

**SUPREME COURT OF NIGERIA**

FRIDAY 19TH DECEMBER, 2014. SC. 4/2014 (CONS.)

**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA, N. S.  
NGWUTA, M. U. PETER-ODILI, M. D. MUHAMMAD, JJSC**

1. SENATOR ABUBAKAR  
SADDIQ YARDUA

2. SENATOR ABUBAKAR  
HADI SIRIKA

3. HON. ABBAS ABDULLAHI  
MACHIKA

4. HON. ISA LA WAL DORO

5. HON. SHEIK UMAR

6. HON. DR. MANSUR  
ABDULKADIR

..... APPELLANTS

7. HON. SALISU ADO

8. HON. SULEIMAN SALISU

9. HON. SANI BELLO MASHI

10. HON. AHMED USMAN BABBA  
AND

1. THE SENATE PRESIDENT

2. THE SPEAKER, HOUSE OF  
REPRESENTATIVES

3. THE CLERK OF THE NATIONAL  
ASSEMBLY

AND

INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

[SC.4/2014; SC.7/2014 &  
SC.752/2013 (CONS)]

1. SENATOR ABDU UMAR YANDOMA

2. SENATOR AHMED SANI STORES

3. MUSA SALISU

4. AMINU ASHIRU

5. MOH. TUKUR

6. MURTALA ISAH

7. MUNTARI DANDUTSE

8. UMAR K.

9. UMAR ABDU DANKAMA

10. TASIU DOGURU
11. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION (INEC)
12. THE SENATE PRESIDENT
13. THE SPEAKER, HOUSE OF  
REPRESENTATIVES
14. THE CLERK OF THE NATIONAL  
ASSEMBLY
- AND
1. SENATOR ABDU UMAR YANDOMA
2. SENATOR AMHED SANI STORES
3. MUSA SALISU
4. AMINU ASHIRU
5. MOH. TUKUR
6. MURTALA ISAH
7. MUNTARI DANDUTSE
8. UMAR K.
9. UMAR ABDU DANKAMA
10. TASIU DOGURU
11. SENATOR ABUBAKAR SADIQ  
YAR'ADUA
12. SENATOR ABUBAKAR HADI  
SIRIKA
13. HON. ABBAS ABDULLAHI  
MACHIKA
14. HON. ISA LAWAL DORO
15. HON. SHEIK UMAR
16. HON. DR. MANSUR ABUBAKAR
17. HON. SALISU ADO
18. HON. SULEIMAN SALISU
19. HON. SANI BELLO MASHI
20. HON. AHMED USMAN BABBA
21. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION
- AND
1. SENATOR ABDU UMAR YANDOMA
2. SENATOR AHMED SANI STORES
3. MUSA SALISU

4. AMINU ASHIRU
  5. MOH. TUKUR
  5. MURTALA ISAH
  7. MUNTARI DANDUTSE
  8. UMAR K.
  9. UMARABDU DANKAMA
  10. TASIU DOGURU
  11. SENATOR ABUBAKAR SADIQ  
YAR'ADUA
  12. SENATOR ABUBAKAR HADI SIRIKA ..... RESPONDENTS
  13. HON. ABBAS ABDULLAHI MACHIKA
  14. HON. ISA LAWAL DORO
  15. HON. SHEIK UMAR
  16. HON. DR. MANSUR ABDULKADIR
  17. HON. SALISU ADO
  18. HON. SULEIMAN SALIU
  19. HON. SANI BELLO MASHI
  20. HON. AHMED USMAN BABBA
  21. THE SENATE PRESIDENT
  22. THE SPEAKER, HOUSE OF  
REPRESENTATIVES
  23. THE CLERK OF THE NATIONAL  
ASSEMBLY
- [SC.4/2014; SC.7/2014 & SC.752/2013 (CONSOLIDATED)]

---

JURISDICTION - Fundamentality of - It is of overriding importance -  
As where court lacks jurisdiction and proceed to hear a case - The  
proceedings no matter how well conducted are nullity ab initio (H1)

COURTS - Competence of - When jurisdiction is raised - Court con-  
siders its constitution - Subject of the case and whether the case was  
initiated by due process of law (H2)

ORIGINATING SUMMONS - Jurisdiction - Objection to - Where there  
is objection in such a matter - The procedure to adopt is to consider  
the objection together with the substantive matter (H3)

LOCUS STANDI - Meaning of - It is about plaintiff's legal right as a party in court to be heard in litigation - And whatever remedy he seeks must be founded on the legal right (H4)

B AFFIDAVITS - Averments - Not challenged - Fate - Such uncontroverted averments are deemed admitted - And court must act on them as being true (H5)

C ELECTIONS - Jurisdiction - Locus standi - By Electoral Act ss. 68(1) & 75(1)(2) - 1<sup>st</sup>-10<sup>th</sup> respondents must manifest such civil rights being threatened - To enable court assume jurisdiction (H6)

D ELECTIONS - Results - Declaration - Finality of - Returning officer's declaration of scores - And his return of a candidate following the declaration is final - Subject to review by tribunal or court (H7)

E ELECTIONS - Certificate of return - Issuance of - INEC is mandated by Electoral Act ss. 68(1)(C) & 75(1) - To issue a successful candidate with sealed certificate of return - Within 7 days of being declared a winner (H8)

F ORDERS OF COURT - Nullity - Meaning of - By virtue of SC decision in Lado's case - Proceedings and orders arising from the FHC and CA - Are deemed wiped off and never existed (H9)

G SUPREME COURT - Supremacy of - By Constitution 1999 s. 287(1) - All persons authorities and lower courts are duty bound - To enforce the decision of the apex court (H10)

G ELECTIONS - Actions - Locus standi - 1<sup>st</sup>-10<sup>th</sup> respondents lack locus in the action - As their amended originating summons and affidavit in support - Contain no facts of their candidature at the elections (H11)

H SUPREME COURT - Appeals - Jurisdiction - The court enjoys appellate jurisdiction - Only in respect of decisions of Court of Appeal (H12)

### ***FACTS***

Before the Federal High Court sitting in Abuja, plaintiffs/1<sup>st</sup> –

10<sup>th</sup> respondents commenced this action via originating summons, seeking for the interpretation of the following question among others - whether upon a proper construction of section 68(1) of the Electoral Act 2010 (as amended) 1<sup>st</sup> defendant Independent National Electoral Commission (INEC) can review the return of 1<sup>st</sup> – 10<sup>th</sup> respondents by their respective returning officers. Sequel to the questions, the following reliefs were therefore sought inter alia, a declaration that by virtue of the aforementioned section, INEC lacks the power to review the return of 1<sup>st</sup> – 10<sup>th</sup> respondents, either directly or indirectly, as the candidates who won the elections into the Senate and House of Representatives to represent their Federal Constituencies and Senatorial Districts, by purporting to withdraw their Certificates of Return and that the said return of 1<sup>st</sup> – 10<sup>th</sup> respondents can only be reviewed by the courts.

This matter originated from the grievances of 1<sup>st</sup> – 10<sup>th</sup> respondents over the conduct of the primary election by the Congress for Progressive Change (CPC) to nominate her candidates for the April 2011 Senatorial and Federal Constituencies elections in Katsina State. To enforce their right, 1<sup>st</sup> – 10<sup>th</sup> respondents initiated an action at Federal High Court Abuja in suit no. FHC/ABC/CS/126/11. The action went through up to the Supreme Court. The apex court held that the trial court had no jurisdiction to entertain the suit. It was after the Ruling of the apex court that 1<sup>st</sup> – 10<sup>th</sup> respondents initiated the present action - suit No FHC/ABJ/CS/1042/2011. At the end of hearing, the court granted 1<sup>st</sup> – 10<sup>th</sup> respondents the reliefs they prayed for. Dissatisfied, some of the appellants in appeal No.SC.4/2014 lodged appeal in the Court of Appeal Abuja Division in appeal No.CA/A/83/2013. The appeal was dismissed and judgment of trial court affirmed. Aggrieved further, appellants appealed to Supreme Court in appeal No.SC.4/2014.

### **ISSUE FOR DETERMINATION**

Whether the lower court's affirmation of the trial court's decision that it has the competence to hear and determine the instant suit is sustainable.

# **HELD** (Unanimously allowing the appeal per

**MUHAMMAD JSC)**

*JURISDICTION - Fundamentalality of*

- 1. In a seemingly limitless chain of cases, this Court has held that the jurisdiction of a court is a radical and crucial question of the court's competence and that where the court lacks jurisdiction and proceeds to hear and determine a case the proceedings, no matter how well conducted and decided, are a nullity ab initio and remain so. A defect in the competence of the court is extrinsic rather than intrinsic to the entire process of adjudication. The nerve centre of adjudication and akin to the blood that gives life to a human being which this Court terms it to be, jurisdiction of the court is therefore of overriding importance.** (p. 3681 C)

*COURTS - Competence of*

- 2. Thus when an issue of jurisdiction is raised, the court would consider whether:**
- (a) It is properly constituted as regards numbers and qualification of the members of the bench such that no member is for any reason disqualified.**
  - (b) the subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the court from exercise of 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. 3686 D)

*Jurisdiction - Objection to*

- 3. The procedure to adopt, where an objection is raised to the jurisdiction of the court in a matter commenced by originating summons, is to consider the objection together with the substantive matter. Invariably, this would involve the consideration of not only the reliefs being claimed against the background of the facts deposed to in the affidavit in support of the originating summons but the totality of available evi-**

**dence including the facts contained in the counter-affidavit(s) in opposition to the originating summons.** (p. 3687 B)

*LOCUS STANDI - Meaning of*

**4. The two Latin words which make up the expression locus standi conjunctively mean a place to stand and if used in relation to a matter in a law court, a platform to stand in the suit. It is a phrase that usually applies to a plaintiff in ascertaining the place he stands in commencing or prosecuting the suit he initiates. It is about that plaintiff's legal right as a party in a court of law or tribunal to be heard in the litigation.**

**The phrase requires that whatever remedy the plaintiff seeks must be founded upon the existence of a legal right.** (p. 3697 F)

*AFFIDAVITS - Averments - Not challenged - Fate*

**5. Again, one agrees with learned senior counsel to the appellants that it is an age old principle that averments in the affidavit of a party which are neither challenged nor controverted by his adversary are deemed admitted and the court must act on those undisputed averments as being true.** (p. 3698 G)

*Jurisdiction - Locus standi*

**6. In its counter affidavit, INEC, the very body the 1st - 10th respondents agree is empowered by law to conduct elections, has averred that 1st - 10th respondents were never candidates in the very elections dispute in respect of which they claim entitle them to institute this action. While the lower court appears right to have held that, by the combined operation of Sections 6(6)(b) and 251(1)(r) of the 1999 Constitution as amended, the trial court has the jurisdiction to adjudicate between the parties as constituted, it is however also the law that the 1st - 10th respondents must, given Sections 68(1) and 75(1) & (2) of the Electoral Act 2010 as amended, manifest such civil right and or obligation of theirs which the defendants have threatened or torpedoed to enable the court assume jurisdiction over their matter.** (p. 3699 A)

*ELECTIONS - Results - Declaration - Finality of*

**7. A community reading of the foregoing clear and unambiguous provisions reveals that a Returning officer's declaration of scores of candidates and his return of a candidate at the election following the declaration, is final subject to review only by a Tribunal or Court in an Election petition proceedings under the Act. (p. 3700 D)**

*ELECTIONS - Certificate of return - Issuance of*

**8. By the sections, it is mandatory for INEC to issue a successful candidate at an election it conducted a sealed Certificate of Return in the prescribed form within seven days of its declaring that candidate the winner of the election. Where however the Court of Appeal or the Supreme Court, as the case may be, being the final appellate Court in an election petition, nullifies the Certificate of Return of any candidate, INEC shall, on being served the order of the particular court nullifying a candidate's Certificate of Return, issue the candidate declared successful by the court a valid certificate of return. (p. 3700 E)**

*ORDERS OF COURT - Nullity - Meaning of*

**9. A nullity has been defined as a void act, an act which has no legal consequence. It is as if nothing happened. The nullification by this Court's decision in Lado & ors V. CPC & ors (supra), of the proceedings of the trial court in suit FHC/ABJ/CS/126/11 as well as the Lower Court's decision in appeal No.CA/133/11 therefrom, from the angle of the law, means that those proceedings, including all the orders made in the course or consequence of the proceedings, never took place. They are completely wiped off, rendered extinct and deemed never to have existed.**

**H The implication of the decision of this Court in Lado & ors V CPC & ors (supra), therefore, is that the order of Kafarati J placing the 1st - 10th respondents on the ballot as candidates for the 9th April Elections has been totally wiped out and rendered extinct as if same was never made. The Platform the**



**nullified order of Kafarati J provided the 1st - 10th respondents to enable them press their claim had thus been effectively removed by this Court's decision in the Lado & ors V. CPC & ors (supra). (p. 3701 F)**

*SUPREME COURT - Supremacy of*

**10. And significantly too, by virtue of Section 287(1) of the 1999 Constitution as amended, all persons and authorities including INEC and the two courts below, being subordinate to the Supreme Court, are duty bound to enforce the decision of the apex court. Indeed by the very section, the apex court itself is duty bound to ensure the enforcement of its own decision. (p. 3702 C)**

*Actions - Locus standi*

**11. From all the foregoing, it must be conceded to the appellants that the 1st - 10th respondents are in law incapable of maintaining their action either because their amended originating summons and the affidavit in support of same do not contain the facts of their candidature at the 9th April 2011 elections or consequent upon the decision of this Court in Lado & ors V. CPC & ors (supra), their names had ceased to be on the ballot for the purpose of the very election. The protection under Sections 68 and 75 of the Electoral Act the 1st - 10th respondents seek by their action to benefit from only avails candidates at an election and who, on the basis of the results declared by INEC's Returning Officer in their favour, were issued certificates of return. Not being such candidates at the election, a fact on which their suit should hinge, the protection under these sections does not avail them, as Courts including the Lower Court lack the jurisdiction of entertaining their suit let alone granting them the protection the two sections, 68 and 75 of the Electoral Act as amended, confer on duly elected persons. It is for these reasons that the entire proceedings of both the trial court and the Lower Court in the instant suit having been conducted without jurisdiction must be set-aside. (p. 3702 D)**

*Appeals - Jurisdiction*

**12. In conclusion, it must be stressed that by virtue of Section 233 (2) of the 1999 Constitution as amended, the Supreme Court enjoys appellate jurisdiction only in respect of “decisions” of the lower Court. Since the decision of the trial court on which the lower Court’s judgment is founded is a nullity, all the three appeals, SC.752/2013, SC.4/2014 and SC.7/2014 which arise from the equally null and void decision of the Lower Court are hereby accordingly struck out.** (p. 3703 E)

**NOTABLE POINTS OF INTEREST**

**MUHAMMAD JSC**

***1. JURISDICTION - Definition of***

Jurisdiction has been broadly 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 founded or to the kind of relief sought. (p. 3686 C)

***2. Elections – Processes and stages***

Certainly, as asserted by the appellants, an election is a long drawn out process with distinct stages ending in the declaration of a winner by the Returning Officer. It entails one’s membership of a political party, his indication of desire to be the party’s candidate at the election, primaries for the nomination of the party’s candidate, presentation of the party’s candidate to INEC, the event of the election, return of the successful candidate at the election after declaration of scores, and ends with the issuance of certificate of return to the successful candidate. (p. 3701 A)

**REPRESENTATION**

SC.4/2014:

Solomon E. Umoh (SAN) with Clifford Omozeghian (Esq.), E. E. Gerald (Esq.), U. L. Abonyi (Esq.) P. Ali-Bozi (Miss), M. N. Umoh (Esq.) and Z. A. Abdullahi (Mrs.)

