

SUPREME COURT OF NIGERIA
FRIDAY 12TH JUNE, 2015. SC. 160/2014
CORAM:- S. GALADIMA, M. U. PETER-ODILI,
O. ARIWOOLA, M. D. MUHAMMAD,
K. M. O. KEKERE-EKUN, JJSC

OZONMA (BARR) CHIDI NOBIS-ELENDU APPELLANT
AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)

2. PEOPLES DEMOCRATIC PARTY

3. HON. MRS. EUCHARIA AZODO RESPONDENTS

APPEALS - Issue - Suo motu raising - By virtue of CA Act s. 15 - The court has jurisdiction to suo motu raise any issue - And determine same after hearing parties (H1)

COURTS - Records - Regularity of - Records of court are presumed to be correct - Until they are successfully impugned (H2)

ELECTIONS - Pre election matter - Time frame - Electoral Act s. 89(9) neither set time within which to conclude the matter - Nor when to commence same (H3)

STATUTES - Interpretation - Principle - Provisions of statute must be read and construed together - Unless there is reason why a particular provision should be read independently (H4)

STATUTES - Interpretation - Rights of action - Courts must jealously guard their jurisdiction in protecting statutory vested rights - If a provision of same statute appears to derogate from such rights (H5)

STATUTES - Interpretation - Literal rule - Courts must interpret the law within the context of its constitutive words - And refrain from seeking the meaning outside the clear words used by legislators (H6)

FACTS

This action was commenced at the Federal High Court Awka judicial division by plaintiff/appellant, seeking inter alia declaration

against defendants/respondents that he (appellant) is the lawful candidate of 2nd respondent in the election for Aguata Federal Constituency seat at the House of Representatives. Appellant, 3rd respondent and some others contested 2nd respondent's primary election for the nomination of the candidate for the aforementioned legislative seat in relation to the 9th April 2011 general election conducted by 1st respondent. Appellant's contention is that the primary election was conducted in accordance with 2nd respondent's guidelines. He further stated that he scored the highest votes cast and thus entitled to have his name submitted to 1st respondent as the authentic candidate of 2nd respondent for the general election. Appellant was therefore dissatisfied when 2nd respondent submitted the name of 3rd respondent to 1st respondent as the party's candidate at the general election.

At the trial, 2nd and 3rd respondents challenged the jurisdiction of the court to entertain the suit on the grounds that appellant's action was not brought timeously and failure to join necessary parties to the suit disentitled appellant to invoke section 251(1) p, q, of the 1999 Constitution as amended. The objection on jurisdiction was upheld and appellant's action struck out. Aggrieved, appellant appealed to the Court of Appeal Enugu Division. Although the court resolved some of appellant's issues in his favour, it however suo motu raised the issue of the appeal being an academic exercise. Consequently, the court held that the prosecution of appellant's suit which was not commenced timeously, is a worthless academic exercise the trial court lacks the jurisdiction of indulging in. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether the Justices of the Court of Appeal were right in their decision that the Federal High Court has no jurisdiction to entertain the suit on the ground that the election having been held that the pre-election matter had become academic or hypothetical.

(2) Whether the lower court was right to raise the issue that the election having been held that the action has become academic or hypothetical suo moto (sic) and resolve same without giving the parties, especially the appellant the opportunity to address them on the issue.”

HELD (Unanimously allowing the appeal per **MUHAMMAD JSC**)

APPEALS - Issue - Suo motu raising

1. My lords, learned respondents' counsel are entirely right that by virtue of Section 15 of the Court of Appeal Act 2004, Order 4 Rule 4 and Order 6 Rule 5 of the Court of Appeal Rules 2011 the lower court has jurisdiction to suo motu raise any issue and determine same after hearing parties to the appeal if doing so will resolve the real question in controversy in the appeal. (p. 1991 C)

COURTS - Records - Regularity of

2. Firstly, it is trite that records of courts are presumed to be correct until they are successfully impugned. The maxim is *Omnia Praesumuntur rite esse acta*. (p. 1991 E)

ELECTIONS - Pre election matter - Time frame

3. Appellant's right of action as conferred under Section 87(9) has persistently been sustained by this Court once exercised before the conduct of the election. The section does not set a time frame within which the action once commenced before the conduct of the election must be concluded. Neither does the section say the action cannot be commenced at the time the appellant did. Indeed the section operates unrestricted by any provision of the Act and or the rules or constitution of the political parties.

I am only to add that once an action pursuant to section 87(9) has been filed before the conduct of the election in relation to which the action has arisen, on the authorities, it remains competent. Appellant's action that has been so commenced, contrary to what the lower court held, accordingly endures.

The real issue in controversy between the parties, whether for the avoidance of doubt, the lower court's order in spite of the provisions of Sections 31(1) & (5) and 33 the trial court has jurisdiction under Section 87(9) of the same Electoral Act to hear and determine appellant's suit, is, for the foregoing,

resolved in appellant's favour. The appeal succeeds and is allowed. Parties are to bear their respective costs.
(pp. 1995 A/1997 D/H)

STATUTES - Interpretation - Principle

- B 4. The interpretative task of the foregoing desired a communal consideration from the lower court. Whenever a court is faced with the interpretation of statutory provisions, the statute must be read as a whole in determining the object of a particular provision. Thus, all provisions of the statute must be read and construed together unless there is a very clear reason why a particular provision of the statute should be read independently. To achieve a harmonious result, a section must be read against the background of another to which it relates.**
C
D This principle is indispensable in giving effect to the true intentions of the makers of the statute. (p. 1995 H)

STATUTES - Interpretation - Rights of action

- E 5. There is also the similarly overriding principle which enables courts to jealously guard their jurisdiction in protecting statutory vested rights if a provision of the same statute appears to derogate from such rights by construing the latter provision very strictly. (p. 1996 G)**

F *STATUTES - Interpretation - Literary rule*

- 6. Lastly, courts must interpret the law within the context of its constitutive words and refrain from seeking the meaning of the statute outside the clear words employed by the legislators. (p. 1996 H)**
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NOTABLE POINT OF INTEREST

