

SUPREME COURT OF NIGERIA
FRIDAY 27TH MARCH, 2015. SC. 757/2013
CORAM:- J. A. FABIYI, O. RHODES-VIVOUR, M. D.
MUHAMMAD, C. B. OGUNBIYI, K. B. AKA'AH, JJSC

ENGR. FRANK OKON DANIEL APPELLANT
AND
1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
2. PEOPLES DEMOCRATIC PARTY RESPONDENTS
3. GOVERNOR GODWILL AKPABIO

ELECTIONS - Primary election - Certificate of clearance - Import of the provisional certificate is that - Appellant could be excluded at the rerun primaries - As this is an internal affair of the political party (H1)

APPEALS - Election - Academic issue - Courts should not spend judicial time on such issue - But since the present appeal is being heard and decided before 29/05/2015 - It is not an academic exercise (H2)

ELECTIONS - Appeals - Relief - Consideration of appellant's claim in view of his assertion in a primary he never participated in - Is a worthless exercise - Hence the CA decision is unassailable (H3)

LOCUS STANDI - Fundamentality of - It is the legal capacity to institute proceedings in court - And if plaintiff does not have locus standi - Court would have no jurisdiction to entertain the suit (H4)

ELECTIONS - Action - Locus standi - Only a participant in primaries can complain of the outcome - But as appellant did not participate in the rerun primaries - He has no locus standi to institute the suit (H5)

FACTS

Before the Abuja Division of the Federal High Court, plaintiff/appellant commenced this action by an originating summons. Appellant seeks among others to invalidate the rerun gubernatorial primary election held by defendant/2nd respondent in Akwa Ibom State

to select its candidate for the April 2011 general election. 2nd respondent conducted its primary election on 09/01/2011 to select its gubernatorial candidate for the State. Appellant, 3rd respondent and some others participated in the election. The election was marred by irregularities leading to the cancellation of the results thereof. A fresh primary election was therefore fixed for 15/01/2011. The latter primary was conducted and 3rd respondent emerged victorious. Appellant was excluded from participating in the rerun primary.

Dissatisfied with the outcome of the rerun primary, appellant filed the action. Appellant supported his amended originating summons with a 65 paragraph affidavit with annexure marked A-N. 2nd and 3rd respondents filed counter-affidavits. They filed preliminary objection on the absence of jurisdiction of the court on the ground that appellant does not have the locus standi to commence the matter. The court upheld the objection and dismissed appellant's claims. Aggrieved with the ruling, appellant appealed to the Court of Appeal, Abuja Division. The court set aside the judgment of the trial court on the issue of locus standi. It invoked its powers under section 15 of Court of Appeal Act to determine the substantive matter. The appeal was eventually dismissed. Aggrieved, appellant appealed to Supreme Court, while 2nd and 3rd respondent cross appealed.

ISSUES FOR DETERMINATION

(Main appeal) *"As two out of the three Justices who heard the appeal held that the trial court was wrong in holding that the appellant has no locus standi to institute the suit, should the Court of Appeal not have allowed the appeal and declared the appellant the candidate of the PDP at the Governorship election in Akwa Ibom State, which held on April 26th, 2011".*

(Cross appeal) Was the lower court right in holding that the appellant had locus standi to complain against the re-run primary before the trial court, not having participated, by his own admission, in the said re-run primary.

HELD (Unanimously dismissing the appeal and allowing the cross-appeal per **RHODES-VIVOUR JSC**)
ELECTIONS - Primary election - Certificate of clearance

1. The word provisional means “...able to be changed in the future.” See Longman Dictionary of Contemporary English page 1320. In Oxford Advanced Learners Dictionary, 7th edition, page 1170 the word is defined as “1. arranged for the present time only and likely to be changed in the future... 2. arranged but not yet definite...” in legal parlance the word means temporary... conditional...” See Black Law Dictionary, 9th edition page 1345. From these dictionary definitions it means that the purchase of the relevant documents, screening and clearing of the appellant, etc, was only provisional. It was arranged for the primaries held on 9th January, 2011. The arrangement could be changed in the future since it was temporary but not definite. Therefore the party hierarchy could change their mind after the primaries of 9th January, 2011 such that the appellant would not be notified but excluded from the primaries of 9th January, 2011 for which he was screened and cleared. This can happen on or before the re-run of 15th January, 2011.

Having accepted the provisional certificate of clearance (exhibit “D”) (see vol. 2 page 1074 of the records of appeal) it no longer lies in the mouth of the appellant that between 9th January, 2011 to 15th January, 2011 things could not have changed. The appellant could be excluded or refused participation at the re-run primaries of 15th January, 2011. That is purely an internal or domestic affair of the party. What the party hierarchy could not do is for the name of the aspirant with the highest number of votes at the end of the primaries whose name was forwarded to INEC as the winner of the primaries and the candidate of the party to be withdrawn without verifiable or cogent reasons. (pp. 825 C /826 D)

Election - Academic issue

2. Courts should not engage in academic issues/exercise. They should spend judicial time resolving live issues. A court is never the proper forum for academic exercise. Academic issues lead nowhere, they only satisfy counsel that he has resolved a trivial issue or no issue at all but with great expense to the litigant and exhausting the energy of judicial officers.

The tenure of the Governor of Akwa Ibom State comes to an end on 29/5/15. Any proceeding contesting the eligibility of the Governor to remain in office must be brought, heard and decided before 29/5/15. An action brought after 29/5/15 becomes an academic exercise if the court decides to hear it as there would be nothing to decide after the tenure has expired. Since this appeal was heard and decided before 29/5/15 it is not an academic exercise. (p. 829 E)

Appeals - Relief

3. It amounts to inverse reasoning for a party who says he scored the highest number of votes in a primary election, he says never participated in to expect a court to consider his claims after he has taken such a stance. Furthermore an examination of the appellant's amended originating summons reveals irreconcilable pleadings. Counsel is allowed to urge the semblance of the truth or what may eventually turn out to be an inconsistent and irreconcilable case, but we as judges should at all times pursue the truth. The stance taken by the appellant makes further consideration of his claims a worthless exercise. The unanimous decision of the Court of Appeal dismissing the appellant's claims for lacking in merit is correct and unassailable.

It is only someone who operates in the spirit world that can win an election without participating in the election.
(p. 833 B)

LOCUS STANDI - Fundamentality of

4. Locus standi denotes the legal capacity to institute proceedings in court. It is a threshold issue that goes to the root of the suit. On no account should the merits of the case be considered before locus standi is decided. Locus standi affects the jurisdiction of the court. Consequently if the plaintiff does not have locus standi to institute the suit the court would have no jurisdiction to entertain the suit. Usually it is the plaintiff that is questioned as to whether he has locus standi.
(p. 836 E)

Action - Locus standi

5. An admission, clearly and unequivocally made is the best evidence against the person making it. Paragraphs 26 and 30 are conclusive evidence that the appellant did not participate in the re-run primaries conducted by PDP on 15th January, 2011. They are clear admissions by the appellant. Since the appellant did not participate in the re-run primaries there was no way he could complain about the conduct of the primaries, and so had no locus standi to institute an action as provided by section 87(9) of the Electoral Act. Put in another way, before a candidate for the primaries can have the locus standi to sue on the conduct of the primaries he must be screened, cleared by his political party and participate at the said primaries. Anything short of that the candidate who did not participate in the primaries could conveniently be classified as a meddlesome interloper with no real interest in the primaries. The Court of Appeal to my mind was wrong. The appellant has no locus standi to institute this suit because he did not participate in the re-run primaries. (p. 838 C)

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC***1. Preliminary objection – Purpose of***

A preliminary Objection is filed only when the respondent is satisfied that there is some fundamental defect in the appellant's process. The purpose is to terminate the hearing of the appeal usually on grounds of incompetence. Where there are minor defects in the appellant's process or there are some grounds that can sustain the appeal a preliminary objection should not be filed, a motion on Notice to strike out the incompetent grounds would be most appropriate. Once a preliminary objection succeeds the hearing of the appeal comes to an end. (p. 824 D)

2. Notice of appeal – Competence of

A Notice of Appeal is the Originating process on which an appeal is based, so an appeal would collapse if the Notice of Appeal is defective.

