

SUPREME COURT OF NIGERIA
FRIDAY 15TH JANUARY, 2016. SC. 928/2015
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA,
M. U. PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD,
J. I. OKORO, A. SANUSI, JJSC

RT. HON. PRINCE TERHEMEN TARZOOR APPELLANT
AND
1. ORTOM SAMUEL IORAER RESPONDENTS
2. ALL PROGRESSIVE CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

ELECTIONS - Gubernatorial - Qualification - As the membership and sponsorship of 1st respondent by his political party was not denied - He is deemed to be qualified to contest the election (H1)

ELECTIONS - Nomination - Locus standi - Appellant has no locus to challenge nomination of 1st respondent - As a non member cannot challenge primary election of a political party (H2)

FACTS

Petitioner/appellant filed this petition before the Benue State Governorship Election Petition Tribunal, challenging the manner 2nd respondent conducted its gubernatorial primary election, through which 1st respondent emerged as its candidate for the gubernatorial general election held on the 11th April 2015 in Benue State. Appellant was sponsored by the Peoples Democratic Party (PDP) to contest as its candidate for the aforementioned general election in the State. 1st respondent was sponsored by 2nd respondent to contest for the same election.

At the end of the exercise supervised by 3rd respondent – INEC, 1st respondent was declared winner and returned as the Governor of the State. The PDP which sponsored appellant for the election were satisfied with the result as declared by 3rd respondent. Hence, it did not challenge the election at the tribunal. However, appellant was not of the same opinion with his political party, as he was dissatisfied with the result of the election. He therefore filed the present petition

at the tribunal. After hearing the petition, the tribunal held that appellant had no locus standi to challenge the propriety or validity of 2nd respondent's primary election nominating 1st respondent as its candidate at the said general election. The petition was in the circumstance dismissed. Aggrieved, appellant appealed to the Court of Appeal unsuccessfully. Further aggrieved, appellant has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

(1) Was the 1st Respondent qualified/disqualified at the time of the election in which he was a candidate?

(2) Is the appellant, a member of one party, entitled to raise the question of nomination vel non in another party?

HELD (Unanimously dismissing the main appeal and

striking out the cross appeal per **NGWUTA JSC**)

ELECTIONS - Gubernatorial - Qualification

1. Appellant said that the 1st Respondent was purportedly sponsored at the election by APC. Why the use of the word "purported"? Did the APC to which he belongs and which 'purportedly' sponsored him deny his membership or its sponsorship of the 1st Respondent? Did the 3rd Respondent, the statutory observer at the primary election of every political party deny knowledge of the process leading to the emergence of the 1st Respondent as the standard bearer of the APC at the Governorship election it conducted in Benue State on 11th April, 2015? Did INEC query the conduct of the primary it observed?

On the facts before the court, I must return a negative answer to each of the above questions and this means that contrary to the case of the appellant, the 1st Respondent was qualified and not disqualified to contest the Governorship election in Benue State on 11th April, 2015. (p. 691 G)

ELECTIONS - Nomination - Locus standi

2. Primary elections are in-house matters of a political party. A non-member of the party has no locus to raise the issue and no member of the party who was not an aspirant can raise the

issue.

This Court has made many pronouncements on who has the locus to challenge the conduct of a primary election.

The proper venue for such challenge is the High Court of a State, the Federal High Court or the High Court of the Federal Capital Territory, Abuja, as the party filing the action may choose. As I said earlier, the appellant is a member of the PDP, not APC and even if he is a member of the APC, he would have no locus to challenge the nomination of the 1st Respondent as he is not one of the aspirants who participated in the primary election.

In my view, appellant is a meddlesome interloper who, having assumed the role of a hired mourner, is crying more than the bereaved. (p. 692 C/G)

NOTABLE POINT OF INTEREST

NGWUTA JSC

1. Elections – Politicians to exhibit sportsmanship

A lot of resources in terms of money and valuable time have been expended in this avoidable contest which has now turned out to be a storm in a tea cup, as it were. Success and failure are the end products of our electoral process and in fact any contest at all. If in the end the process does not produce a winner and losers it has failed to achieve its goal and is inconclusive.

While it is necessary for a politician aspiring to elective office to have a mindset to win, he has to appreciate, and be prepared to accept, the fact that success and failure are the opposite sides of the end product of all contests, including elections. An electoral process is geared towards eliminating the many to pave way for the emergence of one.

If there are no reasonable grounds for challenging the result of an election, the losing party should exhibit some sportsmanship and save his resources and the precious time of the tribunal and the courts. (p. 693 A)

REPRESENTATION

Mrs. J.O. Adesina, SAN (with him Tunde Babalola; Titus T. Hyundu,

G.L. Usongo, Ademola Abimbola, C. P. Ugwu, Oladayo Adewara, K.I. Abolade (Miss), T.M. Nyiutsa), For the Appellant

- Chief Adeniyi Akintola, SAN (with him Israel Olorundare, SAN; A.J. Owonikoko, SAN; Vincent T. Uji, Moses Atagher, A.T. Ochojila, G. N. Gwebe, D. V. Zuanah, F.T. Uparegh, Iorough Igbayue, Omale Omale, F.T. Ajebe, Maureen N. Agbo, S.D. Swen, B.C. Abee, Msughter Alabar, Unum Maurice, V.A. Shima, E. A. Kenen, V.V. Tarhule, A. T. Bolagun (Miss), Momoh Sule)
- C S. T. Hon, SAN (with him S. A. Ngavan, J. J. Igbabon, Rhoda Akoh (Mrs), Joe Abaagu, Timothy Dim, F. A. Nomor, John S. Shishi, T. Oscar Aorabee, William Agbatar, William M. Ortyom, M.T. Assoh, T. M. Agboh, Daniel O. Penda, J. I. Ioyina, Terlumun Azoom, Gedeon D T. Iorver, Chief Saatsaha Yenge, J. M. Ahwen (Mrs.), S. A. Akpehe, F. B. Mnyim, J. I. Tyoapine. Onoja Dominic, J. J. Dabo, Olaniyan Babayemi, Manasseh Serki)

Prof. A.A. Ijohor, SAN (with him T.B. Pepe, P.O. Ahonsi (Mrs.), K. O. E Akingbade (Mrs.), D.D. Asema), for the Respondents

CASES REFERRED TO

- Stirling Civil Eng. Nig. Ltd. v. Yahaya (2005) 22 NSCQR 1
- Odom v. PDP (2015) 6 NWLR (pt. 1456) 527
- F Omisore v. Aregbesola (2015) 15 NWLR (pt. 1482) 205
- Okoye v. Nwankwo (2014) 15 NWLR (pt. 1429) 93
- Buhari v. Obasanjo (2005) 13 NWLR (pt. 941) 1
- Imana v. Robison (1979) 3 - 4 SC 1
- G Amadi v. Nwosu (1992) 6 SCNJ 59
- Onwujuba v. Obienue (1991) 4 NWLR (pt. 188) 16
- Odojin v. Ayoola (1984) 11 SC 72
- Ogundipe v. Awe (1988) 1 NWLR (pt. 88) 188
- Ehonor v. Osayande (1992) 7 SCNJ 217
- H Onuoha v. Okafor (1983) 2 SCNL 244
- Daniel v. INEC (2015) 9 NWLR (pt. 1463) 113
- PDP v. Sylva (2012) LPELR – 7814

STATUTE REFERRED TO

Electoral Act 2010, ss. 87(9)(a), 140(2)

Constitution of the Federal Republic of Nigeria 1999, ss. 138(1), 177, 182(1), 221

LEAD JUDGMENT BY NGWUTA JSC

B

The 3rd Respondent in this appeal, the Independent National Electoral Commission (INEC), conducted the Governorship Election for Benue State on the 11th April, 2015.

Appellant and the 1st Respondent contested in the said election and so did six other candidates who were sponsored by their respective political parties. Appellant was sponsored by his party, the Peoples Democratic Party (PDP). The 1st Respondent, in the words of the appellant, was “purportedly” sponsored by his party, the All Progressive Congress (APC). The result of the election as declared by the electoral umpire, the INEC, showed that the 1st Respondent of the APC polled a total of 422,932 votes against the total of 313,878 votes polled by the appellant of the PDP. The 3rd Respondent declared the 1st Respondent winner of the election and returned him as the elected Governor of Benue State; the 1st Respondent having satisfied other condition for such declaration and return.

