

**SUPREME COURT OF NIGERIA**  
FRIDAY 24TH JUNE, 2016. SC. 377/2015  
**CORAM:- M. MOHAMMED CJN, S. GALADIMA, C. B.**  
**OGUNBIYI, K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC**

GENERAL MOHAMMED A. GARBA (RTD) ..... APPELLANT  
AND

1. MUSTAPHA SANI MOHAMMED  
2. ALL PROGRESSIVE CONGRESS ..... RESPONDENTS  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

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APPEALS - Jurisdiction - Where subject matter of appeal is within jurisdiction of appellate court - Its jurisdiction is not ousted because it lacks power to grant some of the reliefs claimed (H1)

APPEALS - Filing - Multiple notices - Provided that each notice of appeal was filed within time - And appellant specifically chose particular notice to rely upon - There was no abuse of court process (H2)

APPEALS - Objection - Brief - Number of pages - Objection to the number of pages contained in brief of argument - Can never be an issue touching on competence of the appeal (H3)

COURTS - Federal High Court - Jurisdiction - Expansion of - National Assembly can by the Constitution expand its jurisdiction As it did in preelection matters - Which can be exclusive - Or exercised concurrently with other courts (H4)

JURISDICTION - Of Federal High Court - Extent of - The court is not limited by its exclusive jurisdiction in s. 251(1)(a) to (r) - As it can exercise other concurrent jurisdiction with State High Courts (H5)

ELECTIONS - Preelection matters - Jurisdiction - Plaintiff's complaints bring the claim within Electoral Act 2010 ss. 31(5) & 87(9) - Which confer concurrent jurisdiction on FHC and State HC (H6)

COURTS - Issues - Determination of - Court must resolve all issues submitted to it for adjudication except in clearest cases - As failure to do so would amount to denial of fair hearing (H7)

ACTIONS - Substantive suit - Objection - Determination - Failure of trial Judge to consider the preliminary objection before the substantive suit - Occasioned a miscarriage of justice (H8)

### **FACTS**

By an originating summons filed before the Federal High Court Minna, plaintiff/appellant is seeking various reliefs against defendants/respondents on the ground that 1<sup>st</sup> respondent was not a registered member of 2<sup>nd</sup> respondent and therefore ought not to have been returned as the winner of the primary election held on 10/12/2014 and his name ought not to have been forwarded to INEC as the party's candidate for the general election. Appellant is seeking inter alia, for a declaration that 1<sup>st</sup> respondent is not a registered member of 2<sup>nd</sup> respondent within the meaning of 2<sup>nd</sup> respondent's Constitution and a declaration that appellant won the aforementioned primary election. Upon being served with the originating summons, 1<sup>st</sup> respondent filed counter affidavit and preliminary objections, challenging appellant's suit and the court's jurisdiction to entertain same.

Affidavits, counter affidavits and written addresses were filed and exchanged by the parties in respect of the preliminary objections. After the adoption of the written addresses in respect of the preliminary objection, the learned trial Judge entered judgment in favour of appellant and dismissed 1<sup>st</sup> respondent's preliminary objection. Dissatisfied, 1<sup>st</sup> respondent filed a notice of appeal along with an application for stay of execution. Later on, 1<sup>st</sup> respondent filed additional grounds of appeal and a further notice of appeal on a much later date. A third notice of appeal was yet later filed. The notices were all filed within time. Briefs were subsequently exchanged and adopted. At the end, the court dismissed all the grounds of 1<sup>st</sup> respondent's preliminary objection and allowed the appeal on grounds of lack of jurisdiction. Aggrieved, appellant appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Was the Court of Appeal right in dismissing all the grounds

of the Appellant's Notice of Preliminary Objection as lacking in merit?

2. Was the Court of Appeal right in setting aside the judgment of the trial Court wherein it assumed jurisdiction to hear the suit and granted the reliefs sought by the Appellant?

3. Was the Court of Appeal right when it resolved Issue No. 1 in favour of the 1st respondent for the reason that the trial Court did not consider the 1st respondent's preliminary objection?

**HELD** (Unanimously allowing the appeal in part per

**KEKERE-EKUN JSC)**

*APPEALS - Jurisdiction*

**1. Where the subject matter of the appeal is within the jurisdiction of the appellate Court, the Court's jurisdiction will not be ousted simply because it lacks jurisdiction to grant some of the reliefs claimed.** (p. 3007 C)

*APPEALS - Filing - Multiple notices*

**2. I am of the considered view that since what was being challenged before the Lower Court by way of preliminary objection was not the validity of the orders obtained, the Lower Court was correct when it followed the decision of this Court in *Tukur v. Uba & Ors.* (2013) 4 NWLR (Pt. 1343) 90 @ 115-116 H-D, which in turn cited with approval the case of *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt. 68) 39 to the effect that as long as each of the notices of appeal was filed within the time prescribed by the Court of Appeal Rules and the appellant had specifically indicated the particular notice of appeal upon which his brief of argument was based or had formally withdrawn the ones he no longer intends to proceed with, there was no abuse of Court process. The ground was rightly dismissed. I also agree with the Court below, with regard to ground 4 that the court did not and could not have ordered the filing of briefs predicated upon a particular notice of appeal, as the appellant, as has been shown above, is at liberty to choose which of several notices of appeal filed within time he intends to base his brief of argument on.**

(p. 3009 D)

*APPEALS - Objection - Brief - Number of pages*

**3. Finally, on ground 10 of the objection, the Court below held that Paragraph 8 (2) (b) of the Court of Appeal (Fast Track) Practice Direction 2014 has not limited the filing of briefs in pre-election appeals to 25 pages and therefore the objection on the ground that the appellant's brief exceeded 25 pages was misconceived and consequently struck it out. Beyond this finding of the Court below, which I fully endorse, I must observe, as pointed out by learned counsel for the 1st respondent that the Court of Appeal (Fast Track) Practice Direction 2014 does not apply to pre-election appeals. It applies to debt appeals and appeals pertaining to corruption, human trafficking, kidnapping, money laundering, rape and terrorism. See Section 1 thereof. Furthermore an objection to the number of pages contained in a brief of argument can never be an issue touching on the competence of the appeal itself. I therefore hold that the notice of preliminary objection was rightly dismissed. This issue is accordingly resolved against the appellant.** (p. 3010 D)

*COURTS - FHC - Jurisdiction - Expansion of*

**4. The first issue to consider is whether the introductory part of Section 251 (1) of the 1999 Constitution (as amended) forecloses the right of the National Assembly to exercise its powers to make laws by extending the jurisdiction of the Federal High Court or any other superior Court of record. The introductory part of the section is in two parts: (i) Notwithstanding anything to the contrary contained in this Constitution; (ii) and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly. My understanding of the provision is that (i) any contrary provision within the Constitution will not override the exclusive jurisdiction conferred on the Federal High Court in respect of the matters listed in Sub-paragraphs (a) to (r). (ii) Secondly, the National Assembly is also given powers to expand the jurisdiction of the Court. Such expanded jurisdiction could be exclusive or exercised concurrently with the State High Courts and the High Court**

**of the Federal Capital Territory (FCT). See Section 251 (1) (s) above. Pursuant to the powers conferred on it by Section 251 (1) (s) of the Constitution, the National Assembly enacted the Electoral Act 2010, as amended, which conferred concurrent jurisdiction in pre-election matters on the Federal High Court and the High Courts of the States and the High Court of the Federal Capital Territory.** (p. 3017 G) B

*JURISDICTION - Federal High Court - Extent of*

**5. It is evident from the above that the fact that the Federal High Court is conferred with exclusive jurisdiction in respect of the matters listed in Section 251 (1) (a) - (r) does not preclude that Court from exercising other jurisdiction concurrently with the High Court of the Federal Capital Territory or the High Court of a State where such jurisdiction is conferred on it by an Act of the National Assembly, exercising its powers under Section 251 (1) (s) of the Constitution.** (p. 3018 H) C  
D

*ELECTIONS - Preelection matters - Jurisdiction*

**6. A careful perusal of the claims endorsed in the amended originating summons, reproduced earlier in this judgment shows clearly that the plaintiff's claims were centred around the contention that the 2nd respondent failed to follow its guidelines in the conduct of the primary election by allowing someone who is not a member of the party to participate and an allegation that the information contained in the 1st respondent's Form CF001 submitted to the 3rd respondent contained false information. The complaints bring the claim squarely within the provisions of Sections 31 (5) and 87 (9) of the Electoral Act 2010, as amended, which confer concurrent jurisdiction on the Federal High Court, High Court of a State or High Court of the FCT. The argument as to whether the Federal High Court has jurisdiction to entertain the suit on the ground that the so-called principal reliefs are not directed at the Federal Government or any of its agencies, in light of the reasoning above, does not hold water, as there is no such qualification in Section 31 (5) and 87 (9) of the Electoral Act.** E  
F  
G  
H

**The effect of all that has been said is that by virtue of Section 251 (1) (s) of the 1999 Constitution and Sections 31 (5) and 87 (9) of the Electoral Act, 2010 made pursuant thereto, the Federal High Court had the requisite jurisdiction to entertain the action. This issue is accordingly resolved in favour of the appellant.** (p. 3020 H/3021 H)

*COURTS - Issues - Determination of*

**7. The law is well settled that a Court of law, whether of first instance or in its appellate jurisdiction has a duty to consider and resolve all issues submitted to it for adjudication except in the clearest cases. Failure to consider all issues would amount to a denial of fair hearing where the parties have not been heard. The rationale for this, as held by this Court in Okonji v. Njokanma (1999) 14 NWLR (Pt.638) 250 @ 270 E - F, is that a judgment of a Court of record must demonstrate a dispassionate consideration of all issues canvassed by the parties and in turn show the result of such exercise.** (p. 3024 C)

*ACTIONS - Substantive suit - Objection - Determination*

**8. Where a preliminary objection challenging the Court's jurisdiction is heard along with the substantive suit or application, the Court must give a ruling on the objection before proceeding to determine the substantive suit.**

**In the instant case, the trial Court committed its first error by referring to the notice of preliminary objection filed on 9/3/15, which it had already struck out. Secondly, beyond a brief reference to the preliminary objection in the introductory part of the judgment, there was no other reference to the preliminary objection throughout the judgment until the concluding part where the Court declared that the preliminary objection had failed.**

**I fully endorse the finding of the Court below in this regard. The failure of the learned trial Judge to consider the preliminary objection filed on 19/3/2015, which was the extant process before it before resolving the issues in the substantive amended originating summons occasioned a grave miscar-**

***riage of justice. The failure tainted the entire proceedings and rendered same a nullity. This issue is accordingly resolved against the appellant.*** (pp. 3024 F/3025 H)

## NOTABLE POINTS OF INTEREST

### **KEKERE-EKUN JSC**

#### ***1. Appeals – Preliminary objection – Purpose of***

The purpose of filing a preliminary objection is to bring the hearing of the appeal to an end for being incompetent or fundamentally defective. A preliminary objection is only filed against the hearing of an appeal. Where, for example, there is an objection against some grounds of appeal but there are other grounds that can sustain the appeal, a preliminary objection would not be the appropriate procedure to adopt in the circumstances. (p. 3007 A)

#### ***2. Jurisdiction – Fundamental nature of***

There is no doubt that the issue of jurisdiction is fundamental to adjudication. It is the blood that gives life to the Court and enables it exercise its powers as conferred by the law establishing it. Without jurisdiction the proceedings and any decision reached therein is null and void ab initio. This underscores the importance of the issue under consideration. It is especially important in a pre-election or post-election matter where not only the litigants but also the electorates are affected by the outcome of the dispute and it is desirable that the case be determined with dispatch.

