

SUPREME COURT OF NIGERIA
FRIDAY 5TH JUNE, 2015. SC. 29/2015
CORAM:- J. A. FABIYI. C. B. OGUNBIYI, K. B. AKA'AH, K. M. O. KEKERE-EKUN, C. C. NWEZE, JJSC

CHARLES ODEDO APPELLANT
AND
1. PEOPLES DEMOCRATIC PARTY
2. EJIKE OGUEBEGO
3. HON. CHUKS OKOYE RESPONDENTS
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
5. CHUKWUDI OKASIA

OBJECTIONS - Preliminary objection - Filing - Conditions - SC Rules O. 2 r. 9(1) - Relying on the mandatory provisions of r. 9(1) will amount to technicality and breed injustice (H1)

FAIR HEARING - Motions - Consideration of - All applications properly brought before court must be heard - As any breach will nullify the proceedings (H2)

COURTS - Issues - Suo motu raising - Court can raise issue suo motu in the interest of justice - But it must invite parties to address it on such issue - Before basing its decision thereupon (H3)

SUPREME COURT - Powers - Motions - Hearing of - SC Act s. 22 - As there are conditions for exercise of its powers - The court can invoke the section to determine the merit of the application (H4)

APPEALS - Party - Joinder of - Appellant's application for joinder lacks merit and is abuse of court process - As he has no business in the appeal (H5)

FACTS

This appeal emanated from an application for joinder as interested party filed before the Court of Appeal Abuja by applicant/appellant (a registered member of Peoples Democratic Party). 1st and 2nd respondents had commenced an action as plaintiffs at the Federal

High Court sitting in Abuja against 3rd, 4th and 5th respondents as defendants, seeking inter alia for an order restraining 5th respondent from conducting primary elections in Anambra State through a caretaker committee whom they alleged was illegally constituted in contravention of a subsisting order of court, and from using a delegates list produced by the said Caretaker Committee. In its judgment, the court entered judgment in favour of 1st and 2nd respondents. Following the judgment, the PDP's National Assembly primaries were conducted and anchored by 1st and 2nd respondents' State executives. The Independent National Electoral Commission monitored the election and accepted the name of appellant as the rightful PDP candidate for the House of Representatives election for Idemili North and South Federal Constituency seat in Anambra State.

Consequently, appellant fulfilled all the necessary formalities and was duly screened and cleared by INEC for the elections. Meanwhile, there was Appeal No. CA/ABJ/737/2014 before the Court of Appeal Abuja Division. The appeal was between 5th respondent as appellant against 1st, 2nd, 3rd and 4th respondents. The appeal emanated from suit no. FHC/ABJ/CS/854/2014 at the Federal High Court. Appellant was not a party to the suit. He claimed to have known of the case for the first time at the appeal stage. In the circumstance, appellant brought the application for joinder as an interested person in the appeal. When the motion for joinder was called up for hearing, the court pursuant to section 5(a) of the Court of Appeal Practice Direction 2013 struck out same suo motu without giving appellant a hearing. Dissatisfied, appellant lodged an appeal at the Supreme Court.

ISSUES FOR DETERMINATION

Issue One:

Whether the Court of Appeal was right when it struck out the Appellant's Application before the same was argued and whether in the circumstances the appellant was given a fair hearing or any hearing at all.

Issue Two:

Whether the court below was right in striking out the Appellant's application based on Section 5(a) of the Court of Appeal Practice Direction 2013.

Issue Three:

Whether the Appellant is not entitled to judgment on the merit of the application.

Issue Four:

Whether in the circumstances of this appeal, this is not a proper case in which the Supreme Court should exercise its powers under Section 22 of the Supreme Court Act to hear this application on its merit.

HELD (Unanimously dismissing the appeal per
OGUNBIYI JSC)

OBJECTIONS - Preliminary objection - Filing - Conditions

1. Order 2 rule 9(1) of the Rules of this court spells out the regulations relating to preliminary objections. In other words, the rule enjoins that a three clear days notice is to be given before the hearing thereof.

However, and on account of subsection 2 of rule 9 the provision of subsection 1 is not as watertight but at the discretion of the court which should in my view be exercised judicially and judiciously in the best interest of the case in issue.

Order 2 rule 9 subsection (2) says:-

“(2) If the respondent fails to comply with this rule (i.e. 9(1) the court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.”

The use of the mandatory word shall in Rule 9(1) supra has been watered down by the use of an overriding authority in the use of may in the foregoing rule 9(2) as reproduced. Without belabouring the point unnecessarily, the senior counsel Chief (Mrs.) Offiah (SAN) cannot in my view succeed by hiding under Order 2 rule 9(1) of the Rules of Court. Obliging her will amount to technicality and breed injustice. A better discretion which will tow the cause of justice is to allow the preliminary objection to be taken on the merit and I so hold.
(p. 2017 E)

Motions - Consideration of

2. The general principle of law is trite and well established that all applications properly brought before a court must be heard. The reasoning behind this principle is well founded because it is only equitable that a party to a cause or matter should be entitled and ought to be given the opportunity to be heard on his application before a decision can be given either in his favour or against him. This re-iterates and affirms the principle of fair hearing as enshrined in our Constitution which demands and establishes that all parties must be heard for proper determination of their case. Any breach of the principle will naturally nullify the proceedings. In otherwords, an application may not necessarily have merit, it may be bogusly and inelegantly framed or may even be frivolous; be that as it may, once it is shown that there is some legal basis for the application, the court is bound to hear it. It is not optional or discretional.

The cumulative summary from the foregoing authority has clearly shown that merit is not the overriding consideration in an application. Rather it is the justice of its being heard even when it does not deserve coming before the court. The doctrine of audi alteram partem is engraved firmly in our legal system. The consequential effect of non compliance is to abandon the principle of natural justice which is rooted in the concept of the Rule of Law. (pp. 2021 F/2022 G)

COURTS - Issues - Suo motu raising

3. The law is well settled that it is within the competence and province of a court to raise a point suo motu for purpose of serving the interest or course of justice. However, and that notwithstanding, it is also incumbent on the court to invite parties, particularly the party that may be adversely affected as a result of the point raised suo motu, to address it on such a point before basing its decision thereupon. This is a matter of duty and a fulfillment of the constitutional requirement of fair hearing the breach of which is very fundamental. No point raised in this circumstance i.e. suo motu can ever be trivialized. (p. 2024 B)

SUPREME COURT - Powers - Motions - Hearing of

4. It is also pertinent to restate that unlike the other case in reference, it is confirmed on the record under consideration that an application is pending before the Lower Court with same supported by an affidavit and all other supporting documents. In fact the appellant's counsel specifically made it known on the appellant's brief of argument that the record compiled by the Court of Appeal embodies all the processes in this suit from the court of 1st instance through to the Lower Court and including affidavit evidence and Exhibits attached. It is not in question that all necessary documents and materials needed for the consideration of the application for joinder on the merit, were placed before the Lower Court. This was not disputed by any of the respondents to the application by way of a counter affidavit. In my view, there is therefore no reason why this court should not invoke Section 22 of the Supreme Court Act to determine the merit of the application, which same is pending before the Lower Court.

Judicial authorities are well restated on the conditions which must exist before this court could exercise its general powers under Section 22 of the Act and determine a matter as if the proceedings have been instituted and prosecuted before it as a court of 1st instance. (p. 2025 H)

Party - Joinder of

5. The application for joinder is, in the circumstance a non starter. The foundation ought to have shown forth a competent primary. The appellant has no business whatsoever in the appeal he sought to join. I wish to add also that whichever way the appellant's position is looked at, he cannot certainly come in as an appellant because his position is seeking to defend the judgment and not against it.