Aggrieved by the result of the election in which he was the runner-up, the appellant challenged same at the Governorship Election Petition Tribunal constituted for Benue State. Appellant challenged the election and return of the 1st Respondent on three grounds, hereunder reproduced:

“GROUNDS UPON WHICH THE PETITION IS BASED:

1. Your petitioner states that the 1st Respondent, Artom Samuel Ioraer, was at the time of election, not qualified/disqualified to contest the election.

2. Your petitioner states that the declaration and return of the 1st Respondent aforesaid was invalid by reason of non-compliance with the mandatory provisions of the Electoral Act, 2010 (as amended) and the 1999 Constitution of the Federal Republic of Nigeria (as amended).

3. Your petitioner states that the 1st Respondent was not duly elected by a majority of lawful and valid votes cast at the Governorship Election in Benue State held on the 11th day of April, 2015 and

announced on 13th day of April, 2015.”

In his petition, appellant pleaded facts relating only to the first ground of his petition. He pleaded no facts in respect of the second and third grounds of his petition and the said two grounds were deemed abandoned and struck out. It follows that the appellant conceded that he did not challenge the declaration and return of the appellant on either of the said grounds. The petition was determined exclusively on the single ground that:

“Your petitioner states that the 1st Respondent, Ortom Samuel Ioraer was, at the time of the election, not qualified/disqualified to contest the election.”

The parties herein, through their respective learned Counsel, filed many other processes in addition to their respective briefs. It is surprising that so many various processes including the process in relation to the cross-appeal were filed in respect of the lone and simple issue in this appeal.

I have studied each process including the preliminary objection before going into the merit of the appeal, I will dispose of the preliminary objection of the 1st Respondent which relates to the competence of the petition. The preliminary objection was predicated on the following two grounds:

“(i) The appellant is pursuing this appeal as an independent candidate contrary to S. 221 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

(ii) The ultimate reliefs sought by the petitioner/appellant is not grantable in law by virtue of S.140(2) of the Electoral Act, 2010 (as amended).”

Section 221 of the Constitution (supra) is on prohibition of political activities by certain associations.

It provides, S. 221:

“No association other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.”

Now the provision is concerned with associations, not an individual such as the appellant. It does not apply to the appellant.

Section 140(2) of the Electoral Act provides:

“S.140(2): Where an election tribunal or Court nullifies an

election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, or that the election was marred by substantial irregularities or non-compliance with the provisions of this Act, the election tribunal or Court shall not declare the person with the second highest votes or any other person as elected, but shall order a fresh election.” B

With profound respect to the learned Silk for the 1st Respondent, it seems to me that the section of the Electoral Act, 2010 was cited and relied on in error. It has nothing to do with the allegation that the appellant was pursuing the appeal as an independent candidate. On the other hand, Section 137(1) of the Electoral Act (supra) C makes provision for those who can present Election Petitions.

It provides:

“S.137(1): An election petition may be presented by one or more of the following persons: D

(a) a candidate in an election;

(b) a political party which participated in the election.”

The appellant was a candidate at the April 11th Governorship election for Benue State. He is qualified to present a petition alone or in conjunction with his party. This is implicit in the expression “by one E or more...” in Section 137(1) of the Electoral Act reproduced above.

Also Section 140(2) of the Electoral Act (supra) deals with nullification of election and does not relate to whether a candidate files his petition alone or joins his party by the 1st Respondent.

I am constrained to, and I do hereby, over-rule the 1st F Respondent’s preliminary objection on each of the two grounds relied upon by the 1st Respondent. Appellant who was a candidate at the election is one of those authorized to present an election petition pursuant to Section 137(1) of the Electoral Act, 2010 (as amended). G I do not share the view of the learned Silk for the 1st Respondent that the appellant is not consistent in the presentation of his case in that he pleaded the Electoral Act but made submissions on Section 177 of the Constitution (supra).

Section 138(1) states the grounds for questioning an election. H Section 177 of the Constitution (supra) enumerates in (a - d) what qualifies a person for election to the Office of Governor of a State. Section 182 of the Constitution (supra) lists grounds for disqualification for election to the Office of Governor of a State. To determine

whether a person is qualified/disqualified to contest an election in terms of Section 138(1)(a) of the Electoral Act (supra) resort must be had to Sections 177 and 182 of the Constitution (supra) Section 177 settles the question of qualification while Section 182(2) determines the question of disqualification to contest election.

B In other words, the issue of qualification and disqualification, once raised as per Section 138(1) of the Electoral Act (supra) is determined with reference to Section 177 of the Constitution (supra) in case of qualification and Section 182 (1) in case of disqualification. It is therefore not inconsistent for the appellant to rely on the Electoral Act (supra) at one time and the Constitution (supra) at another time.

C For the purpose of proper determination of the appeal I will ignore the rest of the preliminary objections in as much as they do not question the jurisdiction of the Court to hear and determine the D appeal. I will also ignore the myriad of issues formulated by the parties and frame issues appropriate for the determination of the sole question in the appeal. See *Stirling Civil Eng. Nig. Ltd. v. Mahmood Yahaya* (2005) 22 NSCQR 1.

(1) Was the 1st Respondent qualified/disqualified at the time E of the election in which he was a candidate?

(2) Is the appellant, a member of one party, entitled to raise the question of nomination vel non in another party?

These issues flow from ground 19 of the notice of appeal.

F I will deal with qualification first. It would appear that the appellant relied on Section 138(1) of the Electoral Act (supra) in his case that the 1st Respondent was not qualified to contest the election.

The Section provides:

G “S. 137(1): An election may be questioned on any of the following grounds, that is to say-

(a) That a person whose election is questioned was at the time of the election, not qualified to contest the election” (b) (c) (d).”

H Section 177 of the Constitution (supra) provides for qualification for election as governor. It provides:

“S.177: A person shall be qualified for election to the office of Governor of a State if,

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of thirty- five years:

(c) he is a member of a political party and is sponsored by that political party;

(d) he has been educated up to at least School Certificate level or its equivalent.”

Section 137(1) of the Electoral Act provides for grounds upon which an election may be questioned. It deals with qualification to contest election in negative terms, while Section 177 of the Constitution (supra) states the qualification in positive terms. In my humble view, Section 177 states the qualification for contesting in a governorship election while Section 138(1)(a) of the Electoral Act means that a person who has not satisfied all the conditions specified in Sections 177 and 182(1) of the Constitution (supra) at the time of the election is not qualified to contest the election. Also Section 182(1) of the Constitution (supra) lists grounds for disqualification.

In his argument, the learned Silk for the appellant relied heavily on Section 177 of the Constitution (supra), saying that he can rely on a branch of the provision of the Constitution (supra) to challenge the election of the 1st Respondent. However, learned Senior Counsel stopped short of demonstrating that:

(a) the 1st Respondent was a foreigner or not a citizen of Nigeria by birth - Section 177(c) or

(b) that he was any age below 35 years at the time of the election Section 177(b) or

(c) that he was not a member of a political party or

(d) that the said party did not sponsor him - Section 177(c) or

(e) that he was not educated up to at least School Certificate level - Section 177(d) or that he is caught by any of the disqualifying factors in Section 182(1) of the Constitution (supra).

Appellant said that the 1st Respondent was purportedly sponsored at the election by APC. Why the use of the word “purported”? Did the APC to which he belongs and which ‘purportedly’ sponsored him deny his membership or its sponsorship of the 1st Respondent? Did the 3rd Respondent, the statutory observer at the primary election of every political party deny knowledge of the process leading to the emergence of the 1st Respondent as the standard bearer of the APC at the Governorship election it conducted in Benue State on 11th April, 2015? Did INEC query the conduct of the primary it

observed?

On the facts before the court, I must return a negative answer to each of the above questions and this means that contrary to the case of the appellant, the 1st Respondent was qualified and not disqualified to contest the Governorship election in Benue State on 11th April, 2015.

The next question is the locus standi of the appellant to impugn the exercise of primary election in a party other than his own, especially as he could not have participated in the primary election he complained about.

