

SUPREME COURT OF NIGERIA

MONDAY 22ND FEBRUARY, 2016. SC. 46/2016 (CONS.)

**CORAM:- S. GALADIMA, O. RHODES-VIVOUR,
M. U. PETER-ODILI, M. D. MUHAMMAD, C. B. OGUNBIYI,
J. I. OKORO, A. SANUSI, JJSC**

1. AISHA JUMMAI ALHASSAN

2. ALL PROGRESSIVE CONGRESS (APC)

-SC.46/2016, SC.45/2016,

SC.47/2016, 48/2016

INDEPENDENT NATIONAL

ELECTORAL COMMISSION

- SC.50/2016 (CROSS -APPELLANT)

..... APPELLANTS

MR. DARIUS DICKSON ISHAKU

-SC.58/2016 (CROSS-APPELLANT)

PEOPLES DEMOCRATIC PARTY

-SC.59/2016 (CROSS-APPELLANT)

AND

1. MR. DARIUS DICKSON ISHAKU

2. PEOPLES DEMOCRATIC PARTY

3. INDEPENDENT NATIONAL

ELECTORAL COMMISSION - SC.46/2016

1. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

2. MR. DARIUS DICKSON ISHAKU

3. PEOPLES DEMOCRATIC PARTY

- SC.45/2016

1. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

2. MR. DARIUS DICKSON ISHAKU

3. PEOPLES DEMOCRATIC PARTY

-SC.47/2016

.... RESPONDENTS

1. MR. DARIUS DICKSON ISHAKU

2. PEOPLES DEMOCRATIC PARTY

3. INDEPENDENT NATIONAL

ELECTORAL COMMISSION - SC.48/2016

1. AISHA JUMMAI ALHASSAN

2. ALL PROGRESSIVE CONGRESS

3. MR. DARIUS DICKSON ISHAKU

1280 Alhassan v. Ishaku (2016) 2 KLR (pt. 381) 1279; (2016)

4. PEOPLES DEMOCRATIC PARTY
(CROSS RESPONDENT) - SC.50/2016

1. AISHA JUMMAI ALHASSAN

2. ALL PROGRESSIVE CONGRESS

3. PEOPLES DEMOCRATIC PARTY

4. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

- SC.58/2016 (CROSS RESPONDENT)

1. AISHA JUMMAI ALHASSAN

2. ALL PROGRESSIVE CONGRESS

3. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

4. MR. DARIUS DICKSON ISHAKU

- SC.59/2016 (CROSS RESPONDENT)

PLEADINGS - Binding nature of - Pleading conveys the claim of plaintiff to defendant - And parties and courts are bound by pleadings - As no party would be allowed to contend the contrary (H1)

EVIDENCE - Contradiction - Pleadings - Evidence which is at variance with pleaded facts is inadmissible - And ought to be rejected by court (H2)

EVIDENCE - Admissibility - Counsel must object to inadmissible evidence - But where such evidence is admitted - Court must during judgment - Treat same as if it was not admitted (H3)

PLEADINGS - Defect in - Effect - Pleading is the foundation of a claim - And once it is defective - The claim is bound to collapse (H4)

PLEADINGS - Admission - Are waiver of all controversy on the fact the pleader admits - And a party must be consistent in pleading and stating his case in - In order to succeed (H5)

ELECTIONS - Pre election - Jurisdiction - Only aspirants at primaries can complain about the conduct thereof - And jurisdiction in such matters resides not in election tribunal - But in High Courts (H6)

ELECTION PETITIONS - Locus standi - Petitioner satisfies the court that he has locus - If he is able to show that his civil rights and obligations have been - Or are in danger of being infringed (H7)

FACTS

This election petition was commenced at the Governorship Election Petition Tribunal for Taraba State by petitioners/1st and 2nd appellants against the declaration of 1st respondent as the Executive Governor of Taraba State. The Independent National Electoral Commission (INEC) - 3rd respondent had on the 25th April 2015, conducted the gubernatorial election for the State. 2nd appellant sponsored 1st appellant, while 2nd respondent sponsored 1st respondent for the said election. At the end of the exercise, 1st respondent was declared the winner thereof and returned elected as the Governor of the State. 1st appellant and 2nd appellant were not satisfied with the outcome of the election. Hence, they filed the petition.

The main grouse of appellants is that 1st respondent was not qualified to contest election into the office of Governor of Taraba State and that he was not properly nominated by 2nd respondent as its candidate in the aforementioned gubernatorial election. Appellants therefore seek for an order that 1st appellant be issued with a certificate of return as the duly elected Governor of the State. In the alternative, appellants pray for the invalidation of elections in some polling units and wards across the State, as such places witnessed electoral irregularities and non compliance. They also call for fresh elections in the affected areas. Respondents responded with their replies urging the Tribunal to dismiss the entire petition. Hearing commenced in the matter and at the end of which the Tribunal in its final judgment, declared 1st appellant as the winner of the said election. Aggrieved, 1st and 2nd respondents appealed to the Court of Appeal. The Court upturned the judgment of the Tribunal, allowed the appeal and upheld the election of 1st respondent. Dissatisfied, appellants appealed to the Supreme Court.

ISSUES FOR DETERMINATION

ISSUE 1

Having regard to Section 137 of the Electoral Act, 2010 (as amended) whether Appellants did not have the locus standi to chal-

lenge the non qualification of the 1st Respondent for sponsorship as required under Section 177(c) of the Constitution.

ISSUE 2

Whether the Court of Appeal properly construed Section 177 (c) of the Constitution with regards to sponsorship to content Governorship Election in the face of undisputed evidence of PW2 and exhibit A5 to the effect that 2nd Respondent did not conduct any primary election to entitle them to sponsor the 1st Respondent in the April 11 and 25, 2015 election to of Office of Governor of Taraba State as required under Section 87 (4) of the Electoral Act, 2010.

ISSUE 3

Whether Section 87(9) of the Electoral Act was rightly invoked by the Court of Appeal in determining the Petitioners ground of non-qualification of the 1st Respondent to contest the Taraba State Governorship Election of 11 and 25 April, 2015.

ISSUE 4

Having regard to the duty on Court to consider the pleading of parties in its entirety, whether the Court of Appeal correctly applied the principle of admission of evidence in coming to the conclusion that Appellants made an inconsistent case that the 1st Respondent was not qualified to contest the Governorship Election of Taraba State on account of lack of sponsorship.

ISSUE 5

Whether the wrongful description of RW52 by the Trial Tribunal occasioned a miscarriage of Justice.

ISSUE 6

Whether the case as proved by the Petitioners did not entitle the Lower Court to uphold the return of the 1st Petitioner/Appellant as winner of the Governorship Election as determined by the Trial Tribunal.

HELD

(Unanimously dismissing the appeals per **RHODES-VIVOUR JSC**)

PLEADINGS - Binding nature of

1. The Appellants' case is that the 1st Respondent was not sponsored by the PDP to contest the Governorship Election

for Taraba State. The starting point would be to examine the Appellants pleadings. This is so because the main aim of pleadings is to convey the case and the claim of the plaintiff (Petitioner) to the defendant (1st Respondent). In this way the defendant would not be taken by surprise. He would either admit the claim or present his own defence. So if pleadings are to be of any use parties and the Courts are bound by them. On no account would a party be allowed to contend the contrary. The Appellants are bound by their own pleadings it is so clear after reading the paragraphs referred to above that the Appellants are actually saying that the 1st Respondent was sponsored by the 2nd Respondent. Their case that the 1st Respondent was not sponsored by the 2nd Respondent is inconsistent with the facts pleaded which are that the 1st Respondent was in fact sponsored by the 2nd Respondent. (pp. 1294 C/1295 B)

EVIDENCE - Contradiction - Pleadings

2. The long held position of the law is that evidence which is at variance with pleaded facts are inadmissible and ought to be rejected by the Court.

The evidence from the Appellants, i.e. PW2 and Exhibit A5 that the PDP did not conduct primaries and so the 1st Respondent was not sponsored by the PDP is at variance with paragraphs 3, 4 and 11 of the Appellants pleadings.

Consequently the evidence adduced by the Appellant that the 1st Respondent was not sponsored by PDP ought to have been rejected by the Tribunal. (p. 1295 D)

EVIDENCE - Admissibility

3. It is the singular duty of counsel to object to inadmissible evidence, but if somehow inadmissible evidence is admitted it becomes the duty of the Court when it delivers judgment to treat such evidence as if it was not admitted. Courts must ensure that evidence contrary to pleading of a party is never admitted. If such evidence escapes the scrutiny of the Court of first instance the Appeal Court must reject such evidence and decide the case on legal evidence. In this case the evi-

dence adduced by the Appellants' that PDP never conducted primaries is contrary to their pleadings. Such evidence is rejected. (p. 1295 G)

PLEADINGS - Defect in - Effect

B 4. I must remind learned counsel for the Appellants' that pleading is the foundation of a claim. Once it is defective the case would be in serious legal problems (as in this case) leading to its eventual collapse like a pack of cards. (p. 1296 A)

C PLEADINGS - Admission

5. Admissions in pleadings are a waiver of all controversy on the fact the pleader admits. The Court of Appeal correctly applied the principle of admission in the Appellants pleadings in coming to the conclusion that the Appellants made an inconsistent case when he said in one breath that the 1st Respondent was not sponsored by the 2nd Respondent but in the next breath that he was sponsored by the 2nd Respondent to contest the Governorship election of Taraba State.

E On the State of the Appellant's pleadings' viz paragraphs 3, 4 and 11, the fact that the 1st Respondent was sponsored by the 2nd Respondent is indisputable. A party should be consistent in stating his case in his pleadings and consistent in proving it. He would not be allowed to take one stand in his pleadings and the opposite during trial.

F The Appellants' cannot admit in their pleadings that the 1st Respondent was sponsored by the 2nd Respondent and (sic, present) an entirely different and inconsistent case by their witness (PW2) and hope to succeed. (p. 1296 B)

G ELECTIONS - Pre election - Jurisdiction

6. Indeed in Daniel v. INEC (2015) 9 NWLR (pt.1463) p.113, I restated the well laid down position of the law that only a person who participated at a party primary can complain about how it was conducted.

H After an examination of decided authorities it is so clear that party primaries are the domestic affair of the political party which no outsider can complain about. Only aspirants at the

primaries can complain about the conduct of party primaries. Furthermore an election tribunal has no jurisdiction to comment or examine how party primaries were conducted. Jurisdiction for such an exercise resides with Federal High Court, High Court of a State, or FCT High Court and only at the instance of a dissatisfied aspirant at the primaries. B

Finally, nomination and sponsorship of candidates by a party are pre-election matters that should be heard before petition is heard in an Election Tribunal. (pp. 1300 H/1302 C)

ELECTION PETITIONS - Locus standi C

7. A petitioner satisfies the Court that he has locus standi if he is able to show that his civil rights and obligations have been or are in danger of being infringed.

By the clear provisions of Section 87 (9) of the Electoral Act which has been explained repeatedly by this Court in cases alluded to in this judgment the Appellants' have no locus standi to question the nomination and sponsorship of the 1st Respondent by the PDP after admitting that fact, and even if the fact was not admitted. (p. 1301 D) E

NOTABLE POINT OF INTEREST

RHODES-VIVOUR JSC

1. Elections – Sponsorship by political party F

Before a person can stand election for the office of Governor of a State he must belong to a political party and be sponsored by that party. This is so because the Constitution and the Electoral Act make no provision for Independent Candidates. (p. 1298 H)

REPRESENTATION G

A. J. Owonikoko, SAN with him, M. A. Magaji, SAN, J.N. Egwuonwu, M.I. Shaba, A. Zukogi (Miss), C.K. Udeoyibo, E. Okoi, A.D. Hussan, A.Y. Maidalailu, A. Olawole, H.M. Tukui, M. Yahaya, E.O. Abang, N.O. Salifu, A.I. Olawoye, N. Aje (Miss). R.P. Latu (Miss), B.O. Odigie (Miss), B.C. Babatunde (Mrs.), N.A. Bandawa, A.C. Ebuzeme (Miss), J. Agbaduh (Miss), J.S.P. Dada & M.M. Grema (Mrs.), for the Appellants H

Kanu G. Agabi, SAN with him, O. N. Ejut, SAN, J.S. Okutepa, SAN,

- N. Elijah, A. Aakm, J. Ochogwu, U. Njoku, A. Onah, M. Agada (Mrs), L. Akwaji, P. Igajah. P. Erivwode. Y. Ogbonna, K. Wilkey, E. Usungurua, E. Etim (Miss), O. Obeten, A. Osaghae (Miss), C. Odoemene (Miss), D. Oluohu, W.C. Daniel, A. Afolarin, H. Okeke, A. Odule, E. Tutlu, E Ebong (Miss), S.Q. Agbor, C. Ayodele (Mrs), B. Ude, N. Medani, O. Ogbenyealu (Mrs), L. Nwoye, O. Apeh, F. Balogun, O. Ihenkanandu (Miss), O. Okoye (Miss), M. Philip (Mrs), M. Idam, O. Arowosebe, A. Igbo, P. Okpa, A. Pascal (Mrs), A. Ukaga (Miss), J. Jideobi, L. Yusuf (Miss), I. Namiji (Miss), E. Chijioke (Miss), O. Ekonknow (Miss), C. Okorie, A. Alim (Miss), P. Arua (Miss), T. Olubayo (Miss), M. Ogobuchi, O. Achem, G. Ejiesieme (Miss), B. Ameh (Miss), C. Ozuzu (Miss), B. Ogar, N. Odule (Mrs.), Mary Francis Orji (Miss), N. Ezidi, for 1st Respondent
 Chief S. U. Akuma, SAN with him, M.I. Siman, G.E. Ukaegbu, E.A. Effiong, A. Maisamari, T.T. Chahiur, M.B. Ahmad. E.N. Ukaegbu, D.G. Tukura, U. Akingnade (Mrs), M.C. Nwoye, T. T. Sekibo, D. Mbila (Miss), for 2nd Respondent
 J.B. Daudu, SAN with him, A.J. Akanmode, J.O. Makinde, E.N. Chia, J.A. Oguche, H.M. Usman (Mrs.), P.B. Daudu, S. Stephen, F. Al-Mustapha (Miss), O.J. Wada, I.C. Okonji, A. Abu, H.M. Ibega, S.O. Sanni (Miss), K. Fatai-Oso, for 3rd Respondent