SC.7/2014:

G. C. Igbokwe with Ifeanyi M. Nrialike, Chief Joshua Aloba  
SC.752/2013:

Dr. (Mrs.) Valerie-Janette Azinge with Lynda Chuba Ikpeazu Esq.,  
Tobechuwkwu Nweke (Esq), Victor Azubike (Esq.) and Julius Mba  
(Esq.), for the Appellants

SC.4/2014:

E. Y. Kurah (Esq.) with J. B. Amos (Esq.) for the 1st and 2nd Re-  
spondents

Wole Agunbiade with P. N. Chindo and Ibrahim Etsu for 3rd - 6th  
Respondents

Hassan U. El-Yakub with Blessing Esunwoke for the 7th - 9th Re-  
spondents

Abdullahi Yahaya for the 10th Respondent

Dr. (Mrs.) Valerie-Janette Azinge with Lynda Chuba Ikpeazu Esq.,  
Tobechuwkwu Nweke (Esq), Victor Azubike (Esq.) and Julius Mba D  
(Esq.) for the 11th respondent

G. C. Igbokwe with Ifeanyi M. Nrialike, Chief Joshua Aloba for the  
12th - 14th respondents

SC.7/2014:

Chief Aboyomi Alliyu with E. Y. Kurah and J. B. Amos for the 1st and E  
2nd respondents

Wole Agunbiade with P. N. Chindo and Ibrahim Etsu for 3rd - 6th  
Respondents

Hassan U. El-Yakub with Blessing Esunwoke for the 7th - 9th Re- F  
spondents

Abdullahi Yahaya for the 10th Respondent

Solomon E. Umoh (SAN) with Clifford Omozeghian (Esq), E. E.  
Gerald (Esq.), U. L. Abonyi (Esq.) P. Ali-Bozi (Miss), M. N. Umoh  
(Esq.) and Z. A. Abdullahi (Mrs) for the 11th - 20th respondents. G

Dr. (Mrs.) Valerie-Janette Azinge with Lynda Chuba Ikpeazu Esq.,  
Tobechuwkwu Nweke (Esq), Victor Azubike (Esq.) and Julius Mba  
(Esq.) for the 21st respondent

SC.752/2013:

E. Y. Kurah (Esq.) with J. B. Amos (Esq.) for the 1st and 2nd Re- H  
spondents

Wole Agunbiade with P. N. Chindo and Ibrahim Etsu for 3rd - 6th  
Respondents

Hassan U. El-Yakub with Blessing Esunwoke for the 7th - 9th Re-

spondents

Abdullahi Yahaya for the 1-0th Respondent

Solomon E. Umoh (SAN) with Clifford Omozeghian (Esq), E. E. Gerald (Esq.), U. L. Abonyi (Esq.) P. Ali-Bozi (Miss), M. N. Umoh (Esq.) and Z. A. Abdullahi (Mrs) for the 11th - 20th respondents

<sup>B</sup> Chief A. O. Ajana with O. Akinyibo for the 21st - 23rd respondents

**CASES REFERRED TO**

A-G Lagos State v. Dosunmu (1989) 3 NWLR (pt. III) 552

<sup>C</sup> Ukwu v. Bunge (1997) 8 NWLR (pt. 518) 527

Nnonye v. Anyiche (2005) 2 NWLR (pt. 910) 523

Dapialong v. Dariye (2007) 8 NWLR (pt. 1036) 332

Lado v. CPC (2011) 18 NWLR (pt. 1279) 689

Macfoy v. UAC Ltd (1962) AC 152

<sup>D</sup> Ladoja v. INEC (2007) 12 NWLR (pt. 1047) 119

Ogoejeofe v. Ogoejeofe (2006) 3 NWLR (pt. 966) 205

Egbuna v. Egbuna (1989) 2 NWLR (pt. 106) 773

Alagbe v. Abimbola (1978) 2 SC 39

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

<sup>E</sup> Emenike v. PDP (2012) 12 NWLR (pt. 1315) 556

Enemuo v. Duru (2004) 9 NWLR (pt. 877) 75

Musa v. Abubakar (2009) ALL FWLR (pt. 451) 855

Ombugadu v. CPC (2013) 18 NWLR (pt. 1385) 65

<sup>F</sup> **STATUTES REFERRED TO**

Electoral Act 2010 (as amended), ss. 68(1)(C), 75(1)(2), 87(4)(a)(b)(ii)(c)(ii),(9)

Constitution of the Federal Republic of Nigeria 1999, ss. 6(6)(b),

<sup>G</sup> 233(2), 251(1)(r), 285, 287(1)

**LEAD JUDGMENT BY MUHAMMAD JSC**

<sup>H</sup> By their amended originating summons filed on the 19th April 2012, the 1st to the 10th respondents in appeal No. SC.4/2014 commenced Suit No FHC/ABJ/CS/1042/2011 at the Federal High Court, hereinafter referred to as the trial court, sitting at Abuja, against the appellants and the 11th - 14th respondents seeking answers to the following questions:-

“1. *Whether upon a proper construction of Section 68(1) of*

*the Electoral Act 2010, as amended, the 1st Defendant has the power to review, either directly or indirectly, the return of the Plaintiffs by their respective returning officers, by purporting to withdraw the certificates of return issued to them consequent upon the said return.*

2. *Whether upon a proper construction of Section 75(1) of the Electoral Act 2010, as amended the 1st Defendant has the power to nullify, withdraw or render void and invalid the certificates of return issued to the Plaintiffs upon their being returned under Section 68(1) of the Electoral Act 2010, as amended as winners of election into their respective Federal Constituencies and Senatorial Districts of Katsina State of Nigeria without a valid order emanating from a court of competent jurisdiction so directing it.*

3. *Whether upon a proper construction of Section 75(1) & (2) of the Electoral Act 2010, as amended, the 1st Defendant has the power to issue certificates of return to 5th - 14th Defendants when a competent court of law had not invalidated or voided the certificates of return issued the plaintiff nor directed it to issue them with certificates of return.*

4. *Whether upon a proper construction of the Section 75(1) of the Electoral Act 2010, read along with Section 68(1) of the same Act as amended the certificates of return issued the 5th - 14th Defendants by the 1st Defendants in violation of the aforesaid provisions were validly issued and could be used as a basis for the swearing in of the 5th - 14th Defendants as members of the National Assembly, by the 2nd - 4th Defendants."*

Sequel to answers to the foregoing, the plaintiffs prayed the court for the following reliefs:-

"1. *A Declaration that by virtue of Section 68(1) of the Electoral Act 2010, as amended the 1st Defendant lacks the power to review the return of the plaintiffs, either directly or indirectly, as the candidates who won the elections into the Senate and House of Representatives to represent their Federal Constituencies and Senatorial Districts, by purporting to withdraw their certificates of return and that the said return of the Plaintiffs can only be reviewed by the courts prescribed in Section 68(1) of the aforesaid Act.*

2. *A Declaration that by virtue of Section 75(1) of the Electoral Act 2010, as amended, the 1st Defendant lacks the power to cancel, nullify, review, withdraw, void, invalidate, either directly or*

*indirectly, the certificates of return validly issued the Plaintiffs consequent upon their winning elections to represent their respective Federal Constituencies and Senatorial Districts in Katsina State, without an order or court first sought and obtained.*

*3. A Declaration that by virtue of Section 75(1) of the Electoral Act 2010, as amended, the 1st Defendant lacks the power to issue certificates of return to the 5th - 14th Defendants in relation to the Federal Constituencies and Senatorial Districts over which the Plaintiffs had earlier on been issued with valid certificates of return, when neither the Court of Appeal nor the Supreme Court had nullified the certificates of return issued to the Plaintiffs.*

*4. A Declaration that the sealed certificates of return issued to the Plaintiffs upon their winning election into the National Assembly to represent their various Federal Constituencies and Senatorial Districts of Katsina State are still valid and that the Plaintiffs are entitled to immediately repossess their seat in the National Assembly to represent their respective Federal Constituencies and Senatorial Districts without let or hindrance from the 2nd, 3rd, or 4th Defendants or any other persons.*

*5. A Declaration that the 2nd - 4th Defendants ought not to have sworn in the 5th - 14th Defendants into the National Assembly upon the invalid certificates of return issued the 5th - 14th Defendants by the 1st Defendant.*

*6. AN ORDER nullifying the certificates of return issued by the 1st Defendant to the 5th - 14th Defendants, and*

*7. AN ORDER directing the 5th - 14th Defendants to immediately vacate their seats in the National Assembly."*

The trial court, Coram Olotu J, in its judgment dated 11th January 2013, granted the plaintiffs all the reliefs they prayed for.

Dissatisfied, some of the defendants at the trial court, the appellants in appeal No. SC.4/2014, by a Notice filed on 14th January 2013 appealed against the decision. The Abuja Division of the Court of Appeal, hereinafter referred to as the lower court, dismissed their appeal No CA/A/83/2013 and affirmed the trial court's decision.

Aggrieved by the lower court's judgment, the appellants have further appealed to this Court on an amended Notice filed on 28th April, 2014 containing eleven grounds. The facts of the case that

brought about all the three appeals to which this judgment relates need to be better appreciated. They are immediately recounted in remarkable details.

This is the second sojourn of the parties to this appeal to this Court. The 1st - 10th respondents in appeal No. SC.4/2014, earlier to their filing the suit that brought about the instant appeal, commenced Suit No. FHC/ABJ/CS/126/11, Lado and 42 ors V. CPC and 5 ors, at the Federal High Court sitting at Abuja and presided over by Kafarati J. The Congress for Progressive Change, CPC, had on 13th January 2011, through its National Secretariat, conducted primary elections, inter-alia, for all the available offices in the different senatorial Districts and Federal Constituencies in Katsina State. B  
C

Having contested the 13th January 2011 primaries and emerged victorious, the names of the appellants in appeal No. SC.4/2010, see Exhibit "A" annexed to their counter affidavits as the 5th - 15th respondents to the amended originating summons of the plaintiffs, the 1st - 10th respondents in the appeal, were forwarded to the Independent National Electoral Commission (INEC), the 11th respondent, as C.P.C's candidates in the then impending Elections. Exhibit "B", also annexed to the same counter affidavit of the appellants, is INEC's acknowledgment of the receipt of CPC's letter, Exhibit "A", forwarding Appellants names as its candidates for the elections into the various senatorial Districts and Federal constituencies seats. Dissatisfied with this turn of events, the 1st - 10th respondents in appeal No. SC.4/2010 instituted Suit No. FHC/ABJ/CS/126/11 claiming inter-alia that they were the validly nominated candidates of the CPC having won the party's primaries conducted by the Katsina State congress of the party on the 15th January 2011. D  
E  
F

The trial court having found for the 1st - 10th respondents, plaintiffs in the earlier suit, ordered the Independent National Electoral Commission (INEC) to remove the names of the appellants and instead, place the names of the 1st - 10th respondents on the ballot for the April 2011 elections. G

Appellants' appeal against this decision of the trial court in the earlier suit was allowed by the Abuja Division of the Court of Appeal. The respondents at the lower court appealed to this Court. In its judgment on the consolidated appeals Nos. SC.157/11 and SC.334/11, delivered on 16th December 2011, the court, see page H

342 of Vol. I of the record of appeal, on finding that the trial court had proceeded without jurisdiction, nullified the trial court's decision as well as that of the lower court.

It was after and in spite of this decision of the court that the 1st - 10th respondents again instituted Suit No. FHC/ABJ/CS/1042/2011 which has, with the lower court's affirmation of the trial court's decision thereon, brought about the instant appeals Nos, SC.4/2014; SC. 7/2014 and SC.725/2013 to which this judgment relates.

Parties who earlier filed and exchanged their briefs of argument adopted and relied on these briefs as their arguments for or against the respective appeals on 20th October 2014 when the appeals were heard.

The six issues the appellants in appeal No. SC.4/2014 distilled from their grounds of appeal as calling for determination read:-

D "1. Was it proper for the Court of Appeal to suo motu raise the issue of judicial Review of Administrative Actions as the reason for clothing the lower court with the jurisdiction to entertain the matter? Having regard to the peculiar facts and circumstances of this case. (Grounds 3, 4 and 7)

E 2. Was the Court of Appeal truly correct when it held that the Appellants did not challenge the findings of the trial court that the 1st - 10th Respondents were the candidates who scored the highest number of votes and were returned as winners of the said election? (Ground 1)

F 3. Whether in the light of the decision of the Supreme Court in *Emeka v Okadigbo* (2012) 18 NWLR Pt. 1313 the Court of Appeal was right in holding that the 1st - 10th Respondents were the candidates for the CPC having regards to the peculiar facts and circumstances of this case. (Ground 2)

G 4. Whether having regard to the peculiar facts and circumstances of this case, the Court of Appeal was truly correct when it sought to rely on the case of *Rossek v ACB* (1993) 10 SCND at 39-40 to insist on the fact that the 1st - 10th Respondents remained the winner of the election until their Certificates of Return is set aside by a court of competent jurisdiction. (Ground 5)

H 5. Was the Court of Appeal right in its interpretation of S. 68 (1) (b) and S. 75 (1) and (2) of the Electoral Act 2010 having regards to the peculiar facts and circumstances of this case. (Grounds 8



and 9)

6. *Were the Respondents ever candidates sponsored by the party at the election having regard to the peculiar facts and circumstances of this case, and more particularly the decision of the Supreme Court in LADO V CPC. (Grounds 10 and 11)"*

The two issues formulated in the 1st and 2nd Respondents' B brief for the determination of the appeal are:-

"1. *Whether the Court of Appeal raised suo motu the issue of the jurisdiction of the Federal High Court to judicially review the action of the INEC under Section 6(6) and 251(1) of the 1999 Constitution, as amended. If the answer is in the negative, whether the Court of Appeal was right when it held that the Federal High Court had the jurisdiction to entertain and determine the Plaintiffs' claim. Grounds 3, 4, 7, 10*

2. *Whether the Honourable Court of Appeal was right in its D interpretation of Section 68(1) of the Electoral Act 2010, as amended, in line with the judgment of the Federal High Court, that the Independent National Electoral Commission, INEC lacked the powers to withdraw the certificates of return issued to the 1st - 10th Respondents and re-issue new ones to the Appellants without an order from a Court of competent jurisdiction, notwithstanding the decision of the Supreme Court in SC.157/2011 and SC.334/2011, LADO & ORS VS CPC & ORS. Grounds 1, 2, 5, 6, 8, 9, 11"*