Primary elections are in-house matters of a political party. A non-member of the party has no locus to raise the issue and no member of the party who was not an aspirant can raise the issue. See Section 87(9)(a) of the Electoral Act (supra).

This Court has made many pronouncements on who has the locus to challenge the conduct of a primary election. See the case of Daniel v. INEC (2015) 9 NWLR (Pt. 1463) page 113 at 155-157. In the most recent of the plethora of cases on the point, Okoro JSC, speaking for the Court said, inter alia:

“... Only an aspirant at the primary election is permitted by Section 87(9) of the Electoral Act 2010 (as amended) to challenge the selection or nomination of a person for an elective office. Apart from an aspirant who took part in the primary election, no other person is authorised to file an action to challenge the selection or nomination of a candidate by a political party for an election.”

See the Judgment in SC.907/2015 (not yet reported) delivered by this Court on Friday, 8th January, 2016.

The proper venue for such challenge is the High Court of a State, the Federal High Court or the High Court of the Federal Capital Territory, Abuja, as the party filing the action may choose. As I said earlier, the appellant is a member of the PDP, not APC and even if he is a member of the APC, he would have no locus to challenge the nomination of the 1st Respondent as he is not one of the aspirants who participated in the primary election.

In my view, appellant is a meddlesome interloper who, having assumed the role of a hired mourner, is crying more

than the bereaved.

A lot of resources in terms of money and valuable time have been expended in this avoidable contest which has now turned out to be a storm in a tea cup, as it were. Success and failure are the end products of our electoral process and in fact any contest at all. If in the end the process does not produce a winner and losers it has failed to achieve its goal and is inconclusive. B

While it is necessary for a politician aspiring to elective office to have a mindset to win, he has to appreciate, and be prepared to accept, the fact that success and failure are the opposite sides of the end product of all contests, including elections. An electoral process is geared towards eliminating the many to pave way for the emergence of one. C

If there are no reasonable grounds for challenging the result of an election, the losing party should exhibit some sportsmanship and save his resources and the precious time of the tribunal and the courts. D

In conclusion, it is my humble view that the appellant, not being a member of the APC, and so could not have participated in the party's primary election, cannot challenge the nomination of the 1st Respondent either before the Election Petition Tribunal or the High Court of a State, Federal High Court or the High Court of the Federal Capital Territory. See Section 87(a) of the Electoral Act (*supra*). E

The appeal is devoid of merit and it is hereby dismissed. I affirm the judgment of the Court below in favour of the 1st Respondent. F

The cross-appeals have been overtaken by the judgment in the main appeal and are hereby struck out.

Appellant is damnified in cost in the sum of N150,000 to each of the 1st and 2nd Respondents. The 3rd Respondent (INEC), the nominal respondent, is to bear its own cost. G

Appeal dismissed. Judgment of the Court below affirmed.

ONNOGHEN JSC

This appeal is against the judgment of the Court of Appeal, Holden at Makurdi in appeal No CA/MK/LP/GOV/20/2015 delivered on the 1st day of November, 2015 dismissing the appeal of the H

appellant against the judgment of the Governorship Election Tribunal, Holden in Makurdi in petition No. EPT/BEN/GOV/01/215 in which the tribunal dismissed the petition of the petitioner, now appellant before this Court.

The facts of the case have been stated in detail in the lead judgment of my learned brother, NGWUTA, JSC and I do not intend to repeat them herein except as may be needed to emphasize the point being made.

I have had the benefit of reading in draft the lead judgment of my learned brother, NGWUTA JSC and I agree with his reasoning and conclusion that the appeal has no merit and should be dismissed.

It is not in dispute that the grounds on which appellant challenged the return of 1st respondent by the 3rd respondent as the winner of the Benue State Gubernatorial Election held on 11th April, 2015 are three: viz:

"i. Your petitioner states that the 1st Respondent, Ortom Samuel Ioraer was, at the time of the election, not qualified/disqualified to contest the election.

ii. Your petitioner states that the Declaration and Return of the 1st Respondent aforesaid was invalid by reason of non compliance with the mandatory provisions of the Electoral Act, 2010 (as amended) and the 1999 Constitution of the Federal Republic of Nigeria (as amended).

iii. Your petitioner states that the 1st Respondent was not duly elected by a majority of lawful and valid votes cast at the Governorship Election in Benue State held on 11th day of April, 2015.

The reliefs claimed by appellant in the petition are stated as follows -

"i. That it may be determined and doth declared that the 1st Respondent was not qualified and/or was disqualified from contesting the Election to the Office of Governor of Benue State on the 11th day of April, 2015, having not satisfied the mandatory requirements of the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

ii. That it may be determined and doth declared that based on the lawful votes cast at the said Election, the 1st petitioner ought to have been returned as the Governor of Benue State as he scored the majority of the lawful and valid votes cast and also satisfied other

requirements of the Electoral Act, 2014 (as amended) and the Constitution of the Federal Republic of Nigeria, 1999 (as amended) hence all the votes cast for the 1st Respondent were invalid on account of his not being a candidate for the Election aforesaid.

iii. That it may be determined and doth declared that the Petitioner who was the candidate of the Peoples Democratic Party was duly Elected or Returned by the majority of lawful and valid votes cast at the Governorship Election in Benue State held on the 11th day of April, 2015 and declared on the 13th April, 2015.

iv. An order of the Honourable Tribunal directing the 3rd Respondent to withdraw the Certificate of Return issued to the 1st Respondent in error and issue same to the Petitioner as the winner of the Governorship Election in Benue State held on the 11th day of April, 2015 having scored the majority of lawful and valid votes cast at the Election and also satisfied the other requirements of the Electoral Act, 2010, (as amended) and the Constitution of the Federal Republic of Nigeria 1999 (as amended).

From the 1st ground for the challenge of the return of 1st respondent, it is clear that the complaint is that at the time of the election held on 11th April, 2015, the 1st respondent was not qualified or disqualified to contest the same. The above ground is in line with the provision of Section 138(1)(a) of the Electoral Act, 2010, as amended which states thus:

“138(1) An election may be questioned on any of the following grounds, that is to say:

(a) that a person whose election is questioned was at the time of the election, not qualified to contest the election.”

The question that follows is: In what way or circumstance is a person qualified at the time of the election to contest for the office of Governor of a State being the relevant election in the instant case?

The answer to the above question is in the provisions of Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria 1999, as amended dealing with qualification and disqualification of such a person respectively. The provisions are reproduced hereunder:

“177. A person shall be qualified for election to the office of Governor of a State if.

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of thirty-five years;

(c) he is a member of a political party and is sponsored by that political party; and

(d) he has been educated up to at least school certificate level or its equivalent.”

B From the facts pleaded in the petition and evidence on record, it appears the complaint of non qualification of 1st respondent is grounded on Paragraph (c) of Sub-section (1) of Section 177 supra.

C A member of a political party is one who is registered with that party as its member, is issued with its membership card and fulfills all requirements of membership. It is therefore the political party concerned that can state, conclusively that a person is its member as can be demonstrated by production of its membership register and other relevant documents, if the issue arises.

D On the other hand, sponsorship of a person by a political party is as regulated under the provisions of Section 87 of the Electoral Act, 2010, as amended, by way of direct or indirect primary election for nomination of party candidates.

E In the instant case, there is evidence that though 1st respondent was originally a member of the Peoples Democratic Party and did contest that party's primary election for the nomination of its candidate for the Benue State Governorship election, which was won by appellant. 1st respondent resigned his membership of the PDP and subsequently joined the 2nd respondent and was presented to F 3rd respondent as 2nd respondent's consensus candidate for the election in issue; that 1st respondent subsequently participated in the said election and was returned elected.

G There is no challenge from any member of the 2nd respondent as to the emergence of 1st respondent as its candidate for the said election.

