

SUPREME COURT OF NIGERIA
FRIDAY 15TH JANUARY, 2016. SC. 565/2014
CORAM:- S. GALADIMA, O. ARIWOOLA,
K. M. O. KEKERE-EKUN, J. I. OKORO, A. SANUSI, JJSC

1. CHIEF MAXI OKWU APPELLANTS
2. CHIEF DICKSON OGU
(Suing for themselves and all the other
National Officers elected at the National
Convention of APGA held at the Women
Development Centre, Awka on the 8th day
of April, 2013)

AND

1. CHIEF VICTOR UMEH RESPONDENTS
2. ALHAJI SANI A. SHINKAFI
(For themselves and on behalf of the
members of the National Working
Committee “elected” by a motion on the
18th day of February, 2011 at a
Convention held at the Women
Development Centre, Awka)
3. COMRADE IBRAHIM CAREFOR
4. DR. GBENGA AFENI
5. ALHAJI ABUBAKAR ADAMA
6. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

ACTIONS - Party - Necessary party - As the suit centers on the authentic National Leaders of APGA - It is a must that the political party be made a necessary party - For effectual determination of the suit (H1)

ACTIONS - Party - Non joinder of - Although no cause shall be defeated by reason of non joinder - Yet absence of necessary party - Appears to be exercise in futility for court to make a decision (H2)

ACTIONS - Locus standi - Where plaintiff lacks the locus to maintain his action - No issue in the case can be gone into - As the court is

990 Okwu v. Umeh (2016) 1 KLR (pt. 379) 989; (2016) 4 NWLR
denied of jurisdiction to determine the action (H3)

ACTIONS - Representative action - Existence of common interest is basis for such action - Hence the suit having been discontinued - 2nd appellant alone cannot maintain the action in a representative capacity (H4)

JURISDICTION - Absence of - Having withdrawn their complaints against defendants - Plaintiffs cease to be parties in the suit - Thus the continued retention of their names - Rob trial court of jurisdiction (H5)

FACTS

By way of originating summons brought before the Federal High Court sitting at the F.C.T. Abuja, plaintiffs/appellants challenged the election of defendants/1st and 2nd respondents as members of the national executives of All Progressives Grand Alliance (APGA). The questions raised in the originating summons are among others, whether 1st and 2nd respondents can validly occupy the positions of the National Chairman and National Secretary of the aforementioned political party. Appellants thereafter prayed for the following declaratory reliefs inter alia, a declaration that 1st and 2nd respondents having been expelled from the party cannot validly continue to occupy the positions of the National Chairman and National Secretary of the party.

The bone of contention in the matter is that both sides are in battle over the rightful side to take charge of the National control of the political party. Therefore, in reaction to the originating summons brought by appellants, 1st and 2nd respondents filed notice of preliminary objection challenging the jurisdiction of the court to entertain the suit. The preliminary objection and the originating summons were considered together. In his ruling, the learned trial Judge overruled the preliminary objection, assumed jurisdiction in the matter and granted the reliefs sought by appellants in the originating summons. Dissatisfied, respondents appealed to the Court of Appeal, Abuja Division. The court allowed the appeal and set aside the judgment of the learned trial judge. Appellants were not pleased with the judgment of the appeal court. Hence, they appealed to the Supreme

Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right when it overruled the preliminary objection of the Appellants challenging in effect the validity of the appeal of the 1st & 2nd respondents to the Court of Appeal.

2. What is the effect of non joinder of a party to an action particularly when the party not joined has not complained against such non joinder.

3. Whether the Court of Appeal was right when it held that the 1st appellant did not have the locus standi to bring the action when

(a) He had enough interest in the suit since he was claiming to be the duly elected National Chairman of the party as against the 1st Respondent.

(b) The action was brought in a representative capacity and was not his personal action.

4. Whether the judgment of the Court of Appeal in the Suit No. CA/E/84/2013 Umeh V. Ejike decided any other thing apart from deciding that the plaintiff in that suit did not have locus standi to present the action and when none of the issues presented to the court of trial and the Court of Appeal in this suit were decided in that appeal by the Court of Appeal Enugu Division

5. Whether the Court of Appeal properly appreciated the case of the parties as presented to it before arriving at its decision.

HELD (Unanimously dismissing the appeal per **OKORO**

JSC)

Party - Necessary party

1. There is no doubt that the parties to this appeal, except the 6th respondent are members of a political party called the All Progressives Grand Alliance, also known as APGA for short. I shall henceforth use the initials of the party in this judgment. It is also a fact that in this appeal in which the fortunes of the said party is being determined, it has not been made a party, neither was it so made at the court of trial or the lower court. I had set out earlier in this judgment both the questions for

determination and the reliefs sought by the plaintiffs at the trial court (now appellants). I need not repeat it here. One thing is clear, and that is, whether the issue before the trial court was a mere interpretation of the Constitution of APGA or the determination of the status of the 1st and 2nd respondents vis-à-vis the National Convention of APGA held on 10/2/11, with due respect, APGA was a necessary party. I agree with the court below that the dispute between the parties is as to whom between the appellants and the 1st - 5th respondents are the authentic National Leaders of APGA. It becomes imperative that APGA is a necessary party in the suit for the effectual determination of the suit as the party will be affected by the decision of the court however decided.

I need to add that a necessary party is that person whose presence is essential for the effectual and complete determination of the issues before the court. It is a party in the absence of whom the whole claim cannot be effectually and completely determined. (p. 1004 H)

E Party - Non joinder of

2. From the above provision, it is clear that non joinder of a necessary party in a suit is an irregularity that does not affect the competence or jurisdiction of the court to adjudicate on the matter before it. The provision allows the court to hear the matter as regards the rights and interest of the parties actually before the court. Also, that such non-joinder would not defeat the cause or matter.