MUHAMMAD JSC

- H 1. Suo motu raising of issue – Power to be exercised discreetly**
In conclusion, it must be observed that even though the lower court is empowered under Section 15 of the Court of Appeal Act to raise suo motu any issue and, on hearing parties before it, resolve an appeal on the grounds of the issue it so raised, this power should be

resorted to most discreetly and with the highest sense of responsibility. To say the least, sufficient discretion has not been employed by the lower court in the instant case. (p. 1998 C)

REPRESENTATION

CHIEF G.O. OSUIGWE for the Appellant with Onyeka Osigwe Esq. B
BEN OSAKA ESQ. for the 1st Respondent
CHIEF IKENNA EGBUNA ESQ.; for the 2nd Respondent
B.C. IGWILO ESQ.; for the 3rd Respondent with S.N. Obinna Esq.,
Mary-Ann Ekwe (Miss) and Cyndy Orji (Miss) C

CASES REFERRED TO

Amaechi v. INEC (2008) 10 WRN 1
Imegwu v. Okolocha (2013) 9 NWLR (pt. 1359) 347
C.P.C. v. INEC (2011) 18 NWLR (pt. 1279) 493 D
Ezeoke v. Igwe (2001) FWLR (pt. 154) 232
Kuti v. Jibowu (1972) 6 SC 147
Kuti v. Balogun (1978) 1 SC 53
Queen v. Ogoto (1961) 2 SC 366
Mogaji v. Odojin (1978) 4 SC 91 E
Ebba v. Ogoto (1984) 1 S.C.N.L.R 372
Odedo v. INEC (2008) 17 NWLR (pt. 1117) 544

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 251 F
Electoral Act 2010, ss. 31, 32, 33, 87(9), 141
Court of Appeal Act 2004, s. 15
Court of Appeal Rules, O. 4 r. 4, O. 6 r. 5 G

LEAD JUDGMENT BY MUHAMMAD JSC

The appellant, the 3rd respondent and others contested the 2nd respondent's primary election for the nomination of the party's candidate for the Aguata Federal Constituency seat in Anambra State, The primary election which was in relation to the 9th April, 2011 H
general election conducted by the 1st respondent, took place on the 10th day of January, 2011 after a false start the previous day.

The appellant asserts that the primary election proceeded in accordance with the guidelines published by the respondent and,

having scored the highest votes at the end of the exercise, he was entitled to have his name submitted to the 1st respondent as 2nd respondent's candidate in the general election. Instead, the 2nd respondent submitted the name of the 3rd respondent to the 1st respondent as its candidate for the 9th April, 2011 election for the B Aguata Federal Constituency seat in the House of Representatives. Aggrieved by this turn of events, the appellant commenced action at the Awka division of the Federal High Court seeking, inter-alia, a declaration against the respondents that he is the lawful candidate of the 2nd respondent in the election for the Aguata Federal Constituency C Seat.

The 2nd and 3rd respondents having entered conditional appearance contested appellant's claim by filing a joint statement of defence. Thereafter, the two challenged the trial court's jurisdiction to entertain D appellant's suit, inter alia on the grounds that appellant's action was not brought timeously and his failure to join necessary parties to the suit disentitled the appellant to invoke Section 251 (1) p, q, of the 1999 Constitution as amended.

The trial court upheld 2nd and 3rd respondents objection and in E declining jurisdiction struck out appellant's action, Dissatisfied with the trial court's decision, the appellant appealed to the Court of Appeal, Enugu Division, hereinafter referred to as the lower court. He urged the lower court to determine his appeal on the basis of the F following issues:-

"1. Whether the Federal High Court has jurisdiction to entertain pre-election matter bothering on the validity of the nomination and/or submission of the name of a person alleged to have lost the party primary election by a political party instead of the winner of the G primary election to INEC as the party's candidate for election into the House of Representatives. (formulated from ground 1)

2. Whether the learned trial judge was right to make a case quite distinct from the case presented by the 2nd and 3rd respondents for the said respondents and resolve same without inviting the parties to H address him on the issue raised by him (formulated from ground 2)

3. Whether the 1st respondent is a necessary party in this suit (formulated from ground 3)

4. Whether the learned trial Judge properly exercised his

discretion in the matter by striking out the suit instead of transferring it to the State High Court for hearing and determination. (formulated from ground 4)

Having resolved issues 1 and 3, and found it “unnecessary and useless” to consider and determine issues 2 and 4 the appellant had distilled as having arisen for determination of his appeal, the lower court proceeded to resolve the issue it raised suo motu against the appellant. The court held that the prosecution of appellant’s suit which was not commenced timeously is a worthless academic exercise the trial court lacks the jurisdiction of indulging in.

The appeal challenges this ultimate decision of the lower court on the issue it raised suo motu.

In compliance with the rules of court, parties have filed and exchanged their briefs which, at the hearing of the appeal, were adopted and relied upon as arguments for and against the appeal. The two issues distilled in the appellant’s brief as calling for determination in the appeal read:-

“(1) Whether the Justices of the Court of Appeal were right in their decision that the Federal High Court has no jurisdiction to entertain the suit on the ground that the election having been held that the pre-election matter had become academic or hypothetical.

(2) Whether the lower court was right to raise the issue that the election having been held that the action has become academic or hypothetical suo moto (sic) and resolve same without giving the parties, especially the appellant the opportunity to address them on the issue.”

The 1st respondent considers and adopts the two issues distilled by the appellant as having arisen for the determination of the appeal. The 2nd and 3rd respondents distilled a lone and similar issue each on the basis of which they consider the appeal should be determined. 2nd respondent’s issue reads:-

“WHETHER THE COURT BELOW IN ANY WAY OCCASIONED A MISCARRIAGE OF JUSTICE BY SUO MOTU RAISING THE ISSUE OF THE APPLICABILITY OR OTHERWISE OF SECTION 141 OF THE ELECTORAL ACT 2010 AS AMENDED AND RESOLVING SAME AGAINST THE APPELLANT AFTER HEARING BOTH PARTIES ON THE ISSUE.”