CASES REFERRED TO

- PDP v. INEC (2014) 17 NWLR (pt. 1437) 525
 F Newbreed Org. Ltd v. Erhomsele (2006) 5 NWLR (pt. 974) 499
 Odutola v. Papersack Nig. Ltd. (2007) ALL FWLR (pt. 350) 1214
 Adesanya v. Aderonmu (2000) 9 NWLR (pt. 672) 370
 Echir v. Nnamani (2000) 8 NWLR (pt. 667) 1
 G Ogbogu v. Ugwuegbu (2003) 10 NWLR (pt. 827) 189
 Makinde v. Akinwale (2000) 2 NWLR (pt. 645) 435
 Alade v. Olukade (1976) 2 SC 183
 Kamil v. INEC (2010) 1 NWLR (pt. 1174) 48
 PDP v. Sylva (2012) 13 NWLR (pt. 1316) 85
 H Ucha v. Onwe (2011) 4 NWLR (pt. 1237) 386
 Daniel v. INEC (2015) 9 NWLR (pt. 1463) 113

STATUTES REFERRED TO

Electoral Act 2010 (as amended), ss. 87(4)(9), 137, 140(2)

Constitution of the Federal Republic of Nigeria 1999, ss. 177, 182
Evidence Act, ss. 20, 21

LEAD JUDGMENT BY RHODES-VIVOUR JSC

On 11 February 2016, your lordships heard and dismissed
this appeal for reasons to be given on 22 February 2016. These are B
the reasons that led me to that conclusion.

THE FACTS ARE THESE

On 11 and 25 April 2015 the 3rd Respondent, the regulatory body
charged with the conduct of elections in Nigeria conducted election C
for the office of Governor of Taraba State. There were eleven candi-
dates at that election. The 1st Appellant, sponsored by the 2nd Ap-
pellant, and the 1st Respondent sponsored by the 2nd Respondent
were candidates at the election. The 1st Respondent was declared
the winner of the election with a score of 369,318 votes, while the D
1st Appellant came in second with 275,984 votes. The 1st Appellant
and her party, the 2nd Appellant, were not satisfied with the out-
come of the election, and so they filed a petition. The other candi-
dates were satisfied with the outcome of the election.

The Grounds of the Petition are: E

(a) That the 1st Respondent was at the time of the election,
not qualified to contest for the Office of Governor of Taraba State,
having not been sponsored by a political party, a condition prece-
dent prescribed under the Constitution of the Federal Republic of F
Nigeria, 1999 (as amended)

(b) That the election and return of 1st Respondent was invalid
by reason of substantial non compliance with the provisions of the
Electoral Act 2010 (as amended) and Approved Guidelines and Regu-
lations for the conduct of 2015 General Elections and Manual for G
Election Officials 2015 which non-compliance substantially affected
the result of the election.

(c) That the election and return of 1st Respondent was invalid
by reason of corrupt practices which vitiated the election.

(d) That contrary to result declared by 3rd Respondent, the H
1st petitioner indeed won majority of lawful votes cast and satisfied
the mandatory constitutional threshold and spread across the local
government areas of Taraba State and ought to have been declared
winner and returned as the duly elected Governor of Taraba State at

the 11 April and 25 April 2015 election.

The Petitioners prayed for the following:

1. That it may be determined that the 1st Respondent was at the time of the election having failed to meet the constitutional requirement of being sponsored by a political party.

B 2. That it may be determined that the return of the 1st Respondent as the Governor of Taraba State in the election held on 11 and 25 April, 2015 is void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended).

C 3. That it may be determined that the 1st Respondent was not duly elected or returned in the polling units complained of in Ardo-Kola, Bali, Donga, Ibbi, Jalongo, Karim Lamido, Kurme, Lau Takum, Ussa, Wukari, Yorro and Zing Local Governments of Taraba State by D majority of lawful votes cast at the Governorship election held on 11 and 25 April, 2015.

4. That it may be determined that the 1st Petitioner scored the majority of lawful votes cast in the election held on 11 and 25 April, 2015 and satisfied the constitutional requirement and is entitled to E be returned by the 3rd Respondent as having been duly elected Governor of Taraba State in the election held on 11 and 25 April, 2015.

The Petitioners ask for the following reliefs:

F 1. AN ORDER that the 1st Petitioner be issued forthwith with a certificate of return as the duly elected Governor of Taraba State, pursuant to the election held on 11 and 25 April, 2015.

G 2. In the alternative to (3) and (4) above, that it may be determined that the elections in the polling units and wards in Ardo-Kola, Bali, Donga, Ibbi, Jalongo, Karim, Lamido, Kurme, Lau Takum, Ussa, Wukari, Yorro and Zing Local Governments of Taraba State characterised by electoral irregularities and non-compliance (i.e. over-voting) in the Governorship election held on 11 and 25 April, 2015 are invalid and that fresh elections be held in the said local Govern- H ment Areas, amongst the contestant who participated in the original election, and that result of the fresh election in the affected Local Government Areas be added to the scores of the respective candidates to determine and declare the eventual winner of majority of lawful and valid votes cast amongst the same contestants who stood

nominated and entitled to contest the said election on 11 and 25 April, 2015.

The Respondents responded with their replies urging the Court to dismiss the entire petition.

At the hearing of the petition the Appellants' called seventy-nine witnesses while the 1st Respondent called fifty-one witnesses. B The 2nd and 3rd Respondents called a witness each. On hundred and twenty three documents were admitted as exhibits. The 1st Appellant's case is that she scored the majority of lawful votes cast in the election and is entitled to be returned by the 3rd Respondent as the duly elected Governor of Taraba State. And that the 1st Respondent is not qualified to have contested the elected for the office of Governor of Taraba State since he was not sponsored by a Political Party (in this case the (PDP) as contemplated under Section 177 of the Constitution. C

On the election the Election Tribunal said: D

"...the Petitioners have failed to prove over voting and other malpractices allegedly founded on the non-use or improper use of the card reader by the 3rd Respondent..."

And on the qualification of 1st Respondent to contest election E for the office of Governor of Taraba State the Election Tribunal said:

"...having found that the purported nomination of the 1st Respondent never took place, he was therefore in law not sponsored by the 2nd Respondent he never participated in the Taraba State Governorship election held on 11 and 25 April 2015. Accordingly all F the votes purportedly cast for the 1st Respondent on the 11 and 25 April 2015 are wasted votes.... Having found that the 1st Respondent was not duly sponsored by a Political Party as required by the Constitution and the Electoral Act, 2010 he could not have qualified G to contest the election in question."

On this reasoning the Election Tribunal declared the 1st Appellant the winner of the election. The 1st and 2nd Respondents lodged an appeal. It was heard by the Court of Appeal Abuja. That Court upset the judgment of the Election Tribunal when it said that: H

".... we are of the view that the Appellants' appeal is meritorious and it is hereby allowed. The judgment of the Taraba State Governorship Election Petition Tribunal delivered on 7 December, 2015 is hereby set aside in its entirety."

The following consequential orders are hereby made:

1. The Election and return of the Appellant as the Governor of Taraba State in the elections of 11 and 25 April, 2015 is hereby upheld and sustained.

2. The Certificate of Return issued to the Appellant by the 4th Respondent to this appeal remains valid.

3. The Petition of the 1st and 2nd Respondents is hereby dismissed in Toto.

This appeal is against that judgment. Briefs of argument were filed and exchanged. The Appellants' brief was filed on 28/1/2010. Reply briefs to the 1st, 2nd and 3rd Respondents were filed on 3/2/2016, 4/2/2016 and 7/2/2016. The 1st Respondent's brief was filed on 1/2/2016. The 2nd Respondent's brief was filed on 3/2/2016. While the 3rd Respondent did not file a brief.

Learned counsel for the Appellant, Mr. A.J. Owonikoko, SAN formulated six issues for determination of this appeal. They are:

ISSUE 1

Having regard to Section 137 of the Electoral Act, 2010 (as amended) whether Appellants did not have the locus standi to challenge the non qualification of the 1st Respondent for sponsorship as required under Section 177(c) of the Constitution .

ISSUE 2

Whether the Court of Appeal properly construed Section 177 (c) of the Constitution with regards to sponsorship to content Governorship Election in the face of undisputed evidence of PW2 and exhibit A5 to the effect that 2nd Respondent did not conduct any primary election to entitle them to sponsor the 1st Respondent in the April 11 and 25, 2015 election to of Office of Governor of Taraba State as required under Section 87 (4) of the Electoral Act, 2010.

ISSUE 3

Whether Section 87(9) of the Electoral Act was rightly invoked by the Court of Appeal in determining the Petitioners ground of non-qualification of the 1st Respondent to contest the Taraba State Governorship Election of 11 and 25 April, 2015.

ISSUE 4

Having regard to the duty on Court to consider the pleading of parties in its entirety, whether the Court of Appeal correctly applied the principle of admission of evidence in coming to the conclu-

sion that Appellants made an inconsistent case that the 1st Respondent was not qualified to contest the Governorship Election of Taraba State on account of lack of sponsorship.

ISSUE 5

Whether the wrongful description of RW52 by the Trial Tribunal occasioned a miscarriage of Justice. B

ISSUE 6

Whether the case as proved by the Petitioners did not entitle the Lower Court to uphold the return of the 1st Petitioner/Appellant as winner of the Governorship Election as determined by the Trial Tribunal. C

Learned counsel for the 1st Respondent, Mr. K.G. Agabi SAN formulated four issues for determination of this appeal. They are:

ISSUE 1

Whether their lordships of the Court below were right when they held that in the light of the decision of this Honourable Court in PDP v. INEC (2014) 17 NWLR (Pt.1437) p.525, to the effect that where it is alleged that a person is or was not qualified to contest election to the Office of Governor of a State as envisaged by Section 138(1) (a) of the Electoral Act , it is Sections 177 and 182 of the Constitution that are being contemplated and that therefore their lordships of the Tribunal erred in law when they relied on the provisions of the Electoral Act, 2010 to hold that the 1st Respondent did not emerge from a valid primary conducted by his party and proceeded on that ground to annul his election. D E F

ISSUE 2

Whether their lordships of the Court below were right when they held that the ground of the petition that the 1st Respondent was not qualified to contest the election because he was not sponsored by the 2nd Respondent was inconsistent with the facts pleaded which were to the effect that the 1st Respondent was in fact so sponsored and if so, whether their lordships were right when they held that the Appellants were bound by their pleading and could not be heard to contend the contrary. G H

ISSUE 3

Whether their lordships of the Court below were right when they held that the 1st Respondent's right to fair hearing was violated hereby occasioning a miscarriage of justice when their lordships of

the Tribunal failed to review or give any consideration whatsoever to the evidence of the 51 witnesses called by the 1st Respondent in defence of the petition.

ISSUE 4

B Whether their lordships of the Court below were right when they held that the Tribunal erred in law when their lordships having held that the 1st Respondent was not qualified to contest proceeded to declare the 1st Appellant “...winner of the Governorship Election held in Taraba State on 11 and 25 April, 2015 having scored the next highest votes and entitled to be issued with the Certificate of return by the 3rd Respondent” in spite of the 1st Appellant’s own pleading that the election was null and void on account of corrupt practices and acts of non-compliance and in spite of the provisions of Section 140 (1) and (2) of the Electoral Act, 2010.

D Learned counsel for the 2nd Respondent Mr. S. Akuma SAN formulated five issues for determination of the appeal. They are:

ISSUE 1

E Whether the Court below was right when it held that the Appellants’ lacked the locus standi to challenge the 2nd Respondent’s party primaries that nominated the 1st Respondent as a candidate for the 2015 Taraba State Governorship Election.

ISSUE 2

F Whether the sponsorship of the 1st Respondent by the 2nd Respondent in the April, 2015 Taraba State Governorship Election complied with the provision of Section 177(c) of the Constitution 11 and can the Appellants’ rely on alleged non holding of primary election to question the sponsorship of the 1st Respondent under Section 177 (c) of the Constitution.

ISSUE 3

G Whether the Court below was right when it held that Appellants’ in their pleadings admitted that the 1st Respondent was duly nominated and sponsored by the 2nd Respondent.

ISSUE 4

H Whether the Court below was right when it held that the Tribunal failed to evaluate or review the evidence of the 1st Respondent’s 51 witnesses.

ISSUE 5

Was the Court below right when it set aside the order of the

Tribunal that declared the 1st Appellant the winner of the questioned election notwithstanding the provision of Section 140(2) of the Electoral Act, 2010.

The Appellants case is that the 1st Respondent is not qualified to have contested the election for the office of Governor of Taraba State since he was not sponsored by a Political Party (in this case the PDP). The Appellants' issue 1, 2, 3 and 4 are relevant in this regard. B

At the hearing of the appeal on 11 February, 2016 counsel adopted their briefs and made submission in amplification of their briefs. Not to sound repetitive counsel submissions shall be reproduced together with submissions in their respective briefs. I shall address issue 4 first and thereafter issues 1, 2 and 3 together. C

ISSUE 1 (4 in the Appellants brief)

Having regard to the duty on the Court to consider the pleadings of parties in its entirety, whether the Court of Appeal correctly applied the principle of admission of evidence in coming to the conclusion that Appellants' made an inconsistent case that the 1st Respondent was not qualified to contest the Governorship election of Taraba State on account of lack sponsorship.