H It has been held in a plethora of cases that nomination of a candidate of a political party for an election is the internal affairs of the political parties over which the courts have no jurisdiction. Also settled is the principle that the only way the courts can get involved in matters of nomination of candidates of political parties is as provided under Section 87 (8) or (9) or (10) depending on which version of the Electoral Act, 2010, as amended one is using, and that only a candidate who participated in the primary election or contests in the

processes leading to the emergence of a candidate of the party for the election, has the locus standi to invoke the jurisdiction so conferred on the courts to challenge the said nomination. It is not every or any other member of the political party concerned that has the locus standi to do so. The position of a person who is not a member of the political party concerned is the same. In fact he is a busy body. B Appellant in this case is not a member of 2nd respondent neither did he participate in the processes that resulted in the emergence of 1st respondent as a consensus candidate of the 2nd respondent for that election. Even if appellant were to have the locus the proper venue C for that challenge is the Federal, State or Federal Capital Territory High Courts, the matter being a pre-election matter, which must be filed before the conduct of the election in issue. It is not the subject for an Election Tribunal. It is very clear from the above that appellant failed to establish that 1st respondent was not qualified to contest the D election of 11th April, 2015 under the provisions of Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

From the pleading, the relief sought by appellant that he be declared the winner of the election in question with majority of lawful votes cast at the election is based on an assumption that 1st Respon- E dent was neither a member of 2nd respondent nor was 1st respondent sponsored by the 2nd respondent as its candidate for that election. If the assumption were to hold, it would have meant that the votes scored by 1st respondent are wasted votes thereby leaving ap- F pellant as the candidate with majority of lawful and valid votes cast in the election. See relief ii supra. Once the assumption is proved to be what it is, the petition must fail.

With the above being the true state of the law, one wonders why the only surviving ground of the petition could have generated G so many processes such as the five issues formulated by appellant in the appellant brief filed on 10/12/15; the two cross appeals and preliminary objections.

It should be noted that the appeal was heard on Monday 11th January, 2016 and judgment adjourned to today, Friday 15th January, 2016 so as to meet up with statutory limitation. This is unfair to this Court and Counsel should do everything possible to keep their H matters simple and to the point so as not to continue to waste the time of the courts or make it near impossible for the courts to deter-

mine the matters on time and on the merit.

I share the views of my learned brother, NGWUTA, JSC that having determined the appeal on the merit, a determination of the cross appeals would serve no useful purpose. The issues determined in the main appeal constitute the substance of the complaint of ap-
 B pellant at the tribunal and the main issues before this Court.

It is for the above reasons and the more detailed reasons as-
 signed in the lead judgment of my learned brother that I too find no
 merit in the appeal and consequently dismiss same. I abide by the
 C consequential orders made therein including the order as to costs.

Appeal dismissed.

PETER-ODILI JSC

D I agree with the judgment delivered by my learned brother,
 Nwali Sylvester Ngwuta JSC and to record my support I shall make
 some remarks.

This appeal is against the decision of the Court of Appeal deliv-
 ered on the 18th of November, 2015 wherein their Lordships in that
 E Court below affirmed the decision of the Benue State Governorship
 Election Petition Tribunal dismissing the Appellant's petition which
 was filed against the 3rd Respondent's return of the 1st Respondent
 as the elected governor of Benue State at the general election held
 on the 11th of April, 2015.

F The facts leading to this appeal are well set out in the lead
 judgment and so no need for a repetition herein.

Adebayo Adenipekun SAN on the 11th day of January, 2016
 date of hearing adopted his Brief of Argument for the Appellant filed
 G on 10/12/12 wherein he crafted five issues for determination which
 are as follows:-

i) Whether the Lower Court was right when it held that the
 onus of proof as to whether the 2nd Respondent's political party
 conducted a primary election which produced the 1st Respondent as
 H its candidate was on the Appellant. (Ground 1, 2, 3, 4, 5 & 6).

ii) Whether the Lower Court was wrong when it affirmed the
 decision of the trial tribunal dismissing the petition on the basis that
 the Appellant did not prove his petition having regard to the evi-
 dence on record. (Grounds 7, 8, 9, 10, 11, 12, 13, 14, 17 & 19).

iii) Whether the Lower Court was right when it held that there was no need to consider the argument of counsel on Section 140(2) of the Electoral Act (as amended) as the tribunal's judgment was not based on the said section (Ground 15).

iv) Whether the Lower Court was right in striking out ground 4 of the Appellant's Notice of Appeal before it and holding that the Appellant was out of time in appealing against the decision complained against in the said Ground 4 (Ground 16). B

v) Whether the Lower Court was right to have set aside the judgment of the tribunal in relation to the challenge of the tribunal's jurisdiction after the Lower court had held that the tribunal was right in dismissing the motion filed by the Respondents challenging its jurisdiction. (Ground 18). C

Chief Adeniyi Akintola SAN, learned counsel for the 1st Respondent adopted his Brief of Argument filed on the 16/12/15 and in which he couched four issues for determination which are, viz:- D

ISSUE NO. 1

WHETHER THE COURT OF APPEAL WAS RIGHT IN HOLDING THAT APPELLANT'S PETITION WAS RIGHTLY DISMISSED BY THE TRIBUNAL FOR FAILURE TO DISCHARGE BURDEN OF PROOF THAT 1ST RESPONDENT WAS NOT QUALIFIED TO CONTEST AS A CANDIDATE IN THE ELECTION INTO OFFICE OF GOVERNOR OF BENUE STATE HELD ON 11TH APRIL, 2015. (GROUNDS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17 & 19) E F

ISSUE NO. 2

WHETHER THE COURT OF APPEAL CAME TO THE CORRECT DECISION IN HOLDING THAT THE JUDGMENT OF THE TRIBUNAL DISMISSING APPELLANT'S PETITION WAS NOT FOUNDED UPON SECTION 140(2) OF THE ELECTORAL ACT, 2010 (AS AMENDED) . (GROUND 15). ISSUE NO. 3 G

WHETHER THE COURT OF APPEAL WAS RIGHT IN STRIKING OUT GROUND (4) FOUR OF THE APPELLANT'S NOTICE OF APPEAL TO THE COURT OF APPEAL. (GROUND 16)

ISSUE NO. 4 H

WHETHER THE COURT OF APPEAL CAME TO THE CORRECT DECISION IN SETTING ASIDE THE DECISION OF THE TRIBUNAL WHICH RESOLVED ISSUE OF JURISDICTION TO ENTERTAIN THE PETITION IN FAVOUR OF THE PETITIONER/

APPELLANT. (GROUND 18)

1st Respondent had however raised two preliminary objections, one of which was argued in the 1st Respondent's Brief.

For the 2nd Respondent, Mr. Sebastine T. Hon SAN adopted its Brief of Argument filed on the 14/12/15 in which he raised five B issues for determination which are as follows:-

1. Was the decision of the Court of Appeal on burden of proof correct in law bearing in mind facts of this petition? (Grounds 1, 2, 3, 4 and 5 of the Appellant's Ground of Appeal).

C 2. Did the Appellant prove his case sufficiently to merit judgment being delivered in his favour? (Grounds 7, 8, 9, 10, 11, 12, 13, 14, 17 and 19 of Appellant's grounds of Appeal).

3. Was the lower Court correct in its finding that the trial Tribunal's finding on Section 140(2) of the Electoral Act, 2010 as D amended was not a ratio decidendi. (Ground 15 of Appellant's Grounds of Appeal).

4. Was the Court of Appeal right in striking out Appellant's Ground of Appeal No. 4 filed before that Court? (Ground 16 of Appellant's Grounds of Appeal).

E 5. Was the Court of Appeal right in its conclusion while ruling on the 2nd Respondent's Cross-Appeal that the judgment of the Tribunal on the jurisdictional issues raised by the 2nd Respondent was set aside? (Ground 18 of the Appellant's Grounds of Appeal).

F 2nd Respondent also raised a preliminary Objection argued in the said Brief of Argument. Prof. A.A. Ijohor for the 3rd Respondent adopted their Brief of Argument filed on 15/12/2015 and equally adopted the issues as identified by the Appellant.

PRELIMINARY OBJECTIONS:

G The Objections of the 1st Respondent are centred on the lack of locus standi of the Appellant to set the Petition in motion. Also that the Appellant presented and prosecuted the petition at the tribunal and Lower Court as a lone ranger challenging the emergence of the 1st Respondent as the candidate of the 2nd Respondent when Appellant was not a member of the 2nd Respondent. The 2nd H Respondent's Objection has to do with the Appellant seeking the nullification of the election of 1st Respondent when he did not plead any evidence to satisfy the mandatory requirements of Section 179 (i)(a) and (b) of the Constitution as amended. That in the main, this

appeal has become academic, a situation which this court has no room to consider.

