

SUPREME COURT OF NIGERIA
FRIDAY 27TH MARCH, 2015. SC. SC.713/2013
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
M. U. PETER-ODILI, M. D. MUHAMMAD,
J. I. OKORO, JJSC

- | | |
|-----------------------------------|-------------------|
| 1. VIVIAN CLEMS AKPAMGBO-OKADIGBO | |
| 2. OBINNA EMENAKA | |
| 3. ONYEKA PAULINUS | APPELLANTS |
| 4. REBECCA UDOJI | |
| 5. OLIBIE JOHN | |
| AND | |
| 1. EGBE THEO CHIDI & 16 ORS | |
| 18. INDEPENDENT NATIONAL | |
| ELECTORAL COMMISSION | RESPONDENTS |
| 19. PEOPLES DEMOCRATIC PARTY | |

ELECTIONS - Pre election - Jurisdiction - Where there is complaint about conduct of primaries - Court can by Electoral Act s. 87(9) - Examine if the election complied with the Act and constitution of the political party (H1)

DOCUMENTS - Amendment - Commencement - Amendment takes effect not from the date it is ordered by court - But from the date of the original document (H2)

ELECTIONS - Fair hearing - Breach - Reliefs granted to 1st to 17th respondents in absence of appellants - Is in breach of right to fair hearing of the latter - Hence the proceedings being perverse is set aside (H3)

COURTS - Parties - Joinder of - Is ordered where the party is aggrieved - To avoid multiplicity of suits - Completely deal with the suit - Ensure fair hearing and to avoid loss of jurisdiction (H4)

CONSTITUTIONAL LAW - Constitution - Supremacy of - With regard to joinder of appellants in the matter - 1999 Constitution s. 1(1)(3) prevails over FHC Rules O. 9 r. 14(1) (H5)

APPEALS - Concurrent findings - Fair hearing - Lower courts findings that affected appellants' right to fair hearing are perverse - Thus the decisions cannot persist and are set aside (H6)

FACTS

Before the Federal High Court Abuja, plaintiffs/1st – 17th respondents brought suit No. FHC/ABJ/CS/199/2011 against 1st and 2nd defendants/18th and 19th respondents via originating summons, claiming inter alia for a declaration that 1st – 17th respondents are the validly nominated candidates of 19th respondent (PDP) for the April 2011 general elections into the Anambra State House of Assembly for the constituencies listed against their various names. 1st – 17th respondents contend that 18th respondent (INEC) illegally accepted the list from Enugu State Executive body of PDP bearing the names of appellants as the candidates for the aforementioned elections. 1st – 17th respondents further stated that the authentic list is the one from the National Executive body of the political party, bearing their names as the rightful candidates of the party for the elections.

In its judgment, the court granted reliefs 1, 2, 4, 5 and 6 to 1st – 17th respondents and non-suited them on reliefs 3, 7, 8, 9 and 10 on the ground that to do otherwise would imply ordering the cancellation of certificates of return issued by 18th respondent to any other candidates without having afforded them a hearing. Following the grant of the reliefs, five out of 1st – 17th respondents commenced suit No. FHC/ABJ/CS/574/2011 against 18th respondent and the Clerk of the State House of Assembly, seeking to enforce the judgment they obtained in suit No. FHC/ABJ/CS/199/2011. Upon being aware of the judgment in suit No. FHC/ABJ/CS/199/2011, appellants sought and obtained leave to appeal against the judgment, contending inter alia that they were not heard prior to the judgment against them. The Court of Appeal Abuja Division in its judgment dismissed the appeal on the ground that appellants have no locus in the matter. Being dissatisfied, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(i) Whether the trial Court and the Court of Appeal had jurisdiction to entertain/grant reliefs ‘6’ and ‘10’ introduced to the suit by further amendment 21 days after election; and if the answer is in the

negative, whether both the trial Court and the Court of Appeal had jurisdiction to entertain the whole Suit at that stage.

(ii) Whether the lower court endorsed the breach of the rule of audi alteram partem when it held in its judgment as follows:-

‘Since the appellants did not participate in the primary election conducted by the National Executive Committee of the PDP, they did not have any interest to protect in this suit that is questioning the powers of INEC to accept candidates of the parties emerging therefrom, the appellants have heard them. The appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the Court by affording a hearing or fair hearing.’

HELD (Unanimously allowing the appeal per MUHAMMAD JSC)

ELECTIONS - Pre election - Jurisdiction

1. Where, as in the instant case, a political party conducts its primaries and a dissatisfied contestant at the said primaries complains about the conduct of the primaries, the courts have jurisdiction by virtue of Section 87(9) of the 2010 Electoral Act as amended, to examine if the primaries were conducted in accordance with the Electoral Act, the Constitution and Guidelines of the party. The courts’ jurisdiction thereunder impliedly extends to ensuring that INEC, the 18th respondent herein, in the performance of its statutory duty in conducting elections, accepts and relies only on the true and lawful list of candidates nominated and sponsored by the various political parties for the elections. In the case of the P.D.P. the 19th respondent herein, it must be conceded to the 1st - 17th respondents, the list must be the one arising from the primaries conducted by the party’s National executive.

It follows from the principle enunciated by this Court in all these cases and more that 1st - 17th respondents’ further amended originating summons, notwithstanding the reliefs introduced some twenty one days subsequent to the general election, remains a pre-election cause which the trial court by virtue of Section 87(9) of the Electoral Act 2010 as amended, is

competent to determine. The competence of the trial court does not however extend to the claimant's 10th relief since on the basis of the same principle, the relief being in respect of an election that was yet to occur is incompetent. In the circumstance, appellant's 1st issue is accordingly resolved in
B favour of the respondents. (pp. 966 C/967 D)

DOCUMENTS - Amendment - Commencement

2. As rightly submitted by learned respondents' counsel, an
C amendment takes effect not from the date it is ordered by the court but from the date of the original document the order of the court amends. In the case at hand, therefore, the further amendment of the 1st - 17th respondents originating summons relates back to the date when the originating summons was
D first filed rather than the date the order of the court for the amendment sought was made. (p. 967 B)

Fair hearing - Breach

3. One outrightly agrees with learned appellants' counsel that
E it is trite that where a person's legal rights or obligations are challenged he must be given full opportunity of being heard before any adverse decision is taken against him with regard to such rights or obligations. This "Audi alteram partem" principle as guaranteed under Section 36(1) of the 1999 Consti-
F tution as amended remains a binding and indispensable requirement of justice applicable to and enforceable by all courts of law. The principle affords both sides to a dispute ample opportunity of presenting their case to enable the enthrone-
G ment of justice and fairness. In the application of the principle, a hearing is said to be fair and in compliance with the dictates of the Constitution when, inter-alia, all the parties to the disputes are given a hearing or an opportunity of a hearing. If one of the parties is refused or denied a hearing or the
H opportunity of being heard, the court's proceedings being perverse will be set aside on appeal.

Notwithstanding the fact of the trial court's refusal of the consequential reliefs, the lower court's affirmation of the trial court's grant of the most defining of the substantive re-

liefs, particularly the 6th, in their absence clearly stands in breach of the appellants' right to fair hearing as provided for under Section 36 of the 1999 Constitution. The grant of the very relief unmistakably determines who, between the appellants and the 1st -17th respondents, are the lawfully nominated and sponsored candidates of the P.D.P, the 19th respondent, INEC, the 18th respondent, must, by law, place on the ballot for the 26th April, 2011 Election. No matter how weak, unmeritorious or even unenforceable a party's case appears to be in an adverse party's claim, the party must be accorded a hearing or the opportunity of being heard regarding his seemingly unavailing case.

Section 36(1) of the 1999 Constitution as amended makes it a condition precedent that the appellants be heard or offered the opportunity of being heard in the matter otherwise the case not being initiated by due process the court is without the vires to hear and determine 1st - 17th respondents' claim. (pp. 967 G/970 E)

Parties - Joinder of

4. This Court in relation to the foregoing rules of court has persistently emphasized that a court on application or suo motu necessarily orders the joinder of a party where:-

(a) the party is aggrieved or likely to be aggrieved by the result of the litigation to the extent that he will be directly, legally or financially affected by the result of the litigation.

(b) to avoid multiplicity of suits arising from the same subject matter or res;

(c) to enable the court fully, completely and effectually deal with the suit in order to frustrate or stop a possible future litigation on the subject matter;

(d) to ensure that the principles of fair hearing under section 36 of the 1999 Constitution as amended and the natural justice rule of Audi Alteram Partem are not breached.

(e) to avoid loss of jurisdiction by the fact of non-joinder. (p. 969 E)

CONSTITUTIONAL LAW - Constitution - Supremacy of

5. Lastly, the 1999 Constitution which makes the joinder of the appellants in the suit mandatory remains the supreme law of this Country. By Section 1(1) & (3) of the very Constitution, it prevails over Order 9 rule 14(1) of the Federal High Court (Civil Procedure) Rules being an inferior legislation in the event of any conflict between the two. (p. 970 F)

APPEALS - Concurrent findings - Fair hearing

6. It is for all these reasons that one agrees with learned appellants' counsel that in the case at hand even though the two courts below are concurrent in their findings that the appellants do not deserve to be parties to the 1st - 17th respondents amended originating summons, the fact that the trial court's decision has affected their rights makes the concurrent findings which stand in breach of section 36(1) of the 1999 Constitution as amended perverse. The lower court's judgment cannot therefore persist. The decisions of the two courts below are hereby, in the result, set aside. (p. 970 H)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

1. Pre election matter – Meaning of

Now, a pre-election matter as the phrase connotes is a cause of action which predates and does not constitute any complaint against the actual conduct of an Election. In *Amaechi V. INEC & Ors* (2007) 18 NWLR (Pt.1066) 42, this Court has held that issues of nomination and sponsorship of party's candidates for an election precede the election and are therefore pre-election matters. (p. 966 A)

2. Statute not to be interpreted in isolation

Lest we forget, it is a cardinal principle of interpretation that provisions of a statute should not be read in isolation. To avoid violence, the provisions must be read together. Thus in ascertaining the true meaning of the provisions of a statute the statute must be read as a whole. (p. 969 B)

3. Court – Jurisdiction of

The jurisdiction of a validly constituted court, it must always be remembered, connotes the limits imposed upon its power to hear and determine issues between persons seeking to avail themselves of its processes inter-alia by reference to:-

- (a) the subject matter of the issue or
- (b) the persons between whom the issue is joined or
- (c) the kind of relief sought.