Furthermore, by the provision of Section 243(1)(a) of the Constitution, the appellant is subjected to apply for leave to appeal as an interested person/party and which failure cannot be waived. The prayer is also fundamental and should precede and be granted first and foremost before the prayers for joinder can be considered. (p. 2034 H)

NOTABLE POINTS OF INTEREST

OGUNBIYI JSC

1. Motions – Necessity of

B It is pertinent to restate that in our judicial process and procedure, motions are a regular resort. Therefore, generally, our legal jurisprudence recognizes that applications are an integral part of substantive suits. (p. 2022 E)

2. National Assembly primary elections to be conducted by National Executive of political parties

D This court had an occasion to consider the propriety of the Anambra State Executive Committee of PDP conducting a primary election for the nomination of the National Assembly candidates to fly the flag of the Peoples Democratic Party in an election. This was in the case of Emeka V. Okadigbo (2012) 18 NWLR (Pt.1331) 55 or (2012) LPELR 9338 (SC) page 36. In that case, it was held that the Anambra State Executive Committee of the Peoples Democratic Party has no right whatsoever to conduct National Assembly primaries. The court in coming to that decision took into consideration the provisions of the Electoral Act, PDP constitution as well as the Electoral Guidelines of the PDP

E Suffice it to say that it is the National Executive Committee of the PDP that is imbued with the responsibility for the conduct of the party's National Assembly primaries. Any purported attempt to conduct such primary by state chapter of the PDP cannot be validly characterized as competent. The act is totally illegal and will confer no right as it is a nullity and also constituting an abuse of court process. (pp. 2033 C/2034 B)

3. Parties to obey judgments of courts

H It is interesting, I must say, that the case under consideration like Emeka & Okadigbo originates also from the same Anambra State. This is worrisome as it gives a clear indication that the State Executive Committee of the party appears not to know their limit and hence the continued persistence in usurping of power not due to them. This is in spite of the pronouncements made by this court and its orders. The

practice is a flagrant abuse of power and the National body will do well and draw the attention of the erring State Committee thereto. Judgments of court are to be obeyed and serve as a guide for now and the future. (p. 2034 C)

REPRESENTATION

Chief (Mrs.) A. J. Offiah, SAN for the Appellant appearing with: G. N. Onwusi, Esq., Ikechukwu Onuoma, Esq. and C. Iloeje, Esq.; For the Appellant

Mr. Gordy Uche for the 1st and 2nd Respondents

Hassan M. Liman, SAN for 3rd Respondent appearing with: Y. D. Dangana, Esq., Fatima Buka (Miss), Amanzi F. Amanzi, Esq, and Namtap J. Aaron (Miss)

Authur Obi Okafor, SAN for the 4th Respondent appearing with: V. C. Ottao Okpukpu

Chief Olusola Oke for 5th Respondent appearing with O. K. Akuyibo

CASES REFERRED TO

Adegoke Motors Ltd v. Adesanya (1989) 3 NWLR (pt. 109) 250

Yinka v. Folawiyo & Sons Ltd (1991) 7 NWLR (pt. 202) 237

Yakubu v. Governor of Kogi State (1995) 8 NWLR (pt. 414) 386

EFCC v. Peter Odili (2000) LCCLR 4072

Enebeli v. C.B.N (2006) 9 NWLR (pt. 984) 69

CCB (Nig) Plc v. Ozobu (1998) 3 NWLR 290

Harrods Limited v. Anifalaje (1986) 5 NWLR (pt. 143) 603

Yusufu v. Obasanjo (2003) 16 NWLR (pt. 847) 554

Ediagbonya v. Dumez (Nig) Ltd. (1986) 3 NWLR (pt. 31) 753

Omisade v. Akande (1987) 2 NWLR (pt. 55) 158

Adeleke v. Cole (1961) All NLR 35

STATUTES & RULES REFERRED TO

Court of Appeal Practice Direction 2013, s. 5(a)

Supreme Court Act, s. 22

Constitution of the Federal Republic of Nigeria 1999, s. 243(1)(a)

Supreme Court Rules, O. 2 r. 9 (1)(2)

LEAD JUDGMENT BY OGUNBIYI JSC

The Appellant herein, as an applicant in the Court of Appeal

Abuja Division, sought leave to be joined as a party interested in Appeal No.CA/ABJ/737/2014 between the 5th respondent herein as Appellant against 1st, 2nd, 3rd and 4th Respondents. The applicant was not a party to the suit No.FHC/ABJ/CS/854/2014 at the trial Federal High Court and he therefore claimed to have known of the position of the case for the 1st time at the appeal stage after the court below resumed sitting subsequent to the nationwide industrial action of Judicial staff. He immediately filed his application for joinder as an interested person in the appeal on the 2/2/2015, the day it was scheduled for hearing, and served all the parties in the main appeal.

It is pertinent to say that the said plaintiffs at the Federal High Court are the 1st and 2nd Respondents herein while the appellants in Appeals Nos.CA/A/737/2014 and CA/A/737A/2014 are the Peoples Democratic Party (5th Respondent) and Chukwudi Okasia (the 4th Respondent) herein respectively. When the motion for joinder was called up for hearing, the Court of Appeal, pursuant to Section 5(a) of the Court of Appeal Practice Direction 2013 struck out same suo motu without giving the appellant/applicant a hearing. The appellant was dissatisfied with the striking out of his application and has now filed this appeal before us.

The brief and comprehensive facts leading to the background history of this appeal relate to the appellant as a registered member of the Peoples Democratic Party (PDP) and one of the candidates nominated at the PDP congress conducted on the 17/12/2014 in Anambra State.

The 1st and 2nd Respondents (as plaintiffs at the trial Federal High court) had filed a suit against the 3rd, 4th and 5th Respondents claiming amongst other reliefs an order restraining the 5th Respondent from conducting primary elections in Anambra State through a caretaker committee whom they alleged was illegally constituted in contravention of a subsisting order of court, and from using a delegates list produced by the said Caretaker Committee. They also sought orders to restrain the 3rd defendant from dealing with the same caretaker committee in matters relating to the primary elections of the PDP and from accepting any list of candidates emerging from any primary elections conducted by the said illegal Caretaker Committee.

On the 5th of December, 2014, the trial court entered judg-

ment for the 1st and 2nd Respondents in the said suit. Based on the judgment, PDP Primaries were conducted on the 7th of December, 2014 anchored by the 1st and 2nd Respondents' executives.

The Independent National Electoral Commission monitored the election and accepted the name of the Appellant as the rightful PDP candidate for the House of Representatives election for Idemili North and South Federal Constituency seat in Anambra State. Consequently, the Appellant fulfilled all the necessary formalities and was duly screened and cleared by INEC for the elections. His name was on 13/1/2015 published by INEC as the PDP candidate for the House of Representatives 2015 final list which was pasted on its website.

The appeal in respect of which the Appellant applied to be joined as a party was slated for hearing on the 2/2/2015. On the said date, the appellant was represented by a counsel in court who identified the application. The court thereupon, proceeded suo motu to invoke Section 5(a) of the Court of Appeal Practice Direction 2013 and struck out the said application without a hearing. The Lower Court heard the substantive appeal and reserved same for judgment. The appeal at hand is against the said ruling delivered 2/2/2015.

In compliance with the rules of court, the appellant's brief of argument was settled by Chief (Mrs.) A. J. Offiah, SAN and filed on the 23/2/2015, while those of the 4th and 5th Respondents were settled by Arthur Obi Okafor, SAN on the 16/3/2015 and by Chief Olusola Oke also on the 17/3/2015 respectively. The 1st, 2nd and 3rd Respondents did not file any brief of argument in response to the Appellant.

On the 17th March, 2015, at the hearing of the appeal, all learned counsel adopted and relied on their respective briefs of arguments. While the Appellant's counsel urged in favour of allowing the appeal, the Respondents each found the appeal lacking in merit and called for its dismissal.

From the five grounds of appeal, four issues were raised on behalf of the Appellant as follows:-

Issue One:

Whether the Court of Appeal was right when it struck out the Appellant's Application before the same was argued and whether in the circumstances the appellant was given a fair hearing or any hearing at all. (Distilled from grounds 1, 2 and 4 of the Notice of Appeal)

Issue Two:

Whether the court below was right in striking out the Appellant's application based on Section 5(a) of the Court of Appeal Practice Direction 2013. (formulated from ground 3 of the notice of appeal).

Issue Three:

B Whether the Appellant is not entitled to judgment on the merit of the application. (formulated from ground 5 of the notice of appeal)

Issue Four:

C Whether in the circumstances of this appeal, this is not a proper case in which the Supreme Court should exercise its powers under Section 22 of the Supreme Court Act to hear this application on its merit.

The 4th Respondent's counsel in his wisdom raised one issue D only for determination by posing the following question:-

Whether on the printed record, the striking out of the Appellant's Application for joinder was correct or sustainable?

The 5th Respondent also raised a lone issue by asking a question in the following manner:-

E Considering that the appeal at the Court of Appeal to which the Appellant's joinder application relates has since been heard and determined, has this appeal NOT become academic and spent?