However, while it is the law that no cause or matter shall be defeated by reason of the mis-joinder or non-joinder of any party, yet in the absence of a proper party or necessary party before the court, it appears an exercise in futility for the court to make an order or decision which will affect a stranger to the suit who was never heard or given an opportunity to defend himself. This will certainly be against the tenets and tenor of Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In the instant case, there is no way the question posed by the appellants for determination would be effectually and completely answered in the absence

of APGA, the ultimate beneficiary of the outcome of the decision. Also, without APGA as a party, the reliefs sought would not have any effect as APGA cannot be bound by an order of a court in a matter it was not a party. This is, sadly, the lot of this case.

The end result of what I have said above is that although the trial court had the jurisdiction to hear the suit as constituted, the judgment generated thereby which had massive impact on the activities of APGA, including its leadership, cannot be allowed to stand.

A plaintiff is not bound to sue a particular party. However, where the outcome of the suit will affect that party one way or the other, it will be foolhardy not to join him in the suit. In fact, it would amount to an exercise in futility as the said party will not be bound by the outcome of the case.
(p. 1005 H)

ACTIONS - Locus standi

3. The other issue has to do with the locus standi of the 1st appellant herein to institute the action either for himself or on behalf of others. In Attorney-General of Kaduna State V. Mallam Umaru Hassan (1985) NWLR (pt. 8) 483, this court held that the legal concept of standing or locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest. Thus, where a plaintiff by his pleading, fails to show that he has a locus to institute an action, no issue in the case can be gone into, not even the question whether or not the statement of claim discloses a cause of action. As was held in Nigeria Airways Ltd. V. F.A. Lapite (1990) LPELR - 1988 (SC), (1990) 71 - 72 SC, 60, the only and proper order to make in such circumstance is that of striking out the suit.

By Exhibit A, 1st appellant's APGA membership card, he became a member of APGA in "November, 2012", and by paragraph 8(n) of 1st appellant's further and better affidavit in support of Originating Summons, he admitted that "by the time Chief Maxi Okwu came back to APGA in February, 2013

or thereabout, his party, Citizens Popular Party has ceased to exist and it was eventually deregistered by INEC”. So whether he became member of APGA in November, 2012 or in “February, 2013 or thereabout”, it is crystal clear that he was not a member of APGA as at 10th February, 2011 when APGA held its National Convention which produced the 1st and 2nd respondents as National Chairman and National Secretary respectively. It was the view of the lower court that the 1st appellant herein had no locus standi to challenge the convention of APGA held on 10/2/2011 when at that time, he was not a member of APGA. I agree.

It is trite that when a plaintiff has been found not to have the standing to sue or locus standi as in the instant case, the question whether other issues in the case had been properly decided or not does not arise. This is because the trial court has no jurisdiction to entertain the claim. The correct position of the law therefore is that where a plaintiff is held to lack the locus standi to maintain his action, the finding goes to the jurisdiction of the court and denies it jurisdiction to determine the action. The proper order, in such a situation therefore, is to strike out the claim. (pp. 1006 H/1008 A)

ACTIONS - Representative action

4. I find it difficult to appreciate the above argument because that was not the case of the appellants at the two courts below. Secondly, in a representative action, as in the instant case, common interest or same interest is a necessary ingredient to maintain the action. Thus, when the 2nd, 4th and 5th plaintiffs filed Notices of Discontinuance and unequivocally and wholly withdrew their claims in the suit, the element of common/same interest, required in a representative action, became an issue. It follows that the 1st appellant not having been a member of APGA when the alleged cause of action arose, and the 2nd, 4th and 5th plaintiffs having discontinued the action, and in view of the fact that the evidence in support of the Originating Summons was the joint affidavit of all the parties named and unnamed, the 2nd appellant herein alone cannot validly continue to maintain the action in a represen-

tative capacity. (p. 1008 E)

JURISDICTION - Absence of

5. I agree completely. Can anyone see the confusion which bedeviled this case, at the trial court? The trial court ought not to have heard the case and made orders in favour of those plaintiffs who had unequivocally discontinued their action. Having withdrawn their complaint against the defendants, they became strangers to the suit. The continued retention of their names in the suit and the delivery of judgment in their favour even when they were no more parties before the court was in itself a debilitating factor which robbed the court of its jurisdiction to hear the case. All I have said above is that there were definitely features in the case which ought to have prevented the trial court from exercising its jurisdiction. The presence of the 1st appellant in the suit which he filed in a representative capacity was a serious virus which affected the jurisdiction of the trial court. I hold that the court below was right to hold that the trial court lacked the jurisdiction to have entertained the appellants' originating summons. (p. 1009 D)

REPRESENTATION

G.S. Pwul, SAN, with Oba Madubuchi, Esq., Bello I., Ibrahim, Esq., Kenekchukwu Maduka, Esq., V.M.G. Pwul, Esq., A.A. Nyam, (Miss), Adewale Odeleye, Esq., Oluwatosin Odeleke, (Miss), and P.E. Okoye, Esq., for the Appellants

PI.N. Ikwueto SAN, with C.I. Mbaeri, Esq., Isaiah Bozimo, Esq., C. Ogbuefi, Esq., and N. Odumegwu, (Miss), for the 1st and 2nd respondents.

Rahimatu Aminu (Mrs.) for the 6th respondent.

