

**SUPREME COURT OF NIGERIA**  
FRIDAY 9TH DECEMBER, 2016. SC. 256/2016  
**CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD,**  
**C. B. OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC**

JOE ODEY AGI, SAN ..... APPELLANT  
AND  
1. PEOPLES DEMOCRATIC PARTY  
2. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION (INEC)  
3. BENEDICT B. AYADE ..... RESPONDENTS

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ELECTION PETITIONS - INEC - Neutrality of - INEC is merely a nominal and neutral party - And is without any stake in all election matters (H1)

ELECTIONS - Pre election - Jurisdiction - Federal High Court - By Electoral Act 2010 ss. 31(5)(6), 87(9) - Additional jurisdiction is conferred on the Court to determine election matters (H2)

PLEADINGS - Determination of - Basis - In construing pleadings - The totality of averments have to be taken and read together - In order to get a narrative and flowing story of the party (H3)

ACTIONS - Withdrawal of - Is not subject to debate - 1<sup>st</sup> respondent having withdrawn its appeal - Has no right of audience before Court any more - And without any brief of argument - Counsel has nothing to urge the Court (H4)

APPEALS - Judgment - Role of respondent - Is to uphold and support judgment appealed against - And not to advance oral submission against same (H5)

JURISDICTION - Determination - Basis - It is the claim of plaintiff that determines jurisdiction - As Court is to restrict itself to the case put forward by plaintiff (H6)

ACTIONS - Consistency of - Appellant's case is clearly based on membership of 1<sup>st</sup> respondent - He cannot therefore make out a case different from that he set up to do at trial Court (H7)

POLITICS - Political parties - Membership of - Courts do not have jurisdiction to determine membership of political parties - As such issues are internal affairs of parties - And thus are not justiciable (H8)

TAXATION - Payment of tax - Tax is paid to the Government and not political party - And performance of such duty is evidenced by production of tax receipt (H9)

STATUTES - Interpretation - Literal rule - Statutory words must be given their ordinary meaning - As no extraneous matters need be introduced (H10)

POLITICS - Membership - Subscription fee - Proof - Any certification on membership card that fees have been paid - Is sufficient compliance of payment of subscription fees (H11)

ELECTIONS - Disqualification - Age falsification - To disqualify candidate on basis of age falsification - It must be proved that the falsification was done to circumvent 1999 Constitution s. 177 (H12)

ELECTIONS - Preelection - Decision of political party - Finality of - By virtue of PDP Guidelines art. 15(3) - Appellant is bound by decision of the NEC on primary election - Which is final and binding (H13)

ELECTIONS - Governorship - Supremacy of Constitution - Appellant cannot rely on guidelines of political party - At the expense of non compliance with other guidelines - And s.177 of 1999 (H14)

ELECTION PETITIONS - Falsification of age - Proof - It is not enough for appellant to show falsification of age - As he must proof that the act - Was done with intention of gaining an advantage (H15)

ELECTIONS - Qualification - Documents - Where there is false declaration in a document - But same is not a qualifying factor - Its presentation cannot disqualify an otherwise qualified candidate (H16)

DOCUMENTS - Forgery of - Proof - Ingredients - Appellant must prove inter alia that there is document in writing - And that accused knew the document to be false (H17)

DOCUMENTS - Forgery - Proof - Conditions - For falsification of age to be sustained - The documents purportedly forged must be a false representation of genuine documents (H18)

### **FACTS**

This action commenced at the Federal High Court Abuja Judicial Division, wherein plaintiff/appellant by way of originating summons, is asking the Court to determine inter alia whether 1<sup>st</sup> defendant/1<sup>st</sup> respondent is bound to enforce its Constitution and Electoral Guidelines for Primary Elections 2014 in the process of nomination of the Cross River State gubernatorial primaries, and if 2<sup>nd</sup> respondent is bound to ensure compliance with same. Appellant is praying the Court, inter alia, for a declaration that 1<sup>st</sup> respondent is obliged to apply and obey its Constitution and Guidelines and apply same to all aspirants and 2<sup>nd</sup> respondent is obligated to monitor and ensure compliance with the same. Appellant and 3<sup>rd</sup> Respondent along with eight others contested in 1<sup>st</sup> respondent's primary election for nomination for the office of the Governor of Cross River State in the 2015 General Election. 3<sup>rd</sup> Respondent won the primary election by scoring 752 votes, while appellant came second with 11 votes.

Dissatisfied with the outcome of the primaries, appellant

initiated the action. Appellant challenged the qualification of 3<sup>rd</sup> respondent to contest for the primary on the ground that the latter falsified his age. In their counter-affidavit, 1<sup>st</sup> and 3<sup>rd</sup> respondents maintained that 3<sup>rd</sup> respondent was qualified to contest the primary and vie for the position of Governor of Cross-River State of Nigeria. 1<sup>st</sup> and 3<sup>rd</sup> respondents raised preliminary objection that the originating summons fall within the realm of the domestic affairs of 1<sup>st</sup> respondent and as such the Court lacked the jurisdiction to entertain the suit. In its ruling, the Court upheld the objection and also proceeded to consider the suit on the merits and promptly dismissed same. Aggrieved, appellant lodged appeal in the Court of Appeal Abuja Division. The Court affirmed the decision of the trial Court and dismissed the appeal. Aggrieved further, appellant appealed to the Supreme Court.

**D ISSUES FOR DETERMINATION**

1. Whether the lower court was right in its interpretation and application of the provisions of articles 14(b) & 15(2) of the Peoples Democratic Party guidelines and other pieces of evidence when it held that the intention of the Law makers is not to disqualify a candidate based on any alleged false declaration in the nomination forms?

2. Whether the lower court was right when it held that the claim that the 3<sup>rd</sup> respondent presented false age declaration and gave false information to the 1<sup>st</sup> respondent contrary to Articles 14(b) & 15(2) of the PDP Guidelines amounted to criminal allegation requiring proof beyond reasonable doubt.

**G HELD** (Unanimously dismissing the appeal per **OGUNBIYI JSC**)

*ELECTION PETITIONS - INEC - Neutrality of*  
**1. There are 11 (eleven) grounds predicated the application. Without having to belabour the argument, I seek to say straight away that it is a fact which is not in issue that the 2<sup>na</sup> respondent is merely a nominal and neutral party and is without any stake in all election**

**matters. Therefore, and as rightly pointed out by the counsel for the appellant, the 2<sup>nd</sup> respondent is deemed statutorily neutral regardless of which party has an upper hand. With all said and done, I wish to add further that technically and in argument it should not be a matter of controversy. However, in the consideration of the appeal at hand, I am inclined to say that the position of INEC does not have any material bearing on the merit of this appeal. In other words, as a neutral and a nominal party, its brief of argument would have no adverse effect either way in deciding this appeal. Therefore, for all intents and purposes, I hold that INEC by reason of its position, is a necessary party to this appeal and is entitled to be represented.** (p. 4311 B)

*ELECTIONS - Pre election - Jurisdiction - Federal High Court*  
**2. The subject matter of the Preliminary objection poses the question whether the Federal High Court should have jurisdiction in the absence of any relief claimed against INEC as a Federal Agency? Suffice it to say however that in the case of Lokpobiri V. Ogala a 2Ors (2016) 3 NWLR (Pt. 1499) 328, this court gave due consideration to the relevant provisions of section 251(1) of the 1999 Constitution, section 31(1), (2), (3), (4), (5) and (6) as well as Section 87(4) (b) (ii) of the Electoral Act and noted that the opening section 251(1) confer authority on the National Assembly, in addition to the general provision of Legislative powers in section 4 of the 1999 Constitution (as amended), to enact an act conferring additional jurisdiction on the Federal High Court either exclusively or concurrently with State and Federal Capital Territory High Court.**

**The court held the view that it is on the basis of the foregoing constitutional provisions particularly subsection (1) paragraph (s) or section 251 of the 1999 Constitution that the National Assembly enacted the**

**Electoral Act, 2010 (as amended) and conferred concurrent jurisdiction in pre-election matters on the Federal High Court, State as well as the Federal Capital Territory High Court in sections 31(5) and (6) and 87(9) thereof of the said Act.**

B **By the community reading of the foregoing, it becomes obvious that the concurrent jurisdiction conferred on the Federal High Court to determine Election matters, although outside its jurisdiction under**  
C **section 251 of the Constitution, is presently given a different consideration by way of its additional jurisdiction now in force. (p. 4312 H)**

*PLEADINGS - Determination of - Basis*

D **3. As rightly pointed out by the learned counsel for the appellant, a holistic perusal of the pleadings of the appellant has revealed some allegations of specific actions or inactions by the 1<sup>ST</sup> and 2<sup>nd</sup> respondents in preferring**  
E **and accepting the candidacy of the 3<sup>rd</sup> respondent over the appellant. In other words, with reference to paragraphs 16, 17 and 18 of the affidavit in support of the Amended originating summons, material and triable allegations of fact were made against the 2<sup>nd</sup> respondent**  
F **which calls for the invocation of the jurisdiction of the Federal High Court to determine.**

**The law is settled that in construing pleadings, the totality of the averments have to be taken and read together in order to get a narrative and flowing story of the party. In the result, the jurisdictional issue raised by the counsel for the 3<sup>rd</sup> respondent, Chief Olanipekun, SAN is not sustainable. (p. 4314 G)**

H *ACTIONS - Withdrawal - Effect*

**4. Suffice it to say that the law permits a party to withdraw his case for whatever reason if he so desires. The prerogative is his and cannot be a subject of debate.**

**However in the appeal before us, the consequential effect of the withdrawal by a counsel is that the 1<sup>st</sup> respondent will no longer have the right of audience before the court. In other words, without any brief of argument, the counsel Mr. Ibegbunam will have nothing to urge the court on behalf of his client, the 1<sup>st</sup> respondent (PDP). At the very best, counsel should hold his peace and say no more following the withdrawal.** (p. 4315 F)

*Judgment - Role of respondent*

**5. This is reasonable in my opinion because it is trite law and well settled that the respondent owes it a duty to uphold and support the judgment appealed against and not to advance an oral submission against and opposing same in the manner as sought to do by the 1<sup>st</sup> respondent's counsel.** (p. 4315 H)

*JURISDICTION - Determination - Basis*

**6. It is the concurrent findings by the two lower courts that the court lacked jurisdiction to determine the case of the appellant as constituted.**

**As rightly introduced by the appellant's counsel, it is well settled that it is the claim of the plaintiff that determines the jurisdiction of the court.**

**In determining whether or not it has jurisdiction, a court is to restrict itself to the case put forward by the plaintiff and not the construction given to the plaintiff's case by a Defendant. In other words, the fundamental principle of law is well settled that the jurisdiction of a court to entertain a cause or matter is dependent on the plaintiff's claim as stated in his processes; the claim therefore plays the central focus; that is to say, the writ of summons or any originating process, as in this case the relevant part of the appellant's reliefs as contained in his amended originating summons dated and filed on 2<sup>nd</sup> day of March, 2015 at page 337 of volume 1 of the**

*ACTIONS - Consistency of*

**7. Following from the foregoing deduction, it is the appellant's contention that the 3<sup>rd</sup> respondent is not a member of the 1<sup>st</sup> respondent who is entitled to participate in the party's gubernatorial primary election held on December 8, 2014. In another breath also at page 33 of the appellant's brief, by paragraph 2.27, the appellant maintains that his complaint is in respect to the primaries and not membership simpliciter. The law is well settled that the appellant cannot make out a case different from that which he set out to do at the trial court which must be borne out by the pleadings on the record. Also, submission of counsel can neither take the place of pleadings nor evidence, this is trite.**

**Contrary to the contention by the appellant's counsel therefore, the cumulative deductions of the appellant's claim, the reliefs sought and considering also the various related legislations taken together with the relevant provisions of the 1<sup>st</sup> respondent's constitution as well as the constitution of the Federal Republic of Nigeria, 1999, the revelation is clear that the central focus of the appellant's case is the membership or status of the appellant as a member of the 1<sup>st</sup> respondent.**

**Put differently, the issue is whether the 3<sup>rd</sup> respondent is a member of the 1<sup>st</sup> respondent for the purpose of nomination for the gubernatorial primaries of the party. It follows straightaway that the argument advanced by the learned counsel for the appellant wherein he states that his case is simply predicated on the assertion that the 1<sup>st</sup> respondent failed to comply with its constitution, cannot hold water. (p. 4326 H)**

*POLITICS - Political parties - Membership of*

**8. Therefore the courts do not have jurisdiction to**

**determine who the members of a political party are. The authorities are well pronounced and taken that an action based on the determination of membership of a party is not justiciable. Paragraph 48(f) has therefore carved out the status of membership which comes within the exclusive confines of internal affairs of a political party which are evidently non-justiciable. Consequently, the two lower courts were on very firm ground, when they anchored their stand and acted on the established legal principles.**

**I seek to highlight for purpose of emphasis that the underlying principle behind the enactment of section 87(9) of the Electoral Act is to curtail any arbitrary exercise of power by a political party in the selection of their candidates for election; hence the imposition to ensure compliance with the provisions of the Electoral Act and the guidelines. However, the supervisory function vested in the court does not extend beyond borders so as to interfere into matters that are within the exclusive preserve of the political parties such as the issue of membership nomination now before us.**

**For purpose of clarification, I seek to restate that section 87 of the Electoral Act can only be invoked properly where an aspirant challenges his political party for failure to comply with any of the conditions stipulated under the said section of the Act. It is true to say also that the ‘Section does not apply, where a party’s claim is founded on the issue of eligibility of a member to contest election on the ground of membership status, arising from non-payment of membership dues, which is clearly outside the range of the section. I wish to add also that the alleged non-payment of membership dues is not one of the conditions for nomination of candidates for election under section 87 of the Act. (pp. 4331F/4335 B/4336D)**

*TAXATION - Payment of tax*

**9. It is judicially noticed also that tax is paid to the Government, not to a political party. Performance of such civic duty is evidenced by the production of clearance or tax receipt.** (p. 4332 E)

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*STATUTES - Interpretation - Literal rule*

**10. The law is well settled on the cardinal principle of interpretation of statutes, laws and regulations wherein words must be given their ordinary, natural and grammatical meaning. No extraneous matters need be introduced. In the absence of any requirement in the said provision that payment must be attached as claimed by the appellant, the court must give effect to the ordinary meaning.** (p. 4333 B)

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*POLITICS - Membership - Subscription fee - Proof*

**11. As rightly held by the lower court, in the context of the provision of section 8(10) of the PDP's constitution, the implication is that where the word "cleared" is endorsed on the membership card, it signifies that the 3<sup>rd</sup> respondent is not indebted to the 1<sup>st</sup> respondent and thus the satisfaction with the compliance of the phrase:- "which must be reflected on their membership cards," as mandated by section 8(10) of the 1<sup>st</sup> respondent's constitution. In other words, the ticking of the columns in the membership card is an indication that the dues have been paid, more so with the use of the word "cleared".**

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**With reference to the case under review, any certification or indication on the membership card, Exhibit JA9 that fees have been paid, is, in my view, sufficient compliance of payment of subscription fees. I have made reference extensively to the depositions in the counter affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> respondents earlier in the course of this judgment which state in clear terms**

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**that the 3<sup>rd</sup> respondent had fully discharged all his indebtedness to the 1<sup>st</sup> respondent. Therefore, the submission by the appellant's counsel where he alleges that Exhibit A4", the receipt for 2014 subscription was paid only after the case was filed, is without any foundation. This I hold, because, while the receipt was dated 27/3/14, the suit was filed on 2<sup>nd</sup> March, 2015. (p. 4333 D)**

*ELECTIONS - Disqualification - Age falsification*

**12. Essentially therefore and as rightly submitted by the senior counsel for the 3<sup>rd</sup> respondent, in order to present a valid case of disqualification of a candidate on the grounds of falsification of age under Article 14(b) and 15(2) of the PDP guidelines which are meant to comply strictly with the constitution, it must be proven that the falsification was done to circumvent the provision of section 177 of the Constitution, 1999, particularly as it relates to age qualification. The court below therefore duly took cognizance of this trite proposition of law, and rightly in my view proceeded to interpret and give effect to the provision of article 14(b) within the contemplation of section 177 of the constitution as it rightly held at pages 1349 & 1350 of the record which was reproduced earlier in the course of this judgment. (p. 4344 D)**

*ELECTIONS - Pre election - Decision of political party - Finality of*

**13. Assuming that the appellant intends to build his case on Article 15(2) of the PDP guidelines supra, again he cannot as rightly submitted by senior counsel for the 3<sup>rd</sup> respondent, escape the provision of Article 15(3) of the same guidelines which reproduction states thus;**

**"(3) The decision of the National Executive Committee of the party on all primary election matters shall be final and binding." - See page 446 of Vol.1 of the record of appeal. (Emphasis provided')**

**The import of the forgoing provision is very imperative and implies the expectation imposed on the appellant to explore all internal mechanisms provided by the party, including approaching the gubernatorial screening committee and gubernatorial screening appeal panel created under (Article 16(a) & (d) of the guidelines, and also lay a complaint to and await the decision of the National Executive Committee pursuant to article 15(3) of the Guidelines. This procedure is mandatory by the use of the word “shall” and should be adhered to strictly.**  
(p. 4346 D)

