

**SUPREME COURT OF NIGERIA**  
MONDAY 2ND NOVEMBER, 2015. SC. 443/2015  
**CORAM:- W. S. N. ONNOGHEN, O. RHODES-VIVOUR,**  
**N. S. NGWUTA, M. U. PETER-ODILI, O. ARIWOOLA,**  
**M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC**

SENATOR HEINEKEN LOKPOBIRI ..... APPELLANT  
AND

1. HON. FOSTER OGOLA

2. PEOPLES DEMOCRATIC PARTY .....RESPONDENTS

3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

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JURISDICTION - Fundamentality of - Jurisdiction goes to root of adjudication process - As where court lacks jurisdiction - Any decision it reached is a nullity (H1)

JURISDICTION - Exclusive & concurrent jurisdiction - Distinction - Whereas the exclusive jurisdiction of a court is peculiar to it - Concurrent jurisdiction is common to two or more courts (H2)

ELECTION PETITIONS - Nature - Election matters are sui generis unlike other civil matters - And jurisdiction to determine them is statutory - Hence common principles may not be applicable (H3)

ELECTION PETITIONS - Pre election - Jurisdiction - FHC - Concurrent jurisdiction conferred on FHC by Evidence Act in pre & post election matters - Is in addition to its exclusive jurisdiction in s. 251 of Constitution 1999 (H4)

COURT PROCESSES - Abuse - Features - It manifests in improper use of judicial process by party - To interfere with due administration of justice (H5)

ACTIONS - Commencement - Abuse of process - Appellant's fresh action in Bayelsa State on same subject matter as the one pending in Abuja - Is vexatious and abuse of process (H6)

**FACTS**

Appellant as plaintiff at the Federal High Court Yenagoa Bayelsa State commenced this action by an originating summons in suit no. FHC/YNG/CS/03/2015 against 1<sup>st</sup> – 3<sup>rd</sup> respondents. Appellant raised six questions for determination of the originating summons. Appellant is seeking inter alia, for a declaration that 1<sup>st</sup> respondent is not qualified to participate in the primary election conducted by 2<sup>nd</sup> respondent to nominate its candidate for the general election in respect of the Bayelsa West Senatorial District. Upon being served with the originating summons, 1<sup>st</sup> respondent brought an application for dismissal of the case for want of jurisdiction or for being an abuse of process of the court. Interestingly, 1<sup>st</sup> respondent had earlier filed suit no. FHC/ABJ/1011/2014 at the Federal High Court Abuja on the same subject matter against appellant, and 2<sup>nd</sup> and 3<sup>rd</sup> respondents which action was still pending.

There was also another motion filed by 2<sup>nd</sup> respondent, challenging the jurisdiction of the Federal High Court Yenegoa on the same grounds as those of 1<sup>st</sup> respondent. The court in its ruling on the objections found no merit in the applications and consequently dismissed same. The court held that the suit does not constitute an abuse of process of court and that the action is within the jurisdiction of the Federal High Court to hear and determine. Dissatisfied, 1<sup>st</sup> respondent appealed to the Court of Appeal Holden at Port Harcourt. The Court allowed the appeal and held that appellant's main claims are not directed at the Federal Government or its agency and as such outside the purview of section 25(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and that the suit in question amounts to forum shopping and consequently an abuse of court process. Aggrieved with the judgment of the Court, appellant has come before the Supreme Court on appeal.

**ISSUES FOR DETERMINATION**

*“(i) Whether in view of section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 31(1)(2)(3)(4)(5) and (6), 87(4) (c) (ii) and 87(9) of the Electoral Act, 2010 (as amended) the Court of Appeal was right in holding that the Federal High Court, Yenegoa lacks the jurisdiction to entertain this matter on the ground that the main reliefs sought the Originating Summons are not directed at the Federal Government or its*

agency.

(ii) *Whether the Court of Appeal was right in holding that the Appellant's suit constitutes an abuse of court process just because he, rather than file a counter claim to the 1st Respondent's suit No. FHC/ABJ/1011/2014 pending before the Federal High Court, Abuja opted to file a fresh/separate suit to ventilate his own grievance at the Federal High Court, Yenegoa on the same subject matter or similar facts.*

(iii) *Whether this is a proper case for the Supreme Court to invoke section 22 of the Supreme Court Act to determine the substantive matter, the Court of Appeal having failed to so invoke section 15 of the Court of Appeal Act but proceeded to strike out same out of want of jurisdiction."*

**HELD** (Unanimously allowing the appeal in part per ONNOGHEN JSC)

*JURISDICTION - Fundamentality of*

**1. It is settled law that an issue of jurisdiction of a court to adjudicate over a matter before it is not only a threshold but fundamental issue that affects or goes to the root or foundation of adjudication process. Jurisdiction has even been described as the blood that gives life to the survival of an action.**

**It follows, therefore that where a court has no jurisdiction to adjudicate over a matter, any decision emanating from such a court on the matter is a nullity, no matter how well conducted. (p. 3475 C)**

*JURISDICTION - Exclusive & concurrent jurisdiction - Distinction*

**2. Now, it must be borne in mind that there is a world of difference between the exclusive jurisdiction of the Federal High Court, or any other court for that matter, and the concurrent jurisdiction of the said court. Whereas the exclusive jurisdiction of a court is peculiar to it, a concurrent jurisdiction is common to two or more courts. The word 'Concurrent' is defined by Webster's New Twentieth Century Dictionary, Unabridged 2<sup>nd</sup> ed. Page 379, inter alia, as "(1) ...In law, having**

***equal jurisdiction or authority.”***

**To me, it is erroneous to say that for the Federal High Court to entertain a pre-election matter, the main relief(s) must be shown to fall within the exclusive jurisdiction of the court because both jurisdictions are different. In a concurrent jurisdiction, if court ‘A’ has jurisdiction to hear all the reliefs claimed, it necessarily follows that court ‘B’ must have the same jurisdiction otherwise it means giving something to someone with one hand and taking it away with the other hand.**  
 (p. 3478 E)

***ELECTION PETITIONS - Nature***

**3. It is settled law that election and election related matters are sui generis and that the jurisdiction to hear and determine them is statutory just as the rights and obligations connected therewith or arising there from. It is in that respect that the principles of common law may not be appropriate in election and related matters.**

**It is not in dispute that in civil actions, the jurisdiction of a court to hear and determine the plaintiff’s action depends on the claim(s) in the writ of summons and his pleadings. On the other hand, the jurisdiction of a court to hear and determine an election or election related matter is statutory - as provided in the statute establishing the cause of action and conferring jurisdiction on the appropriate or particular court(s) to hear and determine same.** (p. 3479 A)

***ELECTION PETITIONS - Pre election - Jurisdiction***

**4. In terms of election or election related matters, the jurisdiction of the Federal High Court to hear and entertain such matters is rooted in the relevant provisions of the Electoral Act, 2010, as amended, earlier reproduced in this judgment. In respect of matters relating to post election jurisdiction of the court, see section 251(4) of the 1999 Constitution, as amended also supra. If we insist on the jurisdiction of the Federal High Court on pre-election and/or post election matters being exercisable only where the main claim(s) is/are within the exclusive jurisdiction of the Federal High Court, it will re-**

**sult in injustice on the litigants which is clearly not the intention of the legislature. It is therefore very clear that the concurrent jurisdiction conferred on the Federal High Court to hear and determine pre-election and even post election matters is clearly outside the exclusive jurisdiction of the court under section 251 of the 1999 Constitution as amended but in addition to the said exclusive jurisdiction and consequently subject to different considerations.** B

**It is therefore my considered opinion when the Federal High Court's pre-election jurisdiction is invoked, the parties claim(s) and relief(s) must be in conformity with the provisions of the Electoral Act, 2010, as amended, not under the provisions of section 251 of the 1999 Constitution, as amended. In fact, INEC may be a nominal party or be liable to an ancillary claim in a pre-election or post election jurisdiction of the Federal High Court.** (p. 3479 D) C

#### *COURT PROCESSES - Abuse - Features*

**5. It is settled law that the concept of abuse of process is imprecise though it involves circumstances and situations of infinite variety and conditions. A common feature of abuse of process of court, however, remains the improper use of judicial process by a party in litigation to interfere with the due administration of justice. These include, and not limited to:** E

- (i) **Instituting a multiplicity of actions on the same subject matter against the same opponents on the same issues on multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action;** F
- (ii) **Instituting different actions between the same parties simultaneously in different courts even though on different grounds.** G
- (iii) **Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and a respondent's notice.** H
- (iv) **Where two actions are commenced, the second asking for a relief which may have been obtained in the first, the second action is prima facie vexatious and an abuse of court process.**

ess. (p. 3482 A)

*ACTIONS - Commencement - Abuse of process*

**6. It is the view of appellant that in instituting the action in Yenagoa, he was exercising his right to choose between filing a counter claim and a fresh action and that he chose to file a fresh action, which, he submits, is not in abuse of process, I am of the view that learned senior counsel's submission supra is erroneous, for the following reasons:-**

- (a) A counter-claim is a fresh action filed in an existing action but in the same court and division of same to be heard and determined by the court together with the substantive action.**
- (b) The fresh action he chose to institute is on the same subject matter claiming the same reliefs which he would have claimed in a counter claim in the substantive action all the way in Bayelsa State while the first action is pending in Abuja. If the fresh action were to have been filed in the same division of the Federal High Court it could have been consolidated with the earlier action and heard and determined together.**
- (c) The reliefs claimed by appellant in the second action could have been claimed and obtained in the first action in Abuja but to go to Yenagoa, Bayelsa State to claim the reliefs is clearly vexatious and a abuse of court process.**

**It is for the above reasons that I hold the considered view that there is no merit in issue 2 which is accordingly resolved against appellant.**

**The suit haven been adjudged to have been filed in abuse of process, it follows that the third issue relating to the invitation to invoke the provisions of section 22 of the Supreme Court Act has become a non issue as it has been overtaken by events. The issue is therefore discountenanced by me.**