It is pertinent to note that the Courts are creations of statute. They derive their powers and jurisdiction either under the Constitution, which is the supreme, organic and fundamental law and grundnorm of this country or under specific statutes. The Court's jurisdiction may also be limited or extended by statute. For a suit to be competent the plaintiffs claims must fall within the jurisdiction conferred on the Court by the relevant statute. (p. 3016 D)

### **MOHAMMED CJN**

#### ***3. Federal High Court – Preelection jurisdiction of***

In invoking this special additional jurisdiction of the Federal High Court, it is quite unnecessary to have recourse to the provisions of the gen-

eral jurisdiction of the same Court under Section 251 of the 1999 Constitution thereby doing away with the antics of main claim and ancillary claims in search of jurisdiction for the Federal High Court which is no longer there having been constitutionally and lawfully moved to the Electoral Act, 2010 as amended.

- B The present appeal arose from circumstances which are pre-election matters and having regard to the parties claims and reliefs sought at the trial Federal High Court, are plainly within what I regard as pre-election jurisdiction of the Federal High Court under the Electoral Act, 2010 as amended and as such have nothing to do with  
C the jurisdiction of that Court under Section 251 of the 1999 Constitution of the Federal Republic of Nigeria. (p. 3029 B)

### **REPRESENTATION**

- D Chief Robert Clarke (SAN) with him, Chris Osuagwu, Esq. and U.B. Eyo, Esq., for the Appellant  
S. I. Ameh (SAN) with Gavers C. Ihematulam, Esq., R. O. Adakole, Esq., D. M. Idoko, Esq., (Miss) R. O. Mohammed, (Miss) A. O. Nwankwere, R. M. Donglong, (Miss) A. Saidu and N. Igyuse (Mrs.)  
E for 1st Respondent  
A. M. Kayode, Esq. with N. O. Salawu, Esq., O. A. Ajayi, Esq. and O. E. Ashade (Miss) for 2nd Respondent/Cross Appellant  
T. M. Inuwa, Esq. with Alhassan A. Umar, Esq. and C. Nnamah (Miss)  
F for 3rd Respondent

### **CASES REFERRED TO**

- Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 517  
Onuorah v. Kaduna Refining & Petrochemical Co. Ltd. (2005) 6  
G NWLR (pt. 921) 393  
Okorochoa v. P.D.P. (2014) 7 NWLR (pt. 1406) 213  
C.P.C. v. Ombugadu (2013) 344 WRN 1  
Eligwe v. Okpokiri (2015) 2 NWLR (pt. 1443) 348  
Opia v. INEC (2014) 7 NWLR (pt. 1407) 431  
H Yar'adua v. Yandoma (2015) 4 NWLR (pt. 1448) 123  
Dingyadi v. INEC (No.1) (2010) 18 NWLR (pt. 1224) 74  
Conoil Plc. v. Vitol SA (2012) 2 NWLR (pt. 1283) 50  
Tukur v. Uba (2013) 4 NWLR (pt. 1343) 90  
Akeredolu v. Akinremi (1986) 2 NWLR (pt. 25) 710



Regd. Trustees of AMORC v. Awoniyi (1994) 7 NWLR (pt. 355) 154

Shanu v. Afribank (Nig.) Plc. (2002) 17 NWLR (pt. 795) 230-231

N.N.P.C. v. Famfa Oil Ltd. (2009) 12 NWLR (pt. 1155) 462

Gwede v. INEC (2014) 18 NWLR (pt. 1433) 394

### **STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, s. 65(2)(b), 251

Electoral Act 2010 (as amended), ss. 31(5)(6), 87, 141

Court of Appeal (Fast Track) Practice Direction 2014, para. 8(2)(b) C

Court of Appeal Rules 2011, O. 10 r. 1, O.18 r. 6(a)

Federal High Court Civil Procedure Rules 2009, O. 29 r. 1

### **LEAD JUDGMENT BY KEKERE-EKUN JSC**

This is an appeal against the judgment of the Court of Appeal, D  
Abuja Division delivered on 5/6/2015 setting aside the judgment of  
the Federal High Court, Minna Division delivered on 25/3/2015 for  
want of jurisdiction and for its failure to consider and determine the  
preliminary objection challenging its jurisdiction. The Court below  
transferred the suit to the Niger State High Court for reassignment to E  
another Judge for speedy hearing and determination.

The facts that gave rise to this appeal are as follows:

On 8th and 10th December 2014 the 2nd respondent, the All  
Progressives Congress (APC) conducted primary elections to select F  
its candidate for the office of Senator representing Niger South Sena-  
torial District in the general elections, which took place on 28/3/2014.  
The appellant, the 1<sup>st</sup> respondent and two other candidates contested  
the said primaries. The 1st respondent was declared the winner while  
the appellant came second. The 1st respondent's name was submit- G  
ted to the Independent National Electoral Commission (INEC) as the  
2<sup>nd</sup> respondent's candidate for the said Senatorial District. The appel-  
lant was dissatisfied with the outcome and appealed to the Appeal  
Committee of the 2nd respondent. His contention was that the 1st  
respondent was not a member of the party. According to the appel- H  
lant, the National Working Committee of the 2nd respondent (not  
the Appeal Committee) recommended that the 1st respondent be  
disqualified. The appellant was given Form CF001 and an INEC nomi-  
nation form, which he completed and submitted to the Commission

(3rd respondent). However, the 3rd respondent refused to substitute his name without a Court order compelling it to do so. Consequently, the plaintiff/appellant filed an originating summons at the Federal High Court, Minna, seeking various reliefs against the respondents on the ground that the 1st respondent was not a registered member of the 2nd respondent and therefore ought not to have been returned as the winner of the primary election held on 10/12/2014 and his name ought not to have been forwarded to INEC as the party's candidate for the general election. He subsequently filed an amended originating summons with leave of Court.

Therein he sought the determination of the following questions:

1. Whether having regard to the provisions of Articles 9, 9.1 to 9.4 of the All Progressives Congress (APC) Constitution and Paragraphs 3, 4 (A) and (B) of the All Progressives Congress (APC) 2014 Guidelines for the Nomination of Candidates for Public Office and Section 65(2)(B) of the 1999 Constitution (as amended) the 1st defendant is not disqualified from participating in the 2nd defendant's primary election for Niger South Senatorial District held on 10th of December 2014 and the general election slated for March 28, 2015 by reason of not being a registered member of the 2nd defendant.

2. Whether having regard to the provisions of Section 31(5) & (6) of the Electoral Act 2010 (as amended) the 1st defendant is not disqualified from participating in the Niger South Senatorial Election 2015 having given false information as to his membership of the 2nd defendant in the affidavit, Form CF 001, he submitted to the Independent National Electoral Commission.

3. Whether having regard to the provisions of Section 87 of the Electoral Act 2010 (as amended) and Article 9 of the All Progressives Congress constitution, the plaintiff is not the person entitled to have his name submitted to the Independent National Electoral Commission as the candidate of the 2nd Defendant in the Senatorial Election for Niger South Senatorial District 2015 having won the majority of the lawful votes cast in its primary election from the qualified aspirants.

In the event that the above questions were resolved in his favour, the appellant sought the following reliefs:

(a) A declaration that the 1st defendant is not a registered

member of the 2nd defendant within the meaning of the 2nd defendant's Constitution.

(b) A declaration that the 1st respondent was not qualified to have participated in the primary election of the 2nd defendant held on the 10th day of December 2014 for Niger South Senatorial District. B

(c) A declaration that the plaintiff won the primary election of the 1st defendant held on the 10th day of December 2014 and is the person entitled to have his name submitted to the Independent National Electoral Commission as the 2nd defendant's candidate for Niger South Senatorial District in the March 2015 General Elections. C

(d) A declaration that the 3rd defendant, Independent National Electoral Commission is under a duty to receive the name of the plaintiff from the 2nd defendant as its candidate for Niger South Senatorial District in the general elections slated for March 2015. D

(e) An order of the Court setting aside the submission of the name of the 1st defendant to the 3rd defendant as the 2nd defendant's candidate for Niger South Senatorial District Niger State in the March 2015 elections.

(f) An order of Court disqualifying the 1st defendant for giving E false information in his affidavit of personal particulars, Form CF 001 and mandating the 3rd defendant to substitute the name of the 1st defendant with that of the plaintiff as the 2nd defendant's candidate for Niger South Senatorial District in the March 2015 general elections. F

(g) An order of Court mandating the 3rd defendant, Independent National Electoral Commission to accept from the 2nd defendant the name of the plaintiff as its duly nominated candidate for Niger South Senatorial District in March 2015 general elections. G

(h) An order of Court mandating the 2nd and 3rd defendants to substitute the name of the 1<sup>st</sup> defendant with that of the plaintiff as 2nd defendant candidate for Niger South Senatorial District of Niger State in the March 2015 general elections.

(i) An order of Court deeming the name of the plaintiff as the name submitted by the 2nd defendant as its candidate for Niger South Senatorial District of Niger State in the March 2015 general elections. H

(j) An order of perpetual injunction restraining the defendants from tampering or from dealing in any way with the candidature of

the plaintiff except by according him with all the right and recognition as the candidate of the 2nd defendant for Niger South Senatorial District in the March 2015 elections.

(k) And for such further or other orders as the Court may deem fit to make in the circumstances of this case.

B Upon being served with the originating summons the 1st respondent filed a counter affidavit and written address in opposition. He also filed preliminary objections on the 4th and 19th March 2015 challenging the appellant's suit and the Court's jurisdiction to entertain it. Affidavits, counter affidavits and written addresses were filed and exchanged by the parties in respect of the preliminary objections. All the processes were subsequently consolidated and heard along with the amended originating summons. The 1st respondent withdrew the preliminary objection filed on 4th March 2015 and the D counter affidavit filed on 9/3/15. They were accordingly struck out. After the adoption of the written addresses in respect of the preliminary objection filed on 19/3/2015, the learned trial Judge, on 25/3/2015 entered judgment in favour of the appellant and dismissed the 1st respondent's preliminary objection.

E Being dissatisfied with the decision, the 1st respondent filed a notice of appeal the same day, 25/3/2015 along with an application for stay of execution. He also filed additional grounds of appeal on 7/4/15 and a further notice of appeal on 28/4/2015. He filed a third notice of appeal on 5/5/2015, all within time. The final notice of F appeal is contained in the supplementary record of appeal at pages 857 to 869 of Volume II of the record.

The 1st respondent's application for stay of execution came up on 15th April 2015. The Court below granted an interim order G preventing the 3rd respondent from issuing a Certificate of Return to the appellant. On 30/4/15, it granted an interlocutory order against the 3rd respondent in similar terms. The parties subsequently exchanged briefs of argument and adopted them. Judgment was delivered by the Lower Court on 5/6/15 wherein it dismissed all the grounds H of the 1st respondent's preliminary objection and allowed the appeal on grounds of lack of jurisdiction.

The appellant was thoroughly aggrieved by this decision and has accordingly further appealed to this Court by a notice of appeal filed on 8/6/15. The appellant filed another notice of appeal on 16/7/

2015. This appeal is predicated on the notice of appeal filed on 16/7/2015, the earlier notice having been abandoned in the appellant's brief.