The 3rd to the 6th respondents also distilled two issues for F the determination of the appeal as follows:-

"i. *Whether, having regard to the entire facts and circumstances of this case, the court below properly and/or rightly considered the issue relating to the jurisdiction of the trial court and rightly concluded that the trial court had the jurisdiction to entertain the G action of the 1st - 10 Respondents (Grounds 3, 4, 7 and 10)*

ii. *Whether, in the entire circumstances of this case, it was right for the court below to hold that the 11th Respondent, in view of Section 68(1) and 75 of the Electoral Act, 2010 (as amended), lacked the power, without an order of court, to administratively withdraw, H set aside, cancel or nullify the Certificates of Return, which it had issued to the 1st - 10th Respondents who had been declared winners at the election, and to issue new Certificates of Return to the Appellants and thereby affirming the decision of the trial court granting all*

*the reliefs sought by the 1st - 10th Respondents (Grounds 1, 2, 5, 6, 8, 9 and 11)."*

The 7th respondent also formulated two issues for the determination of the appeal. The issues read:-

B *"1. Whether the Court of Appeal was right in affirming the decision of the trial court and granting all the reliefs of the 1st - 10th Respondents. (Grounds 1, 2, 5, 6, 8, 9 and 10)*

C *2. Whether the Court of Appeal apart from relying on the provisions of Section 6(6) and 251(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) in upholding that the trial court has jurisdiction to entertain the 1st - 10th Respondents' claim, also raised and/or relied on the Doctrine of Judicial Review of Administrative Actions in the nature of the prerogative writs in arriving at the some conclusion. (Grounds 3, 4 and 7)"*

D The two issues distilled in the 10th respondent's brief of argument are:-

E *"1. Whether it is true that the Honourable Court of Appeal suo motu raised the issue that the trial court had the jurisdiction pursuant to sections 6(6) and 251(1)(p)(q) and (r) of the 1999 Constitution as amended to undertake a judicial review of the administrative actions of the 11th - 14th Respondents as was presented in this case. If the answer to the above question is in the negative, whether the lower court was right when it held that the trial court had the jurisdiction by virtue of the provisions of Sections 6(6) and 251(1)(p)(q) and (r) of the 1999 Constitution as amended, to judicially review the administrative actions of the 11th - 14th Respondents and to see if they are in consonance with the provisions of Sections 68(1) and 75(1) & (2) of the Electoral Act 2010 as amended,*

F

G *(Grounds 3, 4, 7 and 10).*

*2. Whether the Honourable Court of Appeal was right when it affirmed the decision of the trial court and dismissed the appellants' appeal, regard being had to the facts and circumstances of the case and the evidence led. (Grounds 1, 2, 5, 6, 8, 9 and 11)"*

H The 11th respondent did not file any brief of argument.

The brief of argument filed by the 12th - 14th respondents having been withdrawn without objection was accordingly struck out. The two sets of respondents offered no argument for or against the appeal.

In appeal No. SC.7/2014 appellants formulated a sole issue for the determination of their appeal reads:-

*“Whether the appellants were wrong in swearing in the 11th - 20th Respondents in places of the 1st - 10th Respondents as members of the National Assembly having regards to both the various certificates of return issued to the 11th - 20th respondents by the 21st Respondent and the decision of the Supreme Court in SC.157/2011, SC.334/2011 between Senator Yakubu Garba Lado & Ors V. CPC & Ors; Armiyau V. CPC & Ors respectively.”*

The 1st and 2nd, as well as the 10th respondents in the appeal adopted the foregoing issue of the appellant for consideration in the determination of the appeal.

The similar issue formulated by the 3rd - 6th respondents at page 16 of their brief reads:-

*“Whether, in the entire circumstances of this case, the court below rightly held that it was wrong for the Appellants to swear in the 11th - 20th Respondents to replace the 1st - 10th Respondents as members of the National Assembly when there was no order of court that nullified the 1st - 10th Respondents’ Certificates of Return and in consequence thereof affirmed the judgment of the trial court wherein all the reliefs sought by the 1st - 10th Respondents in their Amended Originating Summons were granted.”*

It is significant to note that the 3rd - 6th respondents have, in adopting and relying on their brief of arguments also relied on the arguments in pursuit of their Notice of preliminary objection as to the competence of the appeal.

The not dissimilar issue presented by the 7th - 9th respondents for the determination of the appeal reads:-

*“Whether the Court of Appeal was right in affirming the decision of the trial court and granting all the reliefs of the 1st - 10th Respondents.”*

The 11th - 20th respondents in the appeal, appellants in appeal No. SC.4/2014, conceded to the appeal.

The 21st respondent in the appeal who did not file any brief of argument had nothing to urge the court in respect of the appeal.

The appellant in appeal No. SC.752/2013, the Independent National Electoral Commission, formulated two issues for the determination of its appeal thus:-

(1) *“Whether having regard to the decision of the Supreme Court in SC.157/2011, SC.334/2011 Lado & ORS V CPC & others which obliterated the decision of the Federal High Court, on which the candidacies (six) of the 1st - 10th Respondents were forested the said Respondents remained members of the National Assembly under the platform of Congress for Progressive Change (CPC).”*

(2) *Whether the Appellant was not bound, without more, to give effect to the decision of the Supreme Court in SC.157/2011; SC.334/2011: LADO & ORS v. C.P.C. & ORS having regard to the circumstance of this case.”*

1st - 2nd Respondents formulated a sole issue also for the determination of the appeal as follows:-

*“Whether the Honourable Court of Appeal was right when it affirmed the decision of the Federal High Court to the effect that the Appellant acted ultra vires when it withdrew the Certificates of Return issued to the 1st - 10th Respondents and re-issued new ones to the 11th - 20th Respondents without a valid court order in view of Section 68(1) and 75(1) of the Electoral Act 2010 as amended, notwithstanding the decision of the Supreme Court in SC.157/2011 and SC.334/2011, Lado & Ors V. CPC & Ors.”*

The 3rd - 6th respondents having previously filed a Notice of preliminary objection relied on all the arguments including those on the objection on the adoption of the brief by their counsel at the hearing of the appeal. The sole issue for the determination of the appeal formulated in their very brief reads:-

*“Whether, having regard to the entire facts and circumstances of this case, the court below rightly dismissed the Appeal before it and affirmed the decision of the trial court.”*

The single issue distilled by the 7th - 9th Respondents for the determination of the appeal is:-

*“Whether the Court of Appeal was right in upholding the decision of the trial court and granting the reliefs sought by the 1st - 10th respondents.”*

The 10th respondent's issue for the determination of the appeal reads:-

*“Whether the Honourable Court of Appeal was right when it affirmed the decision of the trial court and dismissed the appeal regard being had to the facts and circumstances of this case.”*

The 11th - 20th Respondents conceded the appeal. On withdrawing their brief and having same struck out by the court, the 21st - 23rd respondents also conceded to the appeal.

Appellants' 1st, 3rd, 4th, 5th and 6th issues as well as the two issues formulated by each of the four sets of respondents in appeal No. SC.4/2014 all dwell on the lower court's affirmation of the trial court's finding that it has the jurisdiction to hear and determine 1st - 10th respondents claim in the first place. This jurisdictional issue remains a recurring decimal in all the issues formulated by the parties on both sides of the divide in appeals No. SC.725/2013 and SC.7/2014 as well. The commonality is not a coincidence. Rather, the resolve appears to be necessarily deliberate given the fundamental nature of the issue of jurisdiction in the adjudication process.

***In a seemingly limitless chain of cases, this Court has held that the jurisdiction of a court is a radical and crucial question of the court's competence and that where the court lacks jurisdiction and proceeds to hear and determine a case the proceedings, no matter how well conducted and decided, are a nullity ab initio and remain so. A defect in the competence of the court is extrinsic rather than intrinsic to the entire process of adjudication. The nerve centre of adjudication and akin to the blood that gives life to a human being which this Court terms it to be, jurisdiction of the court is therefore of overriding importance.*** See A-G Lagos State V. Dosunmu (1989) 3 NWLR (Pt. III) 552, Ukwu V. Bunge (1997) 8 NWLR (Pt. 518) 527 Nnonye V. Anyiche (2005) 2 NWLR (Pt. 910) 523 and Dapialong V. Dariye (2007) 8 NWLR (Pt. 1036) 332.

In arguing appeal No. SC.4/2014, under their 3rd and 6th issues, learned senior counsel to the appellants contends that this Court's decision in Garba Yakubu Lado & 42 Ors V. CPC and 5 Ors (2011) 18 NWLR (Pt. 1279) 689 has removed the rug beneath the 1st - 10th respondents' feet. It was Kafarati J in determining the respondents earlier Suit No. FHC/ABJ/CS/126/11, it is argued, that ordered the placement of the 1st - 10th respondents names on the ballot. Otherwise, submits learned senior counsel, it was the appellants' names, following their victory in the 13th January 2011 primaries conducted by the national organs of the CPC, that were sent as the candidates of the party in the elections as evidenced by Exhibit

“A”. Exhibit “B”, also annexed to appellants’ counter affidavit in opposition to the amended originating summons, is INEC’s, acknowledgment of receipt of Exhibit “A”.

It follows from these two Exhibits, further contends learned senior counsel, that it was appellants’ names that was on the ballot.

B The nullification of Kafarati J’s order by this Court, submits learned senior counsel, reverted parties in the dispute to their respective positions before the placement of the 1st - 10th respondents on the ballot on the basis of the nullified order. The apex court’s decision in

C Lado V. CPC (supra), it is argued, not only nullified Kafarati J’s null and void order but the totality of the proceedings of that court undertaken without the necessary jurisdiction. The lower court’s failure to imbibe this trite principle of law, submits learned senior counsel, is fatal to the court’s decision. Learned senior counsel relies on Macfoy

D V. UAC Ltd (1962) AC 152 and Ladoja v. INEC (2007) 12 NWLR (Pt 1047) 119.

Further arguing the appeal under their 4th and 5th issues, learned senior appellants’ counsel submits that the further effect of this Court’s decision in Lado V. CPC supra is that the 1st - 10th respondents were never candidates in the elections they aver in the instant suit to have contested, won, returned and for which they were issued with certificates of return by the 11th respondent. The protection under Sections 68 (1) and 75 (1) of the Electoral Act, it is submitted, enures only to persons who were issued certificates of return

F who being candidates of their party contested and won the disputed election.

The appellants as well as INEC, the 11th respondent, further submits learned senior counsel, have deposed to facts in their respective counter-affidavits to the effect that the appellants names were those submitted to INEC as their party’s candidates in the elections; that the submission of their names followed their victory in the 13th January 2011 primaries conducted by the national organ of the CPC; that 1st - 10th respondents being candidates arising from the 15th

H January 2011 primaries conducted by the Katsina State Congress of the party, were neither their party’s candidates for nor contested the very elections. Learned senior counsel to the appellants insists that those facts as averred to by the appellants and the 11th respondent remain unchallenged and uncontroverted.

Relying inter-alia on *Ogojeifo V. Ogojeifo* (2006) 3 NWLR (Pt 966) 205 at 221 *Egbuna v. Egbuna* (1989) 2 NWLR (pt 106) 773 at 777, *Alagbe V. Abimbola* (1978) 2 SC 39 at 40, learned senior counsel submits that the refusal of the two courts below to accept the unchallenged and uncontroverted averments in the two counter affidavits and act on them as true is fatal to their decisions. B

Quite apart from the fact that the apex court's decision in *Lado V. CPC* (supra) had removed the 1st - 10th respondents' platform of instituting the instant action, the facts parties in the suit by their pleadings joined issues on, learned senior counsel also argues, C cannot sustain the decision of the two courts.

Concluding under the two issues, it is submitted that in whatever guise the 1st - 10th respondents prefer to approach the court, the invalidity of the Katsina State primaries that produced them will always knock off any claim they set up as candidates of the party. D Relying on the decisions of this Court in *Emeka v. Okadigbo* (2012) 18 NWLR (Pt 1331) 55 and *Emenike V. PDP* (2012) 12 NWLR (pt 1315) 556 at 594, learned counsel urges that the four issues be resolved in appellants favour and their appeal allowed.

Responding to appellants' arguments, learned counsel for the E 1st and 2nd respondents *Elisha Kurah Esq.* submits under their 2nd issue for the determination of the appeal that INEC, the 11th respondent, by the provisions of the Electoral Act 2010 as amended and the 1999 Constitution as amended is vested with the power and F responsibility of conducting, inter-alia, the elections into the National Assembly. Section 68(1) and Section 75(1) of the Electoral Act 2010 as amended under which the 1st - 10th respondents initiated their claim, it is further submitted, stipulate the statutory limits within which INEC is to exercise its powers. The two sections, contends learned G counsel, make the declaration of scores and return of a candidate by a returning officer of INEC in respect of an election reversible only by an order of court. INEC lacks the power of reversing itself and its purported reversal of the declaration of scores, return as well as the withdrawal of the certificates of return issued to the 1st - 10th H respondents is what, as plaintiffs, the respondents challenged at the trial court.

The law, contends learned counsel, empowers the court not only to determine whether or not INEC's withdrawal of the certifi-

cates it issued to the 1st - 10th respondents was wrongly made but, by the tenor of Section 75(1) of the Electoral Act 2010 as amended, the successful candidates to be re-issued the return certificates. This exercise, it is argued, is a judicial determination which the 11th respondent, INEC, cannot, by law, make. The trial court's decision which  
 B found INEC's act ultra vires, null and void as affirmed by the lower court, being in tandem with the law, contends learned counsel, cannot be set-aside by this Court. He relies on the decisions in *Enemuo V. Duru* (2004) 9 NWLR (Pt 877) 75 at 85 and *Musa V. Abubakar*  
 C (2009) ALL FWLR (pt 451) 855 at 945.

Further arguing the appeal, learned counsel submits that the judgment of this Court in *Lado & ors CPC & ors* which the appellants insist supports INEC's withdrawal of the certificates it issued to the 1st - 10th respondents without the order of a competent court of  
 D law, is unavailing to them. The apex court having declined jurisdiction, argues learned counsel, did not make any consequential order directing that anything more be done. The court in the judgment neither declared the appellants CPC's candidates nor the winners of the April elections and entitled to be issued with certificates of return.

E The fact remains, submits learned counsel, INEC's issuance of certificates of return to the appellants who were neither candidates in nor winners of the April 2011 elections contradicts Section 141 of the Electoral Act and as held in *Ombugadu V. CPC* (2013) 18 NWLR  
 F (Pt 1385) 65 at 119-120 must be set aside. The affirmation by the lower court of the trial court's decision setting aside INEC's unlawful exercise of power, being facilitated by Sections 6(6) and 251(1) of the Constitution, it is contended, is beyond reproach.

Learned counsel further submits that it is not in dispute that  
 G 1st - 10th respondents had contested, won the election and having been declared winners by INEC issued with certificates of return by the latter. Their elections were neither challenged by the appellants nor set-aside by any competent court of law.