(p. 3483 E)

## NOTABLE POINTS OF INTEREST

### **ONNOGHEN JSC**

#### ***1. Competence of court – Conditions for***

The Supreme Court has laid down the conditions precedent to a court assuming jurisdiction in the case of *Madukolu vs Nkemdilim* (1962) 1 All NLR 581 where it is stated that a court is competent to adjudicate over a matter before it only when:

- (a) It is properly constituted with respect to the number and qualifications of its members.
- (b) The subject matter of the action is within its jurisdiction.
- (c) The action is initiated by due process of law, and,
- (d) Any condition precedent to the exercise of its jurisdiction has been fulfilled. (p. 3475 E)

#### ***2. Statutes – Interpretation – Literal rule***

By the literal rule or principle of interpretation of statute, the words used, employed in the sections of the Constitution and Electoral Act supra are to be given their ordinary, natural and grammatical meaning unless to do so will result in absurdity with the provisions of the statute as a whole (p. 3477 H)

#### ***3. Federal High Court jurisdiction in Pre election matters***

It should be noted that the validity of the Electoral Act, 2010 as amended, particularly the provisions conferring jurisdiction on the Federal High Court to hear and determine pre-election matters concurrently with the State and Federal Capital Territory High Courts has not been challenged or successfully challenged in court which means that they remain valid and subsisting. It is also not in doubt that the intention of the National Assembly in enacting the said Act is clearly to confer concurrent jurisdiction on the Federal High Court and State and Federal Capital Territory High Courts in pre-election matters, so as to enlarge the range of choice of courts available to an aggrieved party to ventilate his grievances. (p. 3478 A)

### **REPRESENTATION**

S. Larry, SAN for appellant with him are Chief F. Zimushan, I. Oruegbimiekuno, J.O. Okosun, T. Tabai, I. Nkpor and C. Nzeabu.

Henry Michael – Ihunde Esq for 2<sup>nd</sup> respondent with him Arubisou, A.H; B.O. Onamusi; Saviour L. Taneh; D.M. Cephas; I. M. Oluwasina; S.E. Tobi; Keffas Gadzama; D.I. Onyekwere; C.U. Onyedim and M.S. Yusuf

S.O. Ibrahim, Esq., for 3<sup>rd</sup> respondent

B A. P. Egbegi, Esq. for 1<sup>st</sup> respondent with Messrs. T. I. Iber; T. G. Woko.

E. I. Esene, Esq., appears for 3<sup>rd</sup> respondent leading S. Ibrahim, J. C. Anuruonye, J. D. Okey and C. S. Ogba

C **CASES REFERRED TO**

Madukolu v. Nkemdilim (1992) 1 All NLR 581

Jev v. Iyortyom (2014) 14 NWLR (pt. 1428) 575

Gbileve v. Addingi (2014) 16 NWLR (pt. 1439) 394

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

Kakih v. PDP (2014) 15 NWLR (pt. 1430) 374

Elugbe v. Omokhae (2004) 18 NWLR (pt. 905) 319

Onashile v. Idowu (1961) 2 SCNLR 53

Ojokolobo v. Alamu (1987) 3 NWLR (pt. 61) 377

E Dingyadi v. INEC (No.2) (2011) 18 NWLR (pt. 1224) 221

Saraki v. Kotoye (1992) 9 NWLR (pt. 204) 156

Ogoejefo v. Ogoejefo (2006) 3 NWLR (pt. 996) 205

Okorochoa v. PDP (2014) 7 NWLR (pt. 1406) 213

F Okorodudu v. Okoromadu (1977) 3 SC 21

Agwasim v. Ojichie (2004) 10 NWLR (pt. 882) 613

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999 (as amended),

G s. 25(1)

Electoral Act 2010 (as amended), ss. 31(1)(2)(3)(4)(5)(6), 87(4) (c) (ii) and 87(9)

**BOOK REFERRED TO**

H Black's Law Dictionary, 9<sup>th</sup> ed. pp. 32-33

**LEAD JUDGMENT BY ONNOGHEN JSC**

On the 28th day of January, 2015, appellant caused to be filed at the Federal High Court, Yenegoa, Bayelsa State, an Originat-

ing Summons in Suit No. FHC/YNG/CS/03/2015 for the determination of the following questions:

“1. Whether by virtue of section 31(2) (4) (5) and (6) of the Electoral Act 2010 (as amended); Article 50 (9) of the Peoples’ Democratic Party Constitution 2012 (as amended), the 3<sup>rd</sup> Defendant is not a person disqualified to take part in and contest the primary election conducted by the 2nd defendant at Sagbama Town on 7th December, 2014 Senatorial District for the general election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC)?”

2. Whether by virtue of Section 87 (4) (c) (ii) of the Electoral Act 2010 (as amended); Articles 31(2)(i), 50 (1) (2) (c) of the Peoples’ Democratic Party Constitution 2012 (as amended) and Articles A (i) and (ii) the 2nd Defendant’s Electoral Guidelines for Primary Elections 2014, the 2nd Defendant is not bound to submit the name of the Plaintiff to the 1st Defendant as the duly elected candidate for the Bayelsa West Senatorial District to contest the 2015 general election having polled the highest number of votes in the primary election held at Sagbama Town on 7th December, 2014?

3. Whether by virtue of Section 87 (4) (c) (ii) of the Electoral Act 2010 (as amended); Articles 31(2)(i), 50(1)(2)(c) of the Peoples’ Democratic Party Constitution 2012 (as amended), and Articles A (i) and (ii) the 2nd Defendant’s Electoral Guidelines for Primary Elections 2014, the result or the outcome of the 2nd Defendant’s Senatorial Primary Election conducted on 7th December, 2014 at Sagbama Town, The 2nd Defendant can or could rightly replace the Plaintiff with the 3rd Defendant who lost out in the said primary election?

4. Whether in view of the fact that the 3rd Defendant who was not qualified to contest the primary elections held at Sagbama Town on 7th December, 2014 and was not elected the Candidate for the Bayelsa West Senatorial District, the submission of the 3rd Defendant to the 1<sup>st</sup> Defendant by the 2nd Defendant as its candidate for the purpose of contesting the general election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC) is not ultra vires, unconstitutional, unlawful, illegal, null and void an of no effect whatsoever?

5. Whether by virtue of section 31(2)(4) and (5) of the Electoral Act, 2010 (as amended) and Exhibits HIOL 12(Sic.13) the 3rd

*Defendant having breached the mandatory provisions of the law ought not be barred from contesting the general election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC) as candidate of the 2nd defendant?*

B 6. *Whether in the event that the election (Sic) the general election slated to hold in February or any month in 2015 had held prior to the determination of this suit, and questions 1-5 above are answered in favour of the Plaintiff, the Plaintiff would not step into or be deemed to step into the shoes of the 3rd Defendant?" (see pages 3-4 of vol. 1 of the record.)*

The Appellant also sought the following reliefs by the said Originating Summons:

D "1. A DECLARATION that by virtue of section 31(2)(4)(5) and (6) of the Electoral Act 2010 (as amended); Article 50(9) of the Peoples Democratic Party Constitution 2012 (as amended) the 3rd Defendant is a person not qualified to take part in and contest the primary election conducted by the 2nd Defendant at Sagbama Town on 7th December, 2014 to nominate or select for the general election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC).

F 2. A DECLARATION that the plaintiff is the rightful candidate of the 2nd Defendant for the Bayelsa West Senatorial District in the general election slated to hold in February or any such month in 2015, having secured (Sic). The highest number of votes at the primary election conducted by the 2nd Defendant at the Sagbama Town on 7th December, 2014, having regard to the provisions of section 87(4)(c) (i) (ii) and articles 31(2) (i), 50 (1) (2) (c) of the Peoples' Democratic Party Constitution 2012 (as amended) and Articles A (i) (ii) of the 2nd Defendant's Electoral Guidelines for Primary Elections 2014.

H 3. A DECLARATION that the information supplied by the 3rd defendant in INEC FORM FC 001 sworn to at the Court Registry, Federal Capital Territory Abuja and the documents attached thereto is false and untenable and thus renders Form FC 001 useless, unreliable, worthless and of no effect.

4. AN ORDER of this Honourable Court nullifying and/or setting aside INEC Form No. 001 sworn to by the 3rd defendant at the

*High Court Registry, Federal Capital Territory, Abuja and the documents attached thereto for containing information that is false and untrue.*

5. *AN ORDER* of this Honourable Court disqualifying the 3rd Defendant from contesting the general election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC) as the candidate of the 2<sup>nd</sup> defendant. B

6. *AN ORDER* directing the 1st Defendant to accept forthwith the plaintiff as the 2nd Defendant's candidate to contest the general elections (Sic.) slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC). C

7. *AN ORDER* putting the plaintiff into the shoes of the 3rd Defendant in the General Election slated to hold in February or any other month in 2015 for the Bayelsa West Senatorial District in the National Assembly in the event that the Election had taken place before the determination of this suit. D

8. *AN ORDER* restraining the 1st, 2nd and 3rd Defendants, their servants, agents, privies, assigns or any other person howsoever described from further recognizing and or according recognition to the 3<sup>d</sup> Defendant as the 2nd Defendant's candidate for the Bayelsa West Senatorial District in the general election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC). E F

9. *AN ORDER* restraining the 3rd Defendant from parading or holding himself out as the 2nd Defendant's candidate for the Bayelsa West Senatorial District in the election slated to hold in February or any other month in 2015 as may be fixed by the Independent National Electoral Commission (INEC) or enjoying or seeking to enjoy any of the rights, privileges and or benefits connected with a related to the candidacy of the Bayelsa West Senatorial District. G

10. *AN ORDER* for accelerated hearing of the originating summons having regard to the facts and circumstances of this case. H

11. *AND FOR SUCH FURTHER OR OTHER ORDERS* this Honourable Court may deem fit to make in the circumstances of this case. (see pages 5-7 of vol. 1 of the record)".