The more detailed issue coded in the 3rd respondent’s brief is:-

“Whether the decision of the court below reached after the court below suo moto (sic) raised the issue of section 141 of the Electoral Act 2010 (as amended), invited the parties to the appeal to address the court on section 141 of the Electoral Act 2010 (as amended) and its effect on the Appellant’s appeal could be said to be a decision reached in breach of the Appellant’s right of fair hearing, after the court had heard the parties including the Appellant on section 141 of the Electoral Act 2010 (as amended) and its effect of rendering the Appellant’s appeal academic and hypothetical.

Arguing the appeal, learned appellant’s counsel submits that from the arguments of the appellant, the 2nd and 3rd respondents at pages 483:484 of the record of appeal, it is and contends that the decision of the court below is beyond reproach. The appellant who chose to commence his action a day to the conduct of the 9th April, 2011 did not act timeously. No court, argues learned counsel, can grant the reliefs the appellant seeks by virtue of paragraph 28 of his statement of claim. Sections 31, 32, 33 and 141 of the Electoral Act 2010, submits learned counsel, disentitle the grant of the reliefs, notwithstanding the fact that the action is constituted pursuant to section 87 of the same Act. Indeed, it is further submitted, the question of who is 2nd respondent’s candidate, with the conduct of the election on 9th April, 2011, has ceased to be relevant. With appellant’s failure to seek the reliefs timeously, the lower court, submits learned counsel, is correct to have held at lines 10 - 11 of page 514 of the record of appeal that appellant’s case is worthless and an academic exercise which learned counsel urges that the sole issue be resolved in appellant’s favour.

Further arguing the appeal, learned appellant’s counsel contends that the lower court is wrong in holding that the trial court lacks jurisdiction over the issue of the nomination of 2nd respondent’s candidate commenced on the ground that with the subsequent conduct of the election, even though appellant’s suit was commenced prior to the conduct of the election, the cause has become hypothetical or academic. It is submitted that the Electoral Act 2010 (as amended) does not provide that a pre-election matter must be commenced, heard and necessarily determined before the conduct of the election. Section 87 of the Electoral Act which creates appellant’s right of action, as interpreted by the apex court, argues counsel, only requires that the

action be commenced before the conduct of the election while the court's decision thereon may be reached even after the conduct of the particular election. The state of the law on this aspect of the issue the appellant's action raises, learned counsel submits is as stated by the Supreme Court in *Amaechi v. INEC* (2008) 10 WRN 1.

The lower court, learned counsel concludes, is simply wrong in its purported application of the principle the supreme Court propounded in *Imegwu v. Okolocha* (2013) 9 NWLR (Pt. 1359) 347 since the facts of the earlier case are different from those in the instant case.

On the whole, learned appellant counsel urges that the appeal be allowed.

Arguing the appeal in its brief, learned counsel to the 1st respondent refers to pages 511 - 514 of the record of appeal and contends that the decision of the court below is beyond reproach. The appellant who chose to commence his action a day to the conduct of the 9th April, 2011 did not act timeously. No court, argues learned counsel, can grant the reliefs the appellant seeks by virtue of paragraph 28 of his statement of claim. Sections 31, 32, 33 and 141 of the Electoral Act 2010, submits learned counsel, disentitle the grant of the reliefs, notwithstanding the fact that the action is constituted pursuant to section 87 of the same Act. Indeed, it is further submitted, the question of who is 2nd respondent's candidate, with the conduct of the election on 9th April, 2011, has ceased to be relevant. With appellant's failure to seek the reliefs timeously, the lower court, submits learned counsel, is correct to have held at lines 10 - 11 of page 514 of the record of appeal that appellant's case is worthless and an academic exercise which the trial court lack the jurisdiction to indulge in. Learned counsel relies on *C.P.C. v. INEC* (2011) 18 NWLR (pt 1279) 493 at 559, *Commissioner for Works Benue State v. D.P.L* (1988) SCNJ and *Imegwu v. Okolocha* (2013) 9 NWLR (pt 1359) 347.

Concluding his arguments under their 1st issue, learned counsel submits that the decision of this Court on the purport of Section 141 of the Electoral Act in *C.P.C. v. Ombugudu* (2013) 18 NWLR (pt 1385) 66 at 119 takes the bottom off the appellants feet. The section of the Electoral Act as interpreted makes the grant of appellant's reliefs on the basis of the decision of the Supreme Court in *Amaechi v. INEC* (supra) impossible. It is urged that the 1st issue be resolved against the

appellant.

Under their 2nd issue, appellant's 2nd as well, learned 1st respondent's counsel submits that the finding in the lower court's judgment at page 508 of the record belies the appellant's claim that the issue on the basis of which the lower court dismissed his appeal was raised suo motu and that he was not heard before the decision on the issue. The record of a court is presumed correct and binds the parties to the proceedings as well. Relying on the decisions of this court in *Texaco Panama Inc v. SPDC Ltd* (2002) FWLR (Pt 96) 579 at 605 and *Daniel Adeoye v. The State* (1999) 4 SC (pt 11) 67, learned counsel urges that their 2nd issue be resolved against the appellant and the appeal dismissed too.

Responding, learned 2nd respondent's counsel emphasized the fact that the court below, by virtue of section 15 of the Court of Appeal Act 2004, Order 4 Rule 4 and Order 6 Rule 5 of the Court of Appeal rules; has the powers of raising and determining any question that will resolve the real issue in controversy between the parties provided the parties are heard before the determination. The court, learned counsel submits, raised the critical question which parties had joined issue upon at the trial court which issue the trial court left however undetermined. The 2nd and 3rd respondents, it is submitted, had, in paragraph 6 of the grounds of the objection contained in their memorandum of appearance, paragraph 60 of their statement of defence as well as paragraph 10 of the grounds of their motion on Notice challenging the jurisdiction of the lower court, dwelt on the fact that the 9th April, 2011 election had held without the participation of the appellant. Paragraph 5 of the affidavit in support of the 2nd and 3rd respondents' motion challenging the jurisdiction of the trial court, it is argued, contains facts showing that the appellant did not participate in the election. 2nd and 3rd respondents have argued under their 4th issue at the trial Court that appellant did not participate in the election which fact, given section 141 of the Electoral Act takes away the jurisdiction the trial court would have otherwise exercised over appellant's suit. It is this very issue, contends learned counsel, the lower court raised on its own and had parties address it before the decision the appellant challenges in this appeal. Appellant cannot, contends learned counsel, succeed.