Learned counsel for the Appellant argued that paragraphs 3 and 4 of the petition are introductory parts of the petition, contending that a finding that paragraphs of the pleadings amounts to admission can only arise after the whole pleadings are considered. Relying on *Newbreed Org. Ltd v. Erhomsele* (2006) 5 NWLR (Pt.974) p.499 he submitted that the Appellants pleadings do not amount to admission and that the 1st Respondent was not sponsored by the 2nd Respondent. F

Learned counsel for the 1st Respondent observed that the Appellants admitted that the 1st Respondent actually satisfied the provisions of Section 177 (c) of the Constitution since paragraphs 3, 4, 9 and 74 (6) of their pleadings constitute admission. Reliance was placed on Section 20 and 21 of the Evidence Act. Concluding he submitted that the Appellant cannot be allowed to lead evidence contrary to his pleadings. He urged this Court to dismiss the appeal. H

Learned counsel for the 2nd Respondent observed that the Court of Appeal was correct when it said that paragraphs 3 and 4 of the Appellants pleadings amounts to an admission that the 1st Respondent was sponsored by the 2nd Respondent. Reliance was placed

on *Odutola v. Papersack Nig Ltd* (2007) ALL FWLR (Pt.350) p.1214.

He submitted that the Appellants' pleaded inconsistent facts on the 1st Respondent's sponsorship by the 2nd Respondent.

After examining paragraphs 3 and 4 of the Appellant's pleading the Court of Appeal said:

B *"This is a glaring and fatal admission by the 1st and 2nd Respondents (now Appellants) that the Appellant (now 1st Respondent) actually satisfied the provisions of Section 177(c) of the Constitution ... and those paragraphs of the petition constitute admission against interest to Section 20 and 21 of the Evidence of Act ."*

C ***The Appellants' case is that the 1st Respondent was not sponsored by the PDP to contest the Governorship Election for Taraba State. The starting point would be to examine the Appellants pleadings. This is so because the main aim of pleadings is to convey the case and the claim of the plaintiff (Petitioner) to the defendant (1st Respondent). In this way the defendant would not be taken by surprise. He would either admit the claim or present his own defence. So if pleadings are to be of any use parties and the Courts are bound by them. See***

E *Adesanya v. Aderonmu* (2000) 9 NWLR (Pt.672) P.370, *Echir v. Nnamani* (2000) 8 NWLR (Pt.667) P.1, *Ogbogu v. Ugwuegbu* (2003) 10 NWLR (Pt.827) p.189, *Makinde v. Akinwale* (2000) 2 NWLR (Pt.645) p.435.

F ***On no account would a party be allowed to contend the contrary.***

What did the Appellants plead in support of their case that the 1st Respondent was not sponsored by the PDP.

G Paragraphs 3, 4, 11, 15 and 74(6) of the Appellants' pleading state as follows:

"3. The 1st Respondent is a member of Peoples Democratic Party and was its candidate in the Taraba State Gubernatorial Election held on 11 and 25 April, 2015.

H *4. The 2nd Respondent, Peoples Democratic Party is a duly registered political party and sponsor of the 1st Respondent.*

11. The Petitioners further state that in the said election, the following votes/scores were recorded for 11 political parties fielded and sponsored their candidates.

NO NAMES OF CANDIDATES POLITICAL PARTY SCORES

3.	A.J. ALHASSAN	APC	275,984
4.	Y.U. ARABI	DPP	579
5.	R.U. UMAR	LP	875
6.	K. UMARU	PDM	1,565
7.	D.D. ISHAKU	PDP	369,318

74(6) “...that fresh elections be held in the said local Govern- B
ment Areas, amongst the contestants who participated in the original
election...”

**The Appellants are bound by their own pleadings it is so
clear after reading the paragraphs referred to above that the
Appellants are actually saying that the 1st Respondent was
sponsored by the 2nd Respondent. Their case that the 1st Re- C
spondent was not sponsored by the 2nd Respondent is incon-
sistent with the facts pleaded which are that the 1st Respon-
dent was in fact sponsored by the 2nd Respondent.**

To support their case that the 1st Respondent was not spon- D
sored by the 2nd Respondent, their pleadings should have read:

“The 1st Respondent was purportedly sponsored by the PDP.”

**The long held position of the law is that evidence which
is at variance with pleaded facts are inadmissible and ought to E
be rejected by the Court. See Alade v. Olukade (1976) 2 SC p.183
Emegokwe v. Okadigbo (1973) 4 SC p.113.**

**The evidence from the Appellants, i.e. PW2 and Exhibit
A5 that the PDP did not conduct primaries and so the 1st
Respondent was not sponsored by the PDP is at variance with F
paragraphs 3, 4 and 11 of the Appellants pleadings.**

**Consequently the evidence adduced by the Appellant that
the 1st Respondent was not sponsored by PDP ought to have
been rejected by the Tribunal.**

**It is the singular duty of counsel to object to inadmis- G
sible evidence, but if somehow inadmissible evidence is ad-
mitted it becomes the duty of the Court when it delivers judg-
ment to treat such evidence as if it was not admitted. Courts
must ensure that evidence contrary to pleading of a party is H
never admitted. If such evidence escapes the scrutiny of the
Court of first instance the Appeal Court must reject such evi-
dence and decide the case on legal evidence. In this case the
evidence adduced by the Appellants’ that PDP never conducted**

primaries is contrary to their pleadings. Such evidence is rejected.

I must remind learned counsel for the Appellants' that pleading is the foundation of a claim. Once it is defective the case would be in serious legal problems (as in this case) leading to its eventual collapse like a pack of cards.

Sections 20 and 21 of the Evidence Act provides for admission.

Admissions in pleadings are a waiver of all controversy on the fact the pleader admits. The Court of Appeal correctly applied the principle of admission in the Appellants pleadings in coming to the conclusion that the Appellants made an inconsistent case when he said in one breath that the 1st Respondent was not sponsored by the 2nd Respondent but in the next breath that he was sponsored by the 2nd Respondent to contest the Governorship election of Taraba State.

On the State of the Appellants pleadings' viz paragraphs 3, 4 and 11, the fact that the 1st Respondent was sponsored by the 2nd Respondent is indisputable. A party should be consistent in stating his case in his pleadings and consistent in proving it. He would not be allowed to take one stand in his pleadings and the opposite during trial.

The Appellants' cannot admit in their pleadings that the 1st Respondent was sponsored by the 2nd Respondent and (sic, present) an entirely different and inconsistent case by their witness (PW2) and hope to succeed.

This appeal ought to come to an end now in view of the state of the pleadings, but in view of the fact that full reasons why an election appeal succeeds or fails should be given by this Court. I shall now consider issue 2.

ISSUE 2 (Issues 1, 2, and 3 in Appellants brief).

(a) Having regard to Section 137 of the Electoral Act, 2010, whether Appellants did not have the locus standi to challenge the non-qualification of the 1st Respondent for sponsorships required under Section 177(c) of the Constitution.

(b) Whether the Court of Appeal properly construed Section 177(c) of then Constitution with regards to sponsorship to contest Governorship Election in the face of undisputed evidence of PW2

and exhibit A5 to the effect that 2nd Respondent did not conduct any primary election to entitle them to sponsor the 1st Respondent in the April 11 and 25, 2015 election to the Office of Governor of Taraba State as required under Sec. 87(4) of the Electoral Act, 2010.

(c) Whether Section 87(9) of the Electoral Act was rightly invoked by the Court of Appeal in determining the petitioners ground of non-qualification of the 1st Respondent to contest the Taraba State Governorship Election of 11 and 25 April, 2015. B

Learned counsel for the Appellant observed that the 2nd Respondent did not hold any primary for the sponsorship of the 1st Respondent and by virtue of Section 137 of the Electoral Act 2010 the Appellants' have locus standi to challenge the sponsorship of the 1st Respondent since she has an interest in the outcome of the election of the 1st Respondent. Reliance was placed on *Kamil v. INEC* (2010) 1 NWLR (Pt.1174) p.48. C

He submitted that the 1st Respondent was not qualified to contest the election since he was not sponsored by any Party. Reliance was placed on Section 177 (c) of the Constitution . Learned counsel argued that the cases of *MA Shinkafi & Anor v. A.A. Yari & 2 Ors* and *T. Tarzoor & Anor V.S. Ortom & 2 Ors* delivered by this Court on 8/1/2016 and 15/1/2016 are distinguishable from this case in that in the cases supra primaries held but in this case there was no primaries. Reference was made to Section 87 (1) (2) (4)(b) , (9) of the Electoral Act. *PDP & Anor v. T Sylva & Ors* (2012) 13 NWLR (Pt.1316) p. 85, *N. Ukachukwu v. PDP & Ors* (2014) LPELR 22115. D

He urged this Court to resolve this issue in favour of the Appellants'. E

Learned counsel for the 1st Respondent observed that by virtue of Section 138 (1) (a) of the Electoral Act a Tribunal has no power to inquire into the primaries of a political party, contending that a Tribunal cannot go beyond establishing the requirements of Section 177 and 182 of the Constitution . Reliance was placed on *M.A. Shinkafi & Anor v. A.A. Yari & Ors* SC. 907/2015 delivered by this Court on 8/1/2016. F

He further observed that neither the Appellants' nor the Tribunal had any right to challenge the nomination of the 1st Respondent. Reliance was placed on Section 87(9) of the Electoral Act. *Uzodinma v. Izunaso* (2011) 17 NWLR (pt.1275) p.60, *Emeka v.* G H

1298 Alhassan v. Ishaku (2016) 2 KLR Rhodes-Vivour JSC
Okadigbo (2012) 18 NWLR (Pt.1331) p.55, J.A. Ucha v. E. Onwe &
Ors (2011) 4 NWLR (pt.1237) p.386.

He urged this Court to resolve this issue in favour of the 1st Respondent and dismiss this appeal since the Appellants' lack the locus standi to question the internal affairs of the 2nd Respondent B party.

Learned counsel for the 2nd Respondent adopted the oral submissions of learned counsel for the 1st Respondent. He observe that it is only INEC and the aspirant who participated in a primary election that can complain about the conduct of the primaries, con- C tending that the Appellants' have no locus standi to challenge the primary elections. Reference was made to Section 85, 87 of the Electoral Act 2010. M.A. Shinkafi & Anor v. A.A. Yari & 2 Ors SC.907/2015 delivered by this Court on 24 8/1/2016, PDP v. Sylva (2012) D ALL FWLR (Pt.637) P606.

Relying on recent decisions of this Court to wit. Daniel v. INEC (2015) 9 NWLR (Pt.1463) p. 113. M.A. Shinkafi & Anor v. A.A. Yari & 2 Ors supra Tarzoor & Anor v. S. Ortom & 2 Ors SC.928/2015 delivered by this Court on 15/1/2016.

E He urged the Court to resolve this issue in favour of the 1st Respondent.

The Appellants' case is that at the time of the election the 1st respondent was not qualified to contest for the office of Governor of Taraba State since he was not sponsored by a political party.

F Section 177 of the Constitution provides for qualification to contest for the office of Governor of a State while Section 182 of the Constitution states when a person seeking that office is disqualified. Section 177 of the Constitution states that:

G 177. A person shall be qualified for election to the Office of Governor of a State if-

- (a) he is a citizen of Nigeria by birth;
- (b) he has attained the age of thirty-five years;
- (c) he is a member of a political party and is sponsored by that H political party; and
- (d) he has been educated up to at least School Certificate level or its equivalent.

Before a person can stand election for the office of Governor of a State he must belong to a political party and be sponsored by

that party. This is so because the Constitution and the Electoral Act make no provision for Independent Candidates.

The Appellants pleaded that the 1st Respondent belongs to the PDP and was sponsored by it.

The 1st Respondent has satisfied Section 177 of the Constitution particularly Sub-section (c) B

The 1st Respondent is a member of the PDP and was sponsored by it.

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

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

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;

(c) that the Respondent was not duly elected by majority of lawful votes cast at the election; or D

(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

While Section 31(5) and (6) of the Electoral Act states that:

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

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

A person who participated in an election, and it is his desire to challenge the election of the winner on the ground that the winner was not qualified to contest the election can do so only under Section 177 of the Constitution, if he failed to do so under s. 31(5) and (6) of the Electoral Act. PDP v. INEC (2014) 17 NWLR (Pt.1437) p. 525. G

My lords, by virtue of the provisions of Section 138(1) (a) of the Electoral Act a Tribunal's power to decide whether a person is qualified to contest an election is restricted to establishing the requirements of Section 177 and 182 of the Constitution against the adverse party. An election Tribunal has no jurisdiction to inquire into H

the primaries of a Political Party. See M.A. Shinkafi & Anor v. A.A. Yari & 2 Ors SC.907/2015 delivered on 8/1/2016 and T. Tarzoor & Anor v. S. Ortom & 2 Ors SC.928/2015 delivered on 15/1/2016.

The 1st Respondent was sponsored by the 2nd Respondent, the PDP to contest election for Governor of Taraba State a fact admitted by the Appellants', The Appellants' case that the 1st Respondent was not sponsored by his party or that he was affected by Section 177 (c) of the Constitution fades into insignificance. It is now longer an issue.

C Section 87(a) of the Electoral Act states that:

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

The above provision of the Electoral Act is available to a dissatisfied aspirant who participated in his parties primaries. In a plethora of cases this Court has explained party primaries and who can complain when they are not properly conducted. See Onuoha v. Okafor & Ors (1983) 14 NSCC p.494, Dalhatu v. Turaki (2003) 15 NWLR (Pt.843) p.310.