Many processes were filed by the parties in reaction to the suit

including a motion filed on the 18th day of February, 2015 by the appellant praying for an order of court dismissing the suit for want of jurisdiction or for being in abuse of process of the court. It should be noted that the 1st respondent in this appeal had earlier filed suit No. FHC/ABJ/1011/2014 at the Federal High Court, Abuja on the same subject matter against the present appellant, and the 2nd and 3rd respondents which action was still pending. There was also another motion challenging the jurisdiction of the Federal High Court, Yenegoa on the same grounds as those of appellant, filed by 2nd respondent on the 20th day of February, 2015. Both objections were taken together by the trial court and ruled upon on the 16th day of March, 2015.

In the ruling, the trial court found no merit in the applications and consequently dismissed same. The court held that the suit does not constitute an abuse of process of court and that the action is within the jurisdiction of the Federal High Court to hear and determine.

The 1st respondent was dissatisfied with that ruling and consequently appealed against same to the Court of Appeal, Holden at Port Harcourt in appeal No. CA/PH/96/2015 which appeal was heard on the 19th day of May, 2015. On the 19th day of June, 2015, the lower court delivered a judgment on the appeal in which it allowed the appeal by holding that appellant's main claims, earlier reproduced in this judgment, are not directed at the Federal Government or its agency and as such outside the purview of section 25(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended (hereinafter referred to as the 1999 Constitution, as amended), and that the suit in question amounts to forum shopping and consequently an abuse of court process. The instant appeal is therefore against the said judgment, the issues for the determination of which have been identified by learned Senior Counsel for appellant, S. LARRY, SAN in the appellant brief filed on the 24th day of July, 2015 as follows:-

*“(i) Whether in view of section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended, sections 31(1)(2)(3)(4)(5) and (6), 87(4) (c) (ii) and 87(9) of the Electoral Act, 2010 (as amended) the Court of Appeal was right in holding that the Federal High Court, Yenegoa lacks the jurisdiction to entertain this matter on the ground that the main reliefs sought the Origin-*

*nating Summons are not directed at the Federal Government or its agency. (Related to Grounds one (1) and three (3) of the Notice of Appeal)*

*(ii) Whether the Court of Appeal was right in holding that the Appellant's suit constitutes an abuse of court process just because he, rather than file a counter claim to the 1st Respondent's suit No. FHC/ABJ/1011/2014 pending before the Federal High Court, Abuja opted to file a fresh/separate suit to ventilate his own grievance at the Federal High Court, Yenegoa on the same subject matter or similar facts. (Related to Grounds two(2) and five(5) of the Notice of Appeal.)*

*(iii) Whether this is a proper case for the Supreme Court to invoke section 22 of the Supreme Court Act to determine the substantive matter, the Court of Appeal having failed to so invoke section 15 of the Court of Appeal Act but proceeded to strike out same out of want of jurisdiction."*

In arguing issue 1, learned senior Counsel for appellant referred the court to the case of *Madukolu vs Nkemdilim* (1992) 1 All NLR 581 where the guidelines for the determination of the jurisdiction of a court are laid and submitted that the claims of appellant in the Originating Summons are clearly within the jurisdiction of the Federal High Court; that the lower court was in error in not taking into consideration, the provisions of section 31 of the Electoral Act, 2010, as amended and the decision of this Court in *Jev vs Iyortyom* (2014) 14 NWLR (pt. 1428) 575 and *Gbileve vs Addingi* (2014) 16 NWLR (pt. 1439) 394.

It is the further submission of learned Senior Counsel that in the light of the provisions of section 251 (1)(s) of the 1999 Constitution, section 31 (5) and (6) and 87(4) (c) (ii) and (9) at the Electoral Act, 2010, as amended, the Federal High Court has concurrent jurisdiction with the State and FCT High Courts in the case of disqualification on account of presentation of false information; infraction of the provision of the Electoral Act and the guidelines of a political party's primary election for selection or nomination of a candidate and that appellant's case falls within the jurisdiction of the Federal High Court to hear and determine same, and urged the Court to resolve issue 1 in favour of appellant.

On his part, learned Senior Counsel for 1st respondent, TAYO

OYETIEO, SAN in the 1st respondent's brief filed on 26/10/2015 formulated issue 1 slightly different though substantially the same with that of appellant. The issue is as follows:

“Whether the Court of Appeal was right in holding that the cases of PDP vs Sylva (2012) 13 NWLR (pt. 1316) at 85 and Kakih vs PDP B (2014) 15 NWLR (pt. 1430) 374 were applicable to the suit in determining the jurisdiction of the trial court to entertain same.”

It is the submission of learned Senior Counsel that in a civil action it is the plaintiff's claims as well as the averments in his pleadings that will be considered in determining the question of jurisdiction of the court and urged the court to look at the reliefs claimed herein in determining whether the Federal High Court has jurisdiction in this matter; that the jurisdiction of the Federal High Court is governed by the provisions of section 251 of the 1999 Constitution, as amended D and that for an action to be validly before that court, the plaintiff has a duty to show that his claims fall within the provisions of the said section 251 of the Constitution; that the lower court found reliefs 6 and 8, which are claimed against the 3<sup>rd</sup> respondent, to be ancillary reliefs thereby robbing the Federal High Court of jurisdiction to entertain the matter; that the main claims of appellant not being directed at the 3<sup>rd</sup> respondent robbed the Federal High Court of the jurisdiction to entertain the matter having regard to the provisions of section 251 (1) of the 1999 Constitution and that the lower court was right in so holding having regard to the decision in the case of F Kakih vs POP supra and urged the court to resolve the issue against appellant.

In the 2<sup>nd</sup> respondent's brief filed on the 14th day of September, 2015, learned senior counsel for 2<sup>nd</sup> respondent, CHIEF JOE-KYARI GADZAMA, SAN made submissions on issue 1 which are very similar to those of learned Senior Counsel for 1st respondent earlier summarized. Learned Senior Counsel, however, added that section 87(9) of the Electoral Act, 2010, as amended must be read side by side with section 251 of the Constitution; that the section does not H expressly grant appellant the discretion to choose which of those courts to proceed to file an action but that it is the claim and reliefs of the appellant that determines which court can ventilate his grievances; that since the main claims of appellant are not against the 3<sup>rd</sup> respondent or the Federal Government or any of its agency, the Fed-

eral High Court has no jurisdiction to entertain the action relying on PDP vs SYLVA and Kakihi vs PDP (both supra); that “sections 31 (5), 87(10), 89(10) of the Electoral Act are subject to section 251 of the Constitution as it does not suffice that an agent of the Federal Government is made a party but further that the principal reliefs are directed against the Federal Government agent...” and urged the court to resolve the issue against the appellant. B

The submission of EMMANUEL ESENE ESQ of Counsel for 3<sup>rd</sup> respondent on the issue in the 3<sup>rd</sup> respondent’s brief deemed filed on 27/10/2015 are the same as those of senior counsel for 1<sup>st</sup> and 2<sup>nd</sup> respondents and therefore I see no need to repeat them herein. C

***It is settled law that an issue of jurisdiction of a court to adjudicate over a matter before it is not only a threshold but fundamental issue that affects or goes to the root or foundation of adjudication process. Jurisdiction has even been described as the blood that gives life to the survival of an action.*** D

***It follows, therefore that where a court has no jurisdiction to adjudicate over a matter, any decision emanating from such a court on the matter is a nullity, no matter how well conducted.*** See Elugbe vs Omokhae (2004) 18 NWLR (pt. 905) E 319.

The Supreme Court has laid down the conditions precedent to a court assuming jurisdiction in the case of Madukolu vs Nkemdilig (1962) 1 All NLR 581 where it is stated that a court is competent to adjudicate over a matter before it only when: F

- (a) It is properly constituted with respect to the number and qualifications of its members.
- (b) The subject matter of the action is within its jurisdiction.
- (c) The action is initiated by due process of law, and, G
- (d) Any condition precedent to the exercise of its jurisdiction has been fulfilled.

The issue under consideration is whether the Federal High Court has jurisdiction to hear and determine a pre-election matter where the claim against a Federal Government Agency is not the main claim but ancillary, having regards to the provisions of section 251 (1) of the Constitution of the Federal Republic of Nigeria 1999, as amended, hereinafter referred to as the 1999 Constitution and certain paragraphs of the Electoral Act, 2010 as amended. H

Whereas the Federal High Court held that it has the requisite jurisdiction, the Court of Appeal held otherwise. The purpose of this appeal is to determine which of the opposing views on the matter is correct.

To solve the problem we have to take a look at the relevant provisions of section 251 (1) of 1999 Constitution, sections 31 (1) 2 (3) (4) (5) and (6), 87(4) (c) (ii) and 87(9) of the Electoral Act, 2010 as amended and/or any other provisions of the said Electoral Act.

Section 251 (1) (r) and (s) of the 1999 Constitution provide, inter alia as follows:-

*“251 (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters...*

*(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and*

*(s) such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly”*

It is very clear from a community reading of the provisions of section 251 of the 1999 Constitution that the jurisdiction conferred on the Federal High Court in the circumstances and instances listed thereunder are exclusive to the Federal High Court and not concurrent with any other High Court. In other words, only the Federal High Court can entertain the matter listed thereunder.

Also to be noted is the fact that the jurisdiction so conferred exclusively on the Federal High Court is in civil causes and matters listed thereunder. In other words, the jurisdiction of the Federal High Court under section 251 supra does not extend to nor does it include election or election related matters such as pre-election and/or election matters. However, it is important to note that section 251 (4) of the 1999 Constitution, as amended conferred a post election jurisdiction on the Federal High Court in the following terms:-

*“(4) The Federal High Court shall have and exercise jurisdic-*

*tion to determine any question as to whether the term of office or a seat of a member of the Senate or the House of Representatives has ceased or his seat has become vacant.”*

We shall return to the above provision later in this judgment. I want us to also note that both the opening of section 251 (1) and paragraphs of subsection 1 confer authority on the National Assembly, in addition to the general provision of legislative powers in section 4 of the 1999 Constitution, as amended, to enact an Act conferring additional jurisdiction on the Federal High Court either exclusive or concurrently with State and Federal Capital Territory High Courts.