It is apparent from the appeal that there was no brief filed on behalf of the 1st and 2nd Respondents. This court was so informed F by their counsel, Mr. Gordy Uche, Esq. who did not also have anything to urge in respect of the appeal. The Senior counsel H. M. Liman (SAN) who represented the 3rd Respondent also towed the line of response by the 1st and 2nd Respondents wherein no brief G was filed. The counsel Liman (SAN) chose to abide by the outcome of the appeal.

As a pre-requisite to the determination of the appeal, it will be pertinent to dispose of the preliminary objection raised by the 5th Respondent in urging that this appeal be struck out for being academic with the relief having been spent. H

The two grounds predicated the objection are: That -

(1) Courts do not determine academic, mute questions or entertain spent claims.

(2) Judgment has since been delivered on 6th February, 2015

in the appeal before the Lower Court in respect of which joinder was sought.

In an oral submission before us Chief (Mrs.) A, J. Offiah, SAN, represented the Appellant and objected to the hearing of the preliminary objection raised by the 5th Respondent. It is the contention of senior counsel that the preliminary objection is incompetent as it is not in compliance with Order 2 rule 9(1) of the Rules of Court which provides that a notice of three clear days must be given before the hearing of an objection thereof. B

On the merit of the objection, the senior counsel re-iterates that a continuing suit cannot be regarded as academic since an appeal is an ongoing action by nature. C

An authority cited in support is the case of Adegoke Motors Ltd v. Adesanya (1989) 3 NWLR (Pt.109) P250 at 266. The senior counsel urged for the invocation of Section 22 of the Supreme Court Act to determine the application. D

In response to the objection raised by the Appellant's counsel, Mr. Oke on behalf of the 5th Respondent related copiously to Order 2 rule 9 of the Rules of Court which gives this court the discretion to entertain the objection notwithstanding the failure to give three days notice. E

Order 2 rule 9(1) of the Rules of this court spells out the regulations relating to preliminary objections. In otherwords, the rule enjoins that a three clear days notice is to be given before the hearing thereof. F

However, and on account of subsection 2 of rule 9 the provision of subsection 1 is not as watertight but at the discretion of the court which should in my view be exercised judicially and judiciously in the best interest of the case in issue. G

Order 2 rule 9 subsection (2) says:-

“(2) If the respondent fails to comply with this rule (i.e. 9(1) the court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.” H

The use of the mandatory word shall in Rule 9(1) supra has been watered down by the use of an overriding authority in the use of may in the foregoing rule 9(2) as reproduced. Without belabouring the point unnecessarily, the senior coun-

sel Chief (Mrs.) Offiah (SAN) cannot in my view succeed by hiding under Order 2 rule 9(1) of the Rules of Court. Obliging her will amount to technicality and breed injustice. A better discretion which will tow the cause of justice is to allow the preliminary objection to be taken on the merit and I so hold.

B The appellant in the court below was, by his application seeking to join and participate in an appeal which is pending before this court. Suffice it to say therefore that references made to judicial authorities will determine whether or not the nature of the application is in fact academic, as sought to be raised in the preliminary objection.

C In the case of Adegoke Motors Ltd v. Adesanya supra at page 266 - 267 for instance, Oputa, JSC said:-

“Generally, an appeal is regarded as a continuation of the original suit... rather than the inception of a new action... An appeal, being a judicial examination by a higher court of the decision of an inferior court, it follows that such examination should normally and more appropriately be confined to the facts and issues that came before the inferior courts for decision.”

E Tobi JSC in defining academic claim had this to say in the case of Plateau State V. Attorney-General of the Federation (2006) 3 NWLR (Pt.967) 346 at 419:-

“A suit is academic where it is merely theoretical, makes empty sound, and no practical utilitarian value to the plaintiff even if judgment is given in his favour...”

F From the foregoing definition, the case under consideration, will not, in my view qualify as academic, more so where the appellant has an interest to protect. This is not to say however that he is entitled to such a protection. Without having to belabor the arguments of counsel therefore, I would rather anchor my view in favour of the Appellant and overrule the preliminary objection raised. In other words, the appellant is not pursuing an empty drum, mere rhetoric or theoretical academics, as projected by the respondents.

H On the merit of the appeal, I will seek to determine same in the sequence of the four issues raised by the appellant’s counsel which same have taken care of and subsumed the lone issue each formulated by 4th and 5th Respondents respectively.

Issues 1 and 2 will be taken together. While Issue one (1) raises a question on the propriety of the Lower Court in striking out the

Appellant's application without giving him a hearing, Issue two (2) also as a runner up questions whether the court below was right when it struck out the application based on Section 5(a) of the Court of Appeal Practice Direction 2013?

The substance of the appellant's complaints from the foregoing two issues hangs on the refusal by the Court of Appeal to give him a hearing at all in the proceedings before it. It is the submission of his counsel, Chief (Mrs.) Offiah (SAN) therefore that the application, subject of contention is not seeking to appeal against the judgment of the trial court but to defend same; that a person who did not apply before the trial court can subsequently apply to the Lower Court to be joined as a party. The learned counsel cited the following authorities in support of her contention:- *Yinka v. Folawiyo & Sons Ltd* (1991) 7 NWLR (Part 202) Page 237; *Yakubu V. Governor of Kogi State* (1995) 8 NWLR (Pt.414) P.386 and *EFCC v. Peter Odili* 200 LCCLR 4072. B
C
D

It is the submission of counsel further that motions, especially the nature of the one in issue which is seeking the participation of the appellant in an appeal, which judgment will affect his interest is not novel or inimical to the judicial processes; that the Lower Court therefore ought to have allowed the appellant move his motion and all parties to address thereon; that the refusal to take the motion had occasioned a denial of the appellant's right and also excluded him from participating and being heard in the proceedings of the substantive appeal affecting his interest. E
F

On whether or not Section 5(a) of the Court of Appeal Practice Direction applies, counsel submits that the Lower Court erred when it determined the application before it on the said statutory provision which was raised suo motu by the court without directing parties to address thereon. G

The learned counsel urged that the said issues 1 and 2 be resolved in favour of the Appellant.

I have said earlier in the course of this judgment that the 4th Respondent raised only one issue for the determination of this appeal by asking the question:- H

Whether on the printed record the striking out of the Appellant's application for joinder was correct or sustainable?

It is the submission of counsel, Arthur Obi Okafor, SAN for the

4th Respondent herein that assuming the court below was wrong in striking out the appellant's motion for joinder for reason of non-compliance with Section 5(a) of the Court of Appeal Practice Direction, the action, counsel re-iterates, is a correct decision given the state of the materials before that Court; also by nature that the application was inevitably fated to die; that even without invoking Section 5(a) of the Court of Appeal Practice Direction, the Appellant's application for joinder was dead on arrival and only awaiting an official burial; that there was no way the court below could have gone outside the appeal before it to accord fair hearing to the appellant in the appeal with respect to his alleged interest when he was not a party at the trial court from the inception of the case to final judgment. The counsel submits further that the Lower Court cannot in the substance be rightly accused of breach of the appellant's right to fair hearing when indeed the said Honourable Court does not have the powers to grant the appellant's application for joinder filed for the first time at the court below; that the matter as presented does not in the circumstance justify the invocation of Section 22 of the Supreme Court Act for this court to hear the appellant's motion on its merit.

Counsel further contends that with the two pending appeals stated (supra) flowing from the trial court's decision in suit No.FHC/ABJ/CS/854/2014 in favour of the plaintiffs (i.e. the 1st and 2nd Respondents herein,) the appellant's application is in respect of one of the appeals only i.e. CA/A/737/2014 and not the other. It is the counsel's argument also that, even if the appellant succeeds in his application, he would not stand to benefit there from, as long as the other appeal i.e. CA/A/737/2014 is still in force and binds him. In other words, that the absence of a similar application for joinder in the other appeal renders the current application only academic even if it succeeds. Counsel submits with emphasis that the appellant's pursuit as it stands has rendered this appeal as moot and mere academic and that, courts do not entertain moot cases.

The totality of the submission on behalf of the 4th respondent could be summarized in the following terms:-

That -

1) It is an abuse of process of court to file an application for joinder at the Court of Appeal after the trial court had delivered final judgment in the matter.

2) Where no application for joinder was brought at the trial court, the Court of Appeal and this court lack the vires to grant an application for joinder when the trial court had not expressed or refused to express an opinion on the application.