In the instant case, the jurisdiction of the trial court has been brought into focus in the way the court exercised its powers to hear and determine the 1st- 17th respondents claim particularly their 6th relief. The law remains that a court while duly constituted all the same loses its jurisdiction to proceed on the suit where:-

- (a) the action is not initiated by due process or
- (b) a condition precedent to the exercise of its jurisdiction has not been fulfilled. (p. 970 A)

REPRESENTATION

Paul Erokoro SAN with A.C. Ozioko Esq., Michael Ajara Esq. and Bright Odia, Esq.; For the Appellants
For the Respondents

CASES REFERRED TO

- Hassan v. Aliyu (2010) 17 NWLR (pt. 1223) 547
- Salim v. CPC (2013) 6 NWLR (pt. 1351) 501
- Emenike v. PDP (2010) NWLR (pt. 1315) 551
- Emeka v. Okadigbo (2012) 18 NWLR (pt. 1331) 55
- Okonta v. Phillips (2010) 18 NWLR (pt. 1225) 320
- Imegwu v. Asibelug (2012) 4 NWLR (pt. 1289) 119
- Oladeinde v. Oduwale (1982) NWLR 41
- Green v. Green (1987) 3 NWLR (pt. 61) 480
- Panalpina World Transport Ltd v. J.B. Olande (2010) NSQR 613
- Sapo v. Sunmonu (2010) 11 NWLR 380
- Ayorinde v. Oni (2000) 3 NWLR (pt. 649) 348
- Uzodinma v. Izunaso (No 2) (2011) 17 NWLR (pt. 122)
- Adewunmi v. AG Ekiti State (2002) 2 NWLR (pt. 751) 474
- Amaechi v. INEC (2007) 18 NWLR (pt. 1066) 42
- Lado v. CPC (2011) 12 SC (pt. 111) 113

STATUTES & RULES REFERRED TO

Electoral Act 2010, s. 87(9)(10)

Constitution of the Federal Republic of Nigeria 1999, ss. 1(1)(3), 36(1)

^B Federal High Court (Civil Procedure Rules), O. 9 r. 14(1)

LEAD JUDGMENT BY MUHAMMAD JSC

This is an appeal against the judgment of the Court of Appeal, Abuja Division, hereinafter referred to as the lower court, delivered on 8th November, 2013. The appellants had appealed to the court as interested parties against the judgment of the Federal High court sitting in Abuja, hereinafter referred to as the trial court, in suit No. FHC/ABJ/CS199/2011. The brief and undisputed facts that brought about the appeal are hereinunder supplied.

The 1st - 17th respondents were the plaintiffs at the trial court with the Independent National Electoral Commission (INEC) and the Peoples Democratic Party (P.D.P) being the 1st and 2nd defendants respectively.

^E By their originating summons filed on 14th February, 2011 as further amended, the plaintiffs sought of the trial court the determination of the following three questions:-

^F *“(i) Whether having regard to the constitution of the Peoples Democratic Party and her Electoral Guidelines, it is only the National Chairman and the National Secretary of the Peoples Democratic Party (PDP) who can make submission of names of the candidates that the Peoples Democratic Party (PDP) proposes to sponsor in an election and if so,*

^G *(ii) Whether the rejection of the names of the 1st - 17th Plaintiffs as submitted by the National Chairman and National Secretary of the party did not amount to disqualification of the said candidates from contesting the forthcoming April 2011 elections into the Anambra State House of Assembly and if so whether the defendants*
^H *have power to do so without affording the affected candidates any fair hearing or hearing at all.*

(iii) Whether the defendants have powers to reject or disqualify any candidate particularly the 1st to 17th Plaintiffs when no Court of competent jurisdiction had adjudged them ineligible or disqualified.”

On answering the foregoing questions, the plaintiffs urged the trial court to grant them certain declaratory and injunctive reliefs. Having sought and obtained leave of the trial court to further amend their originating summons, the plaintiffs introduced their 6th & 10th reliefs which are hereinunder reproduced for ease of reference:-

“6. A declaration that the Plaintiffs are the validly nominated candidates of PDP for the elections into the Anambra State House of Assembly for the constituencies listed against the plaintiffs names.

10. An Order of Court restraining the 1st Defendant from issuing certificates of return to any other person other than the 1st, 8th, 10th 14 and 16th plaintiffs the PDP having won the election in their respective constituencies or if a certificate of return had been issued to any other person other than the said 1st, 8th, 10th, 14th and 16th plaintiffs, an Order compelling the 1st Defendant to cancel the said certificate.”

It is to be stated for completeness that the further amended originating summons taken out by the 10th - 17th respondents, but for the 10th relief supra, is about who, between them and others, consequent upon the parallel primaries of 19th respondent herein, are their party's candidates in the April 2011 elections for the various constituency seats.

The 18th respondent, INEC, the plaintiffs assert, had inter-alia unlawfully accepted the lists of the names of the appellants from the Enugu State executive body rather than the list of the names of the 1st - 17th respondents names submitted to it by the National Executive body of the PD.P. as the party's candidates in the April 2011 elections.

In its judgment, the trial court granted reliefs 1, 2, 4, 5 and 6 to the plaintiffs and non-suited them on reliefs 3, 7, 8, 9 and 10 on the ground that to do otherwise would imply ordering the cancellation of certificates of return issued by the 1st defendant to “any other candidates” without having afforded them a hearing.

Sequel to the reliefs granted them in suit No. FHC/ABJ/CS/199/2011, five out of the plaintiffs instituted suit No. FHC/ABJ/CS/574/2011, again at the trial court, against INEC, the appellants and the Clerk of the Anambra State House of Assembly seeking to enforce the judgment they obtained in the earlier suit. The appellants became aware of suit No. FHC/ABJ/CS/199/2011 and the reliefs or-

dered against them in favour of the 1st - 17th plaintiffs therein on their being served the originating processes in respect of the subsequent suit No. FHC/ABJ/CS/57 4/2011.

Being dissatisfied, the appellants obtained leave of the trial court and appealed against the court's judgment in suit No. FHC/ABJ/CS/ B 199/2011 to the lower court. In dismissing the appeal, see page 2571 of Vol. 3 of the record of Appeal, the court held that the appellants who did not participate in the primary election conducted by the National Executive of the 1st respondent and having emerged from the illegal primaries conducted by the party's state executive, neither C have any interest nor right the enforcement of which would warrant their being heard by any court.

Still aggrieved, the appellants have further appealed to this Court on an amended Notice containing five grounds of Appeal. The D two issues distilled for the determination of the appeal in the appellants' brief of argument read:-

"(i) Whether the trial Court and the Court of Appeal had jurisdiction to entertain/grant reliefs '6' and '10' introduced to the suit by further amendment 21 days after election; and if the answer is in the E negative, whether both the trial Court and the Court of Appeal had jurisdiction to entertain the whole Suit at that stage. (This issue relates to grounds 1 and 2 of the Amended Notice of Appeal)

(ii) Whether the lower court endorsed the breach of the rule of F audi alteran partem when it held in its judgment as follows:-

'Since the appellants did not participate in the primary election conducted by the National Executive Committee of the PDP, they did not have any interest to protect in this suit that is questioning the powers of INEC to accept candidates of the parties emerging there- G from, the appellants have heard them. The appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the Court by affording a hearing or fair hearing.'

(This issue relates to grounds 3 and 4 of the Notice of Appeal)."

H The 1st - 8th and 9th - 10th respondents' identical issue for the determination of the appeal as contained in their respective briefs reads:-

"Whether the herein appellants were necessary parties to the suit as to warrant their being accorded fair hearing or hearing at all

particularly with respect to reliefs 1, 2, 4, 5 and 6.”

The not too dissimilar Issue formulated in the 11-14th respondents’ brief is:-

“Whether the court below was right when it held that the Appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the court by affording a hearing or fair hearing” B

The 15th - 17th respondents have adopted the issues formulated by the appellants as those that have arisen for the determination of the appeal.

The 18th respondent neither filed a brief nor proffered any argument for or against the appeal. It claims neutrality in the raging battle between the appellants and the 1st - 17th and 18th respondents. C

The two issues distilled in the 19th respondent’s brief of argument for the determination of the appeal read:- D

“(i) Whether the trial court had jurisdiction to entertain/grant reliefs ‘6’ and ‘10’ introduced to the suit by amendment 21 days after election.