CASES REFERRED TO

Azuh v. UBN Plc. (2014) 11 NWLR (pt. 1419) 580
LSBPC v. Purification Tech. Nig. Ltd. (2013) 7 NWLR (pt. 1352) 82
Peenok Invest. Ltd. v. Hotel Presidential Ltd. (1983) 4 NCLR 122

- Green v. Green (1987) 3 NWLR (pt. 61) 480
 Bakare v. Ajose-Adeogun (2014) 6 NWLR (pt. 1403) 320
 Mbanefo v. Molokwu (2014) 6 NWLR (pt. 1403) 377
 Ndulue v. Ibezim (2000) 5 SCNJ 247
 Olufeagba v. Abdulraheem (2009) 12 SCNJ 349
 B NDP v. INEC (2013) 6 NWLR (pt. 1350) 392
 Okafor v. Nnaife (1987) 4 NWLR (pt. 64) 129
 Dongtoe v. CSC Plateau State (2001) 4 SC (pt. 11) 43
 Olawoye v. Jimoh (2013) 13 NWLR (pt. 1371) 362
 Olonode v. Oyebe (1984) NSCC (Vol. 15) 286
 C Ajide v. Kelani (1985) 3 NWLR (pt. 12) 248
 Osuji v. Eke-Ocha (2009) 16 NWLR (pt. 1166) 81

STATUTE & RULES REFERRED TO

- D Electoral Act 2010 (as amended), s. 87(9)
 Federal High Court (Civil Procedure) Rules 2009, O. 9 r. 14(1) & (3)

LEAD JUDGMENT BY OKORO JSC

- This is an appeal against the judgment of the Court of Appeal,
 E Abuja Division delivered on the 18th day of June, 2014 wherein the
 appeal of the present 1st and 2nd Respondents against the judgment
 of Kafarati, J., of the Federal High Court Abuja was allowed and the
 judgment of the trial Federal High Court set aside. A synopsis of the
 facts will suffice.
 F Briefly, the record of appeal shows that the 1st and 2nd re-
 spondents were the National Chairman and National Secretary of
 the All Progressives Grand Alliance (APGA) from the year 2006. At
 the meeting of the National Executive Committee of APGA held on
 G the 1st December, 2010, it was resolved that the tenure of the reconstituted
 members of the National Working Committee be renewed
 for another four years. On the 10th February, 2011, the tenure of
 the respondents was extended by a motion for another four years in
 a convention of APGA. As at the 10th February, 2011, the 1st Appel-
 H lant was not a member of APGA having been expelled from the
 party in 2005. On his return to the party in February, 2013, he was
 issued with a new membership card No. 94811 signed by the 1st and
 2nd respondents as National Chairman and Secretary of APGA re-
 spectively.

By another convention of the party held on the 8th day of April, 2013, the 1st appellant and others were elected as members of the National Working Committee of APGA. The appellants instituted an action by way of Originating Summons in respect of the election of the 1st and 2nd respondents in the convention of 10th February, 2011 at the trial Federal High Court. The 1st and 2nd respondents filed a notice of preliminary objection challenging the jurisdiction of the trial court to entertain the suit. The learned trial judge determined the preliminary objection and the originating summons together. He overruled the preliminary objection and granted the reliefs sought by the appellants in the originating summons.

Now, for ease of reference, the five questions sought for determination in the originating summons are as follows:-

1. Whether the 1st and 2nd defendants who are in court in suit No. FCT/HC/CV/4278/2012 (1) All Progressive Grand Alliance, (2) Chief Victor Umeh, (3) Alhaji Sani Shinkafi, (1) Alhaji Sadiq Masala (a.k.a. Sadeeq Masalla), (2) Dr. Ifedi Okwenna, (3) Barrister Morgan Anyalechi, (4) Barrister Bala Bako, seeking to set aside their suspension from the party, APGA, can still validly occupy the positions of National Chairman and National Secretary of the party when the suit they brought challenging their said suspension has not been decided in their favour.

2. Whether the 2nd defendant can still validly occupy the position of National Secretary of APGA in 2013 when the constitution of the party provided a maximum tenure of eight years and he was first elected as National Secretary of the party on 10th January, 2003, ten years ago.

3. Whether the 1st and 2nd defendants were validly elected as National Chairman and National Secretary along with other members of the National Working Committee of APGA whom they represent when they were “elected” by a notion moved by Dr. Samson Olalere and seconded by Prince Ukaegbu then State Chairman of APGA Abia State and by voice vote when by Article 18(4) of the Constitution of the All Progressives Grand Alliance, Elections into any of the posts of the party shall be by secret ballot.

4. Whether the 1st and 2nd defendants can validly occupy the positions of the National Chairman and National Secretary respectively along with all the other officers they represent when they were

never elected into the National Executive Committee of APGA.

5. Whether it is proper for the 3rd defendant to continue to deal with 1st and 2nd defendants as the duly elected National Officers of the All Progressives Grand Alliance when there is a court judgment proclaiming that the valid National Officers of the party are those led by the 1st plaintiff and which judgment has not been set aside.

The appellants (as plaintiffs) thereafter prayed for the following declaratory reliefs:

1. A declaration that the 1st and 2nd Defendants having been expelled from the party whether lawfully or unlawfully, regularly or irregularly cannot validly continue to occupy the positions of the National Chairman and National Secretary respectively when the suit they filed challenging their said expulsion has not been decided in their favour.

2. A declaration that the 2nd defendant having first been elected National Secretary of the party on 19th January, 2003 which is over ten years after he was first elected, when by Article 18(2) of the Constitution of the party, any official of the party can only stay in office for a maximum of two terms of four years each.

3. A declaration that the 1st and 2nd defendants having been voted into office by voice votes rather than secret ballot as stipulated by Article 18(3) of the Constitution of APGA were not validly elected.

4. A declaration that unless and until the judgment of the Awka High Court given in Suit No. A/126/2013 between Michael Joe Onwudiwo and (1) Maxi Okwu (As representing APGA elected at the convention or the party on 8th April, 2013), (2) Egwu Okoye (As representing All Anambra State Executive Officers of APGA and all Executive Officers in all wards and local government in Anambra State, is set aside either by itself of a Higher Court, it remains binding, subsisting and must be obeyed by the 3rd Defendant.

