the trial court was clearly not an election petition. Being a pre-election matter it could not be accommodated under Section 138 (1) of the Electoral Act.
(pp. 850 F/851 B)

NOTABLE POINTS OF INTEREST

KEKERE-EKUN JSC

1. Competence of court

It was held in: *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587 at 594 that a court is competent when:

- a. it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other;
- b. the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction and
- c. the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction". (p. 845 F)

NGWUTA JSC**2. Jurisdiction - Definition of**

- D Jurisdiction is defined as the limits imposed on the power of a validly constituted Court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are joined or the kind of relief sought. (p. 854 A)

REPRESENTATION

- F PRINCE ORJI NWAFOR-ORIZU with S.N. ANICHEBE ESQ., ESTHER ABBEY-OLLO (MRS.), F.N. OGUAJU ESQ., NNENNA NWAFOR-ORIZU (MISS), S.N. OBINNA ESQ., NETOCHUKWU NZEWI (MISS), ENO ETIENAN (MISS) and U.C. NDUBUISI ESQ., for the Appellant
- EMEKA NWAGWU ESQ. with A.I. NWACHUKWU ESQ., for the 1st Respondent
- K. C. NWUFO ESQ. with N. NWACHUKWU ESQ., for the 2nd Respondent
- G A. T. UDECHUKWU ESQ. with UDOKA UGWU ESQ., for the 3rd Respondent

CASES REFERRED TO

- H Uwazurike v. Nwachukwu (2013) 3 NWLR (pt. 1342) 503
- Lado v. C.P.C. (2011) 18 NWLR (pt. 1279) 689
- Buhari v. Obasanjo (No.2) (2003) 9 -11 SCNJ 74

- A-G Rivers State v. Ude (2006) 17 NWLR (pt. 1008) 436
- Magit v. University of Agriculture Makurdi (2005) 19 NWLR (pt. 959) 211
- Tiza v. Begha (2005) 15 NWLR (pt. 949) 616
- PDP v. Sylva (2012) 13 NWLR (pt. 1316) 85
- Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd. (1992) 5 NWLR (pt. 244) 675 SLB Consortium Limited v. NNPC (2011) 9 NWLR (pt. 1252) 317
- Nwankwo v. Yar'Adua (2010) 12 NWLR (pt. 1209) 518
- Obiweubi v. CBN (2011) 7 NWLR (pt. 1247) 465
- First Bank of Nigeria Plc. v. T.S.A. Industries Ltd (2010) 15 NWLR (pt. 1216) 247
- Utih v. Onoyivwe (1991) 1 NWLR (pt. 166) 166
- Ohakim v. Agbaso (2010) 19 NWLR (pt. 1226) 172
- Obi v. INEC (2007) 7 SC 268

STATUTES REFERRED TO

- Electoral Act 2010 (as amended), ss. 31(1), 34, 85(2)(a)(b), 86(1), 87(11), 138
- Constitution of Federal Republic of Nigeria 1999 (as amended), s. 65(2)

LEAD JUDGMENT BY KEKERE-EKUN JSC

This is an appeal against the judgment of the Court of Appeal Owerri Division (the lower court) delivered on 9/11/2012 allowing the cross appeal filed by the 2nd respondent herein (HON. INDEPENDENCE OGUNEWE), who was the 1st respondent/cross appellant at the lower court, setting aside the judgment of the Federal High Court, Owerri Judicial Division (the trial court) delivered on 29/3/2011 and G remitting the case to the Federal High Court, Owerri for trial on the merit.

By an originating summons filed on 11/2/2011 before the trial court, the 2nd respondent herein, HON. INDEPENDENCE OGUNEWE sought the determination of a number of questions and consequential reliefs in respect thereof against (i) The All Progressive Grand Alliance (APGA), the Appellant herein, (ii) INEC, the 3rd respondent herein and (iii) SENATOR CHRISTIANA N.D. ANYANWU, the 1st respondent herein. The thrust of the claim was

that the plaintiff, HON. INDEPENDENCE OGUNEWE, is a member of APGA and contested the primary election for the Imo Senatorial Zone to represent the Zone in the 2011 general elections. That the primary election took place on 14/1/2011 with three names indicated on the ballot but only two candidates, the plaintiff and one Chief Nick Oparandu were present and physically contested the election and that he (plaintiff) won the election. It was his contention that SENATOR CHRISTIANA ANYANWU, whose name was also on the ballot, was not a member of APGA on 14/1/2011 when the primary elections were held, as she was, at the time an active member of the Peoples Democratic Party (PDP) and in fact participated in the presidential primary election of that party held at the Eagle Square, Abuja from 13th - 14th January 2011.

In their counter affidavits, appellant and the 1st respondent herein averred that the 1st respondent's name was included on the ballot on 14/1/2011 because she had joined the party after duly resigning her membership of the PDP. Her letter of resignation from the PDP and her membership card for APGA was exhibited to their respective counter affidavits. The appellant also averred that the 1st respondent was present and duly contested the primary and won the election with the highest number of votes.

In determining the originating summons, the learned trial Judge formulated three issues for determination:

1. "Whether the use of Originating Summons by the Plaintiff is appropriate in the circumstances and on the facts of this case.
2. If the answer to issue one is in the affirmative whether the plaintiff has proved this case on the preponderance of evidence; and
3. If the answer to issue No. 1 is in the negative, what is the appropriate order to make in the peculiar circumstances of this case".

In a considered judgment delivered on 29/3/2011, the learned trial Judge held that having regard to the contentious nature of the suit, the originating summons procedure was not the appropriate method of instituting the action. However, rather than order the filing of pleadings, the court upon the consideration of Sections 31 (1) and 87 (11) of the Electoral Act 2010 (as amended), struck out the suit on the ground that nothing would be gained by ordering pleadings since the general elections were scheduled to take place in 7 days' time, The 3rd defendant (1st respondent) herein, was dissatisfied with

the order striking out rather than dismissing the suit and filed a notice of appeal against it at the lower court. The plaintiff (2nd respondent herein) was also dissatisfied with the decision and filed a cross appeal. The main appeal was dismissed while the cross appeal was allowed. The 1st respondent herein was dissatisfied with the dismissal of the appeal and filed a further appeal to this court. The appeal in respect thereof is Appeal No. SC.21/2013; SENATOR CHRISTIANA N.D. ANYANWU V. HON. INDEPENDENCE CHIEDOZIE OGUNEWE & ORS which was heard along with the instant appeal.