Further arguing the appeal, learned counsel submits that line 18 of page 483 to line 7 of page 484 of the record of appeal falsities

appellant's claim that the lower court did not give him a hearing before determining the issue the court raised suo motu. The decision of the lower court at line 13 of page 512 to line 2 of page 513 of the record invoking the provision of Section 141 of the Electoral Act 2010 (as amended) to adjudge appellant's action incompetent, argues learned counsel, cannot be faulted. Relying on the decisions in Evangelist Effanga v. Rogers (2003) FWLR (pt 157) 1058 at 1071, Ezeoke v. Igwe (2001) FWLR (pt 154) 232 at 242 - 3 and Imegwu Okolocha (supra) learned counsel urges that their issue be resolved against the appellant and in consequence the appeal be dismissed.

Similar arguments have been advanced in 3rd respondent's brief of argument settled by B. C. Igwilo Esq. It serves no purpose to reproduce same again.

My lords, learned respondents' counsel are entirely right that by virtue of Section 15 of the Court of Appeal Act 2004, Order 4 Rule 4 and Order 6 Rule 5 of the Court of Appeal Rules 2011 the lower court has jurisdiction to suo motu raise any issue and determine same after hearing parties to the appeal if doing so will resolve the real question in controversy in the appeal. Further concessions have to be made to respondents' counsel!

Firstly, it is trite that records of courts are presumed to be correct until they are successfully impugned. The maxim is Omnia Praesumuntur rite esse acta. See Kossen (Nig) Ltd v. Savannah Bank (Nig.) Ltd. (1995) LPELR-SC 209/89 and Chief Adebisi Adegbuyi v. All Progressive Congress (APC) & Ors (2014) LPELR-SC 257/2015.

In the case at hand, learned appellant's counsel contends that the appellant was not heard before the determination of the issue the lower court raised suo motu was not heard. Yet the record of appeal at pages 483 - 486, as correctly referred to by all counsel to the respondents, indicates otherwise. One's scrutiny reveals very clearly the issue the court raised suo motu and the fact that all the parties before the court, including Mr. Osuigwe who represented the appellant then, had addressed the court on the issue before the court's determination of same. The record of appeal binds not only the parties in this appeal but this court as well.

Learned appellant's counsel is right that this court has depre-

cated the practice of a court raising suo motu and deciding an issue without first hearing parties on it. In one such case, Lahan v. Lajojetan (1972) 6 sc 190, the court per Sowemimo, JSC (as he then was) (of blessed memory) at page 200 of the report enthused thus:-

“... (A) procedure whereby a Court of Appeal takes up a point before parties or their counsel are heard and decides the issue is most inappropriate and irregular. We have often in the past drawn attention to the impropriety of dealing with an appeal in this way and it is our hope that this practice will be discontinued.” See also Kuti v. Jibowu {1972} 6 SC 147 and Kuti v. Balogun (1978) 1 SC 53. The facts of the instant case do not, however, support appellant’s resolve in moving one to apply the foregoing strictures on the lower court since before the determination of the issue the court raised suo motu, as borne out by the record of the instant appeal, the parties before the court were heard on the issue raised by the court.

Now, what is the issue raised suo motu by the lower court and the court’s decision on same that informs the instant appeal? My lords, the submissions of learned counsel of all the parties to the appeal on the issue the lower Court raised spans pages 483 and 484 of the record of appeal.

The lower court in the course of its judgment, see page 507 of the record of appeal, identified the issue it raised and eventually determined thus:-

“I will now deal with the issue of whether the suit at the trial court was an academic exercise, and if so whether the trial court had jurisdiction to entertain such suit. As I had stated herein, this issue was raised suo motu (sic) by this court. No ground of this appeal raised this issue and it was not part of the issues for determination raised by the appellant in his brief of argument. The judgment of the trial court did not decide this issue.” (underlining mine for emphasis).

The lower court then resolved the issue so raised at pages 514 - 515 of the record of appeal that notwithstanding the provision of Section 87(9) of the Electoral Act, which creates appellant’s right of action, same not being invoked timeously, by virtue of Sections 31(1) and 33 of the Electoral Act, is incapable of facilitating the reliefs and has become hypothetical and academic.

The court concluded:-

“In *IMEGWUV. OKOLOCHA* (2013) 9 NWLR (PT 1359) 347

the Supreme Court ...further held that even if a nomination was wrongful once the election has been held, the wrongful nature of the nomination can no longer affect the nomination and the election." (underlining mine for emphasis).

The instant appeal is against the foregoing decision of the lower court. B

The issue in this appeal falls within a very narrow compass. The point the appellant appears to be making and rightly too, is that his cause of action, a pre-election one, on the issue of the nomination of the candidate of the 2nd respondent, is provided for by Section 87(9) of the Electoral Act 2010 (as amended): that the right of action under the section, as interpreted by the Supreme Court, once commenced before the election, is not limited to time; that the decision of the lower court derogates from its own earlier decisions and the very many decisions of this court on the issue and to that extent the court's decision is perverse. One cannot agree more with learned appellant's counsel. A decision is said to be perverse if it does not draw from the evidence on record and/or where the court wrongly apply legal principles to correctly ascertained that and by so doing occasion injustice. See *Queen v. Ogodu* (1961) 2 SC 366, *Mogaji v. Odojin* (1978) 4 SC 91 and *Ebba v. Ogodu* (1984) 1 S.C.N.L.R 372. C

Firstly, the lower court is indeed bound by its own decisions and the decisions of this court on the very issue it raised and determined. In *Chukuma Ogwe & anor v. Inspector General of Police & ors* (2015) LPELR-SC 214/2013, this court restated what the failure of a subordinate court in applying its previous valid and subsisting decisions or the decisions of a higher court results in thus:- D

"The lower court by its decision instantly appealed against failed to appreciate the place of the doctrine of stare decisis or precedent in the adjudication process. By the doctrine, judges are enjoined to stand by their decisions and the decisions of their predecessors. The doctrine does not allow for the exercise of discretion in an issue the court previously decided when that same issue subsequently surfaces before the court for determination. It is this age old rule of practice that gives law its certainty and equilibrium in the society." E

My learned brother Fabiyi, JSC remains ever so direct and poignant in his concurring judgment thus:- F

"The court below cannot claim to be unaware or ignorant of the

position of this court in Akpaji v. Udemba (supra). But it failed to tow the line, as it were, and resultantly flouted the Rule of stare decisis which is to the effect that a point of law that has been settled by a superior court should be followed by a Lower Court.

