

SUPREME COURT OF NIGERIA
FRIDAY 9TH MAY, 2014. SC. 135/2012
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC

DR. UMAR ARDO APPELLANT
AND
1. ADMIRAL MURTALA NYAKO (RTD)
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC) RESPONDENTS

ELECTIONS - Nomination - Justiciability - Issue of candidate of political party is a political issue - To be determined by rules of the party - Hence is not justiciable in court of law (H1)

ELECTIONS - Nomination - Political party - Right of - Although NA attempted to infuse internal democracy in political parties - Yet parties still retain right to select their candidates for election (H2)

POLITICS - Political party - Notice of convention - INEC is to be given at least 21 days notice of party's congress - To elect officials or nominate candidates for election - And the commission may with or without notice - Attend and monitor such congress (H3)

ELECTIONS - Pre election matters - Interference - Where there is complaint about conduct of primary election - Court has jurisdiction by EA s. 87(9) - To examine if the conduct was in accordance with the party's guidelines (H4)

SUPREME COURT - Judgment of - Review - If counsel felt the decisions which he wanted distinguished were reached per incuriam - He must clearly state same - So that a full court could be empanelled to review the decisions (H5)

FACTS

Before the Federal High Court Yola, plaintiff/appellant commenced this action seeking inter alia to nullify the gubernatorial pri-

mary election of 2nd defendant/respondent wherein 1st defendant/respondent was nominated as candidate of 2nd respondent in the 2012 gubernatorial election in Adamawa State. Appellant also faulted the procedure adopted in the nomination of 1st respondent as candidate of 2nd respondent as being inter alia in breach of appellant's right to fair hearing. The Gubernatorial Screening Committee of 2nd respondent screened and cleared appellant and 1st respondent for the primary election to nominate the candidate of 2nd respondent for the Governorship election in the State in 2012. The Special Ward Congresses to pick the three Ward Ad-Hoc Delegates in all the 226 wards of the State was fixed for a date in 2011.

It was at this stage that appellant noticed that the procedure adopted by 2nd respondent in the conduct of the election of the three Ward Ad-Hoc Delegates was discriminatory and so decided to institute this action. 1st respondent filed a preliminary objection to the action urging that the suit is incompetent and the court lacks jurisdiction to determine same. The court in its ruling declined jurisdiction to order for a fresh primary election since the time for the submission of list of candidates for election by the political party had lapsed. The action was thus struck. Being dissatisfied, appellant appealed to the Court of Appeal, Yola Division. The court dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court, seeking for the court to reverse itself on the decision regarding who is an aspirant in the cases of Lado v. CPC, Uzodinma v. Izunaso (No.2), Emenike v. PDP, PDP v. Sylva/Sylva v. PDP, and Emeka v. Okadigbo.

ISSUES FOR DETERMINATION

1. Whether having regard to the definition of who is an 'aspirant' in Section 156 of the Electoral Act, 2010 (as amended), the decision of the Supreme Court in:

a. Lado vs CPC (2012) ALL FWLR 263; b. Uzodinma vs Izunaso (No.2) (2011) 17 NWLR (Part 1275) 30; c) Ikechi Emenike vs Peoples Democratic Party & Ors. (2012) 12 NWLR (Part 1315) 556; d.) PDP vs Timipre Sylva & 2 Ors/Timipre Sylva vs PDP & 2 Ors. (2012) 13 NWLR (Part 1316) 85 and e.) Emeka vs Okadigbo & 4 Ors (2012) 18 NWLR (part 1331) 55 is (sic) not contrary to statutory definition of the word which has occasioned hardship and miscarriage of justice against the Appellant as a person aspiring or striving or seeking to contest election to hold political office and so should

be revisited or reversed?

2. Whether having regard to Section 87(9), of the Electoral Act, the learned justices of the Lower Court were not in error when they held that complaints arising from the selection of Ward Delegates or any of the complaints which formed the basis of the Appellant's claim at the trial court are not justiciable.

HELD (Unanimously dismissing the appeal per **AKA'AH'S JSC)**

ELECTIONS - Nomination - Justiciability

1. The courts have consistently declined to entertain jurisdiction in inter party disputes concerning the candidate a political party chooses to sponsor for an election. The courts cannot therefore compel a political party to sponsor one candidate in preference for another candidate of the self - same party. The reason being, that no court can manage the political party for the members thereof. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a court of law. (p. 1735 B)

ELECTIONS - Nomination - Political party - Right of

2. The power donated to the National Assembly in Section 228 (a) of the Constitution is to make laws which provide guidelines and rules to ensure internal democracy within political parties and this includes making laws for the conduct of party primaries, party congresses and party conventions. The power to nominate candidates for election still resides with the political parties but the procedure for the nomination is not left to the whims and caprices of party officials. The parties must hold either direct or indirect primaries for the aspirants to all elective positions.

Although the National Assembly has attempted to infuse internal democracy in the political parties by ensuring that candidates who have been nominated to stand elections are not

substituted arbitrarily, nonetheless the party still retains the right to set the parameters for nomination/selection of the candidates. (pp. 1738 D/1741 B)

POLITICS - Political party - Notice of convention

B 3. Furthermore a registered political party is required to give the Independent National Electoral Commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under the Electoral Act and the commission may, with or without prior notice to the political party, monitor and attend any convention, congress, conference or meeting which is convened by a political party for the purpose of -

(a) electing members of its executive committees or other governing bodies;

(b) nominating candidates for an election at any level; and approving a merger with any other registered political party. See: Section 85 of the Electoral Act. (p. 1738 G)

ELECTIONS - Pre election matters - Interference

F 4. Nomination or sponsorship of a candidate for election is a political matter solely within the discretion of the party, and this is so because the sponsorship or nomination of a candidate is a pre-election affair of the party. But where the political party conducts its primary and a dissatisfied contestant at the primary complains about the conduct of the primaries, the courts have jurisdiction by virtue of the provisions of section 87 (9) of the Electoral Act to examine if the conduct of the primary elections was conducted in accordance with the party's Constitution and Guidelines.