3) The appellant approached the court below wrongly with an application for joinder based on a purported primary that was a nullity and which has no legal consequence. That the appeal in the circumstance lacks merit and should be dismissed. B

The 5th respondent's counsel in his brief on the lone issue raised, submits his argument on the merit or not of the joinder application but did not necessarily consider the effect of the striking out of same without giving it a hearing thereof. Consideration will therefore be given to the 5th respondent's submission in the course of determining the merit of this appeal. C

The appellant main stream grudge as spelt out in issues one D and two seeks to challenge the striking out of his pending joinder application without giving him a hearing. This, his counsel submits is devastating and a denial of fair hearing, more so where the Section 5(a) of the Court of Appeal Practice Direction upon which the Lower Court relied for the striking out did not apply to the motion at hand. E

It is pertinent to recapitulate that the application filed by the appellant before the court below is for joinder as a party in the proceedings of the substantive appeal, which was predicated on an originating summons filed by Oguebego (1st respondent), as plaintiff in F the trial court.

The general principle of law is trite and well established that all applications properly brought before a court must be heard. The reasoning behind this principle is well founded because it is only equitable that a party to a cause or matter should be entitled and ought to be given the opportunity to be heard on his application before a decision can be given either in his favour or against him. This re-iterates and affirms the principle of fair hearing as enshrined in our Constitution which demands and establishes that all parties must be heard for proper determination of their case. Any breach of the principle will naturally nullify the proceedings, as it has been held in the case of *Enebeli v. C.B.N* (2006) 9 NWLR (Pt.984) 69 at 78. ***In otherwords, an application may not necessarily have merit, it*** G H

may be bogusly and inelegantly framed or may even be frivolous; be that as it may, once it is shown that there is some legal basis for the application, the court is bound to hear it. It is not optional or discretionary.

In the case at hand and in point the appellant's application for joinder was pending before the Lower Court the very morning of the 2/2/2015. It is on record at pages 1268 - 1269 that the said application was filed and served on all the parties who confirmed through their respective counsel in court. Thereafter and without a hearing, the court wrote its ruling invoking Section 5(a) of the Court of Appeal Practice Direction and struck out the motion forthwith. The proceedings of the court were manifest on the record of appeal and the respondents did not in any way contradict the appellant. The 4th respondent sought to justify the action taken by the Lower Court and submits that the application was fated to die from inception and that the striking out was inevitable and awaiting an official burial. It is the submission of counsel further that the totality of the application was uncalled for and an abuse of court process because it was not within the Lower Court's competence to grant same and also that the application was based on a purported primary that was a nullity and which has no legal basis.

It is pertinent to restate that in our judicial process and procedure, motions are a regular resort. Therefore, generally, our legal jurisprudence recognizes that applications are an integral part of substantive suits. The jurist Niki Tobi JSC for instance had this to say in the case of CCB (Nig) Plc V. Ozobu (1998) 3 NWLR page 290 at p.312:

"...Hardly are cases heard and disposed of without the filing of motion seeking for one type of relief or the other... the truth is that they form an inevitable part of our judicial system..."

The cumulative summary from the foregoing authority has clearly shown that merit is not the overriding consideration in an application. Rather it is the justice of its being heard even when it does not deserve coming before the court. The doctrine of audi alteram partem is engraved firmly in our legal system. The consequential effect of non compliance is to abandon the principle of natural justice which is rooted in the concept of the Rule of Law. See Harrods Limited V. Anifalaje & Anor

(1986) 5 NWLR (143) 603. Also in the case of Otapo V. Sunmonu (1987) 2 NWLR (Pt.58) 587 at 605 it was held thus:-

“It is pertinent that all pending applications in a suit be thrashed so as to avoid want of fair hearing. A court should not per-chance, give room for such complains...; Nnamani V. Nnamani (1996) 3 NWLR (Pt 438) 591 at 597; It is a cardinal principle of our administration of justice that all applications properly brought before our courts must be heard. A party to a cause or matter is entitled and must be given the opportunity to be heard before a decision can be given against him...; The principles of fair hearing demands that every application must be heard on its merits; Nalsa and Team Associates v. N.N.PC (1991) 8 NWLR (Pt.212) 652. Any breach of the principle will nullify the proceedings.”

On the submission made by the appellant’s counsel that the Lower Court erred when it relied on Section 5(a) of the Court of Appeal Practice Direction 2013 for the striking out of the application, the 4th respondent’s counsel was very much indifferent and rather concluded the reference made thereon as obiter. Briefly and as rightly, observed and submitted by the learned counsel for the appellant, the section is not applicable and therefore not relevant to the applicant’s motion dated 2/2/2015. This is because the subject matter upon which the application is predicated is neither a criminal appeal relating to situations stated in the Practice Direction nor an interlocutory appeal. The section applied specifically to parties to an appeal and by the very nature of the application the subject of the appeal, it pre-supposed that the appellant was not a party to the appeal as yet. The jurisprudential concept of a “party” in accordance to law was tackled and laid to rest in the case of Fawehinmi v. N.B.A. (No.1) (1989) 2 NWLR (Pt.105) P494 at 550 - 551 per Oputa JSC when he said:-

“...In Black’s Law Dictionary 5th edition p.1010: - A party to an action is a person whose name is designated on record as plaintiff or defendant... “Party is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, whether in law or in equity.” Black then draws the necessary distinction between a party and a person interested thus:- “A party is either a plaintiff or defendant whether composed of one or more individuals and whether natural or legal persons- all others who may be affected by the suit, indirectly or consequently are persons

interested but not parties.”

Reference had been made earlier at pages 1268 - 1269 of volume 3 of the records wherein it is revealed that the reliance made in reference to the statutory provision, Section 5(a) of the Court’s Practice Direction 2013 was raised suo motu by the Lower Court
B without directing parties to address thereon.

The law is well settled that it is within the competence and province of a court to raise a point suo motu for purpose of serving the interest or course of justice. However, and that notwithstanding, it is also incumbent on the court to invite parties, particularly the party that may be adversely affected as a result of the point raised suo motu, to address it on such a point before basing its decision thereupon. This is a matter of duty and a fulfillment of the constitutional requirement of fair hearing the breach of which is very fundamental. No point raised in this circumstance i.e. suo motu can ever be trivialized.
C
D

See Prov. Liquidator, Tapp Ind. v. TAPP Ind (1995) 5 NWLR (Pt.393) 9; see also Olusanya V. Olusanya (1983) 1 SCNLR 134, (1983) 14 NSCC 97 at P2, wherein this court per Ejiwunmi, JSC, (of blessed memory), stated the governing principles that should guide a court in such circumstances as follows:-
E

“...this court has said on a number of occasions that although an appeal court is entitled, in its discretion, to take points suo motu if it sees fit to do so, yet that discretion must be exercised sparingly and in exceptional circumstances only. Where the points are so taken, the parties must be given the opportunity to address the appeal court before decision on the points is made by the appeal court...”
F

On the totality of issues 1 and 2, the outcome cannot but be in
G favour of the appellant, who was conclusively marginalized by the Lower Court in refusing to give him a hearing on his pending motion before the court. The application, no matter the outcome ought to have been taken even if it was for the purpose of fulfilling all righteousness. The appellant in the circumstance was certainly denied a
H fair hearing and consequent upon which the two issues are resolved in his favour. The application ought to have been taken; the consequential effect of the failure has now raised the question whether this court can appropriately invoke its powers under Section 22 of the Act to determine same. This in otherwords calls to bear the resolution

of issue four raised by the appellant which raises the question:

Whether in the circumstances of this appeal, this is not a proper case in which the Supreme Court should exercise its powers under se. 22 of the Supreme Court Act to hear this application on its merit?

The learned counsel for the 4th respondent related copiously to the decision of this court in the case of Senator Nkechi Nwaogu v. Iton Emeka an unreported Ruling delivered on 1st day of November, 2012 in suit No. SC.10/2012 - where an application for joinder was freshly brought before this court under the auspices of Section 22 of the Act. The determinative question raised by their Lordships in that case, was whether the Court of Appeal could have granted an order joining the applicants as respondents in the appeal before it. The Court per Nwali Sylvester Ngwuta (JSC) answered the poser raised in the negative and gave the following reason thus amongst others:-

“...that there was no application for joinder of the applicants before the Court of Appeal and the said court could not have validly granted an order not sought. It is a different thing if the order was sought and the Court of Appeal refused to grant it. The Court cannot consider whether or not the court below could have granted the order as the same was not before it i.e. the court below.

In my humble view, Section 22 of the Supreme Court Act does not avail the applicants. The Supreme Court is without power to make an order which the court below could not have made since no such application was made before it.”

