

SUPREME COURT OF NIGERIA
FRIDAY 22ND JANUARY, 2016. SC. 504/2015
CORAM:- M. S. MUNTAKA-COOMASSIE,
S. GALADIMA, J. I. OKORO, C. C. NWEZE,
A. SANUSI, JJSC

- | | |
|---|-------------------|
| 1. OBASI UBA EKAGBARA | APPELLANTS |
| 2. CHUKWUEMEKA MBAH | |
| AND | |
| 1. CHIEF DR. OKEZIE IKPEAZU | RESPONDENTS |
| 2. PEOPLES DEMOCRATIC PARTY | |
| 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION | |
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COURTS - FHC - Additional jurisdiction - By virtue of Constitution 1999 s. 251(1) - National Assembly may expand jurisdiction of the court - To adjudicate over any matter not listed in s. 251 (H1)

ELECTION PETITIONS - Parties - Where candidate is alleged to have provided false information in form CF001 submitted to INEC - And which is being challenged - INEC has become a necessary party (H2)

JURISDICTION - Federal High Court - Federal Government agency - Where such agency is party to a case - The court is possessed with jurisdiction to hear and determine the case (H3)

FACTS

Before the Federal High Court, plaintiffs/appellants by their amended originating summons sought inter alia for a declaration that 3rd defendant/1st respondent's INEC form CF001, tax payment receipts and tax clearance certificate submitted to 2nd defendant/3rd respondent contain false information regarding 1st respondent's tax payment. In reaction to appellants' claims, 1st respondent brought an application seeking for an order transferring the matter from the trial court to the Chief Judge of Abia State

High Court for assignment to a Judge of that court for the purpose of hearing and determination of the issues raised in this matter because the Federal High Court has no jurisdiction.

The grounds for the application are that the cause of action originated in Abia State, that the Federal High Court does not have jurisdiction to entertain any matter not listed in section 251 of the 1999 Constitution (as amended) and that the question for determination and reliefs sought thereon do not fall within the ambit of section 251 of the Constitution. The court heard the parties and in a reserved judgment dismissed the application. Respondents were dissatisfied with the ruling and appealed to the Court of Appeal Abuja Division. The Court heard the parties, allowed the appeal and set aside the decision of the trial Federal High Court. The matter was therefore transferred to the High Court of Abia State. Appellants were dissatisfied and appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. *“Whether the learned justices of the Court of Appeal were right in their interpretation, application and reliance on the decision of the Supreme Court in KAKIH v. P.D.P (2014) 15 NWLR (pt. 1430) 374 at 413 having regards to the state of pleadings, the reliefs sought by the appellants as well as the separate Provisions of the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

2. *Whether having regards to the state of pleadings and the reliefs sought by the appellants against the 3rd respondent (the INEC) the Court of Appeal was right in holding that the trial Court lacked jurisdiction.*

3. *Whether the learned Justices of the Court of Appeal rightly appreciated the case of the appellants against the 3rd respondent.*

HELD (Unanimously allowing the appeal per **MUNTAKA-COOMASSIE JSC**)

COURTS - FHC - Additional jurisdiction

1. By this provision, the National Assembly may expand or enlarge the jurisdiction of the Federal High Court to adjudicate over any matter not listed in Section 251 of

the Constitution of the Federal Republic of Nigeria as amended. Hence to limit the jurisdiction of the Federal High Court to matters listed in Section 251 of the Constitution alone is erroneous. The National Assembly may by its Act confer additional jurisdiction on the Federal High Court to adjudicate on matters not listed in Section 251 of the Constitution. This power is derived from the Constitution itself.

To my understanding my noble lords, by this provision, both the State High Court and the Federal High Court have concurrent jurisdiction to hear and determine whether the information provided to INEC in FORM CF001 is false or not. (p. 578 H)

ELECTION PETITIONS - Parties

2. My lords, with due respect, I wish to ask these three pertinent questions:

1. Who was the information in FORM CF001 submitted to? It was the INEC.

2. Who was to use the information in FORM CF001 in conducting the election as umpire, it was the INEC; and

3. Can it now be said that INEC is not a necessary party where the authenticity of the information submitted to it is alleged to be false under the provisions of Section 31 (5) of the Electoral Act 2010 (as amended).

My lords, I have no slightest doubt in my mind that for the effective determination of this case INEC is a necessary party. It must be noted, with respect, to counsel, that this matter is not an action in rem but in personam. If this action is heard and determined without the presence of INEC, it would be bound by the decision of the Court one way or the other. It is on this ground that I hold, with respect, that INEC is a very necessary party.

The decision of this Hon. Court in Kaki v. P.D.P (supra) has been over flogged. The cause of action in

that case arose out of the conduct of primary election where all the parties were participants in the election. It was not a case of alleged false information submitted to INEC. INEC was a mere observer in the primary election. Hence this Court's decision in Kakih v. P D P (supra) cannot be faulted.

