

**SUPREME COURT OF NIGERIA**  
FRIDAY 29TH JANUARY, 2016. SC. 37/2015  
**CORAM:- N. S. NGWUTA, M. U. PETER-ODILI,**  
**O. ARIWOOLA, M. D. MUHAMMAD, J. I. OKORO, JJSC**

- |   |                   |
|---|-------------------|
| 1. EJIKE OGUEBEGO                         | ..... APPELLANTS  |
| 2. HON. CHUKS OKOYE                       |                   |
| (Chairman PDP Anambra State and           |                   |
| Legal Adviser PDP Anambra State Chapter   |                   |
| respectively, suing for themselves and on |                   |
| behalf of the other members of the State  |                   |
| Executive Committee of the PDP            |                   |
| Anambra State)                            |                   |
| AND                                       |                   |
| 1. PEOPLES DEMOCRATIC PARTY               |                   |
| 2. INDEPENDENT NATIONAL                   | ..... RESPONDENTS |
| ELECTORAL COMMISSION (INEC)               |                   |
| 3. CHUKWUDI OKASIA                        |                   |
- 

JUDGMENTS - Binding nature - Any person against whom a decision of court is given - Is duly bound to obey it - Irrespective of whether he is of an opinion that the order is void (H1)

JURISDICTION - Federal High Court - The court has jurisdiction to protect the sanctity of its order and processes - Which 1<sup>st</sup> respondent chose to act in gross disobedience to (H2)

APPEALS - Supreme Court - Jurisdiction - The Court has no jurisdiction to entertain appeals directly from Federal High Court (H3)

JUDGMENTS - Action - Party - No person is to be adversely affected by judgment in an action - Of which he was not a party to (H4)

ACTIONS - Multiplicity of suits - Different parties - Where parties in multiplied suits are not the same - There cannot be said to be an abuse of court process (H5)

COURTS - Issue - Suo motu raising - Where court raises point suo

922 Oguebego v. PDP (2016) 1 KLR (pt. 379) 921; (2016) 4  
motu - Parties must be heard on the point - Particularly the party that  
may suffer punishment as a result of the point (H6)

APPEALS - Issue - Validity - Issue of controversy as to which organ of  
1<sup>st</sup> respondent - Has power to conduct primaries as held by CA cannot  
stand - As that was not the main issue (H7)

ACTIONS - Commencement - Originating summons - As there is no  
dispute on the relevant facts in the matter - Originating summons  
was properly used to institute the suit at the FHC (H8)

### ***FACTS***

The Anambra State Executive Committee of the Peoples Democratic Party (PDP) led by plaintiff/1<sup>st</sup> appellant was elected into office on the 7<sup>th</sup> of March 2012 at the State congress election convened for that purpose. The election was duly monitored by the Independent National Electoral Commission (INEC). INEC recognized the executive committee that emerged from the congress in Exhibit E. Thereafter, an attempt was made by certain elements in PDP to recognise one Ken Emeakayi and his associates as the authentic executive committee of the party in the aforesaid State. This prompted 1<sup>st</sup> appellant to institute suit no. FHC/PH/CS/213/2013 (now Suit No. FHC/AWK/CS/247/2013) at the Federal High Court Port Harcourt Judicial Division. The suit was brought in a representative capacity. The court ordered PDP to maintain the status quo ante bellum i.e. 1<sup>st</sup> appellant's led executive is the authentic PDP in the State. Dissatisfied, 1<sup>st</sup> respondent appealed to the Court of Appeal in Appeal No. CA/PH/764/2013. The appeal was still pending during the life of the present appeal in Supreme Court.

When 1<sup>st</sup> respondent, during the pendency of the orders of the Federal High Court and Exhibit E written by INEC, set up a caretaker committee to run the affairs of PDP in the State, appellants being persons affected by the said act, approached the Federal High Court by way of originating summons, seeking for interpretation of the following questions inter alia, whether in view of the subsisting and binding order of interlocutory injunction made by the court in suit no. FHC/PH/CS/213/2013 (now suit no. FHC/AWK/CS/247/2013), 1<sup>st</sup> respondent can validly set up a caretaker committee to

oversee the affairs of the party in the State. Appellants therefore asked for the reliefs inter alia, a declaration that 1<sup>st</sup> respondent cannot validly set up a caretaker committee when the said order of interlocutory injunction made by the court is still subsisting and subject of an appeal. At the end of hearing, the court granted the reliefs of appellants. Dissatisfied, 1<sup>st</sup> respondent appealed to the Court of Appeal. The court heard the appeal, allowed same and set aside the judgment of the trial court. Appellants were aggrieved. Hence, they have appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right in holding that the trial judge should not have assumed jurisdiction over the subject matter of this case relating to the protection of the sanctity of the judicial process of which the 1<sup>st</sup> respondent was in contempt and also relating to an executive and/or administrative decision of the Independent National Electoral Commission.

2. Whether the Court of Appeal was right to have held that the case of the appellants was an abuse of court process on the basis of another case that the appellants are not parties to.

3. Whether the Court of Appeal was competent to determine the issue of whether the case of the appellants was an abuse of court process on the basis of a point raised by the court suo motu and in respect of which the parties were not called upon to address the court.

4. Whether the cases of *Okadigbo V. Emeka & others* (2012) 18 NWLR (pt. 1331) 55 and *Emenike V. PDP* (2012) 18 NWLR (pt. 1315) have any relevance to the real issues that arose for determination before the Court of Appeal.

5. Whether the case of the appellants was rightly commenced by originating summons.

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

*JUDGMENTS - Binding nature*

**1. It is a trite principal of law that any person against whom a decision of a court is given is duly bound to obey it irrespective of whether the person against whom the order is made is**

**of the opinion that the order is void. He is bound to obey the order until it is set aside.** (p. 944 D)

*JURISDICTION - Federal High Court*

**2. It was contended by the 1<sup>st</sup> and 3<sup>rd</sup> respondents that the trial Federal High Court had no jurisdiction to entertain the suit. The court below also took this position. I disagree. I am in full agreement with the learned senior counsel for the appellants that the Federal High Court had jurisdiction to protect the sanctity of its mandatory order as well as its processes and proceedings when the 1<sup>st</sup> respondent chose to act in gross disobedience to its order made on 12<sup>th</sup> September, 2013. A court of law has the jurisdiction to protect its own judgment from being ridiculed or disparaged as done by the 1<sup>st</sup> respondent in this case. Any disobedience to court's order is a serious contempt and courts of law must protect themselves from being maligned and/or ridiculed.**

**I think the court below came to the above conclusion without taking into consideration the fact that although the Federal High Court made the order on 12<sup>th</sup> September, 2013, the 1<sup>st</sup> respondent did not react to the said order until a week after INEC wrote exhibit E on 23<sup>rd</sup> October, 2014. A simple commonsensical deduction is that the 1<sup>st</sup> respondent's action was a reaction to a decision of INEC to obey the judgment of the Federal High Court and to recognize the appellants as the authentic Executive Committee of the PDP Anambra State Chapter. As was rightly submitted by the learned senior counsel for the appellants, Exhibit D, written by the 1<sup>st</sup> respondent was not only in contempt of court, but was also a direct infraction of and a challenge on the administrative decision of INEC to recognize the appellants as ordered by the court. As I said earlier, the suit was filed in reaction to the action of the 1<sup>st</sup> respondent which wrote Exhibit D immediately INEC decided to do business with the appellants. There is no doubt that INEC is a party to this suit and is an agent of the Federal Government. Therefore, by Section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal High Court had jurisdiction to entertain this mat-**

**ter in addition to the power to protect its order which was violently violated by the respondent.** (pp. 944 E/945 B)

*Supreme Court - Jurisdiction*

**3. One issue I wish to consider albeit briefly is the declaration of the ruling/order of Nganjinwa, J. as a “nullity” by the learned senior counsel for the 1<sup>st</sup> respondent. The record shows that there is an appeal against the said ruling and is still pending. All the arguments about the status of the judgment of Nganjiwa, J. made before this court with due respect, is premature as the Supreme Court has no jurisdiction to hear appeals directly from the Federal High Court. I shall therefore, refrain from making any statement as regards the status of the said judgment of Nganjiwa J. I therefore resolve issue one in favour of the appellants.** (p. 945 G)

*Action - Party*

**4. The law is settled as a matter of general rule that no person is to be adversely affected by a judgment in an action to which he was not a party because of the injustice in deciding an issue against him in his absence unless he is a privy to a party in which case he is equally bound as the parties or he has so acted as to preclude himself from challenging the judgment in which case he is estopped by conduct.** (p. 946 D)

*ACTIONS - Multiplicity of suits - Different parties*

**5. This is not the case here. Apart from the fact that the appellants were not parties to the said case, the matter was an intra party dispute to which all the members of the party did not have a common interest such that they could all be bound by the outcome of the said case. Quite apart from that, it is trite that where the parties by multiplicity of suits are not the same there cannot be said to be abuse of court process in the sense of there being multiple actions between the same parties on the same subject matter.** (p. 946 E)

*COURTS - Issue - Suo motu raising*

**6. Again, the complaint that the court below raised the issue**

**of judgment in rem suo motu and used same to decide the case has not been challenged by the respondents in any of their issues in their respective briefs. It is trite that when a court raises a point suo motu, then the parties must be given an opportunity to be heard on the point; particularly the party that may suffer punishment as a result of the point raised suo motu.**

**In the instant case, by raising the issue suo motu and basing its decision on it without hearing arguments from the parties, the appellants were denied the opportunity of being heard. It was not open to the Court of Appeal to raise an issue which the parties did not raise themselves during the hearing of the appeal. When the Court of Appeal felt inclined to raise such a point for any reason, it should have given the parties an opportunity of making their comments upon it before it took a decision on the issue.**

**All I have endeavoured to say above is that issues 2 & 3 are resolved in favour of the appellants. (p. 946 G)**

**E APPEALS - Issue - Validity**

**7. I hold the view that the court below misconceived the real issue in controversy at the trial court which gave birth to the appeal before it. There was no controversy as to which organ of the 1<sup>st</sup> respondent (PDP) has power to conduct primaries. I can say it for the umpteenth time that the main issue was that stated by the learned trial judge. That is, whether the 1<sup>st</sup> respondent can ignore the subsisting order of court and set up a caretaker committee for Anambra State PDP in brazen contempt of the court. Period. Other issues that were thrown up were just to garnish the issue. Therefore, the court below having left the main issue in controversy and be persuaded to dwell on the issue as to which organ of PDP has power to conduct primary, went on a frolic and cannot be allowed to stand.**

**Accordingly, I hold that there was no feature in the case submitted by the appellants that warranted the court below to apply the cases of Okadigbo V. Emeka & Ors (supra) and Emenike V. PDP (supra). The two authorities decide on which**