*ELECTIONS - Governorship - Supremacy of Constitution*

**14. With due regard to the foregoing references, it beats ones imagination that the same appellant who had bonded himself to the depositions as he did per the Declaration of Compliance (supra) would now turn around only to back pedal therefrom. For instance, there is no evidence before the Court that the appellant did comply with section 16(a) and (d) of the party’s guidelines or article 15(3). The appellant cannot choose to rely on Articles 14(b) and 15(2) of the guidelines at the expense or detriment of non-compliance to sections 15(3), 16(a) and (d) and worst still section 177 of the Constitution 1999 (as amended) which has laid down the qualification to run for Governorship election. It is expedient to restate emphatically that, no law, legislation, be it regulation, rules or guidelines of whatever nature can come into effect so as to undermine the effect of a constitutional provision.**  
(p. 4347 C)

*ELECTION PETITIONS - Falsification of age - Proof*

**15. The law is well settled that where allegation of crime is directly in issue in any civil or criminal proceedings, it must be proved beyond reasonable doubt and the onus of proof is on the person, who asserts.**

***It is also trite and firmly established principle of law that he who asserts must bear the burden of proof.***

***I have restated earlier in this judgment also that the nature of the allegation lodged against the 3<sup>rd</sup> respondent by the appellant is firmly rooted in criminality and which must be proved beyond reasonable doubt as rightly held by the lower court. In proving beyond reasonable doubt, it is not enough for an appellant as plaintiff to demonstrate the act of falsification of age, it is also incumbent on him to establish that the act was intentional. In other words that it was done with the intention to gain an advantage by the alleged act of criminality.*** (pp. 4349 E/4351 G)

***ELECTIONS - Qualification - Documents - Falsification of - Effect***<sup>D</sup>  
***16. By the provision of section 31(5) of the Electoral Act, the position of the law is well established that, where a candidate makes a false declaration in his form CF001, a person aggrieved may seek redress. However, the purport of section 31(b) is not designed to disqualify a candidate who is otherwise qualified to contest the relevant election under the 1999 Constitution of the Federal Republic of Nigeria. I seek to say further that even in situations where a governorship candidate makes inconsistent statements in his form CF001 and such a candidate is nevertheless qualified to contest the election under the provisions of section 177(b) of the Constitution, he will notwithstanding the inconsistencies in his form, be disqualified to contest the election.***<sup>E</sup>  
<sup>F</sup>  
<sup>G</sup>

***To disqualify a candidate for falsification, the infraction must relate to the very point on which the qualification depends. Thus, where the alleged falsified document is not a qualifying factor under the constitution of Nigeria, its presentation cannot disqualify an otherwise qualified person.*** (pp. 4350 B/4351 E)<sup>H</sup>

*DOCUMENTS - Falsification - Proof - Ingredients*

**17. I seek to say at this juncture that the onus of proof on the appellant are in respect of the following ingredients:-**

- B      a) *That there is a document in writing.*  
         b) *That the accused knew the document to be false.*  
         c) *That the accused presented the said document to the other party with the intention that it would be acted upon to the detriment of the victim in the belief*  
C *that it is genuine.* (p. 4352 D)

*DOCUMENTS - Forgery - Proof - Conditions*

- D **18. For forgery or falsification of age to be sustained, the documents purportedly forged must be a false representation of genuine documents. This is because it will be preposterous to allege the forgery of a fake or counterfeit document, as rightly submitted by the senior counsel for the 3<sup>rd</sup> respondent. Under the law, forgery**  
E **cannot be grounded in respect of a document in the absence of its original. In other words, mere presentation of series of documents by a party, alleging forgery or falsification of age against the 3<sup>rd</sup> respondent.** (p. 4353 F)

F **REPRESENTATION**

- K. C. O. NJEMANZE, SAN with him, J. C. Njikonye, Esq., Jideofa Onuoha, Isaac Ita, Esq., Kingsley Akomjom, Esq., I. A. Nnana. Esq., and Otuechere Cheminus for the Appellant  
G N. E. IBEGBUNAM, ESQ., for the 1<sup>st</sup> Respondent  
No appearance for the 2<sup>nd</sup> Respondent  
CHIEF WOLE OLANIPEKUN, SAN, OFR with him, Bernard Afu, Michael Ajara, Bolarinwa Awujoola, Vanessa Onyemauwa (Miss), Adebayo Majekolagbe and Oreoluwa Ogunwumiju for the 3<sup>rd</sup>  
H Respondent

**CASES REFERRED TO**

Lokpobiri v. Ogala (2016) 3 NWLR (pt. 1499) 328

Uzodinma v. Izunaso ((No. 2) 2011) 17 NWLR (pt. 1275) 30

Ukachukwu v. PDP (2014) 17 NWLR (pt. 1435) 134

Ugwu v. Ararume (2007) 12 NWLR (pt. 1048) 367

Amaechi v. INEC (2007) 18 NWLR (pt. 1065) 42

Musa v. PRP (1981) 2 NCLR 763

Uwazurike v. Nwachukwu (2013) 3 NWLR (pt. 1342) 503

Peretu v. Sanaa (2013) 5 NWLR (pt. 1348) 415

Adegoke Motors v. Adesanya (1989) 3 NWLR (pt. 312) 250

Okafor v. Nnaife (1981) 4 NWLR (pt. 64) 129

Clement v. Iwuanyanwu (1989) 3 NWLR (pt. 107) 39

Ardo v. Nyako (2014) 10 NWLR (pt. 1416) 591

Ikoku v. Oli (1962) 1 SC NLR 307

HMS Ltd. v. 1<sup>st</sup> Bank (1991) 1 NWLR (pt. 167) 290

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

Constitution of Federal Republic of Nigeria 1999, ss. 31(1)(2)(3)(4)(5)(6), 177, 251(1)

Electoral Act 2010, ss. 35(5), 87(4)(b)(ii), (9)

Evidence Act Cap E14 LFN 2011, s. 135(1)

### **LEAD JUDGMENT BY OGUNBIYI JSC**

This appeal emanates from the decision of the Court of Appeal, Abuja Division presided over by their Lordships Tinuade Akomolafe - Wilson, Tani Yusuf Hassan and Joseph E. Ekanem, JJCA, delivered on 5<sup>th</sup> day of February, 2016 wherein the lower court affirmed the decision of the Federal High Court, which had earlier dismissed the Appellant's case for being unmeritorious.

The appellant and the 3<sup>rd</sup> Respondent along with eight other aspirants contested in the 1<sup>st</sup> Respondent's primaries for nomination for the office of the Governor of Cross River State in the 2015 General Election. The 3<sup>rd</sup> Respondent won the primary election by scoring 752 votes, while the Appellant came second with 11 votes, TWO other contestants scored five votes each while the remaining six scored no votes.

The appellant was dissatisfied with the outcome of the primaries aforesaid and hence filed an originating summons on

the 29<sup>th</sup> January, 2015 (at the Federal High Court) supported by an affidavit with Exhibits attached. The respondents herein (who are also respondents to the said originating summons) joined issues with the appellant (who was the plaintiff at the Federal High Court), by filing their respective counter-affidavits. In the course of the proceedings, the appellant amended the originating summons dated and filed on 2<sup>nd</sup> March, 2015., and sought from the Federal High Court the determination of the following questions namely:-

1. Whether the 1<sup>st</sup> Defendant is bound to enforce its Constitution and Electoral Guidelines for Primary Elections 2014 in the process of nomination or selection of the Cross River State gubernatorial primaries, and if the 2<sup>nd</sup> Defendant is bound to ensure compliance with same.

2. Whether the Provision of Section 8(10), (15) of the Peoples Democratic Party Constitution, Article 13 (A) and 14 (B) of the Electoral Guidelines for Primary Constitution (as amended) are mandatory and applicable to the nomination and selection of a gubernatorial aspirant under the platform of Peoples Democratic Party.

3. Whether in the circumstance Benedict B, Ayade is qualified to contest or be nominated without breaching the Guidelines and Constitution of the Peoples Democratic Party (PDP) and Section 177 (C) of the Nigeria Constitution, 1999 (as amended).

4. Whether the 2<sup>nd</sup> Defendant has any legal role in the conduct of primaries of the 1<sup>st</sup> Defendant. Based on the foregoing questions, the appellant prayed the court for the following Reliefs:-

(a) A DECLARATION that the PEOPLES DEMOCRATIC PARTY (PDP) is obliged to apply and obey its Constitution and Guidelines and apply same to all aspirants and INEC is obligated to monitor and ensure compliance with them, Electoral Act and the 1999 Constitution of the Federal Republic of Nigeria (as amended).

(b) A DECLARATION that by virtue of Section 8 (10) & (15) of the PEOPLES DEMOCRATIC PARTY (PDP) Constitution and Article 14(b) of the Electoral Guidelines for Primary Elections,

2014 the 3<sup>rd</sup> Defendant (Benedict B. Ayade) with Membership Card No. 6386479 ceased to enjoy the rights and privileges of a member of Peoples Democratic Party before and including the 8th December, 2014 and by virtue of Article 14(b) of the Electoral Guidelines for Primary Elections 2014, cannot validly vie and be nominated as Gubernatorial Candidate under the platform of PDP. B

(c) A DECLARATION that the plaintiff, Joe Odey Agi, SAN who met the constitutional requirement of the PDP scored the highest number of valid votes cast at the Cross River State Gubernatorial Primary Election on 8<sup>th</sup> December, 2014 and is the C winner.

(d) AN ORDER of perpetual injunction restraining the 2<sup>nd</sup> Defendant (INEC) from accepting or using the name of Benedict B. Ayode as the lawful candidate of PDP in the Gubernatorial Election fixed for 11<sup>th</sup> April, 2015 or any other subsequent dates. D

(e) A MANDATORY ORDER compelling the 2<sup>nd</sup> Defendant to replace the name of Benedict B. Ayade with the name of Joe Odey Agi, SAN as the lawful PDP candidate for the Cross River State Gubernatorial election fixed for 11<sup>th</sup> April, 2015, and accept the nomination and personal data form of Joey Odey Agi, SAN being the candidate of the 1<sup>st</sup> Defendant for the Cross River State Gubernatorial Election fixed for 11<sup>th</sup> April, 2015 or any other subsequent dates forthwith.” E

In their counter-affidavit, the 1<sup>st</sup> and 3<sup>rd</sup> respondents F maintained that the 3<sup>rd</sup> respondent was qualified to contest the party primaries and vie for the position of Governor of Cross-River State or Nigeria. They also contend that the 1<sup>st</sup> respondent did not breach its constitution and guidelines in any form in the conduct of the primary election. The respondents denied the appellant’s G assertion that the 3<sup>rd</sup> respondent misrepresented his age at all times material to the primaries or at all.

The appellant emphatically contends further that the 3<sup>rd</sup> H respondent did not pay his annual membership subscription and is therefore not qualified to participate in the primaries. The respondents on their part denied the allegation and maintained that the 3<sup>rd</sup> respondent was duly cleared to contest the election

having discharged all his outstanding obligations to the 1<sup>st</sup> respondent.

At the trial court, 1<sup>st</sup> and 3<sup>rd</sup> Respondents raised the preliminary objection that the originating summons fall within the realm of the domestic jurisdiction of political parties and as such the Federal High Court lacked the jurisdiction to entertain the suit. The Federal High Court upheld the Respondents' Preliminary objection and also proceeded to consider the suit on the merits and promptly dismissed same. The appellant was dissatisfied with the judgment of the Federal High Court and hence lodged an appeal in the lower court which affirmed the decision of the trial Federal High Court on the issues of jurisdiction as well as the dismissal of the case on the merits.

Again, the Appellant was dissatisfied with the judgment of the court below and has now appealed further to this court vide a notice of appeal filed 9<sup>th</sup> March, 2016 after having obtained the leave of that court to appeal on grounds of mixed law and fact.

In accordance with the rules of this court, parties filed their respective briefs of argument:-

The Appellant's Brief of Argument settled by L. O. Fagbemi, SAN was filed on 31/3/2016.

The 1<sup>st</sup> Respondent's Brief of Argument settled by Mudiaga -Erhueh, E. H. (Esq) was filed on 17/5/2016.

The 2<sup>nd</sup> Respondent's Brief of Argument settled by Tanimu Inuma Esq. was filed on 24/5/2016.

The 3<sup>rd</sup> Respondent's Brief of Arguments settled by Chief Wole Olanipekun, (SAN) was filed on 1/6/2016 but deemed properly filed on 27/9/2016.

In response to all the Respondents, the Appellant filed separate replies as follows:-

Appellants reply to the 1<sup>st</sup> Respondent's brief filed on the 22/6/2016 but deemed properly filed on 27/9/2016.

Notice of preliminary objection and appellant's reply to 2<sup>nd</sup> Respondent's brief of argument filed on 23/6/2016.

Appellant's reply to 3<sup>rd</sup> Respondent's brief of argument incorporating reply to the jurisdictional issue raised for the first

time at the Supreme Court was filed on 22/9/2016 but deemed properly filed on 27/9/2016.

On the 27<sup>th</sup> September, 2016 when the appeal was fixed for hearing, learned senior counsel K. C. O. Njemanze, SAN, was accompanied by hosts of counsel and represented the appellant. Chief Wole Olanipekun (SAN) appeared with his brother Paul Erokoru, SAN and other counsel with them also represented the 3<sup>rd</sup> respondent. The senior counsel on both sides adopted and relied on their respective briefs of argument inclusive of the preliminary objections raised as well as the responses advanced thereon. Counsel also adumbrated. In favour of allowing the appeal, an outright dismissal of same was urged by the 3<sup>rd</sup> respondent's counsel.

In respect of the 2<sup>nd</sup> respondent (INEC), the party was neither in court nor was there a representation by a counsel on its behalf. There was however an information from the Registrar of Court that hearing notice was served on the 2<sup>nd</sup> respondent on 22<sup>nd</sup> September, 2016 here in Abuja. Pursuant to Order 2 Rule 11(1) of the Rules of Court therefore the 2<sup>nd</sup> respondent's brief of argument was deemed heard, *ex parte*.

The case of the 1<sup>st</sup> respondent, (PDP) is peculiar and different. The party was represented by one counsel N. E. Ibegbunam, Esq. who was a counsel from the Chambers of Chief Ferdinand O. Orbih, SAN where the brief of the 1<sup>st</sup> respondent was settled. In submission at the hearing of this appeal, Mr. Ibegbunam, Esq. intimated the court that he was instructed to withdraw the 1<sup>st</sup> respondent's brief of argument filed on 17/5/2016. I shall return to consider the effect of this withdrawal anon. For now it is kept in abeyance and will be revisited in due course.

For the determination of this appeal, the appellant has distilled and formulated the following three issues for consideration:-

1. Whether the lower court was right in its interpretation and application of the provisions of articles 14(b) & 15(2) of the Peoples Democratic Party guidelines and other pieces of evidence when it held that the intention of the Law makers is not to disqualify a candidate based on any alleged false declaration in the nomination forms? Grounds 2, 4 & 10;

2. Whether the lower court was right when it held that the claim that the 3<sup>rd</sup> respondent presented false age declaration and gave false information to the 1<sup>st</sup> respondent contrary to Articles 14(b) & 15(2) of the PDP Guidelines amounted to criminal allegation requiring proof beyond reasonable doubt. Grounds 6, 7, 8 & 9;

3. Whether the lower court was right when it held that, the provisions of paragraph 48(f) of the Guidelines availed the 3<sup>rd</sup> respondent and that the question of membership is an internal affair of a political party which is not justiciable - when there was credible evidence to show that mandatory payments were not made by the 3<sup>rd</sup> respondent, thereby making plaintiff's claims grantable? Grounds 1, 3, 5 & 11.

While the case of the 1<sup>st</sup> respondent on behalf of the 2<sup>nd</sup> respondent are as follows:-

1. Whether the lower court was right when it held that the case of the appellant is non-justifiable.

2. Whether the lower court was right in its interpretation and application of the provisions of Articles 14(b) & 15(2) of the Peoples Democratic Party and Section 35(5) of the Electoral Act, 2010 (as amended) in relation to alleged false age declaration in the nomination forms of the 3<sup>rd</sup> respondent.