(ii) Whether the lower court was not right when it held that the Appellants who are products of an illegal primary election had no right to be protected in a suit to compel INEC (Independent National Electoral Commission) to accept list of candidates submitted by the National Executive Committee of PDP.” E

At the hearing of the appeal, having identified their respective briefs, parties adopted and relied on them as arguments for or against the appeal. F

On their first issue, learned appellants’ counsel contends that Section 87 of the 2010 Electoral Act as amended only provides remedies for pre-election complaints. The introduction of the 6th and 10th reliefs with the leave of court to further amend their originating summons twenty one days after the 26th April, 2011 general election, it is argued, makes plaintiffs’ entire cause of action a post-election complaint which the trial court is bereft of jurisdiction to entertain. Relying on Hassan v. Aliyu (2010) 17 NWLR (Pt.1223) 547 at 604 and Salim v. CPC (2013) 6 NWLR (Pt 1351) 501, learned appellants’ counsel submits that the lower court’s affirmation of the decision of the trial court that proceeds without the necessary juris- G H

diction is legally untenable. He urges that the decisions of both courts be set aside.

On their 2nd issue, it is contended that the rules of natural justice which requires that a person be heard before a decision against him is delivered, are constitutionally guaranteed. Grounds 3 and 6 of the appellants' Notice of Appeal at the lower court, it is submitted, clearly raise the trial court's error in breach of appellants' right to fair hearing.

In spite of the trial court's observation that the appellants were not before it, the court all the same wrongly proceeded to decide the matter against them. The lower court, submits learned appellants' counsel, regrettably, ran into the same error when it chose to preempt what appellants' defence would have been if they had been joined.

The duty of the lower court in the determination of the appeal before it, contends learned appellants' counsel, is not to determine who the proper candidates of the 19th respondent the P.D.P. are between the appellants and the respondents. Rather, the court's task is to determine whether it is lawful for the trial court to hear and determine a suit and grant orders that affect the appellants who are not parties to the suit before that court.

The lower court, further argues learned appellant's counsel, wrongly applied the decisions of the Supreme Court in *Emenike v. P.D.P.* (2010) NWLR (Pt 1315) 551 at 602 and *Emeka v. Okadigbo* (2012) 18 NWLR (Pt.1331) 55 at 103. In the case at hand, it is submitted, only decisions of the apex in *Okonta v. Phillips* (2010) 18 NWLR (Pt.1225) 320 at 326 should inform the lower court's decision. Relying also on *Imegwu v. Asibelug* (2012) 4 NWLR (Pt 1289) 119 at 134, learned counsel concludes, the lower court's decision that breaches Section 36(1) of the 1999 Constitution and equally stands in conflict with the decisions of this Court must be set-aside. He urges that both issues be resolved in their favour and the appeal allowed.

All the respondents are one in their arguments in defence of the judgment of the lower court being appealed against. They contend that for the appellants to assert the denial of their right to fair hearing, they must establish that they are necessary parties to the suit. Until they establish their right to being joined in the suit in the

first place, appellants cannot insist that they be heard at all. The test whether or not the appellants are necessary parties is whether without them the suit could effectively be determined. The 18th respondent against whom the 1st - 17th respondents commenced suit No. FHC/ABJ/CS/199/2011, it is contended, did not contest the claim.

The amended originating summons, it is further argued, clearly show that the appellants neither participated in the primary election conducted by the National Executive of the 19th respondent nor were their names submitted to the 18th respondent by and as the former's candidates in the general election. Indeed, it is further submitted, 19th respondent's counter affidavit to 1st - 17th respondents' further amended originating summons at pages 565-566 of vol. 1 of the record of appeal clearly show that the 19th respondent had protested 18th respondent's acceptance of the list of appellants' names from the Anambra State Executive Committee of the 19th respondent. Relying on *Oladeinde & Anor v. Oduwale* (1982) NWLR 41, *Green v. Green* (1987) 3 NWLR (Pt 61) 480 and *Panalpina World Transport Ltd v. J.B. Olande & 3 Ors* (2010) NSQR 613. Learned counsel to the respondents insist that the lower court's affirmation of the trial court's grant of reliefs 1, 2, 4, 5 and 6 against the appellants remains extant. In any event, the non-joinder of the appellants to the suit by order 9 rule 14(1) of the Federal High Court (Civil Procedure Rules) as interpreted in *Sapo v. Sunmonu* (2010) 11 NWLR 380 and *Ayorinde v. Oni* (2000) 3 NWLR (Pt 649) 348 is an irregularity which does not render the trial court's proceedings a nullity.

The leave granted the 1st - 17th respondents to further amend their originating summons after the general election, it is also contended, does not make the suit different from the pre-election cause that it is. After all, learned respondents' counsel submit, an amendment duly made takes effect from the date of the original document. The further amendment, it is urged, does not make the decisions of this Court in *Hassn v. Aliyu* (supra), and *Salami v. CPC* (supra) applicable to the respondents' claim. Relying inter-alia on *Uzodinma v. Izunaso* (No 2) (2011) 17 NWLR (Pt 122) and *Adewunmi v. AG, Ekiti State* (2002) 2 NWLR (Pt 751) 474 at 506, learned counsel to the 1st - 8th, 9th - 10th, 11th - 14th, 15th - 17th and 19th respondents pray that the two issues be resolved against the appellants. Their appeal, too, they canvass, be dismissed.

Now, a pre-election matter as the phrase connotes is a cause of action which predates and does not constitute any complaint against the actual conduct of an Election. In *Amaechi V. INEC & Ors* (2007) 18 NWLR (Pt.1066) 42, this Court has held that issues of nomination and sponsorship of party's candidates for an election precede the election and are therefore pre-election matters.

A calm reflection at the 1st - 17th respondents' amended originating summons, their 10th relief discounted, clearly reveals that it primarily questions the nomination and sponsorship of the appellants as candidates of their party, the 19th respondent, for the 26th April, 2011 various constituency seats election. It as well protests INEC's, the 18th respondent's, unlawful acceptance of and reliance on the list of appellants names wrongly submitted to it by the State Executive Committee of the 19th respondent. ***Where, as in the instant case, a political party conducts its primaries and a dissatisfied contestant at the said primaries complains about the conduct of the primaries, the courts have jurisdiction by virtue of Section 87(9) of the 2010 Electoral Act as amended, to examine if the primaries were conducted in accordance with the Electoral Act, the Constitution and Guidelines of the party. The courts' jurisdiction thereunder impliedly extends to ensuring that INEC, the 18th respondent herein, in the performance of its statutory duty in conducting elections, accepts and relies only on the true and lawful list of candidates nominated and sponsored by the various political parties for the elections. In the case of the PD.P the 19th respondent herein, it must be conceded to the 1st - 17th respondents, the list must be the one arising from the primaries conducted by the party's National executive.*** See *Amaechi v. INEC & 2 Ors* (2008) 1 SCNJ 1; *Senator Julius Ali Ucha v. Dr. Emmanuel Onwe & 4 Ors* (2011) 1- 2 SC (Pt 1) 93; and *Lado & 42 Ors v. C.P.C & 53 Ors* (2011) 12 SC (Pt 111) 113.

Under their 1st issue, the appellants submit that the further amendment of 1st - 17th respondents' originating summons some twenty one days after the conduct of the 26th April, 2011 elections, makes the dispute between the parties a post-election dispute. Not being a pre-election dispute, the appellants contend, the lower courts lack the jurisdiction to enquire into and determine the suit. It cannot

be.

Learned counsel to the 1st - 17th respondents are right that the amendment effected to the originating summons following the leave sought and obtained from the trial court after the election in respect of which the court is, by the further amended originating summons, asked to pronounce who 19th respondent's lawful candidates are, does not convert the suit from the pre-election cause that it is to a post election cause the appellants assert it to be. ***As rightly submitted by learned respondents' counsel, an amendment takes effect not from the date it is ordered by the court but from the date of the original document the order of the court amends. In the case at hand, therefore, the further amendment of the 1st - 17th respondents originating summons relates back to the date when the originating summons was first filed rather than the date the order of the court for the amendment sought was made.*** See Mobil Oil v. IAL (2000) 4 SCNJ 124, Adegoke Adewumi & Anor v. A.G Ekiti State & 6 Ors (supra) and S.P.D.C. (Nig) Ltd v. Chief Tigbara Edamkue (2009) 6-7 SC 74.

It follows from the principle enunciated by this Court in all these cases and more that 1st - 17th respondents' further amended originating summons, notwithstanding the reliefs introduced some twenty one days subsequent to the general election, remains a pre-election cause which the trial court by virtue of Section 87(9) of the Electoral Act 2010 as amended, is competent to determine. The competence of the trial court does not however extend to the claimant's 10th relief since on the basis of the same principle, the relief being in respect of an election that was yet to occur is incompetent. In the circumstance, appellant's 1st issue is accordingly resolved in favour of the respondents.

Appellants' 2nd issue for the determination raises the core question in their appeal.

One outrightly agrees with learned appellants' counsel that it is trite that where a person's legal rights or obligations are challenged he must be given full opportunity of being heard before any adverse decision is taken against him with regard to such rights or obligations. This "Audi alteram partem" principle as guaranteed under Section 36(1) of the 1999 Consti-

**tution as amended remains a binding and indispensable requirement of justice applicable to and enforceable by all courts of law. The principle affords both sides to a dispute ample opportunity of presenting their case to enable the enthrone-
B
ment of justice and fairness. In the application of the principle, a hearing is said to be fair and in compliance with the dictates of the Constitution when, inter-alia, all the parties to the disputes are given a hearing or an opportunity of a hearing. If one of the parties is refused or denied a hearing or the
C
opportunity of being heard, the court's proceedings being perverse will be set aside on appeal.** See *Otajio v. Sunwonu* (1987) 2 NWLR (Pt 58) 587), *Aladetoyinbo v. Adewumi* (1990) 6 NWLR (Pt.154) 98 *Mohammed v. Olawunmi* (1990) 2 NWLR (Pt 133) 485 and *Olumesan v. Ogandepo* (1996) 2 NWLR (Pt 433) D 628.