In the cross appeal, which is the subject of the instant appeal, the cross appellant formulated two issues for determination by the lower court, to wit:

1. Whether an order striking out of the suit instead of an order for filing pleadings was proper in the circumstances of the suit?
2. Whether it was proper for the lower court to have struck out the suit merely because the National Assembly Elections were scheduled to hold seven days from the delivery of the judgment?

The lower court in the introductory part of its judgment in respect of the cross appeal noted that the 2nd respondent, now the present appellant, raised the issue of the jurisdiction of the trial court to entertain the suit having regard to the fact that the plaintiff's claim was in respect of membership of a political party. However, in resolving the issues in the cross appeal, it did not address the issue of jurisdiction. It allowed the cross appeal, set aside the judgment of the trial court and remitted the suit to the Federal High Court for trial on the merits. The appellant is most dissatisfied with this decision and filed a notice of appeal on 14/1/2013 containing 3 grounds of appeal.

In compliance with the rules of this court, the parties duly filed and exchanged their respective briefs of argument. The Appellant's brief, settled by PRINCE ORJI NWAFOR-ORIZU is dated and filed on 15/3/2013. He also filed a Reply brief on 15/3/2013. EMEKA O. NWAGWU ESQ. settled the 1st Respondent's brief, which was filed on 22/3/2013. The 2nd respondent's brief filed on 1/3/2013 was settled by K.C. NWUFO ESQ. Finally the 3rd respondent's brief, settled by A.T. UDECHUKWU ESQ. was filed on 3/3/2013.

At the hearing of the appeal on 14/11/2013 learned counsel adopted and relied on their respective briefs and urged their respective

positions on the court. In urging this court to allow the appeal, Prince Nwafor-Orizu cited two additional authorities on the circumstances in which the court has jurisdiction to adjudicate on disputes arising from a party's primary election. They are:

Uwazurike V. Nwachukwu (2013) 3 NWLR (Pt.1342) 503
 B and Lado V. C.P.C. (2011) 18 NWLR (Pt. 1279) 689. In urging the court to dismiss the appeal, K.C. Nwufo Esq. learned counsel for the 2nd respondent cited the additional authority of: Buhari V. Obasanjo (No.2) (2003) 9 -11 SCNJ 74 in respect of the position taken by the
 C 1st and 3rd respondents. A.T. Udechukwu Esq., on behalf of the 3rd respondent urged us to allow the appeal on the ground that the concurrent findings of the two lower courts were that the appellant's case before the trial court was on the issue of membership of a political party, which the court had no jurisdiction to entertain.

D The appellant formulated two issues for the determination of this appeal as follows:

1. Is it correct for the court below to determine this appeal on merit without settling the challenge of jurisdiction of the court below to hear and determine the suit itself?

E 2. Whether the question of membership of a political party is justiciable to invoke the jurisdiction of the court below to determine same under the procedure enacted by Section 31(5) of the Electoral Act, 2010 or at all?

F The 1st and 3rd respondents adopted the issues formulated by the appellant. The 2nd respondent distilled the following two issues as arising for determination in the appeal:

1. Whether there was any proper challenge of the jurisdiction of the court below to hear and determine the suit itself that would have prevented the court below to determine the appeal on the merit?

G 2. Whether the question of membership of a political party avails an aspirant in a primary election, to enable him invoke the jurisdiction of the court below to determine same under the provisions of the Electoral Act, 2010, the provisions of the 1999 Constitution of Nigeria (as amended) or any other enactment?

H It is relevant to observe at this stage that the 2nd and 3rd respondents raised preliminary objections in their briefs of argument. No leave was sought to move them at the hearing of the appeal. The preliminary objections are accordingly deemed abandoned. See

A.G. Rivers State V. Ude (2006) 17 NWLR (pt. 1008) 436; Magit v. University of Agriculture, Makurdi & Ors. (2005) 19 NWLR (pt. 959) 211 @ 239 H-D; Tiza v. Begha (2005) 15 NWLR (pt. 949) 616; Nsirim (1990) 5 SCNJ 174.

The appeal shall be determined on the issues formulated by the appellant. B

Issue 1

In support of this issue learned counsel for the appellant submitted that the appellant, as 2nd Respondent in the court below, challenged the jurisdiction of the trial court to hear and determine the appeal having regard to the fact that the suit was in respect of membership of a political party. Relying on the authority of PDP Vs Timipre Sylva & 2 Ors. (2012) 13 NWLR (pt. 1316) 85, he submitted that the membership of a political party is non-justiciable. He submitted that in its judgment the lower court made a finding that the D appellant herein raised the question of the jurisdiction of the court to entertain the suit. He also noted that it was raised as issue. 2 in the appellant's brief in response to the Cross-Appeal. He submitted that notwithstanding the foregoing, the lower court proceeded to determine the appeal without first determining the question of jurisdiction E one way or the other. He submitted that the issue of jurisdiction could be raised at any stage of the proceedings, even viva voce. He referred to: Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd. (1992) 5 NWLR (pt. 244) 675; SLB Consortium Limited v. NNPC (2011) 9 F NWLR (pt. 1252) 317 @ 332 H. He submitted that the law is settled that the issue of jurisdiction, once raised must be determined first before the court considers any other issue. He referred to: Nwankwo V. Yar'Adua & Ors (2010) 12 NWLR (pt. 1209) 518; Isaac Obiweubi v. Central Bank of Nigeria (CBN) (2011) 7 NWLR (Pt. 1247) 465 @ G 494 D & 294 E - F: First Bank of Nigeria Plc. v. T.S.A. Industries Ltd (2010) 15 NWLR (Pt. 1216) 247.