It is on the basis of the above Constitutional provisions particularly sub-section (1), paragraph (s) of section 251 of the 1999 Constitution that the National Assembly enacted the Electoral Act, 2010, as amended and conferred concurrent jurisdiction in pre-election matters on the Federal High Court and State and Federal Capital Territory High Courts in sections 31 (5) and (6) and 87(9) thereof which provide, inter alia:

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

(6) If the court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the court will issue an order disqualifying the candidate from contesting the election.”

“87 (9) Notwithstanding the provision 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 Federal Capital Territory for redress”.

By the literal rule or principle of interpretation of statute, the words used, employed in the sections of the Constitution and Electoral Act supra are to be given their ordinary, natural and grammatical meaning unless to do so will result in absurdity with the provisions

of the statute as a whole - see *Onashile vs Idowu* (1961) 2 SCNLR 53; *Ojokolobo vs Alamu* (1987) 3 NWLR (pt. 61) 377.

It should be noted that the validity of the Electoral Act, 2010 as amended, particularly the provisions conferring jurisdiction on the Federal High Court to hear and determine pre-election matters currently with the State and Federal Capital Territory High Courts has not been challenged or successfully challenged in court which means that they remain valid and subsisting. It is also not in doubt that the intention of the National Assembly in enacting the said Act is clearly to confer concurrent jurisdiction on the Federal High Court and State and Federal Capital Territory High Courts in pre-election matters, so as to enlarge the range of choice of courts available to an aggrieved party to ventilate his grievances.

The controversy, however, seems to have arisen from the view that for the exercise its concurrent jurisdiction in pre-election matters, the main claim(s) in the action must be within the provision of exclusive jurisdiction of the Federal High Court, as enumerate under section 251 of the 1999 Constitution as amended and that at where the main claim(s) is/are outside the purview of the exclusive jurisdiction of the Federal High Court, the proper court to approach for redress is the State High Court or the Federal Capital Territory High Court. Whether this argument is correct, is the million naira question.

***Now, it must be borne in mind that there is a world of difference between the exclusive jurisdiction of the Federal High Court, or any other court for that matter, and the concurrent jurisdiction of the said court. Whereas the exclusive jurisdiction of a court is peculiar to it, a concurrent jurisdiction is common to two or more courts. The word ‘Concurrent’ is defined by Webster’s New Twentieth Century Dictionary, Unabridged 2<sup>nd</sup> ed. Page 379, inter alia, as “(1) ...In law, having equal jurisdiction or authority.”***

***To me, it is erroneous to say that for the Federal High Court to entertain a pre-election matter, the main relief(s) must be shown to fall within the exclusive jurisdiction of the court because both jurisdictions are different. In a concurrent jurisdiction, if court ‘A’ has jurisdiction to hear all the reliefs claimed, it necessarily follows that court ‘B’ must have the same jurisdiction otherwise it means giving something to some-***

**one with one hand and taking it away with the other hand.**

**It is settled law that election and election related matters are sui generic and that the jurisdiction to hear and determine them is statutory just as the rights and obligations connected therewith or arising there from. It is in that respect that the principles of common law may not be appropriate in election and related matters.** B

**It is not in dispute that in civil actions, the jurisdiction of a court to hear and determine the plaintiff's action depends on the claim(s) in the writ of summons and his pleadings. On the other hand, the jurisdiction of a court to hear and determine an election or election related matter is statutory - as provided in the statute establishing the cause of action and conferring jurisdiction on the appropriate or particular court(s) to hear and determine same.** C D

**In terms of election or election related matters, the jurisdiction of the Federal High Court to hear and entertain such matters is rooted in the relevant provisions of the Electoral Act, 2010, as amended, earlier reproduced in this judgment. In respect of matters relating to post election jurisdiction of the court, see section 251(4) of the 1999 Constitution, as amended also supra. If we insist on the jurisdiction of the Federal High Court on pre-election and/or post election matters being exercisable only where the main claim(s) is/are within the exclusive jurisdiction of the Federal High Court, it will result in injustice on the litigants which is clearly not the intention of the legislature. It is therefore very clear that the concurrent jurisdiction conferred on the Federal High Court to hear and determine pre-election and even post election matters is clearly outside the exclusive jurisdiction of the court under section 251 of the 1999 Constitution as amended but in addition to the said exclusive jurisdiction and consequently subject to different considerations.** E F G

**It is therefore my considered opinion when the Federal High Court's pre-election jurisdiction is invoked, the parties claim(s) and relief(s) must be in conformity with the provisions of the Electoral Act, 2010, as amended, not under the provisions of section 251 of the 1999 Constitution, as amended. In** H

***fact, INEC may be a nominal party or be liable to an ancillary claim in a pre-election or post election jurisdiction of the Federal High Court.***

The position I have taken on this issue is advised by the decision of this Court in *Jev vs Iyortyom* (2014) 14 NWLR (pt. 1428) 575 at 611-613; 626-627; 630 and 631-632. See also *Gbileve vs Addingi* (1014) 16 NWLR (pt. 1433) 394 at 418-419; 424-425; 427-428 and 431-432.

My attention has been drawn by learned counsel for the respondents to the decision of this Court in *PDP vs Sylva* (2012) 13 NWLR (pt. 1316) 85 and *Kakih vs PDP* (2014) 15 NWLR (pt. 1430) 374 said to be in support of their contention that for the Federal High Court to exercise its pre-election jurisdiction under the Electoral Act, 2010, as amended, the main claim(s) or reliefs of the plaintiff must be within the purview of the provisions of section 251 of the 1999 Constitution, as amended. A detailed reading of the facts of *PDP vs Sylva*, supra does not support that contention. The case simply held that Sylva who was not screened by his party (PDP) for the primaries in question nor participated in the said primaries, failed to bring himself within the provisions of section 87(9) of the Electoral Act, 2010, as amended and as such he had no locus standi to institute an action under the said section 87(9) in any court in Nigeria as his complaints were within the internal affairs of a political party which are not justiciable. So, the reliefs claimed in that action were incapable of invoking the jurisdiction of the court - see pages 127 & 137-139 of the report. It must be pointed out that the effect of the decision in *Sylva's* case is that the action as constituted was not a pre-election matter and as such it could not be entertained in any court. Any other thing said is clearly obiter.

With respect to the decision of this Court in the case of *Kakih vs PDP*, supra, I wish to emphasize that the court did not hold that the Federal High Court does not have jurisdiction to hear and determine pre-election matters. It held that it does but that the jurisdiction so conferred is exercisable by that court when the main claim of the plaintiff falls within the provisions of section 251 of the 1999 Constitution and not when the claim against an agency of the Federal Government is ancillary.

Having regard to what I have stated earlier in this judgment

with respect to the sui generic nature of an election or election related matter and the jurisdiction of the courts to entertain them, which are special statutory jurisdictions, the fact that the Federal High Court, by operation of section 251 (4) of the 1999 Constitution is also clothed with jurisdiction to entertain post election matters whose claims or reliefs may not necessarily involve/affect the Federal Government or any of its agencies, it is clear that the intention of the legislature in conferring the additional jurisdiction on the Federal High Court in relation to pre-election and post election matters is clearly that the additional jurisdiction is to be exercised by the court in accordance with the Electoral Act, 2010, as amended, creating the jurisdiction as well as section 251 (4) of the 1999 Constitution. It is therefore clear that Kakih's case as regard the issue of the jurisdiction of the Federal High Court in pre-election matters is limited to its peculiar facts and circumstances having regard to the decision in JEV vs IYORTYOM supra.

In the circumstance I resolve issue 1 in favour of appellant.

On issue 2, it is the contention of learned senior counsel for appellant that the lower court erred in holding that the suit giving rise to the instant appeal was filed in abuse of court process vis-à-vis the earlier suit filed by the 1<sup>st</sup> respondent in the Federal High Court, Holden in Abuja; that in filing the suit, appellant was exercising his right to choose from more than one way of either filing a counter-claim or a fresh action, and decided to file a fresh action which does not constitute abuse of process; that it is not for the defence to choose which option a plaintiff should take, relying on R-Benkay (Nig) Ltd. vs Cadbury (Nig) Plc (2012) 9 NWLR (pt. 1306) 596 and urged the court to resolve the issue in favour of appellant and allow the appeal.

On his part, learned senior counsel for 1<sup>st</sup> respondent cited and relied on the case of Dingyadi vs INEC (No.2) (2011) 18 NWLR (pt. 1224) 221 in submitting that the suit in question was filed in abuse of process of the court; that the subject matter of the two suits is the same as well as the parties thereto; that the reliefs claimed are substantially the same. Learned senior counsel urged the court to resolve the issue against appellant.

Learned senior counsel for 2<sup>nd</sup> respondent made similar submission on the issue as did learned senior counsel for 1<sup>st</sup> respondent. I do not intend to repeat them herein but note that the submissions

are very helpful. The same observation goes for the submission of learned counsel for 3<sup>rd</sup> respondent on the said issue.

***It is settled law that the concept of abuse of process is imprecise though it involves circumstances and situations of infinite variety and conditions. A common feature of abuse of process of court, however, remains the improper use of judicial process by a party in litigation to interfere with the due administration of justice. These include, and not limited to:***

***(i) Instituting a multiplicity of actions on the same subject matter against the same opponents on the same issues on multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action;***

***(ii) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.***

***(iii) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and a respondent's notice.***

***(iv) Where two actions are commenced, the second asking for a relief which may have been obtained in the first, the second action is prima facie vexatious and an abuse of court process*** etc, etc, etc. See Saraki vs Kotoye (1992) 9 NWLR (pt. 204) 156; Ogoejefo vs Ogoejefo (2006) 3 NWLR (pt. 996) 205; Okorocho vs PDP (2014 7 NWLR (pt. 1406) 213 etc.