There is sense in it so as to avoid confusion or unwarranted mistake. See Royal Exchange Assurance Nig. Ltd. v. Aswani Textiles Ind. Ltd. (1991) 2 NWLR (pt. 176) 639 at 672. It is not superior court as same can be counter-productive to refuse to follow the decision of a productive as manifest in the order of the court below. A Lower Court should tow the line on a very clear and well pronounced point of law by a superior court, I repeat. See Atolagbe v Awuni & Ors. (1997) 7 SCNJ 1 at paragraphs 20, 24 and 35,”

The lower court and indeed this court had, before the case at hand, considered and pronounced upon the right of action conferred on appellant by section 87(9) of the Electoral Act 2010 (as amended) in spite of the provisions of sections 31 and 33 of the same statute.

In Chief Koku Garga & ors v. Bayelsa State Independent Electoral Commission & ors (2012) LPELR - CA/PH/166/2011, the Port-Harcourt Division of the tower court had held, prior to the instant case and the lower court’s decision being appealed against, that once a political party breaches Section 87 (4) of the Electoral Act in the conduct of the primary election for the nomination of its candidate for an election, an aggrieved party has, by virtue of sub-section (9) of the same section, the right of action to seek redress notwithstanding the provisions of Sections 31(1) and 33 of the same Act.

In Vivian Clement Akpamgbo Okadigbo and Ors v. Egbe Theo Chidi & Ors (2015) LPELR 24564 (SC) this court restated its position on the right of action open to an aggrieved party pursuant to Section 87 (9) of the Electoral Act thus:-

“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 election.”

Appellant’s right of action as conferred under Section 87(9) has persistently been sustained by this Court once exercised before the conduct of the election. The section does not set a time frame within which the action once commenced before the conduct of the election must be concluded. Neither does the section say the action cannot be commenced at the time the appellant did. Indeed the section operates unrestricted by any provision of the Act and or the rules or constitution of the political parties. See Odedo v. INEC (2008) 17 NWLR (pt. 1117) 544, Gwede v. INEC (2014) 18 NWLR (pt 1438) 56 and Uwazurike v. Nwachukwu (2013) 3 NWLR. (pt 1342) 503 at 522 Sections 31(1) & (5) and 33 of the Electoral Act by virtue of which the lower court held that the appellant cannot, at the time he commenced his suit, invoke the jurisdiction of the trial court pursuant to Section 87(9) are hereinunder reproduced:-

“31. (1) Every political party shall not later than 60 days before the date appointed for a general election under the provisions of this Act; submit to the Commission, in the prescribed forms, the list of the candidates the Party proposes to sponsor at the elections, provided that the commission shall not reject or disqualify candidate(s) for any reason whatsoever.

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

Section 87(9) the lower court held does not avail the appellant in the light of the foregoing reads:-

“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.”

The interpretative task of the foregoing desired a communal consideration from the lower court. Whenever a court

is faced with the interpretation of statutory provisions, the statute must be read as a whole in determining the object of a particular provision. Thus, all provisions of the statute must be read and construed together unless there is a very clear reason why a particular provision of the statute should be read independently. To achieve a harmonious result, a section must be read against the background of another to which it relates. This principle is indispensable in giving effect to the true intentions of the makers of the statute. See *Rabiu v. Kano State* (1980) 8 - 11 SC 130 and *Attorney-General Lagos State v. Attorney-General Federation* (2014) All FWLR (pt. 740) 1296 at 1331.

In the case at hand, a communal consideration of sections 31(1) and (5), 33 and 87(9) of the Electoral Act 2010 (as amended) readily shows that the jurisdiction conferred on the trial court under Section 31(5) is distinct and separate from the subsequent, specific and special jurisdiction under Section 87(9) of the same statute. Indeed Section 87(9), by the clear and unambiguous words that make it, provides that the right of action vested. In the appellant thereunder operates notwithstanding Sections 31(5) and 33 or any other provision of the Electoral Act or the rules of a political party.

The applicable principle in the present circumstance where a specific provision of the statute is subsequent to a general provision, the specific provision prevails in the event of any conflict between the two. The lower court's correct decision in this matter would have been that appellant's right of action under Section 87(9) which is special and specific persists in spite of the separate and general provisions of Section 31 and 33 that are prior in sequence to Section 87(9) of the same Electoral Act. See *Mrs. F. Bamgboye V. Administrator General* (1954) WACA 616 at 619, *AG Lagos V. AG Federation* (supra) and *Chika Madumere & anor V. Barrister Obinna Okwara & others* (2013) 6 SCNJ 268.

There is also the similarly overriding principle which enables courts to jealously guard their jurisdiction in protecting statutory vested rights if a provision of the same statute appears to derogate from such rights by construing the latter provision very strictly. See *Wilson v. A-G of Bendel State* (1985) 1 NWLR (pt 4) 572 and *Oya v. Governor of Oyo State* (1989).

Lastly, courts must interpret the law within the context of

its constitutive words and refrain from seeking the meaning of the statute outside the clear words employed by the legislators. See Senator Dahiru Bako Gassol v. Alhaji Abubakar Umar Turari & Others (2013) 3 S.C.N.J. 6 and Mr. Ugochukwu Duru v. Federal Republic of Nigeria (2013) 2 SCNJ 377.