**organ of a political party has power to conduct primaries. This is not the issue in this case. Thus, this issue is yet again resolved in favour of the appellants.** (p. 948 D)

*ACTIONS - Commencement - Originating summons*

**8. With due respect, the court below came to the above conclusion because it misconceived the claim of the appellants before it. It is trite that in determining whether the facts in support of an Originating Summons are contentions, it is the nature of the claim and the facts deposed to in the affidavit in support of the claims that will be examined to see if they disclose disputed facts and a hostile nature of the proceedings. I may ask: Is there any dispute that the Federal High Court made an order directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to recognize the appellants as Executive members of the PDP in Anambra State? The answer is No. Secondly, is there any dispute that the 2<sup>nd</sup> respondent wrote Exhibit E recognizing the 1<sup>st</sup> appellant and his executive committee members, as ordered by the court? The answer is No. So, what are we talking about? The issue before the trial court was whether the 1<sup>st</sup> respondent can rubbish the judgment/order of the court for whatever reason and set up a caretaker committee, other claims notwithstanding. For me, I strongly hold the view that there is no dispute on the relevant/essential facts granting the claims of the appellants which relate to the determination/interpretation of the action of the 1<sup>st</sup> respondent in setting up a caretaker committee of the PDP Anambra State Chapter during the pendency of the judgment/order of the Federal High Court recognizing the appellants as persons duly elected to that position.**

**The 1<sup>st</sup> and 3<sup>rd</sup> respondents have tried to raise issues which tend to show that there are conflicts as to facts. I do not see any. Those facts which seem to cause disputes are not relevant to the determination of the main issue before the court.**

**As it stands it is clear that the court below premised its decision on this issue on a wrong appreciation of the claim of the appellants before the trial Federal High Court, I hold therefore, that Originating Summons was properly used to commence this suit at the Federal High Court. This issue is re-**

## NOTABLE POINTS OF INTEREST

### **OKORO JSC**

#### ***1. Grounds must arise from judgment appealed against***

B Again, I find it difficult to agree with the learned counsel for the 1<sup>st</sup>  
respondent that these two grounds of appeal do not arise from the  
judgment of the Court of Appeal. It is trite that for a ground of ap-  
C peal to be valid and competent, it must arise from and be traceable  
to the judgment appealed against and should constitute a challenge  
to the ratio of the decision on appeal. It is still good law that when a  
ground of appeal as formulated does not arise from the judgment  
and purports to raise and attack an issue not decided by the judg-  
ment appealed against, the same becomes incompetent and liable to  
D be struck out. (p. 936 G)

#### ***2. Reply brief – Limited to new points of respondent’s***

The learned counsel for the appellant has not responded to the above  
objection. At least, I have searched the processes filed and I have not  
E seen any response. Be that as it may, it is trite that a reply brief under  
the Rules of this court is not to afford an appellant another or further  
bite at the cherry or opportunity to provide additional arguments in  
support of an appeal, but to answer, reply or respond to any fresh or  
F new points raised in the respondent’s brief. This court in many de-  
cided cases has laid emphasis on when a reply brief is necessary and  
what it should address. A reply brief is filed when an issue of law or  
argument raised in the respondent’s brief usually by way of prelimi-  
nary objection calls for a reply. Where a reply brief is necessary, it  
G should be limited to answering any new points arising from the re-  
spondent’s brief. Although the filing of a reply brief is not mandatory,  
where respondent brief raises issues or points of law not covered in  
the appellant’s brief, an appellant ought to file a reply as failure to file  
one without an oral reply to the points raised in the respondent’s  
H brief may amount to a concession or admission of the points of law  
or issues raised in the respondent’s brief. (p. 937 E)



### **REPRESENTATION**

Chief Chris Uche, SAN and G. Uche, SAN, (with James Odiba, Kanayo Okafor, Uzoma Nwosu-Iheme, Toyin Runsewe (Mrs), Angel Uche (Miss), EMIKE Imuekeme (Miss) and Olakunle Lawal) for Appellants.  
 Chief Olusola Oke (with him O. K. Akuyibo, Emenike Ikoro and Oluwaseyi Bamigboye) for the 1<sup>st</sup> Respondent. B  
 Hassan M. Liman, SAN (with him M. B. Usman, Fatima Bukar (Miss) and Amatulla A. Musa (Miss), for the 2<sup>nd</sup> Respondent.  
 Arthur Obi Okafor, SAN (with him Vincent Otaokpukpu, Okechukwu Otutu and David Agbana) for the 3<sup>rd</sup> Respondent C

### **CASES REFERRED TO**

Okadigbo v. Emeka (2012) 18 NWLR (pt. 1331) 55  
 Emenike v. PDP (2012) 18 NWLR (pt. 1315)  
 Harka Air Serv. Nig. Ltd. v. Keazor Esq. (2011) LPELR - 1353 (SC) D  
 Popoola v. Adeyemo (1992) 8 NWLR (pt. 257) 1  
 Longe v. FBN (2010) 6 NWLR (pt. 1189) I  
 Shuaibu v. Mailodu (1993) 3 NWLR (pt. 284) 748  
 Rossek v. ACE (1993) 8 NWLR (pt. 312) 382  
 Okoya v. Santili (1991) 7 NWLR (pt. 206) 753 E  
 Ehuwa v. Ondo State INEC (2007) All FWLR (pt. 351) 1415  
 Dapialong v. Dariye (2007) 4 SC (pt. 111) 118  
 Adigun v. The Secretary, Iwo L.G. (1999) 8 NWLR (pt. 613) 30  
 Onuoha v. Okafor (1983) 2 NCLR 244  
 Abdulkadir v. Maman (2003) 14 NWLR (pt. 836) 1 F  
 Pam v. (2008) 4 NWLR (pt. 1077) 224

### **STATUTES REFERRED TO**

Electoral Act 2010 (as amended), s. 87(9) G  
 Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 251(1)(r), 287  
 Evidence Act 2011, s. 173

### **LEAD JUDGMENT BY OKORO JSC**

This is an appeal against the judgment of the Court of Appeal, Abuja Division delivered on the 6<sup>th</sup> of February, 2015. In it, the lower court allowed the appeal of the 1<sup>st</sup> Respondent herein from the judgment of the Federal High Court, Abuja Division presided over by E. H

S. Chukwu, J, delivered on the 15<sup>th</sup> day of December, 2014. In order to appreciate the issues thrown up for the determination of this appeal, an understanding of the complicated facts of this case is sine qua non. I shall, as much as is practicable, summarize the facts as can be gleaned from the three volumes of the record of appeal.

B The Anambra State Executive Committee of the Peoples Democratic Party (PDP for short), led by the 1<sup>st</sup> appellant was elected into office on the 7<sup>th</sup> day of March, 2012 at the State congress election convened for that purpose. The election was duly monitored by the Independent National Electoral Commission. The said Commission later wrote Exhibit E found on pages 33 - 34 of Volume 1 of the record of appeal recognizing both the congress and the executive committee emerging there from.

However, sometime in March, 2012, one Emma Mbamalu, D alleging himself to be the Acting Chairman of the PDP, commenced an action at the High Court of the Federal Capital Territory in Suit No. FCT/CV/2631/2012 - Emma Mbamalu Vs PDP, to which none of the members of the 1<sup>st</sup> appellant's led state executive committee of the PDP was joined. Judgment was entered in favour of the Plaintiff E in that suit nullifying PDP Wards, local government and state congresses held on 3<sup>rd</sup> and 7<sup>th</sup>, 10<sup>th</sup> and 17<sup>th</sup> March. 2012 respectively. No order was however made against the Ejike Oguebego - led Anambra State Executive, not having been made parties to the case. Records show that even when the appellants herein sought to join in F the said suit as parties likely to be affected or interested party, the said court refused their application, stating that they had no interest in the matter as constituted.

When an attempt was made by certain elements in the PDP to G recognize one Ken Emeakayi (a former State Executive Chairman of PDP Anambra State Chapter), and his associates as the authentic PDP Executive Committee for Anambra State, the 1<sup>st</sup> and 2<sup>nd</sup> appellants herein, as members of the INEC-recognized Ejike Oguebego – led executive committee filed an action (during the annual vacation) H at the Port Harcourt Judicial Division of the Federal High Court in Suit No. FHC/PH/CS/213/2013 now Suit No. FHC/AWK/CS/247/2013. The action was brought in representative capacity such that all the members of the Anambra PDP Executive Committee were parties to the case.

On 12<sup>th</sup> September, 2013, the Federal High Court, presided over by Hon. Justice H. A. Ngajiwa ordered the PDP to maintain the status quo ante bellum, which is that the Ejike Oguebego-led State Executive Committee is the authentic PDP Anambra State Executive. Part of the order of the said court can be found on pages 22 - 24 of Volume 1 of the record of appeal as follows: B

*“That 1<sup>st</sup> and 2<sup>nd</sup> defendants are hereby ordered to recognize and deal with the plaintiffs in all election matters in Anambra State pending the hearing and determination of the substantive matter.”*

The 1<sup>st</sup> respondent herein appealed against the said order of the Federal High Court to the Court of Appeal in Appeal No. CA/PH/764/2013. The notice of appeal can be found at pages 25-28 of Volume 1 of the record of appeal. As at the time this appeal was taken, that appeal was still pending before the Court of Appeal. C

Mr. Ken Emeakanyi commenced another action in the Federal High Court, Abuja in suit No. FHC/ABJ/CS/680/2008 claiming to still be the Chairman of PDP Anambra State Chapter. The said suit was dismissed by E. S. Chukwu, J. of the Federal High Court, Abuja. D

When the 1<sup>st</sup> respondent, during the pendency of the orders of the Federal High Court and Exhibit E written by INEC, set up a caretaker committee to run the affairs of PDP, Anambra State Chapter, the present appellants being persons affected by the said act of the 1<sup>st</sup> respondent, approached the Federal High Court by way of an originating summons dated and filed on the 17<sup>th</sup> of November, 2014, presented the following questions for determination, namely; E F

1. Whether in view of the subsisting and binding order of interlocutory injunction made by this Honourable Court in Suit No. FHC/PH/CS/213/2013) (now Suit No. FHC/AWK/CS/247/2013) – Ejike Oguebego & 2 Ors Vs. Peoples’ Democratic Party & Anor (which order and suit is also subject of pending appeal before the Port Harcourt Judicial Division of the Court of Appeal in Suit No. CA/PH/764/2013 – Peoples’ Democratic Party Vs. Ejike Oguebego & 3 Ors) the 1<sup>st</sup> Defendant can validly set up a caretaker committee to run, or oversee the affairs or conduct any delegate election or primaries of the Peoples’ Democratic Party, Anambra State Chapter. G H

2. Whether the caretaker committee set up by the 1<sup>st</sup> defendant is not an illegal and unconstitutional body when the tenure of the Ejike Oguebego led state executive committee is still subsisting func-

tioning and duly recognised by the court and the 2<sup>nd</sup> Defendant.