He submitted that the jurisdictional issue being raised by the appellant is not the question of the pre-election matter being brought seven days to the election or whether the orders sought could be H granted at that stage but the threshold issue of jurisdiction to determine the case at all. He submitted that an appellate court cannot hear or determine an appeal where the court of first instance lack the competence to hear the case. He submitted that where question

of jurisdiction is raised before the court, and it fails to determine it before dealing with the merit of the case, the resultant adjudication is an exercise in futility because jurisdiction had been held to be the blood that gives life to the survival of an action in a court of law. He relied on: *Utih & Ors. v. Onoyivwe & Ors.* (1991) 1 NWLR (pt. 166) 166 @ 206 A-B; *Ohakim v. Agbaso* (2010) 19 NWLR (pt. 1226) 172.

He submitted that at this stage it is not important that the decision was based on proper principles of law but that the court's decision is a nullity and ought to be set aside for want of jurisdiction. He relied on: *Obi V. INEC & Ors* (2007) 7 S.C. 268. He urged the court to resolve this issue in the appellant's favour.

While adopting the submissions of learned counsel for the appellant in respect of this issue, learned counsel for the 1st respondent made some additional submissions. He noted that the reason given by the lower court for not considering the issue of jurisdiction was that it was a fresh issue being raised before that court in respect of which no leave was sought or obtained.

He submitted that this position is erroneous in view of the fact that the appellant did in fact seek leave to raise the issue for the first time before that court, which application was duly granted. He referred to pages 565 - 569 and 601 - 602 of the printed record. He noted that in any event, as submitted by learned counsel for the appellant, the issue of jurisdiction could be raised at any time and even for the first time on appeal.

On behalf of the 2nd respondent, K.C. Nwufu Esq., contended that there was no challenge of the jurisdiction of the lower court by the appellant to hear and determine the suit that would have prevented that court from determining the appeal on the merit. He argued that there is nowhere in the appellant's brief of argument where he raised the issue or urged the court to determine same before considering the merit of the appeal. He submitted that the appellant also did not file a separate notice of appeal. He submitted that the authorities relied upon by the appellant are inapplicable to this case because in those cases preliminary objections were properly raised. He argued that a court is not Father Christmas and will not grant a party a relief not prayed for. He referred to: *Hon. Justice Ademola V. Chief Sodipo & Ors.* (1992) 7 SCNJ 417.

He conceded that the issue of jurisdiction, once raised, must

be determined first but contended that the leave of the court must first be sought and obtained. He relied on: *Yusuf Vs Union Bank* (1996) 6 SCNJ 203 @ 213 and submitted that having failed to raise the issue at the lower court, this issue ought to be resolved against him. He submitted that the appellant has not shown that he suffered any miscarriage of justice by the alleged failure of the court below to consider it.

A. T. UDECHUKWU ESQ., learned counsel for the 3rd respondent conceded the fact that not having appealed against the judgment of the lower court, it ought not to attack it. He however adopted the arguments canvassed by the appellant in respect of this issue on the ground that the duty of a court of law to hear and determine the issue of jurisdiction before any other matter, is an issue of law, which every counsel, being a minister in the temple of justice is enjoined to support.

In reply to the submissions of learned counsel for the 2nd respondent to the effect that the appellant did not raise the issue of jurisdiction before the lower court nor argue same in his brief, learned senior counsel for the appellant submitted that the brief of argument referred to at pages 521 - 528 of the record is the appellant's brief of argument as 2nd respondent in the main appeal filed by Senator Chris Anyanwu before the lower court. He noted that the appellant's brief (as 2nd respondent) in response to the cross appeal at page 552 specifically challenged the jurisdiction of the trial court to entertain the suit. He referred to pages 631 - 632 of the record where the lower court alluded to the fact that the appellant (then 2nd respondent) raised the issue of jurisdiction. Relying on the authorities of: *Omomeji V. Kolawole* (2008) 14 NWLR (pt. 1106) 180 @ 196 A-C and *Petrojessica Enterprises Ltd. V. Leventis Technical Co. Ltd.* (supra), he submitted that having regard to the fact that the issue of jurisdiction could be raised at any time and even viva voce, the failure to file a separate notice of preliminary objection would not deter the court from considering and resolving the issue.

The law is by now well settled that jurisdiction is the lifeblood of any adjudication and where it is lacking it would render any proceedings, no matter how well conducted, liable to be set aside for being a nullity. Jurisdiction is so fundamental that once the court's jurisdiction to hear a matter is challenged, it must be dealt with and

resolved first before any other step in the proceedings. It is because it is so fundamental that it can be raised at any time, in any manner and at any stage of the proceedings.

In *Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd.* (1992) 5 NWLR (Pt.244) 675 this court per Belgore, JSC (as he then was) held:

“This importance of jurisdiction is the reason why it can be raised at any stage of a case, be it the trial, on appeal to Court of Appeal or to this court; a fortiori the court can suo motu raise it. It is desirable that preliminary objection be raised early on issue of jurisdiction; but once it is apparent to any party that the court may not have jurisdiction it can be raised even viva voce as in this case. It is always in the interest of justice to raise issue of jurisdiction so as to save time and cost and to avoid a trial in nullity.”

Also in: *Isaac Obiweubi V. Central Bank of Nigeria (CBN)* (2011) 7 NWLR (Pt. 1247) 465 @ 494 D- F per Rhodes-Vivour, JSC:

“It is thus mandatory that courts decide the issue of jurisdiction before proceeding to consider any other matter. See *Bronik Motors Ltd & Anor v. Wema Bank Ltd.* (1983) 1 SCNLR P. 296; *Okoya V. Santilli* (1990) 2 NWLR (pt. 131) P. 172; *Madukolu V. Nkemdilim* (1952) 1 ANLR (pt. 4) 587; (1962) 2 SCNLR 341... Usually where a court’s jurisdiction is challenged by the defence, it is better to settle the issue one way or the other before proceeding to hear a case on the merits. Any failure by the court to determine any preliminary objection or any form of challenge to its jurisdiction is a fundamental breach which renders further steps taken in the proceedings a nullity.” The brief of argument filed by the appellant at the court below as 2nd respondent in the cross appeal is at pages 544 - 554 of the printed record.