In compliance with the rules of this Court, both parties filed and exchanged their respective briefs of argument. At the hearing of the appeal on 5/4/2016, CHIEF ROBERT CLARKE, SAN, leading B Chris Osuagwu, Esq. and U. B. Eyo Esq., adopted and relied on the appellant's brief dated and filed on 31/7/2015 and the appellant's reply brief filed on 2/11/15. He urged the Court to allow the appeal. He relied on the list of additional authorities filed on 3/3/16 and made C some submissions in oral adumbration of the brief. S. I. AMEH, SAN, learned senior counsel for the respondent leading several juniors, to wit: Messrs Gavers C. Ihematulam, R. O. Adakole, D. M. Idoko, R. O. Mohammed (Miss), A. O. Nwankwere (Miss), R. M. Donglong, Miss A. Saidu and Mrs. N. Igyuse adopted and relied on the 1st D respondent's brief filed on 28/10/15 and urged the Court to dismiss the appeal. He also made some oral submissions in further adumbration of his brief. The oral submissions of both learned counsel will be considered where appropriate in the course of this judgment. The 2nd and 3rd respondents did not file any briefs in this appeal. E

The appellant formulated three issues for the determination of this appeal thus:

1. Was the Court of Appeal right in dismissing all the grounds of the Appellant's Notice of Preliminary Objection as lacking in merit? F
2. Was the Court of Appeal right in setting aside the judgment of the trial Court wherein it assumed jurisdiction to hear the suit and granted the reliefs sought by the Appellant?
3. Was the Court of Appeal right when it resolved Issue No. 1 in favour of the 1st respondent for the reason that the trial Court did not consider the 1st respondent's preliminary objection? G

The 1st respondent distilled the following issues, which are substantially similar to the appellant's issues:

1. Whether the Court of Appeal rightly dismissed the appellant's notice of preliminary objection as lacking in merit? H
2. Whether the Court of Appeal was wrong in setting aside the Judgment of the trial Court on the ground that the trial Court lacked jurisdiction to entertain the suit.
3. Whether the Court of Appeal was right when it resolved in

favour of the 1st respondent Issue No. 1 presented by him in his appellant's brief of argument for the reason that the trial Court did not consider the 1st respondent's preliminary objection.

As the issues formulated by both parties are substantially the same, I shall adopt the appellant's issues in the resolution of the appeal.

Issue 1

Was the Court of Appeal right in dismissing all the grounds in the Appellant's Notice of Preliminary Objection as lacking in merit.

CHRIS OSUAGWU, ESQ., who settled the appellant's brief submitted that the appellant's preliminary objection, which contains 10 grounds, could be compartmentalized into two, namely; abuse of Court process and absence of jurisdiction by the Court below to entertain and determine reliefs (b) and (c) contained in the notice of appeal dated 4/5/2015 and filed on 5/5/2015. He noted that the preliminary objection was supported by an 11-Paragraph affidavit with two exhibits attached thereto. Exhibit A being a letter from the 3rd respondent, INEC, stating that it had complied with the judgment of the trial Court and Exhibit B being Form EC8E1 (Form for declaration of result for the election into the office of Senator for Niger South Senatorial District) with the name of the appellant as the winner of the election. He referred to reliefs (b) and (c) as contained in the notice of appeal seeking the following reliefs:

(b) To set aside the judgment of the Federal High Court Minna Judicial Division delivered on the 25th March 2015 in Suit no. HC/MN/2015 and any other action whatsoever done by the respondents pursuant to the judgment; and

(c) To consequently order the return of the appellant as the winner of the Niger South Senatorial District Election conducted on 28/3/2015.

Learned counsel submitted, relying on several authorities, including *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517; *Onuorah v. Kaduna Refining & Petrochemical Co. Ltd.* (2005) 6 NWLR (Pt. 921) 393 @ 407 F; *Okorochoa v. P.D.P.* (2014) 7 NWLR (Pt. 1406) 213 @ 221; (2014) 1-2 SC (Pt. 1) 82, that in so far as it is the plaintiff's claim as endorsed on the originating process that determines the jurisdiction of the Court, by the very nature of the reliefs sought, the Court ought to have been put on its guard that

the subject matter of the appeal was not within its jurisdiction. He referred to Section 141 of the Electoral Act 2010, as amended which provides that “*an election Tribunal or Court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election*”, and relied on the cases of: C.P.C. v. Ombugadu (2013) 344 B WRN 1 @ 50; Eligwe v. Okpokiri (2015) 2 NWLR (Pt. 1443) 348 @ 373-374, in support of the position that the Court below lacked jurisdiction to entertain the 1st respondent’s appeal. He posited further that the reliefs sought in the notice of appeal were also not available to him having regard to the combined provisions of Sections 68 (1) (c) and 75 (1) of the Electoral Act 2010, as amended, which provide (a) that the decision of a returning officer on any question arising from or relating to proceedings under the Act in relation to the declaration of scores of candidates and the return of a candidate are final and subject to review only by a Tribunal or Court in an election petition proceeding under the Act; and (b) that INEC shall issue a certificate of return to a successful candidate within 7 days or in the event of a decision of the Court of Appeal or Supreme Court as the final appellate Court nullifying the certificate of return of any candidate, the Commission shall issue the successful candidate with a valid certificate of return within 48 hours of the order, Relying on the authorities of Opia v. INEC (2014) 7 NWLR (Pt. 1407) 431 @ 459; and Yar’adua v. Yandoma (2015) 4 NWLR (Pt. 1448) 123 @ 175-177, he submitted that the aforesaid reliefs do not vest the Lower Court with jurisdiction and ought to have been struck out. He submitted that the appeal emanated from a pre-election dispute filed at the Federal High Court and not an election Tribunal. He rejected the finding of the Court below that the 1st respondent’s complaints were not within the ambit of a preliminary objection. G

It is the appellant’s further contention that the notice of appeal filed on 5/5/2015 amounted to an abuse of Court process because the 1st respondent herein, as appellant, sought to overreach the present appellant having obtained interim and interlocutory reliefs H based on an earlier notice of appeal and also on the ground that the order of Court directing the parties to file their respective briefs of argument was predicated on the notice of appeal and additional grounds of appeal existing on 30/4/2015. On abuse of Court pro-

cess, he relied on: *The Vessel "St. Roland" v. Osinloye* (1997) 4 NWLR (Pt. 500) 387 @ 392; *Dingyadi v. INEC* (No.1) (2010) 18 NWLR (Pt. 1224) 74-25. He argued that the Court ought not to permit a party to utilise a process to gain substantial advantage over his opponent and later turn round to deny the process. He contended that the 1st respondent was estopped from abandoning the first notice of appeal with which he obtained both interim and interlocutory orders of injunction respectively. He contended that the original notice of appeal was incompetent and therefore it is not possible to place something on nothing and expect it to stand.

In reply to the submissions of learned counsel for the appellant, S. I. Ameh, SAN observed that the notice of preliminary objection does not challenge the competence of the appellant's (now 1st respondent's) appeal. He categorized the grounds of the objection into three:

(a) Since the order made by the Honourable Court on 30th April 2015 for filing briefs was predicated on the Notice and Grounds of Appeal and Notice of Additional Grounds of Appeal existing at the time, the subsequently filed notice of appeal dated 4th May 2015 is an abuse of Court process.

(b) Reliefs (b) and (c) contained in the notice of appeal dated April 2015 but filed on 5th May 2015 are not grantable by the Court; and

(c) The appellant's brief exceeds 25 pages.

Learned senior counsel submitted that based on these grounds, the preliminary objection was incompetent ab initio having regard to Order 10 Rule 1 of the Court of Appeal Rules 2011, which requires that a preliminary objection must challenge the competence of the appeal or must be against the hearing thereof. He referred to *Conoil Plc. v. Vitol SA* (2012) 2 NWLR (Pt. 1283) 50 @ 70 G-H, 71 A-C. He submitted that the procedure adopted by the appellant in failing to incorporate arguments in respect of the objection in his brief but supporting the application instead with an affidavit and exhibits, which did not form part of the record of the trial Court, is contrary to the provisions of Order 10 Rule 1 of the Court of Appeal Rules 2011, and the Lower Court ought to have struck it out on this ground alone. He agreed with the Court below that grounds 2 and 3 of the objection are mere statements and argued that even if taken along



with grounds 1 and 4, the objections are misconceived and without merit. He submitted that in so far as the order to file briefs was not predicated on a specific notice of appeal, the appellant's argument in respect of the issue is grossly misconceived and should be dismissed. Learned counsel submitted further, with regard to the several notices of appeal filed, that the appellant was within his right to file any number of notices of appeal as long as they were filed within the three months prescribed by Section 25 (2) (a) of the Court of Appeal Act. He referred to: *Tukur v. Uba* (2013) 4 NWLR (Pt. 1343) 90 @ 115 F-G, 116 D-H & 154-155; *Akeredolu v. Akinremi* (1986) 2 NWLR (Pt. 25) 710; *Registered Trustees of AMORC v. Awoniyi* (1994) 7 NWLR (Pt. 355) 154. He noted that the only stricture is that where there is more than one notice of appeal, the appellant must choose one upon which his brief of argument must be predicated. See: *Tukur v. Uba* (supra) at 113 F-H, 154 D. He noted that the appellant duly stated in his brief of argument that it was predicated on the notice of appeal filed on 5/5/2015. He therefore maintained that there was no abuse of Court process in the circumstance.

With regard to grounds 5, 6, 7 and 9 of the preliminary objection, he submitted that the Court below was right when it held that the objections go to the merit of the substantive appeal particularly as regards the consequential order to be made in the event that the appeal succeeds. He submitted that to hold otherwise would entail the Court below determining issues in the substantive appeal at an interlocutory stage, which it cannot do. He referred to several authorities including: *Shanu v. Afribank (Nig.) Plc.* (2002) 17 NWLR (Pt. 795) @ 230-231 H-A; *N.N.P.C. v. Famfa Oil Ltd.* (2009) 12 NWLR (Pt. 1155) 462 @ 496-497.

He submitted that the authorities of *C.P.C. v. Ombugadu* (supra) and *Eligwe v. Okpokiri* (supra) cannot avail the appellant as it was never decided in those cases that the provisions of Section 141 of the Electoral Act could be employed to refuse reliefs in an appeal at an interlocutory stage. He argued further that the instant appeal arose from the decision of the Federal High Court in a pre-election matter and is therefore a continuation of the case at the trial Court. He also contended, relying of the decisions of this Court in *Gwede v. INEC* (2014) 18 NWLR (Pt. 1433) 394 @ 422-423; and *Jev v. Iyortom* (unreported) in Appeal No. SC.164/2012 delivered on 27th

February 2015 that Section 141 of the Electoral Act is inapplicable to pre-election matters in the Federal High Court or an appeal therefrom.

Learned counsel observed further that in relation to grounds 5, 6, 7, 8 and 9 of the preliminary objection, the appellant alluded to facts in Paragraphs 3 to 9 of his supporting affidavit and Exhibits A and B attached thereto, which were neither part of the record of appeal transmitted to the Lower Court nor of the trial Court. He argued that the averments and exhibits amount to fresh evidence, which could only be adduced with the leave of Court, which leave was not obtained. He argued that the Court below was right to have discountenanced the said paragraphs and Exhibits A and B attached thereto.

He submitted that ground 10 is misconceived as the relevant provision of the Court of Appeal Rules 2011 is Order 18 Rule 6 (a), which stipulates a maximum of thirty pages for an appellant's brief of argument. He submitted that the Court of Appeal (Fast Track) Practice Directions 2014 relied upon by learned counsel for the appellant is inapplicable, as this case is outside the scope of "fast track appeals" to which the Practice Directions apply. He contended further that the length of a brief of argument is not an issue within the contemplation of Order 10 Rule 1 of the Court of Appeal Rules 2011, not being a challenge to the competence of the appeal. He urged the Court to resolve this issue against the appellant.