I had earlier reproduced the questions for determination and reliefs claimed in the instant suit leaving those of the sister suit No. FHC/ABJ/CS/1911/14 filed in Abuja on 15/12/2014 wherein the present 1<sup>st</sup> respondent claimed the following reliefs.

***“1. A DECLARATION that he is the winner of the Peoples Democratic Party Senatorial primary election for Bayelsa West Senatorial District held on Sunday, 7<sup>th</sup> December, 2014 at Sagbama, the headquarters of Bayelsa West Senatorial District.***

***2. A DECLARATION that the 1<sup>st</sup> defendant cannot substitute his name with the name of the 3<sup>d</sup> defendant as the winner of the Peoples Democratic Party Senatorial Primary election for Bayelsa West Senatorial District held on Sunday, 7<sup>th</sup> Decem-***

ber, 2014 at Sagbama, the headquarters of Bayelsa West Senatorial District.

3. *AN ORDER directing the 1<sup>st</sup> defendant to submit his name to the 2<sup>nd</sup> defendant as the winner of the Peoples Democratic Party Senatorial primary election for Bayelsa West Senatorial District held on Sunday, 7<sup>th</sup> December, 2014 at Sagbama, the headquarters of Bayelsa West Senatorial District.* <sup>B</sup>
4. *AN ORDER directing the 2<sup>nd</sup> defendant not to accept the name of the 3<sup>d</sup> defendant or any other aspirant (except the plaintiff) as the winner of the Peoples Democratic Party Senatorial primary election for Bayelsa West Senatorial District held on Sunday, 7<sup>th</sup> December, 2014 at Sagbama, the headquarters of Bayelsa West Senatorial District.* <sup>C</sup>

From the reliefs claimed in both actions each plaintiff claimed to have won the PDP primary election conducted on 7<sup>th</sup> December, 2014 at Sagbama for the purpose of nominating its candidate for the Bayelsa West Senatorial District in the 2015 General Elections; that appellant filed his action in the Federal High Court, Holden at Yenagoa, Bayelsa State while 1<sup>st</sup> respondent's action was instituted after that of 1<sup>st</sup> respondent in a different division of the Federal High Court; that both actions still pend before the different divisions of the Federal High Court, etc, etc. <sup>E</sup>

***It is the view of appellant that in instituting the action in Yenagoa, he was exercising his right to choose between filing a counter claim and a fresh action and that he chose to file a fresh action, which, he submits, is not in abuse of process, I am of the view that learned senior counsel's submission supra is erroneous, for the following reasons:-*** <sup>F</sup>

- (a) ***A counter-claim is a fresh action filed in an existing action but in the same court and division of same to be heard and determined by the court together with the substantive action.*** <sup>G</sup>
- (b) ***The fresh action he chose to institute is on the same subject matter claiming the same reliefs which he would have claimed in a counter claim in the substantive action all the way in Bayelsa State while the first action is pending in Abuja. If the fresh action were to have been filed in the same division of the Federal High Court*** <sup>H</sup>

***it could have been consolidated with the earlier action and heard and determined together.***

- (c) ***The reliefs claimed by appellant in the second action could have been claimed and obtained in the first action in Abuja but to go to Yenagoa, Bayelsa State to claim the reliefs is clearly vexatious and a abuse of court process.***

***It is for the above reasons that I hold the considered view that there is no merit in issue 2 which is accordingly resolved against appellant.***

- C ***The suit haven been adjudged to have been filed in abuse of process, it follows that the third issue relating to the invitation to invoke the provisions of section 22 of the Supreme Court Act has become a non issue as it has been overtaken by***  
D ***events. The issue is therefore discountenanced by me.***

In conclusion I hold the considered view that the lower court is in error in holding that the Federal High Court has no jurisdiction to hear and determine the suit as instituted and accordingly set same aside and restore and affirm the decision of the trial court on the  
E issue.

It is also my considered view that the suit as constituted was filed in abuse of court process as held by the lower court and consequently dismissed for being incompetent.

- F Appeal is consequently allowed in part. Parties to bear their costs. Appeal allowed in part.

### ***RHODES-VIVOUR JSC***

- G I have had the advantage of reading in draft the judgment of my learned brother, Onnoghen, JSC. I agree with his lordship on both points which arise in this case.

1. Whether the Federal High Court, has jurisdiction to hear the appellant's claims, and

- H 2. Whether filing suit No. FHC/YNG/CS/03/2015 while suit No. FHC/ABJ/1011/2014 is pending amounts to an abuse of process.

In view of several authorities on the issue to wit:  
PDP v. Sylva (2012) 13 NWLR (pt.1316) p.85

Kakih v. PDP (2014) 15 NWLR (pt.1430) p.374

Jev v. Iyortyom (2014) 14 NWLR (pt.1428) p.575

The jurisdiction issue to my mind is well settled. I intend to say a thing or two on abuse of process.

During the pendency of Suit No. FHC/ABJ/1011/2014 filed by the 1<sup>st</sup> respondent suit No. FHC/YHG/CS/03/2015 was filed by the appellant. B

It would amount to an abuse of process when a party improperly uses the judicial process to interfere negatively with the due administration of justice. Such a proceeding would be frivolous and pollutes the streams of justice which must remain pure always. This will arise where multiplicity of suits are filed in court on the same subject matter against the same opponent on the same issue. See Dingyadi v. INEC (No. 2) (2011) 18 NWLR (pt.1224) p.221 Okorodudu v. Okoromadu (1977) 3 SC p.21. C D

My Lord, where matters involving the same issue are raised contemporaneously in two different courts it is desirable and in the interest of justice that the matters should be heard in only one of the two courts. The rule on abuse of court process is designed to avoid multiplicity of proceedings. The basis of the rule is the real possibility of two conflicting decisions in respect of one and the same subjects matter. E

Suit No. FHC/YNG/CS/03/15 filed during the pendency of Suit No. FHC/ABJ/1011/2014 amounts to a multiplicity of action as it is on the same subject matter, against the same opponents and on largely the same issues. It is clearly an abuse of process as correctly held by the Court of Appeal. It is struck out. F

For, this and the well considered leading judgment the appeal is allowed in part. G

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### **PETER-ODILI JSC**

I have had the privilege of reading the draft judgment of my learned brother W.S.N. Onnoghen, JSC, which he kindly availed. I am in total agreement with the reasoning from which the judgment emanated and I shall show my support with some comments.

This is an appeal by the Appellant against the decision of the Court of Appeal, Port Harcourt wherein the appeal of the 1st re-

spondent against the ruling of the trial court delivered on the 16<sup>th</sup> March, 2015 dismissing the 1<sup>st</sup> Respondent’s motion on notice challenging the jurisdiction of the Court.

**FACTS BRIEFLY STATED**

B The 1<sup>st</sup> respondent was an aspirant for the Bayelsa West Senatorial seat of the 2<sup>nd</sup> respondent (Peoples Democratic Party) at the primary election conducted on 7<sup>th</sup> December, 2014 at Conference Hall, Isaac Boro College of Education Indiamazi Quarters Mile 2, Sagbama Town in Bayelsa State.

C The Appellant was also in aspirant for the Bayelsa West Senatorial Seat of the 2<sup>nd</sup> respondent (Peoples Democratic Party) at the primary elections conducted on 7<sup>th</sup> December, 2014 at Sagbama in Bayelsa State.

D Sequel to the successful conduct of the primary elections of the 2<sup>nd</sup> respondent for the Bayelsa West Senatorial seat at the Conference Hall, Isaac Boro College of Education, Indiamazi Quarters Mile 2, Sagbama Town in Bayelsa State, the 1<sup>st</sup> respondent scored the highest number of votes and was returned as the candidate of the 2<sup>nd</sup> Respondent for the Bayelsa West Senatorial seat the General  
E Elections.

Following the declaration of the 1<sup>st</sup> respondent as the candidate of the 2<sup>nd</sup> respondent for the Bayelsa West Senatorial seat the said General Election, the Appellant allegedly commenced proclaiming himself as the Peoples Democratic Party Candidate for the Bayelsa  
F West Senatorial seat regardless of the fact that the had contested alongside the 1<sup>st</sup> respondent and lost.

As a result of the above, the 1<sup>st</sup> respondent as plaintiff filed an action vide a Writ of Summons and Statement of Claim in Suit No.  
G FHC/ABJ/1011/2014 against the Appellant as 3<sup>rd</sup> defendant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein as 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively.

The Appellant as 3<sup>rd</sup> defendant in the said suit No. FHC/ABJ/1011/2014 filed a Notice of Preliminary Objection against the suit with a Written Address as contained in pages 305-315 of Volume 1  
H of the Record of Appeal.

Whilst the said suit No. FHC/ABJ/1011/2014 was filed pending at the Federal High Court Abuja, the Appellant, as plaintiff proceeded to the Federal High Court, Yenagoa Judicial Division, (hereinafter referred to as “the Trial Court”) and instituted in the Trial Court

a fresh suit vide Originating Summons as Suit No. FHC/YNG/CS/03/2015 against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein as 2<sup>nd</sup> and 1<sup>st</sup> defendant respectively and the 1<sup>st</sup> respondent herein as 3<sup>rd</sup> defendant.

The Appellant as Plaintiff raised six questions for determination in the Originating Summons.

Upon being served with the aforementioned Originating Summons, the 1<sup>st</sup> respondent herein as 3<sup>rd</sup> defendant filed a Counter-Affidavit accompanied with several exhibits and a Written Address, all dated 4<sup>th</sup> February, 2015, in opposition to the Originating Summons. The 1<sup>st</sup> respondent also filed a 1<sup>st</sup> further and Better Counter-Affidavit in opposition to the Originating Summons.

The 1<sup>st</sup> respondent also filed a Motion on Notice dated 18<sup>th</sup> February, 2015 challenging the Jurisdiction of the trial Court.

The Appellant herein as Plaintiff filed a counter-affidavit in opposition to the 1<sup>st</sup> respondent's motion on notice.