However where a candidate is alleged to provide false information in FORM CF001 submitted to INEC, and which is being challenged, INEC has definitely become a necessary party, and the burden or onus is on the candidate to prove that his information was genuine and not false. (p. 579 E)

JURISDICTION - Federal High Court
3. My lord, it is clear that all the parties agreed that where a Federal Government agency is a party to a case, the Federal High Court is possessed with the jurisdiction to hear and determined the case, I, with respect also agreed with them. It goes without saying that INEC is a Federal Government's agency who is statutorily empowered to conduct the election in issue. (p. 580 E)

REPRESENTATION

Dr. Alex izinyon, SAN, with him, O. J. Nnadi (SAN), Femi Falana (SAN), Orji Nwafor Orizu Esq., Oghojafor Esq., Victor Mnoneke, Esq., L. O. Fagbemi Esq., Alex Izinyon II, Esq., Samuel Ogalo Esq., Ehim Wisdom Esq., Ernest olawonle Esq., and Matina Ozoaka, Esq., for the 1st and 2nd Appellants For the Appellants

Eyitayo Fatogun, with him, Akinyosoye Folorunsho, for the 1st respondent

Mr. Valantine Offia for the 2nd Respondent

H Oladipo Olasofe for the 3rd respondent

CASES REFERRED TO

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

Lado v. INEC (2007) 12 NWLR (pt. 1047) 119

NDIC v. Okem Ent. Ltd. (2004) 10 NWLR (pt. 880) 107
Lajumoke v. Doherty (1969) NMLR 281
Green v. Green (1987) 3 NWLR (pt. 61) 480
Peenok Invest. Ltd. v. Hotel Presidential Ltd (1982) 12 SC 1
Savannah Bank v. Pan Atlantic Shipping & Transport Agencies Ltd. (1987) 1 NWLR (pt. 49) 212 B
PDP v. Sylva (2012) 50 N.S.C.Q.R (pt. 1) 598
Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 567
Gwede v. INEC (2014) 18 NWLR (pt. 1438) 56
Obi v. INEC (2007) 1 NWLR (pt. 1046) 565 C
Jev v. Iyortom (2014) 1 NWLR (pt. 1428) 575
Gbileve v. Addingi (2014) 16 NWLR (pt. 1433) 394

STATUTES REFERRED TO

Electoral Act Cap 15 LFN 2010, ss. 31(1)(2)(3)(5)(6)(8), 87 D
Constitution of the Federal Republic of Nigeria 1999, s. 251(1)(r)

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

The two plaintiffs, who are the appellants in this case prayed E
the Federal High Court in their amended originating summons for
the following reliefs.

1. A Declaration that the 3rd defendants INEC FORM
CF001, and TAX PAYMENT RECEIPTS and Tax Clearance Cer-
tificate of the 3rd defendant attached therewith submitted to the F
2nd defendant by the 1st and 3rd defendants contain false infor-
mation regarding the 3rd defendant's Tax Payment.

2. A Declaration that having regard to the clear and unam-
biguous and sacrosanct provisions of Sections 31 (1) (2) (3) (5) G
(6) and (8) of the Electoral Act Cap 15 Laws of the Federation of
Nigeria 2010 and INEC FORM CF001 and the Tax Payment re-
ceipts and Tax Clearance Certificate attached herewith submitted
by the 1st and 3rd defendants to the 2nd defendant, the said 3rd
defendant is disqualified from contesting the Abia State Gover-
norship election for submitting to the 2nd defendant false informa-
tion regarding his Tax Payment.

3. An Order that the 3rd defendant having failed and/or re-
fused to pay his income Tax promptly as and when due for the

years 2011, 2012 and 2013 and falsely stating in his INEC FORM CF001 and the documents attached therewith that he paid the said tax as and when due is not fit and proper person to contest the gubernatorial election.

B 4. An Order disqualifying the 3rd defendant from contesting the said 2015 Abia State gubernatorial election for submitting to the 2nd defendant in his INEC FORM CF001 and the documents attached therewith false information concerning his tax payment contrary to clear, unambiguous and sacrosanct provisions of Section 31 (5) of the Electoral Act 2010 (as amended).

C 5. An Order banning the 2nd defendant from accepting the 3rd defendant as a candidate to contest the Abia State 2015 gubernatorial election.

D 6. A Declaration that the aspirant as the 1st defendant primary election of 8th December 2014 who polled the second highest number of votes cast at the said primary election is the rightful candidate of the 1st defendant for the Abia State 2015 gubernatorial election.

E 7. An Order directing the 1st defendant to forward the name of the candidate as 1st defendant's Abia State gubernatorial primary election of 8th December, 2014 who polled the second highest number of vote cast at the said primary election to the 2nd defendant as the rightful candidate of the 1st defendant for the F Abia State 2015 gubernatorial election.

8. And for such further or other Orders as the Honourable Court may deem fit or just to make in the circumstance of this case.

G In respect to the appellants' claims the 1st respondent filed a motion on Notice and sought the following Orders:-

H *"An Order transferring this matter from this honourable Court to the Chief Judge of Abia State High Court for assignment to a Judge of that Court for the purpose of hearing and determination of the issues raised in this matter because this Court has no jurisdiction".*

The grounds amongst others, on which this relief is sought are:-

i). *"The cause of action originated in Abia State of Nigeria.*

ii). *The Court does not have jurisdiction to entertain any matter not contemplated, listed or enshrined under Section 251 of the Constitution of the Federal Republic of Nigeria 1999 as amended.*

iii). *The question for determination and reliefs sought thereon do not fall within the ambit of Section 251 of the Constitution of the Federal Republic of Nigeria 1999 as amended”.*

After hearing the parties in a reserved ruling the trial Federal High Court Abuja dismissed the application. In its ruling the Court held as follows:-

“This Court has reviewed the arguments of counsel and perused the authorities cited and agrees with the submissions of the plaintiffs counsel (sic) that their case falls under Section 31 (5) of the Electoral Act 2010 as amended as regard alleged false statements in the affidavit of 3rd defendant. More importantly this cause of action is predicated on 3rd defendants INEC FORM CFOO1 and attachments, Exhibit A2 submitted to 2nd defendant INEC at Abuja.