Comparatively and contrary to the contention held out by the 4th respondent's counsel, the circumstance of the appeal now before us is remarkably distinguishable from the unreported Ruling cited by him and under reference supra. For instance, an application of similar nature as the one in issue was not made in the case under reference. It was obvious therefore that without any pending application an order could not have been made in vacuum. It was for this reason that this court rightly held that it was not in a position to consider whether or not the court below could have granted the order in the absence of any such application made before it.

It is also pertinent to restate that unlike the other case in reference, it is confirmed on the record under consideration that an application is pending before the Lower Court

- with same supported by an affidavit and all other supporting documents. In fact the appellant's counsel specifically made it known on the appellant's brief of argument that the record compiled by the Court of Appeal embodies all the processes in this suit from the court of 1st instance through to the Lower Court and including affidavit evidence and Exhibits attached. It is not in question that all necessary documents and materials needed for the consideration of the application for joinder on the merit, were placed before the Lower Court. This was not disputed by any of the respondents to the application by way of a counter affidavit. In my view, there is therefore no reason why this court should not invoke Section 22 of the Supreme Court Act to determine the merit of the application, which same is pending before the Lower Court.**
- Judicial authorities are well restated on the conditions which must exist before this court could exercise its general powers under Section 22 of the Act and determine a matter as if the proceedings have been instituted and prosecuted before it as a court of 1st instance.**

In the case of Yusufu v. Obasanjo 2003 16 NWLR (Pt.847) 554 at 585-586 for instance, Niki Tobi, JSC made the following pronouncement on the power of this court under s.22 of the Act and said:-

- "One consideration for the invocation of Section 22 is that the matter must have been raised in the Lower Court and that court did not or failed to take the appropriate decision. Another consideration is that there are enough materials before this court to enable it take a decision one way or the other, for example the motion on notice and all the affidavits in support, Exhibits to the affidavits including judgment of the High Court... The record of appeal in my view contains all the relevant materials for this court to consider and make order or orders one way or the other in respect of the amendments sought by the appellants. I therefore resort to the record of appeal to make the necessary orders..."* See also the decided cases of:- Edigbonya V. Dumez (Nig) Ltd. (1986) 3 NWLR (Pt.31) 753; Omisade v. Akande (1987) 2 NWLR (Pt.55) 158; Igboho Irepo Local Government Council and Community V. The Boundary Settlement Commissioner (1988) 1 NWLR (Pt.69) 189; Adeyemi v. Y.R.S. Ike - Oluwa and Sons Lim-

ited (1993) 8 NWLR (Pt.309) 27. Further judicial authorities supporting the jurisdiction of this court under Section 22 of the Act avail for purpose of dealing with issues from time to time and make any order for the determination of real question in controversy are:- Adeleke V. Cole (1961) All NLR 35; Ode V. The Diocese of Ibadan (1966) 1 All NLR 287; Harriman V. Harriman (1987) 3 NWLR (Pt.60) 244; Eimskip Ltd v. Exquisite Ind. Ltd. (2003) 4 NWLR (Pt.809) 88 and C.G.G. (Nig) Ltd V. Ogu (2005) 8 NWLR (Pt.927) 366 at 382 wherein Tobi, JSC again had this to say:-

“As the Court of Appeal was entitled to invoke its Section 16 jurisdiction to deal with the issue, this court is equally entitled to invoke its counterpart, Section 22 of the Supreme Court Act, Cap 424, Laws of the Federation of Nigeria, 1990, now the Supreme Court Act, Cap 515, Laws of the Federation of Nigeria, 2004. The section empowers the Supreme Court to make any order necessary for determining the real question in controversy in the appeal.”

The Court of Appeal in the instant case, had, before it the appellant’s motion together with all affidavit in support. In other words the record compiled by the court of Appeal embodies all the processes in this suit from the court of 1st instance through the Lower Court including affidavit evidence and Exhibits attached. The logical deduction in the circumstance in my view is, as rightly submitted by the learned counsel for the appellant that this court should exercise its special powers as provided for under Section 22 of the Act and determine the application on its merit in the interest of justice. Issue four is also resolved in favour of the appellant.

Issue 3 is the last and final and poses the question whether the appellant is not entitled to judgment on the merits of the application?

At pages 1056 - 1103 of the record of appeal, the application, subject matter of this appeal, prays the court for the following reliefs:-

“1. AN ORDER granting leave to the Applicant/Party seeking to be joined to join as respondent in this appeal.

2. AN ORDER joining the Applicant/Party seeking to be joined as respondent in this appeal.

3. AN ORDER of this honourable court directing that all processes filed and served in this appeal be served on the party seeking to be joined through counsel as indicated below for the purposes of appearing and/or defending this appeal.

4. *AN ORDER* that pursuant to the grant of this application all subsequent processes in this appeal reflect the joinder of the applicant herein as co-respondent.” (emphasis are supplied),

There are six grounds predicating this application as follows:-

B “a) *The applicant (sic) name has been submitted to the Independent National Electoral Commission as candidate of the People’s Democratic party for election into the House of Representatives representing Idemili North and South Federal Constituency and a determination of this appeal one way or the other will affect his candidature.*

C b) *The applicant is a person who will be affected by the result of this appeal; his omission is bound to result in further litigation.*

D c) *There are questions in this appeal herein which cannot be effectively and completely settled unless the Applicant is joined to proffer argument as a party to the appeal.*

d) *In line with the cardinal rule of justice, that litigation should have an end; the application is predicated on the need to avoid multiplicity or duplicity of actions and to save litigation time in the judicial process.*

E e) *That the applicant having benefited under the judgment in suit no FHC/ABJ/CS/854/2014 subject of this appeal, will be stopped from challenging any outcome were he is to stand by and watch the appeal proceed to judgment.*

F f) *Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 guarantees to the Applicant a right to be heard fairly in the determination of his rights in the suit.”*

Also supporting the application is an affidavit of 20 para. duly sworn to by one Charles Chinwendu Odedo, the applicant himself.

G It is the submission of Chief (Mrs.) A. J. Offiah, SAN, the learned counsel for the appellant, that the facts of this application as set out in the grounds and the supporting affidavit succinctly show that the appellant is a necessary party because he has sufficient interest in the substantive appeal and a real and cogent connection, association or H inter-relation with the subject-matter. The learned counsel relied copiously on the decision of this court in the case of Oyedeji Akanbi (Mogaji) & Anor. V. Okunlola Ishola Fabunmi & Anor. (1986) 2 SC. 471 and also Ige v. Farinde (1994) 7-8 SCNJ (Pt.2) 284 where their Lordships held that the fundamental condition for granting a joinder

of an intervener (applicant) is that the joinder is necessary to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter; that a person whose presence is necessary for the effectual and complete determination of the questions in a suit is known as a necessary party. In other words, this practice is squarely in consonance with the age long principle of law which says that it is in the interest of the public that there should be an end to litigation. The appellant's counsel in support of his argument cited the case of *Green v. Green* (1987) 3 NWLR (Pt.61) 480; (2001) 45 WRN 90 where Oputa JSC (of blessed memory) held and said:-

"This rule requires persons who (not shall) be likely affected by the result to be made parties.... In Peenok V. Hotel Presidential (1982) 12 SC. 1 at 35 Idigbe JSC said: "The Court or Judge may, at any stage of the proceedings, either upon or without the application of either party, order that the names of any parties improperly joined, whether as Plaintiffs, or Defendants, be struck out, and that the names of any parties who ought to have been joined or whose presence before the court be necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter be added."

In applying the foregoing principles to the facts of the case herein, it is the submission also by the appellant's counsel that the refusal of the court below to join his client as a necessary party, will cause him (appellant) an irreparable hardship because he will be denied the right to be heard in the pending appeal. counsel submits in the circumstance that this court should resolve this issue in favour of the appellant by obliging his application.

Submitting also on the merit of the application, the 4th respondent's counsel contends that, assuming the court below was wrong in striking out the appellant's motion for joinder, that the striking out in itself was a correct decision given the state of the materials before that court which rendered the striking out inevitable. Counsel argued further that, when the appellant brought his motion for joinder for the first time at the court below, he was trying to wrongfully force the hand of the court to change the character of the case already concluded with finality at the trial court as between the parties thereto; that the Lower Court is not imbued with powers to intro-

duce a new party to an action that has already been concluded; that the Court of appeal as an appellate court created by the constitution to hear appeals is not to embark upon entertaining fresh matters as the appellant would want the court below to do; that it is not permitted by motion, for someone to seek to be joined as a co-defendant
B after judgment has been delivered in the suit. Counsel advises that the appellant should assert his right by seeking the leave of the trial court or the court below to appeal against the final judgment of the trial court as an interested party. It is also the contention of counsel
C that the appellant was totally in abuse of court process when he sought to intervene in a pending appeal in the manner he has done.