H For INEC's purported withdrawal of their return certificates to be allowed to persist, submits learned counsel, is to allow INEC to exercise appellate jurisdiction over the Court of Appeal which in law is the final court in respect of National Assembly election matters. Relying *NDP V. INEC* (2003) 5 NWLR (Pt 1351) 501, *Okafor V. INEC* (2010) 3 NWLR (Pt 1180) 1 and *DR. Ngige V. Peter Obi* (2006)



14 NWLR (Pt 999) 1. Learned counsel urges that we disallow the unlawful scuttling of 1st - 10th respondents victory by INEC.

In further argument, learned counsel to 1st - 2nd respondents refers to pages 1459-1460 where the trial court made conclusive findings that 1st - 10th respondents had proved their being candidates in the elections and on winning the elections were issued with the certificates of return. The averments in proof of these facts, counsel submits, remain unchallenged and controverted. The issue at the trial court and the lower court, it is contended, was never who CPC's validly nominated candidates in the elections were. Rather, it was a challenge to the legality of 11th respondent's unlawful withdrawal of the certificates of return it issued to the 1st - 10th respondents and the re-issuance of same to the appellants without the order of any court of competent jurisdiction. This, submits learned counsel, comes squarely within the purview of Sections 68(1) and 75(1) of the Electoral Act 2010 as amended.

Neither the case of *Emeka V. Okadigbo* (supra) nor *Lado & ors V. CPC & ors* (supra) avail the appellants in that regard.

Concluding, learned counsel justifies the lower court's reliance on *Rossek & 2 others V. ACB & 2 others* (1993) 10 SCJN 20 submitting that in spite of the nullification of the decisions of the trial court and the Court of Appeal by the Supreme Court in *Lado & ors V. CPC & ors* (supra), a further court order was required to facilitate the withdrawal of the certificates of return issued to the 1st - 10th respondents by INEC. Since no court had made that order, the issuance of fresh certificates to the appellants after the purported withdrawal of those issued to the 1st - 10th respondents remains unlawful. To hold otherwise, learned counsel contends, is to allow the erosion of judicial powers of the courts which is a clear breach of the constitution. Urging this Court's decision in *Dr. O.G. Sofekun V. Chief N.O.A Akinyemi & 3 others* (1980) 5-7 SC 1 on us, learned counsel prays that their 2nd issue for the determination of the appeal be resolved in their favour, the appeal adjudged unmeritorious and dismissed.

It is instructive to note that the arguments proffered by the 3rd - 6th, 7th - 9th and the 10th respondents in their respective briefs are similar to the foregoing arguments of the 1st - 2nd respondents. They differ only in form. Since dispensing with the drudgery

of reproducing these arguments does none of them any harm, it helps all to avoid the wasteful exercise. It should be recalled as well that the 11th - 14th respondents, INEC, The Senate President, the Speaker, House of Representatives and the Clerk to the National Assembly having filed no briefs either conceded the appeal or urged  
 B nothing on us at the hearing of the particular appeal.

On the basis of the issues and the arguments the parties herein proffered in relation to the issues under reference, the question to answer primarily is:- Whether the lower court's affirmation of the trial  
 C court's decision that it has the competence to hear and determine the instant suit is sustainable. This is clearly a jurisdictional issue. Juris-  
isdiction has been broadly defined as the limits imposed on the power of a validly constituted court to hear and determine issues between  
 D 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 founded or to the kind of relief sought. ***Thus when an issue of jurisdiction is raised, the court would consider whether:***

(a) ***It is properly constituted as regards numbers and***  
 E ***qualification of the members of the bench such that no member is for any reason disqualified.***

(b) ***the subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the***  
 F ***court from exercise of its jurisdiction and***

(c) ***the case comes before the court initiated by due***  
***process of law and upon fulfillment of any condition prece-***  
***dent to the exercise of jurisdiction.*** See *Madukolu & ors V. Nkemdilim* (1962) 2 SCNLR 341.

And this Court has in a plethora of cases provided the procedure to guide the courts in the determination of the issue of their competence where same is raised. In *Lado V. CPC* (supra) which we all seem to be obsessed with in the matter at hand, this Court at page 724 of the report per Onnoghen JSC has stated the procedure broadly  
 H thus:-

*“While it is settled law that it is the claim of a plaintiff as evidenced in the writ of summons and statement of claim that determines the jurisdiction of the court where however, from the totality of the pleadings of both parties and the evidence adduced to estab-*

*lish same, it becomes obvious that the court has no jurisdiction with regards to the subject matter of the dispute or that the claim, in reality, cannot come within the statutory jurisdiction of the court, the court will take into account the totality of the facts pleaded by the parties and the evidence adduced to establish the same in determining whether the court has jurisdiction or not.”* B

***The procedure to adopt, where an objection is raised to the jurisdiction of the court in a matter commenced by originating summons, is to consider the objection together with the substantive matter. Invariably, this would involve the consideration of not only the reliefs being claimed against the background of the facts deposed to in the affidavit in support of the originating summons but the totality of available evidence including the facts contained in the counter-affidavit(s) in opposition to the originating summons.*** See Adeleke V. OSHA D (2006) 16 NWLR (Pt 1096) 508, Amadi V. NNPC (2000) 10 NWLR (Pt 674) 75 at 100 and Dapilalong V. Dariye (supra).

In the resolution of the jurisdictional issue this appeal raises, therefore, the materials to examine in relation to the decisions of the two courts below are 1st - 10th respondents originating summons, their affidavit in support of same as well as the counter-affidavits of the defendants in the suit that brought about the instant appeal. E

The questions the 1st - 10th respondents sought answers to as well as the reliefs in relation to the questions they urged the trial court to grant them have earlier been captured in this judgment. The facts on which the 1st - 10th respondents as plaintiffs ground their claim are contained in paragraph 4 of the affidavit in support of their originating summons, see pages 671-672 of Vol I of the record of appeal, which read thus:- F

*“4a. That he and other Plaintiffs are registered and bonafide members of the 15th Defendant and contested the April, 2011 general election for various Federal Constituencies and Senatorial Districts of Katsina State under the platform of the 15th Defendant.*

*b. That upon winning the election each, those of them that won the Federal Constituencies election where returned and issued with forms EC8E(1) while those won in their Senatorial Districts were returned and issued with forms EC8E.*

*c. That each one of them was issued with a certificate of re-*

turn by the 1st Defendant.

d. That upon presentation of the Certificate of Return, the 2nd and 3rd Defendants duly swore them in as members (senator for the 1st and 2nd Plaintiffs and members of the House of Representatives for the 3rd - 10th Plaintiffs) of the National Assembly.

B e. That their elections were unsuccessfully challenged at  
(i) The Katsina State National Assembly Elections Tribunal and

C (ii) Court of Appeal, Kaduna and their election were confirmed/affirmed.

f. That without any order of any Court of Competent jurisdiction, their Certificates of Return were purportedly withdrawn or cancelled, and fresh ones issued by the 1st Defendant to the 5th - 14th Defendants.

D g. That pursuant upon the fresh Certificate of Return purportedly issued as aforesaid, the 2nd and 3rd Defendant swore in the 5th - 14th Defendants without any order of Court, to take the various seats of the Plaintiffs in the National Assembly.

E h. That a copy of the 15th Defendants Katsina State Chairman to the National Secretary's letter dated 28th January, 2011 forwarding the names of the Plaintiffs as their nominated candidates dated 28th January, 2011 is attached as Exhibit KT 1.

F i. That the 5th - 14th Defendants to whom the fresh Certificates of Return were issued did not participate in the 9th April, 2011 elections as:

(i) They do not have forms EC 8 series issued in their names after the election.

G (ii) They had no Certificate or Return of that election in their names, after the declarations of the results.

j. That what the Plaintiffs want are declarations on whether the acts of the Defendants are within their powers under the Constitution, Electoral Law, other Acts and Regulations."

H In restating the content of their counter affidavit in opposition to the foregoing, the appellants pointedly aver in paragraphs 6-20, 21, 25-27 and 29-30 of the affidavit in support of their preliminary objection, see pages 736-738 of vol. 1 of the record of appeal, as follows:-

"6. That the entire paragraph 4, 5 and 6 of the Affidavit in

*support of the Originating Summons are false and or incorrect.*

7. That on 13th January, 2011 the 15th Defendant in line with its Constitution and the Electoral Act, 2010 conducted its primaries to elect its candidates for the various Senatorial Districts and Federal Constituencies of Katsina State in the 2011 General election.

8. That at the end of the primaries held in designated centres of the various Senatorial Districts and Federal Constituencies, the 5th-14th Defendants emerged victorious and were nominated as candidates of the 15th Defendant for the respective Senatorial and Federal Constituencies in the 2011 general election.

9. That the 15th Defendant by its letter dated 14th January, 2012 forwarded the names of the 5th-14th Defendants as its candidates for the affected elective seats to the 1st Defendant. A copy of the said letter signed by Price (Dr) Lanre Tejuosho, the Chairman of its National Convention, Congresses and Primaries Committee is exhibited hereto as EXHIBIT A.

10. That at the close of nomination of candidates by political parties on the 31st January, 2012, the 15th Defendant submitted the names and nomination documents including the Affidavit in Support of Personal Particulars that is, INEC Form CF 001, of the 5th-14th Defendants as its candidates in the 2011 general election to the 1st Defendant and the receipt of the INEC Forms CF 001 of each of the 5th-14th Defendants was duly acknowledged by the 1st Defendant. Copies of the acknowledgement of the receipt of the 5th-14th Defendants' Forms CF 007 are attached in the bundle exhibited herein as EXHIBIT B.

11. That after the 15th Defendant had submitted the names and nomination documents of the 5th - 14th Defendants as its candidates to the 1st Defendant, the Plaintiffs herein on the 3rd February, 2011 filed Suit No. FHC/ABJ/CS/126/11: LADO & 42 ORS V. CPC & 5 ORS before this Court seeking among other reliefs, for the court to nominate them as candidates of the 15th Defendant for the various Senatorial Districts and Federal Constituencies in the 2011 general election.

12. That the Plaintiffs did not challenge the nomination of the 5th-14th Defendants which was a product of the 13th January, 2012 primaries of the 15th Defendant and, also did not join the 5th-14th Defendants as parties to the aforesaid suit.

13. That despite the Preliminary Objection raised by the 15th Defendant (who was 1st Defendant therein) that the subject matter of the aforesaid suit was a matter within its domestic jurisdiction on which the court had no jurisdiction as well as the overwhelming documentary evidence it adduced before the court, the trial judge. Abdu-  
B Kafarati, I gave judgment in favour of the Plaintiffs.

14. That the 15th Defendant was dissatisfied with the judgment in that suit and immediately lodged an appeal against it to the Court of Appeal, Abuja in Appeal No. CA/133/11 as well as filed a  
C Motion for injunction pending appeal restraining the Plaintiffs and the 1st Defendant from giving any effect to the said judgment initially before the trial court but later at the Court of Appeal after the appeal was entered.

15. That the Court of Appeal upheld the 15th Defendant's  
D appeal in its entirety, held that the judgment in Suit No. FHC/ABJ/CS/126/11 was perverse and set it aside in its entirety.

18. That the Plaintiffs appealed against the Court of Appeal judgment to the Supreme Court in SC.156/11 and on 16th December, 2011, the Supreme Court unanimously disallowed their Appeal  
E and held that the Court had no jurisdiction to entertain the subject matter and consequently struck out Suit No. FHC/ABJ/CS/126/11 (which had already been set aside by the Court of Appeal) for being incompetent.

19. That at no time whatsoever were the Plaintiffs nominated  
F or sponsored by the 15th Defendant as its candidates in respect of 2011 general election or any other election.

20. That at all times, the only candidates nominated and duly  
G sponsored by the 15th Defendant in the 2011 general election were the 5th - 14th Defendants.

21. That Exhibit KT 1 attached to the Further Affidavit in support of the Amended Originating Summons was not written by the 15th Defendant or any of its authorised Officers or Agents who conducted the 15th Defendant's primaries in Katsina State.

H Further, it was not part of the documents forwarded by the 15th Defendant to the 1st Defendant and does not contain the names of the candidates nominated and sponsored by the 15th Defendant at the various Senatorial Districts and Federal Constituencies of Katsina State in the 2011 general elections.

25. That it was due to the fact that the Plaintiffs were not nominated or sponsored by the 15th Defendant that made them institute Suit No. FHC/ABJ/CS/126/11 before this Court which Suit the Supreme Court held to be incompetent and consequently struck out in its judgment in SC.157/11 and SC.334/11.

26. That at no time were the Plaintiffs issued any valid certificates of Return or any other valid electoral document by the 1st Defendant. B

27. That the 1st Defendant merely issued the 5th - 14th Defendants their Certificates of Return in validation of the mandate won by them and their sponsoring political party, the 15th Defendant herein in the 2011 general election. C

29. That this Suit is instituted to review the judgment of the Supreme Court in SC.157/11.

30. That the foundation of this Suit is the purported claim by the Plaintiffs to be the candidates of the 15th Defendant in the 2011 general election.” D

The crucial averments in the counter affidavit of the 1st defendant, INEC, the 11th respondent are at pages 963-964 of Vol 2 of the record of appeal hereinunder reproduced for ease of reference E

“4. Paragraph 4, (a) (b) (c) (d) (i)(i) (a)(b)(b) (c) (d) (i) (ii) and (e) of the affidavit in support are false, and I depose as follows:-

(i) As a person fully aware of the facts from inception of the nomination process and until the immediate incident which gave rise to this suit, I assert that at all times material, the appropriate candidates for the respective constituencies of the House of Representatives and Senatorial Districts with respect to Katsina State, were the 5th to 14th Defendants who were duly nominated by the 15th Defendant. F

(ii) After the duly constituted primaries of the 15th Defendant, the 15th Defendant, in accordance with its Constitution forwarded the names of the 5th to 14th Defendants as the successful candidates, duly nominated for their respective constituencies. H

The names were accordingly published as the contestants for the office in accordance with the Electoral Act

(iii) On 3rd February, 2011, the Plaintiffs herein filed Suit No: FHC/ABJ/CS/126/2011 SEN. YAKUBU GARBA LADO & ORS

*V. C.P.C & ORS, claiming that they were aspirants of 15th Defendant who won the purported primaries of 15th January, 2011, as against the primaries conducted on 13th January, 2011 by the (C.P.C) 15th Defendant. On 25th February, 2011 the Federal High Court granted Plaintiffs' claims.*

B (iv) Aggrieved by the decision the 15th Defendant herein appealed to the Court of Appeal in appeal No: CA/A/133/2011 C.P.C & ORS v. SENATOR YAKUBU GARBA LADO & ORS and the Court of Appeal set aside the decision of the Federal High Court stated above.

C (v) The Plaintiffs herein appealed to the Supreme Court in SC.157/2011, SC. 334/2011: SEN. YAKUBU GARBA LADO & ORS V. C.P.C & ORS: DR. YUSHA'U ARMIYAU V. C.P.C & ORS and the apex court held that the dispute was intra party, related to nomination arising from competing primaries of which the Courts had no jurisdiction to adjudicate.