The facts of this suit are clearly distinguishable from those in KAKIH v. P.D.P (supra). From the foregoing 3rd defendant’s motion on Notice dated 17/3/2015 fails as is hereby dismissed with no order as to costs”. See pp 153 - 154.

The defendants, now respondents, were dissatisfied with the ruling and appealed to the Court of Appeal, Abuja Division, hereinafter called the Court below. The Court after hearing the parties allowed the appeal and set aside the decision of the trial Federal High Court in the leading judgment delivered by his lordship Joseph E. Ekanem JCA. At pages 347 - 348 of the record of appeal, the Court below has this to say:-

“The principal claims are directed at the appellant who is not the Federal Government or its agency. There is no complaint in the affidavit about an administrative or executive action or decision of the INEC. The focus of the claims is not on the action or inaction of the 4th respondent as for example failure to publish particulars of a candidate or refusal to issue a copy of the particulars of a candidate. It is not also the duty of the 4th respondent to disqualify a candidate or bar him from contesting relief 5 which

seek an injunctive order against the INEC is an ancillary relief because it is dependent on the success of reliefs 1 and 2. The trial Court therefore has no jurisdiction to adjudicate on the matter for the determination in the negative. The appeal has merit and it is allowed. I hereby set aside the ruling of the trial Court”.

B The Court below consequently transferred the matter to High Court of Justice Abia State. The appellants were dissatisfied with the above judgment and appealed to this Court on Notice of Appeal containing grounds of appeal. They are hereby produced with-
C out their particulars.

GROUND 1

The learned Justices of the Court of Appeal misdirected themselves in law in the interpretation and construction of Section (31) (5) of the Electoral Act, 2010 (as amended) and Section 251 (1)
D (r) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

GROUND 2

The learned Justices of the Court of Appeal misdirected them-
E selves in law when they held:

“The principal claims are directed at the appellant who is not the Federal Government or its agency. There is no complaint in the affidavit about an administrative or executive action or decision of the INEC. The focus of the claims is not on the action or
F inaction of the 4th respondent as for example failure to furnish particulars of candidate. It is not also the duty of the 4th respondent to disqualify a candidate or bar him from contesting. Relief No. 5 which seeks an injunctive order against the INEC is an an-
G cillary relief because it is dependent on the success of reliefs 1 and 2. The trial Court therefore has no jurisdiction to adjudicate on the matter.

GROUND 3

The learned Justices of the Court of Appeal erred in law
H when they held that the principal claims are directed at the appellant who is not the Federal Government or its agency.

GROUND 4

The learned Justices of the Court of Appeal erred in law when they misconstrued and misapplied the decision of the Su-

preme Court in the case of Kaki v. PD.P (2014) 15 NWLR (1430) 374, 413 to the present case.

GROUND 5

The learned Justices of the Court of Appeal erred in law when they interpreted the principal claims of the 1st and 2nd respondents/appellants by holing that the focus of the claim is not on the action or inaction of the 3rd respondent (the INEC) B

GROUND 6

The learned Justices of the Court of Appeal misunderstood the case of the 1st & 2nd respondents/appellants when they held that it is not the duty of the 3rd respondent to disqualify a candidate or bar him from contesting. C

In accordance with the Rules of this Court both parties filed and exchanged their respective brief of argument. The appellants filed joint brief of argument dated 14/9/2016 and distilled three issues for determination of the appeal as follows: D

1. *“Whether the learned justices of the Court of Appeal were right in their interpretation, application and reliance on the decision of the Supreme Court in KAKIH v. PD.P (2014) 15 NWLR (pt. 1430) 374 at 413 having regards to the state of pleadings, the reliefs sought by the appellants as well as the separate Provisions of the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria 1999 (as amended). Distilled from grounds 1 and 4 of the Notice of Appeal* E F

2. *Whether having regards to the state of pleadings and the reliefs sought by the appellants against the 3rd respondent (the INEC) the Court of Appeal was right in holding that the trial Court lacked jurisdiction. (distilled from grounds 2, 3, and 5 of the Notice of Appeal)* G

3. *Whether the learned Justices of the Court of Appeal rightly appreciated the case of the appellants against the 3rd respondent. (distilled from ground 6 of the Notice of Appeal)*

The 1st respondent in its brief of argument dated 22/9/15 H formulated two issues for determination thus:-

a. *Whether the Court of Appeal was right when it held that Federal High Court under Section 31 (5) of the Electoral Act read together with Section 251 (1) (b) of the Constitution of the Federal*

Republic of Nigeria (1999) (as amended) cannot exercise jurisdiction on the claims of the appellants in the Originating summons.

b. Whether the learned Justices of the Court of Appeal were right in transferring the suit to the High Court of Justice Abia State for determination of the substantive suit, based on the cause of action before the Court and the case of Kaki v. P.D.P (2014) 15 NWLR (pt. 1430) at 374.”

The second respondent distilled a sole issue for determination thus:-

“Was the Court of Appeal right to hold that the Federal High Court lacked jurisdiction”.

Whilst the 3rd respondent, in its brief of argument also formulated one issue for determination as follows:-

“Whether or not the Court of Appeal was right in ordering a transfer of the case from the Federal High Court to the State High Court in view of the provisions of Section 251 (1) of the 1999 Constitution”.