If a Notice of Appeal has no ground/s of appeal or all the grounds are incompetent, the defect cannot be cured by amendment. Such a Notice of Appeal is incompetent and incurably bad.

A notice of Appeal is competent and valid if it contains only one valid ground of appeal. (p. 828 E)

3. Grounds of appeal – Basis

Grounds of Appeal must attack the ratio decidendi of the judgment appealed against, and an issue for determination will not be struck out if it relates to a ground of appeal. (p. 828 G)

4. Appeal – Basis for

An appellant cannot appeal against a judgment that is in his favour and neither can he appeal against minority judgment.

He can only appeal against a judgment that is against him/his interest. (p. 828 H)

REPRESENTATION

Paul Erokoro, SAN with Canice I. Nkpe Esq., Michael Ajara Esq., Kingsley Odey Esq., Okonache Ogar Esq., Omolara Oriye (Miss), Faith Bako (Miss), for the Appellant/Cross-respondent Adeola Adeipe with O. Anozie, for the 1st Respondent Chief O. Oke with O. K. Akuiyibo, Soli Ikuesan, for the 2nd Respondent/Cross-appellant

Mr. Paul Usoro, SAN with Mr. Kehinde Akinlolu, SAN, Mr. Ikechukwu Duru, Miss Christabel Ndeokwelu, for the 3rd Respondent/Cross-appellant

CASES REFERRED TO

PDP v. Sylva (2012) 13 NWLR (pt. 1316) 85

Mobil Producing Nig. Unltd v. Monokpo (2003) 18 NWLR (pt. 852) 346

Ekunola v. CBN (2013) 15 NWLR (pt. 1377) 224

Odunukwu v. Ofomata (2010) 12 SC (pt. iii) 101

General Electric Co. v. Akande (2010) 12 SC (pt. iv) 75

Thor Ltd v. First City Monument Bank (2002) 2 SC (pt. i) 138

Ajide v. Kelani (1985) 3 NWLR (pt. 12) 248

Erisi v. Idika (1987) 3 NWLR (pt. 66) 503

G.K.F.I. Nig. v. Nitel Plc (2009) 13 NWLR (pt. 1164) 344

Newbreed v. Eromosele (2009) 5 NWLR (pt. 974) 499

SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (pt. 1252) 317

Sylva v. PDP (2012) 13 NWLR (pt. 1316) 85

Emenike v. PDP (2012) AFWLR (pt. 640) 1261

Nurses Association v. A.G. (1981) 11-12 SC 1

Thomas v. Olufosoye (1989) 1 NWLR (pt. 18) 669

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STATUTES REFERRED TO

Electoral Act 2010, ss. 87(9)(10), 156

Court of Appeal Act, s. 15

Constitution of the Federal Republic of Nigeria 1999, s. 233 (2)(a)

Supreme Court Act, s. 22

C

BOOKS REFERRED TO

Longman Dictionary of Contemporary English p. 1320

Oxford Advanced Learners Dictionary 7th Ed. p. 1170

Black Law Dictionary 9th Ed. p. 1345

D

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The 2011 Gubernatorial Elections in Nigeria were held on the 26th of April, 2011. For this election the Peoples Democratic Party (PDP) held its primary election on the 9th day of January, 2011 to elect its Governorship candidate for Akwa Ibom State. The appellant, the 3rd Respondent and some other members of the PDP participated in the primaries. The primary election was marred by irregularities. Eventually the results were cancelled on the 14th day of January, 2011 and fresh primary elections were fixed for the 15th day January, 2011. The primary election fixed for 15th day of January, 2011 went ahead as planned. The 3rd Respondent won. The appellant was not satisfied with the conduct of the primary election and so on the 15th day of March, 2011 he filed an originating summons at an Abuja Federal High Court, which was subsequently amended. The appellants Amended Originating Summons filed on the 10th of November, 2011 presented the following question for determination:

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(a) Whether Dr. Okwesileze Nwodo, the former Chairman of the Peoples Democratic Party (PDP) having been relieved of his of-

fice as chairman of PDP is not disqualified from performing the functions of that office by convening and presiding over the National Working Committee Meetings of the 2nd defendant and purportedly signing result of the re-run primary election for Akwa Ibom State and transmitting the name of the 3rd Defendant to the 1st defendant as
 B Governorship candidate of PDP for Akwa Ibom State in the April, 2011 General/Governorship Elections.

(b) Whether the National Working Committee of the PDP is competent to dabble into primary election or nomination of candidate for Akwa Ibom Governorship elections.

C (c) Whether following violations of provisions of section 87(3)(9) of the Electoral Act 2010, articles 17.1 and 17.2 (a) and (b) of the 2009 Constitution of the Peoples Democratic Party as amended, in the conduct of January 15th, 2011 Governorship re-run election
 D at Uyo Township Stadium in Akwa Ibom State, the plaintiff was not wrongly excluded or put at disadvantage in the said re-run election and the re-run consequently being invalid, wrongly incompetent, unconstitutional and of no effect.

(d) Whether the January 15th, 2011 Governorship re-run
 E primary election in Akwa Ibom State not having been done in compliance with the provisions of part iv Articles 21(9) of the Electoral Guidelines for primary election 2010 of Peoples Democratic Party and Constitution of Nigeria is not in violation of the rights of the
 F plaintiff, his supporters invalid wrongful and void for the purpose of nominating candidate to the 1st defendant for the Governorship election and such candidate incapable of being accepted by the 1st defendant.

(e) Whether the purported Extract of PDP's National Working
 G Committee Meeting dated 14th day of January, 2011 and giving one day notice of Governorship primary re-run election for Akwa Ibom State slated for 15th January, 2011 is not in violation of the provisions of Electoral Act 2010 as amended, PDP constitution. The PDP guidelines for primary election and constitution of the Federal
 H Republic of Nigeria and therefore invalid, null and void and of no effect.

(f) Whether the 3rd defendant having failed to meet the provisions of PDP Constitution and PDP Electoral Guidelines is not disqualified from participating in the primary or re-run primary election

for nomination of Akwa Ibom State Governorship candidate under platform of PDP.

(g) Whether the 2nd defendant can validly hold a special congress called a primaries in Akwa Ibom State for the purpose of nominating its Governorship candidate for April, 2011 General Elections without complying with the provisions of the Electoral Act 2010 as amended. B

(h) Whether the purported special congress fixed with one day notice for January 15th, 2011 in breach of the provisions of section 85 and 87 of the Electoral Act, 2010 as amended is not unlawful and consequently a nullity. C

(i) Whether it was proper and lawful for the 1st defendant to have accepted the purported nomination of the 3rd defendant predicated on the unlawful re-run primary election of 15th January, 2011 and acted on same as Governorship candidate of the 2nd defendant for 2011 Governorship election. D

(j) Whether the purported re-run primary election of January 15th, 2011 in Akwa Ibom State is not invalid for being prejudicial and in discrimination of the plaintiff and violation of the rights of the plaintiff and his supporters as guaranteed by the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended and therefore unconstitutional and incompetent. E

If these questions above are answered in the positive then the plaintiff/appellant seeks the following reliefs:

1. A declaration that the purported re-run primary election in Akwa Ibom State held on the 15th day of January, 2011 which also purportedly produced the 3rd defendant as the Governorship candidate of the 2nd defendant for the Governorship Elections in Akwa Ibom State and acceptance of same by the 1st defendant did not comply with the provisions of the Electoral Act 2010 as amended and therefore unlawful, null and void and no effect. F

2. A declaration that the purported primary re-run election of 15th January, 2011 ordered by the National Working Committee presided over by Dr. Okwesileze Nwodo after his tenure had been terminated by order of Enugu Court is ultra vires. Dr. Okwesileze Nwodo and the National Working Committee of the Peoples Democratic Party and therefore invalid, unlawful, null, void and of no effect and cannot produce any valid candidate. H

3. Declaration that the purported January 15th, 2011 Governorship primary re-run election for Akwa Ibom State is discriminatory and prejudicial of the plaintiff as no notice of re-run was given to him and therefore in violation of the plaintiffs constitutional rights and therefore wrongful, unlawful, null and void and of no effect.