The standpoint of the Appellant to these Objections is that the objection of the 1st Respondent stems from an obiter being the matter of locus standi. In respect to the objection of the 2nd respondent, Appellant contends the appeal not academic being anchored on Section 170(i) (a) & (b) of the Constitution. B

Perusing the arguments for and against the preliminary objections, it seems to me that the issues effectively dovetailed into the issues in the main appeal and therefore creating a distraction from what this Court should concern itself with and risk the possibility of missing the way. The option available in the circumstance is to discountenance these objections so one can get into the main event and resolve the real issues in controversy. Therefore, I go straight to the appeal proper. C D

MAIN APPEAL:

In this main appeal, I shall restrict myself to issues 1 and 2 which I see as taking care of the appeal.

ISSUES 1 & 2:

In these issues are raised the question whether the onus was on the Appellant to prove that the 2nd Respondent's political party conducted a primary which produced the 1st Respondent and whether the Appellant proved his petition having regard to the evidence. E

The position of the Appellant put across is that the 1st Respondent was not qualified to contest the election in issue because the 2nd respondent never conducted a primary election to determine its candidate for the election in issue and so the purported nomination of the 1st Respondent as the candidate was null and void. That the Appellant having asserted that standpoint, it was now up to the 1st and 2nd Respondents to establish that primary election was conducted. That the Court of Appeal overruling the appellant's submission and holding that the evidential and legal burden was on him to prove his case that there was no primary election despite the state of the pleadings was erroneous. He cited *Odom v. PDP* (2015) 6 NWLR H (1456) 527; *Omisore v. Aregbesola* (2015) 15 NWLR (pt. 1482) 205 at 272 - 273; Section 140 of the Evidence Act, 2011. F G

It was further contended for the Appellant that a perusal of the record of appeal will reveal that the Appellant had adduced evidence

in line with his pleadings that no primary election was conducted by the 2nd Respondent to determine its candidate at the election in issue. Also that the 1st and 2nd Respondents failed to tender any proof that they gave the 3rd Respondent 21 days notice of the 2nd respondents primaries where the 1st respondent was nominated as its candidate and this showed there was no primary election held by the 2nd Respondent.

Chief Akintola SAN for the 1st Respondent contended the arguments of the Appellants were in grave error when he submitted that he had no burden of proof since he had asserted the negative that APC did not hold a governorship party primary and so pushing the burden to the Respondents 1st and 2nd that there was a primary election. He cited many judicial authorities to buttress that the two Courts below were correct in their assessment of the evidence laid down before the trial Court on this matter of the proof of whether or not the Primary election indeed was held. He cited *Okoye v. Nwankwo* (2014) 15 NWLR (Pt. 1429) 93 at 126, *Buhari v. Obasanjo* (2005) 13 NWLR (pt. 941) 1 at 11.

Learned counsel for the 2nd Respondent contended that the two Courts in their concurrent findings and decision were correct that the burden of proving that there was no primary election conducted by the APC, 2nd Respondent rested on the Appellant and no other as he asserted there was none and he stood to lose if the fact was not established.

Prof. A.A. Ijohor, SAN towed the line of reasoning of the other Respondents and that is that it behoves the Appellant to establish his assertion on the matter of the 2nd Respondent not conducting the primary through which the 1st Respondent emerged as its candidate.

What seems to me at play in the divergent positions taken by the Appellant on one side and the Respondents on the other side are based on whether or not the 2nd Respondent fielded a candidate properly so called in line with the Constitutional provisions of Section 177 and 179 of the 1999 Constitution juxtaposed with the relevant Electoral Act provisions in relation thereto which are Sections 85, 87 and 86 Electoral Act 2010 as amended. For Section 85, that deals with the necessity for the political party to issue a 21 day notice to INEC of its intention to conduct its primary election by which its candidate for the General Election would emerge. That is where the

party chooses to embark on the indirect primary procedure. I shall quote the said Section 85 of the Electoral Act and it is thus:-

“1) a registered political party shall give the commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under this Act.

2) the commission may, with or without prior notice to the political party attend and observe any convention, congress, conference or meeting which is convened by a political party for the purpose of:-

(a) electing members of its executive committees or other governing bodies;

(b) nominating candidates for an election at any level;

(c) approving a merger with any other registered political party.

3) the election of members of the executive committee or other governing body of a political party, including the election to fill a vacant position in any of these bodies, shall be conducted in a democratic manner and allowing for all members of the party or duly elected delegates to vote in support of a candidate of their choice.

4) notice of any congress, conference or meeting for the purpose of nominating candidates for area council elections shall be given to the commission at least 21 days before such congress, conference or meeting.”

Then the procedure for going about the production of that candidate has been provided for under Section 87 of the Electoral Act and I shall restate same hereunder, viz:-

“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 nomination to the positions of governorship candidate, a political party shall, where it intends to sponsor candidates -

(i) hold a special congress in the State Capital with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party; and

(ii) the aspirant with the highest number of votes at the end of

the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party, for the particular State.

6) *Where there is only one aspirant in a political party for any of the elective positions mentioned in paragraph 4 (a) , (b) , (c) and (d) , the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the commission as the candidate of the party."*

Then where the political party and in the case at hand, 2nd Respondent failed to comply with any of those conditions stipulated under Sections 85 and 84, the sanction is not anywhere disenfranchising the political party or leading to the party being taken not to have fielded a candidate or taken to be out of the race rather what would occur has been properly prescribed in the nature of fines of N500,000.00 against that party. This is what Section 86 of the Electoral Act has stipulated and I shall quote it for ease of reference and thus:-

86 "(1) *The Commission shall keep records of the activities of all the registered political parties.*

(2) *The Commission may seek information or clarification from any registered political party in connection with any activity of the political party which may be contrary to the provisions of the Constitution or any other law, guidelines, rules or regulations made pursuant to an Act of the National Assembly.*

(3) *The Commission may direct its enquiry under Subsection (2) of this section to the Chairman or Secretary of the political party at the National, State, Local Government, Area Council or Ward level, as the case may be.*

(4) *A political party which fails to provide the required information or clarification under Subsection (2) of this section or carry out any lawful directive given by the Commission in conformity with the provisions of this section commits an offence and is liable on conviction to a fine of not less than N500,000.00."*

The Appellant had had a grouse on the trial Tribunal and the Court of Appeal stance and decision that the burden of proving that there was no primary conducted by 2nd Respondent and that the candidature of the 1st Respondent was fundamentally flawed trans-

lating to the 1st and 2nd Respondents not being part of the election and for Appellant to be declared the winner of the election being the next in line in terms of the votes cast.

The Court of Appeal had held thus:-

“In election petitions, which is a specie of civil proceedings, the initial legal burden of proving, by way of introduction of evidence, the grounds upon which an election conducted by the INEC, was questioned or challenged by a petitioner, is and rests squarely, on him because he, it is, who approached an Election Petitions Tribunal and desired the judgment be entered for him or in his favour, based on the existence of the facts upon which the grounds of the petition are grounded. It is the petitioner, who will fail or lose if no evidence at all was given or adduced before the Tribunal in respect of the grounds upon which the petition is premised. He therefore owes and bears the legal burden of proof of the facts he alleged or asserted as constituting the grounds upon which he questioned the election and as shown above, it is a burden that is fixed and remains static on him throughout the trial of the petition until such a stage that it was satisfactorily discharged in accordance with the requirements of the evidence law.”

Learned counsel for the appellant had fixed their position on whom the burden of proof rests, as to whether there was a primary election was on the 1st and 2nd respondent on the case of Odom v. PDP (2015) 6 NWLR (pt. 1456) 527, a judgment of this court. I shall have to refer to what my learned brother, M.D. Muhammad JSC in anchoring that judgment in Odom v. PDP (supra) did and that is thus:

“The appellant took out a writ on 25th January, 2011 against the Respondents seeking certain declaratory and injunctive reliefs. Their case as pleaded and supported by evidence is that the appellants and the 2nd respondent were aspirants for the 1st Respondent’s primary Election for Bonny/Degema Federal Constituency seat. The primary Election took place on 6th January, 2011 at the Degema Local Government Council Headquarters... The counting which immediately commenced was disrupted. The election was terminated. Neither the result nor the winner of the Election was declared. On the other hand, respondent’s case is that with the votes counted and the 2nd respondent declared the winner, the Primary Election was

conclusive. At the end of the trial, the court held that on the pleadings, the law places the burden of proof on the appellants. Having not discharged the burden, the court dismissed appellant's case. Aggrieved, they appealed to the Court of Appeal... In its judgment delivered on 12/2/2013, having reversed the trial court's finding on whom the burden of proof on the pleadings of the parties rested, the lower court evaluated the evidence on record and on concluding that the findings of the trial judge are perverse, set aside his judgment."