It is worthy to note that the appellants also filed a reply brief to the 1st respondent’s brief of argument. At the hearing on 29/11/2015 both parties adopted their respective briefs of arguments. The appellants in their joint brief of argument restated their reliefs in the originating summons and submitted that they were directed against all the respondents. That the claims were hinged on the submission of false information which could be instituted by any person under Section 31 (5) of the electoral Act as amended. It provides thus:-

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

Learned senior counsel for the appellants Izinyon, SAN distinguished the decision in case of Kaki v. P.D.P (2014) 15 NWLR (pt. 1430) 374 at 413 from the instant case. He reproduced reliefs sought in the Kaki V. P.D.P. (supra) and submitted that the reliefs

are declaratory against the conduct of primary election in which INEC was a mere observer. It was therefore submitted that the relief 5 against INEC (the 3rd respondent) cannot be said to be ancillary as without it the other reliefs are toothless bulldogs. He went further to submit that the cause of action in *Kakih v. P.D.P* (supra) arose from the conduct of parties primary election in which all the parties were participants and the reliefs sought were based on Section 87 of the Electoral Act 2010 as amended and that none of the reliefs were directed against any Federal Government agency. Counsel referred to Section 31 (5) of the Electoral Act 2010 (as amended) and submitted that it is a unique provision not tied to anybody who had participated in the primaries pursuant to Section 87 (9) and (10) of the Electoral Act 2010. It was therefore posited that under Section 31 (5) of the Electoral Act 2010 the information given that was envisaged is false information in the relevant form submitted to INEC a Federal Agency.

It was further contended that with relief 5 which is an injunctive relief against the 3rd respondent a Federal Government Agency, under Section 31 (5) of the Electoral Act 2010 it is clear that the Federal High Court has jurisdiction to entertain the matter. The cases of *Lado v. INEC* (2007) 12 NWLR (pt. 1047) 119 and *NDIC v. Okem Ent. LTD* (2004) 10 NWLR (pt. 880) 107 were cited.

On the 2nd issue formulated by the appellants it was submitted that based on the claims of the appellants as contained in the amended originating summons, the 3rd respondent is a necessary party to this suit. In other to be bound by the result of the action, hence the question to be settled in the action must be one which cannot be effectually and completely settled unless and until he is a party. The case of *Lajumoke v. Doherty* (1969) NMLR p.281, *Green v. Green* (1987) 3 NWLR (pt. 61) p. 480, and *Peenok Investment Ltd v. Hotel Presidential Ltd* (1982) 12 S.C. page 1 were cited.

It was therefore submitted that the principal claims were based on the submission of the FORM CF001 and Tax receipts made to the 3rd respondent (INEC). It is therefore the duty of the 3rd respondent to act upon the submitted and Tax Clearance Cer-

tificates. The provision of Section 31 (5) and (6) of the Electoral Act 2010 (as amended) makes the process complete upon submission of the said form to the 3rd respondent, and if the said information is found to be false by the Court and order of disqualification shall be issued and the 3rd respondent directed to act on the Court order, hence the 3rd respondent must be a party to the suit, he cited the case of PW1 (NIG) LTD V. J.B.O International (2009) 19 NWLR (pt. 1226) where Hon. Justice Mohammed agreed with the decision of Adekeye JSC and dismissed the appeal.

On the third (3) issue formulated, the learned counsel Izinyon, SAN, submitted that relief 5 was not a relief for the 3rd respondent to disqualify or bar the 1st respondent from contesting but to question the duty of the 3rd respondent in accepting the order taken by the 3rd respondent upon the receipt of FORM CF001 from the 1st respondent containing false information. This Court was therefore urged to allow the appeal.

The 1st respondent also reproduced the appellants' claims and the provisions of Section 251 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and submitted that the cause of action is the non payment of the income Tax of the 1st respondent which is an issue which relates to the Income Tax law of Abia State of Nigeria. This cannot be determined without the Court looking into the administration of Tax in Abia State. Hence the jurisdiction of the Federal High Court under Section 251 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) does not accommodate matters relating to, or connected with or arising from personal income tax law of Abia State under which the Tax Clearance complained as false arose. Learned counsel again submitted that Section 31 of the Electoral Act 2010 (as amended) is to give room for any matter to either be accommodated under the jurisdiction of the Federal High Court or State High Court depending on the subject matter, the case of *Kakih v. PDP* (supra) was cited. It was therefore submitted that except the cause of action found or grounded in Section 251 of the Constitution 1999 (as amended) as one of the items listed therein, it cannot be accommodated by the Federal High Court. Thus the presentation of false or irregular Tax Clearance of Abia State Govern-

ment is not an issue which can be either in Civil or Criminal proceedings to be litigated in the Federal High Court. All such matters fall within the jurisdiction of the State High Court under Section 272 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

On issue no two (2) formulated by the learned counsel, the facts of the case of *Kakih v. PDP* (supra) were restated and submitted that no principal claim was made against INEC who is a Federal Government Agency as it is in the present case. Learned counsel referred to Section 31 (5) of the Electoral Act 2010 (as amended) and submitted that the provision makes room for matters of this nature to be tried by either the Federal High Court if it falls within its jurisdiction, or the State High Court that has unlimited jurisdiction; the case of *Savannah Bank v. Pan Atlantic Shipping and Transport Agencies Ltd.* (1987) 1 NWLR (pt. 49) 212 was cited. Learned counsel then urged this Court to dismiss the appeal.