H The courts will only interfere if the guidelines of a political party run foul of the Constitution of the Federal Republic of Nigeria. Conscious efforts must be made by the political parties to enthrone internal democracy in their parties. (pp. 1740 E/1741 C)

SUPREME COURT - Judgment of - Review

5. I find nothing in the present appeal from which a distinction could be drawn from the cases already decided by this Court. If learned counsel strongly felt the decisions which he wanted distinguished were reached per incuriam, then it behoves him to state so clearly so that a full court could be empanelled to review the decisions vis-à-vis the law and facts in the present appeal. (p. 1741 D) B

NOTABLE POINTS OF INTEREST C

ONNOGHEN JSC

1. Judicial precedents – Principles of

To begin with I wish to state that the principle of judicial precedent or stare decisis is designed to ensure orderliness, certainty and discipline in the judicial process. The principle holds inferior courts to the Supreme Court of Nigeria bound by the previous decision(s) of the court on similar facts in the consideration and determination of matters before them. Where the lower courts are encouraged not to follow the previous decision(s) of this court on similar facts such an encouragement is designed to promote anarchy, chaos and judicial rascality' which is not the design or purpose of the principles of the Rules of Law. It follows therefore that the lower courts are bound in law to follow the previous decision(s) of this Court on similar facts to the case under consideration by them. D
E
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It is settled that the way opened to the courts to avoid the doctrine/principle of judicial precedent/stare decisis is by distinguishing the previous decision(s) from the facts and/or circumstances of the case under consideration. (p. 1743 H) G

2. Literal interpretation of statutes

It is settled law that in interpretation of statutes, the words used, in as much as they are clear and unambiguous, must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions of the statute. (p. 1745 E) H

3. Adherence to statutory definition of word

Also settled is the principle that where a word has been defined in a

statute, the meaning given to it in the definition must be adhered to in the construction of the provisions of the statute unless the contrary intention appears from the particular section or the meaning is repugnant in the context in which the definition is used. (p. 1745 F)

B 4. Primary election complaints – Conditions for

Where a party did not participate in the primary election of the political party for the nomination of a candidate for an election, he cannot sue on the processes leading to and including the actual primary election, because by the provisions of the said Section 67(9) supra, the court will have no jurisdiction to hear and determine the action. In the instant case, appellant did not participate in the primary election conducted by the party to select/nominate its candidate for the gubernatorial election in question neither did he fail in the said exercise. (p. 1747 B)

REPRESENTATION

Oladipo Okpeseyi SAN appearing with Sylvester Imhanobe Esq.; Harrissin Anachuna Esq.; Alhassan Ahmadu Esq.; Keddei Ekpombang (Miss) and Joshua Akor, for the Appellant
Kanu Agabi SAN for 1st Respondent appearing with Ayo Akani, O. A. Adegoke (Mrs.) M. G. Egenti (Mrs.), Martin Odey, Peter Erivwode, Bartholomew Oluohu, Duncan Oluohu, Uchenna Ugwueze (Miss) Akinola Afolarin, Henry Okeke, Anthony Odule, Elvis Uhrlu and Gaya Nendi (Miss).
J. N. Egwuonwu Esq. for 2nd Respondent appearing with A. S. Akingbade Esq., F. I. Bukar (Miss), C. P. Nzedebe Esq. and H. A. Shehu (Miss).
Uche V. Obi for 3rd Respondent appearing with Olusoji S. Toki and A. M. Sanusi.

CASES REFERRED TO

Lado v. CPC (2011) 18 NWLR (pt. 1279) 689
Uzodinma v. Izunaso (No.2) (2011) 17 NWLR (pt. 1275) 30
Emenike v. PDP (2012) 12 NWLR (pt. 1315) 556
PDP v. Sylva (2012) 13 NWLR (pt. 1316) 85
Emeka v. Okadigbo (2012) 18 NWLR (pt. 1331) 55
A-G Federation v. Guardian Newspapers Ltd. (1999) 9 NWLR (pt.

618) 187

Ejoh v. IGP (1963) 1 All NLR 230

Apampa v. State (1982) 6 SC 47

Schroder v. Major (1989) 2 NWLR (pt. 101) 1

Onuoha v. Okafor (1983) 2 SCNLR 244

Dalhatu v. Turaki (2002) 15 NWLR (pt. 843) 310

B

STATUTES & RULES REFERRED TO

Electoral Act 2010 (as amended), ss. 87, 137, 138, 156

Evidence Act, s. 156

Supreme Court Rules, O. 6 r. 5(4)

Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 40, 65(2), 221, 224, 228

Interpretation Act, s. 3

C

D

LEAD JUDGMENT BY AKA'AHs JSC

The principal aim of the appellant in bringing this appeal is to persuade this Court to reverse itself on the decision regarding who an aspirant is in the following cases:

(a) Lado vs CPC (2011) 18 NWLR (Part 1279) 689;

(b) Uzodinma vs Izunaso (No.2) (2011) 17 NWLR (part 1275) 30;

(c) Ikechi Emenike vs Peoples Democratic Party & Ors (2012) 12 NWLR (part 1315) 556;

(d) PDP vs Timipre Sylva & 2 Ors/Timipre Sylva vs PDP & 2 Ors (2012) 13 NWLR (Part 1316) 85; and

(e) Emeka vs Okadigbo & 4 Ors (2012) 18 NWLR (part 1331) 55.

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According to learned counsel for the appellant the definition of an aspirant in those cases is contrary to what the law provides in Section 156 of the Electoral Act, 2010 (as amended) and this has occasioned hardship and miscarriage of justice against the appellant as a person aspiring, striving or seeking to contest election to hold political office and is therefore urging this Court to revisit those cases with a view to reversing itself first, the Acts.

H

On 12/10/2011, the Peoples Democratic Party (PDP) as 2nd Defendant/Respondent published at page 53 of This Day Newspaper, the time table for the conduct of the Gubernatorial Primary Elec-

tion in Adamawa State.

On 14/10/2011 the appellant who is a bona fide member of the Party purchased, completed and submitted Form Code PD 002/G/2011 Primary Election) his Expression of interest Form for Gubernatorial Nomination 2011 to the 2nd Respondent preparatory to screening. On 17/10/2011, the Gubernatorial Screening Committee screened and cleared both the appellant and 1st Respondent in the primary to nominate the candidate of the Party for the Governorship election in Adamawa State slated for 2012. The Special Ward Congresses to pick the three Ward Ad-Hoc Delegates in all the 226 wards of the State was fixed for 19/10/2011. It was at this stage that the appellant noticed that the procedure adopted by the 2nd Respondent in the conduct of the election of the (3) Ward Ad-Hoc Delegates was discriminatory and so decided to go to court by instituting an action in the Federal High Court Yola on 2/11/2011 and sought for the following reliefs in paragraph 47 of the Statement of Claim:

"47. The Plaintiff states that the Gubernatorial primary of the 2nd Defendant held in Yola, Adamawa State on Monday, 24th October, 2011 wherein the 1st Defendant was nominated the candidate of the 2nd Defendant in the 2012 Gubernatorial election in Adamawa State is invalid and void by reason of-

(a) the discriminatory membership revalidation exercise carried out by the Adamawa State Chapter of the 2nd Defendant in October, 2011 in which known supporters of the plaintiff were excluded;

(b) the refusal to issue and/or sell Delegate Nomination Forms of the 2nd Defendant to known supporters of the plaintiff thereby denying them opportunity to be elected Ad-Hoc Delegates to participate in the nomination of the candidate of the 2nd Defendant in the 2012 Gubernatorial Election in Adamawa State at the Gubernatorial primary held in Yola, Adamawa State on Monday, 24th day of October, 2011.