In reply on points of law, the appellant maintained that the issue in contention is whether, having filed an incompetent notice of appeal dated 25/3/2015, the 1st respondent could validly file a subsequent notice of appeal after the competence of the earlier notice of appeal had been challenged and the fact that the said alleged incompetent notice of appeal was the basis for the interim and interlocutory orders restraining the 3rd respondent from issuing a certificate of return to the appellant. Relying on the authority of *Jev v. Iyortom* (supra) learned counsel submitted that there is nothing in Order 10 Rule 1 of the Court of Appeal Rules 2011 that precludes the appellant from filing his notice of preliminary objection separately so long as he gives the prescribed three days' notice. He submitted that where there is the need to rely on facts in support of the preliminary objection, the party objecting must file an affidavit. He cited the case of:

Okonkwo v. UBA Plc. (2011) 6-7 SC (Pt. 1) 165. He submitted that having joined issues with the appellant on the preliminary objection the appellant (now 1st respondent) was not taken by surprise and it is too late to complain.

The purpose of filing a preliminary objection is to bring the hearing of the appeal to an end for being incompetent or fundamentally defective. See: General Electric Co. v. Harry Akande (2010) 18 NWLR (Pt. 1225) 596 @ 625 D-E; NNPC v. Famfa Oil Ltd. (2012) 17 NWLR (Pt. 1328) 148 @ 185-186 F-B. A preliminary objection is only filed against the hearing of an appeal. Where, for example, there is an objection against some grounds of appeal but there are other grounds that can sustain the appeal, a preliminary objection would not be the appropriate procedure to adopt in the circumstances. ***Where the subject matter of the appeal is within the jurisdiction of the appellate Court, the Court's jurisdiction will not be ousted simply because it lacks jurisdiction to grant some of the reliefs claimed.***

The grounds of objection as contained at pages 922-923 of Volume 2 of the record are as follows:

1. The Notice of Appeal dated 4th of May 2015 but filed on the 5th of May 2015 is an abuse of Court process.

2. The Honourable Court made an order on the 30th of April 2015 for the filing of Briefs of Argument.

3. The appellant was given 5 days while the respondents were given 6 days upon the service of the appellant's brief on them.

4. The appellant abandoned the Notices of Appeal upon which Briefs were ordered by the Court and argued another Notice filed subsequent to the order of Court.

5. That prayers b and c contained in the said Notice of Appeal dated 4th April 2015 but filed on 5th May 2015 are not grantable by the Court.

6. The appellant did not take part in all the stages of the election conducted on the 28th of March 2015.

7. It is the 1st respondent that participated in the election of 28th March 2015 and was declared as the winner of the Senatorial Election for Niger South Senatorial district of Niger State.

8. By Section 141 of the Electoral Act 2010 (as amended) the Court is precluded from declaring any person who has not taken

part in all the stages of an election as the winner of the election.

9. The appellant cannot therefore be returned as the winner of the election into the Office of Senator for Niger South Senatorial District held on the 28th of March 2015.

10. The appellant's Brief of Argument exceeded pages 25 contrary to Paragraph 8 (2) (b) of the Court of Appeal (fast track) Practice Directions 2014.

The notice of preliminary objection was supported by an 11-Paragraph affidavit and two exhibits. The appellant in the Court below (now 1st respondent) filed a counter affidavit and further counter affidavit to the preliminary objection while the 1st respondent (now appellant) filed two further affidavits in support of the objection.

The Court below, rightly in my view, held that grounds 2 and 3 of the grounds of objection are mere statements and not grounds, as they were not stated to be particulars supporting ground 1. The said grounds were accordingly struck out and rightly so. With regard to ground 1, the Court below held as follows:

*"An abuse of Court process entails the use of multiplicity of process to annoy the opposing party. This is not the case here. The judgment of the trial Court was delivered on the 25th of March, 2015 and the party aggrieved had three months to file a notice of appeal. He can file more than one notice of appeal within the three months period allowed. He must however choose only one notice of appeal and predicate his brief upon it. See Section 25 (2) of the Court of Appeal Rules 2004 and Hassan v. Tukur (2013) 4 NWLR (Pt. 1343) 90, 113, 154 and Bilante Ltd. v. NDIC (2011) 15 NWLR (Pt. 1270) 470. The notice of appeal under fire was filed on the 5th of May 2015, within the three months period allowed. The appellant also specifically stated that his brief of argument is "predicated for the avoidance of any doubt, on the last notice of appeal filed on 5/5/2015." He did not leave the respondents or this Court in any doubt as to what notice of appeal was used to file the appellants brief. In that vein, the 1st respondent was not deceived, taken by surprise or prejudiced in any way. The 1st respondent is expected to respond by filing the respondent's brief on the appellant's brief which was clearly based on the notice of appeal filed on the 5/5/05 within time. He is not expected to file a respondent's brief based on a notice of appeal. There is no abuse of Court process whatsoever and the ground is*

*dismissed.”*

A careful examination of the arguments in support of ground 1 of the preliminary objection at pages 936 to 937 of Volume 2 of the record show that the contention of the 1<sup>st</sup> respondent before the Lower Court was that the order made on 30th April, 2015 directing parties to file their briefs of argument was predicated on the existing notices of appeal. Furthermore that having obtained certain reliefs from the Court based on the earlier notices of appeal filed, the subsequent notice of appeal filed on 5th May 2015 was an abuse of the Court process and should be struck out. He also argued before the Lower Court that the second notice of appeal filed on 28th April 2015 was filed to overreach an objection raised to the competence of the first notice of appeal filed on 25th March 2015 upon which an interim order of injunction was predicated. The same argument has been advanced before this Court. ***I am of the considered view that since what was being challenged before the Lower Court by way of preliminary objection was not the validity of the orders obtained, the Lower Court was correct when it followed the decision of this Court in Tukur v. Uba & Ors. (2013) 4 NWLR (Pt. 1343) 90 @ 115-116 H-D, which in turn cited with approval the case of Tukur v. Government of Gongola State (1988) 1 NWLR (Pt. 68) 39 to the effect that as long as each of the notices of appeal was filed within the time prescribed by the Court of Appeal Rules and the appellant had specifically indicated the particular notice of appeal upon which his brief of argument was based or had formally withdrawn the ones he no longer intends to proceed with, there was no abuse of Court process. The ground was rightly dismissed. I also agree with the Court below, with regard to ground 4 that the court did not and could not have ordered the filing of briefs predicated upon a particular notice of appeal, as the appellant, as has been shown above, is at liberty to choose which of several notices of appeal filed within time he intends to base his brief of argument on.***

On grounds 5, 6, 7, 8 and 9 the Court below held as follows at page 1107 of the record:

*“Ground 5 of the Notice of Preliminary Objection states that prayers (b) and (c) contained in the notice of appeal filed on 5/5/15*

*are not grantable by the Court. This is not within the ambit of a preliminary objection. A preliminary objection is aimed at preventing the Court from hearing the appeal itself or for the Court to declare it incompetent. Objection to the grant of prayer or relief goes to the merit of the appeal itself as it must succeed before the issue of granting the prayers would arise. Ground 5 is therefore without merit and is dismissed. Grounds 6, 7, 8 and 9 of the notice of preliminary objection all pertain and go to support ground 5. They are also without merit and are dismissed.”*

It must be reiterated again that the object of a preliminary objection is to challenge the competence of an appeal or the hearing thereof. In other words, its purpose, if successful is to terminate the appeal at that stage. I am in full accord with the Lower Court that whether or not the reliefs sought by the appellant could be granted would only arise after the appeal has been heard and determined on its merit and succeeds.

***Finally, on ground 10 of the objection, the Court below held that Paragraph 8 (2) (b) of the Court of Appeal (Fast Track) Practice Direction 2014 has not limited the filing of briefs in pre-election appeals to 25 pages and therefore the objection on the ground that the appellant’s brief exceeded 25 pages was misconceived and consequently struck it out. Beyond this finding of the Court below, which I fully endorse, I must observe, as pointed out by learned counsel for the 1st respondent that the Court of Appeal (Fast Track) Practice Direction 2014 does not apply to pre-election appeals. It applies to debt appeals and appeals pertaining to corruption, human trafficking, kidnapping, money laundering, rape and terrorism. See Section 1 thereof. Furthermore an objection to the number of pages contained in a brief of argument can never be an issue touching on the competence of the appeal itself. I therefore hold that the notice of preliminary objection was rightly dismissed. This issue is accordingly resolved against the appellant.***

#### Issue 2

Was the Court of Appeal right in setting aside the judgment of the trial Court wherein it assumed jurisdiction to hear the suit and granted the reliefs sought by the appellant.

In support of this issue, learned counsel for the appellant submitted that the appellant's case before the trial Court was predicated upon the refusal of the 3rd respondent (INEC) to accept the appellant's nomination as the 2nd respondent's candidate for the Niger South Senatorial District for the March 15th general election. He submitted that the purpose of the appellant's suit at the trial Court was to compel INEC to accept the nomination made by the 2nd respondent upon the 1st respondent's disqualification. He referred to Paragraphs 20, 21, 22, 23 and 24 of the affidavit in support of the Amended Originating Summons, which read as follows:

*"20. That I was surprised when the 3rd Defendant published Form CF 001 of the 1st defendant as the candidate of the 2nd defendant for Niger South Senatorial District election state (sic: slated) for 28th of March 2015 instead of my Form CF 001, affidavit of personal particulars. A copy of the Form CF 001 is hereto attached as Exhibit J.*

*21. That upon enquiries from our party, I was informed by the National Deputy Organizing Secretary of our party that the Independent National Electoral Commission, INEC, refused to substitute the name of the 1st defendant.*

*22. That the National Secretary of our party has approach (sic) the Independent National Electoral Commission for the substitution of the 1st defendant's name with my name but the INEC insisted that it can only do that if ordered by the Court.*

*23. That I know the Independent National Electoral Commission, INEC, is the body responsible for non inclusion of my name in the list of candidates nominated for the election into the office of Senator for Niger South Senatorial District of Niger State in the general election slated for March 2015.*

*24. That unless this Court mandates the Independent National Electoral Commission to receive my name from the 2nd defendant and substitute the name of the 1st defendant, it will not include my name in the list of nominated candidates for the election"*

He reproduced all the reliefs sought in the amended originating summons, particularly reliefs (d) - (f), (g), (h) and (i) (reproduced earlier in the judgment) and submitted that the principles in the case of: *Kakih v. P.D.P.* (2014) 15 NWLR (Pt. 1430) 374 @ 413-415 were erroneously applied to this case by the Court below. He submitted

that apart from the absence of any claim against INEC and the West African Examinations Council (WAEC), the relief sought in Kakih's case did not flow from the state of the pleadings i.e. the affidavit in support of the Originating Summons. He submitted further that INEC and WAEC were needlessly made parties to the suit in Kakih's case B (supra). He noted that at page 1118 Volume II of the record, the Court below held that reliefs (a), (b) and (c) in the amended originating summons are directed at the appellant and 2nd respondent, who are neither the Federal Government nor any of its agencies and that reliefs (d) - (k) are ancillary reliefs whose fate depends on the success of issues (a) - (c). He is of the view that the approach of the Lower Court in this regard is technical. He submitted that reliefs (d), (f), (g), (h) and (i) are specific principal reliefs against INEC that can stand alone and that Kakih's case is not on all fours with the instant D case. He submitted that every case is an authority for the issues it decides and that the principle in Kakih's case (supra) cannot be dragged, willy nilly from one case to another. He cited *Adegoke Motors Ltd. v. Adesanya* (1989) 3 NWLR (Pt. 107) 250 @ 266 B; *Dingyadi v. INEC* (2011) 10 NWLR (Pt. 1255) 347 @ 391 A.