B 4. Declaration that the January 15th, 2011 Governorship re-run primary election for Akwa Ibom State is in clear violation of sundry provisions of the Electoral Act, 2010 as amended, PDP Electoral Guidelines for Governorship primary election, provisions of the 1999
C Constitution of the Federal Republic of Nigeria as amended and therefore invalid, null, void and of no effect and incapable of producing the 3rd defendant as the Governorship candidate.

5. A declaration that the Akwa Ibom State re-run primary election held on 15th January, 2011 not having complied with Part iv
D Articles 21(a) of Electoral Guidelines for Governorship primary election (EGPR) as regards the seven days notice condition precedent to its being held is illegal, null, void and of no consequence or effect whatsoever.

E 6. An order returning the plaintiff as the winner of January 15th, 2011 re-run Akwa Ibom primary election of the Peoples Democratic Party and the Governorship election of April 26th, 2011 in Akwa Ibom State.

ALTERNATIVELY:

F 7. An order setting aside the aforementioned re-run primary election for non compliance with the provisions of the PDP Electoral Guidelines for Primaries Elections (EDPE), Electoral Act 2010 as amended, PDP constitution and the 1999 Constitution as amended.

G 8. An order setting aside the purported nomination, re-run and acceptance of the 3rd defendant by the 1st defendant as Governorship candidate of the Peoples Democratic Party for Akwa Ibom as well as the purported election of the 3rd defendant as Governor of Akwa Ibom State predicated on the unlawful and invalid PDP re-run/nomination of 15th January, 2011.

H 9. An order directing fresh re-run primary and governorship elections for Akwa Ibom State to be in compliance with the provisions of the Electoral Act 2010 as amended the Constitution of the Peoples Democratic Party (PDP) Electoral Guidelines and Constitution of the Federal Republic of Nigeria as amended.

The appellant supported this Amended Originating Summons, with sixty-five paragraph affidavit with annexure marked A-N. On being served the Amended Originating Summons the respondents particularly the 2nd and 3rd respondents filed counter-affidavits with annexure. They are not relevant now, and so will not be reproduced here. B

The 2nd and 3rd respondents then filed similar Preliminary Objections for the following orders:

1. An order of this Honourable Court dismissing and/or striking out this suit in limine and declining jurisdiction to entertain and adjudicate thereupon however on the grounds inter alia that; C

(a) the plaintiff by his evidence, is not clothed however with the requisite locus standi to institute and maintain this suit, not having participated in the Governorship elections primaries the subject matter of this suit - that was concluded and held by the 2nd defendant in Uyo Akwa Ibom State in 15th January, 2011 ("150111 Re-run AKS Governorship Election Primaries or Re-run Primaries") for the purposes of electing the governorship candidate of the 2nd defendant for the 2011 Governorship Elections in Akwa Ibom State; and D

(b) the Questions for Determination as framed by the plaintiff and the Reliefs sought by him, vide his Amended Originating Summons relate to pre-primary election issues concerning the 150111 re-run AKS Governorship Election Primaries, issues which this honourable Court is not seized with subject-matter jurisdiction to entertain and/or adjudicate upon however; and F

(c) without regard to the preceding grounds, the plaintiffs remedies as distilled from the Reliefs in his Amended Originating Summons all lie against the 2nd defendant and not against the 1st defendant thereby vesting exclusive jurisdiction in this suit (assuming the Plaintiff had locus standi and the suit is justiciable however) in the State High Court and not the Federal High Court pursuant to sections 251 and 272 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). G

In a considered judgment delivered on the 14th day of September, 2012 the learned trial judge found that this case is on all fours with the facts in *PDP v. Sylva* (2012) 13 NWLR (Pt. 1316) p. 85 in that the appellant did not contest in the re-run primaries of PDP which fixed for 15/1/11. H

The learned trial judge then concluded as follows:

“Having found that the grievances of the plaintiff herein are purely political matter within the discretion of the 2nd defendant (i.e. the PDP), I hold that this court has no jurisdiction to entertain and adjudicate upon the case. The plaintiff’s case has no merit which
 B *deserved to be dismissed. The plaintiff’s suit is accordingly dismissed...”*

The reasoning of the learned trial judge was that the appellant did not have locus standi to sue. This finding did not go down well with the appellant. He filed an appeal. It was heard by Court of Appeal, Abuja Division. That court decided the issue of the locus standi
 C of the appellant to maintain the suit and invoked its powers under section 15 of the Court of Appeal Act to decide the substantive claims or main appeal. The judgment of the trial court on locus standi was upset by the Court of Appeal. Adumain, JCA and Akomolafe-Wilson, JCA read the majority judgment while Tur, JCA read the minority judgment. As regards the main appeal, there was unanimity in dismissing it. Both sides were dissatisfied with the judgment of the Court of Appeal. The appellant filed an appeal while the 2nd and 3rd respondents filed Preliminary Objections against the appeal, and
 D
 E filed cross-appeals.

At the hearing of this matter on the 4th day of February, 2015, counsel adopted their respective briefs.

Mr. Paul Erokoro, SAN, learned counsel for the appellant
 F adopted the following briefs.

1. Appellants brief deemed filed and served on the 17th day of June, 2014.
2. Appellants reply to 2nd respondents Preliminary Objection and reply on points of law to 2nd respondents brief deemed filed
 G and served on the 4th day of February, 2015.
3. Appellants reply to 3rd respondent Preliminary Objection and brief of argument deemed filed and served on the 4th day February, 2015.

4. Counter-Affidavit filed on the 27th day of January, 2015 in
 H opposition to 3rd respondents Preliminary Objection (dated 19/12/14).

He urged the court to dismiss the Preliminary Objection, allow the appeal and order that the appellant be sworn in as Governor of Akwa Ibom State.

Learned counsel for 1st respondent, Mr. A. Adedipe adopted the 1st respondents brief filed on the 24th day June, 2014. He informed us that the 1st respondent maintains its neutrality in this appeal.

Learned counsel for the 2nd respondent, Chief O. Oke, adopted the 2nd respondents brief, (containing arguments on his Preliminary Objection) and cross appellants brief both filed on the 6th day of August, 2014 and urged this court to dismiss the main appeal, uphold the Preliminary Objection and allow the cross appeal.

Learned counsel for the 3rd Respondent Mr. P. Usoro, SAN adopted his Notice of Preliminary Objection, filed on the 19th day of December, 2014, the 3rd respondent amended brief deemed filed and served on the 4th day of February, 2015, and cross-appellants reply brief deemed filed and served on the 4th day of February, 2015. He urged this court to uphold the Preliminary Objection. Dismiss the main appeal and allow the cross-appeal.

Finally, on the 14th day of October, 2014 learned counsel for the appellant/cross respondent filed the following briefs.

(a) Appellant/cross respondent's brief in answer to 2nd respondent/cross-appellant appeal.

(b) Appellant/cross respondent brief in answer to 3rd respondent/cross appellant's appeal.

(c) Preliminary Objection to 3rd respondent/cross appellant's appeal.

He urged the court to dismiss both cross-appeals.

This Court is to decide the following:

1. The Preliminary Objections filed by the 2nd and 3rd respondents

2. The judgment of the Court of Appeal

(a) Whether the appellant has locus standi to maintain his suit,

(b) Whether the Court of Appeal was correct to dismiss the main appeal.

3. The cross appeals, and the appellants preliminary objection to the 3rd respondent/cross appellants appeal.

PRELIMINARY OBJECTIONS

Learned counsel for the 2nd respondent and the learned counsel for the 3rd respondent filed Preliminary Objections which they argued in their briefs. Learned counsel for the 2nd respondent ob-

served that Grounds 1, 3, 4 and 5 are raised from issues resolved in favour of the appellant. He further observed that the issue of locus standi was resolved in his favour contending that the appellant cannot in law, appeal against a decision in his favour. Reliance was placed on *Mobil Producing (Nig.) Unlimited v. Monokpo* (2003) 18 NWLR B (Pt. 852) p. 346.