(c) Lack of valid notice to the plaintiff, as an aspirant or to his campaign organisation or supporters of the date of the Ward Congress of the 2nd Defendant purported to have held on the 21st day of October, 2011. WHEREOF the plaintiff seeks from this Honourable Court the following reliefs:-

1. A DECLARATION that the procedure adopted by the 2nd

Defendant for the nomination of the 1st Defendant as the candidate of the Peoples Democratic Party for the 2012 Gubernatorial Election in Adamawa State is in breach of:

- a. the Plaintiffs constitutional right to fair hearing;*
- b. Sections 222 of the constitution of the Federal Republic of Nigeria, 1999 (as amended); and*
- c. Paragraphs 2 and 3 of Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party made pursuant to enabling powers in Section 12.72 (i) and 17.1 and 2 of the Constitution of the Peoples Democratic Party.*

2. A DECLARATION that the breach of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the Constitution of the Peoples Democratic Party (as amended; and the Electoral guidelines for primary Elections 2010 of the Peoples Democratic Party renders the Gubernatorial Primary of the 2nd Defendant in Adamawa State held in Yola, Adamawa State on Monday, 24th October, 2011 wherein the 1st Defendant was nominated the candidate of the 2nd Defendant in the 2012 Gubernatorial election in Adamawa State invalid and void.

3. A DECLARATION that the procedure adopted by the 2nd Defendant in conduct of the Special Ward congress to elect the Ad-Hoc Delegates that participated in the Gubernatorial Primary of the 2nd Defendant in Adamawa State on Monday, 24th day of October, 2011 denied the Plaintiff of his right to be nominated the candidate of the Peoples Democratic Party in the 2012 Gubernatorial election in Adamawa State.

4. A DECLARATION that there is no validly nominated candidate of the Peoples Democratic Party for the 2012 Gubernatorial election in Adamawa State.

5. AN ORDER restraining the 3rd Defendant at its Gubernatorial Primary held in Yola, Adamawa State on Monday, 24th day of October, 2011 wherein the 1st Defendant was nominated the candidate of the 2nd Defendant in the 2012 Gubernatorial Election in Adamawa State.

6. AN ORDER directing the 2nd Defendant to forthwith conduct fresh Gubernatorial Primary for the nomination of its candidate for the 2012 Gubernatorial Election in Adamawa State in accordance with the Constitution of the Federal Republic of Nigeria, 1999 (as

amended); the Constitution of the Peoples Democratic Party (as amended); and the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party.”

On 15th December, 2011, the 1st Defendant filed a preliminary objection to the case urging that the suit is incompetent and the Court lacks jurisdiction to determine same. In his Ruling delivered on 20th January, 2012 Shuaibu J. declared that the Court lacked jurisdiction to order for a fresh primary election since the time for the submission of list of candidates for election by the political party had lapsed. He therefore declined jurisdiction and struck out the suit.

The appellant was dissatisfied with the ruling and filed an appeal before the Court of Appeal, Yola. On 26th February, 2013 the appeal was dismissed thereby prompting the present appeal which was filed on 2nd April, 2013 (See Vol. III pages 1103 - 1112 of the Records).

It appears this Notice was abandoned for another notice of appeal which was filed on 18th May, 2013. The Notice of Appeal contains four grounds of appeal from which the appellant formulated the following two issues for determination.

1. Whether having regard to the definition of who is an ‘aspirant’ in Section 156 of the Electoral Act, 2010 (as amended), the decision of the Supreme Court in:

a. Lado vs CPC (2012) ALL FWLR 263; b. Uzodinma vs Izunaso (No.2) (2011) 17 NWLR (Part 1275) 30; c) Ikechi Emenike vs Peoples Democratic Party & Ors. (2012) 12 NWLR (Part 1315) 556; d.) PDP vs Timipre Sylva & 2 Ors/Timipre Sylva vs PDP & 2 Ors. (2012) 13 NWLR (Part 1316) 85 and e.) Emeka vs Okadigbo & 4 Ors (2012) 18 NWLR (part 1331) 55 is (sic) not contrary to statutory definition of the word which has occasioned hardship and miscarriage of justice against the Appellant as a person aspiring or striving or seeking to contest election to hold political office and so should be revisited or reversed?

2. Whether having regard to Section 87(9), of the Electoral Act, the learned justices of the Lower Court were not in error when they held that complaints arising from the selection of Ward Delegates or any of the complaints which formed the basis of the Appellant’s claim at the trial court are not justiciable.

The 1st respondent raised three issues for consideration while

the 2nd and 3rd had two issues each. The issues formulated by the 1st respondent are:

1. Whether their Lordships of the court below were right when following previous decisions of the Supreme Court, they held that the Appellant not having taken part in the Gubernatorial Primary Election conducted by the 2nd Respondent, was not an aspirant under the Electoral Act 2010, and so had no locus standi to challenge the Gubernatorial Primary Election, or whether their Lordships of the court below were entitled to refuse to follow those decisions as contended by the Appellant on the grounds that;

(a) They are incompatible with the definition of an aspirant in Section 156 of the Electoral Act.

(b) As those decisions relate to the locus Standi of the Appellant, they limit primary election to one event only to the exclusion of others.

(c) They restrict the constitutional right of the Appellant to access to court *"to vent his real or imagined grievances"*.

(d) The decisions were reached per incuriam and occasioned a miscarriage of justice. (Distilled from grounds 1 and 2 of the Grounds of Appeal)

2. Whether their Lordships of the court below were right when they held that the interpretation of Section 87 (1) and (9) of the Electoral Act 2010, the Supreme Court adopted the approach which best expresses the intention of the legislature to the effect that only an aspirant who took part in the primary election can challenge the conduct of such primary (Distilled from Ground 3 of the Grounds of Appeal)

3. Whether their Lordships of the court below were right when they held that the jurisdiction of the court under Section 87 (9) of the Electoral Act can only be invoked where the acts of non-compliance alleged occur at the primaries for the selection or nomination of the candidate of the party and not prior to that. (Distilled from Ground 4 of the Grounds of Appeal)

The issues formulated by the 2nd respondent are as follows:-

(a) Whether the learned Justices of the Lower Court were not right in relying on existing decisions of the Supreme Court on the scope of Section 87 (9) of the Electoral Act 2010 in holding that the Appellant who did not participate in the Primary Election lacked the

locus standi to challenge its validity.

(b) Whether having regard to the provision of Section 87 (9) of the Electoral Act and the decisions of the Supreme Court on the scope of same, the learned Justices of the Court of Appeal were not right to have upheld the decision of the trial High Court that complaints bothering (sic) on pre-primary election matters, such as election of ward delegates, are not justiciable.

The issues formulated by the 3rd respondent though couched differently are not dissimilar with those framed by the 2nd respondent and they are:-

1. Whether or not the court below was not right to have followed binding decisions of the Supreme Court in holding that the Appellant had, no locus standi to challenge the validity and outcome of the Primary Election conducted by the 2nd Respondent since he did not participate in the primary (Distilled from Grounds 1 and 2).

2. Whether or not the court below properly constructed (sic) Section 87 (i) and (9) of the Electoral Act, 2010 to the effect that only an aspirant who participated in a primary election can challenge the conduct of such primary and the related point that the jurisdiction of the court can only be invoked where the alleged non-compliance or infraction occurred at the primary election and not prior to that. (Grounds 3 and 4 of the Notice of Appeal)

The Appellant filed Replies to the Respondents, briefs.