Also and in the same vein as the 2<sup>nd</sup> respondent, two issues were raised by the counsel for the 3<sup>rd</sup> respondent as follows:-

1. Considering the facts and circumstances of this case, whether the lower court rightly resolved the issues bordering on the allegation and proof of falsification of age as made against the 3<sup>rd</sup> respondent by the appellant. Grounds 2, 4, 6, 7, 8, 9 and 10

2. Whether the lower court was right in holding that issues that pertain to membership of a political party are internal affairs of a political party over which the court lacked jurisdiction and also that the claim of the appellant in respect of payment of membership dues could not be substantiated. Ground 1, 3, 5 and 11

It is pertinent to state at this juncture that the appellant filed a notice of preliminary objection on the 23/6/2016 and is

seeking that the court should make the following two orders:-

*“1. An order striking out the 2<sup>nd</sup> respondent’s Brief of Argument dated 23<sup>rd</sup> May, 2016 but filed on 24<sup>th</sup> May, 2016 for being in violation of the 2<sup>nd</sup> respondent’s statutory role as a neutral and impartial umpire.*

*2. An order striking out issue 2 (Two) of the 2<sup>nd</sup> respondent’s Brief of Argument dated 23<sup>rd</sup> May, 2016 but filed on 24<sup>th</sup> May, 2016 for not arising from the appellant’s Grounds of Appeal.”*

***There are 11 (eleven) grounds predicating the application. Without having to belabour the argument, I seek to say straight away that it is a fact which is not in issue that the 2<sup>na</sup> respondent is merely a nominal and neutral party and is without any stake in all election matters. Therefore, and as rightly pointed out by the counsel for the appellant, the 2<sup>nd</sup> respondent is deemed statutorily neutral regardless of which party has an upper hand. With all said and done, I wish to add further that technically and in argument it should not be a matter of controversy. However in the consideration of the appeal at hand, I am inclined to say that the position of INEC does not have any material bearing on the merit of this appeal. In other words, as a neural and a nominal party, its brief of argument would have no adverse effect either way in deciding this appeal. Therefore, for all intents and purposes, I hold that INEC by reason of its position, is a necessary party to this appeal and is entitled to be represented.***

On the 27/9/2016 by an order of this court granted pursuant to a motion filed by the 3<sup>rd</sup> respondent on 1/6/2016, leave was granted him to raise a jurisdictional issue for the first time in this appeal. Argument in respect thereof has been duly incorporated in the 3<sup>rd</sup> respondent’s brief and the appellant had also responded thereto. The jurisdictional issue raised is challenging the competence of the suit herein and which the 3<sup>rd</sup> respondent contends does not come within the jurisdiction of the Federal High Court. In other words, it is the contemplation of the 3<sup>rd</sup> respondent that the

jurisdiction of the Federal High Court, particularly subject matter jurisdiction is expressly itemized and limited to provisions of Section 251 of the Constitution; that in the circumstance, the court cannot exercise jurisdiction on any cause of action outside those spelt out there in the section.

B For all intents and purposes, the total summary of the 3<sup>rd</sup> respondent's argument on the foregoing preliminary objection restates that, on a close examination of the three issues raised by the appellant, there is nowhere that reference was made to the 2<sup>nd</sup> C respondent (INEC). Consequently, therefore, that there was no basis to have instituted the suit before the Federal High Court in the first place. The learned senior counsel, Chief Wole Olanipekun, SAN urges in the result that this appeal as well as the claims of the appellant should be struck out.

D In response and reply to the foregoing argument, Prince Fagbemi, SAN the learned counsel who represented the appellant submits emphatically that the leave to raise a fresh issue only ensures in favour of an appellant and not a respondent; that in the instant E case, the 3<sup>rd</sup> respondent did not file a cross or a respondent's notice, of appeal and that the fresh issue of jurisdiction does not arise from any of the grounds of appeal before this court. Consequently, that the fresh issue raised by the 3<sup>rd</sup> respondent is not hinged on any ground or appeal and thus cannot lie in a vacuum.

F I have considered carefully the argument by both counsel on the question of jurisdiction raised by the 3<sup>rd</sup> respondent. From all indications and taking into consideration the subject matter of the substantive appeal, it would appear that any attempt to resolve G the preliminary objection would encroach into the merit of the main appeal which should not be determined prematurely at this stage. The subject matter of the substantive appeal has raised some very crucial legal issues for determination and in my view, the justice of the case can be determined properly only if the appeal is heard on H its merit.

***The subject matter of the Preliminary objection poses the question whether the Federal High Court should have jurisdiction in the absence of any relief claimed***

**against INEC as a Federal Agency? Suffice it to say however that in the case of Lokpobiri V. Ogala a 2Ors (2016) 3 NWLR (Pt. 1499) 328, this court gave due consideration to the relevant provisions of section 251(1) of the 1999 Constitution, section 31(1), (2), (3), (4), (5) and (6) as well as Section 87(4) (b) (ii) of the Electoral Act and noted that the opening section 251(1) confer authority on the National Assembly, in addition to the general provision of Legislative powers in section 4 of the 1999 Constitution (as amended), to enact an act conferring additional jurisdiction on the Federal High Court either exclusively or concurrently with State and Federal Capital Territory High Court.**

**The court held the view that it is on the basis of the foregoing constitutional provisions particularly subsection (1) paragraph (s) or section 251 of the 1999 Constitution that the National Assembly enacted the Electoral Act, 2010 (as amended) and conferred concurrent jurisdiction in pre-election matters on the Federal High Court, State as well as the Federal Capital Territory High Court in sections 31(5) and (6) and 87(9) thereof of the said Act.**

**By the community reading of the foregoing, it becomes obvious that the concurrent jurisdiction conferred on the Federal High Court to determine Election matters, although outside its jurisdiction under section 251 of the Constitution, is presently given a different consideration by way of its additional jurisdiction now in force.**

At pages 364 - 365 of the said report for instance, his Lordship Onnoghen, JSC as he then was had this to say:-

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

*matters. It is not in dispute that in civil actions, the jurisdiction of a court to hear and determine the plaintiff's action depends on the claim(s) in the writ of summons and his pleadings. On the other hand, the jurisdiction of a court to hear and determine an election or election related matter is statutory - as provided in the status establishing the cause of action and conferring jurisdiction on the appropriate or particular court (s) to hear and determine same.*

*In terms of election or election related matters, the jurisdiction of the Federal High Court to hear and entertain such matters is rooted in the relevant provisions of the Electoral Act, 2010 (as amended). In respect of matters relating to post election jurisdiction of the court, see Section 251(4) of the 1999 Constitution, (as amended). If we insist on the jurisdiction of the Federal High Court on pre-election and/or post election matters being exercisable only where the main claim(s) are 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 matters is clearly outside the exclusive jurisdiction of the court under Section 251 of the 1999 Constitution (as amended) but in addition to the said exclusive jurisdiction and consequently subject to different considerations.*

*It is therefore any considered opinion 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 post election jurisdiction of the Federal High Court." (emphasis supplied).*

**As rightly pointed out by the learned counsel for the appellant, a holistic perusal of the pleadings of the appellant has revealed some allegations of specific actions or inactions by the 1<sup>ST</sup> and 2<sup>nd</sup> respondents in preferring and accepting the candidacy of the 3<sup>rd</sup> respondent over**

***the appellant. In other words, with reference to paragraphs 16, 17 and 18 of the affidavit in support of the Amended originating summons, material and triable allegations of fact were made against the 2<sup>nd</sup> respondent which calls for the invocation of the jurisdiction of the Federal High Court to determine.*** B

***The law is settled that in construing pleadings, the totality of the averments have to be taken and read together in order to get a narrative and flowing story of the party. See Okochi (& 2 Ors. V. Animkwoi a 2 Ors (2003) 18 C NWLR (Pt. 851) 1, at 24 per Tobi, JSC. In the result, the jurisdictional issue raised by the counsel for the 3<sup>rd</sup> respondent, Chief Olanipekun, SAN is not sustainable.***

At this point in time it is pertinent to revisit and determine the legal effect of the withdrawal made of the 1<sup>st</sup> respondent's brief of argument which consideration was kept on hold earlier in the course of this judgment. As a pre-amble, I will seek to recapitulate that on the 27/9/16 when the appeal was heard, the learned counsel N. E. Ibegbunam, Esq. represented the 1<sup>st</sup> respondent and applied that the said respondent's brief of argument be withdrawn. It was confirmed by counsel before this court that he is a counsel in the Chambers of Fred Orbih, SAN & Co., from whence the 1<sup>st</sup> respondent's brief of argument was settled by another counsel, Mudiaga - Erhueh, E. H. (Esq.) also from the same Chambers.

***Suffice it to say that the law permits a party to withdraw his case for whatever reason if he so desires. The prerogative is his and cannot be a subject of debate. However in the appeal before us, the consequential effect of the withdrawal by a counsel is that the 1<sup>st</sup> respondent will no longer have the right of audience before the court. In other words, without any brief of argument, the counsel Mr. Ibegbunam will have nothing to urge the court on behalf of his client, the 1<sup>st</sup> respondent (PDP). At the very best, counsel should hold his peace and say no more following the withdrawal. This is reasonable in my opinion because it is trite law and well settled that the respondent*** H

***owes it a duty to uphold and support the judgment appealed against and not to advance an oral submission against and opposing same in the manner as sought to do by the 1<sup>st</sup> respondent's counsel.***

B In the circumstance, the 1<sup>st</sup> respondent's brief of argument filed on the 17/5/2016 having been withdrawn on the 27/9/16 is hereby struck out.

C In respect of the 2<sup>nd</sup> respondent (INEC), it was adjudged as neutral but a necessary party as concluded earlier in the course of this judgment. Hence the submission made by the senior counsel for the 3<sup>rd</sup> respondent, that INEC should be excluded from being a party does not obviously hold sway. Therefore, the appeal at hand will be considered and determined on the briefs of arguments filed by the appellant, 2<sup>nd</sup> and 3<sup>rd</sup> respondents to the exclusion of that of D the 1<sup>st</sup> respondent as it was struck out.

E On a community reading of the briefs of arguments filed by all the parties, it becomes evident that the three issues raised on behalf of the appellant have been condensed into two as formulated by each of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively. For instance, while appellant's issues 1 and 2 have been reduced into issue 1 by the 1<sup>st</sup> respondent, the same forms the 3<sup>rd</sup> respondent's issue 2. Furthermore and in respect of appellant's issue 3 same have been reproduced also as issues 1 and 2 by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents F respectively. It is obvious however that all parties are agreeable on the issues in controversy.

G Suffice it to say also that, for the determination of this appeal, I intend to adopt the three issues formulated by the appellant's counsel; I will also deem it appropriate to take the 3<sup>rd</sup> issue first and thereafter consider the 1<sup>st</sup> and 2<sup>nd</sup> issues together.

### ISSUE 3

H Whether the lower court was right when it held that, the provisions of paragraph 48(F) of the guidelines availed the 3<sup>rd</sup> respondent and that the question of membership is an internal affair of a political party which is not justiciable - when there was credible evidence to show that mandatory payments were not made by the 3<sup>rd</sup> respondent, thereby making plaintiff's claims grantable?

The crux of this issue questions the correctness of the court below when it held that paragraph 48(F) of the 1<sup>st</sup> respondent's guidelines availed the 3<sup>rd</sup> respondent and whether the question of membership is an internal affair of a political party, which is not justiciable.

While the appellant's counsel vehemently submits that the lower court erred in holding the view *supra*, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents however, hold the contrary. Put differently, the appellant's case is that, 3<sup>rd</sup> respondent's membership of the PDP is in abeyance pending full payment of his membership dues; that the trust of the plaintiff/appellant's case has to do with the effect of non-payment of dues by "the 3<sup>rd</sup> respondent and his right to contest an election under the platform of the PDP having regard to the provisions of the constitution and guidelines of the party; that the court is called upon to ascertain whether the 3<sup>rd</sup> respondent had satisfied the provisions of the guidelines and also whether the court has jurisdiction to entertain the suit in respect thereof. Learned counsel cites the case of *Uzodinma V. Izunaso* ((No. 2) 2011) 17 NWLR (Pt. 1275) 30 @ 60 also *Ukachukwu V. PDP* (2014) 17 NWLR (Pt. 1435) 134 @ 182; that on a critical analysis of section 8(10) & (15) also 150(1) of the PDP constitution as well as section 8(9) of the electoral Act 2010 (as amended), counsel submits as erroneous for the lower court to have relied on Article 48(F) of the PDP Electoral Guidelines to hold that the appellant cannot challenge the decision of the National Executive Committee of the 1<sup>st</sup> respondent.

The learned counsel submits further that the clear effect of the term "notwithstanding" in section 87(9) of the Electoral Act, 2010 (as amended) excludes the provision of Article 48(F) of the PDP Guidelines, 2014; that although the 3<sup>rd</sup> respondent exhibited his membership card pursuant to section 8(10) of the PDP constitution, he did not however show and exhibit the evidence of payment of party dues for the year 2014 as mandated by the party constitution. The outcome, course; argues, is conclusive that the 3<sup>rd</sup> respondent did not pay his dues for the whole of the year 2014. Consequently, it is the complaint of the appellant therefore that the

1<sup>st</sup> respondent breached the provisions of its constitution when it cleared the 3<sup>rd</sup> respondent or gave him the official permission or approval to contest the primaries when the 3<sup>rd</sup> respondent's membership card did not reflect evidence of payment of the party dues and that this presupposes that the 3<sup>rd</sup> respondent did not pay his membership dues to the party. Counsel restates emphatically that the case of the appellant was not to challenge the membership of the 3<sup>rd</sup> respondent.

In summary and submitting on the said issue, the appellant's counsel argues vehemently that the trial court had the requisite, jurisdiction to hear and determine the appellant's case as same is not founded on the issue of membership of a political party, which would have made the suit non-justiciable; that appellant's case is based on, the privileges attached to being a member of a political party.

In response to the foregoing issue, the 2<sup>nd</sup> respondent's counsel re-iterates the claim of the appellant as stated in the affidavit in support of the Amended originating summons, which counsel submits is on pre-primaries issues which are internal affairs of the 1<sup>st</sup> respondent and consequently, the court has no jurisdiction to entertain; that the limited jurisdiction donated to the courts by section 87(9) of the Electoral Act, 2010 (as amended) is not exercisable with respect to matters within the power of a political party; that it was the change introduced in the Electoral Act 2006, that gave the courts jurisdiction in matters of nomination and sponsorship in so far as they relate to substitution; thus the unfettered discretion of the parties to choose which candidate to sponsor was curtailed by the Legislature. Counsel cites the cases in *Ugwu V. Ararume* (2007) 12 NWLR (Pt. 1048) 367 and *Amaechi V. INEC* (2007) 18 NWLR (Pt. 1065) 42.

It is the submission of counsel further that without the appellant raising any complaint against the actual conduct of the primaries, he cannot come under section 8(9) of the Electoral Act which vests jurisdiction in the court; that the case of the appellant is clearly outside the purview of section 87(9) of the Act.

On the totality, the counsel restates affirmatively by

approving the lower court wherein it held, that the case of the appellant is not justifiable as it did not come, within the purview/ of section 87(9) of the Electoral Act, 2010 (as amended).

Submitting on behalf of the 3<sup>rd</sup> respondent, his counsel Chief Olanipekun, SAN called for a close examination of the questions posed for determination as well as the consequential reliefs sought by the appellant in the trial court. The senior counsel poses a question whether it is not within the exclusive confines of a political party to determine who its members are?; that the point being agitated by the appellant has to do with the eligibility of the respondent to contest the primary election as a member of the 1<sup>st</sup> respondent; that the vires to determine who to admit and retain as members lie strictly with the 1<sup>st</sup> respondent, as the political party itself. Learned counsel made copious reference to the affidavit deposed to on behalf of the 3<sup>rd</sup> respondent's party at pages 601 and 602 of the record and endorses that the testimony had knocked the bottom out of the appellant's case, by reason of the fact that Mr. Godwin Ettah who gave the evidence is the Secretary of the Cross River State Chapter of the party, who has direct access to all official records relating to the status of ail members of the party. In dismissing the alarm raised by the appellant, the senior counsel replied same as "hullabaloo and merely creating a storm in a teacup!!"

Counsel submits further that the appellant has not deemed it relevant to appeal the findings by the lower court at page 1341 of the record wherein the court was satisfied that the word "cleared" as endorsed on the 3<sup>rd</sup> respondent's membership card was sufficient evidence of payment; that on this score also, the appellant's case must fail. More so when regard is had to paragraph 48(F) of the 1<sup>st</sup> respondent's guidelines which come after Articles 14(b) and 15(2); That the court below acted on sound legal principles when it relied on the celebrated case of Musa V. PRP (1981) 2 NCLR 763 at 769 which also situates such determination as to membership status within the exclusive confines of internal affairs of a political party which is evidently non justiciable. The counsel, while urging us to endorse the decision by the lower court at page 1297 of the record

of appeal, proceeded further to make a distinction of the case at hand from the cases of *Uwazurike V. Nwachukwu* (2013) 3 NWLR (Pt. 1342) 503 and *Peretu V. Sanaa* (2013) 5 NWLR (Pt.1348) 415.

B It is the argument of senior counsel also that the appellant did not appreciate the undeniable fact that the pre-election issue countenanced in *Swede's* case relates to the issue of substitution, and not status of membership of a party. The counsel cites numerous authorities in support of the proposition that a  
C decision is an authority for what it actually decides and that every decision must be cited in the light of the facts and circumstances under which they were decided. See *Adegoke Motors V. Adesanya* (19R9) 3 NWLR (Pt. 312) 250 at 274 - 275, *Okafor V. Nnaife* (1981) 4 NWLR (Pt. 64) 129 at 137 and *Clement V. Iwuanyanwu*  
D (1989) 3 NWLR (Pt. 107) 39 and 54; that there is no evidence on record to show that the appellant's claim is founded on non-compliance with the provisions of the 1<sup>st</sup> respondent's Guidelines and the constitution. The learned counsel argues therefore that the  
E appellant's submission at paragraph 7.27 of his brief, wherein he alleges that his claim is connected to the 1<sup>st</sup> respondent's primary election is incorrect.