In the case at hand, the 6th relief in the further amended originating summons granted the 1st - 17th respondent by the trial court, as affirmed by the lower court, is easily the most critical of the plaintiff's substantive reliefs. The entire suit hinges on this very relief. The other
E
reliefs the trial court refused, including the 10th incompetent relief, are either not as defining or are merely consequential to the substantive reliefs.

**Notwithstanding the fact of the trial court's refusal of
F
the consequential reliefs, the lower court's affirmation of the trial court's grant of the most defining of the substantive reliefs, particularly the 6th, in their absence clearly stands in breach of the appellants' right to fair hearing as provided for under Section 36 of the 1999 Constitution. The grant of the
G
very relief unmistakably determines who, between the appellants and the 1st -17th respondents, are the lawfully nominated and sponsored candidates of the P.D.P, the 19th respondent, INEC, the 18th respondent, must, by law, place on the ballot for the 26th April, 2011 Election. No matter how weak,
H
unmeritorious or even unenforceable a party's case appears to be in an adverse party's claim, the party must be accorded a hearing or the opportunity of being heard regarding his seemingly unavailing case.** See *Adigun v. Attorney General Oyo State & Ors* (1987) 1 NWLR (Pt 53) 678 at 707 and *Garba v. University of*

Maiduguri (1986) 1 NSCC 255.

My lords, I am unable to agree with the learned respondents' counsel that the decision of the trial court as affirmed by the court below does endure on the basis of order 9 rule 14 (1) of the trial court's rules which provide that:-

"No proceeding shall be defeated by reason of ... non joinder of parties, and a judge may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him." B

Lest we forget, it is a cardinal principle of interpretation that provisions of a statute should not be read in isolation. To avoid violence, the provisions must be read together. Thus in ascertaining the true meaning of the provisions of a statute the statute must be read as a whole. See *Obayuwana v. Governor Bendel State and Anor* (1982) 12 SC 147 and *Action Congress (AC) and Anor v. INEC* (2007) 12 NWLR (Pt. 1048) 222 at 259. C

Equally relevant to the proceedings of the trial court is sub-rule 3 of the same order 14 of its very rules which provide as follows:

"(3) A judge may order that the name of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added" D

This Court in relation to the foregoing rules of court has persistently emphasized that a court on application or suo motu necessarily orders the joinder of a party where:- E

(a) the party is aggrieved or likely to be aggrieved by the result of the litigation to the extent that he will be directly, legally or financially affected by the result of the litigation. F

(b) to avoid multiplicity of suits arising from the same subject matter or res; G

(c) to enable the court fully, completely and effectually deal with the suit in order to frustrate or stop a possible future litigation on the subject matter;

(d) to ensure that the principles of fair hearing under section 36 of the 1999 Constitution as amended and the natural justice rule of Audi Alteram Partem are not breached. H

(e) to avoid loss of jurisdiction by the fact of non-joinder. See *Uku v. Okumagba* (1974) 3 SC 35; *Oyedeki Akambi (Mogaji) & Anor v. Okunlola Ishola Fabunmi & Anor* (1986) 2 SC 471; *Green*

970 Akpamgbo-Okadigbo v. Chidi(1) (2015) 3 KLR Muhammad JSC
v. Green (1987) 3 NWLR (Pt 61) 480 and IGE v. Farinde (1994) 7-8 SCNJ (Pt.2) 284.

The jurisdiction of a validly constituted court, it must always be remembered, connotes the limits imposed upon its power to hear and determine issues between persons seeking to avail themselves of its processes inter-alia by reference to:-

- (a) the subject matter of the issue or
- (b) the persons between whom the issue is joined or
- (c) the kind of relief sought.

In the instant case, the jurisdiction of the trial court has been brought into focus in the way the court exercised its powers to hear and determine the 1st- 17th respondents claim particularly their 6th relief. The law remains that a court while duly constituted all the same loses its jurisdiction to proceed on the suit where:-

- (a) the action is not initiated by due process or
- (b) a condition precedent to the exercise of its jurisdiction has not been fulfilled. See National Union of Road Transport Workers & Anor v. Road Transport Employers Association of Nigeria & 5 Ors (2012) 1 SC (Pt 11) 119.

Section 36(1) of the 1999 Constitution as amended makes it a condition precedent that the appellants be heard or offered the opportunity of being heard in the matter otherwise the case not being initiated by due process the court is without the vires to hear and determine 1st - 17th respondents' claim.

Lastly, the 1999 Constitution which makes the joinder of the appellants in the suit mandatory remains the supreme law of this Country. By Section 1(1) & (3) of the very Constitution, it prevails over Order 9 rule 14(1) of the Federal High Court (Civil Procedure) Rules being an inferior legislation in the event of any conflict between the two.] See Awuse V. Odili (2003) 18 NWLR (Pt 851) 116. See Ekulo Farms Ltd & Anor V. UBN Plc (2006) LPELR-SC 306/2001.

It is for all these reasons that one agrees with learned appellants' counsel that in the case at hand even though the two courts below are concurrent in their findings that the appellants do not deserve to be parties to the 1st - 17th respondents amended originating summons, the fact that the trial

court's decision has affected their rights makes the concurrent findings which stand in breach of section 36(1) of the 1999 Constitution as amended perverse. The lower court's judgment cannot therefore persist. The decisions of the two courts below are hereby, in the result, set aside. See Onowhosa v. Odiuzou (1999) 1 NWLR (Pt.586) 173 and Kulobo v. Ikuomola B (1999) 12 NWLR (Pt 629) 552.

In conclusion, it must be stressed that courts have the duty to prevent the expensive luxury of multiplicity of suits by joinder to ensure the wholesome and effectual determination of the matter in a C single suit.

Thus where the determination of one of the claims of the plaintiffs will involve and affect a person's legal right or property the person must necessarily be joined. It is unfortunate that in the case at hand the two courts below failed to discharge this important duty. In D Green v. Green (supra) this Court has per Oputa held as follows:-

"I am still of the same opinion that it would, with utmost respect, be iniquitous to determine a matter against a person without at least an attempt to hear him. If the court is to decide against the blood that flows through the veins of Solomon, surely, again with E respect, decency, at least demands that he should be heard. To be heard, he must be a party. The sole aim of the court is to seek justice. True, it must be justice according to law, but when parties are available, who are so affected by a claim, pleading, evidence and a subsequent order would spell detriment, or indeed incalculable wrong, to F what they consider their right, and they have either technically or inadvertently, been excluded from stating their own side of the story, it is with respect, waving good-bye to justice."

The issue before the two courts is not only whether the appellants G who had emerged from the parallel primary conducted by the state executive body of the 19th respondent have a good case to press under Section 87(a) of the 2010 Electoral Act as amended.

The issue is also whether, without a hearing or the opportunity of their being heard, the courts below, in view of Section 36(1) of the H 1999 Constitution as amended, lawfully proceeded to decide a claim which affects the appellants.

We cannot run away from the obvious. The answer remains a resounding no to the second and indeed overriding question.

Appellants' second issue must thus, be resolved in their favour. Their appeal succeeds. The decisions of the two courts below having proceeded without the necessary jurisdiction are hereby set aside. I make no order as to costs.

B

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my Learned brother MUHAMMAD J.S.C. just delivered.

C I agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

The relevant facts of the case have been stated in detail in the lead Judgment of my Learned brother. I do not therefore intend to repeat them herein except as may be needed to emphasize the point D being made.

The primary issue in this appeal is whether the appellants were necessary parties to the suit as to warrant their being accorded fair hearing or hearing at all particularly in respect of relief Nos. 1, 2, 4, 5, 6 and 10 of the Claims of the Plaintiffs.

E The question that follows is what do reliefs 1, 2, 4, 5, and 6 seek? To answer the question, I reproduce the said reliefs hereunder.

"1. A declaration that it is only the National Chairman and the National Secretary of the Peoples Democratic Party (and no other Officer of the party) that can make submission of the nominated F candidates of the Peoples Democratic Party to the 1st Defendant.

2. A declaration that once the National Chairman and National Secretary of the Peoples Democratic Party make such a submission of the candidates to the 1st defendants the 1st defendant is G duty bound to accept such list.

4. A declaration that the 1st Defendant has no right to reject any candidate submitted to it by appropriate party organ/functionary of any political party as the candidate of the said political party particularly the Peoples Democratic Party.

H *5. A declaration that it is only a Court of Law that can disqualify a candidate.*

6. A declaration that the Plaintiffs are the validly nominated candidates of Peoples Democratic Party for the election to the Anambra State House of Assembly for the constituencies listed against the plain-

tiffs names.

10. *An Order of Court restraining the 1st Defendant from issuing certificates of return to any other person other than the 1st, 8th, 10, 14, and 16th plaintiffs the P.D.P. having won the election in their respective constituencies or if a certificate of return had been issued to any other person other than the said 1st, 8th, 10, 14th and 116th plaintiffs, an order compelling the 1st Defendant to cancel the said certificate.”*

It is to be noted that the trial court granted reliefs 1, 2, 4, 5, and 6 but non-suited the plaintiffs in respect of reliefs 3, 7, 8, 9, and 10 on the ground that to grant them would amount to the court making a cancellation order of the certificates of return issued by the defendant to “any other candidates” without affording them a hearing. The appellants herein are the “other candidates” that INEC, 1st Defendant published their names as the candidates for the election and subsequently issued them with certificates of return after the election in question. They were however not made parties in that suit (FHC/ABJ/CS/199/2011. Now suit No. FHC/ABJ/CS/574/2011 was instituted by five of the 17 plaintiffs who instituted suit No. FHC/ABJ/CS/199/2011 in which the present appellants were, for the first time joined as defendants. The lower court, in holding that appellants were not entitled to be heard in suit No. FHC/ABJ/CS/199/2011 stated thus.