In the case at hand, therefore, the restriction the lower court imposed on the operation of Section 87(9) is neither drawn from the provisions of sections 31(5) and 33 nor section 87(9) itself. It could not have been. In Uwazurike V. Nwachukwu (supra) this Court per Onnoghen JSC at page 522 of the report puts it more succinctly thus:-

“The jurisdiction conferred on the High Court by the above section of the Act Section 87(9) is not limited to time, let alone circumscribed between the holding of the primary election and submission of the name of the nominated or sponsored candidate by the political party concerned. The provisions of Section 87 (9) supra is very clear and unambiguous and should be given its natural and plain meaning.”

I am only to add that once an action pursuant to section 87(9) has been filed before the conduct of the election in relation to which the action has arisen, on the authorities, it remains competent. Appellant’s action that has been so commenced, contrary to what the lower court held, accordingly endures.

Learned appellant counsel’s submission that the lower court’s decision that ignored all the foregoing principles be pronounced perverse cannot be treated lightly. The court’s reliance on the decision of this court which is neither on the same nor similar facts, learned appellant’s counsel is again right, cannot save the court’s decision. See Rossek v. ACB Ltd (1993) 8 NWLR (pt. 312) 382 and Shetima & Ors v. Goni & ors (2011) NWLR (pt. 1279) 413 at 425. Certainly, had the lower court availed itself with all the foregoing principles and not flaunted them, it would have appreciated and submitted to the authority of its earlier decision in Chief Koku Gariga & ors v. Bayelsa State Independent Electoral Commissions & ors (supra) and the decision of this court in Vivian Clement Akpamgbo Okadigbo and Ors v. Egbe Theo Chidi & Ors (supra) and more specifically Uwazurike V. Nwachukwu (supra) in avoiding the pitfall it needlessly ended in.

The real issue in controversy between the parties, whether

for the avoidance of doubt, the lower court's order in spite of the provisions of Sections 31 (1) & (5) and 33 the trial court has jurisdiction under Section 87(9) of the same Electoral Act to hear and determine appellant's suit, is, for the foregoing, resolved in appellant's favour. The appeal succeeds and is allowed. Parties are to bear their respective costs.

For the avoidance of doubt, the lower court's order affirming the decision of the trial court in declining jurisdiction on the basis of the issue the former raised suo motu and decided is hereby set-aside. The trial court's jurisdiction pursuant to sec. 87(9) of Electoral Act persists. With the tenure of 7th Assembly at the national level having expired, this Court does hereby refrain from remitting appellant's otherwise competent suit to the trial court for same to be heard on the merits.

In conclusion, it must be observed that even though the lower court is empowered under Section 15 of the Court of Appeal Act to raise suo motu any issue and, on hearing parties before it, resolve an appeal on the grounds of the issue it so raised, this power should be resorted to most discreetly and with the highest sense of responsibility. To say the least, sufficient discretion has not been employed by the lower court in the instant case.

GALADIMA JSC

I have had the opportunity of reading in draft the judgment of my learned brother MUSA DATTIJO MUHAMMAD JSC, just delivered. I entirely agree with his reasoning and conclusion therein that there is merit in this appeal and should be allowed. The facts of the case leading to this appeal have been carefully set out in the lead judgment. I need not repeat these facts.

In the court below the two issues (that is 1 and 3) which were resolved and found to be "unnecessary and useless" for consideration and the two issues (that is 2 and 4) determined as having arisen for determination of the appellant's appeal are set out as follows:

"1. Whether the Federal High Court has jurisdiction to entertain pre-election matter bothering on the validity of the nomination and/or submission of the name of a person alleged to have lost the party primary election by a political party instead of the winner of the primary election to INEC as the party's candidate for election into the House of Representatives (Formulated from Ground 1).

2. Whether the learned trial judge was right to make a case quite distinct from the case presented by the 2nd and 3rd respondents for the said respondents and resolve same without inviting the parties to address him on the issue raised by him (formulated from ground 2).

3. Whether the 1st respondent is a necessary party in this suit (formulated from Ground 3).

4. Whether the learned trial judge properly exercised his discretion in the matter by striking out the suit instead of transferring it to the State High Court for hearing and determination. (Formulated from Ground 4)”

After the resolutions of the foregoing issues aforesaid, the court below then proceeded to raise an issue suo motu and resolve same against the Appellant. It held that the appellant's suit was not commenced timeously and is therefore a worthless academic exercise and therefore, the trial court lacked jurisdiction to embark upon. The appeal was dismissed solely on the issue the court raised suo motu.

The Appellant herein was dissatisfied with the decision, hence the appealed against same. He raised two issues for determination as follows:

“1. Whether the justices of the Court of the Appeal were right in their decision that the Federal High Court has no jurisdiction to entertain the suit on the ground that election having been held that the pre-election matter had become academic or hypothetical?”

2. Whether the lower court was right to raise the issue that the election having been held that the action has become academic or hypothetical suo motu and resolve same without giving the parties especially the appellant opportunity to address them on the issue”

The 1st Respondent has considered and adopted the two issues formulated by the Appellant. The 2nd and 3rd Respondents' sole issue is also a complaint against the issue of suo motu raised by the court below.

It is clear that the Appellant is complaining of not being accorded fair hearing on his issue No. 2 I do not think the appellant was denied fair hearing. The record shows that the parties addressed the issue the court raised (see pp. 483 and 484 of the record).

It is at page 483 of the record learned counsel for the Appellant herein, particularly addressed the issue of whether section 141

of the Electoral Act 2010 (as amended) was applicable. Also at page 484A in his Reply on points of law the learned counsel for the appellant has urged the court to confine itself to the issue before it. It was also contented that the Appellant appeal was neither academic nor hypothetical.

B In the appellant's issue No. 1 after a careful consideration of the issue, his contention is that he contested and scored the highest number of votes cast at the primaries conducted by the 2nd Respondent herein and his name and no other, should have been submitted to the 1st Respondent (INEC) as the party's candidate to contest the membership seat for the Aguata Federal Constituency for the National assembly. I agree that this is a complaint that squarely falls within Section 87(9) of the Electoral Act 2010 (as amended). It provided as follows:

D *"Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guideline 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".*

The court below rightly held that the Federal High Court had jurisdiction to entertain the claim of the Appellant. The grouse of the Appellant is the view held by the court below that the Appellant did not act timeously when it challenged the result of the primaries only a day to the conduct of the general election, more so that the election having been conducted and the winner duly declared therefore his complaint became an academic exercise. It is however not in doubt that the election had been conducted with the 3rd Respondent as the candidate of the 2nd Respondent and the said 3rd Respondent had been sworn.