(vi) It is noteworthy that the National Assembly elections were conducted on 9th April, 2011 and the 15th Defendant did not alter the names of candidates already submitted.

E (vii) The 5th to 14th Defendants were duly issued the Certificate of Return and consequently sworn in as they were, at all times material, the only duly nominated candidates in the elections which the 15th Defendant participated along with other political parties for the respective positions in the National Assembly.

F (viii) In the absence of an Order of Court, it has been the practice of the 1st Defendant, which accords with the Constitution of the Political parties duly approved in line with the Constitution of the Federal Republic of Nigeria 1999 (as amended), to accept only the list of candidates presented by the National Secretariat of political parties, and then treat those listed therein as candidates for the elections.

5. Hereto delivered and marked exhibits are-

H (i) Letter dated 14th January, 2011 addressed to 1st Defendant by the 15th Defendant forwarding the names of 5th to 14th Defendants as its candidates as EXHIBIT INEC 1.

(ii) Acknowledgement of Receipt of Form CF.001 from the 5th to 14th Defendants by 1st Defendant as EXHIBITS INEC 2 (i) to (x)."



In the determination of defendants' preliminary objection the trial court adopted the crucial issue that has arisen thus:-

*"Whether considering the entire circumstances of this suit, this Court has jurisdiction to entertain it and grant the reliefs claimed."*

The court postulated firstly, see page 1289 of Vol. 2 of the record of appeal, as follows:-

*"Both Applicants and Plaintiffs apparently are in tune on the issue that when jurisdiction of a court to hear a matter is challenged, the relevant process to be considered is the plaintiffs claim as stated in whatever originating process by which he presented his claim to the court...Therefore, in the determination of the Notice of preliminary objection filed by the Applicants whereby they challenged the jurisdiction of this Court to hear the plaintiffs claim, it is the claim presented by the plaintiffs vide their originating summons and affidavit in support that will be examined via a magnifying glass and no other document."*

The court's examination of the plaintiffs claim in the foregoing manner led to its decision, see page 1300 of Vol. 2 of the record of appeal, that by virtue of Section 251(1)(r) of the 1999 Constitution as amended, it has exclusive jurisdiction to hear and determine the suit which questions the validity of the executive or administrative action or decision of the 1st defendant, INEC, being an agency of the Federal Government.

Before finally determining the crucial issue, the court further held at page 1317 of Vol. II of the record of appeal thus:-

*"Clearly, from the foregoing findings and decisions concerning the subject matter of the suit which the plaintiffs presented to this Court for adjudication, the plaintiffs have not asked the court to look into or decide whether they i.e. the Plaintiffs or Applicants are the candidates which the 15th Defendant sponsored for the General Election."*

Quite naturally, the court resolved the issue against the applicants and in favour of the plaintiffs.

In deciding whether or not the plaintiffs have the locus standi to institute their claim, the trial court held at pages 1329-1330 of Vol II of the record of appeal inter-alia thus:-

*"The Applicants also contended that, the Plaintiffs purported interest in the seats to which this suit relates had been taken away by*

*virtue of the Court of Appeal decision in Appeal No CA/A/133/2011 and the Supreme Court decision in Lado V. CPC as well as sections 65 (2) (b) and 68(1) (b) of the Constitution. Referred to Yesufu V. Govt. of Edo State (2001) NSCQR (pt 11) 675 at 688.*

B *In my humble opinion, the effect of the decisions of the Court of Appeal and Supreme Court in Lado V. CPC (supra) on the Plaintiffs' alleged interests in the seats to which the suit relates is not necessary for the determination of the suit which the Plaintiffs brought to Court for determination.*

C *Section 65(2)(b) of the Constitution which the Applicants alleged removed from the Plaintiffs' locus standi to bring this action provides thus:-*

*'65(2) A person shall be qualified for election under subsection (1) of this section if -*

D *(b) he is a member of a political party and is sponsored by that party.'*

E *In my humble opinion, this provision is not necessary for the determination of the locus standi of the Plaintiffs to institute the action they brought to Court for determination. As I held earlier in this Ruling, the question of sponsoring and nomination of the Plaintiffs by the 15th Defendant is not relevant for the determination of the suit the Plaintiffs brought to Court for adjudication."*

F *In spite of the pleadings of parties as contained in their respective affidavits, before affirming the trial court's foregoing findings, the lower court per Eko JCA, who delivered the lead judgment, at page 1737 of Vol. III of the record of Appeal, firstly circumscribed what the 1st-10th respondents claim before the trial court is thus:-*

G *"It is apparent from reliefs 1, 2, 3, and 4 claimed by the Plaintiffs/1st - 10th Respondents that the suit seeks the judicial review of the powers of the 1st Defendant/11th Defendant, Independent National Electoral Commission (INEC), to allegedly withdraw the Certificates of Return issued to the Plaintiffs/1st - 10th Respondents after it had conducted the elections, declared the results, made returns and thereafter issued certificates of return to each of the Plaintiffs. In the suit the Plaintiffs seem to suggest that without a court order validly made by a court of competent jurisdiction INEC has no powers, in law, to withdraw a certificate of return it issued to each or any of the Plaintiffs after it had validly conducted an election and*

*made a return therefrom. The plaintiffs in the originating summons and the supporting affidavit over that after the election and their returns, their elections were unsuccessfully contested at the National Assembly and State House of Assembly Election Tribunal and the Court of Appeal; and that their returns each, remain inviolate thereafter.”* B

The court also summarized the position of the 1st defendant, INEC, from its counter-affidavit at the same page of Vol. III of the record of appeal as follows:-

*“The position of INEC, the 1st Defendant in the suit, is that the Plaintiffs were never on the ballot in the disputed elections and that the only candidates of the Congress for Progressive Change (CPC) were the 5th-4th Defendants/Appellants.....”* C

The court stated the case of the appellants as well at page 1739 of Vol. III of the record of appeal thus:- D

*“The Appellants, as 5th-14th Defendants, filed a joint counter-affidavit with the 15th Defendant.*

*It is at pages 701-718 of the record. They aver therein that they were the valid and authentic candidates of the CPC, the political party that won all the seats in the disputed elections, that the Plaintiffs/1st - 10th Respondents were not issued valid Certificates of Return by INEC, 1st Defendant and that:-* E

*“The 1st Defendant merely issued the 5th - 14th Defendants their Certificates of Return in validation of the mandate won by them and their sponsoring political party, the 5th defendant herein in the 2011 general election.”* F

Notwithstanding its foregoing findings as to the positions of the 1st Defendant, INEC, and the Appellants, in affirming the trial court’s decision that it has jurisdiction to hear and determine 1st - 10th Respondents suit, the lower court, see page 1742 of Vol. III of the record of appeal, held that the principle which determines the question of jurisdiction is thus:- G

*“The law is settled that it is the claim of the plaintiff that determines the jurisdiction of the trial court see Emeka V. Okadigbo (2012) H 18 NWLR (pt 1331) 55 at 89 and 101; Adeyemi V. Opeyori (1976) 6-10 SC 3; Anya V. Iyayi (1993) 7 NWLR (Pt 305) 290; Anigboro V. Sea Trucks Nig Ltd (1995) 6 NWLR (Pt 339) 35 and Onuorah V. Okeke (2005) 10 NWLR (pt 932) 40.”*

The court proceeded as follows:-

*"I have read the claims of the plaintiffs/1st - 10th Respondents and the fact on which the questions posed and the reliefs sought are predicated. I had earlier set them out in this judgment..... The 11th - 14th Respondents, who were the original 1st - 4th Defendants, clearly answer to the description of 'the Federal Government or any of its agencies' whose 'executive or administrative actions or decisions' were being questioned by the 1st - 10th Respondents as Plaintiffs, at the Federal High Court, Reading Section 6(6) and 251 (1)(r) of the Constitution together. I am of the firm view that the jurisdiction of the Federal High Court to judicially review 'executive or administrative decisions or action' of the Federal Government or any of its agencies is undeniable.*

*These appellants, who have avoided commenting on these Constitutional provisions vesting in the Federal High Court jurisdiction to undertake judicial review of the administrative actions or decisions of the 11th - 14th Respondents, are not on any firm grounds in their insistence to the contrary."*

And concluded its decision at pages 1754-1755 of Vol. 3 of the record of Appeal thus:-

*"The court below has jurisdiction in the matter of the judicial review of the action or decision of INEC, who after issuing Certificate of Return to the 1st - 10th Respondents who were actually candidates at elections INEC conducted in their respective constituencies, purported to withdraw, cancel and nullify the said Certificates of Return without any order of a court or tribunal of competent jurisdiction.*

*The court also has jurisdiction in the matter of the Certificates of Return issued to the Appellants by INEC who were not candidates at the elections conducted by INEC and without order of court or tribunal established by law. Ditto for 12th - 14th Respondent giving effect to the Certificates of Return issued to the Appellants which Certificates of Return are invalid in law. In view of all I have said the Federal High Court was right in dismissing the Appellants' preliminary objection and entering judgment for the 1st - 10th Respondents, as plaintiffs, as it did.*

*There is no merit in this Appeal argued on all the four issues formulated and argued by the Appellants. The appeal is hereby dis-*

*missed in its entirety. The judgment and orders of Federal High Court in the suit no FHC/ABJ/CS/1042/2011 delivered on 11th January, 2013 are hereby affirmed, Parties shall bear their respective costs."*

One has taken the trouble of unraveling the real facts in issue between the parties in the appeal and the decisions of the two courts below thereon in this manner to demonstrate how a very simple matter has unnecessarily been made to look otherwise. With the attained clarity of the real issues, facts on which the issues are grounded, both of which should have informed the lower court in its affirmation of the trial court's decision, it is time to decide whether the lower court's decision does indeed draw from these undisputed facts. If it does not, being perverse, it must, concurrent as it is, be set aside.

My lords, as earlier reflected in this judgment, the trial court's decision as affirmed by the court below that the former's assumption of jurisdiction over the instant suit is, inter-alia, because the plaintiffs, the 1st - 10th respondents in the appeal, have the locus standi to institute the suit. Do they and what, if they do not, is the fate of the decision of a court that proceeded on a matter commenced by plaintiffs who lack the locus standi to initiate the action in the first place? My pick as to the first segment of the question is that the plaintiffs, the 1st - 10th respondents, who initiated the instant suit at the trial court, lack the locus standi of instituting their claim in the first place. In justifying this position, what the fate of the lower court's affirmation of the trial court's decision to the contrary is, in law, will equally be specified anon.

***The two Latin words which make up the expression locus standi conjunctively mean a place to stand and if used in relation to a matter in a law court, a platform to stand in the suit. It is a phrase that usually applies to a plaintiff in ascertaining the place he stands in commencing or prosecuting the suit he initiates. It is about that plaintiff's legal right as a party in a court of law or tribunal to be heard in the litigation.***

***The phrase requires that whatever remedy the plaintiff seeks must be founded upon the existence of a legal right.*** See Ladejobi V. Otunba Oguntayo & 9 others (2004) 18 NWLR (Pt 904) 149 at 173 and Adenuga V. Odumeru (2003) 8 NWLR (Pt 822) 153 at 184. In AG. Adamawa State & ors V. AG, Federation, (2005) 18 NWLR (Pt 958) 581 at 623 this Court held:-

*“...a person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed.”*

B Have the 1st - 10th respondents a place to stand on in instituting their suit? Have they, in their amended originating summons, sufficiently manifested which interest or rights of theirs the defendants endangered or infringed upon? Are the two courts right in their concurrent findings that they have the locus standi in the action they commenced at the trial court? I think not.

C The 1st - 10th respondents as plaintiffs assert that having contested the 9th April 2011 Elections conducted by INEC, the 11th respondent, which organ on their victory at the election declared, returned them as being elected and also issued them with certificates of return as contemplated under Section 75 of the Electoral Act 2010 D as amended. They argue that having been “candidates” at the 9th April Elections and are returned consequent upon their scores over the others by the 11th respondent, they are entitled to the protection the law provides them under Sections 68(1) and 75(1) of the Electoral Act 2010 as amended.

E The finding of the trial court not only that the plaintiffs were indeed candidates at the said elections but that INEC had also issued them certificates of return was affirmed by the lower court. The question that immediately comes to mind when this decision of the lower F court is being appealed against is: does the decision of the lower court draw from the evidence embodied in the affidavits for and against plaintiffs’ amended originating summons? It does not.

G Neither the trial court nor the lower court explained their preference for the content of the clearly deficient affidavit of the plaintiffs in support of their amended originating summons and the rejection of the very lucid paragraphs of the counter-affidavits of the appellants and the 11th respondent.

H ***Again, one agrees with learned senior counsel to the appellants that it is an age old principle that averments in the affidavit of a party which are neither challenged nor controverted by his adversary are deemed admitted and the court must act on those undisputed averments as being true.*** See Okonkwo V. Kpajie (1992) 2 NWLR (Pt 226) 633 and Ajomale V. Yaduat (No 2) (1991) 5 NWLR (Pt 191) 265.

***In its counter affidavit, INEC, the very body the 1st - 10th respondents agree is empowered by law to conduct elections, has averred that 1st - 10th respondents were never candidates in the very elections dispute in respect of which they claim entitle them to institute this action. While the lower court appears right to have held that, by the combined operation of Sections 6(6)(b) and 251(1)(r) of the 1999 Constitution as amended, the trial court has the jurisdiction to adjudicate between the parties as constituted, it is however also the law that the 1st - 10th respondents must, given Sections 68(1) and 75(1) & (2) of the Electoral Act 2010 as amended, manifest such civil right and or obligation of theirs which the defendants have threatened or torpedoed to enable the court assume jurisdiction over their matter.***

In EGOLUM v. OBASANJO (1977) 7 NWLR (Pt 611) 355 the Appellant, who was not a candidate at the election, filed a petition against Chief Olusegun Obasanjo. It was contended on behalf of the Respondents that the Appellant who was not a candidate at the said election had no locus standi to challenge the validity or otherwise of the election, more so when he failed to comply with paragraph 5(1) of Schedule 4 of the said Decree in specifying the nature of the right he relied upon to bring the petition. This Court in striking out the petition, per Ejiwunmi, JSC of blessed memory, concluded as follows:-

*“In my opinion, a petitioner such as the Appellant in the instant case may present an election petition by virtue of section 50(1) of Decree No. 6 of 1999, but it is necessary for that petitioner to comply with the provisions of paragraph 5(1) (b) in the Schedule to Decree No. 6 of 1999. Compliance in that regard means that the petitioner shall state in full and explicit terms that he had a right to contest the election.*

*The Appellant in this appeal having failed to give such particulars as indicated above, the trial court was right to have come to the conclusion that he had no locus standi to present the election petition against the 1st Respondent.”*

See also Owodunni V. Registered Trustees of Celestial Church of Christ & 3 ors (2000) 6 SCNJ 399, Thomas V. Olufosoye (1986) 1 NSCC 323, Basinco Motors Ltd V. Woemann Line (2009) 5-6 (Pt.

11) 123 and Ojukwu V. Ojukwu (2008) 12 SC (Pt. 111).