In this appeal the appellant wants this Court to reverse itself as to the definition of the word 'aspirant' in Section 87 (1) & (9) of the Electoral Act, 2010 and consequently its earlier decisions on the issue. Learned counsel for the appellant has argued that what the courts have failed to consider is that each of the cases reviewed were decided based on their peculiar facts and in none of those cases was there a complaint about breach of the Electoral Act, Constitution/Guidelines of the Party in the conduct of the primary election as in the instant case. He therefore urged that in determining this appeal, to consider the peculiar facts in this case and distinguish it from the previous decisions of this Court.

Learned counsel is further contending that apart from distinguishing this case from the previous decided cases, this Court should review or revisit its decision in the previous cases as they relate to the locus standi of an aspirant and jurisdiction of the courts under Sec-

tion 87 (9) of the Electoral Act, 2010 (as amended). He says that the language of Section 156 of the Electoral Act 2010 (as amended) is clear and unambiguous and having regard to the statutory definition of the word 'aspirant' the judicial definition of that word in PDP vs Timipre Sylva (supra), and all the other cases listed above, that draws from Section 87 (1) of the Electoral Act to define an 'aspirant' as a person who contested the primaries i.e. a candidate in the primaries is clearly wrong and should be visited. B

The intention of the National Assembly in defining the word 'aspirant' in Section 156 of the Electoral Act 2010 (as amended) by using the word 'means' according to learned counsel is to delimit the scope and content of the definition to persons who aspire or seek or strive to contest an election to a political office. C

It is submitted that if the definition of the word aspirant is read along with the timetable published by the 2nd Respondent on 12th October, 2011 the irresistible conclusion that would be reached is that primary election of a political party is a process not an event; consequently the statutory definition of the word 'aspirant' is sufficient to clothe the appellant with the necessary locus standi to maintain the action since the appellant's complaints are in respect of events that occurred in stages (e) and (f) of the timetable i.e. E

(a) the discriminatory membership revalidation exercise which disenfranchised known supporters of the appellant who were refused membership revalidation.

(b) the refusal to issue and /or sell Delegate Nomination Forms of the 2nd Defendant to known supporters of the appellant which denied them the opportunity to be elected Ad-Hoc Delegates to participate in the nomination of the candidate of the 2nd defendant in the 2012 Gubernatorial election in Adamawa State at the Gubernatorial Primary held in Yola on 24th day of October 2011. F G

(c) Lack of valid notice to the Plaintiff, as an aspirant, or to his campaign organisation or supporters of the date of the Ward congress of the 2nd Defendant.

Learned counsel submitted that it will result in serious hardship and miscarriage of justice to deny the appellant locus standi to seek redress in respect of his complaints in the Special Ward Congresses and Special Ward Congress Appeal merely on the ground that he did not participate in the primary election. H

Mr. Agabi, learned Senior Counsel for the 1st respondent submitted that the appellant's contention that the court below erred in treating primaries as an event instead of as a process does not constitute an appeal against the finding that the appellant did not participate in the primaries. He argued that there must first be an appeal against the finding for the appellant to indicate what he understands the primaries to be whether an event or a process and in the absence of such appeal, the appellant's contention cannot avail him. Learned Senior Counsel argued that it is one thing to be cleared to contest and another thing altogether to proceed to contest. He submitted that the appellant's intention to contest the Gubernatorial Primary Election evinced by some of the preliminary steps he took is not enough to clothe him with the locus standi to sue. He submitted that the circumstances under which this Court can depart from its previous decisions are not present in this appeal.

Learned counsel for the 2nd respondent submitted that procedure for inviting the Supreme Court to revisit its earlier decisions with a view to overriding or departing from them is provided under Order 6 Rule 5 (4) of the Supreme Court Rules and if there is no direct and clear invitation upon specified grounds in line with the said Order 6 Rule 5 (4), the Court will remain bound by its previous decisions. He cited the case of A. G. Federation vs Guardian Newspapers Ltd. (1999) 9 NWLR (Part 618) 187. He said the onus lies on the party seeking to have a previous decision of the Supreme Court overruled to satisfy the Court that there is the need to do so.

The submissions of learned counsel for the 3rd respondent were substantially in line with those made by learned senior counsel for the 1st respondent.

Mr. Okpeseyi, learned senior counsel who settled the appellant's brief filed replies to the submissions made by counsel to 1st, 2nd and, 3rd respondents. I do not think it was necessary to file any replies at all except the submission as to whether the appellant complied with Order 6 Rule 5 (4) of the Supreme Court Rules on the procedure for inviting the court to override or depart from its previous decisions.

From the way issue 1 was formulated, learned counsel initially set out to invite this court to reverse itself on the definition of who an aspirant is but ended up submitting that the facts of this case are

distinguishable from the facts of the cases applied by the lower courts to deny the appellant locus standi. In other words what learned counsel wants this court to do is to interpret the word aspirant to include the appellant who participated in the process of the primary election of the 2nd respondent concluded on 24/10/2011 to nominate its candidate for the 2012 Gubernatorial election and this will give him the latitude to ventilate his complaints on the conduct of the primaries. B

The courts have consistently declined to entertain jurisdiction in inter party disputes concerning the candidate a political party chooses to sponsor for an election. The courts cannot therefore compel a political party to sponsor one candidate in preference for another candidate of the self - same party. The reason being, that no court can manage the political party for the members thereof. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a court of law. C

The constitutional provisions which directly or indirectly empower political parties to sponsor candidates for elections to the National Assembly or a State House of Assembly are in Sections 221, 40 and 65 (2) of the 1999 Constitution as amended. The sections provide as follows:- E

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

40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: G

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition H

65 (1) Subject to the provisions of Section 66 of this Constitution, a person shall be qualified for election as a member of -

(a) the senate, if he is a citizen of Nigeria and has attained the

age of thirty-five years; and

(b) the House of Representatives, if he is a citizen of Nigeria and has attained the age of thirty years.

(2) A person shall be qualified for election under subsection (1) of this section if-

B *(a) he has been educated up to at least Secondary School Certificate level or its equivalent; and*

(b) he is a member of a political party, and is sponsored by that party”.

C Sections 224 and 228 of the Constitution deal with the aims and objectives of a political party and the powers of the National Assembly with respect to political parties. The sections stipulate as follows:-

D *“224 The programme as well as the aims and objectives of a political party shall conform with the provisions of Chapter II of this Constitution.*

228 The National Assembly may by law provide -

E *(a) guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party conventions.*

The Electoral Act as amended on 29th December, 2010 defines the word aspirant to mean -a person who aspires or seeks or strives to contest an election to a political office”.

F Section 137 (1) of the Electoral Act 2010 (as amended) enumerates the persons who are entitled to present election petitions while Section 138 (1) gives the grounds upon which an election may be questioned.