5. An order directing the 1st and 2nd defendants to vacate their respective offices of National Chairman and National Secretary pending the determination of their suit challenging their expulsion from the party and in their favour.

6. An order directing the 2nd defendant to vacate office as National Secretary of the party having been first elected into office on 10th January, 2003 and was re-elected into office for a second

tenure which expired on 9th January, 2010.

7. In any event an order directing the 1st and 2nd defendants and all the other officers they represent to vacate their various offices forthwith not having been elected in accordance with Article 18(4) of the Constitution of the party which prescribes mandatorily that elections into the offices shall be by secret ballot or at all. B

8. An order directing the 3rd defendant to deal with the plaintiff and all those they represent as the duly elected National officers of APGA.

As stated earlier, the learned trial Judge held that he had jurisdiction to entertain the suit, overruled the preliminary objection and granted all the reliefs sought by the appellants herein (as plaintiffs). C

Dissatisfied with the stance of the learned trial judge, the respondents herein (as defendants at the trial court) appealed to the lower court, which after a careful consideration of issues placed before it allowed the appeal and set aside the judgment of the learned trial judge. D

Also, being dissatisfied with the judgment of the court below, the appellants have appealed to this court via notice of appeal filed on 12th December, 2014. The notice of appeal alluded to above has sixteen grounds of appeal out of which the appellants have distilled five issues for the determination of this appeal. At the hearing of this appeal on 20th, October, 2015, the learned senior counsel for the appellants, G.S. Pwul, SAN, leading other counsel, adopted the brief and reply brief of the appellants filed on 17/12/14 and 23/3/15 respectively. The learned senior counsel for the 1st and 2nd respondents, P.I.N. Ikwueto, SAN, leading other counsel, also adopted the brief of the said respondents. Rehimatu Aminu (Mrs.) of counsel for the 6th respondent adopted the brief of the 6th respondent filed on 16/3/15 though the said brief has nothing to urge on this court, the 6th respondent opting to remain neutral in the appeal. The 3rd - 5th respondents though duly served with court processes failed to file any process and also did not appear to defend the appeal. E F G

The five issues formulated by the appellants for the determination of this appeal are as follows:- H

1. Whether the Court of Appeal was right when it overruled the preliminary objection of the Appellants challenging in effect the validity of the appeal of the 1st & 2nd respondents to the Court of

Appeal. (Culled from Grounds 1 & 2)

2. What is the effect of non joinder of a party to an action particularly when the party not joined has not complained against such non joinder. Grounds 5 & 11

3. Whether the Court of Appeal was right when it held that the
B 1st appellant did not have the locus standi to bring the action when
(a) He had enough interest in the suit since he was claiming to be the duly elected National Chairman of the party as against the 1st Respondent.

(b) The action was brought in a representative capacity and
C was not his personal action. (Culled from grounds 3 & 4)

4. Whether the judgment of the Court of Appeal in the Suit
No. CA/E/84/2013 Umeh V. Ejike decided any other thing apart from
D deciding that the plaintiff in that suit did not have locus standi to present the action and when none of the issues presented to the court of trial and the Court of Appeal in this suit were decided in that appeal by the Court of Appeal Enugu Division grounds 10 & 12.

5. Whether the Court of Appeal properly appreciated the case of the parties as presented to it before arriving at its decision. Grounds
E 6, 7, 8, 9, 13, 14, 15 & 16

However, the learned senior counsel for the 1st and 2nd respondents has submitted three issues for the determination of this appeal as follows:-

i. Whether the Court of Appeal rightly dismissed the Preliminary
F Objection of the appellants challenging the competence of some grounds of the 1st and 2nd respondents' appeal to the Court of Appeal. (Grounds 1 and 2)

ii. Whether the Court of Appeal rightly held that the trial court
G has no jurisdiction to determine the suit. (Grounds 3, 4, 5, 6, 11 and 16)

iii. Whether the Court of Appeal properly appreciated the case of the parties before arriving at its decision. (Grounds 7, 8, 9, 10, 12, 13, 14 and 15)

H I shall determine this appeal based on the issues as formulated by the appellants. However, I shall first resolve appellants' issues two and three and issue two in the 1st and 2nd respondent's brief together. These three issues have to do with jurisdiction and being a threshold issue, has to be decided first.

On the 2nd issue, the learned senior counsel for the appellants submitted that non joinder of necessary parties does not defeat an action. That it neither affects the potency of the action nor the jurisdiction of the court to determine the case as between the parties actually before the court. Authorities cited in support of this submission are as follows: *Azuh V. UBN Plc.* (2014) II NWLR (pt. 1419) 580 B at 610-611, *LSBPC V. Purification Tech. Nig. Ltd.* (2013) 7 NWLR (pt. 1352) 82 at 109. According to the learned senior counsel, by the Rules of Court no suit should be struck out for non joinder.

Referring to the questions submitted for determination by the learned trial Judge, the learned senior counsel submitted that he could not appreciate how the presence of APGA will help resolve the said question. Learned senior counsel does not also appreciate how the absence of APGA will impede a just and effectual resolution of the issue. It was the further submission of the learned senior counsel that the 1st and 2nd respondents do not have the legal vires to protest the non inclusion of APGA as a party to the proceedings. That only APGA can complain. That of the three types of parties recognized i.e. necessary parties, desirable parties and normal parties, APGA may be regarded as a desirable party to join in the proceedings. E

According to him, they may have let its name just be there, but not imperative. He relies on the cases of *Peenok Investment Ltd. V. Hotel Presidential Ltd.* (1983) 4 NCLR 122, *Green V. Green* (1987) 3 NWLR (pt. 61) 480.