This Honourable court upheld the decision of the lower court which was to the effect that the burden of proving that a conclusive Primary Election took place was on the defendants who asserted that a conclusive primary Election took place. In affirming the Court of Appeal's decision, this court held at page 562 paras C-H that:

"The trial court failed to accept the distinction which this court in a plethora of its decisions held exists, and which the lower court in the foregoing clearly imbibed, between legal burden of proof and evidential burden of proof. Whereas legal burden of proof remains throughout on the claimant to establish his case otherwise he loses his claim, the evidential burden of proof in a case fought on the pleadings rest on the party who asserts in the affirmative and shifts depending on the pleadings of the parties at each turn."

In *Imana v. Robison* (1979) 3 - 4 SC 1 at 9, a case learned appellants/cross respondents justifiably relied on, this court has held as follows:

"The burden of proof in this case, rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. It is fixed at the beginning of the trial by the state of the pleadings, and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleading placed it and never shifting in any circumstances whatever. If when all the evidence, by whosoever introduced, is in, the party who has the burden has not discharged it, the decision must be against him. The lower court's finding against the defendants, including the cross-appellant herein who, having asserted affirmatively as to the conclusiveness of the conduct of the primary election, and failed at the end of the trial to discharge the burden of proving what they so asserted, is unassailable."

Having quoted *Odom v. PDP* (supra) in which the facts leading to the decision of this court which represents the law were showcased which facts are clearly different from the facts of the case at hand and so not on all fours and therefore cited out of context. The reason simply being that the appellant herein is not a member of 2nd respondent, APC unlike in *Odom* (supra) where the appellant and the 1st respondent were members of PDP and both aspirants to the primary election in issue. That is not what the situation here, as the appellant being of a different party, a complete stranger to the home affairs dynamics on who the candidate of the 2nd respondent would be. The appellant was not the contemplation of Sections 85, 87 and 86 of the Electoral Act and so lacks the locus standi to complain. B C

Fortunately by the date of hearing the case of *Mahmud Aliyu Shinkafi v. Abdulazeez Abubaka Yari* in the Unreported SC.907/2015 had been delivered on the 8th day of January, 2016, just three days to the hearing of the instant case and the *Shinkafi v. Yari* (supra) had settled the issue of who had the right to complain about the emergence of a candidate for the governorship of a state for the general election. This court firmly stated in that judgment which lead was delivered by Okoro JSC, that the right to complain resides only in any aspirant to the said primary which presupposes a co-member of the stated political party or INEC who ought to be notified of the process and so everyone else is an outsider and a stranger without the right to ask questions on the propriety or otherwise of such conduct of the primary. Also this court took the opportunity to further reiterate the courts limited vires in going into the internal affairs of a political party, like primary elections or the manner a political party has chosen its candidate. D E F

The hearing of the case after the judgment in *Shinkafi* (supra) offered the opportunity of all parties to be heard on who had the right to approach the court where there is a perceived wrong in the conduct of a party primary. G

Learned counsel for the appellant, Adebayo Adenipekun SAN had made a lot of fuss on Section 179 of the 1999 Constitution H availing the appellant for the two courts below to have made the decision in his favour. He attempted to distinguish the case of *Shinkafi v. Yari* (supra) from the case in hand. I shall quote the said Section 179 (2) - (5) of the Constitution and it is thus:

“(2) A candidate for an election to the office of Governor of a state shall be deemed to have been duly elected where, there being two or more candidates-

(a) He has the highest number of votes cast at the election; and

B *(b) He has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State.*

C *(3) In default of a candidate duly elected in accordance with Subsection (2) of this section there shall be a second election in accordance with Subsection (4) of this section at which the only candidates shall be-*

(a) the candidate who secured the highest number of votes cast at the election, and

D *(b) one among the remaining candidates who secured majority of votes in the highest number of local government areas in the State, so however that where there are more than one candidate with a majority of votes in the highest number of local government areas, the candidate among them with the next highest total of votes*
E *cast at the election shall be the second candidate.*

(4) in default of a candidate duly elected under Subsection (2) of this section the Independent National Electoral Commission shall with seven days of the election held under that subsection arrange for an election between the two candidates and a candidate at such
F *election shall be deemed to have been duly elected to the office of Governor of a State if-*

(a) he has a majority of the votes cast at the election; and

G *(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the local government areas in the State.*

(5) in default of a candidate duly elected under Subsection (4) of this section, the Independent National Electoral Commission shall within seven days of the result of the election held under that subsection,
H *arrange for another election between the two candidates to which that sub-paragraph relates and a candidate at such election shall be deemed to have been duly elected to the office Governor of a State if he has a majority of the votes cast at the election.”*

Bearing in mind all I have set out to bring up above, it is clear

to me that the appellant firstly lacks the competence to challenge the candidature of the 1st respondent and has not shown how he could call in aid Section 179 of the 1999 Constitution and taken along the fuller and better reasoning of my learned brother, Nwali Sylvester Ngwuta JSC in the lead Judgment. I too see no basis for departing from the concurrent findings and decision of the two lower courts B and so I dismiss this appeal.

I abide by the consequential orders made.

ARIWOOLA JSC

C

I had the opportunity of reading in draft, the leading judgment of my learned brother, Ngwuta, JSC just delivered. I agree entirely with the reasoning therein and the conclusion arrived thereat.

There is no doubt that by every standard known to law, the appellant has no locus to challenge either the candidature or the election of the 1st respondent as he did before the Election Petition Tribunal for all the various reasons contained in the lead judgment. He is simply a busy body. The appeal lacks merit and deserves to be dismissed. I too will dismiss the appeal in its entirety. E

Accordingly, appeal is dismissed. I abide by the consequential orders in the lead judgment, including that on costs.

MUHAMMAD JSC

F

I read before now the lead judgment of my learned brother Ngwuta, JSC, just delivered. I entirely agree with his lordship that, given his reasoning in the judgment, the appeal is devoid of any merit and it stands dismissed. I abide by the consequential orders G made in the lead judgment including the order on costs.

OKORO JSC

I have had the privilege of reading in draft the lead judgment H of my learned brother, Nwali Sylvester Ngwuta, JSC just delivered. My learned brother has meticulously and quite efficiently resolved the salient issues nominated for the determination of this appeal. He has also admirably set out the facts of this case in the lead judgment.

I need not repeat the exercise. I shall however make a few comments in support of the judgment only.

On page 3 of the appellant's brief filed on 10th December, 2015, particularly, paragraph 4.02 thereof, the learned senior counsel for the appellant, Adebayo Adenipekun SAN, leading other counsel, captures the case of the appellant in the petition. It states:-

"The Appellant's case in this petition is that the 1st Respondent was not qualified to contest the election in issue because the 2nd Respondent never conducted a primary election to determine its candidate for the election in issue so that its purported nomination of the 1st Respondent as the candidate in issue was null and void."

The pith and substance of the appellant's complaint in this appeal is that the 1st respondent was not qualified to contest election as Governor of Benue State because his nomination was flawed or that he was not nominated at all. Both the trial tribunal and the Court of Appeal found for the 1st and 2nd respondents. The two courts found that the 1st Respondent resigned from the Peoples Democratic Party and joined the All Progressive Congress wherein he was nominated and his name forwarded to the 3rd Respondent (INEC) as its candidate for the April 11th, 2015 Gubernatorial election in Benue State.