The 1<sup>st</sup> respondent, as 3<sup>rd</sup> defendant, also filed a 1<sup>st</sup> further and better affidavit and written address in rely to the appellant's (plaintiff's) counter-affidavit and written address.

The 2<sup>nd</sup> respondent herein, who was the 2<sup>nd</sup> defendant at the Trial Court, also filed a Notice of Preliminary Objection challenging the jurisdiction of the court to determine the suit.

The Trial Court resolved to hear argument on the 1<sup>st</sup> respondent's Motion on Notice dated and filed on 12<sup>th</sup> February, 2015 and the 2<sup>nd</sup> respondent's Notice of Preliminary Objection dated 18<sup>th</sup> February, 2015 and filed on the 20<sup>th</sup> February, 2015 together and delivered ruling in respect of both. After hearing arguments on both applications on 24<sup>th</sup> February, 2015, the Court reserved its rulings thereon for 16<sup>th</sup> March, 2015.

On 16<sup>th</sup> March, 2015, the Trial Court in its Ruling dismissed the 1<sup>st</sup> respondent's Motion on Notice dated 18<sup>th</sup> February, 2015.

Being dissatisfied with the Ruling of the Trial Court, the 3<sup>rd</sup> Defendant as appellant in the Lower Court filed a Notice of Appeal against the said Ruling. On the 19<sup>th</sup> June, 2015, judgment was delivered by the Lower Court allowing the Appeal deciding that the trial court lacked jurisdiction to entertain the suit filed by the appellant as plaintiff and had suit No. FHC/ABJ/03/2015 struck out for want of jurisdiction and for being an abuse of court process.

The appellant being aggrieved with that judgment of the Court

of Appeal has come before this court to ventilate his grievance.

On the 27<sup>th</sup> day of October, 2015 date of hearing, learned counsel for the Appellant, S. Larry SAN adopted his Brief of Argument filed on 24/7/15 and it raised three issues for determination which are as follows:-

B *i) Whether in view of section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections 31(1) (2) (3) (4) (5) & (6), 87 (4) (c) (ii) and 87 (9) of the Electoral Act, 2010 (as amended) the Court of Appeal was right in holding that the Federal High Court, Yenagoa lacks the jurisdiction to entertain this matter on the ground that the main reliefs sought in the Originating Summons are not directed at the Federal Government or its agency. (Related to Grounds one (1) and three (3) of the Notice of Appeal.*

C *(ii) Whether the Court of Appeal was right in holding that the Appellant's suit constitutes an abuse of Court process just because he, rather than file a counter-claim to the 1<sup>st</sup> respondent's suit No. FHC/ABJ/1011/2014 pending before the Federal High Court, Abuja opted to file a fresh/separate suit ventilate his own grievance at the Federal High Court, Yenagoa on the same subject matter or similar facts. (Related to Grounds two (2) and five (5) of the Notice of Appeal)*

D *(iii) Whether this is a proper case for the Supreme Court to invoke Section 22 of the Supreme Court Act to determine the substantive matter, the Court of Appeal having failed to so invoke Section 15 of ...respondents, now Appellant herein, to invoke its power under section 15 of the Court of Appeal Act, 2004 owing to the 1<sup>st</sup> respondent's failure to file a Cross-Appeal or respondent's Notice to the Ruling of the Trial Court delivered on 16<sup>th</sup> March, 2015 instead of formulating such issues which were not distilled from any of the 2 Grounds of appeal as contained of the Notice of Appeal dated 17<sup>th</sup> March, 2015, and if yes, Whether this Honourable Court can invoke its powers under Section 22 of the Supreme Court Act 2004 in the circumstances?*

H Henry Michael-Ihunde of counsel for the 2<sup>nd</sup> respondent adopted its Brief of Argument filed on 14/9/2015. He adopted the issues as identified by the Appellant.

For the 3<sup>rd</sup> respondent, learned counsel, Emmanuel Esene adopted its Brief filed on 26/10/2015 and deemed filed on 27/10/

15. He equally adopted the issues as crafted by the Appellant.

The issues as formulated by the Appellant are apt to be utilised in the determination of this appeal and I so use them.

#### ISSUE ONE

*Whether in view of section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections 31(1) (2) (3) (4) (5) & (6), 87 (4) (c) (ii) and 87 (9) of the Electoral Act, 2010 (as amended) the Court of Appeal was right in holding that the Federal High Court, Yenagoa lacks the jurisdiction to entertain this matter on the ground that the main reliefs sought in the Originating Summons are not directed at the Federal Government or its agency.*

Learned Senior Counsel, S. Larry submitted that the appellant's first complaint is that the participated in the primary election conducted by the 2<sup>nd</sup> respondent herein (PDP) on 7<sup>th</sup> December, 2014 at Sagbama for nomination or selection of its candidate for the Bayelsa West Senatorial District General Election to be conducted by the 3<sup>rd</sup> respondent herein (INEC) in 2015 and emerged the winner having scored the highest number of votes cast. That despite his victory, the name of the 1<sup>st</sup> respondent herein was forwarded by PDP to INEC instead of the name of appellant. Also that the 1<sup>st</sup> respondent herein forwarded sundry false information sworn on oath to the 3<sup>rd</sup> respondent in his INEC FORM CF 001 is therefore unqualified to contest the general election to be conducted and now conducted by the 3<sup>rd</sup> respondent in 2015. That in the light of the above, the jurisdiction of the court is duly invoked pursuant to Section 87 (4) (c) (ii) and (9) of the Electoral Act as regards the first leg of the complaint and as regards the second leg of complaint, section 31 (5) and (6) of the Electoral Act. He cited *Jev v Iyortyom* (2014) 14 NWLR (pt. 1428) 575, *Gbieve v Addingi* (2014 16 NWLR (pt. 1433) 394 etc.

It was submitted for the 1<sup>st</sup> respondent that the jurisdiction of the Federal High Court is governed by the provisions of Section 251 of the 1999 Constitution (as amended and for an action to be validly before the Federal High Court, the Plaintiff has duty to show that his claims fall within the provisions of section 251 of the Constitution. That is the plaintiff's claim that determine the jurisdiction of the Court to hear and determine the cases and the Appellant's claims as those of plaintiff show why the jurisdiction of the Federal High Court would not come in as the Lower Court rightly found that reliefs 6 and 8

against the 3<sup>rd</sup> respondent, INEC, an agency of the Federal Government are ancillary reliefs.

In respect to the 2<sup>nd</sup> respondent, it was contended that section 87 (9) of the Electoral Act 2010 (as amended) must be read side by side with Section 251 of the Constitution. That Section 87 (10) of the Electoral Act does not expressly grant the Appellant the liberty or discretion to choose which of those courts to proceed with and file an action rather, it is the claim and the reliefs that put before that will determine which court the Appellant can elect to ventilate his claims.

For the 3<sup>rd</sup> respondent, it was submitted that section 31 (5) and 87 (10) of the Electoral Act 2010 (as amended) vest jurisdiction on the Federal High Court or the High Court of a State as regards pre-election complaints. That the Act did not take into consideration the nature of the complaint as that may determine the jurisdiction of the Court.

I shall recast the relevant statutory and constitutional provisions relevant to this appeal for our guidance. They are Section 251 (1) of the Constitution; Section 87 (4) and 31 of the Electoral Act (as amended).

*251. (1) notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other in civil cases and matters....*

*(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and*

*(s) such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly;"*

*"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.*

*(2) The list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the High Court of a State, indicating that he has fulfilled all the constitutional requirements for election into that office.*

(3) *The commission shall, within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election.*

(4) *Any person may apply to the commission for a copy of nomination form, affidavit and any other document submitted by a candidate at an election and the commission shall, upon payment of a prescribed fee, issue such person with a certified copy of document within 14 days.*

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

(6) *If the Court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the Court shall issue an order disqualifying the candidate from contesting the election”.*

“87. (4) *A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below:*

(c) *In the case of nominations to the position of a senatorial candidate, House of Representatives and State House of Assembly a political party shall, where they intend to sponsor candidates:*

(ii) *The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the Independent National Electoral Commission as the candidates of the party....”*

(9) *Notwithstanding the provision of this Act or rules of political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been compelled 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.”*

A community reading of section 251 (1) (5) of the 1999 Constitution, Sections 31 (5) and (6) and 87 (4) (c) (ii) and (9) of the Electoral Act, 2010 clearly accommodates concurrent jurisdiction between the Federal High Court and the High Court of a State in the contest of the reliefs sought in the Originating Summons in the

Yenagoa Federal High Court or even in respect to the Federal High Court suit commenced by writ of summons. This situate is guided in the light of the dictum of Galadima JSC in the case of *Kakih v PDP* (2014) 15 NWLR (pt. 1430) 374 at 413.