On the 3rd issue, learned senior counsel submitted that it is unfortunate that the lower court held that the 1st appellant did not have locus standi to bring the action since he was not a member of APGA in 2010 when the 1st and 2nd respondents were re-elected National Chairman and Secretary of APGA respectively. According to him, nobody questioned the validity of the convention of 10/2/2010 which produced the 1st and 2nd respondents. Rather, that it was a question of whether the respondents, having been suspended, could still occupy their offices. Learned senior counsel opined that the only question which relates to the 2010 Convention are as to whether the said convention satisfied Article 18(4) of APGA Constitution and whether a motion which produced the 1st and 2nd respondents equate to an election of the National Executive Committee of the Party. F G H

It was further argued that the 1st appellant as plaintiff has the locus standi to bring the action since he claims to be the authentic National Chairman of APGA which was pleaded by him. He refers to the case of *Bakare V. Ajose-Adeogun* (2014) 6 NWLR (pt. 1403) 320 at 351. He contended that in the instant case, the pleading is the affidavit since the matter was commenced by originating summons. Referring to some paragraphs of the affidavit in support of the originating summons, it was argued that the appellants have sufficient interest to bring the suit.

It was further argued that being a representative action, it is not only the plaintiff or defendant who are the parties, the others who are not named are also parties, relying on *Mbanefo V. Molokwu* (2014) 6 NWLR (pt. 1403) 377 at 425. That even if the 1st appellant and the other three plaintiffs had disengaged from the suit, the 2nd appellant was still there to continue with the action, relying on *Ndulue V. Ibezim* (2000) 5 SCNJ 247 at 260; and *Olufeagba V. Abdulraheem* (2009) 12 SCNJ 349 at 378. He urged this court to resolve the two issues in favour of the appellants.

The learned senior counsel for the 1st and 2nd respondents, P.I.N. Ikwueto, SAN, on the non joinder of APGA, submitted that the judgment of the learned trial court made against APGA, which was not a party to the suit and which had direct and massive impact on the activities of APGA, cannot be allowed to stand and that the court below was right to hold that the determination of the suit in the absence of APGA amounted to a gross violation of APGA'S entrenched right to fair hearing and thus palpably unconstitutional. It is his contention that neither National officers will be imposed on APGA nor the Constitution of APGA interpreted without hearing from APGA. According to him, this is the hallmark of the principle of fair hearing.

Learned senior counsel further argued that by Section 80 of the Electoral Act, 2010 (as amended), APGA is 'a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name'. Failure to join APGA, he opined, was fatal to appellants' case, relying on the case of *NDP V. INEC* (2013) 6 NWLR (pt. 1350) 392. According to learned senior counsel, the case of *Azuh V. UBN Plc.* (supra) and *LSBPC V. Purification Tech. Nig. Ltd.* (supra) cited and relied upon by the appellants do not apply to this case. That each case is decided on its peculiar facts citing *Okafor*

V. Nnaife (1987) 4 NWLR (pt. 64) 129 at 137 and Dongtoe V. CSC Plateau State (2001) 4 SC (pt. 11) 43 at 60.

Finally on this, the learned senior counsel submitted that it is impracticable to question the actions or conducts of principal officers or organs of a corporate entity such as APGA without making the corporate entity a party to the suit, relying on Olawoye V. Jimoh (2013) 13 NWLR (pt. 1371) 362 and Olonode V. Oyebe (1984) NSCC (Vol. 15) 286 at 297. B

On the locus standi of the 1st appellant, learned senior counsel submitted that in view of the fact that there is abundant evidence that the 1st appellant was not a member of APGA on 10/2/11 when the 1st and 2nd respondents were elected chairman and secretary of APGA, he had no locus to bring this action either in his personal capacity or even in a representative capacity. That having only returned to APGA either in November, 2012 as shown in his membership card or “came back to APGA in February, 2013 or thereabout” as admitted by him, he had no locus to challenge actions of APGA which took place in 2011. According to him, APGA is a voluntary association and as such, the 1st appellant who voluntarily joined APGA ought to be bound by the actions of APGA before he joined it, relying on Mbanefo V. Molokwu (2014) 6 NWLR (pt. 1403) 377 at 407 paras B - D. C
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On the contention of the appellants that they never challenged the APGA Convention of 10/2/11, he submitted that both issues 3 & 4 and Reliefs 3, 7 and 8 were targeted at the APGA National Convention of February, 2011. That parties ought to be consistent in the presentation of their case both at trial and on appeal, citing and relying on Ajide V. Kelani (1985) 3 NWLR (pt. 12) 248, Osuji V. Eke-Ocha (2009) 16 NWLR (pt. 1166) 81 at 111 - 112 and Kayode V. Odutola (2001) 11 NWLR (pt. 725) 659. Learned senior counsel submitted that so long as the APGA National Convention of 10/2/11 took place prior to “November, 2012” and/or “February, 2013 or thereabout”, the alleged dates of the 1st appellant’s re-admission into the party, the 1st appellant remained without locus standi to maintain this action. F
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Learned senior counsel further submitted that the issue relating to the 3rd plaintiff being the sole plaintiff since others had withdrawn was never raised at the trial court, nor was it an issue at the

lower court. Thus, this being a fresh issue, leave ought to have been sought and obtained. Accordingly, failure to obtain leave is fatal to the issue, relying on the cases of *UOR & Ors. V. Loko* (1988) 2 NWLR (pt. 77) 439, *Fawehinmi Construction Co. Ltd. V. Obafemi Awolowo University* (1998) 5 SC 43 at 57, *Adake V. Akun* (2003) 7 SC 26 at B 30.