The learned senior counsel considered the provision of section 87(9) and (10) of the Electoral Act and submits that the  
F references were erroneously exchanged one for the other. In reiterating the appellant's complaint, same, counsel argues, has nothing to do with contesting the selection or nomination of the  
G respondent under any of the grounds specified under section 87 of the Act; that the appellant is not also contesting the fact that primary election was not held before the respondent emerged as the party's flag bearer for Gubernatorial Election, or that the said primary election *was* conducted in an arbitrary manner in the sense that  
H some delegates were disenfranchised, or that the respondent did not score the highest votes' cast in the primary elections; that section 87(10) which the appellant erroneously cites as section 87(9) of the Act being the penultimate subsection under section 87 is meant to pave way for any aggrieved party member to seek remedy in

court whenever, any of the conditions stated in the preceding sub-sections are breached.

Counsel re-iterates the stance of this court on the supremacy of a political party over its internal affairs as it was emphasized in the case of *Pereto V. Gariga* (Supra). That the appellant's case is founded on membership of a political party, and not on the method or processes adopted in organizing and conducting the 1<sup>st</sup> respondent's gubernatorial primary election. Counsel urges this court to resolve the issue in favour of the 3<sup>rd</sup> respondent and dismiss this appeal.

In response to the 2<sup>nd</sup> respondent's brief of argument, the appellant filed a reply in the unlikely event that they were overruled on their preliminary objection raised. On the totality of the 2<sup>nd</sup> respondent's brief, the appellant's counsel submits that it has failed to credibly controvert the case of his client; that this court is urged to discountenance the 2<sup>nd</sup> respondent's brief and allow the appeal as a consequence. Also in further submission, counsel re-iterates emphatically that the appellant's complaint falls under section 8(9) of the Electoral Act 2010 (as amended) and is therefore justiciable; that this court had held in plethora of authorities that, where a political party violates its constitution and guidelines, the court will have jurisdiction. The following cases were cited in support as relevant. *Ukachukwu V. PDP*, *Gwede INEC supra* also *Ardo V. Nyako* (2014) 10 NWLR (Pt. 1416) 591 and a host of other authorities.

On the allegation of the offences of perjury and forgery imputed to the 3<sup>rd</sup> respondent, the appellant's counsel relates copiously to their claim and case before the two lower courts and denies ever making such allegations against the 3<sup>rd</sup> respondent; that the basis of the appellant's claim is predicated on article 14(b) and 15(2) of the guidelines; that since the 3<sup>rd</sup> respondent had failed to explain the inconsistency in his age declarations, it ought to be held that the appellant has proved the issue beyond reasonable doubt. See *Ikoku V. Oli* (1962) 1 SC NLR 307 and *HMS Ltd V. 1<sup>st</sup> Bank* (1991) 1 NWLR (Pt. 167) 290; that the false information given by the 3<sup>rd</sup> respondent, (wherein he gave consistently three or

more conflicting dates of birth), are deliberate and clear violation of the 1<sup>st</sup> respondent's constitution and guidelines, thus the reason why the 3<sup>rd</sup> respondent should be disqualified from being the 1<sup>st</sup> respondent's candidate.

B Counsel submits finally and urges this court to hold that the case of the appellant is not predicated on forgery or any act of criminality nor is it an internal/domestic affair of a political party but is predicated on the breach of the party guidelines in the selection of its candidate.

C In response also to the 3<sup>rd</sup> respondent's brief of argument, the appellant's reply was filed and incorporated therein an answer to the jurisdictional issue raised for the first time before this court and which aspect had been dealt with earlier in the course of this judgment. Also contained in the same reply brief is the appellant's  
D response to the arguments advanced by the 3<sup>rd</sup> respondent on the two Issues raised in his brief of argument.

The appellant's counsel urges this court to discountenance the submissions on behalf of the 3<sup>rd</sup> respondent which had failed  
E to address or controvert the appellant's position. Counsel re-iterates further that the appellant's case was clearly founded on non-compliance with the PDP constitution and (Governorship Electoral Guidelines of the party and its consequence as provided by Article 15(2) of the Guidelines and that the said same was raised as an  
F issue at the lower court.

On the submission by 3<sup>rd</sup> respondent that the appellant failed to challenge the findings of the lower court on the false age declaration, wherein the 3<sup>rd</sup> respondent apportioned the wrong as  
G "an error made by his aids", counsel submits that the issue was clearly appealed against by the appellant; that the failure of the lower court to determine and make specific finding on same constitutes a valid ground of appeal upon which the appellant has now complained in this court vide grounds 7 and 9 of his notice of  
H Appeal; that the unequivocal admission of the 3<sup>rd</sup> respondent as shown at paragraph 24 of his amended counter affidavit amounts to an acknowledgement of the false age declarations which is binding on him as the maker and does not require any further

proof by the appellant.

On further submission by the 3<sup>rd</sup> respondent that the appellant did not explore internal mechanism, it was argued that the convention was not tenable in view of the undisputed fact that the appellant clearly exhausted the internal remedy provided for under the PDP constitution; that the issue borders on constitutional interpretation which is outside the powers of the 1<sup>st</sup> respondent, who cannot constitute itself into a court of competent jurisdiction. The learned counsel again cites the case of *Ukachukwu V. PDP* (supra); that the foregoing issue is entirely new and being raised for the first time; that the 3<sup>rd</sup> respondent neither counter-claimed at the trial court nor did he in any manner raise the issue at the lower court; further still, that the said respondent did not cross appeal in this court nor did he seek the leave of the court to raise the fresh issue for the first time. It is the contention of counsel again that the issue did not also arise from the pleadings or grounds of appeal. Counsel, in support of his arguments cites: the view held by Onu, JSC in the case of *Nteogwile V. Otuo* (2001) 16 NWLR (Pt. 738) 58 at 83; that the basis of the appellant's case is not firmly rooted in criminality, which requires proof beyond reasonable doubt as erroneously canvassed. To the contrary, counsel submits, his claim is predicated on Articles 14(b) a 15(2) of the PDP Guidelines.

Assuming without conceding that crime is the main plank of the allegation, counsel maintains, that proof beyond reasonable doubt does not mean proof beyond all shadows of doubt; that while the appellant asserts the negative, the 3<sup>rd</sup> respondent asserts the positive. In the circumstance, the burden of proof, counsel argues, is not static but had shifted to the 3<sup>rd</sup> respondent to disprove and which he has failed to do; that the facts are not controverted by the 3<sup>rd</sup> respondent himself; that where the 3<sup>rd</sup> respondent did not contradict the issue of production of the inconsistent age declarations, it ought to be held that the appellant has proved the allegation beyond reasonable doubt; that the appellant led credible evidence to proof his case on balance of probability since the case is not founded on criminality.

In further submission to discredit the 3<sup>rd</sup> respondent's brief,

the senior counsel for the appellant reveals that the evidence of payment of membership subscription dues by the 3<sup>rd</sup> respondent was produced during the pendency of this litigation and the fact counsel submits was wrongly ignored by the lower court; that had the 1<sup>st</sup> respondent complied with its constitutional provisions as encapsulated in section 8(10) & (15) of the PDF constitution, it would have excluded the 3<sup>rd</sup> respondent from participating in the primaries as the 3<sup>rd</sup> respondent was not qualified to participate therein.

On the legal effect of reliance made on Article 48(f) of the PDP Electoral Guidelines, the appellant's counsel submits that the support sought from the case of Musa V. PRP supra by the respondent's counsel, is totally out of place and very unhelpful. This counsel submits is because, while the said respondent relied on some aspect of the decision of the court in that case, he deliberately left out the more authoritative portion thereof, which does not support his case; that in law, statutes stand taller in hierarchy to rules and regulations of association. Consequently, counsel re-iterates that by the provision of section 87(9) of the Electoral Act (as amended), the argument predicated on paragraph 48(f) of the PDP Guidelines falls flat and serves no useful purpose.

The appellant's counsel on the totality urges this court to discountenance the issue of jurisdiction raised by the 3<sup>rd</sup> respondent as well as submissions in his brief of argument for being unmeritorious and in its stead allow the appeal of the appellant.

#### RESOLUTION OF THE ISSUE

The appellant's issue 3 is sequel to issues 1 and 2 of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' respectively and centered squarely on the question of jurisdiction. In other words, whether the lower court was right when it held that the case of the appellant is non-justiciable.

***It is the concurrent findings by the two lower courts that the court lacked jurisdiction to determine the case of the appellant as constituted.***

***As rightly introduced by the appellant's counsel, it is well settled that it is the claim of the plaintiff that***

**determines the jurisdiction of the court.** See Adcyemi V. Opeyemi (1976) 9 - 10 SC 31, Tukur V. Gongola State (1989) 4 NWLR (Pt. 147) 517, and Uwazurike V. Nwachukwu (2013) 3 NWLR (Pt. 1342) 503.

***In determining whether or not it has jurisdiction, a court is to restrict itself to the case put forward by the plaintiff and not the construction given to the plaintiff's case by a Defendant. In other words, the fundamental principle of law is well settled that the jurisdiction of a court to entertain a cause or matter is dependent on the plaintiff's claim as stated in his processes; the claim therefore plays the central focus; that is to say, the writ of summons or any originating process, as in this case the relevant part of the appellant's reliefs as contained in his amended originating summons dated and filed on 2<sup>nd</sup> day of March, 2015 at page 337 of volume 1 of the record of Appeal.***

For the purpose of appreciating the nature of the plaintiff/appellant's claim, I will seek to recapitulate by reference to the four questions posed as well as the various reliefs sought from the court per the amended originating summons which are all reproduced earlier in the course of this judgment, (it is needless to repeat same).

Suffice it to say that on a careful perusal of the Amended originating summons, with particular reference to questions 2 and 3 and taken along with relief (b), the community reading of same put together and viewed in the light of paragraphs 8 and 10 of the affidavit in support of the claim will give a clearer picture that the kernel complaint of the appellant is centred on the question of his membership or status as a member of the 1<sup>st</sup> respondent. The confirmation of this conclusion is not farfetched when regard is had to paragraphs 8 and 10 of the affidavit in support which reproduction state as follows:-

*"8. That I protested to the 1<sup>st</sup> Defendant in writing challenging the validity of the votes cast for the 3<sup>rd</sup> Defendant on the basis of the status of his membership following a fresh information I saw on a visit to the Party Secretariat. The petition*

*was delivered by me and my copy stamped as acknowledgment of the receipt. The acknowledgment copy is annexed hereto as Exhibit JA8.*

*10. That from the said Membership Card of the 3<sup>rd</sup> Defendant, he failed to pay subscription by indicating what or how much he paid from the year 2009 to 2014.”*

It is obvious to restate that the interpretation of the totality of the foregoing restatements taken together, is conclusive that the appellant’s case complains of the failure by the 3<sup>rd</sup> respondent to pay his membership dues and consequently he had therefore ceased to be a member of the 1<sup>st</sup> respondent. In other words that he (the 3<sup>rd</sup> respondent) is disqualified from contesting the election for the nomination in the gubernatorial primaries of the party. The appellant, relied copiously on section 8(10) and (15) of the 1<sup>st</sup> respondent’s constitution hereunder to sustain his submission.

*“8(10) members shall pay their monthly subscription fees at the ward level which must be reflected on their membership cards and where a member consistently fails to pay his subscription fees for six months, such membership will be deemed to have lapsed. (15) Without prejudice to the provision of section 8(10) of this constitution, any member who fails to renew his membership by payment of the annual subscription fees within 6 months after due date shall cease to enjoy the rights and privileges of membership and it is in defect for upward of 12 months shall cease to be a member of the party.”*

Intriguingly with reference to paragraph 7.25 at page 33 of the appellant’s brief of argument the averment states as follows:-

*“...The mere membership of the 3<sup>rd</sup> respondent in the 1<sup>st</sup> respondent is not the bone of contention in this instant appeal. Rather the appellant’s case is that the 3<sup>rd</sup> respondent’s privilege of membership was in abeyance as a result of failure to pay his membership dues. As a result the 1<sup>st</sup> respondent ought not to have cleared the 3<sup>rd</sup> respondent to participate in the parties primaries;”*

**Following from the foregoing deduction, it is the appellant’s contention that the 3<sup>rd</sup> respondent is not a member of the 1<sup>st</sup> respondent who is entitled to participate**

**in the party's gubernatorial primary election held on December 8, 2014. In another breath also at page 33 of the appellant's brief, by paragraph 2.27, the appellant maintains that his complaint is in respect to the primaries and not membership simpliciter. The law is well settled that the appellant cannot make out a case different from that which he set out to do at the trial court which must be borne out by the pleadings on the record. Also, submission of counsel can neither take the place of pleadings nor evidence, this is trite.**

**Contrary to the contention by the appellant's counsel therefore, the cumulative deductions of the appellant's claim, the reliefs sought and considering also the various related legislations taken together with the relevant provisions of the 1<sup>st</sup> respondent's constitution as well as the constitution of the Federal Republic of Nigeria, 1999, the revelation is clear that the central focus of the appellant's case is the membership or status of the appellant as a member of the 1<sup>st</sup> respondent.**

**Put differently, the issue is whether the 3<sup>rd</sup> respondent is a member of the 1<sup>st</sup> respondent for the purpose of nomination for the gubernatorial primaries of the party. It follows straightaway that the argument advanced by the learned counsel for the appellant wherein he states that his case is simply predicated on the assertion that the 1<sup>st</sup> respondent failed to comply with its constitution, cannot hold water.**

Rather and in summary, it is the contention of the appellant that the 3<sup>rd</sup> respondent had ceased to be a member of the 3<sup>rd</sup> respondent.

In further support and confirmation that the appellant's grouse, relates to an issue of membership of a party, paragraph 7.05 at page 27 of the appellant's brief of argument is in point and states as follows:-

*"The thrust of the plaintiff's case has to do with the effect of non-payment of dues by the 3<sup>d</sup> respondent and his right to*

*contest an election under the platform of the PDP having regard to the clear provisions of the constitution and guidelines of the PDP.”*

Also at page 1292 of the record of appeal, the lower court was careful and meticulous in its analyses of the entire case of the appellant and came to the following deduction and said:-

B *“A perusal of the appellant’s claim, the reliefs sought alongside with the affected provisions of the 1<sup>st</sup> respondent’s constitution and the 1999 Constitution shows without any doubt that the kernel of the appellant’s case is the membership or status*  
 C *of the appellant as a member of the 1<sup>st</sup> respondent. The argument of the appellant that his case is simply predicated on the assertion that the 1<sup>st</sup> respondent failed to comply with its constitution cannot avail him because the complaint is necessarily tied to the issue of*  
 D *whether the 3<sup>rd</sup> respondent is a member of the 1<sup>st</sup> respondent for the purposes of nomination for the gubernatorial primaries of the party. I am afraid, no matter how brilliantly couched issue No. 1 is: the crux of the appellant’s case is his contention that the 3<sup>rd</sup> respondent had ceased to be a member of the 1<sup>st</sup> respondent. This*  
 E *is an issue, of membership of a party. Without any doubt whatsoever, the issue of membership of a party is an internal affair of the party. The provisions of paragraphs 48(f) of the Guidelines of the 1<sup>st</sup> respondent bring this point to light. It provides:-*

F *“Notwithstanding the provisions of the Guidelines and any other rules or regulations laid down by the party, the decision of the National Executive Committee as recommended by the National Working Committee shall be final and binding on all aspirants, officials and organs of the party with respect to eligibility*  
 G *or otherwise of aspirant.”*

For all intents and purposes, I cannot agree more but to endorse the conclusion arrived at by the lower court. In other words, the complaint in this issue relates to membership of a party which is an internal affair of the party exclusively and subject to paragraph  
 H 48(f) of the Guidelines of the 1<sup>st</sup> respondent.

At this juncture, the pertinent question to pose is as rightly proposed by the learned counsel Chief Wole Olanipekun, SAN representing the 3<sup>rd</sup> respondent. The question is:-

Who between the appellant and 1<sup>st</sup> respondent has the competence to determine any issue connected to the status of its members? In other words, who, between the appellant and the 1<sup>st</sup> respondent has the vires or power to determine individuals who are members of the 1<sup>st</sup> respondent?