The counsel in final submission appraised that the appellant approached the court below wrongfully with an application for joinder based on a purported primary that was a nullity and which has
D no legal consequence; that on the totality of the appeal it lacks merit and should be dismissed.

Also submitting on the competence of the application for joinder, the counsel Chief Olusola Oke, representing the 5th respondent raises the question as to whether the Court of Appeal had the requisite jurisdiction to entertain the application? It is significant because
E the jurisdiction of this court cannot be invoked if the Lower Court is without it. The place of jurisdiction cannot be undermined in adjudication. It is the submission further by counsel that there is no provision in the Constitution, Court of Appeal Act or any Rules of Court
F made there-under vesting the Court of Appeal with the power to join a party to an existing appeal save where such an application had earlier been made to the court below which has the jurisdiction but refused to do so.

G The counsel made copious reference to the affidavit in support of the application for joinder at page 1066 of the record, and submits that no application has been made earlier to the trial court and which was refused and the reason which should justify a rehearing by way of a fresh application before the Lower Court, The judicial authority in support is the decision of this court in the case of Sen.
H Nkechi Nwaogu V. Hon. Emeka & Ors: SC.10/2012 (unreported).

On the basis of the authority cited supra, the learned counsel urged this court to hold that the application before the Lower Court was not competent and should not be considered therefore on its

merit in this court.

Earlier in the course of this judgment, while resolving appellant's issue 4, I did consider comprehensively the legal effect of the reason why the merit of the application ought to be taken. The special power accorded the court under Section 22 of the Act is general in nature; the invocation of which will be pertinent only upon the fulfillment of the conditions precedent; In other words upon *"availability before the court of all the necessary requirements to wit: the record of appeal containing all the relevant materials to enable this court consider and make order or orders one way or the other..."* See Yusufu V. Obasanjo (supra).

There is evidence on the record at hand that all relevant and necessary materials avail for purpose of invoking the jurisdiction of this court under Section 22 of the Act, and hence the reason for departure from the contention held by the 5th respondent.

Furthermore and also on the merit of the application, the 5th respondent's counsel submits that Section 243 (1)(a) of the 1999 Constitution (as amended) does not accommodate or contemplate an application for leave by a would be - co-respondent but an application for leave to appeal as an interested party; that the appellant is not a necessary or desirable party for the determination of the appeal before the court below as sought by his application. Consequently, that the appellant's application before the Lower Court was therefore grossly lacking in merit and was rightly struck out by the court below. Counsel urged that the appeal be dismissed while the decision of the Lower Court is to be upheld.

As rightly submitted by the 4th Respondent's counsel, the Court of Appeal is an appellate court created by the Constitution of the Federal Republic of Nigeria 1999 to hear appeals and not embark upon entertaining fresh matters.

The appellant by his application is seeking to be joined as co-defendant after judgment has been delivered in the suit on 5th December, 2014. The primary election which gave the applicant the right of making the application was conducted on 7th December, 2014, that is to say after the judgment was delivered on 5th December, 2014 - paragraphs 11, 12 and 13 of the applicant/appellant's own affidavit in support of his motion are in evidence. Also in the decided authority of the case of International Agricultural Industries

V. Chike Brothers Ltd. (1990) 1 NWLR (Pt. 124) p. 70 this court held the lack of wisdom by a party interested to file a motion seeking to be joined as a co-defendant in a suit after the judgment appealed had been delivered.

The appellant herein was not a party at the trial court when the judgment sought to appeal was delivered. His application for joinder in the appeal at the Lower Court was sequel to the application filed pursuant to Order 4 Rule 1 and Order 7 Rule 1 of the Court of Appeal Rules 2011 also Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Without having to beg the issue, I will quickly say that while Order 4 Rule 1 relates specifically to an appeal, Order 7 Rule 1 of the same Rules is also applicable to all applications generally in the Lower Court. The two sections do not have any useful purpose or bearing on the applicant's application. Also Section 36 of the Constitution which provides for right to fair hearing would only benefit the appellant if he succeeds on his application for joinder and is made a party to the appeal.

It is the submission by the appellant's counsel that his client is a necessary party because he has sufficient interest in the substantive appeal and a real and cogent connection, association or interrelation with the subject-matter such that he will be materially affected by the outcome of the appeal. It is the appellant's contention also for instance that the interest he seeks to protect is the right to contest the 2015 general election. This is explicitly projected on the facts deposed to on the affidavit evidence in support of the motion for joinder at page 1060 of the 3rd Volume of the record of appeal wherein paragraphs 8 and 13 are specifically relevant and said:-

"8. That I took part and won the PDP primary election which was conducted under the Chairmanship of Ejike Oguebego, in line with the guidelines set by PDP for its primaries and INEC regulations.

13. That my name was forwarded by PDP to INEC. That my name was also published by INEC as the candidate who won the primaries under the Chairmanship of Ejike Oguebego,"

It is intriguing to restate that the entire reason for the application is predicated on the facts contained therein in paragraphs 8 and 13 of the affidavit supra. However, it is revealing also that the above averments have serious and legal implications on the appellant's ap-

plication. It is deposed to clearly on the same affidavit per paragraph 1 that the deponent is the applicant in this application. At paragraph 9 of the said affidavit it is also confirmed by the applicant that:

“Ejike Oguebego is the substantive Chairman of PDP in Anambra State...”

On the affidavit evidence before us, the appellant has clearly shown that his emergence as a candidate for the election was as a result of the primaries conducted by the Anambra State Chapter of the Peoples Democratic Party.

As rightly submitted by the 4th Respondent’s counsel therefore, the appellant has hoisted his application for joinder on the primaries conducted by the State Chapter of PDP.

This court had an occasion to consider the propriety of the Anambra State Executive Committee of PDP conducting a primary election for the nomination of the National Assembly candidates to fly the flag of the Peoples Democratic Party in an election. This was in the case of *Emeka V. Okadigbo* (2012) 18 NWLR (Pt.1331) 55 or (2012) LPELR 9338 (SC) page 36. In that case, it was held that the Anambra State Executive Committee of the Peoples Democratic Party has no right whatsoever to conduct National Assembly primaries. The court in coming to that decision took into consideration the provisions of the Electoral Act, PDP constitution as well as the Electoral Guidelines of the PDP and laid down the following clear cut dichotomy per *Fabiye JSC* at pages 104 - 105 and said:-

“It is extant in the record of appeal that the appellant herein did not take part in the primary election conducted by the National Executive Committee of the Peoples Democratic Party which was won by the 1st respondent.

He took part in a primary election surreptitiously organized by the State Executive Chapter of the People Democratic Party which had no vires to organize same, such was a sham and a force. See the case of: Chief Ikechi Emenike V. Peoples Democratic Party & 3 Ors. SC.443/2011, unreported judgment delivered on 25th May, 2012, reported in 2012) 12 NWLR (Pt.1315) 556.” See also *Onuoha V. Okafor* (1983) 2 SCNLR 244. In the case of *Emenike V. PDP* (supra) this court also held thus and said:-

“...the question to be answered from these clear provisions of the law is whether appellant who claimed to have emerged as the

duly elected candidate of the 1st respondent from the primaries conducted by the Abia State Executive Committee of the 1st respondent can be regarded under the law as the properly elected candidate of 1st respondent... The answer is definitely in the negative because the appellant was a product. Who emerged from primaries conducted by a body that was not empowered under the law to conduct the election..."

Suffice it to say that it is the National Executive Committee of the PDP that is imbued with the responsibility for the conduct of the party's National Assembly primaries. Any purported attempt to conduct such primary by state chapter of the PDP cannot be validly characterized as competent. The act is totally illegal and will confer no right as it is a nullity and also constituting an abuse of court process.

It is interesting, I must say, that the case under consideration like Emeka & Okadigbo originates also from the same Anambra State. This is worrisome as it gives a clear indication that the State Executive Committee of the party appears not to know their limit and hence the continued persistence in usurping of power not due to them. This is in spite of the pronouncements made by this court and its orders. The practice is a flagrant abuse of power and the National body will do well and draw the attention of the erring State Committee thereto. Judgments of court are to be obeyed and serve as a guide for now and the future.