Without doubt, this is a concurrent finding of fact by the two courts below. It is settled that where there is sufficient evidence to support concurrent findings of fact by two Lower Courts, such findings should not be disturbed by this court unless there is a substantial error apparent on the record: that is, the findings have been shown to be perverse, or some miscarriage of justice or some material violation of some principle of law or of procedure is shown. See *Amadi v. Nwosu* (1992) 6 SCNJ 59, *Onwujuba v. Obieniu* (1991) 4 NWLR (Pt.188) 16, *Odojin v. Ayoola* (1984) 11 SC 72, *Ogundipe v. Awe* (1988) 1 NWLR (Pt. 88) 188 *Eholor v. Osayande* (1992) 7 SCNJ 217. The appellant herein has not been able to show that the findings of fact by the two Lower Courts were perverse. These findings, to my mind, are unassailable.

It must be noted that issue of nomination of candidates for election in this country is provided for in Section 87 of the Electoral Act, 2010 (as amended). Under the said section, it is prescribed that a political party seeking for election under the Act shall hold prima-

ries for aspirants to all elective positions. The procedure, according to 87(2) thereof, shall be by direct or indirect primaries.

It is trite that Section 87 of the Electoral Act 2010 (as amended) regulate the nomination of candidates for election through the internal mechanism of each political party. That is to say, issue of nomination and sponsorship of candidates by political parties for election fall within the internal affairs of political parties and therefore, not justiceable. See *Onuoha v. Okafor* (1983) 2 SCNLR 244, *Daniel v. INEC* (2015) 9 NWLR (Pt.1463) 113 at 155 - 157, *PDP v. Sylva* (2012) LPELR - 7814 (SC).

Recently, this court had occasion to state the position of the law in respect of complaints against the conduct of primaries by political parties. It was in the case of *Mahmud Ahilu Shinkafi & anor v. Abdulazeez Abubakar Yari & 2 Ors* (unreported) Appeal No. SC.907 delivered on 8th January, 2016. My Lords, permit me to quote in extenso since the issue therein is the same here. On page 18 of the said judgment this court, per Okoro, JSC states as follows:

"However, it is now trite that where a political party conducts its primary and a dissatisfied contestant at the primary election complains about its conduct of the primaries, the courts have jurisdiction by virtue of the provision of Section 87(9) of the Electoral Act 2010 (as amended) to examine if the conduct of the primary was in accordance with the party's Constitution and Guidelines. The reason is that in the conduct of its primaries, the courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its Constitution."

Now, Section 87(9) of the Electoral Act provides:

"Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or Federal Capital Territory, for redress."

The above provision which is clear and unambiguous gives only one person the locus standi to challenge the nomination of a person for an election during a primary election. Only an aspirant at the primary election is permitted by Section 87(9) of the Election Act 2010 (as amended) to challenge the selection or nomination of a

person for an elective office. Apart from an aspirant who took part in the primary election, no other person is authorized to file an action to challenge the selection or nomination of a candidate by a political party for an election.

In *Daniel v. INEC* (2015) 9 NWLR (Pt. 1463) 113 at 155, 156 B - 157 paragraphs G - S and 158 paragraphs G, this court held that:

“By the provision in Section 87(9) of the Electoral Act 2010 (as amended) it is an aggrieved aspirant who physically participated in a primary election conducted by the National Executive Committee of his party that is imbued with the locus standi to raise a finger of complaint... The Appellant admitted that he did not participate in the primary. He is not an aspirant in terms of Section 87(9) of the Electoral Act. He is not imbued with the locus standi to challenge the said primary.”

D Evidence on record shows that the Appellants were not aspirants who participated at the primary election of the APC (2nd Respondent) held on 4th December, 2014. Their complaint before this court is a challenge to the selection or nomination of the 1st Respondent herein by his party. Their complaint was first made at an Election Petition Tribunal. The truth is that apart from the fact that the Appellants were not among the persons permitted by Section 87(9) of the Electoral Act 2010 (as amended) to challenge the nomination or selection of a candidate for election, they failed to approach the appropriate court which has jurisdiction to hear the matter. Section F 87(9) of the Electoral Act 2010 (as amended) provides that such an aggrieved aspirant *“may apply to the Federal High Court or the High Court of a State or Federal Capital Territory for redress.”* Certainly an Election Petition Tribunal is not mentioned there. All I have said above G is that the Appellants had no locus standi to challenge the election or nomination of the first Respondent by his political party, the APC at its primary election of 4th December, 2014. The simple reason being that they were not aspirant at the said primary election. According to Section 87(9) of the Electoral Act 2010 (as amended) only an aspirant who participated in a primary election can challenge its outcome. H The provision is restrictive in nature.”

Apparently, what remains to be said is that the appellant herein had no locus standi to challenge the primary election which produced the 1st Respondent as the candidate of the 2nd Respondent

the APC. The reason is that he was not an aspirant at the said primary election since by Section 87(9) of the Electoral Act 2010 (as amended) only an aspirant at the primary election is imbued with locus standi to challenge the outcome of the said primary election.

I shall make one more comment and I shall be done. Learned senior counsel for the Appellant had argued that the 1st respondent breached Section 177(c) of the Constitution and as such he was not qualified to contest the election. The two courts below did not agree with him. Section 177 9(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) states:

“177 A person shall be qualified for election to the office of governor of a State if -

(a)

(b)

(c) he is a member of a political party and is sponsored by that political party, and

(d) “

Evidence on record shows that by Exhibit R3, the 1st respondent resigned his membership from the Peoples Democratic Party. He subsequently joined the All Progressives Congress. This is confirmed by Exhibit R1: his membership card of APC, Exhibit R4 which is APC Membership Register for the ward where he registered. There is also Exhibit R10 which is 1st Respondent's application for waiver. All these documents which the appellant did not controvert, clearly show that the 1st respondent duly resigned from the PDP and subsequently joined the APC, thus satisfying the requirement of membership of APC as required by Section 177 (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) . Moreover, he applied for waiver which the party gladly granted him. It is apparent that neither the APC nor the 3rd respondent (INEC) has challenged the membership of the 1st respondent in APC. The appellant failed to lead evidence to show that the 1st respondent was not a member of APC. My view is that evidence available shows that the 1st respondent, upon his resignation from PDP, joined APC and was properly nominated and sponsored by the later. He did not in the circumstance breach the provision of Section 177 (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) .

It is the above reasons and the more elaborate ones adum-

brated in the lead judgment that I agree that this appeal is devoid of merit and I join to dismiss same. Appeal Dismissed. I abide by all the consequential orders made in the lead judgment, that relating to costs, inclusive.

B

SANUSI JSC

This appeal is against the judgment of the Court of Appeal (hereinafter referred to as “the court below or “the Lower Court”) delivered on the 8th day of November, 2015 which dismissed the appeal of the present appellant against the decision of the Governorship Election Petition Tribunal which dismissed the petition of the appellant filed before it and returned the 1st respondent as the duly elected governor of Benue State at the election held on 11th April, 2015.

The facts which gave rise to the filing of the petition by the appellant at the tribunal and later to the filing of appeals in both the court below and this court as could be gleaned from the record of appeal, are briefly put or summarised hereunder.

The appellant was or still is a member of the Peoples Democratic Party (PDP) which sponsored him to contest election for the office of governor of Benue State under its platform which said election was held on 11th April, 2015. He lost that election to the first respondent who also contested the same election under the sponsorship of All Progressive Congress (APC), the 2nd respondent herein. The first respondent having won the said election was declared and returned winner of the election by the third respondent which was the statutory body saddled with the assignment of conducting election throughout Nigeria. The Peoples Democratic Party which sponsored the appellant for the election became satisfied with the result declared by the INEC, the third respondent, hence it did not complain or challenge the election at the tribunal as it duly accepted the result of the election. The appellant thereupon became disenchanted with the stance of his party, the PDP, hence he decided to approach the election tribunal by filing election petition to ventilate his grievance, principally, on the manner the first respondents party, the APC, conducted its primary election through which the first respondent emerged as its candidate in that election even though he was not a

member of that party or had contested in the said primary election and was thus not an ASPIRANT who ordinarily should be the person aggrieved and who would have the locus standi to challenge the primary election in the tribunal or in court.