Sections 68(1)(C) and 75(1) of the Electoral Act 2010 as amended under which the 1st - 10th respondents seek the reliefs in the instant suit are hereunder reproduced for ease of reference:-

B *“Section 68(1) The decision of Returning officer on any question arising from or relating to petition proceedings under this Act (C) declaration of scores of candidates and the return of a candidate, shall be final subject to review by a Tribunal or Court in an election petition proceedings under this Act.*

C *Section 75(1) A sealed certificate of Return at an Election in a prescribed form shall be issued within 7 days to every candidate who has won an election under this Act*

D *-Provided that where the Court of Appeal or the Supreme Court being the final appellate court in any election petition as the case may be nullifies the Certificate of Return of any candidate, the commission shall, within 48 hours after the receipt of the order of such court, issue the successful candidate with a valid Certificate of Return.”*

E ***A community reading of the foregoing clear and unambiguous provisions reveals that a Returning officer’s declaration of scores of candidates and his return of a candidate at the election following the declaration, is final subject to review only by a Tribunal or Court in an Election petition proceedings under the Act. By the sections, it is mandatory for***  
 F ***INEC to issue a successful candidate at an election it conducted a sealed Certificate of Return in the prescribed form within seven days of its declaring that candidate the winner of the election. Where however the Court of Appeal or the Supreme Court, as the case may be, being the final appellate***  
 G ***Court in an election petition, nullifies the Certificate of Return of any candidate, INEC shall, on being served the order of the particular court nullifying a candidate’s Certificate of Return, issue the candidate declared successful by the court a valid***  
 H ***certificate of return.***

The overriding word in both sections is “candidate” the import of which the 1st - 10th respondents appear, to their peril, to have ignored. Election, the 1st - 10th respondents must be reminded, is a process rather than the event they aver in the affidavit in support



of their amended originating summons it is. The economy in terms of the facts surrounding their status and participation at the election is fatal to their claim. And all the more so given the facts contrary to theirs as contained in the counter-affidavits opposing their claim.

Certainly, as asserted by the appellants, an election is a long drawn out process with distinct stages ending in the declaration of a winner by the Returning Officer. It entails one's membership of a political party, his indication of desire to be the party's candidate at the election, primaries for the nomination of the party's candidate, presentation of the party's candidate to INEC, the event of the election, return of the successful candidate at the election after declaration of scores, and ends with the issuance of certificate of return to the successful candidate.

The 1st - 10th respondents also seem not to appreciate the added blow the decision of this Court in Lado & ors V. CPC & ors (supra) inflicted on their cause of action. They argue that the decision does no more than declare the earlier proceedings of the trial court Coram Kafarati J a nullity; that the decision neither makes the appellants candidates nor removes the respondents from the ballot; that a further court order is required if effect is to be given to the apex court's judgment. The law does not support these pretensions!

1st - 10th respondents must be reminded that it was the order of Kafarati J that made them candidates at the election by putting them on the ballot. This fact as contained in appellants' and INEC'S counter-affidavits remain uncontroverted. Kafarati J's order in Suit FHC/ABJ/CS/126/11 remains intrinsic to the proceedings this Court nullified and voided for being embarked upon without jurisdiction.

***A nullity has been defined as a void act, an act which has no legal consequence. It is as if nothing happened. The nullification by this Court's decision in Lado & ors V. CPC & ors (supra), of the proceedings of the trial court in suit FHC/ABJ/CS/126/11 as well as the Lower Court's decision in appeal No.CA/133/11 therefrom, from the angle of the law, means that those proceedings, including all the orders made in the course or consequence of the proceedings, never took place. They are completely wiped off, rendered extinct and deemed never to have existed.*** See Ladoja V. INEC (2007) 7 SCNJ 197; Labour Party V. INEC (2009) 1-2 SC 43 and Agip (Nigeria) Ltd & 8

Ors V. Chief C. Ezendu & 9 Ors (2010) 1 SC (Pt. 11) 98. ***The implication of the decision of this Court in Lado & ors V CPC & ors (supra), therefore, is that the order of Kafarati J placing the 1st - 10th respondents on the ballot as candidates for the 9th April Elections has been totally wiped out and rendered extinct as if same was never made. The Platform the nullified order of Kafarati J provided the 1st - 10th respondents to enable them press their claim had thus been effectively removed by this Court's decision in the Lado & ors V. CPC & ors (supra).***

***And significantly too, by virtue of Section 287(1) of the 1999 Constitution as amended, all persons and authorities including INEC and the two courts below, being subordinate to the Supreme Court, are duty bound to enforce the decision of the apex court. Indeed by the very section, the apex court itself is duty bound to ensure the enforcement of its own decision.***

***From all the foregoing, it must be conceded to the appellants that the 1st - 10th respondents are in law incapable of maintaining their action either because their amended originating summons and the affidavit in support of same do not contain the facts of their candidature at the 9th April 2011 elections or consequent upon the decision of this Court in Lado & ors V. CPC & ors (supra), their names had ceased to be on the ballot for the purpose of the very election.*** Indeed, learned senior counsel to the appellants is right that Section 141 of the Electoral Act 2010 as amended remains a cross the 1st - 10th respondents must perpetually carry. The section provides:-

***"141. An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election."***

***The protection under Sections 68 and 75 of the Electoral Act the 1st - 10th respondents seek by their action to benefit from only avails candidates at an election and who, on the basis of the results declared by INEC's Returning Officer in their favour, were issued certificates of return. Not being such candidates at the election, a fact on which their suit should***

***hinge, the protection under these sections does not avail them, as Courts including the Lower Court lack the jurisdiction of entertaining their suit let alone granting them the protection the two sections, 68 and 75 of the Electoral Act as amended, confer on duly elected persons. It is for these reasons that the entire proceedings of both the trial court and the Lower Court in the instant suit having been conducted without jurisdiction must be set-aside.*** B

It must lastly be stated that were the trial court to have jurisdiction over the instant suit the decision of this Court in Emeka V. Okadigbo [2012] 18 NWLR (Pt 1331) 55 and Emineke V. PDP (2012) NWLR (Pt. 1315) 594 would have ruled the facts of the suit. The issue the suit raises is certainly about parallel primaries of the same political party. The one concluded by the national organ of the party which produced the appellants would have prevailed over the State primaries which produced the 1st - 10th respondents. This is the limited but manifest jurisdiction Section 87(4) (b) ii; (c)(ii) and (a) of the Electoral Act 2010 vest in courts as pronounced upon in Emeka V. Okadigbo (supra) and Emineke V. D.D.P (supra) by this Court. C D

***In conclusion, it must be stressed that by virtue of Section 233 (2) of the 1999 Constitution as amended, the Supreme Court enjoys appellate jurisdiction only in respect of “decisions” of the lower Court. Since the decision of the trial court on which the lower Court’s judgment is founded is a nullity, all the three appeals, SC.752/2013, SC.4/2014 and SC.7/2014 which arise from the equally null and void decision of the Lower Court are hereby accordingly struck out.*** E F

---

### ONNOGHEN JSC G

I have had the benefit of reading in draft, the lead Judgment of Learned brother, Hon. Justice MUSA DATTIJO MUHAMMAD JSC just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed. H

The facts of the case leading to the instant appeal had been stated in detail in the said lead Judgment and I therefore do not see the need to repeat them herein except as may be needed to emphasize the point being made. The present appeal however has the same

substratum as appeal Nos. SC.752/2013 and SC.7/3014 which were heard by us on the same day.

It has been settled by a long line of authorities from this court that the issue of nomination of candidates for election remains within the exclusive jurisdiction of the political parties concerned and that the courts are without the vires to decide for the political party who it has to nominate as its candidate for an election. Normally one of the ways a political party nominates its candidates for an election is by the process of conducting primary elections. The courts, however, have very limited jurisdiction as regards issues relating to nomination of candidates by political parties. The extent of the jurisdiction of the court is as defined under section 87(4)(b)(ii);(c)(ii) and (a) of the Electoral Act 2010, as amended. The provisions of the National Executive Committee of a political party is empowered to organize and conduct party primaries and it is a candidate who takes part in such a primary election and is aggrieved with the outcome of same who has the locus standi to complain to the court.

Where a plaintiff did not take part in the primary so organized by the National Executive Committee of the party but that which was organized by the State Executive chapter or committee of the political party, as in the instant case, the court will have no jurisdiction to hear and determine his case as his complaint is not against the primary election conducted by the National Executive Committee of the party. He will have no grievance against that primary election since he was not a participant therein. See the case of *Emeka v. Okadigbo* (2012) 18 NWLR (Pt. 1331) at 55; *Emineke v. D.P.P.* (2012) NWLR (Pt. 1315) 556 at 594, 600, 602.

It is not in doubt at all that the appellants emerged from the primaries conducted by the National Executive committee of CPC and their names were sent to INEC by the said National Executive Committee. On the other hand the 1st to 10th respondents are products of a primary conducted by the Katsina State Chapter of the C.P.C.

It is for the above reasons and the more detailed ones assigned in the lead Judgment that I too find merit in the appeal and consequently allow same.

It is hereby ordered that this Judgment covers appeal Nos.SC.752/2013 and SC.7/2014 as all three appeals have the same

substratum.

I abide by the other consequential orders made in the lead Judgment including the order as to costs. Appeal allowed.

---

***GALADIMA JSC***

I have been obliged a copy of the lead judgment of my brother MUSA DATTIJO MUHAMMAD, JSC just delivered. I agree with his reasoning leading to the conclusion that this appeal has merit and should be allowed.

The relevant facts of the case leading to the appeal, the issues involved have been meticulously set out and resolved in the lead judgment.

It must be noted that Appeal No. SC.752/2013 and SC.7/2014 have been heard and determined. The instant appeal stemmed from those appeals.

It has long been settled in a plethora of decisions of this court that the issue of nomination of candidates for election is the exclusive preserve or jurisdiction of the political parties concerned. The courts are loathed to interfere and decide for a political party who to nominate and who not to nominate for an election. A step leading to the conduct of election is through the conduct of primary elections. It is in this area that the courts have very limited jurisdiction in the area of nomination of candidates by their political parties. See S. 87 (41) (b) (ii) C, (ii) and (a) of the Electoral Act 2010 (as amended).

Notably, the National Executive Committee of a political party is empowered by its provisions to organise and conduct party primaries.

It is that candidate who has shown that he took part in a primary election and is aggrieved with the outcome of same who has the locus standi to complain. See ATT-GEN. ADAMAWA v. ATT-GEN. FEDERATION (2005) 18 NWLR (Pt. 958) 623.

However, where a plaintiff did not take part in the primary election organised by National Executive Committee of the political party but in that which is organized by the State Executive Chapter/Committee of the political party, as in this instant case, the court will have no jurisdictional power to hear and determine his case as his complaint is not against the primary election so conducted by the

National Executive Committee of the party. In that case he will have no grievance against the said primary election since he was not a participant therein. See *EMEKA v. OKADIGBO* (2012) 18 NWLR (Pt. 1331) at 55; *EMENIKE v. P.D.P* (2012) 12 NWLR (Pt 1315) 556 at 594, 600 at 602.

B All the appellants herein undisputedly, emerged from the primaries conducted by the National Executive Committee of the Congress For Progressive Change (CPC) and their respective names were forwarded to 11th Respondents herein (INEC) by the National Executive Committee (NEC). As for the 1st to 10th respondents they  
C are products of a primary exercise conducted by the Katsina State Chapter of the Congress for Progressive Change (CPC).

I have made this little contribution as emphasis and summary to the detailed judgment of my brother MUSA DATTIJO  
D MUHAMMAD JSC. I too find merit in this appeal and it is hereby allowed. I abide by all the consequential orders made including costs. APPEAL NO. SC.752/2013 and SC.7/2014.

As the present appeal No. 4/2014 has the substratum or stem, as appeal Nos. SC.752/2013 and SC. 7/2014, which we took on the  
E same day, they are equally struck out.

### **NGWUTA JSC**

F I have had the opportunity of reading in draft the lead judgment just delivered by my learned brother, Muhammad, JSC. I agree with the reasoning leading to the conclusion that the appeals have merit and ought to be allowed.

The three appeals have the same substratum and, ipso facto,  
G the decision in SC.4/2014 applies with equal force to appeal Nos. SC.7/2014 and SC.752/2014.

The matters from which the appeals arose are concerned with disputes as to who are the nominated candidates of the CPC in the 2011 National Assembly Elections, a matter over which the jurisdiction of the Court is circumscribed. It is the duty of a political party  
H to determine its candidates by a process of primary elections.

The primary elections from which the party's candidates emerge are conducted by the National Executive Committee of the party. As often happens, there may be a parallel primaries conducted

by the State Executive Committee of the political party.

In disputed nomination of political party's candidate for election, the jurisdiction of the Court is limited to the provision of Section 87 (9) of the Electoral Act, 2010 (as amended). It provides: "*S.87 (9): Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or the High Court of a State or FCT for redress.*"

In the case of nomination for the membership of the National or State Assembly the complaint may be that the aspirant with the highest number of votes was not declared winner of the primary election as provided in Section 87 (4) (c) (ii) of the Electoral Act, as amended. If there are two parallel primary elections, as in the cases from which these appeals arose, only a person who took part in the primary elections conducted by the National Executive Committee of the party is an aspirant within the meaning of the term in Section 87 (9) of the Act.

It is only an aspirant who can approach the Court to seek redress pursuant to section 87 (9) of the Act. Anyone who takes part in the primary election conducted by a State organ of the party is not an aspirant and cannot approach the Court for redress for he has no locus standi to ask for redress.

On the facts of this case, appellants emerged from the primaries conducted by the National Executive Committee of the CPC whose names were sent to the INEC by the said Committee. The 1st and 10th Respondents who emerged from a primary election conducted by the State organ of the CPC are not aspirants within the meaning of the word in Section 87 (9) of the Act and therefore have no issue for which they could seek redress. The Court lacks jurisdiction to entertain their complaint since they are not aspirants within the meaning of section 87 (9) of the Act.

For the above and the fuller reasons in the lead judgment, I also allow the appeals and I adopt the consequential orders in the lead judgment. Appeals allowed.

**PETER-ODILI JSC**

I agree with the judgment and reasoning just delivered by my learned brother, Muhammed Dattijo Muhammad, JSC. To emphasize my support I shall make some comments.