*“As I have earlier observed by the community reading of section 31 (5) and 87 (10) of the Electoral Act 2010 (as amended) and Section 251 of the 1999 constitution (as amended) no jurisdiction is conferred on the Federal High Court to hear and determine the instant case. While the two Sections of the Electoral Act vests jurisdiction in the Federal High Court or High Court of the State as regards pre-election complaints, the Act does envisage that the nature of the complaint may determine the jurisdiction of the Court. I agree with the learned counsel for the 1<sup>st</sup> – 4<sup>th</sup> Respondents that the law makers could have vested the State High Court with jurisdiction of the Federal High Court, if the Federal High Court were to assume jurisdiction for every complaint brought in respect of pre-election matter. The provision of Section 251 of the constitution is clear. Any matter that does not fall within the preview of any of the items listed therein must find jurisdiction in any other court and certainly not in the Federal high Court.*

*I shall explain further, when a claim falls within section 251 of the constitution, the Federal High Court should assume jurisdiction will be the High Court. I recapitulate the grouse of the appellant herein.*

*The 2<sup>nd</sup> respondent (INEC) and 3<sup>rd</sup> respondent (WAEC), through agencies of the Federal Government are not alleged to have been involved at all in any wrong doing in the conduct of the said primaries. If the principal reliefs are not directed against the 1<sup>st</sup> and 4<sup>th</sup> respondents who are agencies of the Federal Government, why seeking redress against them in the Federal High Court, simply because of the presence of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Their mere presence cannot confer jurisdiction in that court.*

*I emphasize the fact that in so many decisions of this court that is not in all cases in which the Federal Government of Nigeria or is Agency is party in the suit that the Federal High Court must willy-nilly, without consideration to the nature of the aggrieved party's claim then assume jurisdiction. We have said time without number that the most relevant and important consideration is the plaintiff's*

*claim, Felix Onuorah v. K.R.P.C. (2005) 6 NWLR (pt. 921) 393 at 408, Oliver v. Dangote Industries Ltd. (2009) 10 NWLR (pt. 1150) 467 at 487, Tukur v Government of Gongola State (No. 2) (1989) 4 NWLR (pt. 117) 517, O.H.M.B.V Garba (2002) 14 NWLR (pt. 788) 538. I must agree with the Court below that the argument of the appellant to the contrary is totally flawed when he assumed that because he participated in the primary, conducted by the 1<sup>st</sup> respondent, the Federal High Court would have jurisdiction to entertain his case."*

That is, as much as one can say in regard to jurisdiction of the Federal High Court Yenagoa in respect of the complaints of Appellant against the Respondents and therefore the answer as to whether that court would in normal circumstances faced with the questions raised in the Originating Summons have jurisdiction. Nothing changed because the reliefs of complaints as concerning the Federal Agency were Ancillary and not the main reliefs. The fact of the matter is that with the operation of Sections 31 and 87 of the Electoral Act 2010 as amended, the Federal High Court shares equal jurisdiction with a State High Court. That being a position that creates an exception to the exclusive jurisdiction when Section 251 of the Constitution 1999 as amended is at play. Also to be said is that the Federal High Court, Yenagoa has jurisdiction to adjudicate by the power donated by Sections 31 and 87 of the Electoral Act in the prevailing dispute just like the State High Court. The said is resolved in favour of the Appellant.

## ISSUE TWO

*Whether the Court of Appeal was right in holding that the Appellant's suit constitutes an abuse of Court process just because he rather than file a counter-claim to the 1<sup>st</sup> Respondent's suit No. FHC/ABJ/1011/2014 pending before the Federal High Court, Abuja opted to file a fresh/separate suit to ventilate his own grievance at the Federal High Court, Yenagoa on the same subject matter or similar facts.*

In articulating his position, the Appellant contends there is no abuse of Court process as the present case emanating from the Federal High Court Yenagoa in which Appellant was Plaintiff was commenced by Originating Summons while the earlier one initiated by 1<sup>st</sup> Respondent as Plaintiff in the Federal High Court, Abuja was preemptive and by writ of summons and so no abuse occurred. That the Appellant had the option of filing counter-claim or a fresh action

which action he had the right to choose.

It was submitted for the 1<sup>st</sup> respondent that the action the Appellant was an abuse of court process since it was on the same issues as the suit in Abuja instituted by the 1<sup>st</sup> respondent and the parties were the same.

B For the 2<sup>nd</sup> respondent, it was stated that a look at the record of appeal shows clearly the duplication and abuse of the earlier suit in Abuja by this present suit.

C The 3<sup>rd</sup> respondent agreed along the same line as the other respondents holding on that abuse of court process had occurred.

D The issue herein raised is if the suit in the Yenagoa Federal High Court in FHC/CS/YNG/03/2015 is an abuse of Court process in view of the 1<sup>st</sup> respondent's suit earlier in time before the Abuja Federal High Court in FHC/ABJ/1011/2014 which had subject matter exactly the same as the one before the Yenagoa Court.

E For a picture that would one present an unclear situation recap or a summary of what transpired between the parties might be helpful here. That is on the 7<sup>th</sup> December, 2014 at primary election of the 2<sup>nd</sup> respondent (PDP) and taken place at Sagbama in Bayelsa State and the Appellant and 1<sup>st</sup> respondent had contested against each other.

F The 1<sup>st</sup> respondent was declared winner but apprehensive of the Appellant's continual parading as the Senatorial Candidate, the 1<sup>st</sup> Respondent hit the Federal High Court, Abuja with a suit for clarification and to be properly recognised by the Court as the rightfully elected Senatorial Candidate. This he did with a writ of summons and State of Claim. While that suit was pending the Appellant as 1<sup>st</sup> respondent approached the Yenagoa Federal High Court with an  
G Originating Summons raising in the main the same questions that cropped up in the suit at the Abuja Federal High Court.

H When the issue of abuse arose in the Federal High Court Yenagoa, that court saw nothing amiss but the Court of Appeal disagreed. In similar circumstances in *Dingyadi v INEC (NO. 1) (2011) 18 NWLR (Pt 1224) 154* this Court per Rhodes-Vivour, JSC held as follows:-

*“The filing of two suits on the same issue in two different jurisdiction amounts to multiplicity of actions and is a clear case of multiplicity of proceedings. Where matters involving the same issue are*

*raised contemporaneously in two different courts, it is desirable and in the interest of justice that the matters should be heard in only one of the two Courts. The rule on abuse of Court process is designed to avoid multiplicity of proceedings. The basis of the rule is the real possibility of two conflicting decisions in respect of one and the same subject matter. In the instant case, Appeal No. CA/S/EP/GOV/10/09<sup>B</sup> and Appeal No. CA/A/276/08 pending at the Sokoto and Abuja Divisions of the Court of Appeal amounted to multiplicity of proceedings if allowed”.*

In a similar tone Niki Tobi, JSC had stated in *Agwasim v Ojichie & Anor* (2004) 10 NWLR (pt. 882) 613 at 624 thus:

*“A litigant has no right to pursue pari passu two processes which will have the same effect in two courts at the same time, with a view to obtaining victory in one of the processes or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps.”*

Indeed what has occurred and which the Court of Appeal decried in its judgement is that there has been a classic case abuse of Court process with the Appellant in forum shopping adventure to steal a march on the 1<sup>st</sup> respondent in irritating and vexations manner. This is especially reprehensible since he had an option of a counter-claim in the Abuja Federal High Court, an option the Appellant chose to ignore. For a fact nothing justifies the mode of access to court by the appellant in this instance where the parties are the same, the issues and subject matter are the same. In the policy stance of the Court to discourage multiplicity of suits where as in this case, it is unnecessary and an abuse of Court process. See *Commissioner of Education, Imo State v Amadi* (2013) 13 NWLR (pt. 1370) 133; *Ikome v Edyerode* (2001) 18 NWLR (pt. 745) 466; *R. Benkay (Nig.) Ltd. v Cadbury (Nig.) Plc* (2012) 9 NWLR (pt. 1306) 596 at 616-617.

In the light of the foregoing, I resolve this issue against the Appellant.

### ISSUE THREE

The appellant contends that his is a proper case for this court to invoke Section 22 of the Supreme Court Act as the Court of Appeal acted in error in not invoking its Section 15 of the Court of Appeal Act.

All the respondents' counsel were of one mind in saying there is no basis for the call or invocation of Section 22 of the Supreme Court Act since there is an absence of jurisdiction firstly in the trial Federal High Court and the Court of Appeal. That this court should ignore the invitation.

B The call for the invocation of this Court's exercise of its power under section 22 of the Supreme Court Act is not to be taken seriously in the light of the fate of the appeal having been found to be founded on a suit that died at the beginning being an abuse of court process. This issue is discountenanced.

C I agree in totality with the reasoning in the lead judgment and so allow the appeal in part while I dismiss the suit in the Federal High Court, Yenagoa. I abide by the consequential orders made.

D

### **ARIWOOLA JSC**

I had the privilege of reading in draft the lead judgment of my learned brother, Onnoghen, JSC just delivered. I agree entirely with the reasoning therein and the conclusion arrived thereat. However, I wish to chip in a few words in support in respect of issue two (2) as formulated by the appellant.

It reads thus:-

F *"Whether the Court of Appeal was right in holding that the appellant's suit constitutes an abuse of court process just because he rather than file a counter claim to the 1<sup>st</sup> respondent's suit no. FHC/ABT/1022/2014 pending before the Federal High Court, Abuja opted to file a fresh/separate suit to ventilate his own grievance at the Federal High Court, Yenegoa on the same subject matter or similar facts."*

G In the case that culminated into this appeal, the appellant had a on the 28<sup>th</sup> January, 2015 instituted an action at the Federal High Court, Yenegoa, Bayelsa State by an Originating Summons. He listed six questions for determination of the trial court. From the questions, he sought ten (10) reliefs. Both the questions and reliefs are already H clearly stated in the lead judgment that I need not repeat same on this second issues. The lead judgment has dealt with same diligently in the consideration of the 1<sup>st</sup> issue.

Worthy of note is the fact that earlier, and before the appellant instituted his action in Yenegoa, the 1<sup>st</sup> respondent herein had com-

menced on action before the Federal High Court, Abuja in Suit No. FHC/ABJ/CS/1911/14 on 15/12/2014, wherein he claimed four (4) reliefs. From the reliefs claimed in the two actions by the appellant and 1<sup>st</sup> respondent herein both as claimants in their respective actions, had claimed to have won the Peoples Democratic Party's (PDP) primary election which was conducted on 7<sup>th</sup> December, 2014 at Sagbama, Bayelsa State for the purpose of nominating its candidate for the Senate to represent Bayelsa West Senatorial District in the 2015 General Election. B

Learned Senior Counsel for the appellant had argued that the appellant was perfectly in order in filing his action of Bayelsa Federal High Court, in exercise of his right to choose between filing a counter claim to the 1<sup>st</sup> respondent's action earlier filed in Abuja, and filing a fresh action and that he chose the latter, by instituting a fresh action. He submitted that the choice of filing a new action on the same subject matter between the same parties, in the instant case, did not constitute an abuse of court's process. In order words, it is not being argued or contested by the appellant in the submission of his counsel that the action which was later filed in Yenagoa Federal High Court against the same party who had earlier sued him on the same subject matter, but that he did what he did in exercise of his right. This, to say the least, is a misconception of the right to use process of court in claiming certain reliefs by instituting an action. C  
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'Action' means any civil proceedings commenced by writ or in any other manner prescribed by rules of court, such as, originating summons, petition etc. It has a wide signification as including any method prescribed by those rules of invoking the court's jurisdiction for the adjudication or determination of a lis or legal right or claim or any justifiable issue, question or contest arising between two or more persons or affecting the status of one of them. In its natural meaning, action refers to any proceeding in the nature of a litigation between a plaintiff and a defendant. See; Words and Phrases – Legally defined, Vol. 1. F  
G

In other words, an action is an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. But it is equally, in some sense, applicable proceeding includes recoupment, counter H

claim, set-off, suit in equity and any other proceedings in which rights are determined. See Black's Law Dictionary, Ninth Edition pp. 32-33.