E Learned counsel argued further that Section 87 (9) of the Electoral Act 2010, as amended expressly confers jurisdiction on the Federal High Court with respect to complaints arising from pre-election matters, He contended that Section 87 (9) of the Electoral Act (as amended) is an additional jurisdiction to the original jurisdiction created by Section 251 of the 1999 Constitution. He referred to the introductory portion of Section 251, which states, inter alia: "*notwithstanding anything to the contrary contained in this Constitution, and in addition to such other jurisdiction as may be conferred on it by an Act of the National Assembly...*" In support of his contention that this case falls within the purview of Section 87 (9) of the Electoral Act, he referred to the following recent decisions of this Court: *Gwede v. INEC* (2014) 18 NWLR (Pt. 1438) 56 @ 66; *Gbileve v. Addingi* (2014) 16 NWLR (Pt. 1433) 394 @ 427 A-B; *Jev v. Iyortom* H (2014) 14 NWLR (Pt. 1428) 575 @ 610-613; *P.D.P. v. INEC* (2014) 17 NWLR (Pt. 1437) 525 @ 558; *Eligwe v. Okokiri* (2015) 2 NWLR (Pt. 1443) 348 @ 373-324, and urged the Court to hold that the Federal High Court had jurisdiction to entertain the suit.

In reply to the above submissions, learned senior counsel for



the 1st respondent submitted that in order to determine whether a Court has jurisdiction to entertain a cause or matter, it is the plaintiff's claim that must be examined. He referred to: *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 @ 549 B, *Mogaji v. Matari* (2000) 8 NWLR (Pt. 670) 722 @ 735 F - G & 736 C; *Onuorah v. K.R.P.C.* (2005) 6 NWLR (Pt. 921) 393 @ 404 E - F, 407 F- H & 408 B - C. Learned senior counsel set out the reliefs as contained in the amended originating summons and submitted that the jurisdiction of the trial Court is as conferred on it by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and strictly limited to the matters enumerated in Section 251 (1) thereof. He submitted that for the Federal High Court to exercise jurisdiction in any cause or matter, both the parties and subject matter must come within the confines of the jurisdiction of the Court. He placed further reliance on *Tukur v. Government of Gongola State* (supra). He submitted that reliefs (a), (b) and (c) represent the principal reliefs claimed around which all other reliefs must revolve and observed that the said reliefs are seeking to set aside or challenge the validity of certain actions of the 1st and 2nd respondents. He noted that the Court below was of the same opinion. He submitted that while the Federal High Court has jurisdiction to entertain matters challenging the validity of certain actions, not all actions fall under its jurisdiction. He argued that only matters which principally challenge the validity or otherwise of executive and or administrative actions of the Federal Government and or its agencies are covered. He submitted that in such matters the Federal High Court has jurisdiction to the exclusion of all other Courts. He referred to *NEPA v. Edeghero* (2002) 16 NWLR (Pt. 798) 79 @ 95 B - F & 97 E - G; *PDP v. Sylva* (2012) 13 NWLR (Pt. 1316) 85.

He noted that in the reliefs claimed, the 1st defendant (now 1st respondent) is a natural person while the 2nd defendant (now 2nd respondent) is a political party and that neither is an agency of the Federal Government. He submitted that having regard to the fact that it is the validity of the actions of these persons that is in issue in reliefs (a), (b) and (c), the Federal High Court is not the appropriate venue to ventilate their grievances. He contended that although the 3rd respondent, INEC, is an agency of the Federal Government, reliefs (d), (9) and (h) of the amended originating summons are at best ancillary reliefs. He submitted that the success of these reliefs,

including reliefs (e), (f), (i) and (k) depend on the success of reliefs (a), (b) and (c). He argued that if reliefs (a), (b) and (c) fail, the other reliefs fail with them. He referred to *Uba v. Etiaba* (2010) 10 NWLR (Pt. 1202) 343 @ 393 D - E; *Nwaogwugwu v. President, FRN* (2007) 6 NWLR (Pt. 1030) 237 @ 275 D.

B He submitted that where the Court has jurisdiction over ancillary reliefs and not the principal reliefs, it cannot exercise jurisdiction over the matter. He submitted that conversely, where a Court has jurisdiction over the principal reliefs it can rightly exercise jurisdiction over a matter even though the ancillary reliefs therein do not fall within its jurisdictional scope. He referred to *Tukur v. Government of Gongola State* (supra) at 549 A - D; *PDP v. Sylva* (supra). He contended that in the circumstances of this case, the presence of the 3rd respondent would not confer jurisdiction on the trial Court.

D On the reference to the introductory part of Section 251 (1) of the 1999 Constitution and whether by virtue thereof the Federal High Court can assume jurisdiction based on Sections 31 (5) and 87 (9) of the Electoral Act 2010 (as amended), S. I. Ameh, SAN submitted that the provision, which commences with the phrase “*Notwithstanding anything to the contrary contained in the Constitution...*”, means that the National Assembly cannot use the power given to it under Section 252 of the Constitution to vest jurisdiction which would derogate from the jurisdiction vested in the Federal High Court by virtue of Section 251 (1) thereof. On the meaning and implication of the word “notwithstanding” when used in the Constitution, he referred to: *NDIC v. Okem Enterprises* (2004) 10 NWLR (Pt. 880) 107 @ 182-183. He argued further that in view of the provisions of Section 251 (1) of the Constitution, the provisions of Section 31 (5) and 87 (9) of the Electoral Act, which, inter alia, used the words “*...apply to the Federal High Court or State High Court for redress*” cannot be interpreted to mean that an aggrieved person can choose to approach any of those Courts as he wishes. In his view the provisions must be interpreted to mean that such person must take his grievance to that Court, from among those mentioned, that has jurisdiction having regard to the parties and the subject matter of the claim. He posited that where the principal relief sought by the aggrieved party is against the Federal Government or any of its agencies, in a dispute arising from the conduct of party primaries, the Federal High Court would

be the proper forum for the aggrieved party to ventilate his grievance. He contended that where the principal relief is against the political party and any other individual, as is in the instant case, the State High Court would be the proper Court envisaged under Section 87 (9) of the Electoral Act for the appellant to have approached. He quoted in extenso the dictum of Galadima, JSC in *Kakih v. P.D.P* (supra) at 413-415 H - C; and per Rhodes-Vivour, JSC at 431-433 F - E. He maintained that, contrary to the contention of learned senior counsel for the appellant, the decisions of this Court in *Kakih's* case (supra) and *PDP v. Sylva* (supra) are applicable to the facts of this case and represent the current position of the law on the scope of the jurisdiction vested in the trial Court under Sections 31 (5) and 87 (9) of the Electoral Act. He submitted that this Court's decisions in *Eligwe v. Okpokiri* (2015) 2 NWLR (Pt. 1443) 348 and *Gwede v. INEC* (2014) 18 NWLR (Pt. 1438) 56 cited and relied upon by learned senior counsel for the appellant have not tampered with the present state of the law on the issue, but rather complement it. C D

In Paragraphs 5.2.21 to 5.2.29, learned senior counsel made submissions regarding the appellant's alleged failure to exhaust the remedies provided by the party's Constitution and electoral guidelines before instituting his suit at the trial Court and contended that failure to fulfill conditions precedent before seeking to invoke the Court's jurisdiction deprived the Court of jurisdiction to entertain the suit. E

In reply on points of law, learned senior counsel for the appellant submitted that the right of access to Court is a Constitutional right, which cannot be excluded by any other law or instrument. He submitted further that the provisions of Section 87 (9) of the Electoral Act expressly confer on any aspirant who complains that any of the provisions of the Act and guidelines of a political party has not been complied with in the selection and nomination of a candidate of a political party for election the right to apply to the Federal High Court or the High Court of a State for redress. He urged the Court to discountenance the submission. He maintained that all the appellant's reliefs are within the ambit of Sections 31 (5) and 87 (9) of the Electoral Act 2010, (as amended). He referred to: *Daniel v. INEC* (2015) 9 NWLR (Pt. 1463) 113 @ 120. F G H

In his oral submissions at the hearing of this appeal, Chief Clarke,

SAN argued that the crux of this appeal is different from the facts in Kakih's case, which the Lower Court relied upon. He submitted that recent decisions of this Court are to the effect that where there is a claim under Section 87 (9) of the Electoral Act, both the Federal High Court and the State High Court have jurisdiction. He referred  
 B to the following additional authorities: Senator Heineken Lokpobiri v. Hon. Foster Ogola & 2 Ors. (unreported) in Appeal No. SC.443/2015 delivered on 2/11/2015 at pages 22-23 of the Certified Copy of the judgment made available to the Court and Obasi Uba Ekagbara & Anor. v. Chief Dr. Okezie Ikpeazu & 2 Ors. (unreported) in Appeal  
 C No. SC.504/2015 delivered on 22/1/2016 (CTC also supplied).

In reply to the oral submissions, I. S. Ameh, SAN submitted that the position of the law at the time the Lower Court gave its decision was as in Kakih's case and that the Lower Court came to the  
 D right decision that the Federal High Court lacked jurisdiction to entertain the suit.

There is no doubt that the issue of jurisdiction is fundamental to adjudication. It is the blood that gives life to the Court and enables it exercise its powers as conferred by the law establishing it. Without  
 E jurisdiction the proceedings and any decision reached therein is null and void ab initio. See: Kalio v. Daniel (1975) 2 SC 15; A.G. Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552 @ 567; Oloriode v. Oyebe (1984) 1 SCNLR 390; Madukolu v. Nkemdilim (1962) 2  
 F SCNLR 341. This underscores the importance of the issue under consideration. It is especially important in a pre-election or post-election matter where not only the litigants but also the electorates are affected by the outcome of the dispute and it is desirable that the case be determined with dispatch.

It is pertinent to note that the Courts are creations of statute. They derive their powers and jurisdiction either under the Constitution, which is the supreme, organic and fundamental law and grundnorm of this country or under specific statutes. See: Adetayo & Ors. v. Ademola & Ors (2010) 15 NWLR (Pt. 1215) 169; Nuhu v.  
 G Ogele (2003) 18 NWLR (Pt. 852) 251; Lekwot v. Judicial Tribunal (1997) 8 NWLR (Pt. 515) 22; Egharevba v. Eribo (2010) 9 NWLR (Pt. 1199) 411. The Court's jurisdiction may also be limited or extended by statute. For a suit to be competent the plaintiffs claims must fall within the jurisdiction conferred on the Court by the rel-

evant statute. See: S.P.D.C. v. Anaro (2015) 12 NWLR (Pt. 1472) 123; Umanah v. Attah (2007) ALL FWLR (Pt. 346) 402 @ 432 C-D; (2007) 17 NWLR (Pt. 1009) 503.

Section 251 (1) of the 1999 Constitution provides, inter alia:

*“251.(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters...”*

The section goes on to set out in Sub-paragraphs (a) to (r) the matters in respect of which such exclusive jurisdiction is conferred.