He submitted that issues 1 and 2 are mutually exclusive contending that by issue 1 the appellant maintained that the majority decision of the Court of Appeal resolved the issues of locus standi and jurisdiction of the court in favour of the appellant, and by issues C 2 learned counsel for the appellant wants this court to review the Court of Appeal's decision on locus standi and jurisdiction of the trial court with a view to reversing same. He submitted that the two positions are contradictory and irreconcilable.

D Concluding he urged this court to uphold this objection and strike out grounds 1, 3, 4 and 5 of the Notice of Appeal and issue 2 formulated therefrom.

By the 3rd respondents Preliminary Objection his learned counsel prayed for:

E 1. AN ORDER of this court dismissing and/or striking out this appeal on the ground that the appeal relates to the 2011 General Elections and is as at date wholly academic in nature and constitutes a waste of the court's precious judicial time.

F IN THE ALTERNATIVE

2. AN ORDER of this Honourable court dismissing and/or striking out Grounds 1, 2, 3, 4, 5 and 6 of the appellants amended Notice of Appeal, the said Grounds of Appeal being incompetent on the ground inter alia that the issues appealed against in those Grounds G were decided in favour of the appellant by the majority decision of the lower court.

3. AN ORDER of this Honourable court dismissing and/or striking out issues for determination numbers 1 and 2, distilled by the appellant in his briefs, the said issues being distilled from incompetent H Grounds of Appeal.

Learned counsel for the 3rd respondent observed that the Governorship Primary for the 2015 General Elections was held on 8/12/14 and the winner of that Primary for Akwa Ibom State has been announced. He further observed that the Governorship Elec-

tions would be conducted nationwide on 28/2/15 and the winner sworn in on 29/5/15. He submitted that this appeal has become an academic exercise as the 2011 re-run that the appellant that the appellant challenges by this appeal is literally overtaken by the 2015 General Elections. That signals the conclusion of the appellants term of office as Governor of Akwa Ibom State. B

On the alternative prayers he observed that issues in Grounds 1, 2, 3, 4, 5 and 6 in the amended Notice of Appeal were all decided in favour of the appellant in the majority decision submitting that a person cannot appeal against the majority decision that is in his favour. C Reliance was placed on *Ogunkunle & 2 Ors. v. Eternal Sacred Order of Cherubim and Seraphim & 14 Ors.* (2001) 12 NWLR (Pt. 727) p. 359.

In conclusion learned counsel urged this court to strike out issue 1 since it was distilled from competent Grounds (Grounds 7 D and 8) and incompetent Grounds (Grounds 2 and 6). He also urged this court to strike out issue 2 as it was distilled from incompetent Grounds 1, 3, 4 and 5. Reliance was placed on *Ekunola v. CBN & 1 other* (2013) 15 NWLR (Pt. 1377) p.224.

He urged this court to uphold his Preliminary Objection. On E the 2nd respondents Preliminary Objection learned counsel for the appellant observed that the Preliminary Objection has no merit. He argued that at the time appeal was filed only the leading judgment was available, contending that the grounds of appeal reflected the F decision contained in the leading judgment, but when the two supporting judgment later showed a different decision on the issue of locus of standi the appellant amended his Notice and Grounds of Appeal, by adding Grounds 7 and 8 to the Notice of Appeal, further G contending that the new grounds challenge the decision of the court not to hear the matter on the merits. On the two issues, learned counsel argued that issue 2 is argued in the alternative to issues 1 and that irreconcilable and contradictory arguments are allowed if the arguments are in the alternative. Reliance was placed on *Abiec v. Kano* (2013) 13 NWLR (Pt. 1370) p.69. H

He urged the court to dismiss the 2nd respondents Preliminary Objection. On the 3rd respondents Preliminary Objection, learned counsel for the appellant observed that the judgment of Tur, JCA was the judgment of the Court of Appeal on all issues, except

the singular issue of locus standi. He further observed that Grounds 2, 6, 7 and 8 from the appellants issues 1 was derived are all competent. Learned counsel argued that grounds 1, 3, 4 and 5 were premised on the decision of the leading judgment to deny the appellant locus standi to sue, contending that the said grounds cannot be argued alongside grounds 7 and 8 which are premised on the opposite position taken by the other two justices in their judgments. He submitted that issue 2 derived from the said grounds 1, 3, 4 and 5 were argued in the alternative. He urged this court to overrule the Preliminary objection. Order 2 Rule 9(1) of the Supreme Court Rules provides that a respondent intending to rely on a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice before the hearing. The purpose is to enable appellant respond properly and avoid taking him by surprise. It is now accepted practice for arguments on the preliminary objection to be included in the briefs as the 2nd and 3rd respondents have done.

A preliminary Objection is filed only when the respondent is satisfied that there is some fundamental defect in the appellant's process. The purpose is to terminate the hearing of the appeal usually on grounds of incompetence. Where there are minor defects in the appellant's process or there are some grounds that can sustain the appeal a preliminary objection should not be filed, a motion on Notice to strike out the incompetent grounds would be most appropriate. Once a preliminary objection succeeds the hearing of the appeal comes to an end. See *Odunukwu v. Ofomata & Anor* (2010) 12 SC (Pt. iii) p.101, *General Electric Coy v. Akande & 4 Ors* (2010) 12 SC (Pt. iv) p.75.

The preliminary objections are targeted at the Grounds of Appeal and the two issues distilled for determination of the appeal. The Grounds without their particulars in the Amended Notice and Grounds of Appeal are hereunder reproduced.

GROUND 1

The Court of Appeal erred in law when it held that the appellant had no locus standi to institute the suit at the trial court.

GROUND 2

The Court of Appeal erred in law when it held as follows:

"I hold that the learned Federal Judge acted within the ambit of section 87(1), (4)(b)(c) and 10 of the Electoral Act, 2010 as

amended to decline jurisdiction. However, I set aside the order of the lower court dismissing the Originating Summons. I however dismiss this appeal as lacking in merit."

GROUND 3

The Court of Appeal erred in Law when it held that:

"Furthermore, at page 2 paragraph 2.14 of the appellant's brief on 20th March, 2013 by Alhaji Tasun (sic) Sanusi, SAN the learned silk appearing for the appellant stated as follows:

"1.14. It is instructive and pertinent to point and that the plaintiff/appellant was duly screened and cleared for the Primary Election of 9th January, 2011. The provisional clearance certificate of the appellant among other relevant documents is at page 1074 of the record of proceedings."

The word provisional means "...able to be changed in the future." See Longman Dictionary of Contemporary English page 1320. In Oxford Advanced Learners Dictionary, 7th edition, page 1170 the word is defined as "1. arranged for the present time only and likely to be changed in the future... 2. arranged but not yet definite..." in legal parlance the word means temporary... conditional..." See Black Law Dictionary, 9th edition page 1345. From these dictionary definitions it means that the purchase of the relevant documents, screening and clearing of the appellant, etc, was only provisional. It was arranged for the primaries held on 9th January, 2011. The arrangement could be changed in the future since it was temporary but not definite. Therefore the party hierarchy could change their mind after the primaries of 9th January, 2011 such that the appellant would not be notified but excluded from the primaries of 9th January, 2011 for which he was screened and cleared. This can happen on or before the re-run of 15th January, 2011.

GROUND 4

Having found as follows:

"The appellant deposed to these facts in a 65 paragraph affidavit in support of the Amended Originating Summons of 7th February, 2012 (page 1059-1068) vol. 2 of the printed record) relevant paragraph of which I hereby reproduce.

4. That sometimes in 2009 I decided to contest the 2011 gen-

eral elections for the position of the Governor of Akwa Ibom State.

5. That on the 25 of November, 2011 I bought the Expression of interest as well as nomination forms to contest Governorship sponsorship in Akwa Ibom State Chapter of Peoples Democratic Party.

6. That now shown to me and marked exhibits “B” and “C” respectively are copies of the aforementioned forms which I duly completed and submitted, together with all requested supporting documentations.