Finally on this issue, it was argued that when the other plaintiffs filed notice of withdrawal from the suit, they also withdrew their affidavit/evidence in support of the originating summons. Thus, that there was no longer evidence to which the issues in the originating summons can be determined. C

On the final leg of this issue, the learned senior counsel for the 1st and 2nd respondents submitted that courts have no jurisdiction to interfere with the domestic/internal affairs such as the election of officers of a political party. That the learned counsel for the appellants in paragraph 4.89 of their brief agreed with this position but went ahead to cite cases on nomination of candidates and Section 87(9) of the Electoral Act, 2010 (as amended) which does not apply in this case. He urged the court to resolve this issue in favour of the respondents. D E

The appellants filed amended appellants' reply brief of 27 pages against the main brief of 33 pages. A closer look at the said reply brief is clearly a re-arguing of the appeal and not a reply to new issues as envisaged by a proper reply brief. I must state for the umpteenth time that reply brief is not an opportunity to re-argue an appeal of the appellant. Rather, it is an avenue to reply to new issues raised by the respondent in the appeal. F

However, on page 28, paragraph 1.78 of the amended reply brief, learned senior counsel for the appellants submitted that although the court will not interfere with political questions, it will ensure that political parties obey their Constitutions and Rules as was done by the learned trial court in this matter. He urged this court to allow this appeal. G

There is no doubt that the parties to this appeal, except the 6th respondent are members of a political party called the All Progressives Grand Alliance, also known as APGA for short. I shall henceforth use the initials of the party in this judgment. It is also a fact that in this appeal in which the for- H

tunes of the said party is being determined, it has not been made a party, neither was it so made at the court of trial or the lower court. I had set out earlier in this judgment both the questions for determination and the reliefs sought by the plaintiffs at the trial court (now appellants). I need not repeat it here. One thing is clear, and that is, whether the issue before the trial court was a mere interpretation of the Constitution of APGA or the determination of the status of the 1st and 2nd respondents vis-à-vis the National Convention of APGA held on 10/2/11, with due respect, APGA was a necessary party. I agree with the court below that the dispute between the parties is as to whom between the appellants and the 1st - 5th respondents are the authentic National Leaders of APGA. It becomes imperative that APGA is a necessary party in the suit for the effectual determination of the suit as the party will be affected by the decision of the court however decided.

I need to add that a necessary party is that person whose presence is essential for the effectual and complete determination of the issues before the court. It is a party in the absence of whom the whole claim cannot be effectually and completely determined.

Now, what is the effect of failure to join a necessary party? This matter was commenced at the Federal High Court and by Order 9 Rule 14(1) & (3) of the Federal High Court (Civil Procedure) Rules 2009, it states:

“14(1) No proceeding shall be defeated by reason of misjoinder or non-joinder of parties, and a judge may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him.

(3) A judge may order that the name of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.”

From the above provision, it is clear that non joinder of a necessary party in a suit is an irregularity that does not affect the competence or jurisdiction of the court to adjudicate on the matter before it. The provision allows the court to hear the matter as regards the rights and interest of the parties

actually before the court. Also, that such non-joinder would not defeat the cause or matter. See Leonard Okoye & Ors V. Nigerian Construction & Furniture Co. Ltd & Ors. (1991) 6 NWLR (pt. 199) 501, Laibru Ltd. V. Building & Civil Engineering Contractors (1962) 1 ALL NLR 387, (1962) 2 SCNLR 118, Union Beverages Ltd. V. Pepsi Cola Int'l Ltd. (1994) 3 NWLR (pt. 330) 1, Azuh v. UBN Plc (2014) 11 NWLR (pt. 1419) 580 at 610 - 611, Green V. Green (1987) NWLR (pt. 61) 481.

However, while it is the law that no cause or matter shall be defeated by reason of the mis-joinder or non-joinder of any party, yet in the absence of a proper party or necessary party before the court, it appears an exercise in futility for the court to make an order or decision which will affect a stranger to the suit who was never heard or given an opportunity to defend himself. This will certainly be against the tenets and tenor of Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In the instant case, there is no way the question posed by the appellants for determination would be effectually and completely answered in the absence of APGA, the ultimate beneficiary of the outcome of the decision. Also, without APGA as a party, the reliefs sought would not have any effect as APGA cannot be bound by an order of a court in a matter it was not a party. This is, sadly, the lot of this case. See Olawoye V. Jimoh (2013) 13 NWLR (pt. 1371) 362, NDP v. INEC (2013) 6 NWLR (pt. 1350) 392.

The end result of what I have said above is that although the trial court had the jurisdiction to hear the suit as constituted, the judgment generated thereby which had massive impact on the activities of APGA, including its leadership, cannot be allowed to stand.

A plaintiff is not bound to sue a particular party. However, where the outcome of the suit will affect that party one way or the other, it will be foolhardy not to join him in the suit. In fact, it would amount to an exercise in futility as the said party will not be bound by the outcome of the case.

The other issue has to do with the locus standi of the 1st appellant herein to institute the action either for himself or on behalf of others. In Attorney-General of Kaduna State V.

Mallam Umaru Hassan (1985) NWLR (pt. 8) 483, this court held that the legal concept of standing or locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest. Thus, where a plaintiff by his pleading, fails to show that he has a locus to institute an action, no issue in the case can be gone into, not even the question whether or not the statement of claim discloses a cause of action. As was held in *Nigeria Airways Ltd. V. F.A. Lapite* (1990) LPELR - 1988 (SC), (1990) 71 - 72 SC, 60, the only and proper order to make in such circumstance is that of striking out the suit. See also *Iwuaba V. Nwaosigwelem* (1989) 5 NWLR (pt. 123) 623.

By Exhibit A, 1st appellant's APGA membership card, he became a member of APGA in "November, 2012", and by paragraph 8(n) of 1st appellant's further and better affidavit in support of Originating Summons, he admitted that "by the time Chief Maxi Okwu came back to APGA in February, 2013 or thereabout, his party, Citizens Popular Party has ceased to exist and it was eventually deregistered by INEC". So whether he became member of APGA in November, 2012 or in "February, 2013 or thereabout", it is crystal clear that he was not a member of APGA as at 10th February, 2011 when APGA held its National Convention which produced the 1st and 2nd respondents as National Chairman and National Secretary respectively. It was the view of the lower court that the 1st appellant herein had no locus standi to challenge the convention of APGA held on 10/2/2011 when at that time, he was not a member of APGA. I agree.