The answer to the question may not be unconnected with, but could be sought from the affidavit evidence in support of the originating process wherein the 1<sup>st</sup> respondent discharged this responsibility through Mr. Godwin Ettah, the Secretary of the Cross River State Chapter of the party; paragraphs 4, 5 and 6 of his further counter affidavit deposed to on tie 2<sup>nd</sup> March, 2015 are relevant at page 601 vol.2 of the record:

*“4. I am aware that the 3<sup>rd</sup> defendant is a bona-fide member of our party, who has paid all his dues and levies as and when due.*

*5. All the records in our secretariat show that the 3<sup>rd</sup> defendant is not indebted to our party at any level, starting from his ward to the state chapter.”*

Also at page 602 of the said volume, the Deponent Mr. Godwin Ettah proceeded to advance cogent reasons showing why the 3<sup>rd</sup> respondent cleared the 3<sup>rd</sup> respondent to contest the gubernatorial primary election of 8<sup>th</sup> December, 2014. The deposition is at paragraph 6 of the further counter affidavit and states :-

*“6 If the 3<sup>rd</sup> defendant had been indebted to the party, he would not have been cleared by the party’s screening committee to contest the gubernatorial primary election which was held on 8<sup>th</sup> day of December, 2014.”*

The deponent of the facts on the further counter affidavit supra, by his position as the Secretary of the state chapter of the party, has direct access to all official records relating to the status of all members of the party. It is no wonder therefore that he is in the best position to determine or identify members of the party who are owing and those who are not.

A further confirmation is a reference drawn to the record of appeal at page 1341 wherein the lower court held thus and

said’:-

“In the context of the provisions of section 8(10) of the PDP’s constitution, the implication is that where the word “cleared” is endorsed on the membership card, it means that the 3<sup>rd</sup> respondent is not indebted to the 1<sup>st</sup> respondent. In this case therefore, any certification or indication on the membership card, Exhibit JA9, that fees have been paid is sufficient compliance of payment of subscription fees.”

It is intriguing to say that the appellant has not deemed it relevant to appeal against this finding of the lower court, that the evidence of payment was reflected on the 3<sup>rd</sup> respondent’s membership card and is sufficient compliance with section 8(10) of the PDP constitution.

The next provision heavily relied upon by the court below is paragraph 48(f) of the 1<sup>st</sup> respondent’s Guidelines which same was reproduced earlier in the course of this judgment. The paragraph gives the 1<sup>st</sup> respondent enormous and absolute power to determine the eligibility or otherwise of an aspirant including the appellant himself, to participate in a primary election. The paragraph is emphatic that the decision by the National Executive Committee shall be final and binding on all aspirants, officials and organs of the party. The operative phrase used in the paragraph, that is, “Notwithstanding the provisions of guidelines and any other rules or regulations laid down by the party”, is meant to show that once this particular provision is invoked, all other rules, regulations made by the appellant will have to give way. It also presupposes that membership of the party is completely subject to paragraph 48(f) of the guidelines and none other. The use of the word “shall” is evident.

As rightly envisaged by the senior counsel Chief Olanipekun, SAN, by ‘the very enactment of paragraph 48(f) of the Guidelines under reference, same is deemed to come later and after Article 14(b) and 15(2) of the party guidelines. This as rightly submitted by counsel is in view of the fact that with the paragraph having commenced with the Phrase “Notwithstanding the provisions of the Guidelines and any other rules or regulations laid

down by the party”, the interpretation accepts the taking into cognizance the former provisions of Articles 14(b) and 15(2) thereof. In other words, the operative intention of paragraph 48(f) is to promote automatically the supremacy of the party in the determination of the eligibility of any aspirant including the appellant for an election. No member can therefore complain against the decision of the National Executive Committee. See the case of Musa V. PRP (1981) 2 NCLR 763 at 769 where Adefarasin, CJ held and said:-

*“The court would not interfere, in a case like this one where members of a voluntary association have come to a decision within the provisions of their constitution even if the decision is unreasonable... As a voluntary association, it has the right to lay down its own decisions even when they are unreasonable. They should be obeyed or the member in disobedience is entitled to quit. The party is in its own right supreme over its own affairs. This must be said loudly and clearly, unless it has violated its own constitutional provisions the court would not interfere. The court will not substitute its own will for that of a political party or any other voluntary association. Those who join clubs, or association or political parties, must be made aware of the perils of membership. -The majority will prevail whether it is reasonable or unreasonable.” (Emphasis mine).*

Plethora of cases has shown where this Court did quote with approval the decision in Musa V. PRP supra, and held times without party concerned. **Therefore the courts do not have jurisdiction to determine who the members of a political party are.** See Onuoha V. Okafor (1984) 2 SC NLR 244; Lado V. C. P. C. (2012) 18 NWLR (Ft. 1279) 689; PDP V. Sylva (2012) 3 NWLR (Pt. 1316) 85 and Anyanwu V. Ogunnewe (2014) 8 NWLR (Pt. 1410) 437. **The authorities are well pronounced and taken that an action based on the determination of membership of a party is not justiciable. Paragraph 48(f) has therefore carved out the status of membership which comes within the exclusive confines of internal affairs of a political party which are evidently non-justiciable.**

**Consequently, the two lower courts were on very firm ground, when they anchored their stand and acted on the established legal principles** enunciated in *Musa V. PRP* (supra).

The appellant also relied heavily upon the case of *Ukachukwu V. PDP* “(supra). I quickly wish to say that the circumstances of both cases are different. The distinguishing feature from that case under reference, is that, it did not deal with the issue of membership, although the infraction of Article 14(a) of the Guidelines of PDP was the subject of interpretation vis-à-vis the provision of S. 87(9) of the Electoral Act; the reproduction of Article 14(a) of PDP guidelines provides thus:-

*“An aspirant to the gubernatorial primary election shall not be qualified to be nominated to contest the primary except he produces his tax clearance.*

The provision of Article 14(a) expressly state that the candidate must submit his tax receipts for the purpose of clearance, whereas, in the case at hand, there *was* no corresponding express requirement of the evidence that needed to satisfy the party that an aspirant was in good financial standing with the party. It is easy however for the party to tell from its own records, the state of a member’s financial standing. In other words, the state of the 3<sup>rd</sup> respondent. ***It is judicially noticed also that tax is paid to the Government, not to a political party. Performance of such civic duty is evidenced by the production of clearance or tax receipt.***

I seek to add also that even in *Ukachukwu V. PDP* (supra), this court did recognize and restate its stand on non-justifiability of actions founded on membership of a party.

In the circumstance, I hold that the appellant was greatly miss-conceived on his interpretation of *Anyanim V. Ogunmewe* (2014) 8 NWLR (Pt. 1410) 473 at 470 which, as rightly held by the lower court, did not support the appellant’s case now before us.

On the contention whether there *was* cogent evidence before the court to hold that the 3<sup>rd</sup> respondent paid his fees, the counsel for the appellant argues that details of the particulars of

payment were not attached but that the column for payment was marked “cleared” or merely ticked. On a careful perusal of section 8(10) of PDP’s constitution, it is clear and unambiguous that the mode of reflecting payment is not indicated in the provision which states that “members shall pay their monthly subscription fees at the ward level, which must be reflected on their membership cards. B

***The law is well settled on the cardinal principle of interpretation of statutes, laws and regulations wherein words must be given their ordinary, natural and grammatical meaning. No extraneous matters need be introduced.*** See Onyema V. Oputa (1987) 6 SC 362 at 371 and Egarebua V. Eribo (2010) 9 NWLR (Pt. 1199) 411. ***In the absence of any requirement in the said provision that payment must be attached as claimed by the appellant, the court must give effect to the ordinary meaning.*** See D  
Adetayo V. Ademola (2010) 15 NWLR (Pt. 1215) 169.

***As rightly held by the lower court, in the context of the provision of section 8(10) of the PDP’s constitution, the implication is that where the word “cleared” is endorsed on the membership card, it signifies that the 3<sup>rd</sup> respondent is not indebted to the 1<sup>st</sup> respondent and thus the satisfaction with the compliance of the phrase:- “which must be reflected on their membership cards,” as mandated by section 8(10) of the 1<sup>st</sup> respondent’s constitution. In other words, the ticking of the columns in the membership card is an indication that the dues have been paid, more so with the use of the word “cleared”.*** E  
F  
G

***With reference to the case under review, any certification or indication on the membership card, Exhibit JA9 that fees have been paid, is, in my view, sufficient compliance of payment of subscription fees. I have made reference extensively to the depositions in the counter affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> respondents earlier in the course of this judgment which state in clear terms that the 3<sup>rd</sup> respondent had fully discharged all his*** H

**indebtedness to the 1<sup>st</sup> respondent. Therefore, the submission by the appellant's counsel where he alleges that Exhibit A4", the receipt for 2014 subscription was paid only after the case was filed, is without any foundation. This I hold, because, while the receipt was dated 27/3/14, the suit was filed on 2<sup>nd</sup> March, 2015.**

In my view, the lower court took proper cognizance of this fact and rightly-held thus at page 1297 of the record wherein it held:-

C *"In the circumstances of the provisions of Articles 14(a) the party cannot be in a position to determine the fulfillment of the requirement of tax -payment except the evidence of payment is attached. As rightly analyzed by Mr. Erokoro (SAN) in the 3<sup>d</sup> appellant's brief...*

D *...the Guidelines of the party expressly provided that the candidate must submit clearance, whereas in this case there was no stipulation of the evidence that was needed to satisfy the party that an aspirant was in good financial standing with the party. The*  
 E *party could of course tell from its own records whether a member was in good financial standing or not. In the instant case, it was easy for the party to tell if the 3<sup>d</sup> respondent, who was at the material time a serving Senator, elected on the platform of the said party, had paid his party dues. Tax on the other hand is paid to*  
 F *Government, not to the political party. Therefore, the party could not tell if an aspirant had performed his civic duty of paying tax, unless he produced a clearance or tax receipts.*

G *It is within exclusive prerogative of a political party)' to determine- who its members are because that rests within the internal mechanism of the party. It is not the business of the courts to dabble into such domestic affairs."*

I agree with the lower court completely and endorse the view held comprehensively.

H The appellant related copiously also to the case of *Uwazurike V. Ukachukwu* (2012) 3 NWLR (Pt. 1342) 503 where the courts have had cause to interfere with the affairs of political parties. That case is distinguishable remarkably from the case under review

and now before us. This I say because, in resolving the appeal in that case, this court considered the provision of section 87(9) of the electoral Act against the background facts of the appeal which touched squarely on the wrongful substitution of a candidate and not the subject of nomination of a candidate in a primary election. To the contrary this case was not founded on membership of a political party.

***I seek to highlight for purpose of emphasis that the underlying principle behind the enactment of section 87(9) of the Electoral Act is to curtail any arbitrary exercise of power by a political party in the selection of their candidates for election; hence the imposition to ensure compliance with the provisions of the Electoral Act and the guidelines. However, the supervisory function vested in the court does not extend beyond borders so as to interfere into matters that are within the exclusive preserve of the political parties such as the issue of membership nomination now before us.***

The background facts of Uwazurike's case is connected to the procedure and manner a political party followed in nominating its candidate for election.

A further distinction can also be drawn when regard is had to the case of Peretu V, Sariga (2013) 5 NWLR (Pt. 1348) 415 which is not on all fours with the facts and circumstance of this case because it is connected to the issue of unlawful substitution of candidates who participated and won a primary election, whereas the instant appeal has everything to do with a candidate who participated and lost in a primary election, and who subsequently turned around to initiate an action founded on the status of membership of a political party, which is not justiciable. The appellant, in my view is seeking to play smart in that, what he was unable to obtain through the main entrance, is what he has now set out to achieve through the back door. This is a hard nut to crack.

A further authority cited also by the appellant is the case of Gwede V. Independent National Electoral Commission (INEC)

(2014)18 NWL.R (Pt. 1438) 56. I concede to the submission by the senior counsel, Chief Olanipekun (SAN) that the said case, under reference has nothing to do with the status of membership of any political party. On the contrary, it is inextricably connected to the issuance of a certificate of return to an aspirant who had earlier withdrawn from contesting an election, in preference to the duly elected candidate who participated in the election. This court therefore, rightly identified the issue in controversy as one relating to unlawful substitution of a candidate in respect of which the court can assume jurisdiction.

For all intents and purposes, it is apparent that the pre-election issue countenanced in Gwede's case, relates to issue of substitution, and not the status of membership of a party. It is for this reason that the court assumed jurisdiction in Peretu's and Gwede's cases by invoking the provision of section 87 of the Act.

***For purpose of clarification, I seek to restate that section 87 of the Electoral Act can only be invoked properly where an aspirant challenges his political party for failure to comply with any of the conditions stipulated under the said section of the Act. It is true to say also that the 'Section does not apply, where a party's claim is founded on the issue of eligibility of a member to contest election on the ground of membership status, arising from non-payment of membership dues, which is clearly outside the range of the section. I wish to add also that the alleged non-payment of membership dues is not one of the conditions for nomination of candidates for election under section 87 of the Act.***

As a follow up to the foregoing contention, the court below correctly arrived at the conclusion made at page 1333, volume 3 of the record when it said:-

*"I am afraid, no matter how brilliantly couched issue No.1 is, the crux of the appellant's case in his contention is that the 3<sup>rd</sup> respondent has ceased to be a member of the 1<sup>st</sup> Respondent. This is an issue of membership of a party. Without any doubt whatsoever, the issue of membership of a party is an internal affair*

of the party."

At paragraph 8.03 of the appellant's brief of argument this was what he said:-

*"It is submitted that the trial court had the requisite jurisdiction to hear and determine the appellant's case as same is not founded on the issue of membership of a political party, which would have made same non-justiciable. Appellant's case is based on privileges attached to being a member of a political party and not to being a member."*

I have said times without number that the appellant's case is founded on membership of a political party and not on the method or processes adopted in organizing and conducting the 1<sup>st</sup> respondent's gubernatorial primary election. The submission by the counsel for the appellant supra is, but a complete misconception of his claim per the amended writ of summons and in particular the effect of paragraph 48(f) of the Guidelines vis-à-vis the application of section 87(9) of the Electoral /Act.

In summary, the lower court was right when it held that issues that pertain to membership of a political party are internal affairs of a political party over which the court lacks jurisdiction and also that the claim of the appellant in respect of payment of membership dues could not be substantiated. The said issue is hereby resolved against the appellant and in favour of the respondent.

#### APPELLANT'S ISSUES 1 AND 2 ARE TAKEN TOGETHER

The issues have been reproduced earlier in this judgment and for purpose of substantiating issue *one*, the appellant's counsel was ardent in his argument that contrary to the provisions of Article 14(b) and 15(2) of the 1<sup>st</sup> Respondent's guidelines which are binding, the 3<sup>rd</sup> respondent presented false age declarations to the 1<sup>st</sup> respondent where he variously claimed that he was born 2<sup>nd</sup> March 1968, 2<sup>nd</sup> March 1969 and also his biodata's date of birth in the University as 2<sup>nd</sup> March 1966; that on a careful perusal of the counter-affidavit by the 3<sup>rd</sup> respondent, same did not deny the allegation made by the appellant. The appellant's counsel denies profusely, the explanation made by the 3<sup>rd</sup> respondent, that the

difference in age was an error arising from the urgency in completing the forms, which were filed by aides.

It is a further submission of counsel also that the issues have to do with the interpretation of the provisions of Articles 14(b) and 15(2) of the PDP party guidelines and the importation of criminal connotation vis-à-vis the age declaration made by the 3<sup>rd</sup> respondent to the Peoples Democratic Party. As a result therefore, that the lower court erred in its judgment held on pages 1349 and 1350 volume 3 of the record of appeal because it had no justification in invoking the provisions of section 31(2), (5) and (6) of the Electoral Act 2010 (as amended), sections 177(b) and 182(1) of 1999 constitution for purpose of interpreting the clear provisions of articles 14(b) and 15(2) of the PDP Electoral guidelines, 2014; that the law makers deliberately used the word candidate meaning that the law is referring to a person who has transformed from the status of an “aspirant” to that of a “candidate” of a political party; conversely that articles 14(b) and 15(2) of the guidelines also section 87(9) of the Electoral Act, 2010 (as amended) used the word “Aspirant” to clearly refer to a different category of persons; that the said section 87(9) of the Electoral Act read together with Articles 14(b) a 15(2) of the Guidelines, confer distinct and mutually exclusive rights, obligations and reliefs which are different from section 31 of the Electoral Act, 2010 read together with sections 177 and 182 of the 1999 Constitution of Nigeria. Counsel submits further that the sections cannot be read together or used to interpret each other as was done by the lower court; that the lumping together of sections 31 and 87 of the Act by the lower court had occasioned a great miscarriage of justice against the appellant. Counsel cites the case of *Udengwu V. Uzuegbu* (2003) 13 NWLR (Pt. 836) 136, 152 A-D PER Uwaifo, JSC; that the decision by the lower court wherein it held that the provision of Articles 13, 14(b) and 15(2) of the Guidelines are not intended to disqualify an aspirant who runs of the provisions is clearly and obviously perverse and should be set aside. Again, learned counsel cites the cases of *James V. INEC* (2015) 12 NWLR (Pt. 1474) 538 at 602 and *Adejugbe & Anor V. Ogunja* (2004) 6 NWLR (Pt.