3. Whether the acts, decisions and any delegate list or nominated candidates that may emanate from the congresses and primaries conducted by the caretaker committee set up by the 1<sup>st</sup> Defendant is not illegal, invalid, unconstitutional and therefore null and void  
B and of no effect whatsoever nor can the said list be used for any purpose for the conduct of the 2015 general election.

4. Whether the defendants in this case are not bound to recognize and accept the list of delegates and nominate candidates that  
C may emanate from the congresses and primaries conducted by the Plaintiff in this case.

The plaintiffs then sought the following reliefs from the Federal High Court, namely:

1. A DECLARATION that the 1<sup>st</sup> defendant cannot legally and  
D validly set up a caretaker committee or any other body whatsoever when the order of interlocutory injunction made by this Honourable Court in Suit No. FHC/PH/CS/213/2013 now suit No. FHC/AWK/CS/247/2013 - Ejike Oguebego & 2 Ors. Vs. Peoples' Democratic Party & 1 Or (which order and suit is also subject of pending appeal  
E before the Port Harcourt Judicial Division of the Court of Appeal in CA/PH/764/2013 - Peoples' Democratic Party VS Ejike Oguebego & 3 Ors) is still subsisting and subject of an appeal.

2. A DECLARATION that the caretaker committee set up by  
F the 1<sup>st</sup> Defendant is an illegal and unconstitutional body when the tenure of the Ejike Oguebego led state executive committee is still subsisting, functioning and duly recognized by the court and the 2<sup>nd</sup> Defendant.

3. A DECLARATION that the acts, decisions and delegate list  
G or nominated candidates that may emanate from the congresses and primaries conducted by the caretaker committee set up by the 1<sup>st</sup> defendant is illegal, invalid unconstitutional and therefore null and void and of no effect whatsoever nor can the said list be used for any purpose for the conduct of the 2015 general elections with regard to  
H the Peoples' Democratic Party Anambra State Chapter.

4. AN ORDER OF THIS HONOURABLE COURT that the defendants in this case are bound to recognize and accept the list of and nominated candidates that may emanate from the congresses and primaries conducted by the plaintiff in this case.

5. AN ORDER OF PERPETUAL INJUNCTION restraining the 2<sup>nd</sup> defendant, its agents, servants, privies, assigns, officials whatsoever name they may be called from accepting or receiving any delegates list or nominated candidates that may emerge from the congresses or primaries conducted by the caretaker committee set up by the 1<sup>st</sup> Defendant for the Peoples' Democratic Party Anambra State Chapter except those that emanate from the plaintiffs. B

After full trial and fully hearing the parties and considering the totality of the evidence before it, the trial court granted the reliefs sought in the following terms as contained at pages 851-853 of Volume 2 of the record of appeal, as follows:- C

1. It is hereby ordered that the purported caretaker committee or Ad-hoc Committee set up by the 1<sup>st</sup> defendant during the subsistence and pendency of this suit is illegal, null and void.

2. It is further ordered that any delegate list or nominated candidates that emanate from the congresses and primaries conducted by the caretaker committee or Ad-hoc Committee set up by the 1<sup>st</sup> defendant during the pendency and subsistence of this suit is illegal, invalid, unconstitutional, abuse of court process, null and void and cannot be used for any purpose. D E

3. The 1<sup>st</sup> defendant, agents and privies are hereby restrained from forwarding, sending or submitting to the 2<sup>nd</sup> defendant any delegates' list or nominated candidates that may emerge from the congresses or primaries conducted by the Caretaker Committee set up by the 1<sup>st</sup> defendant for the PDP. F

4. That the 1<sup>st</sup> defendant, its agents, servants, privies are restrained from forwarding, sending or submitting to the 2<sup>nd</sup> defendant any delegates list or nominated candidates that may emerge from the congresses or primaries conducted by the purported caretaker committee set up by the 1<sup>st</sup> defendant for the Peoples' Democratic Party Anambra State Chapter except those that emanate from the plaintiffs' congresses and primaries election. G

5. That the 2<sup>nd</sup> defendant, its agent, servants, privies, assigns, officials whatsoever name they may be called are restrained from accepting or receiving any delegate list or nominated candidates that may emerge from the congresses or primaries conducted by the caretaker committee set up by 1<sup>st</sup> defendant for People Democratic Party Anambra State Chapter except those that emanate from plaintiffs. H

6. That the 1<sup>st</sup> defendant Peoples' Democratic Party by the purported appointment of a caretaker committee to oversee, run the affairs and conduct elections from the Peoples' Democratic Party, Anambra State Chapter is in flagrant disobedience and contempt of the Order of this Honourable Court made by Hon. Justice E. S. Chukwu on the 10<sup>th</sup> day of October, 2014 and re-affirmed on the 24<sup>th</sup> in Suit No. FHC/ABJ/CS/680/2014 - Ken Emeakayi Vs Peoples' Democratic Party & Ors.

Dissatisfied with the judgment of the trial Federal High Court, the 1<sup>st</sup> respondent herein (as appellant) appealed against the said judgment. On 6<sup>th</sup> February, 2015, the Court of Appeal, Abuja Division set aside the judgment of the Federal High Court, hence, this appeal. Notice of appeal was filed on 10<sup>th</sup> February, 2015. This is contained in the supplementary record of appeal filed on 13<sup>th</sup> March, 2015. There are eight grounds of appeal contained in the said notice of appeal. In accordance with the rules of this court, parties filed and exchanged briefs except the 2<sup>nd</sup> respondent that did not file any brief. On 2<sup>nd</sup> November 2015 when this appeal was heard, counsel for both parties adopted their various briefs.

In the brief of the appellants settled by Chief Chris Uche, SAN leading other counsel, five issues are formulated for the determination of this appeal as follows:

1. Whether the Court of Appeal was right in holding that the trial judge should not have assumed jurisdiction over the subject matter of this case relating to the protection of the sanctity of the judicial process of which the 1<sup>st</sup> respondent was in contempt and also relating to an executive and/or administrative decision of the Independent National Electoral Commission. (Grounds 1 and 2)

2. Whether the Court of Appeal was right to have held that the case of the appellants was an abuse of court process on the basis of another case that the appellants are not parties to. (Ground 3)

3. Whether the Court of Appeal was competent to determine the issue of whether the case of the appellants was an abuse of court process on the basis of a point raised by the court suo motu and in respect of which the parties were not called upon to address the court. (Ground 4)

4. Whether the cases of Okadigbo V. Emeka & others (2012) 18 NWLR (pt. 1331) 55 and Emenike V. PDP (2012) 18 NWLR (pt.

1315) have any relevance to the real issues that arose for determination before the Court of Appeal. (Grounds 5 and 6)

5. Whether the case of the appellants was rightly commenced by originating summons. (Ground 7)

Chief Olusola Oke, of counsel for the 1<sup>st</sup> respondent, however submits that only two issues can determine this appeal. On page 13 B of the 1<sup>st</sup> respondent's brief are the two issues stated as follows:

1. Whether the Court of Appeal was not right in its decision striking out appellant's suit on the ground that same was incompetent and that the trial court lacked jurisdiction to entertain it.

2. Was the Court of Appeal in error in applying the principle C enunciated in the case of EMEKA V. OKADIGBO (2012) 18 NWLR (pt. 1315) in the resolution of issue of who between the 1<sup>st</sup> respondent's National Executive Committee and the State Chapter is clothed with authority to organize and conduct the 1<sup>st</sup> respondent's primary D elections and submit to the 2<sup>nd</sup> respondent 1<sup>st</sup> respondent's list of candidates.

The 3<sup>rd</sup> respondent, through his senior counsel, Arthur Obi Okafor, SAN, has distilled three issues for determination. The three E issues are:

1. Whether the court below was right in striking out the appellants' action on the premises that the trial court had no jurisdiction to hear the matter.

2. Whether the court below was not right in applying the cases F of Emeka V. Okadigbo (2012) 18 NWLR (pt. 1332) 55 and Emenike V. PDP (2012) 18 NWLR (pt. 1315) in resolving the issues that arose in the 1<sup>st</sup> respondent's appeal at the court below.

3. Whether the court below was right in holding that the case G of the appellants was not properly commenced and determined under Originating Summons.

Before I take any further steps in this judgment, there are some preliminary issues to be determined. The 1<sup>st</sup> respondent filed notice of preliminary objection on page 10 of its brief of argument. The said H notice of preliminary objection (without the particulars) states:

***"NOTICE OF PRELIMINARY OBJECTION"***

Take notice that the 1<sup>st</sup> respondent will before or at the hearing of the appeal raise and rely on preliminary objection on point of law to urge this Honourable Court to strike out the appeal as incompe-

tent on the ground that the purported Notice of appeal dated 10<sup>th</sup> February, 2015 is not before this court and that grounds 1 & 2 on which issue 1 was said to have arisen did not arise from the judgment of the lower court.

Now, on the first leg of the objection, it is unnecessary and a waste of precious judicial time to summarize the argument of parties on it as the said Notice of appeal is contained in the supplementary record of appeal filed on 13<sup>th</sup> March, 2015, the other three volumes of record of appeal having been filed on 10<sup>th</sup> March, 2015. So, there is no merit in the said ground of objection.

The other ground of objection is that grounds 1 & 2 of the grounds of appeal and issue No. 1 arising therefrom do not arise from the judgment of the lower court. For ease of reference, I shall reproduce the two grounds of appeal complained of. They state thus:

“Ground 1:

The learned Justices of the Court of Appeal erred in law when they allowed the 1<sup>st</sup> respondent’s appeal on the ground that the trial court lacked the jurisdiction to entertain the appellants’ action.

Ground 2:

The learned Justices of the Court of Appeal erred in Law when they held as follows:

*“In this case, only the 3<sup>d</sup> respondent is an agency of the Federal Government. The appellant (PDP) has been held not to be an agency of the Federal Government. See PDP VS SYLVA supra. There is no deposition in the originating summons complaining against a decision or action of the 3<sup>d</sup> respondent. Since the subject matter of the case (acts of the appellant) does not question the administrative action of the 3<sup>d</sup> respondent, the lower court had no jurisdiction to entertain the matter.”*

Again, I find it difficult to agree with the learned counsel for the 1<sup>st</sup> respondent that these two grounds of appeal do not arise from the judgment of the Court of Appeal. It is trite that for a ground of appeal to be valid and competent, it must arise from and be traceable to the judgment appealed against and should constitute a challenge to the ratio of the decision on appeal. It is still good law that when a ground of appeal as formulated does not arise from the judgment and purports to raise and attack an issue not decided by the judgment appealed against, the same becomes incompetent and li-



able to be struck out. See *Co-operative & Commerce Bank PLC & Anor. V. Jonah Dan Okoro Ekperi* (2007) 3 NWLR (pt. 1022) 493.