Learned counsel to the 2nd respondent Valentine Offia, Esq., in his brief of argument submitted that there is no provision in Section 251 (1) (a) - (s) of the Constitution 1999 which confers jurisdiction on the Federal High Court to construe Section 21 (f) of the 1999 Constitution or Section 31 (1) (2) (3) (5) (6) and (8) of the Electoral Act as it affects individuals and organisation which are agencies of the Federal Government. It was posited that the amended originating summons begs the Federal High Court to construe Section 24 (f) of the 1999 Constitution of Nigeria and Section 31 (1) (2) (3) (5) (6) and (8) of the Electoral Act as it affects the 1st respondent only. The construction of these laws is not in relation to any Federal Government Agency but in relation to the 1st Respondent only. It was therefore submitted that all the main reliefs are sought solely against the 1st respondent who is not an agent of the Federal Government and that relief 5 is only a consequential or ancillary relief sought against the 3rd respondent, which can only be considered after the principal reliefs have been granted. Hence a Court cannot hear and determine ancillary claims if it has no jurisdiction to entertain the main claims; the case of *P.D.P v. Sylva* (2012)50 N. S. C. Q. R (pt. 1) page 598; and *Terver*

v. P.D.P SC. 236/2013 (unreported were cited).

The 3rd respondent in support of the sole issue formulated, submitted that the claims brought before the Court was to construe Section 24 (1) of the 1999 Constitution (as amended) and Section 31 (1) (2) (3) (5) (6) and (8) of the Electoral Act as it relates to the 1st respondent, and the issue relates to whether or not the Tax Clearance Certificate of the 1st respondent was forged. These issues, according to the counsel for the 3rd respondent Oladipo Olosoba, do not in any way fall within the confines of the matters listed in Section 251 of the 1999 Constitution. The determination of Tax issues is not in any where listed as one of the areas where the Court can exercise jurisdiction, and the 3rd respondent is not an agent of the Federal Government as provides in Section 251 (1) (a) of the 1999 Constitution. The principal reliefs were directed against the 1st respondent and not the 3rd respondent, and where the Court has no jurisdiction over the principal reliefs it cannot adjudicate on ancillary reliefs. Learned counsel cited the cases of: *Kakih v. P. D. P* (2014) 15 NWLR (pt. 1430) 413 - 414; *P. D. P v. Sylva* (2012) 56 N. S. C. Q. R (pt. 1) 598 and *Tukur v. Government of Gongola State* (1989) 4 NWLR (pt 117) 567.

My lords, I have carefully and meticulously considered the above brilliant submissions of the learned counsel to all the parties, and before I proceed, I want to, with respect, correct a misconception that the jurisdiction of the Federal High Court is only limited to items listed in Section 251 of the 1999 Constitution of the Federal Republic of Nigeria as amended. Section 251 (1) of the Constitution provides as follows:

“Notwithstanding anything to the contrary 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 Courts in Civil causes and matters”

By this provision, the National Assembly may expand or enlarge the jurisdiction of the Federal High Court to adjudicate over any matter not listed in Section 251 of the Constitution of the Federal Republic of Nigeria as

amended. Hence to limit the jurisdiction of the Federal High Court to matters listed in Section 251 of the Constitution alone is erroneous. The National Assembly may by its Act confer additional jurisdiction on the Federal High Court to adjudicate on matters not listed in Section 251 of the Constitution. This power is derived from the Constitution itself. B

The Electoral Act 2010 (as amended) is an Act passed by the National Assembly, and it expanded and enlarged the jurisdiction of the Federal High Court, where it provides in Section 31 (5) C thus:

“Any person who has reasonable ground to believe that any information given by a candidate in an affidavit or any document submitted by that 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”. D

To my understanding my noble lords, by this provision, both the State High Court and the Federal High Court have concurrent jurisdiction to hear and determine whether the information provided to INEC in FORM CF001 is false or not. E

My lords, with due respect, I wish to ask these three pertinent questions: F

1. Who was the information in FORM CF001 submitted to? It was the INEC.

2. Who was to use the information in FORM CF001 in conducting the election as umpire, it was the INEC; and G

3. Can it now be said that INEC is not a necessary party where the authenticity of the information submitted to it is alleged to be false under the provisions of Section 31 (5) of the Electoral Act 2010 (as amended). H

My lords, I have no slightest doubt in my mind that for the effective determination of this case INEC is a necessary party. It must be noted, with respect, to counsel, that this matter is not an action in rem but in per-

sonam. If this action is heard and determined without the presence of INEC, it would be bound by the decision of the Court one way or the other. It is on this ground that I hold, with respect, that INEC is a very necessary party.

The decision of this Hon. Court in Kakih v. PD.P (supra) has been over flogged. The cause of action in that case arose out of the conduct of primary election where all the parties were participants in the election. It was not a case of alleged false information submitted to INEC. INEC was a mere observer in the primary election. Hence this Court's decision in Kakih v. P D P (supra) cannot be faulted.

However where a candidate is alleged to provide false information in FORM CF001 submitted to INEC, and which is being challenged, INEC has definitely become a necessary party, and the burden or onus is on the candidate to prove that his information was genuine and not false.

My lord, it is clear that all the parties agreed that where a Federal Government agency is a party to a case, the Federal High Court is possessed with the jurisdiction to hear and determined the case, I, with respect also agreed with them. It goes without saying that INEC is a Federal Government's agency who is statutorily empowered to conduct the election in issue.

The argument and submission of the respondents that the matter will involve the examination of Tax Administration in Abia State of Nigeria have no moment. All 1st respondent need to show and establish is that the documents he formulated and represented to 3rd respondent (INEC) were genuine and not false or forged.