868) 40 at 70; that the import of Article 15(2) is not restricted only to false age declaration but also to any false information and declaration; that in the light of the three different ages claimed by the 3<sup>rd</sup> respondent before the lower court, it was incumbent on the court below to apply mandatory provisions of the guidelines and not seek refuge in the Constitution or Electoral Act in the name of doing justice. B

In respect of issue two, the appellant's counsel was vigorous in his submission that the lower court was in gross error when it held thus: *"In my view, the fact that the date 2<sup>nd</sup> March is constant in the alleged years of 1968 and 1969 gives credence to the explanation of error made by his aide."* The pronouncement, counsel argued was not supported by evidence before the court. C

The case of the appellant as presented by his counsel alleges that the 3<sup>rd</sup> respondent presented false age declaration and gave false information in his nomination form to the Peoples Democratic Party. The 3<sup>rd</sup> respondent in his defence however contends that the date was given in error committed by aide and that he was born on 2<sup>nd</sup> March, 1968. Appellant's counsel submits sternly that when an alleged error becomes perennial, it can no longer be said to be an error; that the 3<sup>rd</sup> respondent having accepted affirmatively that his date of birth was 2<sup>nd</sup> March, 1968 and not 1966, the evidential burden of proof shifts unto him to proof that he did not give an age declaration of 2<sup>nd</sup> March, 1966 to the University of Ibadan as a student of that school; that in the circumstance, section 148 (d) of the Evidence Act on presumption of fact should apply. The learned counsel cites the case of Okunzua V. Amosu & Anor (1992) 6 NWIR (Pt. 248) 417 at 435 per Kawu, JSC in support of his submission. D E F G

The appellant's counsel laboured frantically and submitted pointedly that the mere-refusal by the 3<sup>rd</sup> respondent to alter the date and month of his birth did not exonerate him from giving false age declaration or information to the PDF; that the appellant has, by credible evidence shown that the 3<sup>rd</sup> respondent had at different times represented that he was born in 1966, 1968 and 1969 even though on the same date and month; that the totality of H

the pleadings by the appellant reveal that his case is predicated on the PDP Electoral Guidelines and not on any perjury, forgery or section 31 of the Electoral Act.

B Counsel argues further that the appellant did not need to prove crime to establish that the 3<sup>rd</sup> respondent presented false age declaration or gave false information to the PDP as the allegation of crime is not directly in issue. Reference was made to the case of Awomolo V, Ifabiyi (2002) 4 NWLR (Pt. 757) 356 at 380 - 381 per Iguh, JSC; that assuming without conceding that crime is the main C plank of the allegation, counsel submits that proof beyond reasonable doubt does not mean proof beyond all shadows of doubt; that where the 3<sup>rd</sup> respondent did not contradict production of inconsistent age declarations, it ought to be held that the appellant has proved the issue beyond reasonable doubt, Again, counsel D cites the cases of Ikoku V. Oli (1962) 1 SCNLR 307 and HMS Ltd V. 1<sup>st</sup> Bank (1991) 1 NWLR (Ft. 167) 290; that the appellant's case was not predicated on section 31 of the Electoral Act 2010 (as amended) and as wrongly found and held by the lower court.

E In strong terms, the said counsel urges this court to resolve the issue also in favour of the appellant and set aside the perverse findings of the lower court and hold that the 3<sup>rd</sup> respondent presented false information and declaration to the 1<sup>st</sup> respondent and that proof should be on the balance of probability and not F beyond reasonable doubt as wrongly contemplated by the lower court.

In response to the appellant's submission, the 2<sup>nd</sup> G respondent's counsel reiterates, as immaterial and, contrary to the contention of the appellant, that the 3<sup>rd</sup> respondent is a professor or a lawyer and error; that this court should take judicial notice of the fact that mistakes do occur out of human or machine errors in the course of preparing documents. Counsel submits squarely that the appellant did not prove penury and or forgery alleged against H the 3<sup>rd</sup> respondent; that he who asserts must prove and reference was made to section 133 of the Evidence Act, 2011. Further reference was made also to section 135(1)(2) of the same Evidence Act since the allegation relates to forgery and perjury and hence its

criminal, in nature; that proof beyond reasonable doubt requires that all the elements or ingredients of the offence or criminal allegation must be proved jointly or together. Counsel cites the cases of Atiku V. State (2010) 9 NWLR (Pt. 1199) 241 at 249; Adava V. State (2006) 9 NWLR (Pt. 984) 152 and Ahmed V. State (2001) 18 NWLR (Pt. 746) 622 in support of his argument. B

The learned counsel in further assertion poses a rider that., assuming but without conceding that the appellant establishes cases of false declaration of age and forgery, that the 3<sup>rd</sup> respondent will still be qualified to contest the election because a person who is qualified to contest an election by virtue of the constitution of the Federal Republic of Nigeria, 1999 (as amended) cannot be disqualified by the operation of any other law in force in Nigeria. Counsel cites section 177 of the Constitution of the Federal Republic of Nigeria and contends strongly that the appellant did not allege an infraction by the 3<sup>rd</sup> respondent of any of the subsections listed under section 177 of the said Constitution; that section 31 of the Electoral Act, 2010 if properly appreciated, is an enabling provision and is referable to the ground of qualification clearly stated in the 1999 Constitution (as amended); that it did not by any stretch of imagination create new grounds of disqualification or non-qualification. Counsel in the circumstance applauds the lower court on the conclusion arrived at in this issue and urges that the decision be affirmed as correct and unassailable, in other words that the lower court was right in its interpretation and application of the provisions of articles 14(b) & 15(2) of the Peoples Democratic Party and section 35(5) of the Electoral Act 2010 (as amended) in relation to alleged false age declaration in the nomination forms of the 3<sup>rd</sup> Respondent. D E F G

As a preamble to the 3<sup>rd</sup> respondent's response to the foregoing issues one and two, the learned senior counsel Chief Olanipekun, SAN relates copiously to the writ of summons filed by the appellant and drew the court's attention sharply that there was no mention of Article 15(2) of the Guidelines thereat. As a consequence, that article 15(2) raised in this court has no platform upon which to stand and that the court lacks the jurisdiction to H

consider arguments on Article 15(2) of the, PDP Guidelines.

I quickly wish to add at this juncture that for all intents and purposes, the submissions made on behalf of the 3<sup>rd</sup> respondent are not different but very much in tandem with the argument advanced by the learned counsel for the 2<sup>nd</sup> respondent. Therefore, I hereby deem it expedient to guard against repetition and boredom. Suffice it to say however that in further submission, the 3<sup>rd</sup> respondent's senior counsel reiterates that the appellant did not appeal the lower court's finding wherein it accepted the fact that the mistake, in the entry on the 3<sup>rd</sup> respondent's nomination form relating his age, was that of his aides and not intentional that the appellant did not also appeal the specific findings by the lower court at page 1348 of the record wherein it held:-

*"On the contrary, the depositions in the affidavit of this appellant do not amount to proof beyond reasonable doubt."*

Hence, the confirmation that the appellant could not prove the allegation of falsification of age beyond reasonable doubt vide affidavit evidence; that the evidence by the Deputy Registrar of the University of Ibadan, (Mr. Samuel Abayomi Ajayi), who appeared at the trial court on a subpoena issued by the appellant is tantamount to admission against the interest of the appellant.

The learned counsel for the 3<sup>rd</sup> respondent, in the circumstance urges that the issue be resolved against the appellant while the appeal should be dismissed.

#### RESOLUTION OF ISSUES 1 AND 2 TOGETHER

The crux of the complaint lodged by the appellant rests on the allegation that the lower court completely misapplied the law as it relates to the issue put before it for determination.

On pages- 1349 &, 1350 volume 3 of the Record of appeal, the lower court found and held as follows:-

*"Hence the raison de'tre for provision of Article 14(b) of PDP Guidelines is to disqualify a candidate who falsifies his age in order to meet the constitutional requirement of age. In the instant case, the minimum age for the office of the Governor is 35 years. Obviously, it cannot be contended in the circumstances of this case that the alleged alteration of age has to circumvent the age*

*limit. In the same line, in my view the promulgation of sections 31(2), (5) and (6) of the Electoral Act 2010 (as amended) is also to ensure compliance with the constitutional requirement of candidate sponsored by every political party for any elective office..... A community reading of Article 14(b) of the PDP's Guidelines and section 31(2), (5) and (6) of the Electoral Act in the purview of section 177(b) and 182(1) of Constitution reveals that the intention of the lawmakers is not to disqualify a candidate based on any alleged false declaration in the nomination forms, rather the laws were made to disqualify any candidate who makes false declaration of age in order to gain advantage of the constitutional requirement of age. The case of AD V. Fayose (Supra) is very apt in comparison to the case at hand.....*

*The error made in the year 1969 instead of 1968 in the circumstances of this case cannot amount to a device to brow beat the constitutional requirement of the minimum age of 35 years for the office of a Governor.”*

It is the appellant's contention that the lower court erred as it had no justification to invoke the provisions of section 31(2), (5) and (6) of the Electoral Act, sections 177(b) and 182(1) of 1999 Constitution and also section 135 of the Evidence Act in its bid to interpret the clear provisions of Articles 14(b) and 15(2) of the PDP Electoral guidelines, 2014. Following from the foregoing therefore, the appellant denies vehemently that the issue of criminality was not raised by him in his claim and that the learned justices of the lower court false age declaration constitutes a criminal allegation which must be proved beyond reasonable doubt.

For the purpose of determining whether or not the appellant raised the issue of criminality in his case at the trial court, careful recourse must be had to the affidavit in support of the amended originating summons. For instance the deposition in paragraph 23 of the Affidavit in support of the Amended originating summons at page 341 of the record of appeal is in point and states:-

*“23. That the 3<sup>rd</sup> defendant presented as false age declaration and told a lie to the 2<sup>no</sup> defendant in his form CF001.”*

Article 14(b) of the Electoral Guidelines for primary

Elections 2014 of the 1<sup>st</sup> respondent also provides:-

*“(a) An aspirant to the gubernatorial primary election shall not be qualified to be nominated or to contest the primary election if he/she*

*(b) Presents a false certificate or declaration of age for the purpose of the primary election or for any other purpose.”*

Impregnated in the foregoing section are salient implications which will disqualify an aspirant from nomination or contesting the PDP primary election if he presents a false birth certificate or declaration of age for the purpose of that election. Furthermore, the birth certificate or declaration of age which is false must have been submitted to the PDP. The section also implies the understanding that an aspirant would not be qualified for nomination or contest for the party primary if he has, prior to the election presents to the party (PDP) a false birth certificate or declaration of age for other purposes. ***Essentially therefore and as rightly submitted by the senior counsel for the 3<sup>rd</sup> respondent, in order to present a valid case of disqualification of a candidate on the grounds of falsification of age under Article 14(b) and 15(2) of the PDP guidelines which are meant to comply strictly with the constitution, it must be proven that the falsification was done to circumvent the provision of section 177 of the Constitution, 1999, particularly as it relates to age qualification. The court below therefore duly took cognizance of this trite proposition of law, and rightly in my view proceeded to interpret and give effect to the provision of article 14(b) within the contemplation of section 177 of the constitution as it rightly held at pages 1349 & 1350 of the record which was reproduced earlier in the course of this judgment.***

In other words, the lower court was on a sound standing when it held in the dictum and said:-

*“Obviously, it cannot be contended in the circumstances of this case that the alleged alteration of age was to circumvent the age limit.”*

Section 177(b) of the Constitution 1999 (as amended) puts the minimum age at 35 years for a candidate to qualify for election as Governor. The declaration of age submitted to PDP and admitted by appellant as 3<sup>rd</sup> respondent's age was 2<sup>nd</sup> March, 1968. As at the time of sponsorship for election, 3<sup>rd</sup> respondent was 46 years old i.e. 11 years above the 35 years mandated by section 177(b) of the Constitution. Therefore, even if the alleged date 2<sup>nd</sup> March, 1969 is taken into consideration, the 3<sup>rd</sup> respondent would have been 45 years as at when he was sponsored by his political party; by calculation, he would still be 10 years above the threshold of 35 years mandated by the constitutional provision. B C

Again and as rightly submitted by the 3<sup>rd</sup> respondent's counsel, the appellant was unable to satisfy the two lower courts that there was any intention to circumvent any law, by the 3<sup>rd</sup> respondent to forestall him run for Governorship. In my view, the lower court rightly interpreted Article 14(b) in the circumstance when it held thus at page D

*"Now, I am inclined to agree with the contention of Dr. Ikpeazu (SAN) for the 1<sup>st</sup> respondent that the object of Article 14(b) of the PDP Guidelines is to ensure compliance with the constitutional requirement of age for the office of a candidate who seeks to contest for the office of a Governor."* E

The lower court also rightly related and re-affirmed its earlier similar decision in AD V. Fayose (2005) 10 NWLR (Pt. 932) 151 per Onnoghen, JCA (as he then was). In other words, the lower court at page 1350 of the said record had this to say:- F

*"A community reading of Article 14(b) of PDP's Guidelines and section 31(2), (5) and (6) of the Electoral Act in the purview of sections 177(b) and 182(1) of the Constitution reveals that the intention of the law makers is not to disqualify a candidate based on any alleged false declaration in the nomination forms, rather the laws were made to disqualify any candidate who makes false declaration of age in order to gain advantage of the constitutional requirement for age."*(Emphasis provided). G H

I have said earlier in the course of the judgment that there is no intention on the part of the 3<sup>rd</sup> respondent to circumvent the

age limit for purpose of incurring or gaining any advantage for himself. Put differently, the question is, what difference would it have made to the 3<sup>rd</sup> respondent if he was any age at all so long as he had attained the minimum age of 35 years? To my mind, the appellant aid not, as rightly held by the lower court substantiate his allegation that 3<sup>rd</sup> respondent breached its guidelines to the advantage of the 3<sup>rd</sup> respondent and to the disadvantage of the appellant, in nominating the 3<sup>rd</sup> respondent as its Governorship candidate, in the last election as it did.

The provision of Article 15(2) of the guideline also provides as follows:-

*“An aspirant shall ensure that all the information supplied by him in the relevant nomination form are true and correct to the best of his knowledge and belief. Any aspirant who gives false information or makes false declaration in the nomination form shall be disqualified.”*

**Assuming that the appellant intends to build his case on Article 15(2) of the PDP guidelines supra, again he cannot as rightly submitted by senior counsel for the 3<sup>rd</sup> respondent escape the provision of Article 15(3) of the same guidelines which reproduction states thus;**

***“(3) The decision of the National Executive Committee of the party on all primary election matters shall be final and binding.” - See page 446 of Vol.1 of the record of appeal. (Emphasis provided’).***

**The import of the forgoing provision is very imperative and implies the expectation imposed on the appellant to explore all internal mechanisms provided by the party, including approaching the gubernatorial screening committee and gubernatorial screening appeal panel created under (Article 16(a) & (d) of the guidelines, and also lay a complaint to and await the decision of the National Executive Committee pursuant to article 15(3) of the Guidelines. This procedure is mandatory by the use of the word “shall” and should be adhered to strictly. See Akanbi V. Alao (1989) 3 NWLR (Pt. 108) 118 at 137 and**

Ajadi V. Ajibola (2004) 16 NWLR (Pt. 898) 91 at 170.