Sub-paragraph (1) (s) provides:

*“(1).(s) Such other jurisdiction civil or criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly.”*

Also relevant to the present discourse are Sections 31 (5) and 87 (9) of the Electoral Act 2010 (as amended). They are reproduced below:

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

*87(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.”*

**The first issue to consider is whether the introductory part of Section 251 (1) of the 1999 Constitution (as amended) forecloses the right of the National Assembly to exercise its powers to make laws by extending the jurisdiction of the Federal High Court or any other superior Court of record. The introductory part of the section is in two parts: (i) Notwithstanding anything to the contrary contained in this Constitution; (ii) and in addition to such other jurisdiction as may be**

**conferred upon it by an Act of the National Assembly. My understanding of the provision is that (i) any contrary provision within the Constitution will not override the exclusive jurisdiction conferred on the Federal High Court in respect of the matters listed in Sub-paragraphs (a) to (r). (ii) Secondly, the National Assembly is also given powers to expand the jurisdiction of the Court. Such expanded jurisdiction could be exclusive or exercised concurrently with the State High Courts and the High Court of the Federal Capital Territory (FCT). See Section 251 (1) (s) above. Pursuant to the powers conferred on it by Section 251 (1) (s) of the Constitution, the National Assembly enacted the Electoral Act 2010, as amended, which conferred concurrent jurisdiction in pre-election matters on the Federal High Court and the High Courts of the States and the High Court of the Federal Capital Territory.** In the case of *Lokpobiri v. Ogola* (supra) this Court per Onnoghen, JSC, considered the provisions of Sections 31 (5) and 87 (9) of the Electoral Act and explained the rationale for the concurrent jurisdiction of the Courts as follows:

*“It is not in doubt that the intention of the National Assembly in enacting the said Act is clearly to confer concurrent jurisdiction on the Federal High Court and State and Federal Capital Territory High Courts in pre-election matters, so as to enlarge the range of choice of courts available to an aggrieved party to ventilate his grievance.”*

In *Ekgabara & Anor. v. Ikpeazu & Ors.* (unreported) (supra) at pages 24-25 of the CTC of the judgment, Muntaka-Coomassie, JSC, in similar vein, stated thus:

*“By this provision [introductory part of Section 251 (1) of the Constitution], the National Assembly may extend, expand or enlarge the jurisdiction of the Federal High Court to adjudicate over any matter not listed in Section 251 of the Constitution of the Federal Republic of Nigeria as amended. Hence to limit the jurisdiction of the Federal High Court to matters listed in Section 251 of the Constitution alone is erroneous. The National Assembly may by its Act confer additional jurisdiction on the Federal High Court to adjudicate or matters not listed in Section 251 of the Constitution. This power is derived from the Constitution itself.”*

**It is evident from the above that the fact that the Federal**

**High Court is conferred with exclusive jurisdiction in respect of the matters listed in Section 251 (1) (a) - (r) does not preclude that Court from exercising other jurisdiction concurrently with the High Court of the Federal Capital Territory or the High Court of a State where such jurisdiction is conferred on it by an Act of the National Assembly, exercising its powers under Section 251 (1) (s) of the Constitution.** B

In *Lokpobiri v. Ogola* (supra), a distinction was made between the exclusive jurisdiction of the Federal High Court, or any other Court, and the concurrent jurisdiction of the Court. His Lordship Onnoghen, JSC said at page 18 (supra): C

*“Whereas the exclusive jurisdiction of a Court is peculiar to it, a concurrent jurisdiction is common to two or more Courts. The word ‘Concurrent’ is defined by Webster’s New Twentieth Century Dictionary, Unabridged 2nd ed. page 379, inter alia as “(1) ... 5 In law, D having equal jurisdiction or authority.” To me, it is erroneous to say that for the Federal High Court to entertain a pre-election matter, the main relief(s) must be shown to fall within the exclusive jurisdiction of the Court because both jurisdictions are different. In a concurrent jurisdiction, if Court A has jurisdiction to hear all the reliefs claimed, it E necessarily follows that Court B must have the same jurisdiction otherwise it means giving something to someone with one hand and taking it away with the other.*

*It is settled law that election and election related matters are sui generis F and that the jurisdiction to hear and determine them is statutory just as the rights and obligations connected therewith or arising therefrom. It is in that respect that the principles of common law may not be appropriate in election and related matters.*

*...In terms of election or election related matters, the jurisdiction G of the Federal High Court to hear and entertain such matters is rooted in the relevant provisions of the Electoral Act 2010, as amended, earlier reproduced in this judgment. ...If we insist on the jurisdiction of the Federal High Court on pre-election and post-election matters being exercisable only where the main claim(s) is/are H within the exclusive jurisdiction of the Federal High Court, it will result in injustice on the litigants which is clearly not the intention of the legislature. It is therefore very clear that the concurrent jurisdiction conferred on the Federal High Court to hear and determine pre-*

*election and even post-election matter is clearly outside the exclusive jurisdiction of the Court under Section 251 of the 1999 Constitution as amended but in addition to the exclusive jurisdiction and consequently subject to different considerations.”*

His Lordship stated further at page 20 (supra);

B *“It is therefore my considered opinion that when the Federal High Court’s pre election jurisdiction is invoked, the parties claim(s) and relief(s) must be in conformity with the provisions of the Electoral Act 2010, as amended, not under the provisions of Section 251 of the 1999 Constitution, as amended. In fact INEC may be a nominal party or be liable to an ancillary claim in a pre-election or past-election jurisdiction of the Federal High Court.”*

C In reaching the above conclusions, reliance was placed on earlier decisions of this Court in: Jev v. Iyortom (2014) 14 NWLR (Pt. 1428) 575 @ 611-613, 626- 627, 630 & 631-632; Gbileve v. Addingi D (2014) 16 NWLR (Pt. 1433) 394 @ 418-419, 424-425, 427-428 & 431-432.

In Gbileve v. Addingi (supra) at 431-432 C-G, I expressed the following opinion:

E *“...It is important to observe that Section 87 (9) of the Electoral Act fully takes care of the situation that arises in this case.*

Section 87 (9) of the Electoral Act provides:

F *“87(9) Notwithstanding the provisions of this Act or the 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 for redress.”*

G *In the instant case, the 1st respondent’s complaint was non-compliance with the provisions of the Electoral Act, specifically Section 87 (4) (c) (ii) thereof. By the provisions of Section 87 (9) of the Act, she was entitled, being an aspirant, to seek redress either at the Federal High Court or the High Court of the State. The suit was H therefore properly instituted before the Federal High Court sitting at Makurdi.”*

**A careful perusal of the claims endorsed in the amended originating summons, reproduced earlier in this judgment shows clearly that the plaintiff’s claims were centred around**



**the contention that the 2nd respondent failed to follow its guidelines in the conduct of the primary election by allowing someone who is not a member of the party to participate and an allegation that the information contained in the 1st respondent's Form CF001 submitted to the 3rd respondent contained false information. The complaints bring the claim squarely within the provisions of Sections 31 (5) and 87 (9) of the Electoral Act 2010, as amended, which confer concurrent jurisdiction on the Federal High Court, High Court of a State or High Court of the FCT. The argument as to whether the Federal High Court has jurisdiction to entertain the suit on the ground that the so-called principal reliefs are not directed at the Federal Government or any of its agencies, in light of the reasoning above, does not hold water, as there is no such qualification in Section 31 (5) and 87 (9) of the Electoral Act.** See: *Jev & Anor. v. Iyortom* (supra) at 612-613 E-A per Okoro, JSC.

Furthermore, in *Lokpobiri v. Ogola* (supra) this Court considered its decision in *Kakih's* case (supra) and reasoned thus at pages 22-23 of the CTC of the judgment:

*"Having regard to the sui generic nature of an election or election related matter and the jurisdiction of the Courts to entertain them, which are special statutory jurisdiction, the fact that the Federal High Court by operation of Section 251 (4) of the 1999 Constitution is also clothed with jurisdiction to entertain post election matters whose claims or reliefs may not necessarily involve/affect the Federal Government or any of its agencies, it is clear that the intention of the legislature in conferring the additional jurisdiction on the Federal High Court in relation to pre-election and post-election matters is clearly that the additional Jurisdiction is to be exercised by the Court in accordance with the Electoral Act 2010, as amended, creating the jurisdiction as well as Section 251 (4) of the 1999 Constitution. It is therefore clear that Kakih's case as regards the issue of the jurisdiction of the Federal High Court in pre-election matters is limited to its peculiar facts and circumstances having regard to the decision in *Jev v. Iyortom* supra."*

**The effect of all that has been said is that by virtue of Section 251 (1) (s) of the 1999 Constitution and Sections 31**

**(5) and 87 (9) of the Electoral Act, 2010 made pursuant thereto, the Federal High Court had the requisite jurisdiction to entertain the action. This issue is accordingly resolved in favour of the appellant.**

Issue 3

B Was the Court of Appeal right when it resolved issue No, 1 in favour of the 1st respondent for the reason that the trial Court did not consider the 1st respondent's preliminary objection?

C In respect of this issue, it is the contention of learned counsel for the appellant that the finding of the Court below that the trial Court failed to consider the preliminary objection of the 1st respondent in arriving at its decision is erroneous. Relying on the provisions of Order 29 Rule 1 of the Federal High Court Civil Procedure Rules 2009, he submitted that in the resolution of the jurisdictional issue D raised by the 1<sup>st</sup> respondent, the Court was at liberty to consolidate all the processes filed by the parties and hear them along with the substantive suit and deliver its judgment thereon. He referred to pages 1 and 2 of the judgment of the trial Court at pages 646-647 of Volume 1 of the record, wherein the trial Court referred to the 1st E respondent's preliminary objection and the grounds upon which it was predicated, which reference was repeated at page 14 of the judgment. He argued that the preliminary objection filed on 9th March 2015, which was subsequently withdrawn and the one filed on 19th F March 2015 have the same substratum. He submitted that judgment writing style differs from one judge to another. That each judge is free to adopt his own style as long as the judgment or ruling reflects a proper evaluation of the evidence adduced by either side. He contended that the judgment of the trial Court is not perverse, as there G was sufficient evidence before the Court to justify the conclusion reached and that the 1st respondent was not denied fair hearing. He also submitted that it is not every mistake or slip in the course of writing a judgment that would lead to the judgment being overturned on appeal. He is of the view that if issue 2 is resolved in the appellant's H favour, this issue would become otiose.

In response to this issue, learned counsel for the 1st respondent tried to put the submissions of learned counsel for the appellant in context of what transpired at the trial Court. He referred to pages 641-642 of Volume 1 of the record of appeal and noted that on

19th March 2015, after the learned appellant's counsel had adopted his arguments in respect of the amended originating summons, learned counsel for the 1st respondent sought to withdraw two preliminary objections filed on 4/3/15 and 9/3/15 respectively as well as the counter affidavit filed on 9/3/15 in response to the amended originating summons. The processes were accordingly struck out. He submitted that learned counsel for the 1<sup>st</sup> respondent then argued his notice of preliminary objection filed on 19/3/2015 and also argued in opposition to the amended originating summons by adopting his written addresses in respect of both processes. He conceded that having regard to the provisions of Order 29 Rule 1 of the Federal High Court (Civil Procedure) Rules (supra) the Court was at liberty to consolidate and hear the processes together. He submitted that where the Court has heard a preliminary objection challenging its jurisdiction along with a substantive suit, it is enjoined to first rule on the preliminary objection one way or the other before considering the merits of the substantive suit. He referred to: *C.B.N. v. Auto Import Export* (2013) 2 NWLR (Pt. 1337) 80 @ 125; *A.N.P.P. v. The Returning Officer, Abia South Senatorial District* (2005) 6 NWLR (Pt. 920) 140 @ 171. He argued that even where suits are consolidated and heard together they do not lose their individual identity and separate decisions must be given in respect of each suit. He referred to: *Diab v. Nasir Complete Home Enterprises (Nig.) Ltd.* (1977) 5 SC 1 @ 10; *Kutse v. Bakfur* (1994) 4 NWLR (Pt. 337) 196 @ 197; *Uba v. Etiaba* (2008) 6 NWLR (Pt. 1082) 154.

Learned counsel referred to the first page of the judgment of the trial Court at page 646 of Volume 1 of the record where the learned trial Judge, erroneously referred to the 1st respondent's notice of preliminary objection filed on 9/3/2015, which had already been withdrawn and struck out on 19/3/2015. He submitted that not only did the learned trial Judge refer to the wrong process, there was no other place in the judgment where any of the grounds of the preliminary objection was considered. He reproduced the grounds of objection as contained in the notice of objection filed on 19/3/2015 and submitted that the grounds raise substantial issues of jurisdiction that ought to have been disposed of before delving into the merit of the amended originating summons. On the need for the Court to consider and resolve all the issue submitted by the parties

he cited several authorities including: *Okonji & Ors. v. Njokanma & Ors.* (1999) 14 NWLR (Pt.638) 250 @ 270 E-F; *Egharevba v. Osagie* (2009) 18 NWLR (Pt. 1173) 299 @ 310 - 311 H - A. He submitted that the learned trial Judge not only failed to discharge his duty in this regard, but also at the conclusion of the Judgment held that “*the plaintiff’s case succeeds while the 1st defendant’s preliminary objection fails.*” He submitted that failure to consider the 1st respondent’s preliminary objection was not a mistake or mere slip but constitutes a grave violation of his right to fair hearing and a grave miscarriage of justice. He submitted that the Lower Court was right when it agreed with this position and held that the entire proceedings were vitiated in the circumstance. He urged this Court to resolve this issue against the appellant.