Considering the relevant authorities cited by the appellants' counsel as additional authorities, I tend to agree with him that this appeal deserves to be allowed. The authorities cited by the respondents are not all that relevant and are full of misconceptions. The authorities cited by the appellants' counsel the additional authorities inclusive are relevant. These additional authorities on the ju-

isdiction of the Federal high Court are hereby reproduced; and the concept of the participation of INEC.

1. Gwede v. INEC (2014) 18 NWLR (pt. 1438) 56 at 147 paras E - F.

2. Obi v. INEC (2007) 1 NWLR (pt. 1046) 565 at 645 Paras E - G; 672 Paras D - E and 694 Paras D - F. B

3. Senator Heineken Lokpobiri and Hon. Foster Ogola & 2 Ors. SC. 443/2015 delivered 2/11/2015 by Hon. Justice Walter Samuel Nkanu Onnoghen, JSC.

I wish however, to put it on record that all the learned counsel in this appeal displayed admirably some elements of deep research and they meticulously presented same to this Court. I really commend all the learned counsel and should keep it up, in fact case comes case goes. C

Finally my lords, I hold that the lower Court, with respect, misapplied the well considered decision of this Court in *Kakih v. P.D.P* (supra) and came to a wrong decision by setting aside the judgment of the trial Federal High Court. This appeal therefore succeeds and it is allowed. The matter is hereby remitted back to the Federal High Court for trial forthwith. No order as to costs. D E

GALADIMA JSC

I have had the privilege of reading in draft the judgment of my learned brother MUNTAKA-COOMASSIE JSC just delivered. I agree with his reasoning leading to the conclusion that the appeal is meritorious and should be allowed. F

It is my considered opinion that the 3 issues submitted by 1st and 2nd Respondents flowing from their grounds of Appeal will determine this appeal. G

These are:

“(1) whether the learned Justices of the Court of Appeal were right in their interpretation, application and reliance on the decision of the Supreme Court in KAKIH v. PDP (2014) 15 NWLR (pt. 1430 374 at 413 having regards to the state of pleadings, the reliefs sought by the appellants, as well as the provisions of the Electoral Act 2010 (as Amended) and the Constitution of the Federal H

Republic of Nigeria, 1999 (as Amended) (Distilled from Grounds 1 and 4 of the Notice of Appeal)

(2) *whether having regards to the state of pleadings and the reliefs sought by the appellants against the 3rd Respondent (The INEC) the Court of Appeal was right in holding that the trial Court lacked jurisdiction. (Distilled from Grounds 2, 3 and 5 of the Notice of appeal)*

(3) *Whether the learned justices of the Court of Appeal rightly appreciated the case of the Appellants against the 3rd Respondent. (Distilled from Ground 6 of the Notice of Appeal)."*

I have taken a cursory look at the reliefs sought by the Appellants reproduced in the leading judgment. These reliefs show clearly the nature of the Appellant's complaints.

The reliefs were clearly directed against all of the Respondents. However, relief 5 is an injunctive relief specifically directed at the 3rd Respondent (INEC) herein. It was based on the foregoing in addition to the facts contained in the affidavit of the Appellants without delving into the merits of the case that the learned trial judge saw clearly that the claims of the Appellants were hinged on the submission of false information which could be instituted under Section 31(5) of the Electoral Act 2010 (as amended). The learned trial Judge was right in his stance. The Court below maintained that the cause of action was that of personal income tax issue by Abia State Government and not whether Form CF 001 as a form which did not carry the information complained about by the appellants cannot rely on Section 31 of the said Electoral Act. I am of the opinion that there are clear distinctions which did not align the facts or issues for determination in the case of KAKIH v. PDP (2014) 15 NWLR (pt. 1430) 374 at 413. Appellant's case has always been quite clear from their Amended Originating Summons filed at the efforts of the 1st Appellant herein to change the nature and character of the reliefs of the appellants by their own understanding of the interpretation is of no moment. This would mean placing the cause of action in this case completely outside the claims and reliefs of the Appellants. The matter is simply that the 1st Respondent submitted false Information to the 3rd respondent in its Form CF 001 The procurement of particulars such as

tax receipts does not, in my view change the subject matter for determination or the cause of action. The Appellants have always made it clear from the trial Court that their claims are based on Section 31 of the Electoral Act and not Section 87 of the Act.

It is noteworthy that the basis of the decision of the Court below was firstly that the case of KAKIH v. PDP (supra) was later in time in comparison with other cases having been decided on 11/7/2014. B

It was also argued that the principal reliefs of the Appellants were only reliefs 1 and 2 and as a result 5 which is an injunctive relief against the 3rd Respondent was an ancillary relief. However what the Court did not consider is the difference in the state of pleadings as brought by the Appellant in KAKIH'S case and those of the Appellants herein. It was clear from the reliefs sought by the Appellants as provided in the Amended Originating Summons and reproduced herewith are as follows: D

"1. A declaration that the 3rd defendant's INEC FORM CFO01 and the tax payment receipts and Tax clearance certificate of the 3rd defendant attached therewith submitted to the 2nd Defendant by the 1st and 3rd Defendants contain false information regarding the 3rd defendant's tax payment. E

2. A declaration that having regard to the clear, unambiguous and sacrosanct provisions of Section 31(1), (2), (3), (4), (5), (6) and (8) of the Electoral Act, CAP 15 Laws of the Federation of Nigeria 2010 and INEC FORM CF001 and the tax payment receipts and tax clearance certificate attached therewith submitted by the 1st and 3rd Defendants to the 2nd defendant, the said 3rd defendant is disqualified from contesting the Abia State Governorship election for submitting to the 2nd defendant false information regarding his tax payment. G