It is intriguing to say that at page 384 of vol.1 of the record of appeal, the appellant deposed to an affidavit of compliance and said:-

*"I Joe Odey Agi of Yala Local Government do hereby affirm that I shall abide and comply with all the condition which the party has laid down; in the Nomination form."* (Emphasis provided). B

Furthermore at page 385 of the same volume, the appellant also swore to an affidavit as DECLARATION OF COMPLIANCE before a Notary public and in paragraph 3 deposed and said:- C

*"That I undertake to abide by the Constitution of the Peoples Democratic Party, Its Guidelines, all laws and any rule or regulation made by the party relating to the conduct of primary elections."*

**With due regard to the foregoing references, it beats ones imagination that the same appellant who had bonded himself to the depositions as he did per the Declaration of Compliance (supra) would now turn around only to back pedal therefrom. For instance, there is no evidence before the Court that the appellant did comply with section 16(a) and (d) of the party's guidelines or article 15(3). The appellant cannot choose to rely on Articles 14(b) and 15(2) of the guidelines at the expense or detriment of non compliance to sections 15(3), 16(a) a (d) and worst still section 177 of the Constitution 1999 (as amended) which has laid down the qualification to run for Governorship election. It is expedient to restate emphatically that, no law, legislation, be it regulation, rules or guidelines of whatever nature can come into effect so as to undermine the effect of a constitutional provision.** D  
E  
F  
G

The appellant in his submission restates vehemently that his case at the trial court was not built on criminality. In my view, the response to this will necessitate a careful perusal of the facts deposed to in the affidavit supporting the amended originating summons. Specifically, and of relevance is paragraph 23 of the deposition at page 314 of the record of appeal as well as the particulars in support which state as follows: H

*“23. That the 3<sup>rd</sup> Defendant presented as false age declaration and told a lie to the 2<sup>nd</sup> Defendant in his form CF001.*

PARTICULARS

B *“(a) That in the Nomination Form which is under oath the 3<sup>rd</sup> defendant gave his birth date as 2<sup>nd</sup> March, 1969 but in the declaration of age certificate he gave his birth date as 2<sup>nd</sup> March, 1968 in an Affidavit sworn to in the year 2007. See Exhibit JA1.*

*(b) That in the screening form the 3<sup>rd</sup> defendant gave his birth date as 2<sup>nd</sup> March, 1968. See Exhibit JA2.*

C *(c) That in the 3<sup>rd</sup> defendant’s record with his Alma mater university of Ibadan he gave his birth date as 2<sup>nd</sup> of March, 1966. See Exhibit JA12.*

*(d) That in his record with the West African Examination Council (WAEC) he gave different birth date.*

D *(e) That the 3<sup>rd</sup> defendant on oath in form CF001 (Exhibit JA11) stated that he was born on the 2<sup>nd</sup> March 1969 which conflicts with the age declaration attached to the form CF001 and sworn to on the 20<sup>th</sup> November 2014 and the age he gave to the University of Ibadan.”*

Furthermore, paragraph 8 of the appellant’s further affidavit in support of the amended originating summons also alleges as follows:-

F *“(a) That the three or so years of births submitted by the 3<sup>rd</sup> defendant to the PDP and INEC were deliberate and not innocent error.*

G *(b) That instead of the 3<sup>rd</sup> defendant applying to his University for his student record which contains his date of birth as 2<sup>nd</sup> March, 1966, he deliberately and knowing that, he changed his age when he sought and obtained employment and rather wrote to the University of Ibadan per “REQUEST FOR CERTIFIED COPY OF BIODATA STAFF RECORD” which culminated in the issuance of Exhibit PA8.”*

H From the community reading of the above depositions, it is overwhelming that the appellant accused the 3<sup>rd</sup> respondent of making false allegations under oath. In further confirmation are paragraphs .8(c) and 23 (particular a - e) (supra) of the further

affidavit in support which are all vivid of an allegation of crime. The document Exhibit JA19 being the police letter of investigation written to the University of Ibadan speaks for itself further that the allegation is of a criminal nature. It is unfortunate that the appellant has consistency shut his eyes to the reality of what is on ground. An outright and persistent denial by the appellant cannot change the colouration of his case. He cannot also make out a case on appeal different from his initial case at the trial as contained in the amended originating summons. As rightly submitted on behalf of the respondents, an allegation of presentation of false and inconsistent age declarations are obviously allegations of forgery and perjury. See the case of Daggash V. Bulama (2004) 14 NWLR (Pt. 892) 144 at 232. B C

I seek to add also that the 3<sup>rd</sup> respondent's form CF001 was sworn to at the Federal High Court Calabar, Division. The deposition by the Appellant that 3<sup>rd</sup> respondent lied under oath is an allegation that the said respondent committed the crime of perjury. D

***The law is well settled that where allegation of crime is directly in issue in any civil or criminal proceedings, it must be proved beyond reasonable doubt and the onus of proof is on the person, who asserts.*** See section 135(1) and (2) of the Evidence Act. See also Omoboriowo V. Ajasin (1-984) 1 SC NJ 108; Bayo V. Njidda (2004) 8 NWLR (Pt. 876) 544 and Arebi V. Gbabiyo (2008) 2 LR ECN 467 at 489. E F

***It is also trite and firmly established principle of law that he who asserts must bear the burden of proof.*** See section 133 of the Evidence Act which provides thus:- G

*"133 (1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were pronounced on either side, regard being had to any presumption that may arise on the pleadings."* H

*(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the*

*party against whom judgment would be given if no more evidence were adduced, and so on successfully until all the issues in the pleadings have been dealt with.*

*(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.”*

B See Dikwa V. Modu (1993) 3 NWLR (Pt. 280) 183, Okonkwo V. Okagbue (1994) 9 NWLR (Pt. 368) P.301 at 325 - 326 and Ebo V. Egbu (1994) 5 NWLR (Pt. 347) P.703 at 718.

***By the provision of section 31(5) of the Electoral Act, the position of the law is well established that, where a candidate makes a false declaration in his form CF001, a person aggrieved may seek redress. However, the purport of section 31(b) is not designed to disqualify a candidate who is otherwise qualified to contest the relevant election under the 1999 Constitution of the Federal Republic of Nigeria. I seek to say further that even in situations where a governorship candidate makes inconsistent statements in his form CF001 and such a candidate is nevertheless qualified to contest the election under the provisions of section 177(b) of the Constitution, he will notwithstanding the inconsistencies in his form, be disqualified to contest the election.***

F The support for the foregoing conclusion, is as rightly submitted by the learned counsel for the 2<sup>nd</sup> respondent, because a person who is qualified to contest an election by virtue of the constitution of the Federal Republic of Nigeria 1999 (as amended) cannot be disqualified by the operation of any other law in force in G Nigeria. The Constitution takes precedence over all other laws. Therefore, where there is a matter of alleged falsification of a document or rendering of a false statement as alleged in this case, it must relate to a qualifying or disqualifying factor by virtue of the Constitution of the Federal Republic of Nigeria.

H The office of governor of a State was created by virtue of section 176(1) of the 1999 Constitution and the qualification to hold that office was established by section 177 thus:-

*“177 person shall be qualified for election to the office of*

*Governor of a state if -*

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

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

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

*(f) he has been educated up to at least school certificate level or its equivalent.”* <sup>B</sup>

It is pertinent to state in strong terms that the appellant did not allege an infraction of any of the subsections enumerated under section 177 of the Constitution (supra); I seek to restate also that the use of the word “shall” prescribes the factors which “shall” qualify a candidate to occupy the office of a Governor of a state. Any attempt by another law to alter the provision except by the Constitution itself shall be rendered of non-effect. See the cases of INEC V. Musa (2003) 3 NWLR (Pt. 806) 72 at 205 and NPP V. Usman (2008) 12 NWLR (Pt. 1100)1 at 54-55. Section 31 of the Electoral Act did not by any stretch of imagination create new grounds of disqualification or non-qualification. <sup>D</sup>

***To disqualify a candidate for falsification, the infraction must relate to the very point on which the qualification depends. Thus, where the alleged falsified document is not a qualifying factor under the constitution of Nigeria, its presentation cannot disqualify an otherwise qualified person.*** Again see the case of AD V. Fayose under reference supra. <sup>E</sup>

The lower court was therefore on a strong foothold and correct when it held as it did at pages 1349 and 1350 volume 2 of the record reproduced earlier in the course of this judgment supra. <sup>G</sup>

***I have restated earlier in this judgment also that the nature of the allegation lodged against the 3<sup>rd</sup> respondent by the appellant is firmly rooted in criminality and which must be proved beyond reasonable doubt as rightly held by the lower court.*** See section 135(1) of the Evidence Act; see also the cases of Bayo V. Ngidda (2004) 8 NWLR (Pt. 376) 544; Vakubu V. Jauroyed (2014) 11 NWLR (Pt. 1418) 205; Yusuf V. Obasanjo (2003)16 NWLR (Pt. 847) 554. ***In*** <sup>H</sup>

**proving beyond reasonable doubt, it is not enough for an appellant as plaintiff to demonstrate the act of falsification of age, it is also incumbent on him to establish that the act was intentional. In other words that it was done with the intention to gain an advantage by the alleged act of criminality.** As rightly submitted on behalf of the 3<sup>rd</sup> respondent, this again brings us to the provisions of section 177(b) of the 1999 Constitution where mens rea in falsification of age for eligibility to contest election as Governor must, of necessity, relate to circumventing the age prescription of 35 years to contest election. With the case at hand, having been instituted under an originating summons procedure which is triable on affidavit evidence, it cannot serve as a means of proving criminal allegations beyond reasonable doubt.

**I seek to say at this juncture that the onus of proof on the appellant are in respect of the following ingredients:-**

- a) That there is a document in writing.**
- b) That the accused knew the document to be false.**
- c) That the accused presented the said document to the other party with the intention that it would be acted upon to the detriment of the victim in the belief that it is genuine.**

See Smart V. State (1974) 11 SC 173; also Awobuti V. State (1976) 5 SC. 49 and Daggosh V. Buloma (2004) 14 NWLR (Pt. 892) 144 at 232.

For all intents and purposes, the appellant did not lead any evidence to show that the purported false declarations in age alleged against the 3<sup>rd</sup> respondent were falsified with the criminal intent of meeting the constitutional age limit of 35 years set by the Constitution. Moreover, in the absence of any evidence that none of the purported age declarations was acted upon to the detriment of anybody, the issue of forgery could not have been proved. It is pertinent to state also that the appellant did not appeal the lower court's finding in accepting the fact that the mistake in the entry on the 3<sup>rd</sup> respondent's nomination form was that of his aide and not

intentional. Therefore, the appellant's submission in that behalf was grossly misconceived. See *Amadi V. FRN* (2008) 18 NWLR (Pt. 1119) 259 at 277 - 278.

Also at page 1348 of the record, the lower court rightly held thus when it said: -

*"On the contrary, the depositions in the affidavit of the appellant do not amount to proof beyond reasonable."* <sup>B</sup>

Again, the appellant did not deem it necessary to appeal the above specific finding. Thus, the appellant concedes to the lower court that he (the appellant) could not prove the allegation of falsification of age beyond reasonable doubt vide affidavit evidence. <sup>C</sup>

It is imperative to say further that the appellant is saddled with the burden of establishing which of the two sets of age declarations Exhibits JA1 and JA10 is original or counterfeit document as portrayed by paragraphs 17 and 20 of his affidavit on page 341 of the record. <sup>D</sup>

Affidavit evidence would make it virtually impossible for the appellant to prove the allegation of forgery/falsification of age beyond reasonable doubt in the circumstance which would otherwise require proof based on identifiable, cogent and compelling evidence. See *Uwagboe V. State* (2008) 12 NWLR (Pt. 1102) SC 621 at 647, also *Ikenia Beet (Nig) Ltd. V. A.G. Rivers State* (2008) 6 NWLR (Pt. 1084) SC 612. <sup>E</sup>

***For forgery or falsification of age to be sustained, the documents purportedly forged must be a false representation of genuine documents. This is because it will be preposterous to allege the forgery of a fake or counterfeit document, as rightly submitted by the senior counsel for the 3<sup>rd</sup> respondent.*** <sup>F</sup> See the cases of *ACB Plc V. Ndoma Egba* (2000) 8 NWLR (Pt. 667) 389 at 401, *Adelaja V. Alade* (1999) 6 NWLR (Pt. 608) 544 at 558, *Ikoku V. Oli* (1962) 1 SC NLR 307 and *Adewrafe V. Olaifa* (2012) 17 NWLR (Pt. 1330) 478. ***Under the law, forgery cannot be grounded in respect of a document in the absence of its original. In other words, mere presentation of series of documents by a party, alleging forgery or falsification of age against the*** <sup>G</sup> <sup>H</sup>

**3<sup>rd</sup> respondent.**

At paragraph 5.20 at pages 12-13 of his brief of argument, the appellant affirmed emphatically by implication that his case centres on crime. This is what he had to say:-

B *“Our humble submission is that it is immaterial that a person has met the mandatory age requirement, but that being dishonest in his declaration clearly violates the mandatory Guideline... It becomes glaring therefore that the provisions of the Guidelines is to disqualify a dishonest person (dishonest for any*  
C *purpose whatsoever) from aspiring to become a governorship candidate... It is trite that the law cannot be used as an instrument of fraud.”* (Emphasis is provided).

D The appellant’s case against the 3<sup>rd</sup> respondent is criminal in nature and which he had failed to substantiate beyond reasonable doubt as rightly held by the two lower courts. Consequently, issues 1 and 2 are in the circumstance, also resolved against the appellant.

E On the totality of the appeal before us, the concurrent judgments of the two lower courts are unassailable and have not been debunked by the appellant. In the result, I hereby endorse the judgment of the lower court which affirmed that of the trial court. The appeal on the totality is devoid of any merit and is hereby  
F dismissed by me as being unmeritorious. There shall be no costs awarded rather each party is to bear his costs of the appeal.

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**RHODES-VIVOUR JSC**

G I have had the benefit of reading in draft the leading judgment of my learned brother, Ogunbiyi JSC. For the reasons given agree that this appeal should be dismissed.

H The appellant and the 3<sup>rd</sup> respondent contested the PDP primaries to enable the Party select its candidate for the gubernatorial elections held on 11 April 2015, The 3<sup>rd</sup> respondent won, with 752 votes while the appellant came in second with 11 votes, The appellant was not satisfied with the conduct of the primaries, so he filed an originating summons, subsequent y

amended wherein he contended that since the 3<sup>rd</sup> respondent failed to pay his membership subscription for the year 2014, he was not at that point a brother, Ogunbiyi JSC. For the reasons given agree that this appeal should be dismissed.

The appellant and the 3<sup>rd</sup> respondent contested the PDP primaries to enable the Party select its candidate for the gubernatorial elections held on 11 April 2015, The 3<sup>rd</sup> respondent won, with 752 votes while the appellant came in second with 11 votes, The appellant was not satisfied with the conduct of the primaries, so he filed an originating summons, subsequently amended wherein he contended that since the 3<sup>rd</sup> respondent failed to pay his membership subscription for the year 2014, he was not at that point a member of the PDP and so not qualified to be nominated as a candidate. The learned trial judge held that:

*“The issue of payment on non-payment of subscription fees by a member of political party is an internal affair of the party concerned for which the courts do not have jurisdiction to entertain. Amended Originating Summons is struck out for want of jurisdiction.”*

On appeal, the Court of Appeal agreed with the High Court when it said that:

*“By the provisions of paragraph 48(f) of the Guidelines, it is immaterial if 3<sup>rd</sup> respondent failed to pay or complete his membership dues before the primaries. Once the party regards a person as a member and he is chosen as being eligible to contest the primaries, no member of the party can complain against the decision of the National Executive Committee.”*

Paragraph 48 (f) of the Guidelines of the 1<sup>st</sup> respondent (PDP) states that:

*“Notwithstanding” the provisions of the Guidelines and any other rules or regulations laid down by the Party, the decision of the National Executive Committee as recommended by the National Working Committee shall be final and binding on all aspirants, officials and organs of the Party with respect to eligibility or otherwise of aspirant.”*

The above makes it very clear that a party is supreme over

its own affairs. See *Dalhatu v Turoki* 15 NWLR (Pt.843) p.310; *Onuoha v Okafor & Ors* (1983) 14 NSCC p.494; *Uzodima v Izunaso* (No.2) (2011) 17 NWLR (pt. 1275) p.30; *PDP v Sylva* (2012) 3 NWLR (pt. 1316) p.85.

B A party is like a club. A voluntary association. It has its rules, regulations, guidelines and constitution. Members join the party on their own free will. By joining they have freely given their consent to be bound by the rules regulations, guidelines and Constitution of the party. These rules etc of the party must be obeyed C by all members of the party, as the party's decision is final over its own affairs, Members of a party would do well to understand and appreciate the finality of a party's decision over its domestic or internal affairs, The court would only interfere where the party has violated its own rules, Where the National Working Committee of D the 1<sup>st</sup> respondent regards a person as a member of the party eligible to contest the primaries, no member of the party can complain against such a decision. Both courts below were correct that the 3<sup>rd</sup> respondent is a member of the 1<sup>st</sup> respondent, Such an issue is E within the domestic and internal affairs of the 1<sup>st</sup> respondent over which the courts have no jurisdiction as such an issue is not justiciable.

On the allegation that the 3<sup>rd</sup> respondent presented false age declarations to the 1<sup>st</sup> respondent where he variously claimed F that he was born on 2/3/1968, 2/3/1969 and that his Biodata's date of birth in the University is 2/3/1966, The Court of Appeal resolved the issue when it said that;

G *"A community reading of Article 14 (b) of PDP's guidelines and section 31 (2), (5) and (6) of the Electoral Act in the preview of sections 177(b) and 182 (1) of Constitution reveals that the intention of the law makers is not to disqualify a candidate based on any alleged false declaration in the nomination forms, rather the laws were made to disqualify any candidate who makes false H declaration of age in order to gain advantage of the constitutional requirement for age..... The error made in the year 1969 instead of 1986 in the circumstances of this case cannot constitutional requirement of the minimum age of 35 years for the*

*office of a Governor .....*”

I agree with the Court of Appeal, Section 177(b) of the Constitution simply says that a person who intends to contest the elections to the Office of Governor of a State is not qualified if at the date of the election he has not attended the age of 35 years, the elections were held on 11/4/2015. 3<sup>rd</sup> respondents gave different dates of birth to wit; 2/3/1968, 2/3/69, he was 46 years old on 11/4/2015 when elections for the office of Governor of Cross River State were held. I fail to see what the 3<sup>rd</sup> respondent stood to gain, or what his intention was by giving different dates of birth, I tend to agree with the Court of Appeal that the different dates of birth were an error and clearly not intended to gain an advantage of the Constitutional requirement that stipulates 35 years for anyone who desires to contest for Governor of a State.

For this, and the more detailed reasoning in the leading judgment, I too dismiss this appeal.

### **MUHAMMAD JSC**

My learned brother Ogunbiyi JSC had obliged me in draft his lead judgment just delivered. On perusal, I am in entire agreement with the reasoning and conclusion therein that this appeal being unmeritorious should fail. Purely for the sake of emphasis, I offer, hereinunder, brief comments on certain aspects of the issues the appeal raises. Reliance is placed on the detailed recall of the facts which brought about the appeal made in the lead judgment and same shall be restated, where helpful, in the course of this contribution.