7. That after having satisfied all procedural requirements as set out in the Electoral Guidelines for the primary election 2010 of the Peoples Democratic Party hereinafter referred to as (EGPE), I was accordingly issued with a provisional clearance certificate number 0000238 dated 8th January, 2011 in confirmation of any eligibility to contest the Governorship primary.

8. That now shown to me and marked exhibit “D” is a copy of the provisional clearance certificate.”

Having accepted the provisional certificate of clearance (exhibit “D”) (see vol. 2 page 1074 of the records of appeal) it no longer lies in the mouth of the appellant that between 9th January, 2011 to 15th January, 2011 things could not have changed. The appellant could be excluded or refused participation at the re-run primaries of 15th January, 2011. That is purely an internal or domestic affair of the party. What the party hierarchy could not do is for the name of the aspirant with the highest number of votes at the end of the primaries whose name was forwarded to INEC as the winner of the primaries and the candidate of the party to be withdrawn without verifiable or cogent reasons.

5
G GROUNDS

Having found as a fact that the appellant was cleared to contest and that he did contest the primaries of 9th January, 2011, which were later annulled and a re-run held, the Court of Appeal erred in law in holding that the appellant was not a contestant at the re-run primaries of 15th January, 2011.

6
H GROUND

The learned Justices of the Court of Appeal erred in law when they thus:

“Counsel argued that the Justice of the case would require

that this court invoke the provisions of section 15 of the Court of Appeal Act, 2004 that determine the Originating Summons but not to remit it to another court for retrial.

Having heard argument on the Preliminary Objection I am of the humble opinion that no authority was cited by the learned counsel to the appellant that the relief set out in the notice of appeal can be elevated to become an issue for determination. Issues for determination are distilled from the grounds of appeal.

GROUND 7

The learned Justices of the Court of Appeal erred in law and occasioned a miscarriage of justice when they failed to properly consider the appellant's originating summons on the merits and failed to pronounce on all reliefs claimed.

GROUND 8

As two out of the three justices of the Court of Appeal held that the trial court was wrong in holding that the appellant was not a candidate at the re-run primaries of 15th January, 2011 and also wrong in holding that the appellant had not locus standi to sue, the Court of Appeal ought to have allowed the appellants appeal and declared him the candidate of the 2nd respondent at the Governorship election of 26th April, 2011 April 2011 in Akwa Ibom State.

The two issues for determination formulated from the eight grounds above by the appellant are:

1. As two out of the three justices who heard the appeal held that the trial court was wrong in holding that the appellant had no locus standi to institute the suit, should the Court of Appeal not have allowed the appeal and declared the appellant the candidate of the PDP at the Governorship election in Akwa Ibom State, which held on April 26th, 2011?

2. Having regard to sections 87(9), (10), and 156 of the Electoral Act, was the appellant not a candidate at the Governorship primary election of the 2nd respondent, held on the 15th of January, 2011 for the Akwa Ibom State Governorship Election of April, 2011?

The trial court found that the appellant had no locus standi to maintain/prosecute the suit and dismissed it. The Court of Appeal by a majority of two, (Adumein, JCA, Akomolafe-Wilson, JCA) to one, Tur, JCA dissenting upset the decision of the trial court and held that the appellant had locus standi (the only issue decided by the trial

court). Relying on section 15 of the Court of Appeal Act the appeal was dismissed. Put in another way there was only one issue before the trial court, and that was whether the appellant had locus standi. The trial court found that the appellant did not have locus standi. On appeal the Court of Appeal considered two issues.

- B
1. Whether the appellant had locus standi;
 2. The merits of the appellant's claims.

Tur, JCA agreed with the learned trial judge that the appellant did not have locus standi while Adumein, JCA and Akomolafe-Wilson, JCA were of the view that the appellant had locus standi. There was unanimity that the appellant's claims be dismissed. The appeal was dismissed accordingly.

The issues raised for determination in both Preliminary Objections are:

- D
1. Whether the appellant's grounds of appeal 1, 2, 3, 4, 5 and 6 are competent.
 2. Whether the two issues formulated by the appellant are competent.
 3. Whether this appeal is an academic exercise.

E

A Notice of Appeal is the Originating process on which an appeal is based, so an appeal would collapse if the Notice of Appeal is defective. See *Thor Ltd v. First City Monument Bank (2002) 2 SC (Pt. i) p.138*, *Ebokani v. Ekwenibe & Sons Trading Co. Ltd (1999) 7 SC (Pt. 1) p.39*.

F

If a Notice of Appeal has no ground/s of appeal or all the grounds are incompetent, the defect cannot be cured by amendment. Such a Notice of Appeal is incompetent and incurably bad. See *Global Transport Occanic Co. S.A. & Anor v. Fixe Enterprises Nig. Ltd (2001) 2 SC p.154*.

A notice of Appeal is competent and valid if it contains only one valid ground of appeal. See Section 233 (2)(a) of the Constitution. *Erisi & Ors v. Idika & Ors (1987) 3 NWLR (Pt. 66) p. 503*.

H

Grounds of Appeal must attack the ratio decidendi of the judgment appealed against, and an issue for determination will not be struck out if it relates to a ground of appeal. An appellant cannot appeal against a judgment that is in his favour and neither can he appeal against minority judgment.

He can only appeal against a judgment that is against him/his

interest.

Ratio decidendi means; What was decided.

Ground 1, 3, 4 and 5 are on issues resolved in favour of the appellant. They challenge or attack the majority decision of the Court of Appeal to the effect that the appellant had locus standi to institute the action in the trial court and that the trial court had jurisdiction to entertain the appellants pre-election case. The said grounds once again are on issues in favour of the appellant. Grounds of appeal in favour of the appellant are incompetent and are to be struck out. They are struck out accordingly.

Issue 2 was formulated from grounds 1, 3, 4 and 5.

Issue 2 is also incompetent since it was formulated from incompetent grounds of appeal. Issues 2 grounds 1, 3, 4 and 5 are hereby struck out.

Issue 1 was formulated from grounds 2, 6, 7 and 8. Grounds 2, 6, 7 and 8 attacks the unanimous decision of the Court of Appeal which dismissed the appellants claims.

Issue 1 raises the point that rather than dismiss the appellants claims the Court of Appeal ought to have allowed the appeal and declare the appellant the candidate of the PDP at the Governorship election which held on 26/4/11 since the majority decision of the Court of Appeal held that the appellant had locus standi. Grounds 2, 6, 7 and 8 are competent, so also is issue 1.

Courts should not engage in academic issues/exercise. They should spend judicial time resolving live issues. A court is never the proper forum for academic exercise. Academic issues lead nowhere, they only satisfy counsel that he has resolved a trivial issue or no issue at all but with great expense to the litigant and exhausting the energy of judicial officers. The tenure of the Governor of Akwa Ibom State comes to an end on 29/5/15. Any proceeding contesting the eligibility of the Governor to remain in office must be brought, heard and decided before 29/5/15. An action brought after 29/5/15 becomes an academic exercise if the court decides to hear it as there would be nothing to decide after the tenure has expired. Since this appeal was heard and decided before 29/5/15 it is not an academic exercise.

Preliminary Objection is overruled.

MAIN APPEAL

Grounds 2, 6, 7 and 8 easily sustain the main appeal from which learned counsel for the appellant formulated a sole issue. It reads:

1. As two out of the three justices who heard the appeal held
 B that the trial court was wrong in holding that the appellant has no
 locus standi to institute the suit, should the Court of Appeal not have
 allowed the appeal and declared the appellant the candidate of the
 PDP at the Governorship election in Akwa Ibom State, which held
 C on April 26th, 2011?

Learned counsel for the 1st respondent said in his brief that he
 adopts the issues raised by the parties to the appeal, but all that he
 goes on to say in his eight page brief is that the 1st respondent must
 remain an unbiased umpire on issues on who is a party's candidate,
 D and as he put it, the 1st respondent will therefore not make a foray
 into the disputes between the parties. I am in the circumstances satis-
 fied that no issues were formulated for the 1st respondent neither did
 his counsel adopt the issues formulated by the appellant.