“Since the appellants did not participate in the primary election conducted by the National Executive Committee of the PDP, they did not have any interest to protest in this suit that is questioning the powers of INEC to accept candidates of the parties emerging therefrom, the appellants have no right upon which the court could have heard them. The appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the court by affording a hearing or fair hearing”

The question is whether the lower court is right in holding as above?

It is settled law that a court may, on application, or suo motu order the joinder of a party where:

(i) The party is aggrieved or likely to be aggrieved by the result of the litigation to the extent that he will be directly, legally or financially affected by the result of the litigation.

(ii) to avoid multiplicity of suits arising from the same subject matter or res.

(iii) to enable the court fully, completely and effectually deal with the Suit in order to frustrate or stop a possible future litigation on the subject matter;

B (iv) to ensure that the principles of fair hearing under section 36 of the 1999 Constitution as amended and the rules of natural justice particularly the rules of audi alteram partem (hear both sides) are not breached

C (v) to avoid loss of jurisdiction by the fact of non-joinder. However, See UKU VS OKUMAGBA (1974) 3 S.C. 35; GREEN VS GREEN (1987) 3 NWLR (Pt. 61) 4580; Ige Vs Farinde (1994) 7 - 8 S.C.N.J. (Pt.2) 284 et, etc.

The next question is whether the grant of the reliefs earlier D reproduced in this Judgment by the trial court affected the interests/rights of the appellants thereby making them necessary parties in the Suit to be heard by the court.

Going through the reliefs, I hold the view that from the facts of the case, the most important or fundamental relief sought by the E plaintiffs in the Suit is relief No. 6 which sought:-

“A declaration that the plaintiffs are the validly nominated candidates of PDP for the elections into the Anambra State House of Assembly for the Constituencies listed against the plaintiffs names”

F It is not disputed that the plaintiffs in the suit and the present appellants emerged as the nominated candidates of parallel primaries conducted by the National and State Executive Committees, respectively, of the PDP and therefore lay claims to the sponsorship of the party for the election in question.

G The above scenario means that a grant of relief No. 6 supra will definitely affect adversely the interests/rights, claims of the appellants to sponsorship of the party for the said election. This is very obvious.

H However, appellants were not joined as parties in the Suit. It was after the plaintiffs obtained their Judgment that they instituted another action by way of mandamus to enforce the Judgment as obtained in the Suit behind the backs of the appellants. The appellants were then, joined as parties in the new suit No. FHC/ABJ/CS/574/2011.

It is obvious that the lower court saw the need for appellants being made parties in the action but held that since they emerged from a primary election conducted illegally by the State Executive Committee of the PDP instead of the National Executive Committee of the party, they have no right legally recognizable for protection! The issue is not whether the nomination of appellants was valid or invalid but whether before the rights of the plaintiffs in the Suit, including relief No. 6 can be granted appellants do not deserve the right to be heard since a grant of that particular relief affects their claim, rightly or wrongly, to the same relief, haven been “nominated” by an organ of the party. The issue is really whether a man who has a bad or very bad case should not be heard before being condemned in damages or any other relief(s).

Before concluding this Judgment, it is very important to note that this Judgment is hinged on the breach of the Constitutional Provision of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended particularly the right of fair hearing. It has nothing to do with the issue as to whether the nomination exercise of the appellants conducted by the Anambra State Executive Committee of the PDP is valid, legal and binding, as against the nomination of the plaintiffs in the suit, which was conducted by the National Executive Committee of the said PDP. That issue has been decided in a very number of cases by this court and has therefore become trite. The only valid nomination of the party for any election is the one conducted by the National Executive Committee of the party, not by the state Executive Committee. However, before the court can legally come to a conclusion as to which of the two primaries/nominations is valid, all the parties necessary for that determination must be joined in the Suit and heard by the court.

Where there is a failure to hear all the necessary parties to the dispute before a decision is reached, there is a breach of section 36(1) of the 1999 Constitution as amended which has the effect of automatically rendering the proceedings in the action and the Judgment or ruling resulting therefrom a nullity and void, without any legal effect.

It is unfortunate that appellants have taken advantage of the judicial process, which they have exploited. It is against good conscience but the law must prevail particularly where the issue involves

the constitutionally guaranteed fundamental right to fair hearing in the determination of the rights and/or obligations of any person.

It is for the above reasons and the more detailed ones assigned in the lead Judgment of my Learned brother MUHAMMAD JSC that I too find merit in the appeal and accordingly allow same.

B I abide by the consequential orders made in the said lead Judgment including the order as to costs.

Appeal allowed. The Judgment of lower courts are hereby set aside.

C _____

GALADIMA JSC

This appeal is against the judgment of Court of Appeal, Abuja Division delivered on 8/11/2013 in Appeal No. CA/A/593/2011.

D In a nutshell, the appellants herein had appealed to the said Court of Appeal, herein after referred as the “lower Court” or “Court below”, as interested parties against the judgment of the Federal High Court, Abuja delivered on 25/5/2011 in Suit No. FHC/ABJ/CS/199/2011, hereinafter referred to as “trial Court”.

E The 1st -17th respondents herein were plaintiffs at the trial court, while the 18th and 19th respondents herein, were respectively the 1st and 2nd Defendants in the suit.

In the said Plaintiffs Further Amended Originating Summons, they sought for the determination of the following questions:

F “(i). *Whether having regard to the Constitution of the People Democratic Party and her Electoral Guidelines, it is only the National Chairman and the National Secretary of the Peoples Democratic Party (PDP) who can make submission of names of the candidates that the*
G *People Democratic Party (PDP) proposes to sponsor in an election and if so,*

(ii). *Whether the rejection of the names of the 1st - 17th Plaintiffs as submitted by the National Chairman and National Secretary of the Party did not amount to disqualification of the said candidates*
H *from contesting the forthcoming April 2011 elections into the Anambra State House of Assembly and if so whether the defendants have power to do so without affording the affected candidates any fair hearing or hearing at all.*

(iii). *Whether the defendants have powers to reject or disqualify*

any candidate particularly the 1st to 17th Plaintiffs when no Court of competent jurisdiction had adjudged them ineligible or disqualified.”

The plaintiffs also urged the trial court to grant them certain declaratory and injunctive reliefs particularly in paragraphs 6 and 10 as follows:

“6. A declaration that the plaintiffs are the validly nominated candidates of PDP for the elections into the Anambra State House of Assembly for the Constituencies listed against the plaintiffs.

10. An order of Court restraining the 1st Defendant from issuing certificates of return to any other person other than the 1st, 8th, 14th and 16th plaintiffs (sic) the PDP having won the election in their respective constituencies or if a certificate of return had been issued to any other person other than the said 1st, 8th, 10th, 14th and 16th plaintiffs an order compelling the 1st Defendant to cancel the said certificate.”

The trial court in its judgment only granted reliefs 1, 2, 4, 5 and 6 and non-suited the plaintiffs on reliefs 3, 7, 8, 9 and 10 on the ground that the implication of granting such order would, be that the court have ordered the cancellation of certificates of return issued by the 1st defendant (INEC) to “any other candidates” without being accorded them fair hearing.

Consequent upon the granting of the declaratory reliefs, in part, by the trial court, 5 out of 17 plaintiffs instituted another said No. FHC/ABJ/CS/574/2011 against INEC, the 5 appellants in this appeal and the Clerk of the Anambra State House of Assembly seeking by way of prohibition, certiorari, and mandamus to enforce the judgment contained in Suit No.FHC/ABJ/CS/199/2011. It was when the appellants were being served with the reliefs ordered against them and the originating process that they became aware of the Suit No. FHC/ABJ/CS/199/2011, which had been determined and when they applied to the trial court to appeal against the judgment, in the said Suit as interested parties, and their application was granted.

Unhappy about the situation the appellants appealed to the lower court as interested parties, on the ground that they were not granted fair hearing to be part of the proceedings in the said suit.

The lower court while dismissing the appeal and allowing the cross-appeal held as follows:

“Since the appellants did not participate in the primary elec-

tion conducted by the National Executive Committee of PDP, they did not have any interest to protect in this Suit that is questioning the powers of INEC to accept candidates of the parties emerging therefrom, the appellants have no right upon which the Court could have heard them. The appellants are a product of an illegality and cannot
B enjoy any right or privilege to be protected by the Court by affording a hearing or fair hearing.”

Further aggrieved with the judgment of the lower court, the appellants herein, have appealed to this court raising 5 grounds in
C their amended Notice of appeal from which 2 issues are distilled for determination in their amended brief of argument, settled by AC Ozioko Esq., and filed on 28/10/2014, as follows:-

“(i). Whether the trial court and the Court of Appeal had jurisdiction to entertain/grant reliefs ‘6’ and ‘10’ introduced to the suit by
D further amendment 21 days after election; and if the answer is in the negative, whether both the trial Court and the Court of Appeal had jurisdiction to entertain the whole Suit at that stage. (This issue relates to grounds 1 and 2 of the Amended Notice of Appeal).

(ii). Whether the lower court did not participate in the primary
E election conducted by the National Executive Committee of the PDP, they did not have any interest to protect in this suit that is questioning the powers of INEC to accept candidates of the parties emerging therefrom, the appellants have no right upon which the court could
F have heard them. The appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the court by affording a hearing or fair hearing.”