This is an appeal against the judgment of the Court of Appeal delivered on the 1st day of November, 2013 whereby the Court of Appeal affirmed the judgment of the Federal High Court Abuja entering judgment in favour of the plaintiffs/1st-10th respondents herein and granted all the reliefs sought by them in an originating summons procedure as follows:

“1. *Whether upon a proper construction of Sections (sic) 68(1) of the Electoral Act 2010 as amended, the 1st defendant has the power to review, either directly or indirectly the return of the plaintiffs by their respective returning officers, by purporting to withdraw the Certificates of Return issued to them consequent upon the said return.*

2. *Whether upon a proper construction of section 75(1) of the Electoral Act 2010, as amended the 1st defendant has the power to nullify, withdraw or render void or invalid the Certificates of return issued to the plaintiffs upon their being returned under section 68(1) of the Electoral Act 2010, as amended as winners of election into their respective Federal Constituencies and Senatorial Districts of Katsina State of Nigeria without a valid order emanating from a court of competent jurisdiction so directing it.*

3. *Whether upon a proper construction of section 75(1) & (2) of the Electoral Act 2010 as amended, the 1st Defendant has the power to issue Certificates of Return to the 5th-14th defendants when a competent court of law had not invalidated or voided the Certificates of Return issued the plaintiffs nor directed it to issue them with Certificates of Return.*

4. *Whether upon a proper construction of the (sic) section 75(1) of the Electoral Act 2010, read along with section 68 (1) of the same Act as amended the Certificates of Return issued the 5th-14th defendants by the 1st Defendant in violation of the aforesaid provisions were validly issued and could be used as a basis for the swearing in of the 5th-14th defendants as members of the National Assembly, by the 2nd defendants.”*

The following reliefs were sought by the 1st-10th respon-



dents as plaintiffs in the originating summons.

1. *“A declaration that by virtue of section 68(1) of the Electoral Act 2010 as amended, the 1st defendant lacks the power to review the return of the plaintiffs, either directly or indirectly, as the candidates who won the elections into the Senate and House of Representatives to represent their Federal Constituencies and senatorial Districts, by purporting to withdraw their Certificates of Return and that the said return of the plaintiffs can only be reviewed by the courts prescribed in section 68(1) of the aforesaid Act.*

2. *A declaration that by virtue of Section 75(1) of the Electoral Act 2010, as amended, the 1st defendant lacks the power to cancel, nullify, review, withdraw, void, invalidate, either directly or indirectly, the certificates of return validly issued the plaintiffs consequent upon their winning elections to represent their respective Federal Constituencies and Senatorial Districts in Katsina state, without an order of court first sought and obtained.*

3. *A declaration that by virtue of Section 75(1) of Electoral Act 2010, as amended, the 1st defendant lacks the powers to issue Certificates of Return to the 5th-14th defendants in relation to the Federal Constituencies and Senatorial Districts over which the plaintiffs had earlier on been issued with valid Certificates of Return, when neither the Court of Appeal nor the Supreme Court had nullified the Certificates of Return issued to the plaintiffs.*

4. *A declaration that the sealed Certificates of Return issued to the plaintiffs upon their winning election into the National Assembly to represent their various Federal Constituencies and Senatorial Districts of Katsina State are still valid and that the plaintiffs are entitled to immediately repossess their seats in the National Assembly to represent their respective Federal Constituencies and Senatorial Districts without let or hindrance from the 2nd, 3rd or 5th defendants or any other person.*

5. *A declaration that the 2nd-4th defendants ought not to have sworn in the 5th-14th defendants into the National Assembly upon the invalid Certificates of Return issued the 5th-14th defendants by the 1st defendant.*

6. *AN ORDER nullifying the Certificate of Return issued by the 1st defendant to the 5th-15th defendants, and*

7. *AN ORDER directing the 5th-14th defendants to immedi-*

*ately vacate their seats in the National Assembly.”*

FACTS

On the 13th of January 2011, the Congress for Progressive Change (CPC), a political party (as it then was), through its National Secretariat held a primary election for all the available offices for the April 2011 election in Katsina State. The appellants contested the said primary elections among other persons and emerged victorious in their different Senatorial districts and Federal Constituencies.

Accordingly, the National Headquarters of the party submitted their names to the Independent National Electoral Commission (INEC) as the candidates sponsored by their political party for the senatorial as well as the Federal House of Representatives elections in Katsina State.

These facts were stated in paragraphs 4-9 of the 5th-15th respondent's (now appellants) counter affidavit with Exhibit "A" being the letter forwarding the names of the party's candidate to the Independent National Electoral Commission (INEC).

On its own part, INEC acknowledged receipt of the names of the party's candidate vide INEC form CF001 which was Exhibit "B" to the 5th-15th respondents' (now appellant) counter affidavit.

Aggrieved by the turn of events, the 1st-10th respondents as plaintiffs filed suit no. FHC/ABC/CS/126/11 between: Lado & 42 Ors v. CPC & Ors before the Federal High Court presided over by Kafarati J. wherein they claimed inter alia that they were validly nominated candidates of the party as according to them they won the primaries conducted on the 15th January, 2011 by the Katsina state congress of the party.

At the trial, the Federal High Court entered judgment in their favour and directed INEC to place their names on the ballot for the April 2011 election and consequently removed the names of the persons who won the primary that was organized by the National Headquarters who had their names submitted by the said National Headquarters.

Aggrieved by the said decision the appellants appealed to the Court of Appeal which court allowed the appeal and set aside the judgment of the trial court. Again dissatisfied with the decision the 1st-10th respondents appealed to the Supreme Court which apex court held that the trial court had no jurisdiction to entertain the suit

and so both judgments of the two courts below were null and void for the absence of jurisdiction. It was after the Ruling of the Supreme Court that the present 10th-10th respondents went to the Federal High Court submitting the questions for determination which were restated above.

Mr. Solomon Umoh SAN, learned counsel for the appellants on the 20th day of October, 2014 date of hearing adopted their Brief of Arguments settled by John Olusola Baiyeshea SAN and filed on 28/4/2014 deemed properly filed and served. He also adopted a Reply Brief filed on 12/9/2014 and deemed property filed on the 20/10/2014.

From the amended eleven grounds of appeal, Mr. Baiyeshea SAN distilled six issues for determination which are:

1. Was it proper for the Court of Appeal to suo motu raise the issue of Judicial Review of Administrative Actions as the reason for clothing the lower court with the jurisdiction to entertain the matter? Having regard to the peculiar facts and circumstances of this case. (Grounds 3, 4 and 7).

2. Was the Court of Appeal truly correct when it held that the appellants did not challenge the findings of the trial court that the 1st-10th respondents were the candidates who scored the highest number of votes and were returned as winners of the said election?

3. Whether in the light of the decision of the Supreme Court in *Emeka v. Okadigbo* (2012) NWLR (Pt. 1313) the Court of Appeal was right in holding that the 1st-10th respondents were the candidates for the CPC having regard to the peculiar facts and circumstances of this case. (Grounds 2)

4. Whether having regard to the peculiar facts and circumstances of this case, the Court of Appeal was truly correct when it sought to rely on the case of *Rossek v. ACB* (1993) 10 SCND at 39-40 to insist on the fact that the 1st-10th respondents remained the winner of the election until their Certificates of Return is set aside by a court of competent jurisdiction. (Ground 5)

5. Was the Court of Appeal right in its interpretation of S. 68(1) (b) and S. 75(1) and (2) of the Electoral Act 2010 having regard to the peculiar facts and circumstances of this case. (Grounds 8 and 9)

6. Were the respondents ever candidates sponsored by the

party at the election having regard to the peculiar facts and circumstances of this case, and more particularly the decision of the Supreme Court in *Lado v. CPC* (Grounds 10 and 11).

Learned counsel for the 1st and 2nd respondents, Elisha Y. Kurah Esq. adopted their Brief of Argument filed on 13/5/14 and in B it raised two issues for determination, stated thus:

1. Whether the Court of Appeal suo motu the issue of the jurisdiction of the Federal High Court to judicially review the action of the INEC under sections 6(6) and 261(1) of the 1999 Constitution, as amended. If the answer is in the negative, whether the Court C of Appeal was right when it held that the Federal High Court had the jurisdiction to entertain and determine the plaintiffs' claim. Grounds 3, 4, 7, 10

2. Whether the Honourable Court of Appeal was right in its D interpretation of S.68(1) and S. 75(1) of the Electoral Act 2010, as amended, in line with the judgment of the Federal High Court, that the Independent National Electoral Commission, INEC lacked the powers to withdraw the certificates of return issued to the 1st-10th respondents and re-issue new ones to the appellants without an order E from a court of competent jurisdiction, notwithstanding the decision of the Supreme Court in SC 157/2011 and SC 334/2011, *Lado & Ors v. CPC & Ors* Grounds 1, 2, 5, 6, 8, 9, 11.

For the 3rd-6th respondents, Wole Agunbiade adopted the F Brief of Argument he settled, filed on 14/5/14 and which was deemed properly filed on the 15/5/14. He crafted two issues for determination as follows:

1. Whether, having regard to the entire facts and circumstances of this case, the court below properly and/or rightly considered the issue relating to the jurisdiction of the trial court and rightly G concluded that the trial court had the jurisdiction to entertain the action of the 1st-10th respondents (Grounds 3, 4, 7 and 10)

2. Whether, in the entire circumstances of this case, it was right for the court below to hold that the 11th respondent, in view of H Sections 68(1) and 75 of the Electoral Act, 2010 (as amended), lacked the power, without an order of court, to administratively withdraw, set aside, cancel or nullify the Certificates of Return, which it had issued to the 1st-10th respondents who had been declared winners at the election, and to issue new Certificates of Return to the appel-

lants and thereby affirming the decision of the trial court granting all the reliefs sought by the 1st-10th respondents (Grounds 1, 2, 5, 6, 8, 9, and 11).

Learned counsel for the 7th-9th respondents, Hassan El Yakub Esq. adopted the Brief of Argument filed on 12/5/14 and deemed properly filed on 15/5/14. He too raised two issues for determination stated thus: B

1. Whether the Court of Appeal was right in affirming the decision of the trial court and granting all the reliefs of the 1st-10<sup>th</sup> respondents. (Grounds 1, 2, 5, 6, 8, 9 and 10) C

2. Whether the Court of Appeal apart from relying on the provisions of Section 6(6) and 25(1) of the 1999 Constitution of Federal Republic of Nigeria (as amended) in upholding that the trial court has jurisdiction to entertain the 1st-10th respondents' claim, also raised and/or relied on the Doctrine of Judicial Review of Administration Actions in nature of the prerogative writs in arriving at the some conclusion (Grounds 3, 4 and 7). D

Mr. Abdullahi Yahya, learned counsel for the 10th respondent adopted their Brief of Argument filed on 15/5/14. He formulated two issues for determination, viz: E

1. Whether it is true that the Honourable Court of Appeal suo motu raised the issue that the trial court had the jurisdiction pursuant to sections 6(6) and 251(1)(p)(q) and (r) of the 1999 Constitution as amended to undertake a judicial review of the administrative actions of the 11th-14th respondents as was presented in this case. If the answer to the above question is in the negative, whether the lower court was right when it held that the trial court had the jurisdiction by virtue of the provisions of Sections 5(6) and 251(1)(p)(q) and (r) of the 1999 Constitution as amended, to judicially review the administrative actions of the 11th-14th respondents and to see if they are in consonance with the provisions of Section 68(1) and 75(1) & (2) of the Electoral Act 2010 as amended. (Grounds 3, 4, 7 and 10) F

2. Whether the Honourable Court of Appeal was right when it affirmed the decision of the trial court and dismissed the appellants' appeal, regard being had to the facts and circumstances of the case and the evidence led. (Grounds 1, 2, 5, 6, 8, 9 and 11) H

Dr. Valerie Azinge, Learned counsel for the 11th respondent,

INEC had not filed any Brief the 11th Respondent the being the umpire .

Mr. G. C. Igboke for 12th-14th respondent did not file any Brief and conceded the appeal.

B The issue No. 1 of the 7th-9th respondents which is similar to the second issue of the 10th Respondent in my humble view captures the essence of the bone of contention in this appeal and easy enough for use by me.

C Whether the Court of Appeal was right in affirming the decision of the trial court and granting all the reliefs of the 1st-10th respondents.

Learned Senior Advocate for the appellant, Mr. Solomon Umoh submitted that the issue that arose at the Court of Appeal was a post election dispute as to who was entitled to retain the certificate D of return as well as the seats of the CPC in the National Assembly. That the constitution had also provided that tribunals were empowered to deal with such issues if and when they arose as was suggested by the Court of Appeal in the instant case. That the attempt by the Court of Appeal to rely on Section 6(6) to justify its position appears E to suggest a limitation of the powers provided by Section 285 of the 1999 Constitution. That it is to be noted that Section 285 is a special provision whereas Section 6 (6) is a general provision over which section 285 would take pre-eminence. Going on, Mr. Umoh of counsel said where a court raises an issue suo motu, as happened here F then the parties should be given an opportunity to ventilate argument or be heard on the issues. He cited *Victino Fixed Odds Ltd v. Ojo* (2010) 8 NWLR (Pt. 1197) 486; *Chami v. U.B.A. Ltd* (2010) 6 NWLR (Pt. 1191) 474.

G Mr. Umoh SAN said the parties never joined issues on the Doctrine of Judicial Review as normally epitomized by the case of *Anisminic Ltd v. Foreign Compensation* (1969) AC 147 relied upon by the Court of Appeal. That the doctrine of judicial did not arise through the parties but by the Court of Appeal which used it in making H its decision without having the condition precedent for such application fulfilled before the court assumed jurisdiction. He cited *Agboola v. Agbodemu* (2010) ALL FWLR (Pt. 529) 1163.

It was further submitted for the appellant that facts in affidavit evidence not challenged or controverted by the opposite party is

deemed admitted as in this case where the 1st-10th respondents did not controvert the averment of the appellants that they were the validly nominated candidates of the party after contesting the primary election which the National secretariat of the party held on the 13th of January, 2011. He cited *Emeka v. Okadigbo* (2012) 18 NWLR (Pt. 1331) 55; *Emenike v. PDP* (2012) 12 NWLR (Pt. 1315) 556 at 594. B

Learned counsel for the appellants said the court below clearly overlooked the import of the Supreme Court case of *Garba Yakubu Lado & Ors v. CPC & Ors* (2008) 5 NWLR (Pt. 1080) 227 at 318-319 in that a court acting without jurisdiction does so in futility. C

In response, learned counsel for the 1st and 2nd respondents, Mr. Kurah contended that once as in this instance there is a violation of a constitutional provisions or the provision of any other law the supervisory power or control or review by the Judicial Arm of Government can be ignited to check that violation and so judicial review can be put in place. He cited *Ekeocha v. Civil Service Commission, Imo State* (1981) 1 NCLR 155, *Okwu v. Wayas & Ors* (1981) 2 NCLR 522. D

That the Federal High Court had the jurisdiction under Section 25 (1) p, q, s & r of the 1999 Constitution to invoke the interpretative jurisdiction by way of the originating summons and the Court of Appeal was in good stead in referring to that power of the Federal High Court on judicial review. E

For the respondents 1st and 2nd was contended that the issue is post-election in nature having arisen after the conclusion of the election but it is not the kind that should go to the Election Tribunal. That those that should go to the Election Tribunal are those within the contemplation of Section 138(1) of the Electoral Act 2010 as amended which is not the case here. He cited *Agbakoba v. INEC* (2008) 18 NWLR (Pt. 1119) 489 at 536. F

Also that the claims of the 1st-10th respondents before the trial court were for the interpretation of Sections 68(1) and 75(1) & (2) of the Electoral Act 2010 as amended which fall outside the jurisdiction of the Election Tribunal as provided by Section 285 of the 1999 constitution but rather a matter for the regular courts. He referred to *Yusuf v. Obasanjo* (2004) ALL FWLR (Pt. 213) 1884 at 1914-1915. H

Mr. Kurah of counsel for 1st & 2nd respondents stated on that there was no enforceable judgment delivered by the Supreme Court in Lado & Ors v. CPC & Ors (2012) ALL FWLR (Pt. 607) 623 and so INEC or 11th respondent was wrong to have issued the appellants the Certificate of Return for the general election based on the pro-  
 B nouncement of the apex court in Lado & Ors v. CPC & Ors (supra). This being the fact that the appellants did not participate in the said election and thus the provisions of Section 141 of the Electoral Act were not met. He cited Ombugadu v. CPC (2013) 18 NWLR (Pt. 1385) 66 at 119-120.