It is also obvious even on the appellant's deposition on his affidavit at paragraphs 8 and 13 supra that his application is self defeatist. This I say because by his deposition, he had confirmed the nullity of the interest he seeks to protect. In otherwords, the primary upon which the appellant anchors his ship did not confer any right on him as it is a complete nullity. An act which is a nullity has no legal consequence. The application for joinder was rooted in an interest that is tainted with illegality. In the case Okafor & Ors. V. A.G. & Commissioner for Justice & Ors. (1991) LPELR - 2414 (SC) page 30 this court held thus of nullity:-

"A nullity is in law a void act, an act which has no legal consequence. The act is not only bad, and as was stated by Denning L. J. in U.A.C. Ltd. V. Macfoy (1961) 3 All ER. 1169, is incurably bad."

The application for joinder is, in the circumstance a non starter. The foundation ought to have shown forth a compe-

tent primary. The appellant has no business whatsoever in the appeal he sought to join. I wish to add also that whichever way the appellant's position is looked at, he cannot certainly come in as an appellant because his position is seeking to defend the judgment and not against it.

Furthermore, by the provision of Section 243(1)(a) of the Constitution, the appellant is subjected to apply for leave to appeal as an interested person/party and which failure cannot be waived. The prayer is also fundamental and should precede and be granted first and foremost before the prayers for joinder can be considered. A supporting authority is the case of *Chukwu V. INEC* (2014) 10 NWLR (Pt.1415) 385 where this court said thus at page 439:-

"Pursuant to Section 243(1)(a) of the Constitution, a party interested in an appeal who was not originally a party to the decision complained of, must first seek leave to appeal as an interested party... since he is not in the category of person who require no leave ab initio in order to participate in the proceedings. The application for leave to appeal as interested party, cannot be subsumed..." (emphasis supplied)

With reference made to the prayers sought on the motion paper as reproduced earlier, there was no prayer for leave to appeal as an interested party/person as required mandatorily by Section 243(1)(a) of the Constitution. The applicant from the content of his application is seeking to be joined as co-Respondents and not as co-Appellant. The provision of Section 243 creates a right which it vests in an intending appellant and not in an intending respondent. The reproduction of Section 243(1) states:-

"any right of appeal from the party thereto, or decisions of the Federal High Court or a High Court conferred by this Constitution shall be:

(a) Exercisable in the cause of any proceedings at the instance of a party thereto or...leave of the Federal High Court or the Court of Appeal at the instance of any other person having an interest on the matter."

The right is to be exercised by a person who is aggrieved by the judgment and desires to appeal against it. The same benefit or right is not shown to extend also to any other person who was not

affected by the judgment being appealed against to be joined for the purpose of defending the said judgment.

The court, as rightly submitted by the 5th respondent's counsel, is given the power to interpret the provisions of the Constitution as it is expressed in clear terms. That power does not extend to legislation but is purely adjudicative. The right as sought by the appellant/

B applicant is novel and has no place as it neither comes under Section 243(1)(a) of the Constitution nor any other provision known to law.

It is unfortunate to say that the application is lacking grossly in

C merit and is an abuse of court process; the totality is a bundle of confusion and is hereby dismissed.

Consequently, the appellant has no standing in the appeal herein. He cannot possibly be a necessary party or a desirable party for the determination of the appeal before the court below. The ap-

D pellant is a mere interloper and should go home and keep his peace.

Appeal lacks merit and is dismissed. I also make no order as to costs.

FABIYI JSC

E I have had a preview of the judgment just delivered by my learned brother - Ogunbiyi, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

F As extant in the record of appeal and pointed out by the 4th respondent's counsel, the appellant based his application for joinder on the primaries conducted by the State Chapter of Peoples Democratic Party (PDP).

It is here imperative for me to make some remarks on the

G provision of Section 87(9) of the Electoral Act, 2010 (as amended). It is an aggrieved aspirant who physically participated in a primary election conducted by the National Executive Committee of his party that is imbued with the requisite locus standi to raise a finger of complaint.

H In short, the law provides that a candidate with the highest votes cast at a primary election organised by the National Executive Committee of the party to the knowledge of the 4th respondent (INEC) can approach the court for redress if he is excluded by the party without a verifiable reason.

The above principle as stated in *Emenike vs. Peoples Democratic Party & Ors.* (2012) NWLR (Pt.1315) 556 at 591 has become entrenched and reiterated severally by this court. *Lado vs. CPC* (2011) 18 NWLR (Pt.1279) 689; *Peoples Democratic Party vs. Sylva & Ors.* (2012) 13 NWLR (Pt.1316) 85 and *Emeka vs. Okadigbo* (2012) 18 NWLR (Pt.1331) 55 are also in point. B

With the above position of the law, the appellant, who placed his application on the outcome of the primary conducted by the State Executive Committee of PDP had no remote chance for success. He should have been advised by his counsel that his attempt to be joined C to a pending appeal as a respondent, in the circumstance, was to no avail. The attempt made by the appellant was like trying to run against a stone wall.

For the above remarks and of course the detailed reasons adumbrated in the lead judgment, I too, feel that the appeal lacks merit D and should be dismissed. I order accordingly and abide by the order on costs as made in the lead judgment.

AKA'AHS JSC

I had a preview of the judgment which has just been delivered E by my learned brother, Ogunbiyi JSC. Although it was wrong for the court below to strike out the application for joinder without hearing from the appellant; nonetheless the appellant did not suffer any serious injury for which this court should grant him a remedy. The appli- F cation for joinder, as a party to the appeal was defective; moreso since the judgment delivered by the trial court enured to the appellant's benefit under Section 243(1)(a) of the Constitution, a person interested in an appeal who was not originally a party to the decision complained of may seek leave to appeal as a person interested. Since G no leave was sought, the application was incompetent and liable to be struck out.

For this reason and the more elaborate reasons contained in the judgment of my learned brother, Ogunbiyi JSC I too find that the appeal lacks merit and it is accordingly dismissed with no order on H costs.

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my

learned brother, OGUNBIYI, JSC just delivered. The issues in contention have been exhaustively dealt with in the lead judgment. I adopt the reasoning and conclusion reached therein as mine. I agree that the appeal lacks merit and should be dismissed.

The appellant herein anchored his application to be joined as a respondent in this appeal on his emergence as the winner of the primaries conducted by the Anambra State Chapter of the Peoples Democratic Party (PDP). In view of the decision of this court in *Emeka Vs Okadigbo* (2012) 18 NWLR (Pt.1331) 55 it has been settled beyond conjecture that the State Executive Committee of the PDP has no right to conduct National Assembly primaries. This court held at pages 87 - 88 H - A (supra):

“...A diligent reading of the above reveals that it is the National Executive Committee of the PDP that is responsible for the conduct of the party’s National Assembly Primaries. ... There can only be one valid primary and that is the primaries conducted by the National Executive Committee. A primary conducted by the State Chapter of the PDP is not a primary. It is an illegal contraption that carries with it no rights. It is a complete nullity.”

The application was clearly dead on arrival in the absence of any cognizable legal right to be protected.

The Supreme Court is the highest court in the land. By virtue of Section 235 of the Constitution of the Federal Republic of Nigeria 1999 its decisions are final. In other words, a decision of the apex court settles the position of the law in respect of a particular issue and becomes a binding precedent for all other courts of record in Nigeria. Legal practitioners have a responsibility to keep abreast of the pronouncements of the court and advise their clients accordingly. It is wrong to ignore decisions of this court and seek to perpetuate a position that has already been pronounced upon. This is one of the causes of congestion in our courts and must be discouraged. See the dictum of Nweze, JSC in his concurring judgment in the recent case of *IFEANYI CHIYENUM BLESSING Vs F.R.N.* (unreported) in SC.503/2012 delivered on 15/5/2015.

For the reasons so ably advanced in the lead judgment, I also dismiss this appeal and make no order for costs.