The sections state as follows:-

G *“137 - (1) An election petition may be presented by one or more of the following persons -*

(a) a candidate in an election;

(b) a political party which participated in the election

H *138 - (1) An election may be questioned on any of the following grounds that is to say -*

(a) that the person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;

(c) that the respondent was not duly elected by a majority of lawful votes cast at the election; or

(d) that the petitioner or its candidate was validly nominated

(e) but was unlawfully excluded from the election”.

One of the radical changes which the National Assembly introduced into the electoral process in 2006 was to curtail the power of the Political parties in the substitution or replacement of candidates in an election. Before the introduction of primaries where the candidates for elections emerged, only the political parties had the sole monopoly to nominate the candidates they wished to sponsor for the elections and they were at liberty to substitute the candidates provided this was done within the period stipulated by the Electoral Commission and the power to accept or reject the list rested with the Electoral Commission. Section 28 of the Electoral Act, 1982 stipulates thus:

“28 (1) Every registered political party shall, not later than ninety days (or such later day as may be directed by the Commission) before the date appointed for any general elections to be conducted under this Act, deliver the complete list of the names and other relevant particulars of all the candidates the party proposes to sponsor for elective offices in respect of all the elections (or such number thereof as the party intends to contest) to the Commission.

(2) The Commission shall, not later than twenty-one days after delivery of the list aforesaid, deliver to the political party a list containing the names of candidates who are qualified for election under the provisions of the Constitution and where appropriate, a separate list of those rejected by the Commission and in the case of those so rejected, the Commission shall -

(a) state in writing the grounds for such rejection, and

(b) afford the political party concerned an opportunity, subject to the other provisions of this part of this Act, of substituting another candidate for each one so rejected.

(3) If after twenty -one days a political party is not informed within the specified period of the disqualification of its candidates, all the candidates named in such list shall be deemed qualified or approved by the Commission.

(4) The powers exercisable by the Commission in determining qualification of a candidate for an election shall be limited to the

provisions of the Constitution and this Act”.

As I have already observed, the appellant set out to urge this Court to reverse itself on the decisions reached in Lado vs CPC supra; Uzodinma vs Izunaso supra; Emenike vs PDP. supra; P.D.P. vs Timipre Sylva supra and Emeka vs Okadigbo supra on the non-justiciability of the claim as to who a political party should nominate to contest for a Gubernatorial or National Assembly seat in a General Election conducted by the Independent National Electoral Commission. Midstream the argument was changed to asking this Court to review or revisit those decisions as they relate to the locus standi of an aspirant and jurisdiction of the courts under Section 87 (9) of the Electoral Act, 2010 (as amended) so as to accommodate the complaints which led to the exclusion of the appellant from realising his ambition of being nominated by the PDP to contest in the Gubernatorial Election which took place in Adamawa State in 2012. In other words what the appellant wants this Court to pronounce upon is that the process adopted by the party for the emergence of a political aspirant should be made justiciable.

The power donated to the National Assembly in Section 228 (a) of the Constitution is to make laws which provide guidelines and rules to ensure internal democracy within political parties and this includes making laws for the conduct of party primaries, party congresses and party conventions. The power to nominate candidates for election still resides with the political parties but the procedure for the nomination is not left to the whims and caprices of party officials. The parties must hold either direct or indirect primaries for the aspirants to all elective positions. See: Section 87 of the Electoral Act, 2010 (as amended). ***Furthermore a registered political party is required to give the Independent National Electoral Commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under the Electoral Act and the commission may, with or without prior notice to the political party, monitor and attend any convention, congress, conference or meeting which is convened by a political party for the purpose of -***

(a) electing members of its executive committees or other governing bodies;

(b) nominating candidates for an election at any level; and approving a merger with any other registered political party. See: Section 85 of the Electoral Act.

Section 87 (3) & (4), (7) & (9) of the Electoral Act States:- B
“87 (3) A political party, that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party

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

(b) in the case of nominations to the position of Governorship Candidate, a political party shall, where they intend to sponsor candidates: D

(i) hold special congress in each of the Local Government Areas of the States with delegates voting for each of the aspirants at the congress to be held in designated centres on specified dates,

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

(7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting in addition to delegates already prescribed in the constitution of the party. F

(9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied within the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT for redress”. G

The learned trial Judge held that by provisions of Section 87 H
 (10) of the Electoral Act, 2010, the courts have unfettered powers to inquire whether the selection of a candidate by a party for election has been conducted in full and substantial compliance with the provisions of the Electoral Act and the guidelines of a political party regu-

lating the conduct of the primaries.

He further stated that for the plaintiff to successfully invoke the jurisdiction of the Court pursuant to the provisions of Section 87 (10), the complaint must be in relation to the conduct of primaries for the selection or nomination of a candidate by a political party but
 B found that the complaints of the plaintiff contained in paragraph 47 of the statement of claim have to do with matters that arose before the conduct of the primaries; consequently the Court lacked jurisdiction to look into the complaints.

C The Lower Court agreed with the stand taken by the trial court in holding that a candidate who did not participate in the selection/nomination of a candidate to stand election cannot invoke the jurisdiction of the Court over complaints which occurred prior to the holding of the primaries.

D In P.D.P. vs Sylva (2012) 13 NWLR (part 1316) 85 Rhodes-Vivour JSC stated at page 125 thus:

*“The right to nominate or sponsor a candidate by a political party is a domestic right of the party. A political matter within the sole discretion of the party. A member of the party has no legal right to be
 E nominated/sponsored by his party. A court thus has no jurisdiction to determine who a political party should sponsor.”*

***Nomination or sponsorship of a candidate for election is a political matter solely within the discretion of the party, and this is so because the sponsorship or nomination of a
 F candidate is a pre-election affair of the party. But where the political party conducts its primary and a dissatisfied contestant at the primary complains about the conduct of the primaries, the courts have jurisdiction by virtue of the provisions of
 G section 87 (9) of the Electoral Act to examine if the conduct of the primary elections was conducted in accordance with the party’s Constitution and Guidelines.***

Earlier in Lado vs CPC (2011) 18 NWLR (Part 1279) 692, Onnoghen JSC had stated at pages 718-719 that -

H *“The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the purview of Section 87 @ (b) (ii); and (9) of the Electoral Act 2010 (as amended) supra, It is only if he can come within the provisions of those sub-sections that his complaints can be*

justiciable as the courts cannot still decide as between two or more contending parties which of them is the nominated candidate of a political party; that power still resides in the political parties to exercise.