A counter-claim is “a claim for relief asserted against an opposing party after an original claim has been made”. In order words “a counter claim is equivalent to a cross action and is instituted as a cross action”. In other words, a counter claim is a claim by the defendant against the plaintiff in the same proceedings. See; Maobison Inter-Link Ass. Ltd. vs. U.T.C. Nig Plc (2013) 3-4 SC (pt.1) 109; (2013) All FWLR (pt.694) 52.

What then constitutes abuse of court process? It is the law that multiplicity of actions on the same subject matter between the same parties will constitute an abuse. Where this happens, the court has a duty to interfere to stop such an abuse of its process. See; Robert C. Okafor & Ors vs. Attorney General of Commissioner for Justice Anambra & Ors. (1991) 6 NWLR (pt. 200) 659; (1991) 2 SCNJ 1345; (1991) 7 SC (pt. 111) 138.

In Mrs. F.M. Saraki & Anor vs V.A.B Kotoye (1992) NWLR (pt. 264) 156, (1992) 11/12/ SCNJ 26, this court held that “the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right per se.” The court went further to hold as follows:-

“The abuse consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of justice; such as instituting different actions between the same parties simultaneously in different courts, even then on different grounds” Per Karibi-Whyte, JSC.

It must be noted that the multiplicity of action on the same subject matter between the same parties and in different courts envisaged to constitute an abuse of process of court, may not have to be filed by the same party in the actions. For instance, an action subsequently instituted by an opposing party as defendant in an earlier action on the same subject matter between same parties will definitely constitute an abuse of court process. The reason being that the defendant could have, conveniently and appropriately, in the exercise of his right of action to be meant to annoy, irritate, and harass

the opponent and it will constitute an abuse of process of court, in which the court is entitled to interfere to stop.

It is trite law, that abuse of judicial process is the improper use of the judicial process by a party litigation. See; Ashley Agwasim & Anor vs. David Ogibhie & Anor (2004) 9-12 SCM (pt. 2) 1, Okorodudu vs Okoromodu (1977) 3 SC 21. B

As clearly shown in the record, the reliefs claimed in the subsequent action filed by the appellant in Yenegoa could have been taken in a counter claim with the action filed at the Abuja Federal High Court by the 1<sup>st</sup> respondent. In other words, there was no need, indeed for the filing of the action filed by the appellant in the Federal High Court, Yenegoa. It was meant to annoy, irritate and harass the 1<sup>st</sup> respondent. The court below was therefore right in holding that the appellant's suit constitute an abuse of court process. The law is clear as having been held that the appropriate order the court is expected to make having come to the conclusion that its process has been abused, is to dismiss the process which constitutes abuse. See; Ojo vs Olawore (2008) 6-7 SC (pt. 2) 541 African Reinsurance Corp. vs JDP Construction Nig. Ltd. (2003) 4 SCM 1, First Bank Plc vs. T.S.A. Industries (2012) 14 NWLR (pt. 1320) 326; (2012) 9 SCM C  
D  
E 76.

For the above reason and the fuller and detail reasoning of my learned brother, Onnoghen, JSC which I adopt as mine, I too will allow the appeal in part. The action instituted by the appellant in Yenegoa which led to this appeal is liable to dismissal having constituted an abuse of court process. It is dismissed. F

Accordingly, appeal is allowed in part. Parties are to bear their respective costs.

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### **MUHAMMAD JSC**

Having read in draft the lead judgment of my learned brother Onnoghen JSC, I entirely agree with his lordship's reasoning and conclusion therein that the appeal succeeds in part. H

It must be emphasized that the jurisdictions the Electoral Act 2010 as amended particularly creates under Sections 31(5), and 87(9) and vests in the Federal High Court, FCT High Court and the High Court of a State, for the three to concurrently exercise, are special

ones. The special jurisdictions thereunder avail aggrieved persons in spite of the exclusivity of the jurisdiction the Federal High Court enjoys by virtue of Section 251(1) of the 1999 Constitution as amended.

Section 251 of the 1999 Constitution in its entirety does not provide for jurisdiction over Election or Election related matters. The  
 B jurisdictions conferred on the three courts under sections 31(5) and 87(9) of the Electoral Act 2010 as amended do not stand in conflict with any of the paragraphs of Section 251 of the 1999 Constitution as amended. A litigant who successfully brings his claim within the  
 C purview of the special jurisdictions created by any of the sections of the Electoral Act cannot, therefore, be stopped from seeking redress in any of the two other courts simply because his claim is against an agency of the Federal Government. Section 251 of the 1999 Constitution as amended creates jurisdiction and makes same exclusively  
 D exercisable by the Federal High Court ONLY in respect of the subject matters the paragraphs under the section cover. Election and Election related matters, be it stressed, have not been provided for by any of the paragraphs under Section 251 of the 1999 Constitution.

This Court has said this much in *Jev Vs Iyortyom* (2014) 14  
 E NMLR (Pt 1428) 575 at 611-613, 626-627, 630 and 631-632 and *Gbileve Vs Addingi* (Pt 1014) 16 NWLR (Pt 1433) 394 at 437- 428 and 431-432. The contrary submissions of counsel in this regard are certainly misinformed and their reliance on our decisions in *P.D.P. VS Sylva* (2012) 13 NWLR (Pt 1316) 85 and *Kakih V P.D.P.* (2014) 15  
 F NWLR (Pt 1430) 374 are without basis. The decision of this Court, particularly in the former, is that only aggrieved persons that have successfully brought their claims within the purview of Section 87(9) of the Electoral Act 2010 as amended can approach any of the three  
 G courts the Section vests jurisdiction in and make concurrently exercisable by them for redress. Having not participated in his party's primaries, the plaintiff in that case was held to be without the locus of enforcing his claim.

It is hoped that with this Court's decision in this appeal the  
 H unnecessary controversy about the extent of the exclusivity of the jurisdiction of the Federal High Court by virtue of Section 251 of the 1999 Constitution as amended has come to rest given the special nature of the jurisdictions the Electoral Act provides particularly in its Sections 31(5) and 87(9).

I rely on the foregoing and more so the detailed reasons advanced in the lead judgment in adjudging the appeal meritorious in part. I allow it to that extent and abide by all the consequential orders made in the lead judgment.

B

### **OGUNBIYI JSC**

I read in draft the lead judgment just delivered by my learned brother Walter Samuel Nkanu Onnoghen, JSC. I agree totally with his reasoning and conclusion that the lower court erred in holding the absence of jurisdiction by the Federal High Court to hear and determine the suit which was duly initiated by way of an originating summons. C

The exercise of jurisdiction by the Federal High Court in election matters is certainly pursuant to the special statutory jurisdiction which is the making of the legislature in addition to the Court's regular jurisdiction as provided for by the operation of section 251(4) of the 1999 Constitution. Unlike the Court's designated jurisdiction in its normal course of business under section 251 (1) - (3), the additional jurisdiction under sub-section (4) is purposely conferred and is to be exercised specifically in accordance with the Electoral Act 2010 as amended. E

The submission of counsel on the jurisdictional competence of the Federal High Court therefore, should appropriately be considered within the parameters of section 251(4) of the Constitution also sections 31 and 87 of the Electoral Act (reproduced respectively) in the lead judgment. This is not to be within the context of the general provision of section 251 (1) - (3) which confers exclusive jurisdiction. The Federal High Court as rightly submitted by the senior counsel for the appellant is imbued with the jurisdiction to entertain the suit in question; the absence of either the Federal Government or its agencies as a party is of no moment and consequence. F

I further wish to state that the essence of the appellant's suit No FHC/ABJ/CS was to the effect that having won the primary election conducted by the 3<sup>rd</sup> respondent on 7th December, 2014, for the Bayelsa West Senatorial District, he cannot be substituted with the 1<sup>st</sup> respondent and that (INEC) should not accept the name of the 1<sup>st</sup> respondent or any other aspirant as the party's candidate for the G H

Bayelsa West Senatorial District.

The other suit No FHC/YNG/03/2015 also challenged the conduct of the same primary election of the 7th December, 2014 alleging that the 1<sup>st</sup> respondent was not qualified to take part and contest in the primary election in question by virtue of section 31(2)(4)(5) and (6) of the Electoral Act 2010 and Article 50(9) of the POP's Constitution 2012 as amended. Also that the said respondent supplied false information in INEC form FC 001.

It is not disputed that both parties and subject matter of the suits relate to the conduct of the primary election of 7th December, 2014 for the selection of the candidate for Bayelsa West Senatorial District. The subject matter is therefore essentially the same. In as much as the reliefs are however different, both are products of two parallel primary elections conducted on the same 7th December, 2014.

The law is trite and well settled against instituting multiplicity of claims which effect is an abuse of court process. In this respect, the Court of Appeal, in my view rightly affirmed the decision by the trial court wherein it held that suit No FHC/YNG/03/2015 was filed in abuse of the process of court. I also strike out same as incompetent.

In the result, the appeal is also allowed by me in part and I further abide by the orders made by my learned brother Waiter Samuel Nkanu Onnoghen, JSC inclusive of the order made as to costs.

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