Learned counsel for the 2nd respondent adopted the two is-
 E sues formulated by the appellant.

Learned counsel for the 3rd respondent formulated two issues
 for determination. They are:

1. Was the appellant vested with locus standi to challenge the
 F re-run primary in the terms of section 87(9) of the Electoral Act,
 2010 (as amended) and was the trial court seized with jurisdiction to
 entertain the appellant's suit?

2. Was the lower court, in any case, right in dismissing the
 G appellant's substantive suit before the trial court pursuant to section
 15 of the Court of Appeal Act?

An Appeal Court has the power to adopt the issues formulated
 by the appellant or the respondent, or even formulate its own issues.
 The overriding consideration in the formulation of issues is for the
 court to rely on issues already formulated or its own issues (if and
 H when formulated) that would determine the real grievance in the
 appeal. An appeal court should be slow to reject the appellant's is-
 sues. Once the appellant's issue/s relates to even a single ground of
 appeal, is simple, and direct to the point and clearly reveals the real
 grievance of the appellant it should be adopted by the appeal court

for determining the appeal. The grievance of the appellant from his sole surviving issue is that since the Court of Appeal decided that he has locus standi the appellant's claims should have been granted and the appellant declared the candidate of the PDP at the Governorship election in Akwa Ibom State, which held on April 26th, 2011.

In view of the above I shall consider the sole surviving issue B formulated by the appellant in resolving this appeal. It reads:

"As two out of the three Justices who heard the appeal held that the trial court was wrong in holding that the appellant has no locus standi to institute the suit, should the Court of Appeal not have C allowed the appeal and declared the appellant the candidate of the PDP at the Governorship election in Akwa Ibom State, which held on April 26th, 2011".

Learned counsel for the appellant observed that the Court of Appeal by a majority of 2 to 1 decided that the appellant was a candidate and contestant at the PDP primaries held on 15/1/11, and so had the locus standi to sue, and that the trial court had jurisdiction to hear the case. He submitter that the Court of Appeal ought to have allowed the appeal as a necessary corollary of its findings that the trial court was wrong when it dismissed the suit without a hearing on the merits contending that the Court of Appeal failed to pronounce on every claim before it including the alternative claims. Reliance was placed on G.K.F.I. Nig. v. Nitel Plc (2009) 13 NWLR (Pt. 1164) p.344, Newbreed v. Eromosele (2009) 5 NWLR (Pt. 974) p. 499.

He urged this court to resolve this issue in favour of the appellant, declare the appellant the winner of the January 15th, 2011 re-run Akwa Ibom primary election or grant all the alternative claims. F

Learned counsel for the 2nd respondent observed that Adumein, JCA found after examining the appellants reliefs and depositions that the appellant is blowing hot and cold in one and same breath, further observing that parties are precluded from doing so. He concluded that the appellants claims were frivolous, and totally lacking in merit. Learned counsel for the 2nd respondent similar observations on the judgment of Akomolafe-Wilson, JCA and observed that the appellant has failed to show any provision of statute or case law to support his contention that he is entitled to his claims because the trial court wrongly declined jurisdiction. Concluding learned counsel contended that the Court of Appeal was right to find that the H

appellants claim lacks merit and dismissed it.

Learned counsel for the 3rd Respondent observed that in the majority judgment it was correctly found that the appellant had presented conflicting claims in his originating process and that made the appellant undeserving of the courts judgment. He urged us to dismiss the appeal as frivolous and lacking in substance.

Inherent in the sole surviving issues formulated by the appellant are the following posers.

(a) The Court of Appeal ought to have granted the appellants claims since it found that he had locus standi.

(b) The Court of Appeal was wrong not to have considered all of the appellants claims before dismissing the appeal.

(a) Locus standi simply means that the appellant (plaintiff) has shown to the satisfaction of the court sufficient interest in the suit, and is entitled to be heard. The success or failure of the suit has nothing to do with the presence of locus standi. After locus standi is established in the appellant's (plaintiff) favour the onus is on him to establish his case on the preponderance of evidence. The Court of Appeal was unable to grant the appellant's claims because the appellant failed woefully to establish his case on the preponderance of evidence as required by the law.

(b) Was the Court of Appeal wrong not to have considered all the appellants claims?

Before the Court of Appeal dismissed the appeal after invoking its powers under section 15 of the Court of Appeal Act, 2007, Adumein, JCA said:

"A community reading of the appellant's originating summons shows however, that the appellant's case is grossly incongruous and it is incapable of success. This is so because, on the one hand the appellant claimed that he did not participate in the re-run primary election held on 15/1/11, which on the other hand he claimed to have scored the highest votes at the re-run primary election and should be declared the winner of the said re-run primary election."

His lordship examined the appellant's affidavit in support of his Originating Summons, his reliefs and concluded that the appellant:

"...Is blowing hot and cold in one and the same breath and parties to a law suit are precluded from doing so..."

Holding an identical view, Akomolafe-Wilson, JCA said:

“...However the appellant has not been consistent with his case before the court. On one hand he claimed he did not participate in the re-run primary election, while on the other hand he claimed to have scored the highest votes. It is established that a party will not be allowed to be inconsistent in the presentation of his case in court.” B

And with that His lordship dismissed the appellant appeal.

It amounts to inverse reasoning for a party who says he scored the highest number of votes in a primary election, he says never participated in to expect a court to consider his claims after he has taken such a stance. Furthermore an examination of the appellant’s amended originating summons reveals irreconcilable pleadings. Counsel is allowed to urge the semblance of the truth or what may eventually turn out to be an inconsistent and irreconcilable case, but we as judges should at all times pursue the truth. The stance taken by the appellant makes further consideration of his claims a worthless exercise. The unanimous decision of the Court of Appeal dismissing the appellant’s claims for lacking in merit is correct and unassailable. C D E

It is only someone who operates in the spirit world that can win an election without participating in the election. I must remind learned counsel for the appellant that judges are God’s forever representatives on earth for resolving mundane problems. They do not operate in the spirit world. They are mortal and would forever remain so in the discharge of their judicial duties. The appeal is hereby dismissed. F

CROSS APPEALS

PRELIMINARY OBJECTION G

Learned counsel for the 2nd respondent and 3rd respondent filed cross-appeals. Learned counsel for the appellant filed a preliminary objection to the 3rd respondents/cross-appellants brief on two grounds

1. The brief was filed out of time. H
2. The brief was not signed by Paul Usoro, SAN.

I read learned counsel for the appellants submissions in support of his preliminary objection and I am satisfied that his objection can’t be sustained because on the 4th of February, 2015 when this

appeal was heard, learned counsel for the 3rd respondent/cross-appellant moved an application filed on 22/12/14. The application was granted without opposition from counsel. The application was for the 3rd respondent to amend his brief to incorporate arguments on the preliminary objection, cross-appellant brief and 3rd respondents brief. The entire process was granted and deemed properly filed and served on 4/2/15. The 3rd respondent cross-appellants brief was deemed duly filed and served on 4/2/15. The said process was filed within time. It was not filed out of time.

In SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt. 1252) p. 317.

I explained how processes filed in court are to be signed. I said.

(a) First, the signature of counsel, which may be any contraption;

(b) Secondly, the name of counsel clearly written;

(c) Thirdly, who counsel represents.

(d) Fourthly, name and address of legal firm.

There was complete compliance with the above by learned counsel for the 3rd respondent/cross-appellant in signing his brief.

The preliminary objection is hereby dismissed.

Learned counsel for the 2nd respondent/cross-appellant formulated three issues for determination. They are:

1. Considering the state of the law and the facts of this case was the lower court not in grave error to have held that the cross-respondent had requisite locus standi to challenge the validity of the primary election of 15th January, 2011 on the ground that he was screened and cleared as contestant for the nullified primary election on 9th January, 2011.

2. Whether the lower court was right when it failed or neglected to consider and pronounce on cross-appellants case that the grounds upon which the 15th January, 2011 primary election were being challenged are not justiceable, being pre-primary election matters.