Significantly at page 552 it raised the following issue:
“ISSUE TWO: WHETHER THE LOWER COURT HAD JURISDICTION TO ENTERTAIN THE CASE” and submitted as follows:

“The Court below held unequivocally that “the main contention of the plaintiff is that the 3rd defendant was not a member of the APGA when primary election was held on 14 January 2011. See page 464 (last paragraph) - 455 and at page 471, the court restated the same finding. There is no appeal against the finding by the cross

appellant. It is therefore safe to submit that the cross appellant at the court below was contending that the Senator Chris Anyanwu was not our member (APGA) at the time of the primary elections.

It is respectfully submitted that the 1st respondent Senator Chris Anyanwu was a member of the party. It is now trite law that the court has no jurisdiction to determine who a member of a political party is. The political party alone has the prerogative. See *ANPP v. USMAN* (2209) ALL FWLR (Pt. 463) 1292 AT 1329 PARAS F - G. So on the case before the court below, the court is bereft of jurisdiction to hear the case.” (Emphasis mine)

It is evident from the above, that although no separate notice of preliminary objection was filed in compliance with Order 10 Rule 1 of the Court of Appeal Rules 2011, the issue of the jurisdiction of the trial court to entertain the suit before it was raised and argued. The lower court acknowledged this fact, when, in reviewing the issues formulated by the parties in the cross appeal observed at pages 630 - 631 of the record as follows:

“In the 2nd respondent’s brief of argument filed on the 20th February 2012, settled by Prince Orji Nwifo (sic) Esq., two issues were distilled for determination to wit:

(i) Whether an order of striking instead of an order of dismissal was appropriate in the circumstances of this case;

(ii) Whether the lower court had jurisdiction to entertain the case.” (Emphasis mine)

In resolving the cross appeal, the lower court did not consider the aforesaid issue 2 raised by the appellant (then 2nd respondent). The importance of a resolution of the issue of jurisdiction one way or the other cannot be over emphasised. The jurisdiction of the lower court to entertain the appeal was dependent upon the jurisdiction of the trial court to hear and determine the suit before it in the first instance. The importance of this issue was well illustrated in a recent decision of this court in: *SLB Consortium Ltd. V. NNPC* (2011) 9 NWLR (1252) 317. In that case an objection was raised at the hearing of the appeal before this court that the originating processes at the trial court were incompetent, having been signed by a law firm instead of a qualified legal practitioner as required by the Rules of Practice of the Federal High Court and the decision of this court in *Okafor V. Nweke* (2007) 3 SC (Part II) 55 @ 62 - 63. It was argued

on behalf of the respondent that the appellant was deemed to have waived his right to complain not having raised the objection before the trial court and having taken steps in the proceeding after becoming aware of the defect. This court held at pages 332 - 333 G - B:

B “The argument that the objection ought to have been taken
before the trial court and that it is rather too late in the day to raise
same in this Court particularly as the respondents had taken steps in
the proceedings after becoming aware of the defect or irregularities is
erroneous because the issue involved in the objection is not a matter
C of irregularity in procedure but of substantive law - an issue of juris-
diction of the courts to hear and determine the matter as constituted
and it is settled law, which has been conceded by both counsel in this
proceedings - that an issue of jurisdiction is fundamental to adjudica-
tion and can be raised at any stage in the proceedings, even for the
first time in the Supreme Court. In the circumstance I find merit in
D the preliminary objection which is accordingly upheld by me. I hold
that the originating processes in this case having been found to be
fundamentally defective are hereby struck out for being incompetent
and incapable of initiating the proceedings thereby robbing the courts
of the jurisdiction to hear and determine the action as initiated. In
E the final analysis, the appeal arising from the proceedings initiated
and conducted without jurisdiction is hereby struck out for want of
jurisdiction.” (Emphasis supplied)

F Thus, in that case the appeal to this court was struck out on
the basis of the incompetence of the originating processes filed at
the trial court. It therefore behoved the lower court to consider and
determine the issue of jurisdiction raised by the appellant before con-
sidering the merit of the cross appeal because if the trial court lacks
jurisdiction to entertain the case, its proceedings are a nullity and the
lower court would have no jurisdiction to entertain the appeal arising
G therefrom. Whether or not the appellant has suffered a miscarriage
of justice by the omission of the lower court does not arise, the issue
of jurisdiction raised in this case being one of substantive law. Where
the court lacks jurisdiction parties cannot confer jurisdiction on the
court by consent or acquiescence. See: Adesola v. Abidoye (1999)
H 14 NWLR (pt.637) 28; Jadesimi V. Okotie-Eboh (1986) 1 NWLR
(Pt.16) 264; Shaaban V. Sambo (2010) 19 NWLR (Pt.1226) 353;
Obiweubi V. CBN (2011) 7 NWLR (Pt.1247) 465. In effect the first

issue is answered in the negative and accordingly resolved in favour of the appellant.

Issue 2

In support of this issue, learned counsel for the appellant sub-
mitted that it is not in dispute between the parties that the gravamen
of the case is a claim that the 1st Respondent, Senator Chris Anyanwu
was not a member of All Progressive Grand Alliance (APGA) at the
time she won the primary election. He referred to relevant pages of
the record and noted that both lower courts made findings to this
effect. He submitted that there is no appeal against the concurrent
findings. He submitted that the legal position as espoused by this court
in: PDP Vs Sylva (supra) at page 145 F - C is that membership of a
political party is a domestic affair of the political party and is therefore
not justiciable. He submitted that the plaintiff at the trial court did not
approach the court pursuant to Section 87 (9) of the Electoral Act D
2010 (as amended) (hereinafter referred to as “the Act”), and noted
that the lower court found and held that the suit was filed pursuant
to Section 31 (5) of the Act. He submitted that in the absence of an
appeal against this finding, the proper conclusion is that the suit was
filed pursuant to Section 31 (5) of the Act. He reviewed the provi- E
sions of Section 35 (1) - (5) thereof and submitted that Section 31 (5)
envisages a situation where the primary election has been concluded
and a party’s candidate has been nominated and his name published
to enable his constituency confirm the information supplied by him. F
He submitted that the section also envisages that the plaintiff must
have obtained the form containing the candidate’s particulars being
challenged from INEC and attached it to his claim. He submitted
that no such form was referred to or attached to the originating sum-
mons. He submitted that the remedy for actions brought pursuant G
to Section 31 (5) as provided for in sub-section (6) is quite specific.
The sub-section provides:

“31. (6) Any person who has reasonable grounds to believe
that any information given by a candidate in the affidavit or any
document submitted by that candidate is false may file a suit at the H
High Court of a State or Federal High Court against such person
seeking a declaration that the information contained in the affidavit
is false”.