NWEZE JSC

My Lord, Ogunbiyi, JSC, obliged me with the draft of the leading judgment just delivered now. The proceedings of the Court of Appeal, Abuja Division, [hereinafter, simply, referred to as “the Lower Court”], which necessitated this appeal, were conducted on February 2, 2015. Sequel to the appearance of counsel for the parties, G. Onwusi, who with I. Onuoma, held the brief of Chief A. J. Offiah, (Mrs.); SAN, announced to the Lower Court that he had a motion. B

He intimated the said court that, in the said motion, Hon Charles Odedo, was entreating it [the Lower Court] with a supplication to be joined in the appeal as an interested party. Save for Umoh, SAN; Dr. Izinyon, SAN; Asiwaju Awomolo, SAN and Obi-Okafor, SAN expressed their preparedness to go on with the motion. Thenceforth, the court took over. For their bearing on the complaint in this appeal, D I take liberty to set out the court’s view, now being impugned in this appeal, in extenso:

Court: the party seeking to be joined, Charles Chinwendu Odedo, through his counsel on record, Chief (Mrs.) A. J. Offiah, SAN, filed a motion on notice today, February 2, 2015, the court and parties were served with the motion in open court in gross contravention of Section 5 (a) of the Court of Appeal Practice Direction, 2013. The appeal was filed on December 12, 2014 and the Record of Appeal was transmitted on December 12, 2014 and the appeal F was fixed for today for hearing.

The nature of the appeal is such that time is of essence and requires speedy hearing and determination as such any one that wants to participate in the appeal must be extremely vigilant and act timeliness. The provisions of the Practice Direction referred to above G imposes (sic) a duty on a party to file and serve his application before the date fixed for hearing. Where there is a breach as in this instance, the motion ought to be struck out since [the] Practice Direction has binding force, a breach of which must be visited with sanction, accordingly the motion on notice dated February 2, 2015 and served H in open court is struck out.

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In effect, the court truncated the life of the applicant’s motion for joinder as an interested party in the pending appeal without any

input from counsel, who, as shown above, had all indicated their preparedness in the proposition or opposition thereof. In so doing, the court suo motu invoked Section 5 (a) of the Practice Direction (supra) as its reason for striking out the said motion.

The above Bench Ruling dictated the tenor of the two issues which the appellant formulated from his five Grounds of Appeal: issues which sought to interrogate the propriety of the said court's Ruling which guillotined the said motion even before it was, properly, argued.

I, entirely, agree with the leading judgment that the Lower Court was wrong in, brusquely, striking out the appellant's application, duly, pending before it without, as much as, casting even a furtive glance at its merits or demerits. Let me explain: there can be no doubt that the Lower Court could have, properly, raised the question of the effect (if any) of s. 5 (a) (supra) on the said application, *Kraus T. Org. Ltd v. UNICAL* (2004) 25 WRN 1, 17. Its error was in its arbitrary invocation and resolution of the effect of the said provision of the Practice Direction on the motion without affording counsel, particularly, the applicant's counsel, the opportunity of offering any arguments in confutation of the court's preconceived views on the matter, *Kraus T. Org. Ltd v UNICAL*; *Adegoke v. Adibi* (1992) 5 NWLR (Pt.242) 410; *Atanda v. Lakanmi* (1974) 3 SC. 109.

Unarguably, the Lower Court's approach was an unmitigated violation of the applicant's right to fair hearing as entrenched in the Constitution, *Ugo v. Obiekwe* (1989) 1 NWLR (Pt.99) 566; *Oje v. Babalola* (1991) 4 NWLR (Pt.185) 267. In one word, what transpired thereat on February 2, 2015, with regard to the said Bench Ruling, was a miscarriage of justice; failure of justice; or, simply, justice inconsistent with the law or a juridical aberration, *Owoso v. Sunmonu* (2004) 30 WRN 93, 106-107; *Ojo v. Anibire* (2004) 5 KLR (Pt.177) 1205, 1207; *Wilson v Wilson* (1969) ANLR 191 approvingly adopted in *Ojo v Anibire* (supra) 1214.

Worse still, the said court's view of Section 5 (a) (supra) betrayed its misconception of the scope; Objectives and Guiding Principles of its Practice Direction, 2013. Indeed, if it had been cautious, [and heard the arguments of counsel], it would have realised that the said Practice Direction had no relationship, of any sort, with the applicant's application for joinder. An exploration of its main provi-

sions will throw more insightful light on the pungency of Chief (Mrs.) A. J. Offiah, SAN's submission. According to Section 2 (a) of the said Practice Direction:

The purpose of this Practice Direction is to establish a specialized system of case management in the Court of Appeal that will provide for the fair and impartial administration of criminal and civil appeals arising out of cases listed in 3 (a) (i) and (ii) below...

Section 3 (a) mandates the Presiding Justice of each Division of the Lower Court, in conjunction with the Deputy Chief Registrar of the Division, to "give priority to the listing, consideration and determination of all applications and substantive appeals related to the items listed in [section 3(a)] (i) [of the Practice Direction] and in respect of the Rulings and Judgments of the court below related thereto." The items in question are: all Criminal Appeals originating from or involving the EFCC, ICPC or any other statutorily recognised prosecutorial agency or person/or where the offence relates to Terrorism, Rape, Kidnapping, Corruption, Money Laundering and Human Trafficking, Section 3 (a) of the Practice Direction (*supra*).

On the other hand, where a Cause List is to be prepared in accordance with Order 3 Rule 11 of the Court of Appeal Rules, 2011 [that is, the provision dealing with the publication of the weekly Cause List], the Registry "shall ensure that priority is given to all cases listed in [section] 3 (a) (i) and (ii) of the said Practice Direction," Section 3 (b) of the Practice Direction (*supra*).

The Lower Court's embarrassing error, thus, underscores the wisdom in the prescription that, where a court raises an issue *suo motu*, it should be wary of resolving it without hearing from counsel, particularly, counsel for the party who would be prejudiced, *Adegoke v. Adibi* (*supra*); *Atanda v. Lakanmi* (*supra*); *Odiase v. Agho* (*supra*).

Against this background, I, entirely, endorse the conclusion of the leading judgment that issues one and two ought to be resolved in the appellant's favour. Chief (Mrs.) A. J. Offiah, SAN's submissions on these issues are irrefutable. However, it is at this juncture that I, like the leading judgment, will, most respectfully, part ways with the brilliant submissions of the learned legal Amazon. Thus, notwithstanding the resolution of issues one and two in the appellant's favour, his appeal is, still, bound to fail.

From the averment in paragraph (e) of the Grounds of his

application, it is evident that the judgment in FHC/ABJ/CS/854/2014 inures in his favour. That being the case, his application under Section 243(1) (a) of the Constitution is not well-taken. When the Drafts person of the 1999 Constitution (as amended) speaks of “person having interest” in the second clause of Section 243(1) (a) (*supra*),
 B he uses the phrase synonymously with the phrase a “person aggrieved;” that is, a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has, wrongfully, deprived him or her of something or, wrongfully, refused him or her of something or wrongfully affected his or her title to something. Such an aggrieved person includes a person who has a genuine grievance because an order has been made which, prejudicially, affects his interests, *L.S.D.P.C. v Dakur* [1992] 11 - 12 SCNJ 217, 224; *Ojukwu v Government of Lagos State* [1985] 2 NWLR (Pt.10) 806; “K” Line Inc v. K. R. INT’L [1993] 3 NWLR (Pt.292) 159; *Funduk Eng. v. Mac-Arthur* [1990] 4 NWLR (Pt.143) 266; *Society-General Bank v. Afereko* [1999] 7 SCNJ 171, 187; *Ezeagu v Ufuanya* [1996] 7 NWLR (Pt.456) 226, 231; *Funduk v. Madaki* [1976] 7 KLR (Pt.43) 1319; *Yusuf v. Adeyemi* [2009] 15 NWLR (Pt.1165) 616; *Opekun v. Sadiq* [2003] 5 NWLR (Pt.814) 475. The appellant, on his own showing, does fall into this category.

Even then, there is yet another snag to his appeal. As could be deduced from paragraphs 2.02-2.3, page 2 of the appellant’s brief filed on February 23, 2015, he [the appellant] emerged as the winner of the primaries conducted by the Anambra State Chapter of the Peoples Democratic Party, that is, the State Executive Committee of the PDP. In effect, his claim is not anchored on primaries conducted by the National Executive Committee of the PDP. He, therefore, cannot find any succor from this court, *Emeka v. Okadigbo* [2012] 18 NWLR (Pt.1331) 55; *PDP v. Sylva and Ors* [2012] 13 NWLR (Pt.1316) 85; *Emenike v. PDP and Ors* [2012] All FWLR (Pt. 646) 1261; *Adebayo and Ors v. PDP and Ors* (2013) LPELR -20342 (SC); *Lado v. CPC* [2012] 18 NWLR (Pt.1279) 689.

H It is for these, and the more detailed, reasons in the leading judgment that I, just like the leading judgment, enter an order dismissing this appeal. I abide by the consequential orders in the said leading judgment.