However, that is not the situation here. Both grounds 1 & 2 relate positively and are traceable to the judgment of the lower court appealed against. To make the matter clearer, the portion of the judgment appealed against in ground 1 is even lifted from the judgment as pronounced. I am really surprised that the learned counsel for the 1st respondent raised this preliminary objection. The preliminary objection of the 1<sup>st</sup> respondent to the hearing of this appeal is hereby adjudged unmeritorious and is accordingly overruled.

There is yet another preliminary issue. The learned senior counsel for the 3<sup>rd</sup> respondent had filed a motion on notice praying for an order of this court to strike out paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 4.3, 4.4, 4.5, 4.7, 4.8, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12 and 5.13 of the appellants' reply brief of argument. According to learned counsel, these paragraphs are matters earlier dealt with by the appellants in their brief of argument. That the arguments in those paragraphs are made to beef up the appellants' argument in their brief.

The learned counsel for the appellant has not responded to the above objection. At least, I have searched the processes filed and I have not seen any response. Be that as it may, it is trite that a reply brief under the Rules of this court is not to afford an appellant another or further bite at the cherry or opportunity to provide additional arguments in support of an appeal, but to answer, reply or respond to any fresh or new points raised in the respondent's brief. This court in many decided cases has laid emphasis on when a reply brief is necessary and what it should address. A reply brief is filed when an issue of law or argument raised in the respondent's brief usually by way of preliminary objection calls for a reply. Where a reply brief is necessary, it should be limited to answering any new points arising from the respondent's brief. Although the filing of a reply brief is not mandatory, where respondent brief raises issues or points of law not covered in the appellant's brief, an appellant ought to file a reply as failure to file one without an oral reply to the points raised in the respondent's brief may amount to a concession or admission of the points of law or issues raised in the respondent's brief. See *Harka Air Services (Nig) Ltd V. Keazor Esq* (2011) LPELR - 1353

(SC), *Popoola v. Adeyemo* (1992) 8 NWLR (pt. 257) 1, *Longe V. FBN* (2010) 6 NWLR (pt. 1189), I, *Shuaibu V. Mailodu* (1993) 3 NWLR (Pt. 284) 748.

In the instant appeal, I have perused the reply brief filed by the learned senior counsel for the appellants particularly the paragraphs complained of and I say with certainty that they do not offend any known rule governing reply briefs. They are, in my opinion modest responses to points of law and new issues raised in the 1<sup>st</sup> respondent's brief. Curiously, the 1<sup>st</sup> respondent whose brief is being replied to has not complained. The appellants did not file a reply brief to 3<sup>rd</sup> respondent's brief and yet the 3<sup>rd</sup> respondent has found umbrage in attacking the said reply brief which did not directly concern him. Be that as it may, the said prayer to strike out those paragraphs does not fly. The prayer is hereby refused as I hold that the said reply brief is proper and within the confines of the rules of this court. The two preliminary objections are accordingly, overruled.

Having determined all preliminary issues in this appeal, the coast is now clear for me to determine the appeal on its merit and that is why the parties are before us. I shall determine this appeal based on five issues distilled by the appellants.

Issue one has to do with the decision of the lower court that the trial Federal High Court lacked the jurisdiction to entertain this matter. Both the 1<sup>st</sup> and 3<sup>rd</sup> respondents also have this as their issue number one.

In his argument the learned senior counsel for the appellants submitted in the main that the decision of the lower court was arrived at in total misconception of the pith and substance of the case of the appellants at the Federal High Court. It is his contention that the suit was not a claim brought under Section 87(9) of the Electoral Act, 2010 (as amended) to complain about the conduct of primary election, nor was it a dispute over which organ of the political party that has the authority and competence to conduct primary election.

According to him, the originating summons speaks for itself on what the case of the appellants was at the trial High Court.

After going memory lane by reiterating the facts of this case, senior counsel for the appellants submitted that the action instituted by the appellants in suit No. FHC/ABJ/CS/854/2014 was to challenge the constitutionality and legality of the appointment of a Care-

taker Committee by the 1<sup>st</sup> respondent to take over the duties of the appellants contrary to the mandatory order of the Federal High Court commanding 1<sup>st</sup> and 2<sup>nd</sup> respondents to deal with the appellants as Executive Committee of the party in Anambra State and in the face of the letter by INEC (2<sup>nd</sup> respondent) recognizing the appellants as the authentic executive of 1<sup>st</sup> respondent, Anambra State Chapter. B

It is his contention that the Federal High Court has jurisdiction to protect the sanctity of its order as well as its processes and proceedings which the 1<sup>st</sup> respondent chose to disobey, relying on the cases of *Rossek V. ACE* (1993) 8 NWL,R (pt. 312) 382 at 471, *Okoya & Ors V. Santili & ORS* (1991) 7 NWLR (pt. 206) 753 at 770. C

Referring to section 251(1) (r) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), he submitted that there is nothing in the words used therein to suggest that a complaint has to be made against the Federal Government or its agency or that the decision of the Federal Government or its agency has to be challenged. It is his submission that upon a broad and purposive interpretation of the section, the jurisdiction created encompasses where the beneficiary of the executive or administrative decision of the Federal Government or its agency uses in order to protect that action or decision from infringement by any person, citing the cases of *Ehuwa V. Ondo State INEC* (2007) ALL FWLR (pt. 351) 1415 at 1448 pages E-H, *Dapialong & 5 Ors V. Dariye & Anor* (2007) 4 SC (pt. 111) 118 at 178-177 lines 10-20. D E

Learned senior counsel submitted finally on the issue that if consideration is taken of reliefs 4 and 5 of the appellant's claims, it cannot be contended that the presence of the 2<sup>nd</sup> respondent (INEC) was cosmetic. That apart from complying with the order of the Federal High Court in Suit No. FHC/PH/213/2013 now Suit No. FHC/AWK/CS/247/2013, *Ejike Oguebego & 2 Ors V. PDP & 3 Ors*, INEC independently, in exercise of its statutory duties pursuant to Sections 85 and 86 of the Electoral Act, took a far reaching decision to recognize the appellants as PDP Executive in Anambra State. Referring to Exhibit E, the said letter of INEC, he opined that the Federal High Court had jurisdiction to entertain the matter contrary to the decision of the court below. He urged this court to resolve this issue in favour of the appellants. F G H

In response to this issue, the learned counsel for the 1<sup>st</sup> re-

spondent has thrown up many issues and arguments which appear to clog his case. Be that as it may, I shall wade through it to bring out those arguments relevant to the issue as to whether the court below was right to hold that the trial Federal High Court lacked the jurisdiction to determine the claims of the appellants.

B After identifying eight reasons why the court below held that the trial Federal High Court did not have jurisdiction to try the case, learned counsel submitted that the appellants failed to attack these findings but busied themselves with what they perceive as the sacrosanct and immutability of the order of Nganjiwa, J.

C According to learned counsel, the judgment of Kekemeke, J., had nullified the election of the appellants and their attempt to appeal against it was rebuffed by the court which held that their committee did not exist in the eye of the law. He submitted that the suit  
D the appellants filed which gave rise to this appeal was an abuse of court process and that the court below was right to hold that the trial court lacked the jurisdiction to try the case, relying on the case of Adigun V. The Secretary, Iwo Local Government (1999) 8 NWLR (pt. 613) 30 at 38 paras E-G.

E Furthermore, learned counsel submitted that the interlocutory order made by Nganjiwa, J. was a nullity since according to him, it was given without jurisdiction.

Again, it was contended that the Federal High Court either under Section 251(1) (r) of the 1999 Constitution of the Federal  
F Republic of Nigeria (as amended) or Section 87(9) of the Electoral Act 2010 (as amended) is without jurisdiction to entertain a suit on the election of political parties, a matter in the domestic realm of a political party and thus not justifiable citing Onuoha V. Okafor (1983) 2 NCLR 244, Abdulkadir V. Yusuf Maman (2003) 14 NWLR (pt. 836) 1 and Pam V. (2008) 4 NWLR (pt. 1077) 224.  
G

On the submission by the appellants that they were not bound by Kekemeke J's judgment, learned counsel, relying on Section 173 of the Evidence Act, 2011 and the case of Alapo V. Agbokekere (2010)  
H 9 NWLR (pt. 1199) 30 at 44, submitted that as members of the PDP, the appellants are its privies and are therefore bound by any judgment declaring a legal status against it.

Learned counsel submitted further that assuming but not conceding that the lower court wrongly applied the doctrine of estoppel

per rem judicata, other grounds exist in the judgment that will sustain it. That it is not every slip in the judgment that will warrant it being set aside, relying on the cases of *Ugwu v. State* (2013) 14 NWLR (pt. 1374) 257, *Eyiboh v. Abia* (2012) 16 NWLR (pt. 1325) 51 at 82-83.

Finally, on the argument that it was the administrative functions of INEC to recognize the Executive Committee led by the appellants, learned counsel submitted that it is not part of the duties of INEC to recognize state executive of a political party. Also that INEC cannot under the guise of executive or administrative decision, set aside the decision and/or order of a court. According to him, it is the principal relief that determines the jurisdiction of a court and ancillary relief citing *Ahmed* (2013) 15 NWLR (pt. 1377) 274 at 348. He opined that the case of *Jev V. Iyortom* (2014) 14 NWLR (pt. 1428) 575 cited by the appellants is inapplicable. He urged the court to resolve this issue in favour of the 1<sup>st</sup> respondent.

In his response on behalf of the 3<sup>rd</sup> respondent, the learned senior counsel, Arthur Obi Okafor, SAN, submitted that the appellants' contention that their suit is not a challenge as to who should conduct the party primaries and whose list of candidates should be submitted to INEC is tenuous when considered in the light of the printed record. Referring to reliefs 4, 5, and 6 in the Originating Summons and the judgment of the trial court ceding to the reliefs sought, the learned senior counsel opines that the appellants are just trying to make out a new case on appeal.

According to learned senior counsel, issues relating to conduct of party primaries or anticipated conduct of primaries are political questions within the internal affairs of a political party which are generally not justiciable except as provided for in Section 87 of the Electoral Act 2010 (as amended). He contended that the appellants failed to bring themselves within the purview of the said Section 87(9) of the Electoral Act, relying on *Ukachukwu V. PDP & Ors* (2014) 17 NWLR (pt. 1435) 134 at 201, *Emenike V. PDP* (2012) 12 NWLR (pt. 1315) 556 at 598.

Just like the learned senior counsel for the 1<sup>st</sup> respondent, the learned senior counsel referred to *Kekemeke J*, judgment, issue of abuse of court process and Section 287 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and submitted that the court below was right to hold that the Federal High Court lacked the

jurisdiction to hear the case. He then joined in urging this court to resolve this issue in favour of the respondents.