On their part, the 1st - 8th and 9th - 10th, raised identical sole issue in their respective briefs, for determination of the appeal as
G follows:

“Whether the herein appellants were necessary parties to the Suit as to warrant their being accorded fair hearing or hearing at all particularly with respect to the reliefs 1, 2, 4, 5 and 6”

The 11th - 14th respondents set out their sole issue for deter-
H mination thus:

“Whether the court below was right when it held that the appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the court by affording a hearing or fair hearing.”

The 15th - 17th respondents simply adopted the issues distilled by the appellants for the determination of the appeal whilst the 18th respondent, did not file a brief of argument, it stood neutral in the matter.

In the 19th respondent's brief two issues were distilled for determination. The first issue is an adoption of the appellants' first issue and the second that of the 11th - 14th's sole issue. B

When the appeal was heard on 9/2/2015, the respective learned counsel adopted and relied on their briefs of argument.

On the first issue learned counsel for the appellants has contended that section 87(10) of the Electoral Act 2010 (as amended) provides redress for an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a Political Party for election and the avenue to ventilate his grievance is either in the Federal High Court or High Court of a State. C
D

It is submitted that reliefs 6 and 10 claimed by the plaintiffs purely relate to a pre-election dispute and the introduction of these reliefs with the leave of court after 21 days after general election of 26/4/2011, makes entire cause of action a post election complaint and therefore the trial court lacked jurisdiction to entertain. Reliance was placed on *HASSAN v. ALIYU* (2010) 17 NWLR (Pt.1223) 547 at 604, and *SALIM v. CPC* (2013) 6 NWLR (Pt.1351) 501. E

Learned counsel submitted that the whole suit suffered a setback for lack of jurisdiction. So also the court below which in the course of allowing the respondents' cross-appeal entertained the further amended originating summons in suit No.FHC/ABJ/CS/199/2011 and granted the reliefs in the case which the Lower Court had no jurisdiction to entertain and grant. It is urged that the decisions of both court below be set aside. F
G

On the appellants' 2nd issue, learned counsel has contended that the appellants were not heard before a decision was made against them. That the appellants appealed from trial court to the court below on grounds 3 and 6 of the Notice and grounds of Appeal dated 19/7/2011 and filed on 21/7/2011 complained of the breach of the appellants' right of fair hearing. That in spite of the fact that the appellants were not before the trial court, that court went ahead to decide the matter against them. It is submitted that the Lower Court H

choose to pre-empt what the defence of the appellants would have been, had they been joined, when it held that being products of an illegal primary, the appellants cannot be afforded a hearing or fair hearing. It is argued that the appeal before the Lower Court was not an appeal for the determination of who or were they proper candidates of PDP, between the appellants and the respondents, rather it was an appeal for the determination of whether it was proper in law to hear and determine the suit and grant orders that affected the appellants who have not been joined as parties to the suit.

Relying, on the decision of this case in *OKONTA v. PHILIPS* (2011) 18 NWLR (Pt.1225) 320, learned counsel submitted that a court has no jurisdiction to make an order which affects the interest of a person who has not been joined as a party. It is urged that the appeal be allowed while setting aside the decisions of both two courts below.

Learned counsel for the 1st - 8th, 9th - 10th respondents presented a common ground when they contended that the appellants having failed to establish that they are necessary parties to the suit, they cannot assert that their right to be accorded fair hearing have been breached. That they have not established that the suit could not be effectively determined without them.

It is submitted that even if the appellants were a desirable party the fact that they were not joined and accorded fair hearing does not occasion any miscarriage of justice as such non-joinder does not render the proceedings of the court a nullity. Reliance was placed on the cases of *SAPO v. SUNMONU* (2010) 11 NWLR (Pt.1254) 380. *AYORINDE v. ONI* (2000) 3 NWLR (Pt.6490) 348 also order 9 Rule 14(1) of the Federal High Court Rules.

That the trial judge only dealt with reliefs touching on the interest of the parties actually before him and declined to deal with those aspects of the relief that it felt will affect the interest of the appellants.

The learned counsel have canvassed that the cause of action of the plaintiffs relate only to the nomination and sponsorship of candidates by the PDP and that their claim was grounded on a pre-election disputes and because the election had taken place before the judgment was concluded the jurisdiction of the court was not ousted. The case of *UCHA v. ONWE* (2011) 4 NWLR (Pt.1237) 386

was cited in reliance.

The decisions of this court in *AMAECHE v. INEC & ORS* (2007) 18 NWLR (Pt.1066) 42 and a host of others, have fully explained the vexed issues of nomination and sponsorship of party's candidature for an election, that a pre-election matter is a cause of action which predates and does not in any way constitute any complaint against the actual conduct of election. B

I have taken pains to study the 1st - 17th respondents' Amended Originating Summons. It is clear that the grouse of the respondents deals with the nomination and sponsorship of the appellants as candidates of their party, the 19th respondent herein. It is for the various constituency seats election. That the 18th respondents herein unlawfully accepted and relied on the list of appellants names which were submitted to it by the State Executive Committee. Indeed a contestant who is dissatisfied, with the conduct of primaries conducted by his party, can seek redress in the courts vested with jurisdiction by dint of the provision of S.87 (9) of the 2010 Electoral Act (2010) (as amended). It will then be examined if the primaries were conducted in accordance to said Act, the constitution and Guidelines of the Political Party. C D E

This is to ensure that INEC conduct the elections in a manner that is satisfactory and acceptable by the various Political Parties for the election.

However, in the case at hand, the main issue is whether the appellants, in the first place were necessary parties to the suit, who should enjoy any right or privilege to be protected by the court by affording them a hearing at all. The answer is clear from the nature of reliefs 1, 2, 4, 5, and 6 sought by the plaintiffs which the trial court granted but non suited the plaintiffs in respect of reliefs 3, 7, 8, 9 and 10 when the court was aware "that there are persons who ought to have been joined as defendants who are candidates of the PDP Anambra State Executive Committee nominated and accepted by the 1st defendant for the election held on 26th April, 2011," yet the court went on to give judgment in favour of the plaintiffs that is in suit No. FHC/ABJ/CS/199/2011. It is to be observed that suit No. FHC/ABJ/CS/574/2011 was brought by 5 out of 17 plaintiffs who instituted suit No. FHC/ABJ/CS/199/2011 in which the present appellants, were joined for the first time as defendants. However the court F G H

below held that the appellants were not entitled to be heard in that suit because “they did not have any interest to protect in the suit that is questioning the powers of INEC to accept candidates of the parties emerging there from”.

B In other words, that the appellants as “product of an illegality” they cannot be afforded a hearing or fair hearing.

C It has been settled that the court may on an application or suo motu, in the circumstance of a case, order the joinder of a party where inter alia, essentially, the party is aggrieved or likely to be aggrieved by the result of the litigation to the extent that he will be directly legally or financially affected by the result of the litigation. Another good ground for ordering the rejoiner (relevant to the case at hand) is to ensure that the principle of fair hearing under section S.36 of the 1999 Constitution (as amended) is not breached.

D The plaintiffs’ relief No. 6 is seeking a declaration that the plaintiffs are the validly nominated candidates of PDP into the Anambra State House of Assembly for the various constituencies listed in the suit of the plaintiffs.

E In the parallel primaries conducted by the National and State Executive Committees of PDP the plaintiffs and the appellants herein emerged as the nominated candidates of the two committees respectively. Both lay claims to the sponsorship of their party (PDP). This explains the reason why the appellants are saying that the grant of relief No. 6 has adversely affected their interests and rights to the sponsorship of their party for the election. Their grouse is that they were not joined as parties to the first suit but only joined in the new suit No. PHC/ABJ/CS/574/2011.

G The court below rightly saw the need for the appellants to be made parties in said suit, but curious enough, held that the appellants deserve no right of being heard, in the circumstance of this case. This was not good enough. A party who has shown sufficient interest or right in a case should not be denied hearing before a decision is reached, this is to avoid breach of section 36(1) of the Constitution H (supra).

It is for this contribution and the detailed reasoning in the lead judgment that I find that there is merit in this appeal. I too accordingly allow it. I abide by the consequential orders including the order as to costs in the said lead judgment.

PETER-ODILI JSC

I agree completely with the judgment and reasoning just delivered by my learned brother M. D. Muhammad, JSC and to underscore that support, I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Abuja Division Coram: Uwa, Bada and Adumein JJCA delivered on the 18th day of November, 2013 in Appeal No. CA/A/593/2011. The Appellants herein had appeared to the Court of Appeal or Lower Court as interested parties against the judgment of the Federal High Court, Abuja presided over by the Hon. Justice G. O. Kola-Wale, delivered on the 25th day of May, 2011 in Suit No. FHC/ABJ/CA/199/2011.

The 1st to 17th Respondents in this Appeal were plaintiffs at the Trial Court, while the Independent National Electoral Commission (INEC) and the Peoples Democratic Party (PDP) were respectively the 1st and 2nd Defendants in the suit. The Plaintiffs filed the Originating Summons on the 14th of February, 2011 and then later amended and further amended the originating summons. As at the date of the further amended Originating Summons, INEC had conducted the House of Assembly elections in the state and had issued certificates of return to the Appellants.