On who can challenge the conduct of primaries of a political party, I said in PDP v. Sylva & 2 Ors (2012) 13 NWLR (Pt.1316) P.85 that:

"...Section 87(9) of the Electoral Act confers jurisdiction on the Court to hear complaints from a candidate who participated at his party's primaries and complains about the conduct of the primaries..."

In Lado v. CPC (2011) 18 NWLR (Pt.1279) p.689 Onnoghen, JSC said that

"... Section 87 of the Electoral Act, 2010, as amended deals with the procedure needed for the nomination of candidate by a political party for an election and specifically provided a remedy for an aggrieved aspirant who participated at the party primaries which produced the winner by the highest number of votes."

Indeed in Daniel v. INEC (2015) 9 NWLR (pt.1463) p.113, I restated the well laid down position of the law that

only a person who participated at a party primary can complain about how it was conducted. More recently this Court made the same observations per Okoro JSC in M.A. Shinkafi & Anor v. A.A. Yari & 2 Ors SC.907/2015 delivered by this Court on 8/1/2016 and T. Tarzoor & Anor v. S. Ortom & 2 Ors SC.928/2015 delivered by this Court in 15/1/2016 per Ngwuta JSC. Furthermore the following cases decided by this Court have laid to rest that issue. Uzodinma v. Izumaso (2011) 17 NWLR (Pt.1275) p.60, Emeka v. Okadigbo (2012) 18 NWLR (Pt.1221) p.55, J.A. Ucha v. E. Onwe & Ors (2011) 4 NWLR (pt.1237) p.386.

In Taiwo v. Adegboro & 2 Ors (2011) 5 SC (pt.ii) p.179. I said that:

“The rule about locus standi developed primarily to protect the Courts from being used as a play ground by professional litigants, or, and meddlesome interlopers, busybodies who really have not real stake or interest in the subject matter of the litigation.”

A petitioner satisfies the Court that he has locus standi if he is able to show that his civil rights and obligations have been or are in danger of being infringed.

By the clear provisions of Section 87 (9) of the Electoral Act which has been explained repeatedly by this Court in cases alluded to in this judgment the Appellants’ have no locus standi to question the nomination and sponsorship of the 1st Respondent by the PDP after admitting that fact, and even if the fact was not admitted.

Relying on Section 140 (1) and (2) of the Electoral Act, the Election Tribunal found that since the 1st Respondent was not sponsored by a Political Party all his votes are wasted votes and that since the 1st Appellant was the candidate with the next highest votes, was the winner of the election. The Court of Appeal had a completely different view when it said:

“It is thus clear that where in an election petition proceedings a Court or Tribunal comes to a conclusion that the person elected or returned in an election was at the time of the election not qualified to contest the election the option open to the Court or tribunal pursuant to Section 140(2) of the Electoral Act, 2010 is an order nullifying the election and shall order a fresh election to be conducted into the office in question.”

The Court of Appeal is correct. The Court of Appeal is simply stating the correct interpretation of Section 140 (2) of the Electoral Act which the Election Tribunal was wrong in its interpretation of the said section. Section 140 (2) is not applicable since the 1st Respondent was qualified to contest the election.

B After examining the sad State of the Appellants' pleadings where they admitted that the 1st Respondent was indeed sponsored by the 2nd Respondent the Appellants' failed woefully to show that any of the provisions of Section 177 of the Constitution applies to the 1st Respondent.

C ***After an examination of decided authorities it is so clear that party primaries are the domestic affair of the political party which no outsider can complain about. Only aspirants at the primaries can complain about the conduct of party pri-***
D ***maries. Furthermore an election tribunal has no jurisdiction to comment or examine how party primaries were conducted. Jurisdiction for such an exercise resides with Federal High Court, High Court of a State, or FCT High Court and only at the instance of a dissatisfied aspirant at the primaries.***

E ***Finally, nomination and sponsorship of candidates by a party are pre-election matters that should be heard before petition is heard in an Election Tribunal.***

In conclusion a brief summary of the reasons why this appeal fails would suffice at this stage.

F 1. Appellants' pleadings were against their own case rather than in favour of their case.

2. Evidence of PW2 & Exhibit 5 in favour of the Appellants' to show that the 2nd Respondent did not conduct primaries is at variance with Appellants' pleadings and so worthless.

G 3. It is only a person who participated in his party primaries that has locus standi to complain about how the primaries were conducted. The 1st Appellant not being a member of the PDP (2nd Respondent) has no locus standi to say that the 1st Respondent was
H not sponsored by the 2nd Respondent.

4. The 1st Appellant in paragraph 74 (6) of her petition called for fresh election, and that the 1st Respondent should participate. How may I ask can a person the Appellant' says was not sponsored by his party participate in afresh election?

This appeal has no redeeming features. It lacks substance and it ought to fail. It is accordingly dismissed. Parties to bear their costs.

SC.45/2016

My lords, the Appellants' in this appeal formulated three issues for determination. The issues are on:

(a) locus standi

B

(b) Evidence of PW2 and Exhibit 5

(c) Whether the Court of Appeal should not have upheld the return of the 1st Respondent/Appellant.

These issues have been addressed in detail in SC.46/2016. I adopt my judgment in SC.46/2016.

C

Appeal Dismissed. Parties to bear their costs.

SC.47/2016

My lords, the Appellants' in this appeal formulated three issues for determination. The issues are on:

D

(a) locus standi

(b) Section 177(c) of the Constitution and Evidence of PW2 and Exhibit A5

(c) Whether the Court of Appeal should not have upheld the return of the 1st petitioner/Appellant.

E

These issues have been addressed in detail in SC.46/2016. I adopt my judgment in SC.46/2016.

Appeal Dismissed. Parties to bear their costs.

SC.48/2016

My lords, all learned counsel agree that this appeal shall abide the judgment in SC.46/2016.

F

Accordingly this appeal is dismissed. Parties shall bear their costs.

SC.50/2016

My lords, we observed in court that this cross appeal does not in any way improve the position of the Cross/Appellant, a fact agreed to by Mr. J.B. Daudu SAN, learned counsel for the Appellant, and all other counsel.

G

Accordingly this cross appeal is hereby dismissed.

Parties to bear their own costs.

H

SC.58/2016

My lords, we observed in Court that this cross-appeal does not in any way improve the position of the cross-appellant, a fact agreed to by Mr. K. Agabi, SAN, learned counsel for the Cross-Appellant

and all other counsel.

Accordingly this cross appeal is hereby dismissed.

Parties to bear their own costs.

SC.59/2016

B My lords, we observed in Court that this cross-appeal does not in any way improve the position of the Cross-Appellant a fact agreed to by Mr. S. Akuma SAN, learned counsel for the Cross-Appellant, and all other counsel.

Accordingly this cross appeal is hereby dismissed.

C Parties to bear their own costs.

GALADIMA JSC

D We heard this appeal on the 11th day of February, 2016. In painstaking consideration of the appeal, it was dismissed for lacking in merit. However, it was adjourned today by my learned brother RHODES- VIVOUR, JSC who delivered the lead judgment. I also allowed the appeal and it was adjourned to today to give the reasons for my judgment.

E I have been obliged in advance the lead judgment of my brother RHODES-VIVOUR, JSC who has elaborately resolved all the most important issues set out for determination of this appeal. I adopt his reasons leading to the conclusion that this appeal be dismissed.

F The facts of this case has been meticulously set out in the judgment, needless repeating them.

The main complaint of the Appellants herein is that the 1st Respondent was not qualified for the election into the office of the Governor of Taraba State as he was not validly nominated by the G 2nd Respondent herein, as its candidate for the election of 11th April, 2015 in the State.

In their joint brief of argument the Senior Counsel for the Appellants has contended that in the process of nomination of the 1st Respondent, Section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), was breached. This H section has been reproduced in the lead reasons for this judgment. By this section one of the qualifications for a person for election in the Office of Governor of a State is that “he is a member of a political party and he is sponsored by that political party” See Section 177(c)

of the 1999 Constitution (supra). The question whether the 1st Respondent was a member of his political party and has been sponsored by that party (PDP) has been conceded by the 1st and 2nd Appellants in paragraphs 3 and 4 of their petition. These paragraphs read as follows:-

“3. The 1st Respondent is a member of Peoples Democratic Party (PDP) and was its candidate in Taraba State Gubernatorial Election held on 11th April, 2015.

4. The 2nd Respondent, Peoples Democratic Party (PDP) is a duly registered political party and sponsor of the 1st Respondent.” (underlined for emphasis)

By their own showing in their pleadings reproduced Above, Appellants clearly admitted that the 1st respondent was a member of the 2nd respondent (PDP) a political party that duly sponsored him. See also paragraph 74(b) of the petition.

Basically, parties are bound by their pleadings, and it is also trite that parties are not allowed to set out in Court a case at variance with their pleadings.

See *IFEANYI v. ACB LTD* (1977) 2 NWLR (PT.489) 509.

As I have earlier observed the Appellants in their petition did not deny the fact the 1st respondent is a member of the 2nd respondent, a duly registered political party, that duly sponsored him.

The vexed issue of sponsorship and nomination have been fairly settled in quite a number of authorities of this Court; that the issue is a domestic affairs of political parties and the Courts have no jurisdiction to entertain issues relating to the sponsorship and nomination of candidates.

Section 87 (9) of the Electoral Act 2010 (as amended) states clearly as follows:-

“Notwithstanding the provisions of this Act, or Rules of a political party, as aspirant who complains that any of the Provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT for redress.”

The question is who has the locus standi to complain against nomination of political party's candidate? By virtue of the foregoing Section 87(9) (supra) it is “aspirant,” not even a candidate or (the

Appellants herein) who are not members of 2nd Respondent, who may complain to the Court if any of the provisions of the Electoral Act and the guidelines of a Political Party has not been complied with. See 1. ONUOHA v. OKAFOR (1983) 14 NSCC 494

2. EMEKA v OKADIGBO 2012 18 NWLR (Pt.1316) 55

B 3. DALHATU v. TURAKI (2003) 15 NWLR (Pt. 843) 310.

4. OMBUGADU v CPC (2013) 3 NWLR (Pt. 1340) 31 at 7172

5. ZARANDA v TILDE (2008) 10 NWLR (Pt. 1094) 184.

6. KOLAWOLE v FOLUNSHO (2009) 6 NWLR (Pt.1143) 338.

See further recent decisions of this Court on:-

C 1. SHINKAFI & ANOR v A. YARI & SONS (unreported) Appeal No. 907/2015 delivered on 8th January, 2016.

2. TARZOOR & ANOR v IYORTOM & 2 ORS SC.928/2015 (unreported) delivered on 15th January, 2016.

D The Appellants lost this battle by the dint of their pleadings. They are “meddlesome interlopers” when they seek to challenge the sponsorship and nomination of the 1st Respondent with these few remarks, I agree that the appeal which is lacking in merit must be dismissed. It is dismissed. Parties to bear their costs.

E APPEALS No. SC.45/2016; SC.47/2016; SC.48/2016; SC.58/2016; SC.50/2016: SC.59/2016 raise substantially the same issues as Appeal No. SC.46/2016 just delivered and dismissed. As agreed by all the counsel to the parties, these appeals abide the outcome of Appeal SC.46/2016.

F CROSS APPEAL SC.58/2016:

We observed in Court when this appeal came up for hearing that it does not improve in any way the position of the Cross Appellant, a fact that was put to the Learned Senior Counsel for the Cross-Appellant Chief Kanu Agabi SAN which he conceded.

G Accordingly the Cross-Appeal is dismissed. Parties to bear their costs

H **PETER-ODILI JSC**

I am in total agreement with the reasons for judgment just delivered by my learned brother, Olabode Rhodes-Vivour JSC which decision was rendered on the 10th day of February, 2016 dismissing the appeal Sc.46/2016 and with the consent of the counsel on all

sides, all the other appeals and cross-appeals abided thereto.

I shall make some remarks in support of the judgment and the lead reasonings thereto. I shall not go into the facts which have already been adumbrated in the lead judgment.

Mr. A.J. Owonikoko SAN adopted Appellants Brief of argument filed on the 28/1/2016 and also the Reply Briefs to 1st Respondent on 3/2/2016, 2nd Respondent filed on 7/2/2016 and 3rd Respondent's filed in 4/2/2016, Learned counsel nominated five issues for determination which are thus:-

i. Having regard to Section 137 of the Electoral Act, 2010 (as amended), whether Appellants did not have the locus standi to challenge the non-qualification of the 1st Respondent for sponsorship as required under Section 177(c) of the 1999 Constitution (as amended), (Ground 1).

ii. Whether the Court of Appeal properly construed Section 177(c) of the 1999 Constitution (as amended) with regards to sponsorship to contest governorship election in the face of undisputed evidence of PW2 and exhibit A5 to the effect that 2nd Respondent did not conduct any primary election to entitle them to sponsor the 1st Respondent in the April 11th and 25th, 2015 election to the office of Governor of Taraba State as required under Section 87(4) of the Electoral Act 2010 (as amended). (Grounds 2, 3, 6 & 8).

iii. Whether Section 87(9) of the Electoral Act (as amended) was rightly invoked by the Court of Appeal in determining the Petitioners' ground of non-qualification of the 1st Respondent to contest the Taraba State Governorship Election of 11th and 25th April, 2015. (Grounds 4 and 5).

iv. Having regard to the duty on Court to consider the pleadings of parties in its entirety, whether the Court of Appeal correctly applied the principle of admission of evidence in coming to the conclusion that Appellants made an inconsistent case that the 1st Respondent was not qualified to contest the Governorship election of Taraba State on account of lack of sponsorship, (Grounds 7 and 9).

v. Whether the wrongful description of PW52 by the trial tribunal occasioned a miscarriage of justice, (Ground 10).

vi. Whether the case as proved by the Petitioners did not entitle the Lower Court to uphold the return of the 1st Petitioner/Appellant as winner of the governorship election as determined by the

trial tribunal. (Ground 11).