***The law is well settled that a Court of law, whether of first instance or in its appellate jurisdiction has a duty to consider and resolve all issues submitted to it for adjudication except in the clearest cases. Failure to consider all issues would amount to a denial of fair hearing where the parties have not been heard. The rationale for this, as held by this Court in Okonji v. Njokanma (1999) 14 NWLR (Pt.638) 250 @ 270 E - F, is that a judgment of a Court of record must demonstrate a dispassionate consideration of all issues canvassed by the parties and in turn show the result of such exercise.*** See also: *A.G. Leventis Nig. Plc. v. Akpu* (2007) 17 NWLR (Pt. 1063) 416; *Odetayo v. Bamidele* (2007) 17 NWLR (Pt. 1062) 77; *Kotoye v. CBN* (1989) 1 NWLR (98) 419. ***Where a preliminary objection challenging the Court’s jurisdiction is heard along with the substantive suit or application, the Court must give a ruling on the objection before proceeding to determine the substantive suit.***

***In the instant case, the trial Court committed its first error by referring to the notice of preliminary objection filed on 9/3/15, which it had already struck out. Secondly, beyond a brief reference to the preliminary objection in the introductory part of the judgment, there was no other reference to the preliminary objection throughout the judgment until the concluding part where the Court declared that the preliminary objection had failed.*** The Lower Court had this to say on this un-

fortunate state of affairs:

*“In the instant case, the trial Court at the beginning of its judgment referred to the notice of preliminary objection that it had struck out and its grounds. It then proceeded to determine the merit of the originating summons and at the tail end of its judgment without giving any modicum of consideration to the preliminary objection in the body of the judgment, concluded as follows: ‘The plaintiff case succeeds while 1st defendant’s preliminary objection fails.’* B

*We agree with 1st and 2nd respondents’ counsel that judgment writing is an art and that each judge is entitled to his own style but as was stated in the case of OJOGBUE v. NNUBIA (1972) ALL NLR (2) 226, 231-232* C

*“A judgment of the Court must demonstrate a full dispassionate consideration of the issues properly raised and heard and must reflect the results of such exercise.”* D

*It is not entirely correct as stated by 2nd respondent’s counsel that the grounds of the preliminary objection and the crux of appellant’s case are the same. The grounds of the preliminary objection as to subject matter jurisdiction of the trial Court under Section 251 of the Constitution of Nigeria 1999 and the non-justiciability of the matter were not part of the appellant’s case in the substantive suit. Merely setting out the preliminary objection at the beginning of the judgment does not amount to a consideration and determination of it.* E

*The failure of the trial judge to address the preliminary objection of the appellant as highlighted above in our view is not a matter of style but a fundamental error or vice as it amounted to a breach of the appellant’s right to fair hearing. It is a denial of fair hearing for a Court to fail or refuse to consider an issue properly raised before it. See ANYANWU v. OGUNWE (2014) 8 NWLR (Pt. 1410) 437, 460. It therefore resulted in a miscarriage of justice and vitiates the proceedings. We can only say what Coker, JSC stated in OJOGBUE v. NNUBIA supra 232: ‘...we cannot allow it to stand.’* F

*We answer issue 1 in the negative and resolve it in favour of the appellant.”* G

**I fully endorse the finding of the Court below in this regard. The failure of the learned trial Judge to consider the preliminary objection filed on 19/3/2015, which was the extant process before it before resolving the issues in the substan-** H

***tive amended originating summons occasioned a grave miscarriage of justice. The failure tainted the entire proceedings and rendered same a nullity. This issue is accordingly resolved against the appellant.***

In conclusion therefore, the appeal succeeds in part. Having resolved issue 2 in the appellant’s favour I hold that the Federal High Court has the requisite jurisdiction to entertain the appellant’s claims. That part of the judgment of the Court of Appeal, Abuja Division delivered on 5/6/2015 allowing the appeal, setting aside the judgment of the trial Court on the basis that the Federal High Court lacked jurisdiction to entertain the suit and ordering the transfer of the suit to the High Court of Niger State is hereby set aside. However, having upheld the decision of the Court below on the failure of the trial Court to consider and determine the 1st respondent’s preliminary objection to the suit, and declaring the entire proceedings therein, including the Judgment delivered on 25/3/2015 a nullity, the appropriate order to make in the circumstance is to order that the case be remitted back to the Federal High Court for expeditious hearing before another Judge of that Court.

The parties shall bear their respective costs in the appeal. Appeal succeeds in part.

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### **MOMAMMED CJN**

I have been privileged of reading the lead judgment of my learned brother, Kekere-Ekun, J.S.C, which has just been delivered. I agree that the appeal has merit and deserves to be allowed particularly on the issue of jurisdiction. From the undisputed facts of the case, the dispute between the parties in this appeal arose from the primary election conducted by the All Progressives Congress on 10th December 2014 to elect a candidate to represent it as its candidate for Niger South Senatorial District in the General Election in Nigeria slated for March, 2015. At the end of the primary election in which both Appellant and the 1st Respondent were candidate and participated fully at the primary election, the 1st Respondent was declared the winner and his name was forwarded to INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC), the 3rd Respondent in this appeal to contest the election as the candidate of the 2nd

Respondent All Progressives Congress (PC). The Appellant as aspirant and who also participated at the primary election felt aggrieved and filed an action at the Federal High Court Minna, mainly challenging the declaration of the 1st Respondent as the winner of the primary election and asked for a number of reliefs including the declaration that he was the winner of the primary election. At the end of the case, the trial Court having dismissed a preliminary objection to the jurisdiction of the Court to hear the case, and determine the case, found for the Plaintiff now Appellant and granted him reliefs. However, that judgment was set aside on appeal by the Court of Appeal which held that the trial Court lacked jurisdiction to hear and determine the case and consequently transferred the case to the Niger State High Court for hearing and determination to give rise to the present appeal in this Court by the Appellant. B  
C

The law is trite that Courts are creatures of statutes and it is the statute that created a particular Court that will also confer on it, its jurisdiction. See *OKULATE v. AWOSANYA* (2000) 1 SC.107. The trial Court being a Federal High Court, its jurisdiction in the main is found in Section 251 of the 1999 Constitution of Nigeria as amended after the same Constitution brought into being the Federal High Court of Nigeria in Section 249. The jurisdiction of the Court is clearly stated in Section 251 (1) (a)-(s) of the same Constitution thus- D  
E

*“251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters-* F

*(a) xxx*

*(s) Such other jurisdiction Civil or Criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly.”* G

It is quite plain from the above provisions of the 1999 Constitution of the Federal Republic of Nigeria creating and conferring jurisdiction on the Federal High Court, that in addition to the jurisdiction conferred by the Constitution, the Court shall also have and exercise additional jurisdiction conferred upon the Court by the provisions of an Act of the National Assembly. This is exactly what the National Assembly did in conferring additional jurisdiction on the H

Federal High Court in Sections 31 (5) and (6) and 87 (9) of the Electoral Act 2010 as amended.

These Sections state-

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

C (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.

87 (1) xxx

D (9) Notwithstanding the provision of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and guide lines 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  
E of a State or FCT for redress.

In Sub-Section (5) of Section 31 of the Electoral Act, 2010 as amended above, the additional jurisdiction given to the Federal High Court in the circumstances described therein requires no further interpretation. The powers of the Court in the determination of the suit  
F filed before it to make relevant orders are further provided under Sub- Section (6) of Section 31 of the Act as shown. The jurisdiction being exercised under these Sub-Sections (5) and (6) are obviously in addition to the jurisdiction of that Court under Section 251 of the  
G 1999 Constitution which empowered the National Assembly to give this additional jurisdiction to the Court.

As for the additional jurisdiction conferred on the Federal High Court under Section 87 (9) of the Electoral Act, 2010 as amended quoted above, it gives any aspirant member of a registered political  
H party who participated in a primary election conducted by a political party to choose a candidate to contest an election under its platform, who is not satisfied with the outcome of the primary election contested with other members of the same political party, to approach the Federal High Court or High Court of a State or FCT High Court



for redress. This jurisdiction under the Electoral Act is also quite distinct and separate from the jurisdiction of the Federal High Court conferred under the 1999 Constitution. In other words any dispute arising from the conduct of primary elections by political parties to nominate candidates to contest election, may be brought to the Federal High Court under Section 87 (9) of the Electoral Act, 2010 as amended, by an aggrieved aspirant member of any political party who participated in the primary election conducted by a political party for resolution by that Court. In invoking this special additional jurisdiction of the Federal High Court, it is quite unnecessary to have recourse to the provisions of the general jurisdiction of the same Court under Section 251 of the 1999 Constitution thereby doing away with the antics of main claim and ancillary claims in search of jurisdiction for the Federal High Court which is no longer there having been constitutionally and lawfully moved to the Electoral Act, 2010 as amended.

The present appeal arose from circumstances which are pre-election matters and having regard to the parties claims and reliefs sought at the trial Federal High Court, are plainly within what I regard as pre-election jurisdiction of the Federal High Court under the Electoral Act, 2010 as amended and as such have nothing to do with the jurisdiction of that Court under Section 251 of the 1999 Constitution of the Federal Republic of Nigeria. See *JEV v. IYORTYOM* (2014) 14 NWLR (PT. 1428) 575 at 611-63 and *GBILEVE v. ADDINGI* (2014) 16 NWLR (PT. 1433) 394 at 418-419.

In the result, it is for these reasons and fuller reasons contained in the lead Judgment of my learned brother, Kekere-Ekun, JSC, that I too saw merit in the appeal which is hereby allowed. I abide by the consequential orders made in the lead judgment including the order on costs.

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### ***GALADIMA JSC***

I have had the advantage of reading in draft the judgment of my learned brother KEKERE-EKUN, JSC, just delivered. I agree entirely that there is merit in the finding of the Court below. It is trite that a Court of law has a duty to dispassionately consider and resolve on issues submitted before it for adjudication. Failure to consider such

issues and when the parties have not been heard, would amount to denial of fair hearing. See *KOTOYE v. CBN* (1989) 1 NWLR (Pt.98) 419. *ODETAYO v. BAMIDELE* (2007) 17 NWLR (Pt. 2007) 77.

It is also the law that where a preliminary objection challenging the jurisdiction of the Court has been raised the Court must rule on the objection before proceeding to determine the substantive suit. What happened in this case is that the trial Court first briefly referred to the notice of preliminary objections of the 1st Respondent filed on 9/3/2015 which had already been withdrawn and struck-out on 19/3/2015. Besides this, there was no further reference to the preliminary objection in the entire judgment until at the tail end of the judgment. The failure of the trial judge to consider the 1st Respondent's preliminary objection filed on 9/3/2015 before resolving the issues in the substantive amended originating summons has occasioned a grave miscarriage of Justice. In view of this grave error, the entire proceedings including the judgment of the trial Court delivered on 25/3/2015 is a nullity and in the circumstance the appropriate order to make is remittance of this case to the Federal High Court for expeditious hearing before another judge.

I also abide by order as to costs.

### **OGUNBIYI JSC**

I read in draft the lead judgment of my learned brother Kekere-Ekun, JSC and I agree that the appeal succeeds in part in terms of the lead judgment.