3. Whether the lower court was not in error when it failed to limit itself to the claim of the cross-respondent in resolving the issue of locus standi and jurisdiction but relied on the content of the appellant's defence.

Two issues were formulated by learned counsel for the 3rd

respondent/cross appellant. They are:

1. Was the lower court right in not resolving the issue of whether the appellant's substantive complaints before the trial court constituted pre-primary issues over which the trial court lacked jurisdiction to adjudicate upon? As an adjunct to that question is this Honourable Court well placed to determine the said issue pursuant to section 22 B of the Supreme Court Act.

2. Was the lower court right in holding that the appellant had locus standi to complain against the re-run primary before the trial court, not having participated, by his own admission, in the said re-run primary. C

Learned counsel for the appellant/cross-respondent adopted the three issues formulated by learned counsel for the 2nd respondent/cross-appellant and the two issues formulated by the 3rd respondent/cross-appellant. D

I have examined the five issues formulated for determination of the cross-appeal and I am satisfied that the 3rd respondent/cross-appellants issue 2 would be considered for determining the cross-appeal. Issue 2 supra is concise simple and direct to the point. Both cross-appeals shall be taken together. E

The trial court held that the appellant did not have the requisite locus standi to institute his action. The Court of Appeal upset that finding and held by a majority of 2 to 1 that the appellant had locus standi to institute his action and the trial court had the jurisdiction to entertain the appellant's pre-election case. This cross-appeal is against that finding in the majority of the Court of Appeal. F

The sole issue for determination reads:

"Was the lower court right in holding that the appellant had locus standi to complain against the re-run primary before the trial court, not having participated, by his own admission in the said re-run primary"? G

Learned counsel for the 2nd respondent/cross-appellant observed that the appellant/cross-respondent who claimed not to have participated in the primary election of 15/1/11 had no standing to challenge the said primary election in the light of the provision of section 87(9) of the Electoral Act. Reliance was placed on several paragraphs of the affidavit in support of the amended originating summons and particularly paragraphs 26 and 30 supra. Sylva v. PDP H

(2012) 13 NWLR (Pt. 1316) p.85, Emenike v. PDP (2012) AFWLR (Pt. 640) p.1261.

Concluding he submitted that since the appellant/cross-respondent did not take part in the re-run primary election he is without locus standi to maintain his action to challenge the conduct or result of the re-run primaries. He urged this court to so hold.

Learned counsel for the 3rd respondent/cross-appellant observed that the appellant/cross-respondent not having participated in the re-run primary was not qualified as an aspirant pursuant to the said section 87(9) of the Electoral Act and therefore lacked the locus standi to complain against the re-run primary. Reliance was placed on *Sylva v. PDP & 2 Ors* (2012) 13 NWLR (Pt. 1315) p.85, *Lado v. CPC* (2011) 18 NWLR (Pt. 1279) p.689, *Emenike v. PDP & 3 Ors* (2012) 12 NWLR (Pt. 1315) p.556.

He urged this court to resolve this issue in favour of the 3rd respondent/cross-appellant.

Learned counsel for the appellant/cross-respondent observed that the Court of Appeal was correct when it held that the appellant/cross-respondent had the locus standi to sue.

Concluding he submitted that the facts in this case are different from the facts in *Sylva v. PDP* (supra) and *Emenike v. PDP* (supra).

He urged the court to resolve this issue in the appellant/cross respondent favour.

Locus standi denotes the legal capacity to institute proceedings in court. It is a threshold issue that goes to the root of the suit. On no account should the merits of the case be considered before locus standi is decided. Locus standi affects the jurisdiction of the court. Consequently if the plaintiff does not have locus standi to institute the suit the court would have no jurisdiction to entertain the suit. Usually it is the plaintiff that is questioned as to whether he has locus standi. See: Nurses Association v. A.G. (1981) 11-12 SC p.1, Thomas v. Olufosoye (1989) 1 NWLR (Pt. 18) p.669, Pacers Multi-Dynamics Ltd v. MVD Dancing Sisters & Anor (2012) 1 SC (Pt. 1) p.75.

Does the appellant have locus standi?

The majority decision of the Court of Appeal is that the appellant has locus standi. The court said:

“The logical conclusion that can be deduced from the circum-

stances of this case, clearly, is that even though primary election of 9th January, 2011 was nullified only the results were nullified while the process that led to the nomination of candidates was left intact. I am therefore of the humble view that those who participated in the primaries and cleared for the primary election of 9th January, 2011 were automatically participants and ipso facto aspirant for the re-run of the primary election. The appellant therefore had the locus standi to challenge the conduct of the election.” B

The appellant amended originating summons questions the conduct of the re-run PDP primaries held on 15/1/11.

Who can question conduct of primaries? Section 87(9) of the Electoral Act answer the question. It reads: C

“87(9) Notwithstanding the provisions of this 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.”

This court has interpreted the above section in recent decisions. E

In Sylva & 2 Ors v. PDP (2012) 13 NWLR (Pt. 1316) p.85

I said that:

“...Section 87(9) of the Electoral Act confers jurisdiction on the court to hear complaints from a candidate who participated at his party’s primaries and complains about the conduct of the primaries...” F

In Lado v. CPC (2011) 18 NWLR (Pt. 1279) p.689, Onnoghen, JSC said that:

“...section 87 of the Electoral Act, 2010, as amended deals G with the procedure needed for the nomination of candidate by a Political Party for any election and specifically provided a remedy for an aggrieved aspirant who participated at the party primaries which produced the winner by the highest number of votes.”

Also in Emenike v. PDP & 3 Ors. (2012) 12 NWLR (Pt. 1315) H p. 556, Fabiyi, JSC said:

“...that for a complaint to come within the narrow compass of sections 87(4) (6) and 87(9) of the Electoral Act and be cognizable by a court the aspirant must show clearly and without any equivoca-

tion that the National Executive Committee of the Political Party conducted a primary election in which he was an aspirant and that the primary election was conducted in breach of specified provisions of the Electoral Act/Electoral Guidelines.”

B Can the appellant benefit from section 87(9) or did the appellant participate in the re-run of the PDP held on 15/1/11.

In his affidavit filed in support of his amended originating summons the appellant deposed in paragraphs 26 and 30 as follows:

C *“26. That in response, I informed Mr. Akpabio Udo Ukpa that I was not aware and did not participate in the re-run election.*

30. That because of their refusal to inform me, I could not attend the re-run neither did any of my supporters, as we became aware after it had been done.”

D ***An admission, clearly and unequivocally made is the best evidence against the person making it. Paragraphs 26 and 30 are conclusive evidence that the appellant did not participate in the re-run primaries conducted by PDP on 15th January, 2011. They are clear admissions by the appellant. Since the appellant did not participate in the re-run primaries there was***
 E ***no way he could complain about the conduct of the primaries, and so had no locus standi to institute an action as provided by section 87(9) of the Electoral Act. Put in another way, before a candidate for the primaries can have the locus standi to***
 F ***sue on the conduct of the primaries he must be screened, cleared by his political party and participate at the said primaries. Anything short of that the candidate who did not participate in the primaries could conveniently be classified as a meddlesome interloper with no real interest in the primaries.***
 G ***The Court of Appeal to my mind was wrong. The appellant has no locus standi to institute this suit because he did not participate in the re-run primaries.***

H Notwithstanding his irreconcilable pleadings and his outlandish claims the appellant remains doggedly resolute, and undeterred in proceeding with this appeal which is dismally devoid of any merit whatsoever. The appeal is dismissed with no order on costs. The cross appeal is allowed.