Kanu G. Agabi SAN, learned counsel for the 1st Respondent adopted his Brief of Argument filed on the 1st day of February 2016 in which he framed four issues for determination which are thus:-

1. Whether their Lordships of the Court below were right when they held that in the light of the decision of this Honourable Court in *PDP v INEC (2014) 17 NWLR (Pt.1437) 525 at 559*, to the effect that a person is or was not qualified to contest election to the office of governor of a state as envisaged by Section 138(1)(a) of the Electoral Act, it is Sections 177 and 182 of the Constitution that are being contemplated and that therefore, their Lordships of the Tribunal erred in law when they relied on the provisions of the Electoral Act, 2010 to hold that the 1st Respondent did not emerge from a valid primary conducted by his party and proceeded on that ground to annual his election. (Arising from grounds 1, 2, 3, 4, 5, 6 and 8).

2. Whether their Lordships of the Court below were right when they held that the ground of the petition that the 1st respondent was not qualified to contest the election because he was not sponsored by the 2nd respondent was inconsistent with the facts pleaded which were to the effect that the 1st Respondent was in fact so sponsored and if so, whether their Lordships were right when they held that the appellants were bound by their pleading and could not be heard to contend the contrary. (Arising from Grounds 7 & 9).

3. Whether their Lordships of the Court below were right when they held that the 1st Respondent's right to fair hearing was violated thereby occasioning a miscarriage of justice when their Lordships of the Tribunal failed to review or give any consideration whatsoever to the evidence of the 51 witnesses called by the 1st Respondent in defence of the Petition. (Arising from Ground 10).

4. Whether their Lordships of the Court below were right when they held that the Tribunal erred in law when their Lordships having held that the 1st Respondent was not qualified to contest, proceeded to declare the 1st Appellant "...winner of the Governorship election held in Taraba State on the 11th and 25th day of April 2015 having scored the next highest votes and entitled to be issued with the certificate of return by the 3rd Respondent" in spite of the 1st Appellant's own Pleading that the election was null and void on account of corrupt practices and acts of non-compliance and in spite of the provi-

sions of Section 140(1) & (2) of the Electoral Act, 2010 (as amended).
(Arising from Ground 11).

Chief Solomon Akuma SAN for the 2nd Respondent adopted its Brief of Argument filed on the 3rd February, 2016 and he crafted five issues for determination which are, viz:-

ISSUE ONE:

B

Whether the Court below was right when it held that the Appellants lacked the locus standi to challenge the 2nd Respondent's party primaries that nominated 1st Respondent as a candidate for the 2015 Taraba State Governorship Election. (Grounds 3, 4 & 5).

C

ISSUE TWO:

Whether the sponsorship of the 1st Respondent by the 2nd Respondent in the April, 2015 Taraba State Governorship Election complied with the provisions of Section 177 (c) of the Constitution of the Federal Republic of Nigeria and can the Appellants rely on alleged non holding of primary election to question the sponsorship of 1st Respondent under Sec. 177 (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Grounds 1, 4, 5, 6 & 8).

D

ISSUE THREE:

Whether the Court below was right when it held that the Appellants in their Pleadings admitted that the 1st Respondent was duly nominated and sponsored by 2nd Respondent. (Grounds 7 & 9).

E

ISSUE FOUR:

Whether the Court below was right when it held that the Tribunal failed to evaluate or review the evidence of the 1st Respondent's 51 witnesses. (Ground 10).

F

ISSUE FIVE

Was the Court below right when it set aside the order of the Tribunal that declared the 1st Appellant the winner of the questioned election notwithstanding the provision of Section 140 (2) of the Electoral Act 2010 (as amended). (Ground 11)

G

The issues as identified by the Appellants on one side and those respectively couched by the 1st Respondent, then those of the 2nd respondent and lastly as crafted by the 3rd Respondent, interestingly the issues are substantially similar but since I find those as framed by the 2nd Respondent simpler, I shall utilize them.

H

ISSUES 1, 2, & 3:

These issues are connected and in the main ask the question

whether the Appellants have the locus standi to challenge the 2nd Respondent's party's primaries that nominated the 1st Respondent as a candidate for the 2015 Taraba State Governorship Election. Also, whether the Court below was right when it held that the Appellants in their Pleadings admitted that the 1st Respondent was duly nominated and sponsored by the 2nd Respondent?.

The standpoint of the Appellants as canvassed by, A.J. Owonikoko SAN is that the provisions of Section 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) clearly provides that only persons sponsored by a political party can contest for the office of Governor of a State and a communal reading of Section 177 (c) and Section 228 (a) and (b) of the 1999 Constitution has made the conduct of party primaries by political parties the only method by which it can nominate its candidate and so, since the 2nd Respondent did not conduct a valid primary to nominate the 1st Respondent as its candidate, the implication that the 1st Respondent as its candidate the implication is that the 1st Respondent was not qualified to contest the election aforesaid and so, was not sponsored by the 2nd Respondent.

Learned Senior Counsel, Kanu Agabi disagreed with that stance of the Appellants contending that the Appellants lacked the locus standi to question the sponsorship of 1st Respondent for the 2nd Respondent for the said election as the matter of the process of nominating a candidate of any party was within the internal affairs of a particular party and Appellants not being of the same party or as aspirant in the primaries of the 2nd Respondent could not question the process that threw up the 1st Respondent as candidate of his political party.

Chief Solo Akuma SAN for the 2nd Respondent was of the same mind as counsel for the 1st Respondent,

In paragraph 11 (a) of the petition of the Appellants is shown that Appellants positing that 1st Respondent is not qualified to contest the gubernatorial election because he was not sponsored by a political party contrary to the relevant Constitutional Provisions. I shall recast the said paragraph 11 (a) of the Petition which is thus:-

"11(a) - That the 1st Respondent was at the time of the election, not qualified to contest for the office of Governor of Taraba State, having not been sponsored by a political party a condition

precedent prescribed under the Constitution of the Federal Republic of Nigeria. 1999 (as amended).

The Constitutional provisions which have provided for the qualifications of anyone seeking to contest for the position of Governor of a State which is under Section 177 of the Constitution while Section 182 prescribes the disqualifications for which a person who has put himself up for candidature for Governorship will be disallowed from such contest and where the contest has already taken place and he succeeded in the quest, he would on account of any of the provisions of Section 182 of the Constitution cease to be in that placing.

These two prescriptions of the Constitution have been well interpreted by this Court in the case of PDP v INEC (2014) 17 NWLR (Pt.1437) 525 at 559 per Okoro JSC in these words:-

“As I mentioned earlier, a person who wishes to challenge the election on the basis that the winner was not qualified to contest the election has umbrage in Section 138(1)(a) of the Electoral Act . That is to say, where a person failed to take advantage of Section 31 (5) and (6) (supra) in the High Court, he can still approach the election Tribunal under Section 138 (1) (a) . Section 177 of the Constitution of the Federal Republic of Nigeria as amended sets out conditions a person must meet to be qualified to be governor of a state. It states:-

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

- (a) He is a citizen of Nigeria by birth;*
- (b) He has attained the age of 35 years;*
- (c) He is a member of a political party and is sponsored by that political party; and*
- (d) He has been educated up to at least school certificate level or its equivalent”.*

Again, Section 182 of the said Constitution provides for disqualification of candidates seeking the office of governor. It is my view that where it is alleged that a person is or was not qualified to contest election to the office of governor as envisaged by Section 138(1)(a) of the Electoral Act , it is Section 177 and 182 of the Constitution of the Federal Republic 1999 (as amended) that are being contemplated.

This Honourable Court has held in the recent case of Mahmud

Aliyu Shinkafi & Anor v Abdulazeez Abubakar Yari & Ors. unreported decision in suit No. SC.907/2015 delivered on 8 January 2016. per Okoro JSC at pages 23-24 thus:

“Taking the above provisions together i.e. Sections 177 and 182 (1) of the 1999 Constitution (as amended), it is seen that both the provision for qualification and that for disqualification are so comprehensive which makes them exhaustive. Thus, the Constitution as the grundnorm (supreme law of the land), having made such elaborate and all encompassing provisions for qualification and disqualification of persons seeking the office of governor of a State, does not leave any room for addition to those conditions already set out.... It is my view that once a candidate sponsored by his political party has satisfied the provisions set out in Section 177 of the Constitution and is not disqualified under Section 182 (1) thereof, he is qualified to stand for election to the office of Governor of a State.

No other law can disqualify him. Accordingly, I hold that the 1st Respondent having not been shown to have breached any of the provisions in Section 182 (1) of the Constitution, he was eminently qualified to have contested into the office of Governor of Zamfara State. Sec. 85 or 87 of the Electoral Act, 2010 (as amended) cannot disqualify him. This issue is accordingly resolved against Appellants”.

Moreover, the Court below was right in holding that neither the Appellants nor the Tribunal had any right to challenge the nomination of the 1st Respondent by engaging in an inquiry into the conduct of the primaries of the 2nd Respondent. This is because the Electoral Act clearly specifies who can challenge the conduct of a party’s primaries. Section 87 (9) of the Electoral Act provides that only a candidate who participated in the primaries can question the conduct of the primaries and the appropriate forum for such challenge is the Federal High Court or High Court of the State. The Section provides thus:-

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

In Mahmud Aliyu Shinkafi & Anor v Abdulazeez Abubakar

Yari & Ors . per Onnoghen JSC in his Concurring Judgment at pages 18 -19 thus:-

“It is settled law that the issue of nomination of a candidate by a political party for any election is within the exclusive preserve of the political parties and that the Courts have no jurisdiction to interfere therein as decided in a number of cases including Onuoha v Okafor and Ors (1983) NSCC 494; Dalhatu v Turaki (2003) 15 NWLR (Pt. 843) 310 etc, etc.

Equally settled is the fact that as at the moment, the only window opened for the Courts to entertain actions on and/or concerning nomination of candidates for any election by political parties is as provided under Section 87(8) or (9) or (10) of the Electoral Act, 2010, as amended , and earlier reproduced in this Judgment. As a result of the above provision conferring limited jurisdiction on the Courts to entertain issues of nomination, this Court has held, in very many cases, that only an aspirant in the primary election conducted by the political party can question the result or nomination or declaration of any person by the party as the winner of the primary election and consequently the sponsored candidate of the political party concerned in the election in issue. It follows, therefore, that no other person or member of a political party let alone a total stranger or a non-member of a political party concerned, has the locus to challenge or question the nomination of any candidate by a political party for any election.

Again, to be brought out is the lack of jurisdiction of an election Tribunal such as the trial tribunal in the instant case entering into the qualification or disqualification arising from the domestic or internal exercise of his political party which being a pre-election matter is outside the domain of an election Tribunal, a situation in my humble view, already over-flogged.

In this wise, I refer to Tabai JSC in:-

SENATOR JULIUS ALI UCHA v DR. EMMANUEL ONWE & ORS (2011) 4 NWLR (Pt.1237) 386 at 247 per TABAI JSC thus:

“A person’s disqualification or non qualification based on or arising from the domestic nomination exercise of his political party is clearly a pre-election matter over which the election Tribunal has no jurisdiction”.

See also ALL NIGERIA PEOPLE’S PARTY v USMAN (2009)

ALL FWLR (Pt.1301) 1327, UGWU v ARARUME (2007) NWLR (Pt.1048) 367; IMAM v SHERIFF (2005) 4 NWLR (Pt.914) 80; IBRAHIM v INEC (1999) 8 NWLR Pt. 614) 334.

Towing the line of those guiding principles above stated, the Court of Appeal held thus:-

- B “The only person who can complain of improper or misconduct of primaries of a political party is INEC and the aspirant who participated in the primary election concerned, in this case, it is those who participated in the Gubernatorial primary election in the PDP at which the Appellant emerged as a candidate of the 3rd Respondent (PDP) for the April, 11th, 2015 Governorship election in Taraba State.
C See page 5188 vol.5 of the Record.

Again, at pages 63-64 of the Judgment, the Court below further stated that:-

- D “*The 1st and 2nd Respondents contention that 1st Respondent to the petition now Appellant was not duly sponsored by his political party as required by Section 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and thus not qualified to contest the 11th April, 2015 Gubernatorial election of*
E *Taraba State, cannot with profound respect to the 1st and 2nd Respondents’ Learned Senior Counsel be right or correct. Section 177(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) did not provide modalities or procedure for sponsorship of a member of a political party. It is the Electoral Act that makes*
F *provisions for nomination or selection of a candidate of a political party for election and the right to complain about such nomination under Section 87 lies with a member of a political party who participated in the primary conducted for the aspirants to political offices*
G *within a political party, The right to complain is severely limited to participant in the primary election. Whether the primary election of a party was done right or otherwise cannot be subject of an election petition”.* See page 5189-5190, Vol. 5 of the Record.

- H “*I have found in this case that 1st and 2nd Respondents (sic) have no right to challenge the primary election at which the Appellant here emerged since none of them is a member of PDP”.*

The Court below then concluded by stating that the 1st and 2nd Respondents had no right to challenge the primary election of the Appellants now Respondents 1st and 2nd in the emergence of

1st Respondent as candidate since the 1st Appellant is not a member of PDP which produced the 1st Respondent.

For emphasis, this Court very recently in the unreported case of Rt. Hon, Prince Terhermen Tarzoor v Ortom Samuel Ioraer in SC.928/2015, a judgment anchored by Ngwuta JSC had this to say:-

“Primary elections are in-house matters of a political party. A non-member of the party has no locus to raise the issue and no member of the party who was not an aspirant can raise the issue. See Section 87(9)(a) of the Electoral Act (supra). This Court has made many pronouncements on who has the locus to challenge the conduct of a primary election. See the case of Daniel v INEC (2015) 9 NWLR (Pt.1463) page 113 at 155. In the most recent of plethora of cases on the point, Okoro JSC, speaking for the Court said, inter alia:

“...Only an aspirant at the primary election is permitted by Section 87(9) of the Electoral Act 2010 (as amended) to challenge the selection or nomination of a person for an elective office. Apart from an aspirant who took part in the primary election, no other person is authorized to file an action to challenge the selection or nomination of a candidate by a political party for an election”. See the judgment in SC.907/2015 (not yet reported) delivered by this Court on Friday, 8th January, 2016.