He submitted that the section deals with disqualification from

participating in the election in respect of which the primary election was held and not the primary election itself or membership of the party or a claim that the plaintiff be declared the candidate of the party, as sought by the plaintiff in the originating summons.

B Learned counsel submitted that the position of the law is that the competence of a court to exercise jurisdiction in a cause or matter is determined by the plaintiff's claim. He referred to: *Olagunju V. Power Holding Co. of Nig. Plc.* (2011) 10 NWLR (pt.1254) 113; *Odugbo V. Abu & Ors*, (2001) 14 NWLR (732) 45. He maintained C that the originating summons does not fall within the ambit of Section 31 (5) of the Act. On the conditions precedent to the exercise of jurisdiction by the court, he relied on: *Madukolu V. Nkemdilim* (1962) 2 SCNLR 341 and submitted that the originating summons falls short of the second requirement, namely, that "the subject matter of the case is within its jurisdiction and there is no feature in the case which D prevents the court from exercising its jurisdiction." He submitted that where lack of jurisdiction is established, as in this case, the proper order to make is one striking out the suit at the trial court. He referred to: *Obi Vs INEC* (2007) 7 SC 268.

E Learned counsel submitted that the case could not be said to have been brought pursuant to Section 87 (9) of the Electoral Act because the plaintiff did not allege that any section of the appellant's constitution was breached nor did he exhibit a copy of the party's constitution. He submitted that a perusal of the plaintiff's claim shows F that it is in the nature of an election petition, which is filed after the results of a general election have been published. He submitted that a petition based on qualification as provided for in Section 65 (2) of the Act enures to the benefit of an opposing party after elections and not to a member of the same political party challenging the membership of another member of the party. He referred to Section 138 (1) G of the Electoral Act 2010 (as amended). In conclusion he urged us to hold that the plaintiff's suit before the trial court is not justiciable and to resolve this issue in its favour.

H Although learned counsel for the 1st and 3rd respondents made some additional submissions in respect of this issue, they did state in their respective briefs of argument that they adopt the arguments canvassed by the appellant herein. As respondents, the normal practice is that they have a duty to defend the judgment appealed

against unless they have cross-appealed. See *NNPC V. Famfa Oil Ltd.* (2012) 17 NWLR (Pt.1328) 148; *Eliochin V. Mbadiwe* (1986) 1 NWLR (Pt.14) 47; *Emeka V. Okadigbo* (2012) 18 NWLR (Pt.1331) 55. The instant appeal is against the decision in the cross appeal. The 1st respondent filed an appeal against the dismissal of the main appeal. The said appeal No. SC.21/2013 will be considered anon. B Neither the 1st nor 3rd respondent has filed a cross appeal to this appeal No. SC.20/2013. Therefore, as far as the instant appeal is concerned, the appeal will succeed or fail based on the submissions made in the appellant's brief of argument. For this reason I do not C propose to set out the additional submissions of the 1st and 3rd respondents.

Learned counsel for the 2nd appellant argued that the contention of learned counsel for the appellant that Section 31 (5) of the Electoral Act could not avail the plaintiff because it has nothing to do D with membership of a political party is misconceived. He submitted that assuming, without conceding, that the provisions of Section 31(5) of the Electoral Act 2010 do not avail the plaintiff/2nd respondent, if there are other provisions in the said Electoral Act 2010 (as amended), E the 1999 Constitution of Nigeria (as amended) or any other relevant law that avail the plaintiff's case, the said case would be entertained. He submitted that it is settled law that if a relief or remedy is provided for in any written law, the relief or remedy claimed by the party seeking it cannot be denied him simply because he has applied for it under F the wrong law. He relied on: *Falobi V. Falobi* (1976) 1 NMLR 169 @ 177. He set out the provisions of Sections 87 (1) and 87 (4) (c) (ii) of the Electoral Act and submitted that the issue of primary elections of a political party cannot be discussed without determining whether the aspirants are members of the party. He referred to Section 156 G of the Act and submitted that the words "voters of a given political party" used therein refer to members of the political party. He also referred to Section 65 (2) of the 1999 Constitution (as amended). He submitted that the provision requires that for a person to be qualified H for election he must be a member of a (emphasis on the singular) political party and not more than one political party. He submitted that the 3rd respondent herein (INEC) is empowered under paragraph 15 (c) and (f) of the 3rd Schedule to the 1999 Constitution (as amended), to monitor the primary elections of a political party.

He noted that Sections 85 (2) (a) and (b) and 86 (1) of the Electoral Act also empower INEC to monitor and keep records of the activities of all the political parties including the nomination of candidates for an election at any level. He contended that the following facts are apparent from the constitutional and statutory provisions referred to above:

1. "That a primary election is done by members (voters) of a given political party and not by non-members or strangers.
2. That both the 1999 Constitution (as amended) and the Electoral Act 2010 (as amended) allow the question of party membership to be an issue in a pre-election suit.
3. That INEC (i.e. 3rd respondent herein) has both the Constitutional and Statutory powers to monitor a primary election of a given political party and keep records pertaining thereto"

Based on the above observation learned counsel submitted that the 3rd Respondent is empowered to monitor the primary elections of a political party and to keep records in respect thereof. He submitted that the 3rd respondent kept such a record in this case, which it captioned 'Executive Summary of Candidates nominated by Political Parties for the 2011 General Elections in Imo State'. He urged the court to presume its authenticity on the ground that it was a document prepared for all the political parties in Imo State and not for the appellant (APGA) alone. He noted that the 3rd respondent had cause to write to the appellant on 1/3/2011 to remind it that only the names of persons who emerged as candidates from validly conducted primaries should be forwarded to the Commission as nominated candidates into the various elective positions. Learned counsel thereafter proceeded to examine the facts of the case as deposed to in the affidavits before the trial court. He submitted that the appellant did not appeal against the finding of the trial court that the plaintiff's right of action could be accommodated under Section 65 (2) of the 1999 Constitution (as amended) or that he could also bring his action under sections 31 (5) and 87 (9) of the Electoral Act. He submitted that a party who has not appealed against a decision of the trial court cannot, on further appeal to this court, seek to set it aside. He relied on: *Onibodu & Ors. V. Akibu & Ors.* (1982) 13 NSCC 199; *John Anyaduba V. N.R.T.C. Ltd.* (1992) 8 NWLR Page 535 @ 553 G-F.