The 3rd Respondent remains the authentic candidate of the 2nd Respondent for the 2011 Governorship election.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the main appeal deserves an order of dismissal while the cross-appeals should be allowed. B

The facts of the matter have been stated in the lead judgment. I am at one with the stance taken with respect to the preliminary objections taken on behalf of the 2nd and 3rd respondents with respect to the main appeal. C

As extant in the records, Adumein and Akomolafe-Wilson, JJCA found that the appellant blew hot and cold as he was not consistent with his case before the court. On one hand, he claimed that he did not participate in the re-run primary election of 15th January, 2011. On the other hand he claimed to have scored the highest votes and should be declared the winner. D

The stance of the appellant goes against the dictates of logic in the extreme. It goes without saying that a party should not be inconsistent in the presentation of his case in court. No reasonable court can do any thing to assist such a slippery claimant. Refer to *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248. E

The main appeal has no chance, however remote, for success. It was badly handled. The appellant who said he did not participate in the re-run was given an unwarranted false hope which radiated in his feigned imagination that he should even be declared winner of the April, 2011 Gubernatorial election of Akwa Ibom State. It is often said that ‘wonders will never end. F

Without any shred of hesitation, the main appeal is hereby dismissed. G

With respect to the cross-appeals, the real determinant issue is whether the appellant/cross-respondent who admitted that he did not physically participate in the re-run primary election of 15/1/2011 has the requisite locus standi to complain in respect of same.

Let me make some remarks on the provision of section 87(9) of the Electoral Act, 2010 (as amended). It is an aggrieved aspirant who physically participated in a primary election conducted by the National Executive Committee of his party that is imbued with locus standi to raise a finger of complaint. See: *Peoples Democratic Party v.* H

Sylva & 2 Others (2012) 13 NWLR (Pt. 1316) 85; Lado v. C.P.C. (2011) 18 NWLR (Pt. 1279) 689.

In short, the law provides that a candidate with the highest votes cast at a primary election organized by the National Executive committee of the 2nd Respondent to the knowledge of the 1st respondent can approach the court for redress if he is excluded by the party without a verifiable reason. Before a candidate can lay claim to have scored the highest votes at a primary election, he must have physically participated in the process.

The above principle as stated in *Emenike v. Peoples Democratic Party & 3 Ors.* (2012) 12 NWLR (Pt. 1315) 556 at 591 has become entrenched and reiterated severally by this court. The appellant/cross-respondent admitted that he did not participate in the stated primary. He took conscious decision not to participate in the re-run primary and advertised same in writing. He is not an aspirant in terms of Section 87(9) of the Electoral Act. He is not imbued howsoever with locus standi to challenge the said primary.

For the above stated reason and the fuller ones set out in the lead judgment, I too feel that the cross-appeals are meritorious and should be allowed. I order accordingly.

I abide by the order on costs as contained in the lead judgment of my learned brother.

F

MUHAMMAD JSC

I have read in draft the very lucid and comprehensive lead judgment of my learned brother Rhodes-Vivour JSC. I adopt the judgment as mine in dismissing the main appeal and allowing the Cross-Appeal. I abide by the consequential orders made in the lead judgment including the order on costs.

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Rhodes-Vivour (JSC) and I agree that while the appeal lacks merit, and is dismissed, the cross appeal is allowed.

Briefly and for purpose of emphasis, I wish to state as unfortunate that the matter at hand has to do with the 2011 general election

which has long been gone. In principle, it is a matter of common knowledge that time is closing on an end of an era and another election is giving way to a new dawn by ushering in a new beginning.

The appellant in the case at hand was dissatisfied with the re-run primary election conducted on 15th January, 2011 consequent upon which he took out an originating summons at the Federal High Court. It is pertinent to state also that in posing a number of questions for determination, the appellant sought for declarative and deductive reliefs thereon. In addition, he also sought for an order returning him as the winner of the said rescheduled primary election. Three further alternative reliefs were demanded by the appellant in the event of any eventuality. There were two issues raised before the Court of Appeal inclusive of the question as to whether or not the appellant possesses the *locus standi* to institute the claim and thus giving the court the jurisdiction which formed the central consideration before the trial court. In other words, if the plaintiff/appellant did not participate in the primary re-run election, what therefore is his stake other than being an interloper or an intruder? *Locus standi* is a pre-requisite status to instituting an action in the court of law; the absence, which will render any suit initiated as non effectual and or purported. See the case of *PDP v. Sylva* (2012) 13 NWLR (Pt. 1316) p. 85.

The only issue also before us relates to the same question of *locus standi* and whether the lower court ought to have considered the appellant's claims and granted them thereof.

On a community reading of the appellant's originating summons, the certainty of whether or not he was in fact a candidate in the re-run primary election held on 15/1/2011 is in question. This is bearing in mind that the only mandate giving the appellant the right of action was his participation in the re-run primary election. Section 87(9) of the Electoral Act is very apt.

The law is well settled that courts should not act on speculations and the same goes also to parties who are to state clearly the nature of their claims and positions. An ambiguous claim will only put the claimant at a disadvantage. The appellant is neither definitive nor clear cut on whether or not he participated in the primary election alleged.

The appellant is the only person imbued with the knowledge

of his case and cannot depend on any external intervener to come to his aid. The extent of the inconsistency contained in the appellant's claims is an indicator he is set out on a wild goose chase.

He is depending on luck in casting his net on many waters. This did not appear to favour his case in the circumstance. He was quickly identified by the lower court, which did not see any merit in the game played by the appellant. The decision arrived at by their Lordships of the lower court was very logical and sound. I do not see any reason why it should be upset. I hereby also endorse same.

In the result, and while agreeing with my learned brother Rhodes-Vivour, JSC, I also dismiss the appeal as lacking in merit and allow the cross appeal for the reasons and conclusion arrived thereat in the lead judgment. I further abide by the order made as to costs.

D

AKA'AH'S JSC

I read before now the draft of the judgment of my noble Lord, Rhodes-Vivour, JSC. He captured the very essence on which this appeal stands to be decided when he said:-

"It amounts to inverse reasoning for a party who says he scored the highest number of votes in a primary election he says he never participated in to expect a court to consider his claims after he has taken such a stance."

There is no way that a party who takes such a stand can win his case unless he was voted for in absentia which is not the case here.

In the primaries scheduled for 9th January, 2011 the appellant who was to participate but was excluded following the declaration that the 3rd respondent was the only candidate for the gubernatorial primaries of the PDP in Akwa Ibom State protested that decision in a written complaint to the Party Headquarters in Abuja on 11th January, 2011 to which he did not receive any acknowledgment.

However on 16th January, 2011, he received information from Mr. Akpabio Udo Ukpa, the chairman of his campaign organization in Akwa Ibom State that when the latter was listening to the morning news on the same date, there was a news item to the effect that a rerun of the primaries for Governorship position in Akwa Ibom State had taken place and the 3rd respondent was declared the winner.

This prompted the appellant to commence the proceedings by originating summons at the Federal High Court, Abuja on the same date, in Suit No. FHC/ABJ/CS/365/2011. An application to amend the originating summons was made and in paragraphs 25, 26 and 30 of the 65 paragraph affidavit he deposed to on 10th November, 2011 in support, he averred to the following facts:-

“25. That on 16th January, 2011, I was telephonically informed by Mr. Akpabio Udo Ukpá, the chairman of my campaign organization in Akwa Ibom State and I verily believe him as follows:

a. That he was listening to the morning news of Radio Nigeria on the 16th January, 2011 when he heard that there was a re-run primary election for Governorship ticket in Akwa Ibom State and that the 3rd Defendant herein was declared winner.

b. That he wanted to know if I was aware of this rerun primary election and if I had participated.

26. That in response, I informed Mr. Akpabio Udo Ukpá that I was not aware and did not participate in the rerun election as I was not notified neither were my supporters.

30. That because of their refusal to inform me, I could not attend the rerun neither did any of my supporters, as we became aware after it had been done.”

He was clearly excluded from the re-run primaries. The Party has a right to exclude a candidate from participating in primaries even after he has been screened and cleared to contest the primaries and the candidate so excluded has no legal remedy against the action taken by the Party. See: PDP v. Sylva (2012) 13 NWLR (Pt. 1316) 85. The minority decision of Tur, JCA which agreed with the decision of the trial court that the appellant lacked the locus standi to institute the action is right since he did not participate in the re-run he cannot question the conduct or result of the re-run. Consequently the main appeal fails and it is dismissed while the cross-appeals of 2nd and 3rd respondents have merit and they are allowed accordingly. No order on costs is made.