...As I said earlier, the appellant is a member of the PDP, not APC and even if he is a member of the APC, he would have no locus to challenge the nomination of the 1st Respondent as he is not one of the aspirants who participated in the primary election. In my view, Appellant is a meddlesome interloper who, having assumed the role of a hired mourner, is crying more than the bereaved”.

Indeed, this Court has settled the matter in a plethora of judicial authorities that it is only a candidate/aspirant at the primaries of a party that has the locus standi to complain about the conduct of such primaries and so, the grouse of the Appellants have nothing to stand on as they are clearly interlopers in regard to how the 1st Respondent emerged as candidate and also how, where and when the 2nd Respondent produced its candidate, Therefore, no matter how loudly the Appellants shout on the irregularity, impropriety of the primaries of the 1st and 2nd Respondents, the noise will remain unheard and unattended to, coming from those whose voices ought not to be heard in the internal matters of another.

I refer to the following cases for assistance being:-

Onuoha v Okafor (1983) 14 NSCC 494; Dalhatu v Turaki (2003) 15 NWLR (Pt.843) 310; Ardo v Nyako (2014) LPELR - 22878 (SC); Emeka v Okadigbo (2012) 18 NWLR (Pt.1331) 55 at 88; PDP v Sylva (2012) All FWLR (Pt.637) 606 at 654.

B I agree totally with the findings and conclusion of the Court below setting aside what the Tribunal did erroneously.

These issues are resolved against the Appellant.

ISSUES 4 & 5:

C These question whether the Court below was right in holding that the Tribunal failed to evaluate or review the evidence of the 1st Respondent's 51 witnesses and if the Tribunal was wrong to declare the 1st Appellant the winner of the questioned election notwithstanding the provision of Section 140(2) of the Electoral Act, 2010 . Also, the
D matter of the effect of inconsistent and contradictory pleadings in the Petition of the Appellants.

In the matter of the inconsistent pleadings, learned counsel for the Appellants posited that those are not to be taken as pleadings inter se. That is the fact that in those paragraphs 3 and 4 they referred to 1st Respondent as being sponsored even though they asserted there was no sponsorship of his election by 2nd Respondent, his political party and so the inconsistency is not fatal to the petition. Also, that the Tribunal was right to declare 1st Appellant winner having found the 1st Respondent not qualified to contest the election.
E
F

The position of the Appellants was roundly rejected by the Respondents who contend that assuming without conceding that 1st Respondent was not qualified, the proper order would be for a fresh election and not to declare any of the candidates as winner of the election. That in making the declaration of 1st Appellant being winner, the Tribunal acted without jurisdiction.
G

In paragraphs 3 and 4 of the Petition, the Appellants averred thus:-

H *"3. The 1st Respondent is a member of the Peoples Democratic Party and was its candidate in the Taraba State Gubernatorial Election held on the 11th and 25th April, 2015".*

"4. The 2nd Respondent, Peoples Democratic Party is a duly registered political party and sponsor of the 1st Respondent".

When the issue came up at the Court below, the learned Jus-

tices had this to say:-

“In any event, the 1st and 2nd Respondents categorically pleaded in paragraphs 3 and 4 of the petition page 2, Vol.1 of the record of appeal that;

“3. The 1st Respondent is a member of the Peoples Democratic Party and was its candidate in the Taraba State Gubernatorial election held on the 11th and 25th April, 2015.

“4. The 2nd Respondent, Peoples Democratic Party is a duly registered Political party and sponsor of the 1st Respondent”.

This is a glaring and fatal admission by the 1st and 2nd Respondents that the Appellant actually satisfied the provisions of Section 177(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and those paragraphs of the petition constitute admission against interest pursuant to Sections 20 and 21 of the Evidence Act.

More importantly, the learned silk to the Appellant specifically asked the PW2 an INEC official, witness of the 1st and 2nd Respondents on issue of qualification and agreed that facts pleaded in paragraphs 2 and 4 of the petition are true”. See page 5194-5195, Vol.5 of the Record.

The above situation was aptly tackled by the Court below as the law does not allow a party such as the Appellants to approbate and reprobate on the same subject and so blowing hot and cold as they did in the pleadings and as against the evidence proffered showcases an appellant not really sure of what he is asking for or the footing on which he stands. This presentation was decried by Aderemi JCA (as he then was in Ngige v Obi (2006) 14 NWLR (Pt.999) 1 at 60. Therefore, there was faulty evaluation by the trial Tribunal on what was brought to its notice on the matter of qualification or otherwise of the 1st Respondent both in the pleadings and in the evidence seeking to buttress the facts pleaded which facts were contradictory with the evidence.

On the issue of the Tribunal after making its findings that the 1st and 2nd Respondents were not property in the election and the conclusion that they in effect did not participate and thereby proceeded to declare the Appellants as winners, their votes coming next in majority to what had been declared for the 1st and 2nd Respondents, The Tribunal held thus:-

“We are not unmindful of the provisions of Section 140(1) and (2) of the Electoral Act, 2014 (as amended) on the appropriate order to make where a petition is nullified on the grounds of irregularity, non-compliance or non-qualification to the effect of fresh election.

B *However, where the issue of non-qualification is predicated on non-sponsoring or non-nomination of a candidate, the proper order to make is declare as elected the candidate with the second highest votes because the returned winner cannot be said to have participated in the election...”*

C Reacting to that, the Court below held thus;-

“It is thus clear that where in an election petition, a Court or Tribunal comes to a conclusion that the person elected or returned in an election was at the time of the election not qualified to contest the election the option open to the Court or Tribunal pursuant to Section 140(2) of the Electoral Act, 2010 (as amended) is an order nullifying the election and shall order a fresh election to be conducted into the office in question.

E *It is therefore a gross misdirection in law on the part of the trial Tribunal in this petition to have made an order declaring the 1st Respondent to this appeal as winner on the premise that she has the second highest votes in the election. The Order/Declaration of the Lower Tribunal erroneously stated that the 1st Petitioner was the winner of the Governorship election held in Taraba State on 11th and 25th day of April, 2015 is hereby set aside for being null and void and of no effect at all”.* See page 5216, Vol.5 of the Record.

F The Court of Appeal correctly reacted within the provisions of Section 140 of the Electoral Act which guided the position on ground G if the disqualification had taken place and not allowing to stand the extra jurisdictional stand of the trial Tribunal since the jurisdiction the circumstance is circumscribed and limited within the stated Section 140 of the Electoral Act . This is because once the election is nullified on the ground of a lack of qualification of the successful candidate, H the election is regarded as not having taken place at all and the eyes of the law, it is void ab initio. See Labour Party v. INEC (2009) 1-2 SC; Obi v. INEC & 6 Ors (2007) 7 SC 297.

As if going outside the statutory provision of Section 140 of the Electoral Act was not bad enough, the Appellants particularly the

1st Appellant had not asked to be so declared winner as what they sought was a declaration that 1st Respondent was not qualified to contest the election not meeting the constitutional requirement of being sponsored by a political party. That being the case, the Tribunal granted a relief outside of what was sought by the Appellants. Our adversarial legal system has laid down principles outside of which no Court is permitted to venture and that is that no Court or Tribunal would grant or award to a party a relief not sought. This because the Court has no jurisdiction to do award is confined within the reliefs sought and no more. There are many judicial authorities to buttress that point and a few of them are as follows: - *Ekpenyong v Nyong* (1975) 2 SC 71; *Obioma v Olmu* (1978) 3 SC 1; *Odojin & Anor v. Agu & Anor* (1992) NWLR (Pt.229) 350. B C

From the foregoing and the better reasoning the lead judgment, it clear there was no other way to go than a dismissal of the appeal and the upholding of what the Appeal Court did, I abide by the consequential orders as made. D

MUHAMMAD JSC

I have read before now the lead reasons of my learned brother Rhodes-Vivour JSC, for the judgment of this Court delivered on 11th February 2016 dismissing this appeal. I adopt the reasons as mine for dismissing the appeal too, I hereby order that Appeals, SC.45/2016, SC.41/2016, SC.48/2016, SC.50/2016, SC.58/2015 and SC.59/2016 abide by the decision in Appeal No.SC.46/2016. E F

OGUNBIYI JSC

On the 11th of February, 2016, this appeal was heard and in the lead judgment read by my learned brother Rhodes-Vivour, JSC the Court dismissed the appeal for lacking merit. The reason for the judgment was however adjourned to today being the 22nd February, 2016. I also concurred with my brother dismissing the appeal and fixed my reasons for doing so on the same date: I now, hereby proffer my reasons as follows: G H

My brother had before today obliged me his lead judgment and giving the reasons whereof, I could not have agreed with him

more that the totality of the appeal is lacking in merit and should be dismissed.

His judgment is very comprehensive and well articulated. I will adopt same as mine but will just put in one or two words for purpose of emphasis.

B The facts and issues are well spelt out in the lead judgment and I seek to state that the main issue of appeal is very straightforward, narrow and simple. In a nutshell, it is tied around the question of membership and sponsorship of the 1st respondent by a political party. The provision of Section 177 of the Constitution of the Federal C Republic of Nigeria 1999 is very explicit on the persons who can be eligible to contest for election to the office of Governor of a State. The qualification is constitutional and watertight; it cannot fall short for any reason.

D In the appeal at hand, by the very reason of the appellants' pleading, even without more, it is sufficient that the appellants' pleading, while re-affirming the candidature and sponsorship of the 1st respondent in one tone, they are also contradicting on their claims before the Court.

E In other words and without having to be repetitive, the appellants by paragraphs 3 and 4 of their petition have on the onset defeated their own interest and have no reason being in Court.

F The law is trite and well settled that parties are bound by their pleadings and no party can make out a case which different from that set out on the onset.

An appeal is a continuation of the case before the trial Court.

G The provision of Section 87(9) of the Electoral Act operated to shut out the appellants, from getting involved in another man's business. The appellants have no locus standi and should stay out from being trespassers. The Section 87(9) of the Electoral Act says:-

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

It was not in contention on the pleadings that the 1st Respondent belongs to a political party. The fact has been settled by the

appellants themselves on their pleadings. Thus the requirement of the Constitution at Section 177 has been met. The law would not allow the appellants to depart from their pleadings and make out a new case different from that which they set out to do originally. See the decision of this Court in the case of *PDP v INEC (2014) 17 NWLR (Pt.1437) 525 at 559 per Okoro, JSC*. See also the recent case of *B Mahmud Aliyu Shinkafi & Anor v. Abdulazeez Abubakar Yari & Ors* unreported decision in suit No, SC.907/2015 delivered on 8th January, 2016.

My brother has dealt comprehensively with the reasons proffered in the lead judgment and in adopting same as mine, I also dismiss the appeal as lacking in merit. Parties are to bear their respective costs. C

In further aligning with the lead judgment of my learned brother Rhodes-Vivour, JSC I also, make an order that Appeals; SC.45/2016, D SC.47/2016, SC.48/2016, SC.50/2016, SC.58/2016 and SC.59/2016 should all abide by the decision in Appeal No.SC.46/2016.

OKORO JSC

This appeal was heard on the 11th of February, 2016. On the same date, this Court considered the appeal and delivered judgment dismissing the appeal having adjudged it to be lacking in merit. My learned brother, Olabode Rhodes-Vivour, JSC delivered the lead judgment and adjourned the matter till today, 22nd February, 2016 for reasons which informed the dismissal of the appeal. E

I also dismissed the appeal and promised to give reasons today. I now proceed to give the reasons I promised. F

In the lead Reasons for judgment, which I read in draft before now, my learned brother Rhodes-Vivour, JSC has meticulously and quite efficiently resolved all the salient issues submitted for the determination of this appeal. My Lords, I adopt the reasons adumbrated in the lead judgment as mine. I shall however chip in a few words in support only. G

The facts leading to this appeal have been ably set out in the judgment of my learned brother alluded to above. I shall resist the prompting of repeating the exercise. H

The main grouse of the appellants herein is that the 1st re-

spondent was not qualified to contest election into the office of Governor of Taraba State and that he was not properly nominated by the 2nd respondent as its candidate in the 11th April, 2015 gubernatorial election in the said State.

It was the contention of the senior counsel for the appellants B that the sponsorship of 1st respondent did not comply with Section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Now Section 177 of the Constitution (supra) states:

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

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

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

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

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

By Section 177 (c) of the 1999 Constitution (supra) one of the conditions a person seeking to contest election into the office of a E Governor of a State in this country is that he is a member of a political party and must be sponsored by that political party.

The question may be asked, was the 1st respondent a member of a political party? Was he sponsored by a political party? The answer is not far-fetched. Apart from the 1st and 2nd respondents F stating clearly that the 1st respondent was a member of the PDP and was sponsored by it, the appellants by their pleadings admitted this fact fully. In paragraphs 3 and 4 of the petition, the appellants gave the answers to the questions I posed above. These paragraphs state G as follows:-

“3. The 1st respondent is a member of Peoples Democratic Party and was its candidate in the Taraba State Gubernatorial Election held on 11th and 25th April, 2015.

4. The 2nd respondent, Peoples Democratic Party is a duly H registered political party and sponsor of the 1st respondent.”

I can go on and on in showing that by their pleadings, the appellants admitted that the 1st respondent was a member of PDP, a political party and was duly sponsored by it. By this I also refer to paragraphs 11 and 74 (b) of the petition.