The originating circumstance which gave rise to this appeal is a result of a primary election conducted on 10th December, 2014. The appellant and 1st respondent were candidates whereby the latter was declared the winner as the candidate of the All Progressives Congress, the 2nd respondent.

The appellant was aggrieved with the return of 1st respondent and as a first port of call, he filed an action at the Federal High Court Minna. Judgment was given in his favour but same was again upturned by the Lower Court for want of jurisdiction by the trial Federal High Court. On an appeal, the Court of Appeal subsequently transferred the suit to the High Court, Niger State on question of jurisdiction.

My brother has dealt exhaustively with all the three issues raised in this appeal and I adopt her reasoning and conclusion arrived therein as mine. I will however wish to make a few comments on issue No.3 which questions the propriety of the lower Court when it resolved issue No. 1 in favour of the 1st respondent for the reason that the trial Court did not consider the 1st respondent's preliminary objection? B

The 1st respondent's Preliminary objection filed 19/3/2015 was not considered by the trial Court. It is a fundamental error and grossly premature for the Court to have deliberated and decided on the substantive suit before it while the preliminary objection was still hanging in the balance or pending. This is more so especially where the objection is challenging the jurisdiction of that Court. C

The law is well settled that it is incumbent on a Court to take any objection and rule thereon one way or the other before a final decision is to be made on a substantive matter before it. D

In the case in issue, it is on record that the trial Court consolidated all the processes filed by parties and heard them together with the substantive suit and delivered its judgment.

The appellant submits the propriety of the trial Court in following the procedure laid down in Order 29 Rule 1 of the Federal High Court Civil Procedure Rules 2009 by rolling together in one, the preliminary objection with the substantive suit and which counsel argues did not therefore occasion any denial of fair hearing; that in the absence of any hard and fast rule to a judge's individual style of writing judgment, the trial Court had the liberty to adopt her own style and hence the absence of breach of fair hearing or injustice. E F

To the extent that the trial Court had the liberty as provided under Order 29 supra, I agree with the learned counsel for the appellant. G

This is more so especially where the nature of the suit is by originating summons which did not require any oral evidence.

Order 29 Rule 1 of the Rules provides as follows:-

*"1. Where a defendant wishes to -*

*(a) dispute the Court's jurisdiction to try the claim; or*

*(b) argue that the Court should not exercise its jurisdiction, he may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have,*

H

*and the Court may take such application together with the plaintiff's substantive suit in so far as the substantive suit does not involve the taking of oral evidence.*" See also *Inakoju v. Adeleke* (2007) 4 NWLR (Pt. 1025) 423 at Pp.622.

The error by the trial judge however was where he failed to  
B consider first the preliminary objection as he did, before the merits or otherwise of the substantive suit. See *Central Bank of Nigeria v. Auto Import Export* (2013) 2 NWLR (Pt. 1337) 80 at P.125. See also *A.N.P.P. v. The Returning Officer, Abia South Senatorial District* (2005) 6 NWLR (Pt. 920) 140 at 171.

C As rightly submitted by the learned counsel for the 1st respondent, all that the trial Court judge did in the face of the objection was to simply waive aside, ignored or neglected to consider any of the issues arising from the grounds of objection. The singular act in the  
D circumstance has occasioned substantial miscarriage of justice and the reason why the issue is resolved in favour of the 1st respondent. With this few words of mine and more particularly on the fuller reasoning and conclusion arrived at by my brother Kekere-Ekun in the lead judgment, I also agree that the appeal succeeds in part and abide  
E by the orders made therein the lead judgment inclusive of the order made as to costs.

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### **OKORO JSC**

F My learned brother, KUDIRAT M. O. KEKERE-EKUN, JSC, obliged me in advance the lead judgment he has just delivered which I am in total agreement that there is merit in the appeal and deserves to be allowed. My learned brother has meticulously and quite effi-  
G ciently dealt with all the salient issues nominated by the parties for the determination of this appeal and there seems to be nothing new to say. Be that as it may, apart from adopting both the reasoning and conclusion in the lead judgment as mine, I shall chip in a few words of mine in support of the judgment only.

H The facts on record disclose that both the Appellant and the first respondent took part in the primary election conducted by the second Respondent - The All Progressives Congress (APC) on the 8th and 10th December 2014 to elect its candidate who would represent her as its flag bearer for the Niger South Senatorial District in

the General Election in the country which was fixed for the 15th day of March, 2015. At the end of the said primary election, the 2<sup>nd</sup> respondent declared the 1st respondent as winner. His name was subsequently forwarded to the 3rd respondent to be placed on the ballot as its candidate.

Aggrieved with the return of the 1st respondent as the candidate of APC in the general election, the appellant petitioned the APC alleging among other complaints that the appellant was not a registered member of the APC and as such was not eligible to contest the primary election of the party. According to the appellant the National Working Committee of the party recommended that the appellant be disqualified. The 3rd Respondent refused to honour the recommendation.

Based on the said refusal to substitute the appellant's name for the 1st Respondent, the appellant filed an originating summons at the Federal High Court, Minna. In it, the appellant sought sundry reliefs including the relief that he be declared the winner of the aforementioned primary election on the ground that the 1st Respondent was not a registered member of the APC.

After hearing the parties on the matter, the learned trial judge dismissed the 1st Respondents' preliminary objection, holding that it has jurisdiction to hear the matter. The trial Court then entered judgment for the plaintiff, now appellant.

On appeal to the Court of Appeal, the judgment of the Federal High Court was set aside on the ground that the trial Court lacked the jurisdiction to try the case. The Lower Court then transferred the case to the High Court of Niger State for hearing and determination. The appellant has in turn appealed to this Court.

One of the issues submitted for the determination of this appeal is whether the Court of Appeal was right in setting aside the judgment of the trial Court wherein it assumed jurisdiction to hear the suit and granted the reliefs sought by the appellant. Issue of jurisdiction, being the basis upon which the Lower Court set aside the judgment of the trial Court calls for my support for the lead Judgment.

The jurisdiction of a Court is the authority, which a Court possesses to decide matters litigated before it. Indeed jurisdiction is the pillar or foundation upon which the entire proceedings stand. In *Shell*

Petroleum Development Company Nigeria Limited v. Isaiah (2001) 5 SC (Pt. 11) 1, Mohammed, JSC cited with approval the views expressed by the learned author of Halsbury's Laws of England and observed:-

B Jurisdiction of a Court has also been judicially defined as very  
fundamental and priceless "commodity" in the judicial process. It is  
the fulcrum, centre pin, or the main pillar upon which the validity of  
any decision of any Court stands and around which other issues ro-  
tate. It cannot be assumed or implied, it cannot also be conferred by  
consent or acquiescence of parties. See also Ibrahim v. INEC (1999)  
C 8 NWLR (Pt. 614) 334, Ogunmokun v. Milad, Osun State (1999) 3  
NWLR (Pt. 594) 261 at 265.

The issue of jurisdiction can be raised at any stage of a case, be  
it at the trial, on appeal to the Court of Appeal or even in this Court.  
D It is so important that the Court can raise it suo motu. Once it is  
apparent that the Court may not have jurisdiction, it can be raised as  
it is in the interest of justice to do so. This is to save time and cost and  
to avoid the trial and judgment generated therein from being de-  
clared a nullity. See Petrojessica Enterprises Ltd & Anor v. Leventis  
E Technical Company Ltd (1992) NWLR (Pt. 244) 675, (1992) LPELR-  
2915 (SC), Owoniboy Technical Services Ltd v. John Holt Ltd (1991)  
6 NWLR (Pt. 199) 550.

The main plank of the appellant's submission in respect of this  
matter is that the Lower Court fell into monumental error of law by  
F deciding that the trial Federal High Court Minna had no jurisdiction  
to entertain the Appellant's case. As would be expected the learned  
counsel for the respondents insist that the Lower Court was right in  
holding that the trial Federal High Court had no jurisdiction to deter-  
G mine the issues placed before it in this case. In setting aside the judg-  
ment of the trial Federal High Court, the Court of Appeal relied  
heavily on the case of Kakih v. Peoples Democratic Party (2014) 15  
NWLR (Pt 1430) 374 at 413-415. I shall return to this anon.

The law is well settled that Courts exercise jurisdiction as con-  
H ferred on them by the law or statute creating them. The Federal High  
Court is not an exception. I shall explore the law setting up the said  
Court to determine if it is endowed with jurisdiction to determine  
matters falling under Section 87 (9) of the Electoral Act 2010 (as  
amended) under which the appellant approached the Court. As I

speaks, Section 251 (1) (a) (s) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) comes to mind.

Now Section 251 (1) of the said Constitution states:-

*“257 (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil and criminal matters...”*

In Sub paragraph (1) (s) thereof, the Constitution further provides as follows:-

*“251 (1) (s) - Such other jurisdiction civil or criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly.”*

Sequel to the above Constitutional Provisions, the National Assembly has conferred on the Federal High Court further jurisdiction in addition to those granted to it in Section 251 (1) (a) (s) of the 1999 Constitution (Supra). The ones relevant to our present matter are Sections 31 (5) and 87 (9) of the Electoral Act 2010 (as amended). The two sections are hereunder reproduced:-

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

*“87 (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 High Court of a State or FCT for redress”.*

As can be clearly seen above, Sections 31 (5) and 87 (9) of the Electoral Act 2010 (as amended) are additional jurisdiction granted the Federal High Court by the National Assembly in line with Section 251 (1) (s) of the 1999 Constitution. Under Section 251 (1) (s) of the 1999 Constitution, the National Assembly has power to grant to the Federal High Court additional jurisdiction either exclusively or in concurrence with other Courts. For me, the jurisdiction granted the

Federal High Court in Sections 31 (5) and 87 (9) of the Electoral Act (supra) are to be exercised concurrently with State High Courts and the High Court of the Federal Capital Territory. See *Jev v. Iyortom* (2014) 14 NWLR (Pt. 1428) 575 at 611-613, 630 and 631- 632, *Gbileve v. Addingi* (2014) 16 NWLR (Pt. 1433) 394 at 418-419.

B In view of the nature of election petitions which is sui generic, and in view of the fact that time is of the essence in election and election related matters, it becomes imperative that parties seeking redress in Court are given adequate facilities to ventilate their matters are expeditiously as possible. It must be noted that election related cases are of high public interest. Thus, in order to give parties ample opportunity to file their cases, the National Assembly in Sections 31 (5) and 87 (9) of the Electoral Act (Supra) gave persons to which these sections apply (sic) to ventilate their matters either at the Federal High Court, or State High Court or the High Court of the Federal Capital Territory. Any of the three Courts has jurisdiction to hear a matter arising from Sections 31 (5) and 87 (9) of the Electoral Act (supra).

E In matters relating to Sections 31 (5) and 87 (9) of the Electoral Act, issues of main claim and ancillary claim do not arise.

F In Senator Heineken Lokpobiri v. Hon. Foster Ogola & 2 Ors (unreported) - Appeal No. SC. 443/2015 delivered on 2nd November, 2015, this Court took a second look at the case of *Kakih v. PDP* (supra), and held that *Kakih* case was decided on its peculiar facts and does not take away the jurisdiction conferred on the Federal High Court in Sections 31 (5) and 87 (9) of the Electoral Act which is to be exercised concurrently with the State High Court and the High Court of the FCT.

G Having made my views known in this matter, I hold a strong view that the Court below was wrong to have set aside the judgment of the trial Federal High Court on the basis that the said Court lacked the jurisdiction to entertain the case which was squarely anchored under Section 87 (9) of the Electoral Act.

H Based on the above and fuller reasons enunciated in the lead Judgment, I agree that there is merit in this appeal. It is accordingly allowed by me also. I abide by all the consequential orders made in the lead judgment, that relating to costs, inclusive.