C He further submitted that the act of INEC in withdrawing the certificate of return of 1st-10th respondents and issuing new ones to the appellants was a Judicial Act and was rightly declared ultra vires by the Federal High Court and affirmed by the court below. He cited  
 D Dangana v. Usman (2012) ALL FWLR (Pt. 627) 612 at 647-648; Sofekun v. Akinyemi & Ors (1980) 57 SC 1 (reprint) 15.

Mr. Wole Agunbiade for the 3rd-6th respondents submitted that the jurisdiction of the court to entertain an action is determined by the claim of the plaintiffs and that the courts, trial and appellate  
 E have concurrent rights to examine the originating process, statement or as in the case at hand, supporting affidavit of the Amended Originating summon and reliefs sought in order to determine whether or not a court has jurisdiction to entertain an action. He cited PDP v.  
 F Sylva & Ors (2012) 13 NWLR (Pt. 1316) 85 at 127, C.G.G. (Nig.) Ltd v Ogu (2005) 8 NWLR (Pt. 927) 366 at 381.

That it is too late in the day for the appellants to complain about the perceived procedural infraction on initiating the originating process on the judicial review as the lapse is a technicality which  
 G would not be allowed to shackle the course of justice. He cited Obiora v Osele (1989) 1 NWLR (Pt. 97) 279 at 302; Anyawale & Ors v. Atanda & Ors (1988) 1 NSCC 1 at 9-10 etc.

For the 3rd-6th respondents was submitted that in the circumstances of this appeal, the point of jurisdiction which the court  
 H below considered ought not to be a reason to complain on the ground that the court raised it suo motu. He cited Alunis Nig. Ltd v. UBA (2013) 6 NWLR (Pt. 1351) 613 at 626.

That the appellants have not shown that the issue raised suo motu without the invitation to the parties to address on it was not



substantial to vitiate the judgment of the lower court. He referred to *Bello v. Fayose* (1999) 11 NWLR (Pt. 627) 510 at 517; *Oje v. Babalola & Or* (1991) 4 NWLR (Pt. 185) 267 at 282.

Mr. Hassan El-Yakub, Learned counsel for the 7th-9th respondents submitted that the Supreme Court in the case of *Lado v. CPC* (supra) which was on the issue of nomination of the candidates of CPC for the April 2011 general elections simply declared that the Federal High Court, Court of Appeal and the Supreme Court itself had no jurisdiction to entertain the matter as it related to which of the two primary elections of the CPC was valid and therefore struck out the matter. That the Supreme Court did not make any consequential order in relation to the withdrawal or cancellation of the 1st-10th Respondents' certificate of Return or issuance of fresh ones to the appellants. That it is absurd for the appellants or the 11th respondent (INEC) to hide under the guise of implementing the decision of *Lado v. CPC* (supra) to withdraw or cancel the 1st-10th respondents' certificates of return and issue fresh ones to the applicants.

Mr. Abdullahi Yahya for the 10th respondent submitted that the nature of the case of the plaintiffs before the trial Federal High Court as rightly found by it and also the court below and as defined by the amended originating summons was for the interpretation of sections 68 (1) and 75(1) of the Electoral Act, 2010 as amended and had nothing to do with who the nominated candidates of the CPC at the general election of April 2011 were, for the Federal constituencies and Senatorial Districts of Katsina State which the plaintiffs including the 10th respondent represent at the National Assembly.

Most of the other submissions of counsel were substantially along the same lines as those of learned counsel for the other respondents 1st-9th and there is no point repeating them here.

The Argument of learned counsel for the appellants on reply on points of law have already been captured in the earlier arguments of learned counsel for the appellants and so rehash is not necessary.

The main thrust of the contending parties in this appeal may be briefly captured to be that the Federal High court had the power to judicially review and nullify the act of INEC in administratively withdrawing or nullifying the Certificates of Return issued to 1st-10th respondents and the issuing of new ones to the appellants without an order from court after the Supreme Court judgment in *Lado & Ors*

CPC & Ors (2012) ALL FWLR (Pt. 607) 623.

Having considered the arguments for and against this appeal and perusing the Records, I would want to firstly state the salient part of the Federal High Court judgment subject of the appeal to the court below and it is thus:

B *“It is true that the Supreme Court in Lado v. CPC (supra) nullified and destroyed the foundation of the plaintiffs’ claim as the candidates duly nominated for the elections. However, I am of the view that the nullification of the Federal High Court suit did not automatically invalidate the results declared in their favour in Exhibits*  
 C *KT2 A - J and the Certificates of Return in Exhibits KT3 A - J. The legal principle in Macfoy v. UAC and Sken Consult v. Ukey (supra) that if an act is bad, it is incurably bad, cannot apply to void the Exhibits KT 2 A - J and KT 3 A - J. By the wordings of Section 68(1)*  
 D *(Electoral Act), it is only an order of court or Tribunal that can do that”.*

In affirming what the High Court had done, the Court of Appeal took a step further by raising suo motu the matter of judicial review which none of the parties had brought up and the court below had not asked the parties to address on it before reaching its decision basing it as a judicial review of the administrative act of the 11th respondent, INEC. I shall for clarity quote the relevant part of that judgment of the Court of Appeal, viz:

F *“For the avoidance of doubt I am of the firm view that the court below has the jurisdiction to entertain the case the 1st-10th respondents presented before it on originating summons. In addition to the specific jurisdiction of the Federal High Court under section 251(1) (p) (q) and (r) of the 1999 Constitution, as amended, juris-*  
 G *isdiction inheres in the court below by dint of section 6(6) of the said Constitution, to undertake judicial review of the powers of the 11th-14th respondents, who were the 1st-4th defendants at the court below, of the certificates of return issued to the appellants by the 1st defendant/11th respondent (INEC) when the appellants were not*  
 H *candidates at the elections organized by INEC, and INEC having, in the election in which 1st-10th respondents were candidates, declared them the winners and issued certificates of return to each of them by INEC in evidence of that return.”*

While the 1st-10th respondents are of the view that the court

below could venture into that judicial review unilaterally raised and considered vel non the invitation to the parties to address upon it. The appellants refuse the notion contending that the right to fair hearing of the appellants had been compromised on account of that act of the court below. This position of the appellants cannot be waved aside in view of certain judicial authorities on the point such as the following: *Victino Fixed Odds Ltd v. Ojo* (2010) 8 NWLR (Pt. 1197) 486; *Chami v. UBA Plc* (2010) 6 NWLR (Pt. 1191) 474 etc. See the case of *PDP v. Okorocha* 15 NWLR (Pt. 1323) 205 where the Supreme Court held as follows:

*“The court hearing a matter, whether as a court of first instance or an appellate court, has a duty to ensure that the processes by which a party seeks relief before it comply with the relevant provisions of the applicable law. It may raise issue suo motu provided that if the issue so raised is one on which the matter will be disposed of, counsel for the parties must be heard on it before a decision is taken.”*

This court in the case of *Victino Fixed Odds Ltd v. Ojo* (2010) 8 NWLR (Pt. 1197) 486, held that:

*“A trial court has the right to raise an issue suo motu. However, it is imperative that parties must be given the opportunity to address it thereon in order not to breach the rule of fair hearing. The right to fair hearing is a fundamental constitution of the Federal Republic of Nigeria and a breach of it particularly in trials vitiates such proceedings, thereby rendering same null and void. A hearing cannot be said to be fair if any of the parties is refused a hearing or denied the opportunity to be heard, present his case or call witnesses. In the instant case, the trial court raised suo motu the issue of the composition of the panel members and resolved same in favour of the appellant without hearing the parties on it. This was wrong.”*

In addition, at page 505 of the case of *Victino Fixed Odds Ltd v. Ojo* (supra), the Supreme Court went further and held that:

When a court raises an issue suo motu, it raises an issue not in the contemplation of the parties, and not before the court in the circumstance. Procedural fairness entails that the courts should give parties before them the right to be heard before deciding a matter. In the case at hand, the trial court raised an issue suo motu in the process of writing its judgment when it should be clothed with the toga of impartiality. See also *Chami v. UBA Plc* (2010) 6 NWLR (Pt. 1191)

474, where this court held that:

Where a trial court raised an issue suo motu without asking parties to address on it, and went ahead to base its judgment thereafter, then such a finding or holding would not stand on appeal as same must be set aside.

B The situation is all the more fundamental and cannot be treated with levity since there is a condition precedent to the application of a judicial review. I refer to Order 34 of the Federal High Court Rules which provides thus:

C *“1(1) An application for  
(a) An order of mandamus, prohibition or certiorari, or  
3(1) No application for judicial review shall be made unless  
the leave of the court has been obtained in accordance with this rule.  
(2) An application for leave shall be made ex parte to the  
D judge and shall be support by”*

Nothing in the Record bears out the fulfillment of this condition precedent to the assumption of jurisdiction by the trial High Court and so the court below flowing along it and justifying what that court had done as a judicial review well within its constitutionally granted powers is in my humble view way off the mark. I refer to the case of Agboola v. Agbodemu (2010) ALL FWLR (Pt. 529) 1163 per Sankey, JCA and I quote:

F *“Where a statute or rules of court prescribe a condition precedent to the assumption of jurisdiction, that condition precedent must first be fulfilled before there is jurisdiction. A case must therefore come before the court only when initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.”*

G I adopt those views as mine and to say there was no foundation upon which a judicial review in this instance could validly be made, and so the court below raising the point of acting within a judicial review all on its own motion without the input of the parties was an act in breach of the right to fair hearing and grave enough to  
H vitiate the decision thereby reached.

On the next plank of this appeal as to the correctness of what the two courts below did a few references on how primary elections conducted by a political party should be viewed, a look at some decided matters of this court offer guide. I refer to Emeka v. Okadigbo

(2012) 18 NWLR (Pt. 1331) 55.

*“There is no jurisdiction in the court to dabble into the issue of nomination of candidate for an election by a political party. It is the prerogative of the party to take care of it. The court is however vested with a very limited and thin jurisdiction which can be ignited under the provision of Section 87(4) (b) (ii), (c) (ii) and (9) of the Electoral Act, 2010 (as amended). The section imbues the National Executive Committee of the party with vires to organize and conduct the primaries. A candidate who took part in such a primary election and is aggrieved can complain before the court. In the instant case, the appellant did not take part in the primary election conducted by the National Executive Committee of the Peoples Democratic Party which was won by the 1st respondent. He took part in a primary election surreptitiously organized by the State Executive Chapter of the Peoples Democratic Party which had no vires to organize same on 10/01/11. Such was a sham and a farce.”*

See also the case of Emineke v. PDP (2012) 12 NWLR (Pt. 1315) 556 at 594, paras. 600, paras. D-E; 602. paras. G-H where this court per Mohammed, JSC held thus:

*“A primary election conducted by the State Executive Committee of a political party is not recognized by the Electoral Act, 2010 (as amended). Section 87(4) of the Act vests that power on the National Executive Committee of the party. A primary election conducted by the State Executive Committee of a political party is illegal.”*

*“The case of the appellant at the trial court, the Court of Appeal and in this court is that he was screened, cleared, contested the primaries conducted by the Abia Executive Committee of the 1st respondent PDP and emerged as the candidate for the 1st respondent in the Governorship Election conducted in Abia State in the April 2011 election. However what the appellant failed to realize is that fact that the primaries of the 1st respondent conducted by the Abia State Executive Committee of the party, is not recognized by the Electoral Act 2010 which by Section 87(4) of the Act, vests that power on the National Executive Committee (N.E.C) of the party.”*

At the root of those decisions cited above is the fact that must be ingrained well in mind of the court and litigants that who becomes the candidate of a political party is an issue to be solely determined by that political party and well in its domestic realm and not for the

interference of any agency or the court. In that wise, since all the political parties are national, it is its National Executive Committee or delegates therefrom who can validly conduct a primary election or conduct a process through which the particular political party is to bring forth its candidate and no other arm of that party including a  
 B state organ of that party. That was the gravamen of the case *Garba Yakubu Lado & Ors v. CPC & Ors* (2012) ALL FWLR (Pt. 607) 623 and which the Supreme Court declined jurisdiction and also decided that neither the Court of Appeal nor the trial High Court had jurisdiction.  
 C This court in Lado's case had then struck out the suit. The implication therefore was that the order of the Federal High Court placing the plaintiffs on the ballot was evacuated by the Supreme Court and therefore all the parties returned to the status quo ante bellum which created the further presentation of the now appellants being the candidates put forward by the CPC for the election and the rightful owners if I may say so of the victory when the CPC won those elective seats. I see nothing strange in that and what the 11th respondent alongside the 12th-14th did and indeed all of them did was to revert to extant position of all parties before the situation that provoked the  
 E dispute between the parties. Therefore there was nothing untoward in the 11th respondent withdrawing or canceling the certificates of Return which it had earlier issued to the respondents 1st-10th based on which they took the seats in the National Assembly, which can no longer be sustained in view of the Supreme Court decision in *Lado v. CPC* (supra) and so 11th respondent proceeded to do the needful  
 F which is cancelling that certificate wrongly awarded and issuing Return certificates to the rightful persons.

That position clarified, it needs be said that the 1st-10th respondents venturing into the Federal High Court through the backdoor movement of seeking answers on the vires of the 11th respondent, INEC to do what it had done in its official capacity as umpire is repugnant particularly in the wake of the Apex Court full and final determination on the jurisdiction of the court to inquire into  
 H the primary election of CPC in Katsina State, the same subject matter as in *Lado v. CPC* (supra) this case which this court held there was no vires. It follows therefore that if the litigants or 1st-10th respondents did not know the matter had been concluded with finality for all time in Lado's case should now see it as such and the Court of Appeal

ought not to have affirmed what the High Court did. This is because the plaintiffs having lost their perceived rights and being told so earlier, their imagined rights are taken not to have existed and they ought to have rested not to proceed as they have done akin to fishing in the desert. See *Ladoja v. INEC* (2007) 12 NWLR (Pt. 1047) 119.

The issue is hereby from the foregoing resolved in favour of the appellants. B

From what I have attempted to put across and better reasoned lead judgment I too allow these appeals SC.4/2014, SC.7/2014 and SC.752/2014, I set aside the judgment of the Court of Appeal which had affirmed the decision of the Federal High Court, which was a decision reached from a null and void proceeding. C

I abide by the consequential orders earlier made.

D

E

F

G

H