Let me say from the outset that the facts leading to this appeal are a product of the struggle for the soul of the Peoples Democratic Party, Anambra State Chapter. As a result, many suits were filed by various contenders seeking the control of the executive committee of the State Chapter of the party. This appeal is an off-shoot of one of those suits. The sequence of events leading to the filing of the suit giving birth to this appeal clearly demarcate this matter from the many issues thrown up by the respondents which appear to make the appeal confusing.

There is no doubt that the Federal High Court in Suit No.FHC/PH/213/2013, now Suit No. FHC/AWK/CS/247/2013, on 12<sup>th</sup> September, 2013, made an interlocutory order to the effect that the PDP and INEC should recognize and deal with the Ejike Oguebego led State Executive Committee of the PDP, Anambra State Chapter in all election matters in Anambra State. Dissatisfied, the PDP (1<sup>st</sup> respondent herein filed an appeal against the said order in appeal No. CA/PH/764/2013. That appeal, the records show, is still pending.

On 23<sup>rd</sup> October, 2014, the 3<sup>rd</sup> respondent herein wrote Exhibit E, clearly, in obedience to the court order made by H. A. Nganjiwa, J on 12<sup>th</sup> September, 2013.

The content of Exhibit E is so important and I shall reproduce it as follows:

*“INEC/LEG/LM/AN/04/V/541 23<sup>rd</sup> October, 2014*  
*Taiwo Abe & Co.,*  
*No. 16 James Brown Street,*  
*Gwarimpa, Abuja*

*RE: CURRENT STATUS OF THE LEADERSHIP OF PEOPLES DEMOCRATIC PARTY IN ANAMBRA STATE*

*1. The Commission acknowledged receipt of your letter dated 20<sup>th</sup> October, 2014 and the enclosed certified true copy of court orders and originating process in Suit No. FHC/PH/CS/213/13 between Ejike Oguebego & 2 Ors Vs. PDP & 3 Ors on the leadership of the Peoples Democratic Party in Anambra State.*

*2. The Commission monitored a State Congress of the Peoples Democratic Party in Anambra State at which Chief Ejike Oguebego was elected as chairman of the party in the state.*

3. *It is worthy of note that the Federal High Court, Port Harcourt Division in its Ruling of 12<sup>th</sup> September, 2013 in Suit No. FHC/PH/CS/213/13 between Ejike Oguebego & 2 Ors VS. PDP & 3 Ors ordered both the Peoples Democratic Party and INEC to recognize and deal with Ejike Oguebego led State Executive in all elections in Anambra State. The said order is still subsisting and an appeal arising thereto is yet to be determined at the Court of Appeal.* B

4. *Consequently, the Commission will continue to recognize Chief Ejike Oguebego as the Chairman of PDP in Anambra State until specifically ordered otherwise by a court of law.* C

5. *Please, accept the assurances of the Commission.*

*Signed*

*Musa H. Adamu*

*For: Secretary to the Commission”*

See pages 33-34 of Volume 1 of the record of appeal. D

As was rightly pointed out by the learned senior counsel for the appellants, about a week after the above letter by INEC recognizing the appellants as the authentic executive committee of the PDP – Anambra State and specifically, on 30<sup>th</sup> October, 2014, the 1<sup>st</sup> respondent wrote Exhibit D setting up a Caretaker Committee to “oversee the affairs of the Anambra State Chapter until congresses are held.” See page 32 of volume 1 of the record of appeal. The originating summons challenging the action of the 1<sup>st</sup> respondent was filed on 17<sup>th</sup> November, 2014. I have already set out all the questions for determination in the originating summons and I need not repeat it here. Be that as it may, I shall refer to the main question which is the first one. He states: E F

*“(1) Whether in view of the subsisting and binding order of interlocutory injunction made by this Honourable Court in Suit No. FHC/PH/CS/213/2013 (Now Suit No. FHC/AWK/CS/247/2013) – EJIKE OGUEBEGO & 2 ORS. VS. PEOPLES DEMOCRATIC PARTY & ANOTHER (which order and suit is also subject of pending appeal before the Port Harcourt Judicial Division of the Court of Appeal in Suit No. CA/PH/764/2013 – PEOPLES DEMOCRATIC PARTY VS. H EJIKE OGUEGBO & 3 ORS) the 1<sup>st</sup> defendant can validly set up a caretaker committee to run, or oversee the affairs or conduct any delegate election or primaries of the Peoples Democratic Party, Anambra State Chapter.”*

From the above facts and the main question raised for determination in the Originating Summons, it is clear that the action instituted by the appellants at the Federal High Court was to challenge the constitutionality and legality of the appointment to take over the duties of the Anambra State Executive Committee of PDP when there B is in existence a mandatory order of the Federal High Court commanding the 1<sup>st</sup> and 2<sup>nd</sup> respondents to deal with the Ejike Oguebego led Anambra State Executive Committee in all election matters.

I agree entirely with the learned senior counsel for the appellants that the suit was neither a claim brought under Section 87(9) of C the Electoral Act, 2010 (as amended) to complain about the conduct of a primary election nor a dispute over which organ of the political party i.e. the PDP that has the authority and competence to conduct a primary election, questions 4 and 5 in the Originating Summons D notwithstanding.

***It is a trite principal of law that any person against whom a decision of a court is given is duly bound to obey it irrespective of whether the person against whom the order is made is of the opinion that the order is void. He is bound to obey the order until it is set aside.*** See Rossek V. A.C.B. (1993) 8 NWLR (pt. 312) 382, Williams V. Sanusi (1961) ALL NLR 33, Ajao V. Alao (1986) 5 NWLR (pt. 45) 802, Melifonwu V. Egbiyi (1982) 9 SC 145.

***It was contended by the 1<sup>st</sup> and 3<sup>rd</sup> respondents that the trial Federal High Court had no jurisdiction to entertain the suit. The court below also took this position. I disagree. I am in full agreement with the learned senior counsel for the appellants that the Federal High Court had jurisdiction to protect the sanctity of its mandatory order as well as its processes and proceedings when the 1<sup>st</sup> respondent chose to act in gross disobedience to its order made on 12<sup>th</sup> September, 2013. A court of law has the jurisdiction to protect its own judgment from being ridiculed or disparaged as done by the 1<sup>st</sup> respondent in this case. Any disobedience to court's order H is a serious contempt and courts of law must protect themselves from being maligned and/or ridiculed.*** See Jev VS. Iyortom (2014) 14 NWLR (pt. 1428) 575 at 628 para. H.

The court below did not consider this matter on this plane. It rather went ahead to hold on page 1285 of Volume 3 of the record



of appeal that:-

*“There is no deposition in the originating summons complaining against a decision or action of the 3<sup>d</sup> respondent. Since the subject matter of the case (acts of the appellant) does not question the administrative action of the 3<sup>d</sup> respondent, the lower court had no jurisdiction to entertain the matter under Section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).”* B

**I think the court below came to the above conclusion without taking into consideration the fact that although the Federal High Court made the order on 12<sup>th</sup> September, 2013, the 1<sup>st</sup> respondent did not react to the said order until a week after INEC wrote exhibit E on 23<sup>rd</sup> October, 2014. A simple commonsensical deduction is that the 1<sup>st</sup> respondent’s action was a reaction to a decision of INEC to obey the judgment of the Federal High Court and to recognize the appellants as the authentic Executive Committee of the PDP Anambra State Chapter. As was rightly submitted by the learned senior counsel for the appellants, Exhibit D, written by the 1<sup>st</sup> respondent was not only in contempt of court, but was also a direct infraction of and a challenge on the administrative decision of INEC to recognize the appellants as ordered by the court. As I said earlier, the suit was filed in reaction to the action of the 1<sup>st</sup> respondent which wrote Exhibit D immediately INEC decided to do business with the appellants. There is no doubt that INEC is a party to this suit and is an agent of the Federal Government. Therefore, by Section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal High Court had jurisdiction to entertain this matter in addition to the power to protect its order which was violently violated by the respondent.** C D E F G

**One issue I wish to consider albeit briefly is the declaration of the ruling/order of Nganjnwa, J. as a “nullity” by the learned senior counsel for the 1<sup>st</sup> respondent. The record shows that there is an appeal against the said ruling and is still pending. All the arguments about the status of the judgment of Nganjiwa, J. made before this court with due respect, is premature as the Supreme Court has no jurisdiction to hear appeals directly from the Federal High Court. I shall there-** H

**fore, refrain from making any statement as regards the status of the said judgment of Nganjiwa J.** See Ibori V. Agbi (2004) 6 NWLR (pt. 868) 78 at 143, Sunday Oduntan V. General Oil Ltd (1995) 4 NWLR (pt. 387) 8. **I therefore resolve issue one in favour of the appellants.**

B Issues 2 and 3 in the appellant's brief were argued together by the learned senior counsel for the appellants. The 2<sup>nd</sup> issue has to do with abuse of court process while the 3<sup>rd</sup> issue is that the issue was raised suo motu and resolved by the court below without giving the parities an opportunity to be heard. The record shows that none of the respondents herein responded to these two issues. Be that as it may, I state clearly that the appellants, not being parties to the case of Emma Mbamalu V. PDP – Suit No: PHC/CV/2231, cannot be bound by the judgment emanating therefrom and cannot be held to have litigated issues that had never been decided against them. **The law is settled as a matter of general rule that no person is to be adversely affected by a judgment in an action to which he was not a party because of the injustice in deciding an issue against him in his absence unless he is a privy to a party in which case he is equally bound as the parties or he has so acted as to preclude himself from challenging the judgment in which case he is estopped by conduct.** See Clay Industries Ltd V. Aina (1997) 7 SCNJ 491 at 509. **This is not the case here. Apart from the fact that the appellants were not parties to the said case, the matter was an intra party dispute to which all the members of the party did not have a common interest such that they could all be bound by the outcome of the said case. Quite apart from that, it is trite that where the parties by multiplicity of suits are not the same there cannot be said to be abuse of court process in the sense of there being multiple actions between the same parties on the same subject matter.** See Ogoejofo V. Ogoejofo (2006) 3 NWLR (pt. 966) 205 at 226.

**Again, the complaint that the court below raised the issue of judgment in rem suo motu and used same to decide the case has not been challenged by the respondents in any of their issues in their respective briefs. It is trite that when a court raises a point suo motu, then the parties must be given an opportunity to be heard on the point; particularly the party**

**that may suffer punishment as a result of the point raised suo motu.** See Adegoke V. Adibi (1992) 6 SCNJ 136, Odiase V. Agbo (1972) 1 ALL NLR (pt. 1) 170, Ajao V. Ashiru (1973) 11 SC. 23.