The enactment is not designed to encourage factions emerging from the political parties with each electing its candidates but claiming some to be candidates of the political party concerned.” B

Although the National Assembly has attempted to infuse internal democracy in the political parties by ensuring that candidates who have been nominated to stand elections are not substituted arbitrarily, nonetheless the party still retains the right to set the parameters for nomination/selection of the candidates. The courts will only interfere if the guidelines of a political party run foul of the Constitution of the Federal Republic of Nigeria. Conscious efforts must be made by the political parties to enthrone internal democracy in their parties. C

I find nothing in the present appeal from which a distinction could be drawn from the cases already decided by this Court. If learned counsel strongly felt the decisions which he wanted distinguished were reached per incuriam, then it behoves him to state so clearly so that a full court could be empanelled to review the decisions vis-à-vis the law and facts in the present appeal. E
 The appeal lacks merit and it is accordingly dismissed. Parties are to bear their respective costs. F

ONNOGHEN JSC

This is an appeal against the Judgment of the Court of Appeal, Holden at Yola in appeal No.CA/YL/15/2012 delivered on the 26th day of February, 2013 in which the court dismissed the appeal of appellant against the decision of the Federal High Court Holden at Yola in suit No.FHC/YL/CS/50/2011 delivered on 20th January, 2012 dismissing the claims of appellant, then plaintiff before the court following a preliminary objection raised by the 1st respondent challenging the jurisdiction of the court to hear and determine the claims. H

The facts of the case have been stated in detail in the lead Judgment of my learned brother, AKA'AH'S, J.S.C. just delivered and

they include the following:

The appellant was desirous of contesting the gubernatorial election into the office of Governorship of Adamawa State and consequently obtained an Expression of Interest Form as well as a nomination form, all from the 2nd respondent, Peoples Democratic Party B but did not pay the prescribed fees for same. Appellant also failed to participate in the gubernatorial primary election of the 2nd respondent conducted on the 24th day of October, 2011. Appellant did not like the processes leading to the conduct of the said primary election and consequently caused to be issued, a writ of summons against the C respondents in which he contended that the gubernatorial primary election so conducted by 2nd respondent was void by reason of the fact that the membership revalidation exercise carried out by the Adamawa State Chapter of the 2nd Defendant in October, 2011 was D discriminatory because known supporters of appellant were excluded.

It is also the contention of appellant that his supporters were denied the opportunity of participating in the nomination exercise by the refusal to sell Delegate Nomination Forms to them; that no valid notice was given to him as an aspirant, or to his Campaign Organisation E or to his supporters on the date of the Ward Congress of the 2nd respondent which was purportedly held on 21st October, 2011.

Following the service of the processes on him the 1st respondent filed a Notice of Preliminary objection in which he challenged the jurisdiction of the court on the ground, inter alia, that the complaints of appellant were not envisaged by the provisions of Section F 87(9) of the Electoral Act, 2010, as amended.

The objection, as stated earlier in this Judgment, was upheld resulting in an appeal to the Lower Court which was dismissed for G lack of merit culminating in the instant further appeal, the issues for the determination of which have been identified in the appellant brief filed on 10/05/13 by learned senior counsel, OLADIPO OKPESEYI, ESQ, SAN, as follows:-

1. Whether having regard to the definition of who is an “*Aspirant*” in Section 156 of the Electoral Act, 2010 (as amended), the decision of the Supreme Court in: a. Lado Vs C.P.C. (2012) All FWLR at page 263 paragraphs G-H to 624 Paragraph A, b. Uzodimma V. Izunaso (No.2) (2011) 17 NWLR (Pt.1275) 30 at 59 paragraph H to page 60 paragraph A-E, c. Ikechi Emenike V. Peoples Democratic H

Party & Ors (2012) 12 NWLR (Pt. 1315) -pg 556; (d) PDP vs Timipre Sylva & 2 Ors/Timipre Sylva vs PDP & 2 Ors (2012) 13 NWLR (Part 1316) 85 at 126 paragraphs A - B and 147, (e) Emeka vs Okadigbo & 4 Ors (2012) 18 NWLR (part 1331) 55, is not contrary to statutory definition of the word which has occasioned hardship and miscarriage of justice against the Appellant as a person aspiring or striving or seeking to contest election to hold political office and so should be revisited or reversed? B

2. Whether having regard to Section 87(9) of the Electoral Act, the learned justices of the lower courts were not in error when they held that complaints arising from the selection of Ward Delegates or any of the complaints which formed the basis of the Appellant's claim at the trial court are not justiciable? C

A summary of argument of appellant on the above issues are that a primary election of a political party, such as the one in issue in this case, is a process, not an event and that appellant, having regard to the facts of the case, is an aspirant within the meaning of the Electoral Act, 2010, as amended, that complaints by an aspirant in the conduct of the process of primary election conducted by a political party are justiciable under the said Electoral Act, 2010, as amended but that the judicial definition of "*who is an aspirant*" is at variance with the definition of the word in Section 156 of the Electoral Act, 2010, as amended. It is also the contention of learned senior Counsel that the Lower Court wrongly applied previous decisions of the Supreme Court to deny the appellant his constitutionally guaranteed right of access to court in claims touching and concerning primary election conducted by the 2nd respondent. D E F

Finally senior counsel submitted that the jurisdiction conferred on the courts in Section 87(9) of the Electoral Act, 2010, as amended is wide enough to include the complaints of appellant in respect of irregularities arising from the procedure for the election of the three ward Ad-Hoc Delegates to participate at the Special Congress of the 2nd respondent to elect its candidate for the 2012 gubernatorial election in Adamawa State and urged the court to allow the appeal. G H

To begin with I wish to state that the principle of judicial precedent or stare decisis is designed to ensure orderliness, certainty and discipline in the judicial process. The principle holds inferior courts to the Supreme Court of Nigeria bound by the previous decision(s) of

the court on similar facts in the consideration and determination of matters before them. Where the lower courts are encouraged not to follow the previous decision(s) of this court on similar facts such an encouragement is designed to promote anarchy, chaos and judicial rascality' which is not the design or purpose of the principles of the Rules of Law. It follows therefore that the lower courts are bound in law to follow the previous decision(s) of this Court on similar facts to the case under consideration by them.

It is settled that the way opened to the courts to avoid the doctrine/principle of judicial precedent/stare decisis is by distinguishing the previous decision(s) from the facts and/or circumstances of the case under consideration.

It is with the above observations in mind that I proceed to consider the issues raised for determination in this appeal. I must, however, also observe that appellant has not invited this court to depart from its previous decisions identified in issue 1, Supra, in accordance with the provisions of the Rules of this Court and the decisions of this Court thereon.

The procedure for inviting this Court to review/revisit, for the purpose of setting same aside, its previous decision(s) have been clearly stated in Order 6 Rule 5(4) of the Supreme Court Rules' as amended as follows:-

"(4) If the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the brief, to which special attention shall also be restated as one of the reasons."

It must be noted that until this court is directly and clearly invited to overrule or depart from its previous decision(s) on specified special grounds in accordance with the above Rule of Order 6 and the court agrees to so overrule/depart from or set aside and in fact so overrules/departs from or set(s) aside the said decision(s), this Court and every other court in Nigeria, will remain bound by the decision(s) complained of - See Attorney-General of the Federation Vs Guardian Newspaper Ltd. (1999) 9 NWLR (Pt.618) 187 at 222.

In any event, the pivot of the appeal is, whether the lower courts are right in holding that the court has no jurisdiction to hear and determine the claims of appellant as constituted having regards to the provisions of Section 87(9) of the Electoral Act, 2010, as

amended and the decisions of this court or the said provision.