In the said plaintiffs' Originating Summons, they sought the determination of the following questions:

(i) Whether having regard to the constitution of the Peoples Democratic Party and her Electoral Guidelines, it is only the National Chairman and the National Secretary of the Peoples Democratic Party (PDP) who can make submission of names of the candidates that the Peoples Democratic Party (PDP) proposes to sponsor in an election and if so

(ii) Whether the rejection of the names of the 1st - 17th plaintiffs as submitted by the National Chairman and National Secretary of the party did not amount to disqualification of the said candidates from contesting the forthcoming April 2011 elections into the Anambra State House of Assembly and if so whether the defendants have power to do so without affording the affected candidates any fair hearing or hearing at all.

(iii) Whether the defendants have powers to reject or disqualify

any candidate particularly the 1st to 12th plaintiffs when no Court of competent jurisdiction had adjudged them ineligible or disqualified.

They claimed the following reliefs:-

1. A declaration that it is only the National Chairman and the National Secretary of the Peoples Democratic Party (and no other
B officer of the party) that can make submission of the nominated candidates of the Peoples Democratic Party to the 1st Defendant.

2. A declaration that once the National Chairman and National Secretary of the Peoples Democratic Party make such a sub-
C mission of candidates to the 1st defendant, the 1st defendant is duty bound to accept such list.

3. A declaration that the names of the 1st - 17th Plaintiffs having been submitted to the 1st defendant as the 2nd Defendant's candidates for their various constituencies listed against each plaintiff's
D name i.e.

(i) Egbe Theo Chidi - Ekwusigo State Constituency of Anambra State

(ii) Uju Osude (Mrs.) - Aguata II

(iii) Emmanuel Nwankwo - Orumba South

E (iv) Uchenna Ogbonna - Orumba North

(v) Ikenna Amaechi - Nnewi South

(vi) Emeka Osemeka - Onitsha North

(vii) Obiora Chukwuka - Onitsha South

F (viii) Solomon Ekweoba - Oyi

(ix) Michael Akubude - Awka South

(x) Celestine Anambra East Chijioke Ofoegbenam Esq, -

(xi) Somto Udeze - Ogbaru II

(xii) Kennedy Mwoya - Anambra West

G (xiii) Afam Akonanya - Njikoka II

(xiv) Umerie Uchenna - Dunukofia

(xv) Godwin Nnamdi Okafor - Awka South I

(xvi) Boniface Okonkwo - Awka North

(xvii) Onuigbo Gabriel Onyebuchi Osca - Aguata I;

H The 1st Defendant is duty bound to accept the names as candidates of the Peoples Democratic Party and, in all material respects, treat them as such by publishing their names as Peoples Democratic Party (PDP) candidates for April 2011 elections into the Anambra State House of Assembly to the exclusion of any other names and, if

any other name has been published, to de-list such other names.

4. A declaration that the 1st Defendant has no right to reject any candidate submitted to it by appropriate party organ/functionary of any political party as the candidate of the said political party particularly the Peoples Democratic Party.

5. A declaration that it is only a Court of law that can disqualify a candidate. B

6. A declaration that the Plaintiffs are the validly nominated candidate of PDP for the elections into the Anambra State House of Assembly for the constituencies listed against the plaintiffs names. C

7. An Order of Court compelling the 1st Defendant to publish the names of the plaintiffs as the only validly nominated candidates of the Peoples Democratic Party for the various constituencies listed against their names in 3 above and treat them to the exclusion of any other persons in all material respects as the candidates of the Peoples Democratic Party (PDP) for the April 2011 elections into the Anambra State House of Assembly and if any other name other than the plaintiffs had been published, to delist that name. D

8. An Order of perpetual injunction restraining the 1st Defendant from acting upon any other list of candidates for Anambra State House of Assembly particularly for the constituencies as listed against the names of the plaintiffs other than the one submitted by the Acting National Chairman and National Secretary of the Peoples Democratic party. E

9. An Order of perpetual injunction restraining the 1st Defendant from putting the names of any other candidates on the ballot for election into Anambra State House of Assembly (particularly for the constituencies mentioned in paragraph 5 above) other than the names of the plaintiffs. F

10. An Order of Court restraining the 1st Defendant from issuing certificates of return to any other person other than the 1st, 8th, 10th, 14th and 16th plaintiffs the PDP having won the election in their respective constituencies or if a certificate of return had been issued to any other person other than the said 1st, 8th, 10th, 14th and 16th plaintiffs, an Order compelling the 1st Defendant to cancel the said certificate. G

The trial Court in its judgment granted only reliefs 1, 2, 4, 5, and 6, and non-suited the plaintiffs on reliefs 3, 7, 8, 9 and 10 on the H

ground that the implication of granting such order would be that the Court had ordered the cancellation of certificates of return issued by the 1st defendant (INEC) to “any other candidates” (Appellants herein) without affording them a hearing.

B Armed with the declaratory reliefs granted in part above by
the trial Court in the said Suit No. FHC/ABJ/CS/199/2011, 5 out of
the 17 plaintiffs in the Suit instituted another Suit No. FHC/ABJ/CS/
574/2011 against INEC, the 5th Appellant herein and the Clerk to
Anambra State House of Assembly, seeking by way of prohibition,
C certiorari and mandamus to enforce the judgment obtained in Suit
No. FHC/ABJ/CS/199/2011, against the appellants herein who were
the other candidates that INEC chose to publish their names, instead
of the plaintiffs in the said Suit No. FHC/ABJ/CS/199/2011. It was
when the Defendants in the said Suit No. FHC/ABJ/CS/574/2011
D (Appellants herein) were served with the originating process that they
became aware that there was Suit FHC/ABJ/CS/199/2011 which had
been determined that they applied to the trial Court to appeal against
the judgment in the said suit as interested parties which application
was granted.

E The Appellants then appealed to the court of Appeal as inter-
ested parties on the ground that the trial court’s judgment affected
them and they had not been afforded a fair hearing to be part of the
proceedings. The Lower Court dismissed the appeal and allowed the
cross-appeal deciding that since the appellants had not participated
F in the primary election conducted by the National Executive Com-
mittee of PDP, they had no interest to protect in the suit. That the
appellants were products of an illegality and cannot enjoy any right
or privilege to be protected by the Court for which they deserved a
G fair hearing.

Being aggrieved with that decision, the Appellants have come before this Court raising two grounds of appeal later amended.

H On the 9th day of February, 2015 date of hearing, learned
counsel for the Appellants, Paul Erokoro SAN adopted their Amended
Brief of Argument settled by A. C. Ozioko, filed on 28/10/2014 and
deemed filed on 30/11/14. He distilled two issues for the determina-
tion of the appeal which are as follows:-

1. Whether the trial Court and the Court of Appeal had juris-
diction to entertain/grant reliefs ‘6’ and ‘10’ introduced to the suit by

further amendment 21 days after election; and if the answer is in the negative, whether both the trial Court and the Court of Appeal had jurisdiction to entertain the whole suit at that state. (Grounds 1 and 2),

2. Whether the Lower Court endorsed the breach of the rule of audi alteram partem when it held in its judgment as follows:- B

“Since the appellants did not participate in the primary election conducted by the National Executive Committee of the PDP, they did not have any interest to protect in this suit that is questioning the powers of INEC to accept candidates of the parties emerging therefore, the appellants have no right upon which the Court could have heard them. The appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the Court by affording a hearing or fair hearing.” C

Learned senior Advocate, Ikechukwu Ezechukwu adopted the Brief of Argument of the 1st - 8th Respondents which he settled, filed on 6/5/14 and deemed filed on the 30th 10/14 and the issue crafted is thus:- D

Whether the Appellants are necessary parties to the Respondent Originating Summons as to warrant their being accorded a fair hearing or a hearing at all particularly with respect to reliefs 1, 2, 4, 5 and 6. E

For the 9th and 10th Respondents, G. C. Igbokwe of counsel adopted a Brief of Argument he settled, filed on 6/5/14 and deemed filed on 30/10/14. F

A single issue was formulated which is thus:-

Whether the herein appellants were necessary parties to the suit as to warrant their being accorded fair hearing or hearing at all?

Chief A. T. Udechukwu of counsel for the 11th - 14th Respondents adopted the Brief of argument which he settled, filed on the 6/5/14 and deemed filed on 30/10/14. He distilled a sole issue which is as follows:- G

Whether the Court below was right when it held that the Appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the Court by affording a hearing or fair hearing? H

Mr. Ifeanyi M. Nriallike, learned counsel for the 15th - 17th Respondents adopted their Brief of Argument filed on 27/11/14.

The 15th - 17th Respondents adopted the two issues as crafted by the Appellants.

The 18th Respondent INEC did not file any Brief of Argument and being represented by S. O. Ibrahim Esq. stating that the Respondent was the umpire.

B Chief A. O. Ajana, learned counsel for the 19th Respondent adopted their Brief of Argument filed on 2/12/14 and in it identified two issues for determination which are thus:-

C 1. Whether the trial Court had jurisdiction to entertain/grant reliefs '6' and '10' introduced to the suit by amendment 21 days after election?

D 6. Whether the Lower Court was not right when it held that the Appellants who are products of an illegal primary election had no right to be protected in a suit to compel INEC (Independent National Electoral Commission) to accept list of candidates submitted by the National Executive Committee of PDP.

The sole issue as crafted by the 9th - 10th Respondents seem sufficient to be utilised for the determination of this appeal and I shall so use it.

E **SOLE ISSUE:**

Whether the herein Appellants were necessary parties to the suit as to warrant their being accorded fair hearing or hearing at all.

F Learned counsel for the Appellants submitted the reliefs 6 and 10 were introduced into the suit by further amendment of the Originating Summons 21 days after the election, which reliefs related purely to a pre-election dispute which rendered the Court without jurisdiction. He cited Section 87 (10) of the Electoral Act 2010 (As Amended); Hassan v Aliyu (2010) 17 NWLR (Pt.1223) 547 at 604; Salim v CPC G (2013) 6 NWLR (Pt.1351) 501.