**In the instant case, by raising the issue suo motu and basing its decision on it without hearing arguments from the parties, the appellants were denied the opportunity of being heard. It was not open to the Court of Appeal to raise an issue which the parties did not raise themselves during the hearing of the appeal. When the Court of Appeal felt inclined to raise such a point for any reason, it should have given the parties an opportunity of making their comments upon it before it took a decision on the issue.** See also Ndiwe V. Okocha (1992) 7 SCNJ. 355, Iriri V. Erhuhobara (1991) 2 NWLR (pt. 173) 252 at 265, Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

**All I have endeavoured to say above is that issues 2 & 3 are resolved in favour of the appellants.**

The next issue is No. 4 which is the 1<sup>st</sup> respondent's issue No. 2 and the 3<sup>rd</sup> respondent's issue 2 also. Briefly put, it is whether the cases of Okadigbo V. Emeka & Ors (2012) 18 NWLR (pt. 1331) 55 and Emenike V. PDP (2012) 18 NWLR (pt. 1315) have any relevance to the real issues that arose for determination before the Court of Appeal.

Both the appellants and the respondents have raised arguments for and against this issue respectively. I held in the first issue earlier in this appeal that the main contention in this suit relates to the setting up of a caretaker committee in spite of a subsisting court order recognizing the appellants as constituting the authentic executive committee of the PDP, Anambra State Chapter. This, the learned trial judge held on page 850 of the record as follows:-

*"On the substantive suit, I have listened to the various issues raised by the defence counsel and the plaintiff counsel in this suit. I will make it clear that both counsel went on voyage of discovery. I am not here in this suit to determine who is the executive of PDP in Anambra State. The issue is predicated on a narrow compass, can the 1<sup>st</sup> defendant in view of the subsisting order and judgment of this court go ahead to appoint caretaker or ad hoc committee. What is more, they boldly boast on the network news that even if the care-*

*taker is nullified, they will appoint another one.”*

The court below, however, veered from the course set by the trial court and took the matter to another level which clearly failed to take into consideration the main issue before the trial court. On page 1291 of Volume 3 of the record of appeal the Court of Appeal held  
B as follows:-

*“It is established beyond peradventure that it is the National Executive Committee of the appellant which has the power to conduct a valid primary for the nomination or selection of candidates for a general election. See Emeka V. Okadigbo supra and Emenike V. PDP supra. Reliefs 3, 5 and 6 were predicated on the possibility of congress and primary being conducted by the caretaker committee set up by the appellant. There was no evidence to back this up. Exhibit D at page 32 of Volume 1 of the record (the letter of PDP appointing the South East Zonal Executive to oversee the affairs of the Anambra State Chapter “until congresses are held”) does not suggest that the congresses were to be held by South East Zonal Executive.”*  
C  
D

***I hold the view that the court below misconceived the real issue in controversy at the trial court which gave birth to the appeal before it. There was no controversy as to which organ of the 1<sup>st</sup> respondent (PDP) has power to conduct primaries. I can say it for the umpteenth time that the main issue was that stated by the learned trial judge. That is, whether the 1<sup>st</sup> respondent can ignore the subsisting order of court and set up a caretaker committee for Anambra State PDP in brazen contempt of the court. Period. Other issues that were thrown up were just to garnish the issue. Therefore, the court below having left the main issue in controversy and be persuaded to dwell on the issue as to which organ of PDP has power to conduct primary, went on a frolic and cannot be allowed to stand.***  
E  
F  
G

***Accordingly, I hold that there was no feature in the case submitted by the appellants that warranted the court below to apply the cases of Okadigbo V. Emeka & Ors (supra) and Emenike V. PDP (supra). The two authorities decide on which organ of a political party has power to conduct primaries. This is not the issue in this case. Thus, this issue is yet again resolved in favour of the appellants.***  
H

The last issue for consideration is whether the court below was right in holding that the case of the appellants was not properly commenced and determined under originating summons. Whereas the appellants contend that the issues for determination were straight forward and could be determined via an originating summons, the respondents opined that because of the hostility of the facts, it was improper to bring this matter by an originating summons. B

At pages 1287-1288 of Volume 3 of the record of appeal contains the judgment of the lower court in respect of this issue. It states:

*“Originating summons is not to be used where there are material facts or the likelihood of disputes. See NBN V. Alakija (1978) 8-10 SC 79. In the instant case, it can be seen that issues of facts relating to the validity or tenure of the 1<sup>st</sup> respondent – led Executive Committee, holding or proposed holding of state congress and primaries and by who etc would crop up for determination. Thus, the proceedings were hostile or potentially hostile and ought not to have been commenced by originating summons.”* C D

***With due respect, the court below came to the above conclusion because it misconceived the claim of the appellants before it. It is trite that in determining whether the facts in support of an Originating Summons are contentions, it is the nature of the claim and the facts deposed to in the affidavit in support of the claims that will be examined to see if they disclose disputed facts and a hostile nature of the proceedings. I may ask: Is there any dispute that the Federal High Court made an order directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to recognize the appellants as Executive members of the PDP in Anambra State? The answer is No. Secondly, is there any dispute that the 2<sup>nd</sup> respondent wrote Exhibit E recognizing the 1<sup>st</sup> appellant and his executive committee members, as ordered by the court? The answer is No. So, what are we talking about? The issue before the trial court was whether the 1<sup>st</sup> respondent can rubbish the judgment/order of the court for whatever reason and set up a caretaker committee, other claims notwithstanding. For me, I strongly hold the view that there is no dispute on the relevant/essential facts granting the claims of the appellants which relate to the determination/interpretation of the action of the 1<sup>st</sup> respondent in setting up*** E F G H

***a caretaker committee of the PDP Anambra State Chapter during the pendency of the judgment/order of the Federal High Court recognizing the appellants as persons duly elected to that position.*** See *Famfa Oil Ltd V. Attorney-General of the Federation* (2003) 18 NWLR (pt. 852) 453, *Doherty V. Doherty* (1968) B NWLR 241, *Habib Bank Nig. Ltd V. Ochete* (2001) 3 NWLR (pt. 699) 144, *Jer V. Iyortom* (2014) 14 NWLR (pt. 1428) 575 at 627-628.

***The 1<sup>st</sup> and 3<sup>rd</sup> respondents have tried to raise issues which tend to show that there are conflicts as to facts. I do not see any. Those facts which seem to cause disputes are not relevant to the determination of the main issue before the court.***

***As it stands it is clear that the court below premised its decision on this issue on a wrong appreciation of the claim of the appellants before the trial Federal High Court, I hold therefore, that Originating Summons was properly used to commence this suit at the Federal High Court. This issue is resolved in favour of the appellants.***

Having resolved all the five issues in favour of the appellants, I hold that there is merit in this appeal which is hereby allowed. The judgment of the Court of Appeal is hereby set aside. The order of the Federal High Court in Suit No. FHC/PH/CS/213/2013) (now Suit No. FHC/AWK/CS/247/2013) recognising the Ejike Oguebego - led Executive Committee of the Peoples' Democratic Party, Anambra State Chapter is still subsisting until it is set aside by an order of court. I award costs of N100,000.00 against the 1<sup>st</sup> and 3<sup>rd</sup> respondents in favour of the appellants.

## G **NGWUTA JSC**

I read in draft the lead judgment just delivered by my learned brother, Okoro, JSC and I agree entirely with the reasons advanced for allowing the appeal as meritorious.

H All the issues canvassed in the appeal were duly considered and resolved against the Respondents.

The undisputed facts of this case constitute a sad commentary on the politicians' proclivity to profane the Constitution, the Electoral Law and binding orders of Courts of competent jurisdiction in their

quest for power. They also demonstrate the disruptive effects of internal wrangling and lack of internal democracy in the political parties in this country. Lack of internal democracy in the political parties is a serious threat to democracy in the country.

I also allow the appeal and abide by the consequential orders in the lead judgment. B

### **PETER-ODILI JSC**

I agree with the lead judgment just delivered by my learned brother, John Inyang Okoro JSC and in support I shall make the following comments. C

This is an appeal against the judgment of the Court of Appeal, Abuja Division, Coram: Abdulkadir Jega, J. E. Ekanem and M. Mustapha JJCA, delivered on 6<sup>th</sup> day of February, 2015 allowing the appeal of the 1<sup>st</sup> respondent herein from the judgment of the Federal High court, Abuja presided over by ..... the 5<sup>th</sup> day of December, 2014. D

The appellants were the plaintiffs at the trial court and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the trial court which found for the plaintiffs and the 3<sup>rd</sup> respondent appealed to the Court of Appeal or Court below or Lower Court which allowed the appeal of the 1<sup>st</sup> respondent setting aside the judgment of the Federal High Court. Being dissatisfied the appellants have come before the Supreme Court. E  
F

The facts leading to this appeal are well set out in the lead judgment and I shall not go into them here.

Chief Chris Uche SAN on the 2/11/2015 date of hearing adopted the Brief of Argument of the appellant filed on 13/2/15 and a Reply Brief of 16/3/15. He identified five issues for determination which are Thus: G

1. Whether the Court of Appeal was right in holding that the trial judge should not have assumed jurisdiction over the subject matter of this case relating to the protection of the sanctity of the judicial process of which the 1<sup>st</sup> respondent was in contempt and also relating to an executive and/or administrative decision of Independent National Electoral Commission (Grounds 1 & 2) H

(2) Whether the Court of Appeal was right to have held that

the case of the appellants was an abuse of court process on the basis of another case that the appellants are not parties to. (Ground 3)

(3) Whether the Court of Appeal was competent to determine the issue of whether the case of the appellants was an abuse of court process on the basis of a point raised by the court suo motu and in respect of which the parties were not called upon to address the court. (Ground 4).

(4) Whether the cases of Okadigbo v Emeka & Others (2012) 18 NWLR (Pt. 1331) 55 and Emenike v PDP (2012) 18 NWLR (Pt. 1315) have any relevance to the real issues that arose for determination before the Court of Appeal. (Ground 5 and 6).

(5) Whether the case of the appellants was rightly commenced by Originating Summons (Ground 7).

Chief Olusola Oke of counsel for the 1<sup>st</sup> respondent adopted the Brief of Argument filed on the 10<sup>th</sup> March 2015 and crafted two issues for determination which are thus:

1. Whether the Court of Appeal was not right in its decision striking out appellants' suit on the ground that same was incompetent and that the trial court lacked jurisdiction to entertain it.

2. Was the Court of appeal in error in applying the principles enunciated in the cases of Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 and Emenike v. PDP (2012) 18 NWLR (Pt. 1315) in the resolution of issue of who between the 1<sup>st</sup> respondent's National Executive Committee and its State Chapter is clothed with authority to organize and conduct the 1<sup>st</sup> respondent's primary elections and submit to the 2<sup>nd</sup> respondent, 1<sup>st</sup> respondent's list of candidates.