The main argument of learned senior counsel for appellant on this issue centres on the interpretation of the word “aspirant” as contained in Section 156 of the Electoral Act, 2010, as amended vis-à-vis the definition of the word by the Supreme Court in the cases in which a consideration of the provision of Section 87(9) of the said Electoral Act, 2010 was relevant. The two provisions of the Electoral Act, 2010, as amended are reproduced hereafter.

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

156. “Aspirant” means a person who applies or seeks or strives to contest an election to a political office”.

The question is whether the context in which the word “*aspirant*” is used in the above section i.e. section 156 of the Electoral Act, 2010, as amended, make the word to have the same meaning so as to confer jurisdiction on the court to hear and determine all matters touching and concerning a nomination exercise conducted by a political party to select a candidate for election into any political office.

It is settled law that in interpretation of statutes, the words used, in as much as they are clear and unambiguous, must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions of the statute.

Also settled is the principle that where a word has been defined in a statute, the meaning given to it in the definition must be adhered to in the construction of the provisions of the statute unless the contrary intention appears from the particular section or the meaning is repugnant in the context in which the definition is used. See section 3 of Interpretation Act; Ejoh Vs Inspector General of Police (1963) 1 All NLR 230; Apampa Vs State (1982) 6 S.C. 47. It follows that the word “*aspirant*” have been defined in Section 156 of the Electoral Act, 2010, as amended, the definition must govern the other sections whenever it appears unless the context otherwise requires or it is repugnant.

Applying the above principles to the interpretation or construc-

tion of the word “*aspirant*” it is my view that the definition of the word as appears in Section 156 of the Electoral Act, 2010 as amended is subject to the context in which the word is used in Section 87(9) of the Electoral Act, 2010, as amended.

B Looking closely, at the definition of the word “*aspirant*” under Section 156 of the Electoral Act, 2010, as amended, and the context in which it is used in Section 87(9) of the said Act, it is very clear that the definition in the said Section 156 is general in nature while the context in which the word is used in Section 87(9) is in particular. It is the law that in considering situations where general and special provisions are seen to apply to a subject matter, the law takes the course which does not permit a general provision to derogate from a special provision. It follows that where a subject matter is covered by both general and special provisions, the special provision apply to it in such a way that one general provision does not derogate from its effect. The Latin Maxim is *generalia specialibus non derogant*. In short, a special provision is interpreted as taking away the effect of a general provision: *specialia generalibus derogant* - See *Schroder vs. Major* (1989) 2 NWLR (Pt.101) 1 at 13.

E In interpreting the provisions of Sections 156 and 87(9) of the Electoral Act 2010, as amended we have to constantly keep in mind the fact that the definition of the word “*aspirant*” as used in both sections has to be related to the subject matter of the suit or cause of action since what we are trying to determine is the issue as to whether the court has jurisdiction to entertain the action as constituted. It is in that respect that I have to say that it is settled law that the question as to who is a candidate of a political party remains within the province of the political parties over which the courts have no jurisdiction except within the very narrow compass provided under the said Section 87(9) of the Electoral Act, 2010, as amended Under the said Section 87(9) an aspirant who can invoke the jurisdiction of the court, and, as has been held in a long line of cases from this court, is the one who complains that any of the provisions of the Electoral 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 - See *Lado Vs C.P.C. (2012) Vs. Izun* (2011) 17 NWLR (Pt.1275) 30 at 59 - 60;: *Emenike Vs. P.D.P.* (2012) 12 NWLR (Pt. 1315) 556; *P.D.P. v. Timipre Sylva* (2012) 13 NWLR (Pt.1316) 85 at 126; *Emeka*

v. Okadigbo (2012) 18 NWLR (Pt.1331) 55 at 83, etc.

It follows that for a party/person to qualify or have the locus to institute an action on a matter arising from the nomination of a party's candidate for an election, he must have participated in the nomination exercise of the party and failed irrespective of whether nomination is a process or an event. B

Where a party did not participate in the primary election of the political party for the nomination of a candidate for an election, he cannot sue on the processes leading to and including the actual primary election, because by the provisions of the said Section 67(9) C supra, the court will have no jurisdiction to hear and determine the action. In the instant case, appellant did not participate in the primary election conducted by the party to select/nominate its candidate for the gubernatorial election in question neither did he fail in the said exercise. D

It is therefore clear and I hold that the definition of the word "*aspirant*" as rendered in Section 156 of the Electoral Act, 2010, as amended, is very wide and general in nature and does not apply to the facts of this case because its application would defeat the intention of the law makers in limiting the scope of the jurisdiction of the court in matters of nomination of candidates by political parties for elections. It is very important for us to always keep in mind the fact that the court has no business dealing with political questions, which is exclusively reserved for the politicians and their political party machineries. The court always deals within its jurisdiction as expressly defined by either the Constitution or statute. An interpretation of a section of a statute which has the effect of conferring jurisdiction on a court beyond what is expressly conferred by either the constitution or statute is to be avoided like the plague, particularly in political G matters. F

From the above exposition it is clear that the purported invitation by learned senior counsel for appellant for the court to adopt the definition of the word "*aspirant*" as contained in Section 156 of the Electoral Act, 2010, as amended over and above the context in which the word is used in Section 87(9) of the said Act and thereby overrule/depart from the earlier decisions of this court on the matter is grossly misconceived and consequently declined. The Supreme H Court does not make the practice of departing from its provisions

decision(s) merely because the decision (s), as in this case, is/are against the case presented by the appellant. It has not been shown that the decision complained of are erroneous in law or given per incuriam or contrary to public policy thereby occasioning a miscarriage of justice - See Attorney-General of the Federation Vs Guardian Newspaper Ltd supra. Adesokan Vs Adetunji (1994) 5 NWLR (Pt.346) 540 at 562.

It is for the above and the more detailed reasons contained in the lead Judgment of my learned brother, AKA'AH'S JSC that I too hold that the appeal is without merit and should be dismissed.

I order accordingly and abide by the consequential orders made in the said lead Judgment including the order as to costs.
Appeal dismissed.

D

GALADIMA JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother AKA'AH'S JSC. I am in full agreement with him that this appeal is without substance and ought to be dismissed. It is accordingly dismissed.

I too, make no order as to costs.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment delivered by my learned brother Aka'ah's JSC. I agree with his lordships reasoning and conclusions.

The complaint is against the way the PDP (Peoples Democratic Party) selected or nominated its ward delegates.

This court in a plethora of cases has said that pre-primary matters are within the domestic and internal affairs of the PDP which no court has jurisdiction to entertain. The jurisdiction of the court in party affairs is limited to where the complaint is about the conduct of the primaries for the selection/nomination of a candidate. For example if a candidate complains of rigging or similar malpractices, a court would have jurisdiction to entertain such a complaint. See: Onuoha v. Okafor 1983 2 SCNLR p. 244, Dalhatu v. Turaki 2002 15 NWLR pt.843 p.310, PDP v. T. Sylva & 2 Ors 2012 ALL FWLR 637 p.606, Section

87(1), (9) of the Electoral Act.