H It is not correct to say that because the election conducted by the 1st Respondent had taken place before the commencement of the Appellant's matter therefore it became academic. It is however, to be noted that the Appellant had instituted his action on the conduct of his party's primaries before the holding of the election but he was not heard until after the election took place. How can it be said that he has forfeited his right to ventilate his grievance? Section 87(9) (supra) is not ambiguous. It is clear. The jurisdiction of the High Court

as conferred on it by this section is not subjected to any time frame, it is not circumstance between Election and submission of the name of the nominated or sponsored candidate by his political party. It is neither intended by the legislature to be subjected this provision of any provisions of the Electoral Act of the Rules guiding the political affairs of any political party, otherwise the jurisdiction of the court would be unnecessarily ousted even in a clear situate or circumstances that is not warranted. It is wrong to construe section 31(1)(4)(5) and (6) of the Electoral Act by the court below as the provisions ousting the jurisdiction of the trial High Court once the main election has taken place. The jurisdiction conferred on the trial High Court under these sections is quite distinct and separate from the special jurisdiction under section 87(9) of the same Act. B
C

It is for the foregoing reasons and the more detailed ones provided in the lead judgment that I too allow this appeal. I abide by the order made as to costs. D

PETER-ODILI JSC

EDITOR'S NOTE: Observe that the judgment of the Hon. Justice M. U. Peter-Odili, JSC was not secured at the time of going to the press. E

ARIWOOLA JSC

My learned brother Dattijo Muhammad, JSC obliged me with a copy of the draft of the lead judgment just delivered. I am in total agreement with the reasoning therein and the conclusions arrived thereat, that the appeal is meritorious and should be allowed. All the issues raised in the appeal were admirably dealt with in the lead judgment and I have nothing new to add. Accordingly, the appeal is also allowed by me. F
G

I abide by the consequential orders in the said lead judgment including the order on costs.

KEKERE-EKUN JSC

This is an appeal against the judgment of the Court of Appeal, Enugu Division delivered on 3/2/2014 dismissing the appellant's appeal against the ruling of the Federal High Court, Awka delivered on 23/7/2011. H

The appellant and three others, including the 3rd Respondent

contested the Peoples Democratic Party's primaries for election of the candidate to represent Aguata Federal Constituency in the House of Representatives at the National Assembly. The primaries were conducted on 10th January, 2011. At the conclusion of the exercise the 3rd Respondent was said to have scored the highest number of votes and her name was submitted to INEC (1st Respondent) as the party's candidate. The appellant, however, contended that he was the one who scored the highest number of votes and that it was his name that should have been submitted to the 1st respondent. Being dissatisfied with the outcome of the primaries, he instituted an action before the Federal High Court sitting at Awka (the trial court) for, inter alia, a declaration that he is the lawful candidate of the PDP (2nd Respondent) for the House of Representatives Aguata Federal Constituency; that the 3rd Respondent is not the winner of the primaries and for an order substituting or replacing his name for that of 1st respondent as the candidate of the PDP for the said Aguata Federal Constituency.

The suit was filed on 8th April 2011 on the eve of the election, which took place on 9th April 2011.

The 2nd and 3rd Respondents (as 2nd and 3rd defendants) entered a conditional appearance to the suit and filed a joint Statement of Defence. They also filed a motion on notice challenging the court's jurisdiction to entertain the suit on various grounds. On 22/7/2011 the trial court struck out the suit for want of jurisdiction. The court ruled:

1. That the 1st Respondent (INEC) is not a necessary party to the suit;
2. That it lacked jurisdiction to entertain the action as it did not fall within the provision of Section 251 (1) (p) (q) and (r) of the 1999 Constitution; and
3. That the Federal High Court lacks jurisdiction to hear and determine pre-election matters.

The appellant was dissatisfied with this decision and filed an appeal before the Enugu Division of the Court of Appeal. At the hearing of the appeal, the court, suo motu, invited the parties to address it on whether the appeal had not become academic since the election had already taken place on 9th April 2011 and 3rd respondent had assumed her seat in the House of Representatives and also in view of the decision of this court in *Imegwu Vs Okolocha* (2013) 9

NWLR (Pt. 1359) 347 and the provision of Section 141 of the Electoral Act. The parties addressed the court accordingly. In respect of the issues for determination formulated by the appellant and adopted by the respondents, the court held, inter alia, that INEC is a necessary party to the suit and that by virtue of Section 87 (9) of the Electoral Act 2010 (as amended) the Federal High Court has jurisdiction to entertain a suit at the instance of an aspirant who alleges that any of the provisions of the Act or the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for an election. B

However, notwithstanding the resolution of the issues for determination in the appeal in the appellant's favour, the lower Court dismissed the appeal based on the issue it raised suo motu and held that the election having taken place, the suit had been overtaken by events and rendered academic and that in the circumstances the trial court lacked jurisdiction to continue to entertain it. The appellant, not surprisingly is dissatisfied with the decision. This is the crux of the appeal now before this court. C D

The appellant formulated two issues for determination, to wit:

1. Whether the Justices of the Court of Appeal were right in their decision that the Federal High Court has no jurisdiction to entertain the suit on the ground that election having been held that the pre-election matter had become academic or hypothetical. E

2. Whether the lower court was right to raise the issue that the election having been held that the action has become academic or hypothetical suo motu and resolve same without giving the parties especially appellant the opportunity to address them on the issue. F

The 1st respondent adopted the two issues above with slightly different wording. The 2nd and 3rd respondents each formulated a single issue for determination arising from the appellant's issue 2. G

Since the appellant's issue 2 borders on the issue of fair hearing, I shall discuss it briefly first before commenting on the issue of jurisdiction. If the allegation of lack of fair hearing is established, the entire proceedings would amount to a nullity. H