Learned counsel argued that the falsehood in the 1st respondent's claim that she had resigned her membership of the Peoples Democratic Party (PDP) on 13/1/2011 and contested the APGA primary elections on 14/1/2011 coupled with the appellant's disregard of the outcome of the primaries by forwarding the 1st respondent's name as the winner are the facts that bring the case within the purview of Section 31 (5) and 87 (9) of the Electoral Act (as amended). He relied on the case of: *Uwazurike V. Nwachukwu* (2012) SCNJ 1 @ 18 lines 9 - 12, 20 lines 15 - 30 and 27 lines 12 - 16; (2013) 3 NWLR (Pt.1342) 503 and submitted that the appellant's contention that the suit before the trial court cannot come under Section 31 (5) of the Electoral Act is misconceived.

The law is that where the court lacks jurisdiction to entertain a cause or matter, the entire process, no matter how well conducted, is an exercise in futility, for the proceedings are a nullity ab initio. It was held in: *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587 at 594 that a court is competent when:

- a. it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other;
- b. the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction and
- c. the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction".

See also: *Skenconsult (Nig) Ltd. V. Ukey* (1981) 1 S.C. 6 at 62; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt.1025) 427 at 588 F.

The law is settled that in determining the jurisdiction of a court to entertain a cause or matter, the processes to be considered by the court are the processes filed by the plaintiff or applicant i.e. the writ of summons and statement of claim, or as in the present case the originating summons and its supporting affidavit. See: *Inakoju V. Adeleke* (supra); *Elabanjo V. Dawodu* (2006) 15 NWLR (Pt.1001) 75; *Adeyemi V. Opeyori* (1976) 9-10 SC 31; *Tukur Vs Governor Gongola State* (1989) 4 NWLR (Pt.117) 517. I have carefully examined the 11 questions submitted to the trial court for determination as contained at pages 1 - 3 of the record. The thread

that runs through all the questions is the plaintiff's contention that 1st respondent's (then 3rd defendant's) name ought not to have been submitted to the 3rd respondent (then 2nd defendant) as the appellant's (then 1st defendant's) senatorial candidate for the Imo East Senatorial Zone Election in the 2011 general election because at the time of the primary election which took place on 14th January 2011 she was not a member of the appellant, APGA, but an active member of another party. The general thrust of the 12 reliefs sought is that the plaintiff should be declared the "right lawful and proper APGA" Senatorial Candidate for Imo East Senatorial Zone in 2011 general election." In other words, the case was a contest between the plaintiff therein and the 3rd defendant as to who is a member of APGA and therefore entitled to contest the primary election and have his or her name submitted to INEC as the party's candidate. It is obvious that the entire foundation of the claim as made out in the originating summons is membership of APGA a political party.

This is the finding of the two lower courts. At pages 465 - 466 of the record the trial court held:

"The totality of the questions put forward for determination in the plaintiff's originating summons bothers (sic) on issue of the 3rd defendant's membership of APGA. The main contention of the plaintiff is that the 3rd defendant was not a member of APGA when primary election was held on 14th January 2011 in that the 3rd defendant was an active member of PDP and participated in the presidential primary election of PDP held at Eagle Square in Abuja from 13th - 14th of January 2011."

The lower court at page 615 of the record held:

"In a nutshell, the facts of the 1st Respondent's case as can be gleaned from the processes filed are that the Appellant is not a member of All Progressive Grand Alliance (APGA), the 2nd respondent and her name should not have been forwarded to the Independent National Electoral Commission (INEC), the 3rd respondent by the 2nd respondent as the candidate of All Progressive Grand Alliance (APGA) for the Imo East Senatorial District Election for April 2011."

As rightly observed by learned counsel for the 2nd respondent, there is no appeal against these concurrent findings of fact. It is a settled principle of law that a decision on any point of law or fact not appealed against is deemed to have been conceded by the party

against whom it was decided and it remains valid and binding on all the parties. See: Ogunyade V. Osunkeye (2007) All FWLR (pt. 389) 1175 @ 1206 - 1207 H-B; Onibodu & Ors v. Akibu & Ors. (1982) 13 NSCC 199; Anyaduba & Anor. v. N.R.T.C. Ltd. (1992) 5 NWLR (pt. 243) 535 @ 553 G - F; Unity Bank Nig. Plc. V. Bouari (2008) 7 NWLR (Pt.1086) 372 @ 400 B-C.

It is therefore settled beyond any discourse that the cause of action before the trial court related to membership of a political party. There is a plethora of decisions of this court to the effect that membership of a political party is the domestic affair of the party concerned and the courts will not be involved in deciding who the members of a political party are. See: Onuoha v. Okafor (1983) 2 SCNLR 244; (1983) NSCC 494; Lado V. C.P.C. (2012) ALL FWLR (pt.607) 598 @ 622 - 623 C - D & F - H; (2011) 12 SC (Pt.III) 113 @ 139 - 140; P.D.P. V. Sylva (2012) 13 NWLR (Pt.1316) 85. In Lado V. C.P.C. (supra), this court observed that with the introduction of Section 34 of the Electoral Act, the absolute powers of political parties had been curtailed slightly but emphasised the fact that the provision did not in any way 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. In P.D.P. V. Sylva (supra) at 146 B - C, this court per Chukwuma-Eneh, JSC held as follows:

"Furthermore, as a legal proposition also deducible from the case of Onuoha V. Okafor no member of a political party has the locus standi to question the party's prerogative right on the issue of its choice of candidate for elective offices not even in the face of breaching of its rules and regulations, I dare say. The redress available to such a member who is so aggrieved and who has suffered any damage as a result of refusing him nomination and sponsorship lies in damages against the political party and subject to the provisions of the party constitution, rules and regulations."