At this stage, it is necessary to admit the elementary, but fundamental rule of pleadings that parties are bound by their pleadings.

As was held by this Court in *AMERICAN CYANAMID COMPANY V. VITALITY PHARMACEUTICALS LTD* (1991) 2 NWLR (Pt.171) 15, the purpose of pleading is to reveal to the opposing party, the nature of the case, at the earliest opportunity, he is likely to be confronted with. See also *OSHO v. FOREIGN FINANCE CORPORATION & ANOR* (1991) 4 NWLR (Pt.184) 157, *ODONIGI V. OYELEKE* (2001) 6 NWLR (Pt.808) 12. B

Apart from the fact that parties are bound by their pleadings, it is trite that parties cannot be allowed to set out in Court a case at variance with their pleadings. See *IKEANYI V. ACB LTD.* (1997) 2 NWLR (Pt.489) 509, *METALIMPEX V. A. G. LEVENTIS & CO. NIG. LTD* (1976) ALL NLR 79. C

So, by the appellants, showing in the petition, they agreed that the 1st respondent was a member of PDP and that he was sponsored by that party. This satisfies qualification under Section 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). D

On issue of sponsorship and nomination, it is now well settled in a plethora of authorities of this Court that this issue is in the domestic affairs of political parties. See *ONUOHA V. OKAFOR* (1982) 14 NSCC 494, *DALHATU V. TURAKI* (2003) 15 NWLR (Pt.843) 310. It is also settled that Courts have no jurisdiction to entertain issues relating to nomination and sponsorship of candidates by political parties except as provided for in Section 87(9) of the Electoral Act 2010 (as amended). E

Section 87(9) of the Electoral Act (supra) states:

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

I have stated elsewhere that only a candidate who took part in the primary election of a party who has the locus standi to challenge the outcome of the primary in line of the Electoral Act, 2010 in line with Section 87(9) of the Electoral Act 2010 (as amended). No other person, whether within the political party or outside of it, can venti- H

late his grievance arising from party nomination as there is no law backing him up. So, when the appellants hereby sought to challenge the nomination and sponsorship of the 1st respondent by the 2nd respondent, they were fighting a lost battle. It was like a boxer throwing punches into the air without any target in sight. See SHINKAFI & ANOR v. A. A. YARI & ORS (unreported) Appeal No. SC.907/2015 delivered on 8th January, 2016; DANIEL V. INEC (2015) 9 NWLR (Pt.1463) 113, T. TARZOOR & ANOR V. ORTOM & 2 ORS. SC.928/2015 (unreported) delivered on 15th January, 2016 and many others. The appellants herein had no business in the way and manner the 2nd respondent nominated its candidate for the election. At best, the appellants were busybodies and/or meddlesome interlopers. See TAIWO V. ADEGBORO & 2 ORS (2011) 5 SC. (Pt.11) 179.

With the above comments of mine and the detailed and elaborate reasons marshaled in the lead reasons for judgment, I agree that the appeal is lacking in merit and was properly dismissed. I also dismissed the appeal based on these reasons. Parties shall bear their respective costs.

At the hearing of this appeal all counsels agreed that Appeal Nos. SC.45/2016, SC.47/2016, SC.48/2016, SC.50/2016, SC.58/2016 and SC.59/2015 raising substantially the same issues as Appeal No. SC.46/2016 just delivered, shall abide the outcome of this appeal.

In the circumstance, these appeal and cross appeal are hereby also dismissed. Parties to bear their respective costs.

SANUSI JSC

This Court on Thursday 11th of February, 2016 heard this appeal and gave judgment dismissing it. I however promised to give my reasons for judgment justifying the dismissal of the appeal today, Monday 22nd February, 2016.

The two appellants herein, jointly filed a petition before the Governorship Election Tribunal of Taraba State (“the tribunal,” for short) challenging the declaration and return of the 1st respondent herein, as winner of the governorship election held in Taraba State on the 11th day of April, 2015 and the concluding election held on 25th April, 2015. The 1st Respondent contested the election on the

platform of his party, the Peoples Democratic Party (PDP), which is 2nd Respondent herein, against 1st appellant who was sponsored to contest the same election on the ticket of his part, the All Progressive Congress (APC), 2nd Appellant. The declaration and return of 1st Respondent were done by the third respondent INEC, which is the statutory body established to conduct general elections in Nigeria. B

The third respondents return and declaration were based on the fact that the first respondent scored a total votes of 369,318, as against the total votes of 275,984 scored by the 1st Appellant at the conclusion of the election. Suffice it to say, that the two contestants herein, namely 1st appellant and 1st Respondents contested the same election with nine other contestants sponsored by various political parties who also scored various number of votes which I deem unnecessary to reproduce them and their scores here. C

Upon the declaration of the results and return of 1st respondent as winner of the said election by the 3rd Respondent, the 1st Appellant and his party, the 2nd Appellant, became dissatisfied with such declaration and return, hence both of them jointly approached the Governorship Election Tribunal of Taraba State, sitting in Abuja, by filing a joint petition challenging the declaration and return of the 1st Respondent and his party the 2nd Respondent. D E

The gravamen of the joint petition filed by the petitioners, (now appellants) at the tribunal was on the four under-listed complaints:-

(i) That the 1st Respondent was, at the time of the election, not qualified to contest the said election for want of sponsorship by any registered political party as required by the Constitution of Federal Republic of Nigeria of 1999. F

(ii) That the election and return of 1st Respondent was not valid for reasons of substantial non-compliance with the provisions of Electoral Act 2010 as amended, the Guidelines and Regulations for conduct of 2015 General Elections and the Manual for Election Officials 2015, which said non-compliance had substantially affected the result of the election; G

(iii) Election and Return of 1st Respondent was not valid due to corrupt practices which affected and vitiated the election; and H

(iv) That it was the 1st petitioner who won with majority of lawful votes cast, contrary to the declaration by 3rd Respondent, having satisfied mandatory constitutional provisions and the require-

ment of spread across the local government areas of Taraba State, hence she ought to have been declared winner and returned as duly elected governor of Taraba State at the said election.

Based on the above complaints, the petitioner urged the tribunal to declare that the 1st Respondent was not, as at the time of the election, qualified to contest the said election as he did not meet the constitutional requirements of being sponsored by any registered political party and also to declare that his return as winner of the election held on 25/4/15 as void, due to corrupt practices and substantial non-compliance with the provisions of the Electoral Act 2010. The reliefs sought were that the 1st respondent was not duly elected in some named polling units where he was alleged not to have scored majority of lawful votes as announced by the 3rd Respondent in the results it declared and also to declare that the 1st petitioner, now first Appellant, scored majority of lawful votes cast in the elections held on 11th and 25th of April, 2015, thereby meeting the constitutional requirements in that regard and that the 3rd Respondent ought to have declared the winner of the election in question. Sequel to that, the 1st petitioner (now 1st Appellant) in the petition, ultimately prayed the tribunal for the under mentioned reliefs:-

(A) AN ORDER that the 1st petitioner be issued forthwith a certificate of return as the duly elected Governor of Taraba State, pursuant to the election held on 11th and 25th of April, 2015.

(B) In the alternative, the election held in some of the named polling units was characterised by electoral irregularities and non-compliance i.e. over voting in the Governorship election held on 11th and 25th of April 2015 are invalid and therefore, fresh elections be held in those local government areas among the contestants who participated in the original election and that the result of the fresh elections be added to the score earlier recorded for the various contestants to determine the overall winner and to ultimately declare candidate scoring the highest number of votes as winner of the election and return him as so.

It needs to be stated here, that the Respondents upon being served with the petitioners petition, filed their respective Replies to same and urged the trial tribunal to dismiss the entire petition.

After conducting all the preliminaries, the hearing in the petition commenced in earnest. The petitioners, now appellants, called

seventy one witnesses. The 1st Respondent called fifty one witnesses. Many exhibits were also tendered numbering up to 123 documents. Now basically, the petitioners hinged their grouse on the claim that the 1st appellant scored the majority of lawful votes cast in the election and is entitled to be returned by the 3rd Respondent (INEC) as Governor of Taraba State. And also that the 1st Respondent was not qualified to have contested the election right from the outset as he was not sponsored by any registered political party as required by the provisions of Section 177 of the Constitution of the Federal Republic of Nigeria 1999, as amended. At the conclusion of the proceedings, the trial tribunal made the following far-reaching findings on some of the above mentioned grounds in the petitioners' petition and granted some of the reliefs sought by the petitioners/appellants and also it granted some consequential orders, For instance, in some issues challenged in the election, the trial tribunal held thus:-

"...the petitioners have failed to prove over voting and other malpractices founded in the non-use of or improper use of the Card reader by the 3rd Respondent

Also on the qualification of 1st Respondent to contest the said election, the tribunal held as below:-

"...having found that the purported nomination of the 1st Respondent never took place, he was therefore in law, not sponsored by the 2nd Respondent and, he never participated in the Taraba State Governorship election held on the 11th and 25th April, 2015. Accordingly, all the votes purportedly cast for the 1st Respondent on the 11th and 25th April 2015 are wasted votes....

Having found that the 1st, Respondent was not duly sponsored by a political party as required by the Constitution and the Electoral Act 2010, he could not have qualified to contest the election in question."

The trial tribunal finally declared the 1st Appellant as the winner of the election in question.

Aggrieved by the decision of the tribunal declaring the 1st petitioner/appellant as winner of the election, the present 1st and 2nd Respondents appealed to the Court of Appeal (the Court below), Abuja Division, which said Court upturned the judgment of the trial tribunal by allowing the appeal and declaring the 1st and 2nd Respondents' appeal meritorious vide its judgment delivered on 7th

December 2015 in which the judgment of the tribunal was set aside. It also upheld the election of 1st Respondent held on 11th and 25th April, 2015 as Governor of Taraba State. The Lower Court also upheld the Certificate of Returning issued to the 1st Respondent by (INEC) the 3rd respondent, as valid.

B The present appellants then became piqued by the decision of the Court below, hence they jointly appealed to this Court. In keeping with the practice and rules of this Court, parties to this appeal filed their respective briefs of argument through their learned counsel, which said briefs were later exchanged. The appellants, joint Brief
C of argument was filed on 28/1/2016. Appellants Reply Briefs to 1st, 2nd and 3rd Respondents were filed on 3/2/2016, 4/2/2016 and 1/2/2016 respectively and were also served and exchanged. Upon being served with Appellants' brief of Argument, the 1st Respondent
D filed his brief on 1/2/2016 while the 2nd Respondent filed its brief on 3/2/2016. The 3rd Respondent did not however file any brief of argument in this appeal.

In the Appellants, joint brief of argument filed by their learned senior counsel A. J. Owonikoko SAN, six issues were proposed for
E the determination of this appeal which said six issues read as follows:-

i. Having regards to Section 137 of the Electoral Act 2010 (as amended) , whether Appellants did not have the locus standi to challenge the non-qualification of the 1st Respondent for sponsorship as required under Section 177(c) of the 1999 Constitution as (amended)
F (Grounds 1).

ii. Whether the Court of Appeal properly construed Section 117(c) of the 1999 Constitution (as amended) with regards to sponsorship to contest governorship election in the face of undisputed
G evidence of PW2 and exhibit A5 to the effect that 2nd Respondent did not conduct any primary election to entitle them to sponsor the 1st Respondent in the April 11th and 25th, 2015 election to the office of Governor of Taraba State as required under Section 87(4) of the Electoral Act, 2010 (as amended). (Grounds 2, 3, 6 and 8)

H iii. Whether Section 87(9) of the Electoral Act (as amended) was rightly invoked by the Court of Appeal in determining the Petitioners' ground of non-qualification of the 1st Respondent to contest the Taraba State Governorship Election of 11th and 25th April. (Grounds 4 and 5).

iv. Having regard to the duty on Court to consider the pleading of parties in its entirety, whether the Court of Appeal correctly applied the principle of admission of evidence in coming to the conclusion that Appellants made an inconsistent case that the 1st Respondent was not qualified to contest the Governorship election of Taraba State on account of lack of sponsorship. (Grounds 7 and 9). B

v. Whether the wrongful description of RW52 by the tribunal occasioned a miscarriage of justice. (Ground 10)

vi. Whether the case as proved by the Petitioners did not entitle the Lower Court to uphold the rerun of the 1st Petitioner/Appellant as winner of the governorship election as determined by the trial tribunal. (Ground 11). C

In the 1st Respondents brief of Argument, four issues for determination of this appeal were formulated as set out below:-

1. Whether their lordships of the Court below were right when they held that in the light of the decision of this Honourable Court in *PDP v. INEC (2014) 17 NWLR (Pt.1437) 525 at 559*, to the effect that where it is alleged that a person is or was not qualified to contest election to the office of governor of a State as envisaged by Section 138(1)(a) of the Electoral Act, it is Sections 177 and 182 of the Constitution that are being contemplated and that therefore their lordships of the Tribunal erred in law when they relied on the provisions of the Electoral Act 2010 to hold that the 1st Respondent did not emerge from a valid primary conducted by his party and proceeded on that ground to annul his election. (Arising from grounds 1, 2, 3,4, 5, 6 and 8). E

2. Whether their lordships of the Court below were right when they held that the ground of the petition that the 1st Respondent was not qualified to contest the election because he was not sponsored by the 2nd Respondent was inconsistent with the facts pleaded which were to the effect that the 1st Respondent was in fact so sponsored and if so, whether their lordships were right when they held that the appellants were bound by their pleading and could not be heard to contend the contrary. (Arising from Grounds 7 & 9). F

3. Whether their lordships of the Court below were right when they held that the 1st Respondent's right to fair hearing was violated thereby occasioning a miscarriage of justice when their lordships of the Tribunal failed to review or give any consideration whatsoever to H

the evidence of the 51 witnesses called by the 1st Respondent in defence of the petition. (Arising from Ground 10).