3. An Order that the 3rd defendant having failed and/or refused to pay his income tax promptly as and when due for the years 2011, 2012 and 2013 and falsely stating in his INEC FORM CF001 and the documents attached therewith that he paid the said tax as and when due is not a fit and proper person to contest the gubernatorial election of Abia State in the 2015 general election. H

4. *An Order disqualifying the 3rd defendant from contesting the said 2015 Abia State gubernatorial election for submitting to the 2nd defendant in his INEC FORM CFOO1 and the documents attached therewith false information concerning his tax payment contrary to clear, unambiguous and sacrosanct provisions of Section 31(5) of the Electoral Act 2010 (as amended).*

5. *An order barring the 2nd defendant from accepting the 3rd defendant as a candidate to contest the Abia State 2015 gubernatorial election.*”

The foregoing glaringly reveals that Relief No. 5 of the principal relief sought by the Appellants was against the 3rd Respondent herein.

When it becomes necessary to sieve ancillary relief from principal as demands by circumstance, it is done roughly to give mathematical answer to effect a purpose. The law allows it. See: *COTECNA INT’L LTD. v. IVORY MERCHANT BANK LTD.* (2006) ALL FWLR (Pt.315) 26 at 38; *TUKUR v. GOVERNMENT OF GONGOLA STATE* (No. 2) 1989 4 (NWLR) (pt. 117) 517. Here in this case the injunctive reliefs claimed against the 3rd respondent cannot be said to be ancillary as without the declaratory reliefs become ineffective. This relief is against the 3rd Respondent. The Court below, with due respect, erred to have held otherwise.

I have carefully gone through the set of reliefs sought by the appellant in *KAKIH v. PDP* (2014) 15 NWLR (pt. 1430) 374 at p.413. The facts and the prevailing circumstances in *KAKIH*’s case (supra) and the case at hand are quit distinguishable: Firstly, the principal reliefs in *KAKIH*’s case encompassed the declaratory reliefs and the attendant orders flowing from it. Care should be taken to juxtapose the reliefs sought in the two cases. Besides, there are other peculiarities distinguishing this present case from the decision in *KAKIH*’s case. Those factors are: firstly, that the parties to the suit were participants of the primaries in dispute. Secondly, that the principal reliefs were centered on the primaries and the result of the primaries. Thirdly, the basis of the principal reliefs sought was predicated on Section 87 of the Electoral Act, 2010 (as Amended). Fourthly and finally, none of the principal reliefs were directed at any of the agencies of the Federal Government.

By contrast, the clear examination of the case of the Appellants herein show how different the claims and reliefs are from that in KAKIH's case. An overview of the Appellants claim in the Amended Originating Summons reveals that they are unhappy because the 1st Respondent had submitted false information to the 3rd Respondent, being a Federal Government Agency responsible for acting on such document. ^B

Sections 31(5), 87(9) of the Electoral Act, 2010 (as amended) and S.251 of the 1999 Constitution (as amended) revisited.

Section 31(5) of the Electoral Act (supra) did not envisage ^C the nature of claim to determine the jurisdiction of the Court. The nature of the information envisaged is false information in the relevant form submitted to INEC, a Federal Government Agency, which can be instituted by "any person" but for which on the contrary, Section 87(9) (supra) restricts the exercise of such right to institute ^D to "an aspirant who complains that any of the provisions of the Act has not been the light of the foregoing I agree with the learned Counsel for the Appellants that the cases of JEV v. IYORTOM (2014) 1 NWLR (pt. 1428) 575 and KAKIH v. PDP (supra) are not ^E conflicting to warrant the Learned Justices of the Court below prefer the decision in KAKIH's case. The claims and issues before the Court in the case of JEV v. IYORTOM (supra) are based on Section 87(9) of the Act supra. It is noteworthy to state that in both cases the unique position of Section 31(5) of the Act was not the ^F issue before the Court. The issues before the Court in both cases were based on persons who participated in the primaries.

Now to the jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution (as amended) read in line with ^G Section 31 of the Electoral Act (supra).

A chronological provisions, the Electoral Act and case laws show this quite clearly.

"251(r) of the 1999 Constitution (as amended) states thus:

"251(1) Notwithstanding anything to the contrary contained ^H 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 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.”

Section 31(5) of the Act confers additional jurisdiction on the Federal High Court (as amended) to entertain matters brought by any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false.

The function or duty of the 3rd Respondent (INEC) in accepting and acting on documents from candidates or rejecting such documents that may not have been properly filed can be classified as function falling within the executive or administrative action or decision. This administrative function which the appellant have sought an injunctive relief to redress or cure, clearly brings this matter under the jurisdiction of the Federal High Court.

On the second issue having said that the relief 5 of the principal reliefs as an injunctive relief was directed at the 3d Respondent, I have no difficulty in concluding that based on the claims of the Appellants as contained in their Amended Originating Summons, the 3rd Respondent is a necessary party to this suit, who should be bound by the outcome or result of the action.

On the third issue I am of the opinion that the learned Justices of the Court below went beyond the issues canvassed before them. They should have confined themselves only to the issue canvassed by the parties. By their so doing this has occasioned miscarriage of justice.

In view of the foregoing few remarks and comments and/or the fuller reasons given in the leading judgment, I too allow this appeal and set aside the judgment of the Court below. I order for the remittance of this Suit to the learned Chief Judge of the Federal High Court for immediate assignment to another Judge for expeditious determination. I make no orders as to costs, in the circumstances.