There is thus no doubt that membership of a political party is not justiciable. The appellant has however contended that his claim could be accommodated under Section 31 (5) or 87 (9) of the Electoral Act 2010 (as amended). In order to appreciate the purport of Section 31 (5) of the Electoral Act, it is necessary to reproduce sub-paragraphs (1) - (4) and (6) also. They provide:

“35. (1) Every political party shall not later than 60 days before the date appointed for a general election under the provision of this Act, submit to the Commission in the prescribed forms the list of the candidates the party proposes to sponsor at the elections.

B (2) The list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the High Court of a State, indicating that he has fulfilled all the constitutional requirements for election into that office.

C (3) The Commission shall, within 7 days of the receipt of the personal particulars of the candidate publish same in the constituency where the candidate intends to contest the election.

D (4) A person may apply to the Commission for a copy of nomination form, affidavit and any other document submitted by a candidate at an election and the Commission shall, upon payment of a prescribed fee, issue such person with a certified copy of the documents within 14 days.

E (5) A person who has reasonable grounds to believe that any information contained in the affidavit or any document submitted by that candidate is false may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the affidavit is false.

F (6) If the Court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the Court shall issue an order disqualifying the candidate from contesting the election.”

G It is clear that the above provisions relate to a “candidate” sponsored for election by a political party after the conduct of party primaries. In other words it presumes that the political party has made its choice of candidates after employing the direct or indirect method provided for in Section 87 (2), (3) and (4) of the Electoral Act. The relevant political party having submitted the names of the candidates it proposes to sponsor in the election along with the required affidavits, it is the duty of INEC to publish the personal particulars of the candidates in the constituency where they intend to contest the election to afford any opposing party the opportunity to challenge same. Since the sponsorship of candidates is the prerogative of the political party, it would be absurd to interpret the provisions of Section H 31 (5) above as permitting members of the same political party to

challenge the party’s choice in court.

This brings me to Section 87 (9) of the Act, which provides:

“Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the 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.”

C It has been held that the jurisdiction of the court to entertain a complaint under this section is very narrow in scope. A complainant must bring himself squarely within the confines of the provision. He must be an aspirant who participated in the primary and his complaint must relate to non-compliance with the provisions of the Electoral Act or the guidelines of the political party. See: Uwazurike V. Nwachukwu (2013) 3 NWLR (Pt.1342) 503 @ 526 E - G; PDP V. Sylva (2012) 13 NWLR (Pt.1316) 85 @ 148 C - D: 149 A - E; Lado V. C.P.C. (2012) ALL FWLR (Pt.607) 598 @ 622 - 623 F - H. In the instant case, the plaintiff before the trial court had no complaint about the conduct of the primary. His complaint is that his name ought to have been submitted to the 2nd defendant (3rd respondent herein) as the candidate for the party, APGA because the 3rd defendant (1st respondent herein) was not a member of the party as of the date when the primaries were held. The only way this issue could be resolved at the trial court would be for the court to determine whether or not the 1st respondent herein was a member of the appellant. The court has no jurisdiction to do so. It is the prerogative of every political party to determine who its members are. The courts have no business delving into the issue as clearly stated in the authorities G of Onuoha v. Okafor (supra), Lado V. C.P.C. (supra). P.D.P. V. Sylva (supra) referred to earlier. The case of Uwazurike V. Nwachukwu (supra) referred to by learned counsel for the 2nd respondent does not avail him, having found in the course of this judgment, that the issue before the trial court was membership of a political party and H not the manner in which the appellant’s primaries were conducted.

Furthermore, the issue in contention in that case was whether there was a time limit within which a complainant could seek redress under the provisions of Section 87 (9) of the Electoral Act in view

of the provisions of Section 31 (1) of the Act. It was held that the provisions of Section 87 (9) are independent of any other section of the Electoral Act or any provisions of a political party's guidelines and therefore not circumscribed by time.

B The plaintiff's cause of action at the trial court is a pre-election matter.

C Section 138 (1) (a) of the Electoral Act 2010 (as amended), which provides that one of the grounds upon which an election may be questioned is that **"a person whose election is questioned was, at the time of the election, not qualified to contest the election"** is clearly not applicable in this case. Section 138 is contained in Part VIII of the Act, which makes provision for the determination of election petitions arising from elections. Section 138 (1) and (2) provides:

D "Section 133. (1) No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.

E (2) In this part, "tribunal or court" means: -

(a) in the case of Presidential election, the Court of Appeal; and

F (b) in the case of any other elections under this Act the election tribunal established under the Constitution or this Act."

The plaintiff's case at the trial court was clearly not an election petition. Being a pre-election matter it could not be accommodated under Section 138 (1) of the Electoral Act.

G In conclusion therefore, the second issue for determination must be answered in the negative and in favour of the appellant. The appeal is thus meritorious and it is hereby allowed. The judgment of the lower court delivered on 9/11/2012 is hereby set aside. The originating summons at the trial court is hereby struck out for lack of jurisdiction.

The parties shall bear their respective costs in the appeal.

H

This is an appeal against the decision of the Court of Appeal (Owerri Division) hereinafter called court below which court allowed the cross appeal filed by the 2nd Respondent herein who was the 1st Respondent/Cross appellant at the court below which set aside the decision of the Federal High Court, Owerri Judicial division (now trial court) which was delivered on 29/3/2011 and remitting the case to the Federal High Court, Owerri for trial on the merit.

It was clearly stated and held that "having regard to the contentious nature of the suit, the originating summons procedure was not the best and in fact it was inappropriate method of approaching that court. That court struck out the case instead of ordering the parties to file pleadings.