There would be no need to proceed further. On the issue of a court raising an issue suo motu, see the recent decision of this court in: Ejike Vs Okoye SC.279/2011 delivered on 8th May 2015 (as yet unreported) wherein I stated thus:

“The position of the law is that a court is not entitled to raise an issue and decide on it without affording the parties an opportunity to be heard. This is because in doing so the court is seen to leave its exalted position as impartial arbiter and descend into the arena of conflict. See: Kuti Vs Balogun (1978) 1 SC 53 @ 60; Obawole Vs Williams (1996) 10 NWLR (pt.477) 146; Stirling Civil Eng. (Nig.) Ltd. Vs Yahaya (2005) 11 NWLR (pt. 935) 181; Omokuwajo Vs F.R.N. (2013) 9 NWLR (pt.1359) 300; Ominiya Vs Alabi (2015) LPELR - SC.41/2004. An appellate court is also not entitled to raise an issue not raised by either of the parties at the trial court or on appeal and base its decision thereon without affording the parties an opportunity to be heard. The court, being an impartial arbiter, must never be seen to be making a case for one of the parties.”

Order 6 Rule 5 of Court of Appeal Rules 2011 empowers the court to decide an appeal on an issue not contained in the grounds of appeal provided that if it allows the appeal, it should not rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground. In other words, the parties must be heard before any decision can be based upon an issue raised suo motu by the court. It must be emphasized that the court’s power to raise an issue suo motu must be sparingly and judiciously exercised.

In the instant case, a careful scrutiny of the record reveals that the parties addressed the issue raised by the court at pages 483 and 484 of the record. At page 483 of the record, learned counsel for the appellant addressed the issue of the applicability of Section 141 of the Electoral Act and at page 484 in his reply on points of law he urged the court to confine itself to the appeal before it and maintained that the appeal is not academic or hypothetical. The record belies the appellant’s contention that the parties were not given an opportunity to be heard. I resolve this issue against the appellant.

With regard to the appellant’s first issue, it goes without saying that the appellant’s contention that he was the person who scored the highest number of votes at the PDP primaries and whose name ought to have been submitted to INEC as the Party’s candidate to contest the seat for the Aguata Federal Constituency in the House of Representatives at the National Assembly, is a complaint that falls within the purview of Section 87 (9) of the Electoral Act 2010 (as

amended), which provides thus:

“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.”

As rightly held by the court below, the Federal High Court certainly had jurisdiction to entertain the appellant’s claim. The bone of contention is the view of the lower court that the appellant failed to act timeously having taken steps to challenge the outcome of the primaries only a day to the conduct of the general election and that the election having been conducted and a winner declared, his complaint became academic.

It is settled law that a pre-election matter instituted prior to the conduct of an election subsists and the High Court in which it was instituted continues to have jurisdiction to hear and determine the suit even after the conduct of the election. See *Gwede v. INEC* (2014) 18 NWLR (pt.1438) 56; *Amaechi v. INEC* (2008) All FWLR (pt. 407) 1; *Odedo v. INEC* (2008) 17 NWLR (pt.1117) 554 @ 622-623.

While it is true that the election had taken place with 3rd Respondent as the 2nd Respondent’s candidate and the 3rd Respondent has since been sworn in, the lower court was wrong to hold that the appellant’s claim was academic. The trial court had jurisdiction to hear the case being a pre-election matter filed before the holding of the election. The fact that the election had taken place before the trial commenced is not sufficient to render it academic. See the position of this court as held in *Gbileve Vs Addingi* (2014) 16 NWLR (1433) 394; *Gwede Vs INEC* (2014) 18 NWLR (1438) 56; *Barr. Orker Jev & Anr. Vs Sekav Dzua Iyortom & Ors*: SC. 164/2012 delivered on 27/2/15 wherein this court ordered the Appellant/or Applicant to assume their seats in the National Assembly even though the election had long since taken place and another person had been sworn in.

While the observation of the lower court that time is of the essence in respect of a complaint about the nomination of a candidate for an election cannot be faulted, it is also settled that no time limit has been prescribed for the exercise of that right under Section 87 (9) of the Electoral Act 2010 (as amended). It is no doubt desir-

able that a person aggrieved with the conduct of his party's primaries should take steps to ventilate his grievance as early as possible so that it can be resolved before the conduct of the election but he does not forfeit that right if he institutes his action before the holding of the election but it is not heard until after the election takes place. This court held in: *Uwazurike Vs Nwachukwu* (2013) 3 NWLR (Pt. 1342) 503 @ 522 F per Onnoghen, JSC:

"The jurisdiction conferred on the High Court by the above section of the Act [section 87 (9)] is not limited to time, let alone circumscribed between the holding of the primary election and submission of the name of the nominated or sponsored candidate by the political party concerned The provisions of section 87 (9) supra is very clear and unambiguous and should be given its natural and plain meaning."

Significantly, at p. 522 G-H (supra), His Lordship held further: *"The provisions of Section 87 (9) supra is not made subject to any provisions of the Act. Rather it operates 'notwithstanding the provisions of the Act or Rules of a political party...' In other words, it overrides any other provision of the said Act, including sections 31 (1), 33 and 35 thereof."*

Per Ogunbiyi, JSC at page 533 B - C (supra):

"From all indications, the construing intendment and operational extent of Section 87 (9) is neither dependent upon the Act itself nor the rules of political parties. The section operates independently... The jurisdiction of the court in other words cannot be ousted."

The above dicta highlight the misconception of the court below that the jurisdiction of the trial court was ousted because Sections 31(1), (4), (5) and (6) of the Act could no longer be invoked once the election has taken place. I agree with my learned brother, Dattijo Muhammad, JSC, whose lead judgment I was privileged to read before now, that the restriction placed by the lower court on the operation of Section 87 (9) of the Electoral Act is not supported by the clear and unambiguous language of the said provision. It is for the above stated reasons and the more detailed reasons articulately adumbrated in the lead judgment that I also allow this appeal. The parties shall bear their respective costs.