Learned counsel for the 1<sup>st</sup> respondent had raised and argued a Preliminary Objection in his Brief of Argument which will be tackled shortly.

For the 2<sup>nd</sup> respondent, Mr. Hassan Limon SAN did not file any Brief of Argument as he chose to abide by whatever was the outcome of the appeal.

The learned counsel for the 3<sup>rd</sup> respondent, Author Obi Okafor SAN adopted the Brief of Argument filed on the 10<sup>th</sup> March 2015 in which he formulated three issues for determination which are thus:

1. Whether the Court below was right in striking out the appellants' action on the premises that the trial court had no jurisdiction to hear the matter. (Grounds 1, 2, 3 & 4).



2. Whether the court below was not right in applying the cases of *Emeka v. Okadigbo* (2012) 18 NWLR (Pt. 1331) 55 and *Emenike v PDP* (2012) 18 NWLR (Pt. 1315) in resolving the issues that arose in the 1st respondent's appeal at the court below. (Grds. 5 and 6).

3. Whether the Court below was right in holding that the case of the appellants was not properly commenced and determined under originating summons (Ground 7) B

It needs no saying that the Preliminary Objection of the 1<sup>st</sup> respondent would be first taken before anything can be done on the appeal. This is because the objection has raised the matter of the competence of the appeal on the ground that the Notice of Appeal dated 10<sup>th</sup> February, 2015 is not properly before this court and that grounds 1 and 2 on which issue I was said to have arisen did not arise from the judgment of the lower court. C

#### PRELIMINARY OBJECTION D

The arguments on the Preliminary Objection are contained in the Brief of Argument. Learned counsel for the 1<sup>st</sup> respondent/objector contended that there is an absence of Notice of Appeal from the record contrary to Order 7 Rule 2 (2). That the record does not contain such a Notice of Appeal and so an appeal without notice of appeal is unknown to law and so goes to the root and thereby denies jurisdiction to this court to entertain such an appeal. He cited *Ayoola v. Adebayo* (1969) 1 ALL NLR 159; *Nwana v F. C. D. A.* (2007) 11 NWLR (Pt. 1044) 59 at 78. E

Also contended by the Objector is that it is too late for the appellants to premise their appeal on a relief not considered by the trial court and which did not form the bases of the appeal before the lower court. That it is settled law that an appeal cannot be lodged at the Supreme Court against the decision on an error committed by the trial court unless and until the same had been ventilated before the Court of Appeal as provided in the constitution. That to the extent that Grounds 1 and 2 and Issue 1 formulated therefrom seek to raise issue concerning relief 1 in the originating summons which did not form part of the judgment of the trial court and by extension the lower court, the grounds and issue are incompetent and liable to be struck out. F

Learned counsel for the appellant and respondent to the objection in reacting along his Reply Brief stated that the said Notice of G

Appeal dated 10<sup>th</sup> February, 2015 was duly filed and served before this court and is contained in the Supplementary Record of Appeal and the Briefs of Argument in this appeal are based on the said Notice of appeal. He debunked the assertion that issue No. 1 did not arise from the grounds 1 and 2 of the Appeal and referred the court  
B to the said grounds.

Learned counsel for the appellant said it is erroneous as contended by the objector's counsel that appellants failed to appeal against the findings of the court below relating to jurisdiction and commencing the suit by means of an originating summons etc. That all the  
C material points forming part of the decision were appealed against. He cited *Ogunbiyi v Ishola* (1996) 6 NWLR (Pt. 452) 12 at 21; *Saude v Abdullahi* (1989) 4 NWLR (Pt. 116) 387 etc.

That this court is not the appropriate forum for the 1st respondent to challenge the decision by Hon. Justice Nganjiwa of the Federal High Court, Port Harcourt delivered on the 12<sup>th</sup> September 2013 and it is open to the 1<sup>st</sup> respondent to appeal against the said decision to the Court of Appeal and therefrom to the Supreme Court which she failed to do. That the 1<sup>st</sup> platform of the present appeal in  
E respect of a different case to challenge the decision of a Federal High Court that is still extant and subsisting. He relied on *S. P. D. C. (Nig.) Ltd v Tiegbo VII* (2005) 9 NWLR (Pt. 931) 439; *Ibori v Agbi* (2004) 6 NWLR (Pt. 868) 78 at 143 etc.

It was further submitted by the appellants that the objector  
F failed to show how the parties in the two suits are the same or how the subject matter of the litigation is the same. That the court below raising the issue suo motu wrongly applied the doctrine of estoppel per rem judicata to this case.

The Preliminary Objection lacks merit and is dismissed. There  
G is a Notice of Appeal properly before Court.

#### MAIN APPEAL

I shall utilise the issues as crafted by the 3<sup>rd</sup> respondent as they seem to me simpler to follow.

#### H ISSUES 1 & 3

1. Whether the Court below was right in striking out the appellants' action on the premise that the trial court had no jurisdiction to hear the matter.

2. Whether the court below was right in holding that the case

of the appellants was not properly commenced under originating summons.

Chief Chris Uche SAN for the appellants submitted that the suit was not a claim brought under section 87(a) of the Electoral Act, 2010 (as amended) to complain about the conduct of a primary election. That the nature of the case is determined by the plaintiffs pleadings and not by the defendant's pleadings nor by the defendant's conception of the case. That it cannot be seriously contended that the Federal High Court has no jurisdiction to protect the sanctity of its mandatory order as well as its processes and proceedings when the 1<sup>st</sup> respondent chose to act in gross disobedience to the order of the Federal High court in suit No. FHC/PH/CS/213/2013 now suit No. FHC/ AWK/CS/247/2013. That the said order is clear, unambiguous and mandatory and instead of obeying same 1<sup>st</sup> respondent resorted to self-help and treated the courts of the land with disdain. He cited *Rossek v A. C. B.* (1993) 8 NWLR (Pt. 312) 382 at 471 etc.

For the appellants was further contended that what the 1<sup>st</sup> respondent tried to do by setting up the Caretaker Committee was to usurp the role of INEC recognized and judicially authenticated Ejike Oguebego led Anambra State Executive Committee with respect to the special congresses from which the candidates of the PDP emerged for the general elections. That in determining jurisdiction it is the plaintiffs claims as contained in the originating summons that determine same. He cited *Gbileve v Addingi* (2014) 16 NWLR (pt. 1433) 394 at 431 etc.

Learned Senior Advocate for the appellants stated that it was the executive and administrative decision of the 3<sup>rd</sup> respondent to recognise the 1<sup>st</sup> appellant as Chairman of the PDP in Anambra State and the Executive Committee that he leads as the authentic one until specifically ordered otherwise by a court of law that the 1<sup>st</sup> respondent herein wanted to truncate by contemptuously setting up an illegal caretaker committee to take over the same functions of the State executive Committee of the appellant, Anambra State chapter in defiance of the subsisting judgments of courts. That this court has held severally that political parties must not only obey their constitution, regulations and guidelines but must also obey orders of court. He cited *Jev v Iyortyom* (2014) 14 NWLR (Pt. 1428) 575 at 627 - 628.

Chief Chris Uche SAN went on to say that commencing their suit by originating summons was proper since the supporting facts were not in material dispute and so none of the courts below had any difficulty in discerning the documentary evidence for construction in the case. He referred to the *FGN v Zebra Energy Ltd* (2002) 18 NWLR (Pt. 798) 162, *Habib Bank (Nig) Ltd v Ochete* (2001) 3 NWLR (Pt. 699) 114 at 135.

Learned counsel for the 1<sup>st</sup> respondent, Chief Olusola Oke said the failure of the trial court to found on the interlocutory order of Ngajiwa J. was appealable by the appellants and failure to so appeal was tantamount to an acceptance of the position of trial court and so cannot now and here complain. He cited *Amala v Sokoto Local Government* (2012) 5 NWLR (1292) 181; *Ajamale v Yaduat* (No. 1) (2003) FWLR (Pt. 182) 1913 at 1910 etc.

For the 3<sup>rd</sup> respondent, learned counsel, Arthur Obi Okafor SAN submitted that issues relating to conduct of party primaries or anticipated conduct of primaries are political questions and within the internal affairs of a political party which are generally not justifiable and that the appellants have failed to bring themselves within the purview of section 87(9) of the Electoral Act. He cited *Ukachukwu v PDP & Ors.* (2014) 17 NWLR (Pt. 1435) 134 at 201- 202.

He further contended that the affidavit evidence conflicts were not reconciled and so the need for oral evidence and so commencing the suit by originating summons was faulty. He cited *Habib Bank (Nig) Ltd v Ochete* (2001) 3 NWLR (Pt. 699) 114 at 134 etc.

The summary of the positions of the parties is stated for the appellants that there is jurisdiction in the Federal High Court to entertain this suit and go on to decide that it is the INEC recognized, judicially approved Ejike Oguebego led Anambra state Executive Committee that is the authentic executive committee of the PDP.

The respondents on the other hand take the view that PDP is not an agency of the Federal Government and its actions or decisions cannot be questioned under sections 251 (i) (r) of the 1999 Constitution (as amended) and so the Federal High Court lacked the vires to entertain the matter which has culminated to this appeal.

To place the matter unto proper perspective, there is a need to go back in time and bring out certain salient facets that led to the present position especially the facts that are not disputed which bring

into focus the foundation on which the present determination of the issues are placed. These points on which is common ground are as follows:

1. There is a pending, subsisting, binding and enforceable order of interlocutory injunction made by the Hon. Justice H. A. Ngajiwa of the Federal High Court in Suit No. FHC/AWK/CS/247/2013 NOW **EJIKE OGUEBEGO & 2 ORS. V PEOPLES DEMOCRATIC PARTY & 3 ORS.** on the 12<sup>th</sup> day of September, 2013 to the effect that the Peoples Democratic Party and the Independent National Electoral Commission should recognise and deal only with the Ejike Oguebego led State Executive committee of the Peoples Democratic Party, Anambra State Chapter in all election matters in Anambra State.

2. The 1st respondent, PDP appealed against the order of interlocutory injunction to the Court of Appeal, Port Harcourt Division in APPEAL NO.CA/PH/764/2013. **PEOPLES DEMOCRATIC PARTY V EJIKE OGUEBEGO & 5 ORS.**

3. There is a pending, subsisting, binding and enforceable order of the Federal High Court made by the Honourable Justice E. S. Chukwu in **SUIT NO. FHC/AB/CS/680/2014 KEN EMEAKAYI V PEOPLES DEMOCRATIC PARTY & 6 ORS.** to the effect that the parties should maintain the status quo ante bellum with respect to the matter.