It is pertinent to say at this stage, that the gravamen of the appellant's/petitioner's complaint at the tribunal, the 2nd respondent party did not conduct primary election because the 1st respondent was alleged to have emerged winner of the primary election through consensus candidate or uncontested position procedure adopted by his party the second respondent following aborted direct primary election in which he emerged as his party's consensus candidate: for the governorship election. Perhaps from the evidence that abound in the record, the 2nd respondent adopted the procedure of indirect election or consensus candidate procedure because on two occasions when the 2nd respondent fixed dates to conduct its primary election, some events emerged militating against conducting the direct primary election, hence to beat the deadline fixed for the conduct of such election and dearth of time which was very much of essence was against it. After hearing the petition, the tribunal held that the appellant as petitioner thereat had no locus standi to challenge the propriety or validity of the 2nd respondent's primary election nominating the 1st respondent as its candidate at the said election. The tribunal in its considered judgment dismissed the petition in the end.

Aggrieved by the decision of the tribunal, the appellant appealed to the Court of Appeal (the lower or court below) unsuccessfully because the latter court also dismissed the appellant's appeal. Disenchanted with the dismissal of his appeal by the court below, the appellant further appealed to this court. In the extant appeal, the appellant raised five issues for determination of the appeal in his brief of argument settled by Adebayo Adenipekun SAN, filed on 10th December, 2015. The five issues proposed by the appellant, for the determination of this appeal, are reproduced hereunder:-

"1. Whether the Lower Court was right when it held that the onus of proof as to whether the 2nd respondent's political party conducted a primary election which produced the 1st respondent as its candidate was in the appellant.

2. Whether the Lower Court was wrong when it affirmed the

decision of the trial tribunal dismissing the petition on the basis that the appellant did not prove his petition having regard to the evidence on record.

3. *Whether the lower court was right when it held that there was no need to consider the argument of counsel on Section 140(2) of the Electoral Act (as amended) as the tribunal's judgment was not based on the said section.*

4. *Whether the Lower Court was right in striking out ground four (4) of the Appellant's Notice of Appeal before it and holding that the Appellant was out of time in appealing against the decision complained against in the said Ground 4.*

5. *Whether the Lower Court was right to have set aside the judgment of the tribunal in relation to the challenge of the tribunal's jurisdiction after the Lower Court had held that the tribunal was right in dismissing the motion filed by the Respondents challenging its jurisdiction.*

The first respondent in his brief of argument filed on 16/2/2015 adopted the above mentioned five issues proposed by the appellant although with modification even though he condensed the issues into four in number. I do not deem it necessary to reproduce them here, since they border on same points with the issues raised by the appellant set out supra. The other two respondents' briefs of argument also raised similar issues which also need not reproduced. It should be noted also that 1st respondent and the 2nd respondent raised preliminary objection in their respective briefs of Argument which were ably addressed in the lead judgment of my learned brother Ngwuta JSC. I am in agreement with His Lordship, that the said preliminary objections are devoid of merit and I also have no hesitation in dismissing them too.

My noble lords, it is my humble view that the core issue raised in this appeal centres on the first issue for determination which relates to issue of primary election conducted by the 2nd respondent to settle on the choice and its resolution that the 1st respondent should represent it at the governorship election of Benue State.

On the issue of the primary election, it is the case of the appellant as petitioners at the tribunal, that the primary election conducted by his rival party, the 2nd respondent, was inconclusive and aborted because of series of court's injunctive orders on the 2nd respondent

at the instance of one of the aspirants at the primary election of the 2nd respondent one Prof. Steve Torkuma Ugba who was allegedly excluded from the said primary election. Sequel to that, the primary election was rescheduled to hold on 10th and 11th December, 2014 which said rescheduled election was also frustrated and hence could not hold following service of other court processes on 2nd respondent at the venue and also due to apparent insecurity at the venue. The appellant argued that, at the end of the deadline set by INEC, the 3rd respondent herein, for production of candidates of political parties for the said election, the 2nd respondent failed to produce a governorship candidate for the election of 11th April, 2015. The appellant further contended that the 1st respondent was never validly nominated by his party, the 2nd respondent, yet he was returned as a winner of the Benue State governorship election. This is the grudge of the appellant upon which he filed and fought his petition along with other complaints.

Conversely, the 1st respondent's case was simply that in view of the antecedents that befell the conduct of the primary election, the party resolved to present the 1st respondent as its candidate in its uncontested position or consensus candidate after an aborted direct primary election. The 1st respondent's case is that there was Resolution Agreement for electing the 1st respondent as a consensus candidate of the 2nd respondent on 11th April, 2015 general election and the said resolution was admitted and marked Exhibit R8 when tendered from the Bar.

It is an established fact, that the appellant is or was a member of the Peoples Democratic Party (PDP) which said party sponsored him to contest the governorship election along with the 1st respondent who was sponsored by his party APC, the second respondent herein. The provisions of Section 87 of the Electoral Act 2010 as amended (hereinafter called "the Act") govern the conduct of primary election by a political party. The said section is set out hereunder.

Section 87 of the said Act provides thus:-

(1) A Political Party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.

(2) The procedure for the nomination of candidates by politi-

cal party for the various elective positions shall be by direct or indirect primaries.

(3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

B 4) A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below:-

(a) Not relevant

C (b) In the case of nomination to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates:

(c) Not relevant

(d) Not relevant

D (5) Not relevant

(6) Where there is only one aspirant in a political party for any of the elective positions mentioned in paragraph (4) (a), (b), (c) and (d), the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the party.

F (7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the constitution of the party.

(8) Not relevant

G (9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.

H From the wordings of Section 87 of the Act as reproduced above, where a political party intends to participate in an election, it must hold primary election to choose or select a candidate it wants to sponsor or to represent it at an election. Candidates seeking to be sponsored for the election by the political party are regarded as or

called “ASPIRANTS”. The primary election can be through “direct” or “indirect” method and it is in the whichever method adopted by the party that a candidate to represent it could emerge and such process of primary election is monitored by the INEC. After the conduct of the election, whoever emerged winner of the primary election will be nominated by the party as its candidate. However, where there is dispute among aspirants with regard to the nomination at the primary election conducted by the political party, the jurisdiction of court is only limited to the provisions of Section 87(4)(c)(ii) of the Act, as amended and if there is or are dispute(s) in the conduct of the primary election only person who took part in the primary election is an ‘ASPIRANT’ within the meaning of Section 87(9) of the Act. This is to say, it is only an “ASPIRANT” that has locus standi or capacity to approach the court to seek redress, pursuant to Section 87(9) of the Act as amended. This precludes even a member of the said political party, in as much as, he did not participate at the primary election, NOT to talk of a member of another rival political party, like the present appellant. The appellant herein, therefore being a member of Peoples Democratic Party (PDP) and not the 2nd respondent the APC, lacks the locus to complain on the manner a primary election of his adverse political party, was conducted. In my view, the appellant herein is merely a busy body, intruder or an Interloper and NOT an aspirant. He cannot therefore grudge or complain against a primary election conducted by a party other than the one that he belongs to. See *Yaradua v. Yandoma* (2015) 14 NWLR (Pt. 1448) 123; *Emeka v. Okadigbo* (2012) 18 NWLR (Pt. 1316) 55; *Onuoha v. Okafor* (1933) 2 SCNLR (2003) 15 NWLR (Pt. 843) 310.

See also the recent case of *Mahmu Aliyu Shinkafi & Anor. vs. Abdulazeez Abubakar Yari & 2 Ors.* unreported judgment in appeal No. SC.907/2015 delivered on 8th January, 2016.

I must stress here, that this court had in a plethora of decided authorities, settled that, courts have no jurisdiction to dabble into issue of nomination of candidate for an election by a political party. The political party always has the unfettered prerogative to conduct its primary election without any change, except under the exceptions provided in Section 87 (4) (b) (ii), (c) (ii) and (9) of the Electoral Act 2010, as amended. For instance, courts have jurisdiction to examine if the primary election was conducted in accordance with the party’s

constitution and guidelines. See *Emeka v. Okadigbo* (supra).

Thus, in the light of these few comments and the detailed reasons marshaled in the lead judgment of my learned brother Nwali Sylvester Ngwuta, JSC which I entirely agree with, I also hold that this appeal is devoid of merit and I dismiss it accordingly. At the same
B time I strike out the cross appeals by the 1st and 2nd respondents as having dismissed the main appeal they are merely rendered academic. I endorse the order of cost made in the lead judgment.

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