The appellants' learned senior counsel argued that they did not challenge the convention of 10/2/11. But in the face of raw facts staring us in the face, and well documented in the record of appeal, the learned SAN cannot be right. Their position is inconsistent with questions 3 and 4 submitted by the appellants to the trial court for determination and reliefs 3, 7 and 8 sought by them. Both questions 3 and 4 and reliefs 3, 7 and 8 were targeted at the APGA National Convention of 10/2/11 wherein the 1st and 2nd respondents and other National Officers of APGA were re-elected for a new term in

office. Clearly, the 1st appellant had no locus standi to file this suit either for himself or as representing other unnamed parties.

It is trite that when a plaintiff has been found not to have the standing to sue or locus standi as in the instant case, the question whether other issues in the case had been properly decided or not does not arise. This is because the trial court has no jurisdiction to entertain the claim. The correct position of the law therefore is that where a plaintiff is held to lack the locus standi to maintain his action, the finding goes to the jurisdiction of the court and denies it jurisdiction to determine the action. The proper order, in such a situation therefore, is to strike out the claim. See Herbert Ohuabunwa Emezi V. Akujobi David Osuagwu & Ors (2005) 12 NWLR (pt. 939) 340, Thomas V. Olufosoye (1986) 1 NWLR (pt. 18) 669.

The learned senior counsel for the appellants had argued in paragraph 4.70 of their brief that:

“Even if... the 1st appellant does not have the locus standi to bring the action, even if the 2nd, 4th and 5th plaintiffs had disengaged themselves from the suit, there is still Chief Dickson Ogu, the 3rd plaintiff. He did not disengage from the suit and such he has the locus standi to continue the case as representing the other unnamed plaintiffs.”

I find it difficult to appreciate the above argument because that was not the case of the appellants at the two courts below. Secondly, in a representative action, as in the instant case, common interest or same interest is a necessary ingredient to maintain the action. Thus, when the 2nd, 4th and 5th plaintiffs filed Notices of Discontinuance and unequivocally and wholly withdrew their claims in the suit, the element of common/same interest, required in a representative action, became an issue. It follows that the 1st appellant not having been a member of APGA when the alleged cause of action arose, and the 2nd, 4th and 5th plaintiffs having discontinued the action, and in view of the fact that the evidence in support of the Originating Summons was the joint affidavit of all the parties named and unnamed, the 2nd appellant herein alone cannot validly continue to maintain the action in a representative capacity. See Adefulu V. Oyesili (1989) 5 NWLR (pt. 122)

377 at 407.

It must be noted that the 2nd appellant did not file a separate suit or affidavit in support of the originating summons. Secondly, when the other plaintiffs withdrew from the case, there was no effort to streamline the evidence needed for the case and the ones withdrawn. Was it the function of the court to sift the affidavit to know which paragraph would sustain the case of the 2nd appellant? I think this is not the business of the court. And in any case, in spite of the discontinuance of the 2nd, 4th and 5th plaintiffs from the suit, the learned trial judge still gave judgment in their favour. The court below on page 3016 of the record states that:

“It follows therefore that the reliefs granted the 2nd, 4th and 5th respondents by the trial judge are without jurisdiction, the 2nd, 4th and 5th respondents having withdrawn from the suit, and the suit, and the grant of reliefs made on their behalf is of no effect and amounts to a nullity.”

I agree completely. Can anyone see the confusion which bedeviled this case, at the trial court? The trial court ought not to have heard the case and made orders in favour of those plaintiffs who had unequivocally discontinued their action. Having withdrawn their complaint against the defendants, they became strangers to the suit. The continued retention of their names in the suit and the delivery of judgment in their favour even when they were no more parties before the court was in itself a debilitating factor which robbed the court of its jurisdiction to hear the case. All I have said above is that there were definitely features in the case which ought to have prevented the trial court from exercising its jurisdiction. The presence of the 1st appellant in the suit which he filed in a representative capacity was a serious virus which affected the jurisdiction of the trial court. I hold that the court below was right to hold that the trial court lacked the jurisdiction to have entertained the appellants’ originating summons. See *Madukolu V. Nkemdilim* (1962) 1 ALL NLR (pt. 4) 557.

In the circumstance therefore, I hold that this appeal lacks merit and is hereby dismissed. I uphold the judgment of the Court of Appeal which set aside the judgment of the Federal High Court in Suit No. FHC/ABJ/CS/563/2013 of 15/1/2014. I award cost of

N100,000.00 in favour of the 1st and 2nd respondents only.
Appeal Dismissed.

GALADIMA JSC

B The synopsis of the background facts leading to this appeal has
been exposed in the lead judgment of my Learned Brother OKORO,
JSC. It is unnecessary for me to repeat same. The Originating Sum-
mons instituted by the Appellants at the Federal High Court Abuja,
C was in respect of the election of the 1st and 2nd Respondents as
chairman and secretary of the National Working Committee of APGA,
held on the 18th day of February, 2011. The 1st and 2nd Respon-
dents filed a Notice of Preliminary Objection challenging the jurisdic-
tion of the trial Federal High Court to entertain the suit. The learned
D trial judge determined the preliminary objection and the suit together.
Having overruled the preliminary objection, he granted the reliefs
sought by the Appellants.

Dissatisfied with this decision, the Respondent herein (as De-
fendants) appealed to the court below, which allowed the appeal
E and set aside the judgment of the learned trial judge.