4. There is an undertaking given by the Counsel to the Peoples Democratic Party (the Appellant herein) in **SUIT NO. FHC/ ABJ/680/ 2014** given to the Federal High Court that the Peoples Democratic Party would not do anything to foist a situation of hopelessness or helplessness on the court in order not to render whatever judgment the Federal High Court may reach in the case.

5. In an admirable and commendable display of respect for the rule of law and respect for the judicial process, the 2<sup>nd</sup> respondent, INEC, took an executive and an administration decision to recognise and deal with the Ejike Oguebego led Anambra State for 2 reasons, to wit:

(i) INEC, in the exercise of its statutory duties under sections 85 and 86 of the Electoral Act, had monitored the State Congress of the PDP where Ejike Oguebego and the members of his Executive Committee were elected.

2. The Federal High Court, Port Harcourt Division, in a ruling

delivered on 12<sup>th</sup> September 2013, in Suit No.FHC/PH/CS/2113 ordered both INEC and PDP to recognise and deal with Ejike Oguebego led State Executive Committee in all elections in Anambra State, and that the said order is still subsisting and an appeal arising thereto is yet to be determined at the Court of Appeal.

B 6. INEC communicated this crucial and administrative and executive decision in writing through a letter dated 23<sup>rd</sup> October 2014 which is Exhibit E to the originating summons in this matter at pages 33 - 34 of volume 1 of record of appeal.

C 7. About a week after INEC had communicated its administrative cum executive decision via Exhibit E the 1st respondent on 30<sup>th</sup> October 2014, during the subsistence of the order of interlocutory injunction made by the Federal High court in SUIT NO. FHC/PH/213/2013 NOW SUIT NO. FHC/AWK/CS/247/2013 EJIKE D OGUEBEGO & 2 ORS. V PEOPLES DEMOCRATIC PARTY & 3 ORS. wrote to one Colonel Austin Akobundu and the South East Zonal Executive of the PDP to take over the affairs and management of the Peoples Democratic Party, Anambra State chapter as a Caretaker Committee. This is in spite of the fact that the 1st respondent E had appealed against the order of injunction made by the Federal High court and the appeal is yet to be determined. There is no order to stay of execution.

8. The main brief given to the said Colonel Akobunde led illegally appointed Caretaker Committee “to oversee the Anambra State Chapter until congresses are held”. It is from congresses of the PDP that delegates for primary elections are elected and primary elections conducted and candidates elected. The 1st respondent’s letter in this regard is Exhibit “D” to originating summons at 32 of volume 1 of G the record of appeal.

9. The said Exhibit “D” written by the 1st respondent is not only in contempt of court, but is a direct infraction of and a challenge on the administrative supervisory powers of INEC over the PDP as a political party subject to the electoral Act and directly brought the H proviso to section 251(1)( r) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

From the foregoing it can be seen that the Suit FHC/ABJ/CS/854/2014 commenced by the appellants was to inquire into the legality and constitutionality of the appointment of Caretaker Commit-

tee for the Anambra State Chapter of the PDP in relation to congresses to be carried out in the light of the subsisting court orders of the Federal High Court commanding the 1<sup>st</sup> and 2<sup>nd</sup> respondents to deal only with the 1st appellant led Executive Committee in all elections but also in connection with the INEC, a Federal Government Agency which had taken a decision recognizing the Ejike Oguebego (1<sup>st</sup> appellant) led Executive Committee of PDP Anambra State. B

In view of these clear situations the question that arises is if the Federal High Court would be said to lack the vires to protect the sanctity of the mandatory order which was being ignored especially when the person against whom the order is given is duty bound to obey it even if that party was of the opinion that the order is void, irregular or made without jurisdiction. That obedience is to be done firstly unless and until it is set aside. I rely on *Rossek v A. C. B.* (1993) 8 NWLR (Pt. 312) 382 at 471. C

Another way of putting it is that where the person against whom a court order is made takes the option of flouting it, the courts are not helpless as they have a bounden duty and jurisdiction to reverse all steps taken to overreach or render nugatory any decision of the courts. That is to say that disobedience of a court's order is a serious contempt and courts of law must protect itself from being maligned, ridiculed or disparaged. See *Okoya & Ors v Santili & Ors* (1991) 7 NWLR (Pt. 206) 753 at 770; *Anthony v Surveyor - General of Ogun State & Anor.* (2007) ALL NWLR (Pt. 354) 375 at 389. D

It is necessary to reiterate that it is the claim of a plaintiff that determines whether a court has jurisdiction to determine it or not and therefore in the case at hand, the appellant's suit as that of plaintiff at the trial court related to issues that concerned the executive and administrative decision of INEC, an agency of the Federal Government of Nigeria. The reliefs sought by the appellants were such as affected the validity of the action of that Federal Government Agency, 2<sup>nd</sup> Respondent and since it was needed for INEC to be bound by the outcome of the case since its role was crucial then the proper forum is the Federal High Court duly empowered by section 251(r) of the 1999 Constitution (as amended). The provisions therefore are thus: E

Section 251(r) of the 1999 Constitution (as amended) provides: F

*"251. (1) 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 court in civil causes and matters.....*

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

An interpretation of section 251 (1) (r) of Constitution is that jurisdiction is granted to the Federal High Court where the beneficiary such as the appellant is apprehensive that the action of the Federal Government Agency may infringe on the rights of the appellant. See *Gbileve v Addingi* (2014) 16 NWLR (Pt. 1433) 394 at 431.

By the same token since 2<sup>nd</sup> respondent had recognized the 1<sup>st</sup> appellant as chairman of the PDP in Anambra State and the State Executive Committee that he led, in INEC executive and administrative roles then an action taken by the 1<sup>st</sup> respondent in setting up a Caretaker Committee in way that negated that status of being the authentic and duly recognized Executive Committee with the court in existence then the appellants cannot be faulted in seeking redress to the forum that would settle their grievance holistically and that arena is none other than the Federal High Court. See *JEV v Iyortyom* (2014) 14 NWLR (Pt. 1428) 575 at 627 - 628.

I agree with the learned counsel for the appellants that their rights were breached by the Court of Appeal when it raised suo motu the issue of the fact that there had been a judgment in rem in a situation where the appellants were not given an opportunity to be heard on same and worse still a judgment in a matter to which appellants were not parties nor against the entire political party and so cannot be properly described as a judgment in rem. See *Obumseli v Uwakwe* (2009) 8 NWLR (Pt. 1142) 55 at 76; *Arowolo v Akaiyejo* (2009) 8 NWLR (Pt. 1290) 286 at 306; *Victino Fixed Odds Limited v Ojo* (2010) 8 NWLR (Pt. 1197) 486 at 499 - 500.

On whether the commencement of the appellants suit by originating summons was not proper, I see no way except to answer that it was appropriately done as the matter was in the main the interpretation of documents and the supporting facts did not have serious contests therein and so it was not difficult for either of the two courts below to see their way through as to what was at stake between the



parties and so no need for oral testimony to resolve conflicts. See *FGN v Zebra Energy Ltd* (2002) 18 NWLR (Pt. 798) 162; *Habib Bank (Nig.) Ltd v Ochete* (2001) 3 NWLR (Pt. 699) 114 at 135.

The issues above are resolved in favour of the Appellants.

## ISSUE NO. 2

Whether the court below was not right in applying the cases of *B Emeka v Okadigbo* (2012) 18 NWLR (Pt. 1331) 55 and *Emenike v PDP* (2012) 18 NWLR (Pt. 1315) in resolving the issues that arose in the 1<sup>st</sup> respondent's appeal at the court below.

Learned counsel for the appellants stated that the appellants not being parties in the case in which judgment was given cannot therefore be bound by the judgment and cannot be said to be relitigating issues that had never been decided against them. He cited *A. G. Federation v All Nigeria Peoples Party* (2003) 18 NWLR (Pt. 851) 182 at 211; *Ogoejofo v Ogoejofo* (2006) 3 NWLR (Pt. 966) D 205 at 226.

That the court below in considering the issues of abuse of court process entered into the arena of conflict on the side of the 1<sup>st</sup> respondent who was appellant before that court when it raised the issue suo motu of whether the judgment of *Kekemeke J* in *Emma Mbamalu v PDP* is a judgment in rem. He cited *Oyinlola v Ojelebi* (2011) 9 NWLR (Pt. 1251) 200 at 207; *Obumseli v Uwakwe* (2009) 8 NWLR (Pt. 1142) 55 at 76 etc.

That the appellants right to audi alteram partem was breached. Also that there is no feature of this case that warranted the Court of Appeal's application of the cases of *Okadigbo v Emeka & Ors* (2012) 18 NWLR (Pt. 1331) 55 and *Emenike v PDP* (2012) 18 NWLR (Pt. 1315).

For the 1<sup>st</sup> respondent, Chief Olusola Oke said the court below was right in holding itself bound by the cases of *Emeka v Okadigbo* (supra) and *Emenike v PDP* (2012) 12 NWLR (Pt. 1315) 556 at 594 - 595 in deciding on who had the power to decide who the candidates of the Political Party.

The learned counsel for the 3<sup>rd</sup> respondent agreed with the H same arguments as those of the 1<sup>st</sup> respondent stating that the Court of Appeal was right to apply the principles enunciated in *Emeka v Okadigbo* (supra) and *Emenike v PDP* (supra)

The concern of an abuse of court process by multiplicity of

suits being levelled against the appellants does not hold water as such an issue cannot arise herein where the parties are not the same as in the earlier suit or suits nor the subject matter the same. Therefore the appellants cannot be bound by a judgment to which they were not parties and so the matter of relitigating issues that were not decided  
B against them does not arise. I rely on *Ogoejofo v Ogoejofo* (2006) 3 NWLR (pt. 966) 205 at 226.

Also the principles in *Emeka v Okadigbo* (supra) and *Emenike v PDP* (supra) do not apply as those had to do with who the properly  
C elected candidates of the political party were in relation to which executive committee's conduct of primaries was valid vis-à-vis the National Executive Committee or the State Executive Committee.

The issue is resolved against the appellant as the Court of Appeal was wrong to apply those cases of *Emeka v Okadigbo* (supra)  
D and *Emenike v PDP* (supra).

In the light of the above and the better reasoning in the lead judgment, I allow the appeal as I abide by the consequential orders made.

E

### **ARIWOOLA JSC**

I had the opportunity of reading in draft the lead judgment of my learned brother, Okoro, JSC, just delivered. I concur with the reasoning that led to the conclusion that the appeal is meritorious  
F and deserves to be allowed. I too will allow the appeal for the same reasons beautifully stated in the lead judgment to which I have nothing new to add.

Appeal is allowed by me too. I abide by the consequential orders  
G in the lead judgment including the order on costs.

### **MUHAMMAD JSC**

Having read in draft the lead judgment of my learned brother  
H Okoro JSC, and imbibed the reasoning and conclusion therein, I also allow the appeal and abide by the consequential orders made in the judgment.