OKORO JSC

In the leading judgment of my learned brother M. S. Muntaka-

Coomassie, JSC just delivered, he has admirably determined all the salient issues formulated for the consideration of this appeal. I am in agreement with both the reasons advanced and the conclusion that there is merit in this appeal and ought to be allowed. I shall make a few comments in support of the judgment.

This appeal turns on the correct interpretation of the Provision of Section 31 (5) of the Electoral Act, 2010 (as amended). In other words, does the Federal High Court has jurisdiction to determine issues arising from Section 31 (5) of the Electoral Act 2010 (as amended).

Section 31 (5) of the Electoral Act 2010 (as amended) provides:

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

The appellants herein as plaintiffs at the trial Federal High Court had approached the said Court seeking a declaration that having regard to unambiguous provisions of Section 31 (1) (2) (3) (5) (6) and (8) of the Electoral Act Cap 15 Laws of the Federal Republic of Nigeria 2010 (as amended) and INEC FORM CFOO1 and the Tax Payment receipts and Tax Certificate attached therewith submitted by the 1st respondent herein to INEC, the said 1st respondent was disqualified from contesting the Abia State Governorship election for submitting to INEC false information regarding his Tax Payment.

In this case, whereas the Federal High Court held that it had jurisdiction to entertain the matter, the Court of Appeal held otherwise and ordered that the matter be transferred to the State High Court for hearing. But by the provision of Section 31 (5) of the Electoral Act (supra) it is crystal clear that three Courts are mentioned therein to wit: Federal High Court, High Court of a State or High Court of the Federal Capital Territory to which a person can approach to ventilate his grievance arising from the said section. In other words, the three Courts mentioned above, have concur-

rent jurisdiction to hear any application seeking to determine whether a person has submitted false information to INEC in the documents submitted by him as provided in Section 31 (5) of the Electoral Act (supra). I made this point very clear in an earlier case of *Jev v. Iyortom* (2014), 14 NWLR (pt 1428) 575 at 611. My learned brother Onnoghen, JSC also made this point in Senator Heineken Lokpobiri v. Hon. Foster Ogola & 2 Ors (unreported) suit No. SC 443/2015 delivered on 2nd November, 2015. See also *Gbileve v. Addingi* (2014) 16 NWLR (pt 1433) 394 at 418 - 419, 424 - 425, 427 - 428 and 431 - 432.

The Court below had relied on the case of *Kakih v. PDP* (2014) 15 NWLR (pt 1430) 374 to hold that the Federal High Court lacked jurisdiction to entertain this matter. My learned brother, Onnoghen JSC, in the case of Senator Heineken Lokpobiri v. Hon. Foster Ogola & 2 Ors (supra) made the position of this Court clear regarding the decision in *Kakih v. PDP* (supra). I am unable to improve upon what my noble Lord has said in that case. I shall rather reproduce my Lord's views in that judgment in extenso on page 21 - 23 of the judgment as follows:

"My attention has been drawn by learned counsel for the respondents to the decision of this Court in PDP v. Sylva (2012) 73 NWLR (pt 7316) 85 and Kakih v. 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 provision of Section 251 of the 1999 Constitution, as amended. A detailed reading of the facts of PDP v. 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 are within the internal affairs of a political party which are justiciable. So, the reliefs claimed in the 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 v. PDP, supra, I wish to emphasis 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 257(4) of the 1999 Constitution is also clothed with jurisdiction to entertain post election matters whose claims or reliefs may not necessarily involve or 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 v. IYORTYOM supra."

I agree entirely.

Based on the above and the more detailed reasons in the leading judgment I too agree that there is merit in this appeal. The Court below was wrong to hold that the Federal High Court lacked jurisdiction to hear this matter. I allow the appeal. Accordingly, I remit this matter back to the Federal High Court for hearing and determination. I also make no order as to costs.

NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my Lord, Muntaka-Coomassie, JSC, just delivered now. I agree with the conclusion.

B With profound respect, the Court of Appeal (hereinafter, simply, referred to as the lower Court) took a narrow view of the matter before it. Surely if the lower Court exercised considerable circumspection in its reading of Section 31 (5) of the Electoral Act (as amended), it would have realised that, just like the other categories of Courts mentioned therein, the Federal High Court had the jurisdiction to entertain the complaint which the appellants herein brought before it.

D Simply put, the trial Federal High Court, rightly, held that, pursuant to the said Section 31 (5) (supra), it had the requisite jurisdiction to determine the question whether a person had submitted false information to the third respondent (INEC), *Jev v. Iyortom* (2014) 14 NWLR (pt. 1428) 575, 611- 613; *Lokpobiri v. Ogola and Ors* unreported decision of this Court in appeal No SC. E 443/2015 delivered on November 2, 2015; *Gbileve v. Addingi* (2014) 16 NWLR (pt 1433) 394, 418-419; 424-425; 427-428; 431-432.

F It is for these and the more detailed reasons in the leading judgment that I, too, hold that this appeal is meritorious. I too, shall enter an order allowing it. I abide by the consequential orders in the leading judgment.

SANUSI JSC

G I had a preview of the judgment of my learned brother Muntaka Coomassie JSC, just delivered. I am in entire agreement with the reasons and conclusion arrived at by my learned brother that this appeal is meritorious and deserves to be allowed. I too accordingly allow it and I abide by the consequential order made H remitting the suit to the learned Chief Judge of the Federal High Court who should assign it to another Judge for hearing de novo. I make no order on costs.