H That the trial Court had no jurisdiction to entertain the amendments introduced into the Originating Summons or the suit which negates the facts that the Court has a duty to adjudicate on issues only properly placed before it. Also that the Lower Court in allowing the Respondents Cross-appeal entertained the said further amended originating summons in Suit No. FHC/ABJ/CS/199/2011 and in doing so granted the reliefs which the Lower Court had no jurisdiction either to entertain or grant.

For the appellants was contended that the appeal before the

Lower Court was not an appeal for the determination of who were the proper candidates of the PDP, between the appellants and the respondents, rather, the appeal was for the determination of whether it was proper in law to hear and determine the suit and grant orders that affected the appellants who have not been joined as parties to the suit.

That had the appellants become aware of the pendency of the suit, they could have on their own applied to be joined as defendants but since they did not know of it until another suit was instituted against them to enforce the orders granted after the determination of the earlier suit, the only option left for them was to appeal against the said judgment as interested parties. The appellants state that it cannot be right that the appellants who were and are still serving members of the Anambra State House of Assembly would not be affected in a suit seeking to nullify their mode of nomination for the election and cancel their certificates of return. He cited *Okonta v Philips* (2010) 18 NWLR (Pt.1225) 320 at 326; *Imegwu v Asibelua* (2012) 4 NWLR (Pt.1289) 119 at 134.

Learned Senior Advocate for the Appellant said that it was not proper that a person or persons were illegally nominated or that they were a product of an illegal primary election without joining them in the suit or giving them an opportunity to present their own side of the case.

For the 1st - 8th Respondents, it was contended that before appellants could claim denial of right of fair hearing to them, they must first establish that they were necessary parties to the suit. That unless it is shown that the appellants ought to be joined in the suit in the first place, they cannot claim any right to be heard at all.

Learned Senior Counsel for 1st - 8th Respondents said the test as would be gleaned from decided cases is whether from the writ or originating process the matter cannot be effectively and effectually determined without the presence of the appellants in this appeal which is not the case in this instance. He referred to *Oladeinde & Anor v. Oduwole* (1962) WNLR 41; *Green v Green* (1987) 3 NWLR (Pt.61) 480; *Panalpina World Transport Ltd v J. B. Olande & Ors* (2010) NSQR 613.

It was further contended that since the appellants did not participate in the primary election conducted by the PDP they had no

interest to protect in a suit questioning the powers of INEC to accept nominees or candidates of the party emerging from the primary elections of the party. That the appellants had no rights upon which the Court can hear them.

B That even if the Appellants were a desirable party, the fact that they were not joined and accorded fair hearing does not occasion any miscarriage of justice as such non-joinder does not render a nullity the proceedings of the Court. He cited *Sapo v Sunmonu* (2010) 11 NWLR 380; *Ayorinde v Oni* (2000) 3 NWLR (Pt.6490) 348; Order 9, Rule 14(1) of the Federal High Court Civil Procedure Rules.

C For the 9th - 10th Respondents, it was submitted that the parties necessary for effective and effectual disposition of the suit are present and participated in the suit. That the appellants who admittedly emerged from that adjudged illegal primary election had acquired no rights to be protected by the Court.

It was submitted for the 11th - 14th Respondents that the learned trial judge was right when it heard and determined those parts of the 1st to 17th Respondents claim at the trial Court that did not in any way affect the rights of the present appellants and the Court of Appeal right in dismissing the appellants appeal.

F For the 15th - 17th Respondents it was submitted that it is even a surplusage for the Lower Court to have even considered the rights and interests of the Appellants when the process that produced them is illegal, unlawful and have been validly set aside by a Court of competent jurisdiction.

The 19th Respondent submitted that though the Appellants were desirable they are not necessary parties. That the justice of the case does not lie with the Appellants who had not participated in the primary election organised by National Executive Committee of the PDP whose names were presented by the State executive of the PDP.

H On reply on points of law along the lines of the Appellants Reply Brief to the 19th Respondents filed on 5/2/2015 contended that necessary party or not the Constitution provides in Section 36 that every person against whom an order is to be made must be heard as in this instance. He cited *Military Governor Lagos State v Adeyiga* (2012) 5 NWLR (Pt.1293) 291 at 319 - 320.

Having set out the summary of the different positions of the parties that is the Appellants on the one side, the 1st - 17th Respon-

dents on the other and on the third part, the 18th and 19th Respondents, I dare say the issue at stake is very restricted in area. That is whether or not the Appellants ought to have been made parties to have their side of the story of the dispute between the 1st - 17th Respondents as against the 18th and 19th Respondents since by the judgment of the trial Court ordering the 18th Respondent to cancel the certificates of return already issued by it to the Appellants and re-issue them to 1st - 17th Respondent did not affect the Appellants in such a way as to make mandatory to have them defend those interest. This in keeping with the fair hearing principle encompassed in the rules of natural justice of “nemo iudex in causa sua” and “audi alteram partem”

The angle that was brought up on account of that trial Court judgment and orders aforesaid by the affirmation of the Court of Appeal which held that though it acknowledged that a party with interest ought to be heard but that in the case in hand the Appellants were not such as had such interests being products of an illegal primary. That Appellate Court stated so in the words hereunder:

“Since the Appellants did not participate in the primary election conducted by the National Executive Committee of the PDP, they did not have any interest to protect in this suit that is questioning the powers of INEC to accept candidates of the parties emerging therefrom, the appellants have no right upon which the Court could have heard them. The appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the Court by affording a hearing or fair hearing”.

Indeed, from what the Court of Appeal did in shutting out the Appellants when they sought to ventilate their grievance on having their seats and certificates of return however obtained is like shaving the hair off a man in his absence which in legal parlance would be declaring a person not before Court guilty with a sentence of a term of years in prison. A clear situation of a grave scenario brought about by rumour or speculation in contrast with the Constitutional provision under section 36 (5) that every person is innocent until found guilty not to talk of section 36 (1) of the same Constitution on the need to be heard before a decision affecting a person could be made by a court. In this regard, I shall take refuge in the case of Okonta v Philips (2010) 18 NWLR (Pt.1225) 320 at 236 per Adekeye JSC

who stated:

“The issue of necessary parties being before the Court had been considered in various decisions of the Court. A Court has no jurisdiction to make an order which affects the interest of a person who has not been joined as a party”.

B The Court in the Okonta case (supra) might as well be talking of the case at hand, as what other interest can be necessary or weighty than the certificates of return already granted the Appellants upon which they are sitting in the Anambra State House of Assembly representing their respective constituencies which are now ordered for their vacation thereof. I would venture to say that what the 1st - 17th Respondents put forward as justifying the Appellants exclusion from the process is being economic with the truth and standing the law on its head. The court below endorsing that stance was wrong as what
C
D was in issue before it is not which of the two primary elections was valid but whether the reliefs sought and obtained in the trial court by the plaintiffs/1st - 17th Respondents did not affect the Appellants thereby necessitating their being joined as parties.

E From the foregoing and the fuller and better reasoning in the lead judgment, I hereby allow the appeal as the right to fair hearing of the Appellants were breached.

I abide by the consequential orders made.

F

OKORO JSC

My learned brother, Musa Dattijo Muhammad, JSC obliged me in advance a copy of the judgment he has just delivered with which I am in total agreement that this appeal is meritorious and
G deserves to be allowed.

By Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), “in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”. This is a constitutional provision which must not be
H toyed with. It is well settled that the right to fair hearing entrenched in Section 36(1) of the 1999 Constitution (supra) entails not only hear-

ing a party on any issue which could be resolved to his prejudice but also ensuring that the hearing is fair and in accordance with the twin pillars of justice, namely, *audi alteram partem* and *nemo iudex in causa sua*. Thus, where a party is not heard at all in a matter which affects his right or the trial is adjudged unfair, any judgment generated therefrom, becomes a nullity and of no legal consequence. It is bound to be set aside. See *Alhaji Suleiman Mohammed & Anor. v. Lasisi Sanusi Olawunmi & Ors* (1990) 4 SC 40, *Okafor V. A.G. Anambra State* (1991) 6 NWLR (Pt.200) 659, *Adigun V. A.G. of Oyo State* (1982) 1 NWLR (Pt.53) 678, *Obodo V. Olomu* (1987) 3 NWLR (Pt.59) 111. B C

The court below held in its judgment that since the appellants did not participate in the primary election conducted by the National Executive Committee of the PDP they did not have any interest to protect it the suit that was questioning the powers of INEC to accept candidates of the parties emerging therefrom. It also held that the appellants are a product of an illegality and cannot enjoy any right or privilege to be protected by the court by affording a hearing or fair hearing. To say the least, this is an absurd legal reasoning. It amounts to standing section 36(1) of the 1999 Constitution (as amended) on its head. D E

It is my view that whether the appellants were a product of illegality or not, and presently occupying “their” seats in the House of Assembly, they ought to have been made parties and heard before any decision affecting their continued membership in the house was made. It is usually said in our local parlance that you cannot shave a man’s head in his absence. This is not possible. See *Green V. Green* (1987) 3 NWLR (Pt.61) 480. F

There is no doubt that the appellants were denied a hearing at the trial court. There is no way a judgment which affects them, which was generated from such a proceedings can be allowed to stand. It is a nullity. It is on this and the fuller reasons in the lead judgment that I also allow this appeal. I set aside the decisions of both the trial court and the Lower Court. I also make no order as to costs. G H