My lords, jurisdiction is conferred on the courts to hear complaints from an aggrieved member of the Party who took part in the Primaries. Since the appellant did not take part in the Primaries he has failed to show any interest in the conduct of the Primaries. The appeal is in the circumstances without merit. The appeal is dismissed. B

OKORO JSC

The Appellant herein indicated interest in the gubernatorial primary election in Adamawa State which was held on 21st October, 2011. Although he bought the declaration of intent form, he however did not take part in the primary election because of the following reasons given by him. That is to say: C

1. The discriminatory membership revalidation exercise as his known supporters were refused membership revalidation. D

2. Refusal to issue and/ or sell delegate nomination forms to his supporters.

3. Lack of valid notice to the Appellant or his campaign organization. E

After the primary, which the 1st Respondent won, the Appellant (as Plaintiff) filed a suit at the Federal High Court challenging the outcome of the exercise. The 1st Respondent filed preliminary objection challenging the locus of the Appellant and the jurisdiction of the trial court. F

The learned trial judge, after hearing argument on the issue, held that the Appellant was not an aspirant at the primary election and that the court lacked the jurisdiction to entertain the suit in line with decided cases of the Supreme Court. G

Not satisfied with the stance of the learned trial judge, the Appellant appealed to the Court of Appeal. The Court of Appeal agreed with the trial court that the Appellant was not an aspirant and affirmed the decision of the learned trial judge. The Appellant has again appealed to this court. H

Basically, the Appellant is calling on this court to overrule itself in a long line of cases which defined an aspirant contrary to the position he adopts. The issues submitted by the learned senior counsel for the Appellant Oladipo Okpeseyi, SAN depicts this assertion. They

are as follows:

1. Whether having regard to the definition of who is an “*Aspirant*” in Section 156 of the Electoral Act (as amended) the decision of the Supreme Court in: (a) Lado VS. CPC (2012) ALL FWLR at page 262 pars G - H to 624 para. A, (b) Uzodinma Vs. Izunaso (No.2) (2011) 17 NWLR (pt.1275) 30 at 59 paragraphs H to page 50 paragraph A-E, (c) Ikechi Emenike V. Peoples Democratic Party & Ors (2012) 12 NWLR (Pt.1315) page 556, (d) Peoples Democratic Party V. Timipre Sylva & 2 Ors/Timipre Sylva V. PDP & 2 Ors (2012) 13 NWLR (Pt.1316) 85 at 126 paras. A-B and 147. (e) Emeka V. Okadigbo & 4 Ors (2012) 18 NWLR (pt.1331) 55 at 83, is not contrary to statutory definition of the word which has occasioned hardship and miscarriage of justice against the Appellant as a person aspiring or striving or seeking to contest election to hold political office and so should be revisited or reversed?

2. Whether having regard to Section 87 (9) of the Electoral Act, the learned Justices of the Lower Courts were not in error when they held that complaints arising from the selection of Ward Delegates or any of the complaints which formed the basis of the Appellant’s claim at the trial court are not justiciable?

I have considered the arguments of Counsel in this matter and I have not been able to see any distinguishable features between the instant appeal and the cases of LADO V. CPC (supra), UZODINMA V. IZUNASO (No. 2) (supra), etc., which this court has interpreted the word “*aspirant*” under Section 87 (9) of the Electoral Act. The learned trial judge had held on the status of the Appellant in the primary as follows:-

“Indeed, from the processes filed by the plaintiff in this case, there is nothing to show that the Plaintiff participated in the conduct of the primary election as an aspirant. The person who had not shown to have participated in an election as an aspirant cannot be heard to complain on the conduct or outcome of the election.”

The learned trial judge had relied heavily on those cases decided by this court already set out in this judgment. The Court of Appeal had no difficulty in affirming the decision of the learned trial judge when they held as follows:-

“In my humble opinion, by the decisions of the Supreme Court in the cases cited above, the Court below; could infer from the plead-

ings in the Appellant's statement of claim whether he participated at the primary election or not, as it is now a matter of law, that for a party to ignite the jurisdiction of the courts mentioned in Section 87 (9) of the Electoral Act 2010, he must not only plead that he was an aspirant for the candidature of his party at an election but he must go further to plead that he participated in the primary election for that candidacy in order for him to be seized (sic) of the cause of action to challenge the party's primary election for the purpose" (See page 1026, Vol. 3 of Record of proceedings).

From the concurrent findings of the two lower courts, it is clear that the Appellant did not take part in the primary election. Thus, by the decision of this court in cases like EMENIKE V. Peoples Democratic Party (supra), UZODINMA V. IZUNASO (NO. 2) (supra) and Peoples Democratic Party V. SYLVA (supra); a party who expressed intention to contest the primary election of his party but failed to do so, is not an aspirant envisaged in Section 87 (9) of the Electoral Act. An aspirant is not a person who merely declared an intention to participate in the primary election but somebody who fully participated in the said party primary.

Let me emphatically state that by the doctrine of judicial precedents and stare decisis, whenever the Apex court has taken a position on an issue, all lower courts are bound to follow that decision. The only window open to lower courts or parties and their counsel is to distinguish the facts of their case from the one already decided. But where the facts are similar, no party is allowed to refuse to follow a decided case merely because it is not in his favour.

Now coming to the definition of 'aspirant', as laid down in Section 156 of the Evidence Act vis-à-vis Section 87 (9) of the Electoral Act, I wish to state that for a person to have locus to sue in a court of law to challenge the nomination of a candidate of a political party, the party must have conducted a primary election in the first place and the complainant must have participated in the nomination exercise and lost. It is only then that he can have the locus to challenge the result of the primary election. It is also then that the court by Section 87 (9) of the Electoral Act can have jurisdiction to entertain the matter. Where a party did not conduct a primary election in its nomination process, no court will have jurisdiction to entertain a complain on nomination of candidate. See PEOPLES DEMOCRATIC

PARTY V. TIMIPRE SYLVA (2012) 73 NWLR (pt.1316) 85. That is the purport of Section 87 (9) of the Electoral Act. It is a jurisdictional issue. Therefore, the definition of “aspirant” in Section 156 of the Evidence Act is general in nature and does not cage the definition which is limited in nature which is the hallmark of Section 87 (9) of the Electoral Act. The call by the Learned Senior Counsel for the Appellant for this court to follow his own definition of “aspirant”, in line with that in Section 156 of the Evidence Act does not fit into the intention of the Legislature when Section 87 (9) of the Electoral Act was made. If his definition is adopted, it will open a floodgate of litigation by all persons who had intention to vie for political office to challenge the eventual winners even when they did not take part in the process which produced the winner. That is also why this court cannot set aside or depart from its earlier decision in the matter.

Based on the above and the fuller reasons espoused in the lead judgment of my learned brother, Aka’ahs, JSC, I also hold that this appeal lacks merit and ought to be dismissed. I too dismiss the appeal. I abide by all the consequential orders made in the lead judgment, that relating to costs, inclusive.

F

G

H