The 3rd defendant, now 1st respondent being dissatisfied with the order striking out the case, appealed to the court below and filed a Notice of appeal against the said decision.

The 2nd respondent (plaintiff at the trial court) was also aggrieved and filed a cross-appeal. The main appeal by the 1st respondent Hon. Independence Chidoziem Ogunewe, was dismissed by the court below and allowed the cross-appeal. The 3rd defendant now 1st respondent being dissatisfied with the decision of the court below appealed to this court filed a further appeal to the Supreme Court.

Parties adopted their respective brief of argument before us. The appellant in the main appeal formulated two issues for determination. The 1st and 3rd respondents adopted the issues as formulated by the appellant while the 2nd respondent also formulated his two issues for determination.

I was privileged to have read before now the lead judgment rendered by my noble lord Kekere-Ekun JSC. The reasons and conclusions adumbrated in the lead judgment tally with my understanding of the law. The law is therefore in favour of the appellant vis-a-vis issue number two. The appeal must therefore be resolved in favour of the appellant herein. The appeal is allowed. Judgment of the court below is set aside. The originating summons in the trial court is inappropriate same is thereby struck out. No order as to costs.

I have had a preview of the judgment just delivered by my learned brother - Kekere-Ekun, JSC. I agree with the reasons therein adumbrated to arrive at the conclusion that the appeal is meritorious and should be allowed.

B I wish to chip in a few words in support of the comprehensive judgment. The complaint of the appellant relates to issue of jurisdiction of the trial Federal High Court to try the matter. The two (2) issues decoded by the appellant for determination read as follows:-

C 1. Is it correct for the court below to determine this appeal on merit without settling the challenge of jurisdiction of the court below to hear and determine the suit itself.

2. Whether the question of membership of a political party is justiciable to invoke the jurisdiction of the court below to determine same under the procedure enacted by section 31 (5) of the Electoral Act, 2010 or at all.

D It is settled that issue of jurisdiction is very vital in adjudicatory process. Once raised, it should be determined at the earliest opportunity so as to obviate an exercise in futility. See: Isaac Obiweubi v. CBN (2011) 7 NWLR (pt. 1247) 465 at 494.

E The 2nd issue before the Court of Appeal is - 'whether the lower court had jurisdiction to entertain the case.' The court below failed to consider this vital issue. The stance taken was not proper.

F The primary complaint of the 2nd respondent herein is that the 1st respondent is not a member of All Progressive Grand Alliance (APGA). For quite sometime now, issue of membership of a political party is regarded by this court as a domestic affair of the political party which is not justiciable. See: ANPP v. Usman (2009) All FWLR (pt. 463) 1292 at 1329; Onuoha v. Okafor (1983) 2 SCNLR 244. A court of record should not dabble into political question which remains the exclusive preserve of political parties which should be allowed to do their things.

G For the above reasons and those carefully adumbrated in the lead judgment, which I hereby adopt, I too feel that the appeal is meritorious and should be allowed. It is hereby allowed. I endorse all the consequential orders therein made, inclusive of that relating to costs.

H

GALADIMA JSC

I have had the privilege of reading before now the lead judgment just delivered by my learned brother KEKERE-EKUN JSC, I agree entirely with the reasoning leading to the conclusion that this appeal is meritorious and it should be allowed. I too allow it and hereby set aside the judgment of the Court below delivered on 9/11/2012. Consequently, the originating summons at the trial Court is hereby struck out for lack of jurisdiction.

I make no order as to costs. The parties shall bear their respective costs in the appeal.

C

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Kekere-Ekun, JSC and I entirely agree with the reasoning and conclusion therein.

My learned brother rightly adopted the two issues formulated by the appellant as germane to the determination of the appeal and resolved the said issues conclusively. I will chip in a few words by way of emphasis.

The two issues relate to jurisdiction. Jurisdiction is defined as the limits imposed on the power of a validly constituted Court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are joined or the kind of relief sought.] See AG Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552 SC.

The question of jurisdiction of Court is a radical and crucial question of competence because if a Court has no jurisdiction to hear and determine a matter, the proceedings are and remain a nullity ab initio no matter how well conducted or brilliantly decided they might be.

This is because the defect of want of jurisdiction is not intrinsic but extrinsic to the entire process of adjudication. Jurisdiction is therefore considered to be the nerve-centre of the process of adjudication. See Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 332 SC.

H

The question of jurisdiction once raised by either of the

parties or by the Court suo motu should be determined one way or the other first before any further step is taken in the matter. See *Nnonye v. Anyichie* (2005) 2 NWLR (Pt. 910) 623; *Messrs. N. V. Scheep v. The MV "S Araz"* (2000) 12 SC (Pt. 1) 164. It is therefore not correct for the Court below or any Court for that matter to determine a case or an appeal on the merit without first of all settling the challenge to its jurisdiction to hear and determine the matter. It is an exercise in futility. The issue of jurisdiction raised in this scuttle the hearing and determination of the matter on the merit, is that the Court is not competent to determine who is, and/or who is, not a member of a political party.

The contest herein is primarily between the 2nd Respondent and the 1st Respondent. It is the case of the 2nd Respondent that the 1st Respondent was not, at the material time, a member of the APGA, the appellant, and ipso facto cannot be sponsored by the appellant. I think it is a political party that determines its own membership and the related question of who to sponsor as its flag bearer in any election. It is an intra-party affair which is not amenable to the decision making process of the Court. See *Ehuwa v. OSIEC* (2006) 18 NWLR (pt. 1012) 544 SC; *Onuoha v. Okafor* (1983) 2 SCNLR 244. The question of who is a member of a political party which ultimately comes to the question of who is the candidate of the party at an election is a political question not justiciable in a Court of law. See *Ogunbiyi v. Ogundipe* (1992) 9 NWLR (pt. 263) 24.

It is for these and the well - articulated fuller reasons in the lead judgment that I also resolve each of the two issues in favour of the appellant. Consequently I also allow the appeal as meritorious, declare the judgment of the Court below a nullity and strike out the originating Summons for want of jurisdiction. I also order that parties bear their respective costs.