This is further appeal by the Appellants who from their sixteen
Grounds of Appeal, distilled 5 issues for the determination of this
appeal in their brief of argument. This was adopted and relied upon
at the hearing of the appeal by the learned Silk, G.S. Pwul leading
F other counsel. Learned silk for 1st and 2nd Respondents, P.I.N.
Ikwueto SAN, leading other counsel adopted and relied on the brief
of 1st and 2nd Respondents. The learned counsel for 6th Respon-
dent adopted their brief. The 3rd - 5th Respondents did not file any
G process and did not appear to defend the appeal.

My contribution here has to do with Appellants' issues No.2 on
the effect of non- joinder and issue No. 2 of the 1st and 2nd Respon-
dents, which are on jurisdiction, a threshold issue in the appeal.

Firstly, the question of the necessary parties in this appeal. May
H it be noted that except the 6th Respondent, all the parties are mem-
bers of All Progressive Grand Alliance (APGA). However, that party
which fortune is being determined has not been made a party either
at the trial or the lower court. The issue before the trial court was not
a mere interpretation of the APGA Constitution or the determination

of the status of the 1st and 2nd Respondents regarding the National convention of APGA of 10/2/2011. To that extent APGA, in my opinion, is a necessary party for the effectual determination of the suit because it will be affected by the decision of the court, howsoever decided. In its absence the dispute between the parties cannot be effectually determined. Although by Order 9 Rule 14(1) & (3) of the Federal High Court (Civil Procedure) Rules 2009, non-joinder of a necessary party in a suit is a mere irregularity that does not affect the competence or jurisdiction of the court to adjudicate on the matter before the trial court, it must however, have regard to the rights and interests of the parties actually before it. In the case at hand the issues set out by the Appellants for determination would not be effectually determined, if APGA, as a political party is not made a party. This is to avoid any exercise in futility as the party must be bound by the outcome of the case, in this circumstance.

My second consideration is focused on the 3rd issue as formulated by the Appellants and the issue (ii) formulated by the 1st and 2nd Respondents respectively. As I have stated this too is a threshold issue.

While the learned senior counsel for Appellants has contended seriously that the 1st Appellant had locus standi to bring the action, the learned senior counsel for the 1st and 2nd Respondents has contended otherwise, submitting that 1st Appellant did not have such locus standi, since he was not a member of APGA in 2010 when the 1st and 2nd Respondents were re-elected National Chairman and Secretary of APGA respectively.

The term “locus standi” connotes the legal capacity to institute proceeding in a court of law. It is used interchangeably with the term “standing” or “title to sue,” It is often an aspect of justifiability and also an issue of jurisdiction. If a plaintiff is not competent because he has no locus standi to bring an action, the court would, in turn be incompetent and without jurisdiction to entertain the plaintiff’s action. See *ADESANYA v. PRESIDENT* (1981) 1 NCLR 38; *OWODUNNI v. REGISTERED TRUSTEES OF C.C.C.* (2001) 10 NWLR (Pt. 675) H 315. The fundamental aspect of locus standi is that it focuses on the party seeking to get his complaint before the court and not on the issues he wishes to have adjudicated.

In other words, the locus standi to sue does not depend on the

success or merits of claim. That is, it is a condition precedent to a determination in the merits consequently if a plaintiff has no locus standi to sue, it is not necessary to consider whether or not there is a genuine case on the merits. His case ought to be struck out as being incompetent. *ADESANYA v. PRESIDENT* (supra) *A.G. AKWA IBOM B STATE v. ESSIEN* (2004) 7 NWLR (Pt. 872) 288.

In Exhibit 'A' 1st Appellant's membership card of APGA, it is shown that he became a member in November, 2012. By paragraph 8(n) of the 1st Appellant's Further and Better Affidavit in support of his Originating Summons, he admitted that when Chief Maxi Okwu came back to APGA in February 2013, his party Citizens Popular Party (CPP) had ceased to exist and it was eventually deregistered by Independent National Electoral Commission (INEC). So, the two dates, November 2012 and February 2013 are not significant but 10th February, 2012 when the convention of APGA took place. Mere denial by the appellants that they are not challenging the convention of 10/2/2011, does not change their clear position in their questions 3 and 4 submitted to the trial court for determination and reliefs 3, 7, and 8 which they had sought. Flowing from these facts, it has been found that the 1st Appellant lacked locus standi to bring this action. These were features which ought to have prevented the trial court from entertaining the suit. It definitely lacked jurisdiction to do so. For this contribution and the more detailed reasons in the lead judgment of my learned brother Okoro JSC, I too dismiss the appeal for lacking in merit and affirm the judgment of the Court of Appeal, which set aside the judgment of the trial Federal High Court delivered on 15/1/2014. I also abide by order made as to costs.

G

ARIWOOLA JSC

I have had the opportunity of reading the draft of the lead judgment of my learned brother Okoro, JSC just delivered. I am in entire agreement that the appeal is unmeritorious and it should be dismissed. I also hold that the court below was right and correct to have held that the trial court acted without jurisdiction in entertaining the appellant's Originating Summons.

Accordingly, for the reasons well articulated in the lead judgment, I affirm the decision of the court below which set aside the

judgment of the trial court.

Appeal is dismissed by me.

I abide by the orders in the lead judgment, including that on costs.

B

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, John Inyang Okoro, JSC, just delivered. He has meticulously considered and ably resolved the issues in contention in this appeal. I adopt his reasoning and conclusion as mine in agreeing that the appeal lacks merit and should be dismissed.

I abide by the consequential orders made including the order for costs.

D

SANUSI JSC

I had been opportune to read the draft copy of the lead judgment prepared by my lord John Inyang Okoro, JSC. My noble lord had ably and painstakingly addressed all the issues canvassed in this appeal by learned counsel of the parties. The reasons advanced in the lead judgment and the conclusion arrived at are agreeable to me and I have no reason to depart from them. While adopting them as mine, I also find the appeal devoid of merit and I accordingly dismiss it. I affirm the decision of the court below. I endorse the order in costs awarded.

G

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