4. Whether their lordships of the Court below were right when they held that the Tribunal erred in law when their lordships having held that the 1st Respondent was not qualified to contest, proceeded
B to declare the 1st Appellant “.... winner of the Governorship election held in Taraba State on the 11th and 25th days of April, 2015 having scored the next highest votes and entitled to be issued with the certificate of return by the 3rd Respondent’, in spite of the 1st Appellants
C own pleading that the election was null and void on account of corrupt practices and acts of non-compliance and in spite of the provisions of Section 140(1) & (2) of the Electoral Act, 2010 (as amended). (Arising from ground 11).

With regard to the 2nd Respondent, five issues for the determination were decoded in its brief as settled by Mr. S. Akuma SAN and the said issues are also reproduced hereunder:-

ISSUE ONE: Whether the Court below was right when it held that the Appellants lacked the locus standi to challenge the 2nd Respondent’s party primaries that nominated the 1st Respondent as
E a candidate for the 2015 Taraba State Governorship Election. (Grounds 3, 4 and 5).

ISSUE TWO: Whether the sponsorship of the 1st Respondent by the 2nd Respondent in the April, 2015 Taraba State Governorship Election complied with the provision of Section 177 (c) of the
F Constitution of the Federal Republic of Nigeria and can the Appellants rely on alleged non holding of primary election to question the sponsorship of the 1st Respondent under Section 177 (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
G (Grounds 1, 2, 6 & 8).

ISSUE THREE: Whether the Court below was right when it held that the Appellants in their pleadings admitted that the 1st Respondent was duly nominated and sponsored by the 2nd Respondent. (Grounds 7 & 9).

H ISSUE FOUR: Whether the Court below was right when it held that the Tribunal failed to evaluate or review the evidence of the 1st Respondent’s 51 witnesses. (Ground 10).

ISSUE FIVE: Was the Court below right when it set aside the order of the Tribunal that declared the 1st Appellant the winner of

the questioned election notwithstanding the provision of Section 140 (2) of the Electoral Act, 2010 (as amended). (Ground 11).

Looking closely at all the issues variously formulated by the parties, they appear to me to be similar in form and context, save that they differ in the wordings used in couching them. In any case, all the issues revolve on the pleadings, sponsorship, locus standi, qualification, non-compliance with provisions of Electoral Act and to some extent on scores of majority lawful votes. As I said earlier, the tribunal held that over-voting had not been proved by the petitioners. The first four issues for determination raised in the Appellants, brief of argument cover the main points which if duly considered, will adequately determine this appeal because they are the pith or focal points canvassed by parties learned counsel generally. B C

I must at this stage say, that my learned brother Rhodes-Vivour JSC had ably and painstakingly addressed these vital issues in his elucidating Reasons for judgment, which I entirely agree with and adopt as mine. I however wish to address some of these issues, even if it will merely serve as emphasis or amplification or will compliment the reasons given in his well researched lead judgment. To my mind, after making a cursory and dispassionate perusal of the five issues raised in the Appellants' Brief of argument, I am convinced that issues 1, 2, 3 and 4 therein, have adequately covered all the complaints of the appellants which I highlighted supra. I will therefore restrict my comments on some of the points raised in those issues for determination. In treating the four issues mentioned above, I intend to comment on them by starting with issue No 4 and to later to consider issues 1, 2 and 3 together. D E F

Issue No. 4

In this issue the appellants query the stance of the Court below on the application of the principle of admission of evidence in arriving at the conclusion that the appellants tend to make a case inconsistent with its earlier case, that is to say, the 1st Respondent was not qualified to contest the governorship election in question. It is worthy of note, that right from the outset the appellants in their joint petition complained that the 1st Respondent was not sponsored by any registered political party which they rightly conceded as a precondition a candidate must meet in order to be qualified to contest the election as required by the provisions of Section 177 of the 1999 Constitu- G H

tion, as amended. However, in their joint petition, the two petitioners pleaded as below in paragraphs 3, 4, 11 and 74(6) of their joint petition.

Paragraphs-

B 3. The 1st Respondent is a member of Peoples Democratic Party and was its candidate in the Taraba State Gubernatorial Election held on 11th and 25th April, 2015.

4. The 2nd Respondent Peoples Democratic Party is a duly registered political party and sponsor of 1st Respondent.

C 11. The Petitioners state that in the said election, the following votes were recorded for the 11 political parties which fielded and sponsored their candidates. 74(b)”that fresh election be held in the said local Government Areas, amongst the contestants who participated in the original election...”

D From the contents of the above quoted pleadings, the relevant and live issue centers on sponsorship of the 1st Respondent by a political party. That was the core issue on which the petitioners squarely hinged their joint petition and also on which they approached the tribunal to determine. In my view, the appellants herein, had right
E from the beginning admitted that the 1st Respondent was indeed sponsored by the PDP (2nd Respondent). It is therefore an admission which the appellants cannot later or subsequently change or vary at the 23rd hour of the day. An admission, to my understanding, is a statement, oral or documentary, made by a person which
F suggests any inference as to any fact in issue or relevant fact. See *Narindex Ltd vs NIMB Ltd* (2001) 4 SCNJ 208 at 220. See also Section 20 of Evidence Act 2011. It also means a statement by one of the parties to an action, which amounts to acknowledgment by
G him, that one of the material facts relevant to the issues in controversy in the proceedings is not as he claims it to be. See *NAS Ltd vs UBA Plc* (2005) All FWLR (Pt.204) 275. Therefore, admission in my view, if it is clear, unequivocal, and cannot be said to be based on any misapprehension of any fact, is binding on the maker and such maker
H cannot be heard changing it subsequently or at a later stage to suit his supposed new or fresh case or averment.

It is trite and well settled law, that where a party admits a fact in issue such fact in issue does not require any proof any again. The Courts do not need proof of fact already admitted and further dis-

pute if such facts should not be entertained since admission is the strongest and highest of the fact in issue.

At the hearing of these appeals, when the learned senior counsel for the appellants' attention was drawn to his admission in his pleading as reproduced above, the learned senior counsel proffered an explanation that those paragraphs were introductory part of their joint pleadings. With due deference to the learned silk for the appellants, I do not see how paragraphs 3, 4, 11 and 74(b) in the petitioners' petition reproduced above could be regarded as mere introductory paragraphs or part of the preambles. That is inconceivable and untenable. My view is that, subsequent contrary evidence or submissions made in the already admitted fact in issue are not admissible or tenable and indeed should have been rejected out-rightly by the tribunal because such evidence or submissions are at variance with their earlier pleadings. The appellants should even not have been allowed to play cold and hot at the same time. The appellants should always stick to their earlier pleadings upon which they tried to build their case and not to change it later, as they seemed to have done, by pleading inconsistent facts. The Court below in its judgment made the correct finding when it stated thus:-

"This is a glaring and total admission by the 1st and 2nd Respondents (now appellants) that the appellant (1st Respondent) actually satisfied the provisions of Section 177(c) of the Constitution..... and those paragraphs of the petition constitute admission against interest pursuant to Section 20 and 21 of the Evidence Act."

It is my view therefore, that the above finding of the Court below cannot be faulted or assailed. Therefore, having stated supra that the issue of sponsorship on which the petitioners/appellants hinged their petition was settled by the admission of such sponsorship of 1st Respondent by his party, (the 2nd Respondent (PDP) which was the only live issue in the petition, should have simply been determined by a verdict of dismissal of same in limine. This issues is therefore hereby resolved against the appellants. Be that as it may, I will still consider the other points raised in issues 1, 2 and 3 of the Appellants' brief of Argument together, albeit, summarily too.

Issues 1, 2 and 3

On these issues for determination the learned senior counsel for the appellant complained that the 2nd Respondent did not hold

primary election for sponsorship of the 1st Respondent as required by Section 137 of the Electoral Act 2010 as amended, and therefore the appellants have locus standi to challenge the sponsorship of the 1st Respondent since she was an interested party. See *Kamil v INEC* (2010) 1 NWLR (Pt.1174) 48. It was also submitted on the appellants' behalf that the 1st Respondent was not qualified to contest the election due to want of sponsorship by any political party. The case of *M. A. Shinkafi & Anor vs A. A. Yari & 2 Ors* and *Tarzoor & Anor vs Ortom & 2 Ors*. Unreported decisions delivered on 8/1/2016 and 15/1/2016 respectively. Learned counsel for Appellants argued that the two cases mentioned above, are distinguishable from the present case because unlike in the other two cases mentioned above, there was totally no primary elections held in this instant case.

On his part, the 1st Respondents learned senior counsel submitted that by virtue of Section 138(1)(a) of Electoral Act 2010 as amended, the tribunal lacks jurisdiction because the tribunal's bound is restricted to the requirements under Sections 177 and 182 of the 1999 Constitution. He referred to the cases of *M. A. Shinkafi & Anor v A. A. Yari & 2 Ors* (supra). The 2nd Respondent's counsel adopted the submissions of the 1st Respondent's counsel.

I have earlier stated in the fore paragraphs of this judgment, that there are valid pleadings from the petitioners that the 1st Respondent was duly sponsored by his party and therefore he has satisfied the first leg of Section 177 (c) of the Constitution which stated that for a person to qualify to contest election for governorship seat he must inter alia, *"be a member of a political party and is sponsored by that political party."* This is so because independent candidature is not recognised by the extant Nigerian Constitution.

On the issue of primary elections, this Court in plethora of decided authorities emphasized that only a member of a political party can challenge its primary election and even such challenger must be "an aspirant." Anybody who is not a member of such political party cannot challenge its primary election because he is not an aspirant and also he is merely an interloper or a busy body. See Sections 85, 86 and 87 of the Electoral Act 2010 as amended.

In fact, by the provisions of Section 87 (9) of the Electoral Act 2010, Courts have jurisdiction to hear complaints from a candidate who participated at the party's primaries and complains about the

conduct of the primaries only. See *Onuoha vs Okafor & Ors* (1983) 14 NSCC 494; *Dalhatu v. Turaki* (2003) 15 NWLR (Pt.843) 310; *Daniel v INEC* (2015) 9 NWLR (1463) 113; *M. A. Shinkafi & Anor vs A. A. Yari* (supra); *T. Tarzoor & Anor vs S. Ortom & 2 ors* Unreported No. SC.928/2015 delivered on 15/1/2016.

The 1st appellant therefore, having not been a member of PDP or an aspirant, she lacks locus standi to complain about the primaries of the 2nd Respondent an adverse political party.

It is noted by me, that the appellants during the proceedings at the tribunal called PW2 and tendered Exhibits 5 through him to establish that the 2nd Respondent did not hold primary election. These pieces of evidence which she rigidly relied on is at variance with the case she initially presented and has rendered the said evidence worthless and of no moment, This Court in the case of *Emenike v PDP* (2012) 12 NWLR (Pt.1315) 556 stated as below at page 593:-

"This Court has stated in clear terms, that a party should be consistent in stating his case and consistent in proving it, Justice is more than a game of hide and seek. It will never decree anything in favour of so slippery a customer as the appellant. See Ajide v Kelani (1985) 3 NWLR (Pt.12) 248 at 269.

....Again, it should be stated that there should be consistency in prosecuting a case by a party. See Kalu v Uzor (2006) 8 NWLR (Pt.981) 66 at 87".

As a corollary, these issues have to be and are hereby accordingly resolved against the appellants.

On the whole, with these few comments of mine, and for the more detailed lead Reasons for judgment, I am in entire agreement with those lead reasons for judgment advanced by my learned brother Olabode Rhodes-Vivour JSC, just delivered and the conclusion he arrived at, that this appeal is devoid of any merit and deserves to be dismissed is also agreeable to me. I also dismiss it accordingly. I decline to make any order on costs, so each party should bear his/its own costs.

SC.45/2016

Considering the issues for determination formulated in this appeal, I find them to be more or less the same with those issues raised in appeal No.SC.46/2016 in which reasons for judgment have just been delivered. I hereby adopt those reasons and conclusion in

that judgment i.e. SC.46/2016 to apply to this appeal in their entirety. As a corollary, this appeal is also hereby dismissed. I make no order as to costs.

SC.47/2016

The issues raised by parties learned counsel in this appeal tally with those raised in appeal No.SC.46/2016 which reasons for judgment have just been rendered. I adopt them to apply to this appeal as well as the conclusion arrived at in that appeal, to the effect that the appeal lacks merit and therefore deserves to be dismissed. I therefore also dismiss this appeal for want of merit. Costs to be borne out by respective parties.

SC.48/2016

At the hearing of appeal No.SC.46/2016 on 11th February 2016, all learned counsel to the parties in this appeal agreed that this appeal should abide the decision in the main appeal No.SC.46/2016. I therefore hereby so order and this appeal is accordingly dismissed. Parties to bear their respective costs.

SC.50/2016

When this cross-appeal was called for hearing on 11th February 2016, all learned counsel to the parties agreed that this cross-appeal even if taken, will not enhance the position of the cross-appellant. That being the position, this appeal deserves to be dismissed and I accordingly do same. I decline to make any order on costs.

SC.58/2016

When this cross-appeal was called for hearing on 11th February 2016, all learned counsel to the parties observed that this cross appeal will not enhance the position of the cross appellant. Sequel to that this cross appeal deserves to be dismissed and it is accordingly hereby so dismissed. No order is made in costs.

SC.59/2016

Learned counsel to the parties in this Cross appeal observed when this cross appeal was called for hearing on 11th February 2016, that the position of the cross appellant will not be improved when this cross-appeal is heard. In view of that stance of the learned counsel to the parties, this Court has no option than to dismiss this cross-appeal. The cross-appeal is therefore hereby accordingly dismissed. I make no order as to costs.