The appellant, the 3<sup>rd</sup> respondent and eight other aspirants participated in 1<sup>st</sup> respondent’s primaries for the 8<sup>th</sup> December 2014 gubernatorial election in Cross River State. While the former scored seven hundred and fifty two votes, the latter had eleven votes. Dissatisfied with the result of the primaries, the appellant petitioned the 1<sup>st</sup> respondent, see exhibit JA8, seeking the nullification of the votes scored by the 3<sup>rd</sup> respondent and on their being so voided, he be declared the duly nominated aspirant for the impending

gubernatorial election.

Eventually, the appellant by an originating summons dated and filed on 29<sup>th</sup> January 2015, as amended, approached the Federal High Court sitting at Abuja, hereinafter referred to as the trial court, in Suit No. FHC/ABJ/CS/25/2015, asserting that 1<sup>st</sup> respondent's refusal to adhere to its Constitutional provisions and Electoral Guidelines had placed him at disadvantage in the concluded primaries. 3<sup>rd</sup> respondent's false declaration of age, 1<sup>st</sup> respondent's reliance on the false declaration in breach of the clear provisions of Articles 14(b) and 15(2) of its Electoral Guidelines as well as 3<sup>rd</sup> respondent's non-payment of his membership dues, disentitled the latter's participation in the primaries. 1<sup>st</sup> respondent's presentation of election, it is claimed, has accordingly been vitiated.

The trial court's dismissal of appellant's suit led to his appeal to the Court of Appeal, Abuja Division, hereinafter referred to as the lower court. This appeal is against the decision of the lower court, affirming the trial court's judgment, delivered on 5<sup>th</sup> February 2016. The notice of appeal contains eleven grounds dated and filed on 9<sup>th</sup> March 2016.

At the hearing of the appeal, instead of adopting and relying on the brief settled on behalf of the 1<sup>st</sup> respondent; Mr. N. E. Ibegbunan of counsel withdrew the said brief and indicated 1<sup>st</sup> respondent's intention to concede the appeal.

it is trite that a counsel while functioning as such has the implied authority to make any admission of facts hereby dispensing with proof of the particular facts and the admission may be binding if not retracted by the client before judgment. It remains an elementary principle, though, that unlike the Jock which returns on the weather abide the inconsistencies of the subject it reports on, a party must be consistent in the case he weaves and proves. He is never allowed to take on appeal a position different from the one taken at trial. In *Ajide V. Kelani* (1985) 3 NWLR (Pt 12) 248 at 269 this Court per Oputa JSC of blessed memory opined thus:-

*"A party should be consistent in stating his case and consistent in proving it..... Justice is much more than a game of hide and seek. It is an attempt, our human imperfections*

*notwithstanding, to discover the truth. Justice will never decree anything in favour of so slippery a customer as the present defendant/appellant."*

More recently the court in *Pacers multi-Dynamics Ltd V. The M.V. Dancing Sister & Anor* (2012) 4 NWLR (Pt 1289) 169 at 191 per my learned brother Rhodes-Vivour JSC reiterated as follows:-

*"A party should be consistent in stating its case and also consistent in proving it. He will not be allowed to take one stance in the trial court and another stance on appeal such shifty attitude must be condemned in strong terms. For the streams of Justice to remain pure counsel must at all times be consistent in the presentation of his case."* (Underlining mine for emphasis).

See also *Onyekwelu V. Elf Petroleum Nigeria Ltd* (2009) 5 NWLR 181 at 205, *Abeke V. Odunsi & Anor* (2013) LPELR-20640 (SC) and *Intercontinental Bank Ltd V. Brifina Ltd* (2012) IB-(Pt 1316)l.

Addedly, this Court has stated in so many cases that the traditional role of a respondent to an appeal is to defend the judgment appealed against. The rules accommodate the respondent's desire to depart from this traditional role to attack the judgment in any way only by filing a cross appeal, in the case at hand 1<sup>st</sup> respondent whose counsel has withdrawn its brief, having not filed a cross appeal cannot be obliged to depart from the judgment by conceding the appeal. See *Ekochin (Nig) Ltd & ors V. Victor Mgozi Mbadiwe* (1986) 1 NWLR (Pt. 14) 47 and *Adefuiu V. Oyesile* 5 NWLR (Pt 122) 377. 1<sup>st</sup> respondent's role in the appeal is hereby accordingly discountenanced.

Now, what is appellant's case against, in particular, the 1<sup>st</sup> and 3<sup>rd</sup> respondents? Appellant's extant claim, I agree with learned senior counsel for the 3 respondent Chief Wole Olanikpekin, is as contained in his amended originating summons, see pages 335 to 338 of the record, whereby the trial court was asked to answer, in the main:-

*"2 Whether the provisions of Section 8(10), (15) of the Peoples Democratic Party Constitution, Article 13 (a) and 14(b) of the Electoral Guidelines for Primary Elections 2014 and Section*

*177(c) of the 1999 Constitution (as amended) are mandatory and applicable to the nomination and selection of a Gubernatorial aspirant under the platform of Peoples Democratic Party.”*

On answering the foregoing question in the affirmative and from facts deposed to for and in opposition of appellant’s amended originating summons, the trial court was urged to nullify 3<sup>rd</sup> respondent’s nomination to contest the seat in 2014 Gubernatorial Election in Cross River State on 1<sup>st</sup> respondent’s platform. Appellant’s case is simply that having failed to pay his membership dues and presented a false age declaration document to the 1<sup>st</sup> respondent, the 3<sup>rd</sup> respondent is disqualified from being nominated as 1<sup>st</sup> respondent’s flag bearer at the election. 3<sup>rd</sup> respondent’s nomination, urges the appellant, be nullified and, in his place, the latter be reported as the 1<sup>st</sup> respondent’s duly nominated aspirant for the 14<sup>th</sup> December gubernatorial elections in Cross River State.

Whether or not 3<sup>rd</sup> respondent had paid his membership fees and presented to the 1<sup>st</sup> respondent a false declaration of age document in relation to the 1<sup>st</sup> respondent’s primary election is a question of fact.

The facts on the basis of which the questions raised by the appellant are to be answered lie in the affidavit in support of his originating summons, the eleven Exhibits annexed thereto, Exhibits JA1, - JA10 and JA12, 1<sup>st</sup> respondent’s counter affidavit, and 3<sup>rd</sup> respondent’s amended thirty five paragraph affidavit along with the seven Exhibits marked PA1 - PA7. There are also appellant’s further affidavit in reply to respondents counter affidavit and Exhibits JA13 - JA16, JA16(A), JA17 and JA18 attached therewith. The laws applicable to these facts in reaching a decision on the issues in controversy between the parties are supplied by counsel in their respective addresses.

1<sup>st</sup> and 3<sup>rd</sup> respondents by way of preliminary objection challenge the competence of appellant’s suit on the ground that same is not justiciable. Though sustaining the objections as having been well taken, the trial court proceeded to consider appellant’s action on the merit. For the court, appellant’s case as contained in the amended originating summons, see pages 955 and 960 vol. 2

of the record, are:-

*“(i) By the operation of Section 8(10) and (15) of the Constitution of the 1<sup>st</sup> respondent, the 3<sup>rd</sup> respondent not having paid his membership dues is not a member of the party and resultantly not qualified to contest the primary election the purportedly entitled him to contest the 4<sup>th</sup> December Cross River B  
Gubernatorial Election and*

*(ii) 3<sup>rd</sup> respondent’s alleged falsification of his age.”*

The trial court’s findings on the foregoing is firstly:

*“I hold that the allegation of the plaintiff that 1<sup>st</sup> defendant C  
had not followed its Constitution and guidelines in screening the 3<sup>rd</sup> defendant has no basis. It is my considered view and I so find that the guidelines and the Constitution of the 1<sup>st</sup> defendant were followed by both the 1<sup>st</sup> defendant and the 3<sup>rd</sup> defendant.”*

On the 2<sup>nd</sup> leg of appellant’s claim, the court held at pages D  
960-961 as follows:-

*“The second issue raised by the plaintiff borders on criminality, to wit, forgery and perjury. I do not want to waste time on this. It is trite that both forgery and perjury being criminal offences E  
have to be proved beyond reasonable doubt. This suit was commenced by way of an originating summons. It is Impracticable to prove these by affidavit evidence. Secondly, it was not pointed out by the plaintiff which document was forged. All these need to be Investigated which had not been done,”* (Underlining supplied) F

On the basis of the foregoing findings the trial court further adjudged appellant’s suit unmeritorious and dismissed same. The lower court’s affirmation of the trial court’s decision informs the instant appeal. G

At page 1285 of vol. III of the record of proceedings the lower court agrees with the trial court thus:-

*“The appellant’s grouse are two pronged: That the 1<sup>st</sup> Respondent breached its Constitution and guidelines in nominating the 3<sup>rd</sup> Respondent as its candidate for the Governorship of Cross H  
River State in the 2015 General Elections when firstly, there was no evidence of payment of party’s subscription to regard him as a member of the party and that he severally supplied false birth*

*declaration of age in his nomination form, issues 1 and 4 deal with the first complaint while issues 2 and 3 delve on his second grouse.”*

In resolving the first of the two sets of issues, the lower court at pages 1292 - 1293:-

B *“A perusal of the Appellant’s claim, the reliefs sought alongside with the affected provisions of the 1<sup>st</sup> Respondent’s Constitution ..... shows without any doubt that the kernel of the Appellant’s case is necessarily tied to the issue of whether the 3<sup>rd</sup> respondent is a member of the 1<sup>st</sup> respondent for the purposes of nomination for the gubernatorial primaries of the party..... This is an issue of membership of a party. Without any doubt whatsoever, the issue of membership of a party is an internal affair of the party.”*

The court reasoned thus:-

D *“The provisions of paragraph 48(f) of the Guidelines of the 1<sup>st</sup> Respondent bring this point to light. It provides..... The concomitant effect of this provision is that having regard to the stance of the 1<sup>st</sup> Respondent maintaining that the 3<sup>rd</sup> Respondent remains member of the party and having cleared him to contest the primaries as being eligible as an aspirant for the post of governorship of Cross River State, any implication that must have arisen from non payment of party dues, if proved has been removed by the party..... See the celebrated case of Musa*  
 E *V. P.D.P supra ..... An action based on the determination of membership of a party is not justiciable.”*  
 F

At page 1300 of the record of proceedings, the court’s conclusion on the issue is as follows:-

G *“In the light of abundance evidence before the court, the appellant failed to prove the allegation that the 3<sup>rd</sup> Respondent was indebted to the 1<sup>st</sup> Respondent for the membership fees. The learned trial judge was therefore correct when he held that the allegation that the 1<sup>st</sup> Respondent did not follow its Constitution and guidelines*  
 H *is baseless.”*

In resolving appellant’s second set of issues for the determination of the appeal which borders on 3<sup>rd</sup> respondent’s false declaration of age, the lower court opines at page 1304 -1305 of

the record of proceedings thus:-

*“A careful perusal of the affidavit in support of the amended originating summons at the trial court showed glaringly that the Appellant raised the issue of criminality in his affidavit the particulars in support of the above allegations at pages 341 - 342 of the record amplified the contention that the Appellant accused the 3<sup>rd</sup> Respondent for making false allegation on oath .... Any allegation of presentation of false and inconsistent age declaration are obviously allegation of forgery and perjury..... It must be proved beyond reasonable doubt.”*

Having evaluated the myriad of affidavits and their annexations, the court held at pages 1310 to 1311 as follows:-

*“In the circumstances, the Appellant also failed to substantiate his allegation that 1<sup>st</sup> Respondent breached its guidelines to the advantage of the 3<sup>rd</sup> Respondent and to the disadvantage of the Appellant in nominating the 3<sup>rd</sup> respondent as its Governorship candidate in the last Elections. Issues 2 and 3 are also resolved against the Appellant.... On the whole, in the circumstances of this case, the teamed trial Judge was correct when he dismissed the Appellant’s case as lacking in merit. This appeal is unmeritorious and it is hereby dismissed.”*

Certainly, the two courts below are concurrent in their findings on the two issues that constitute appellant’s claim. This Court remains very slow in interfering with concurrent findings of fact by courts, it does so only where the appellant succeeds in showing that the findings are perverse. Learned senior counsel for the appellant’s reference to this Court’s restatement of the principle in James V. INEC (2015) 12 NWLR (Part 1474) 538 at 602 is apposite. Thus it is only where the concurrent decisions of the two courts are shown to be persistent in error, different from what is reasonable or required, against the weight of evidence, full of account of matters which ought not to have been taken or where the obvious had been ignored that this Court, in the discharge of its appellate duty, will interfere. See also Atolagbe V. Shorun (1985) 1 NWLR (Pt 2) 360.

Appellant’s contention in the appeal is that his case has

been misapprehended. Both courts, it is asserted, misrepresented the facts on which his action is anchored. Not surprisingly, it is argued, having not correctly appraised and understood the crucial and material facts before them, the courts arrived at the wrong, indefensible and unsustainable findings. The 1<sup>st</sup> and 3<sup>rd</sup> respondents have contrary view. Certainly both sides cannot, inspite of their opposing views, be correct.

The thrust of the 1<sup>st</sup> leg of appellant's claim, where made out, is rooted in the effect of 3<sup>rd</sup> respondent's non-payment of his membership dues to the 1<sup>st</sup> respondent and his right to contest an election on the party's platform. By 3<sup>rd</sup> respondent's run-payment of his dues, he ceases to be a member of the party and as such disentitled to participate in 1<sup>st</sup> respondent's primary election. If he purports to participate, the 1<sup>st</sup> respondent by its Constitution and Electoral would be bereft of power to present 3<sup>rd</sup> respondent's name to the 2<sup>n</sup> respondent as a candidate in any election.

Now, Section 8(10) and (15) of the 1<sup>st</sup> respondent's Constitution the appellant weaves his claim upon provide:-

"8(10) Members shall pay their monthly subscription fees at the ward level which must reflect on their membership cards and where a member consistently fails to pay his subscription fees within 6 months a such membership will be deemed to have lapsed.

(15) Without prejudice to the provisions of Section 6(16) of this Constitution, any member who fails to renew his membership by payment of the annual subscription fees within six months after due date shall cease to enjoy the rights and privileges of membership and if in default for upward of 12 months shall cease to be a member of the party." (Underlining supplied).

The foregoing provisions of 1<sup>st</sup> respondent's Constitution are unarguably adjectival. The two provide the manner in which the party's membership, having been constituted, is sustained. Paragraph 48(f) of 1<sup>st</sup> respondent's Electoral Guidelines, a further body of adjectival rules, 2<sup>nd</sup> and 3<sup>rd</sup> respondents rightly contend, takes off the bottom of this leg of the appellant's claim, it provides:-

*"48(f) Notwithstanding the provisions of the Guidelines and any other rules or regulation (aid down by the party, the decision*

*of the National Executive Committee as recommended by the National Working Committee shall be final and binding on all aspirants, officials and organs of the party with respect to the eligibility or otherwise of an aspirant.”*

The two lower courts are concurrent in their findings that in spite of Section 8(10) and (15) of 1<sup>st</sup> respondent's Constitution, granted the 3<sup>rd</sup> respondent is established not to have paid his dues, and this is not conceded, the decision of the party's National Executive Committee, on the recommendation of the National Working Committee of the party, waiving 3<sup>rd</sup> respondent's non-compliance is final and binding on all aspirant? including the appellant. Both courts appositely relied on the principle enunciated by Adefarasin CJ in *Musa V. PRP*. (3581) 2 NCLR 763 at 769. I cannot disagree with the principle so crafted in the case which I hereby imbibe. Where a political party provides mechanisms for determining who its members are and when they cease to be it is not for the courts to rewrite for the party and its members these rules of engagement they agreed should govern their affairs. Once there has been compliance with these rules, as in the instant case, the best an aggrieved person can do is to opt out from the party he voluntarily joined.

Section 87(9) the appellant insists entitle him to his claim in respect of 3<sup>rd</sup> respondent's alleged non-payment of party dues provides:-

*“(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 of a State or FCT for redress.”*

By the foregoing, given his claim that touches on 1<sup>st</sup> respondent's non-compliance with provisions of its Constitution and Electoral Guidelines as well as 3<sup>rd</sup> respondent's breach of Section 31 of the Electoral Act 2010 as amended, appellant is certainly entitled to seek the declaratory reliefs he approached the trial court to grant him. He seems however to have ignored; to his peril, two

principles he should have taken more seriously because of their relevance to the success of his action. Firstly, being the plaintiff, the burden the law places on the appellant to establish his declaratory reliefs to the satisfaction of the court is quite heavy in the sense that where he fails to establish his entitlement to the declaration by his own evidence the reliefs are not granted even on the admission of the defendant. See *Inakoju & 17 ors V. Adeleke & 3 Ors* (2007) 1 SC (Pt 1) 1, *AG Cross River State V. AG Federation & Anor* (2012) 7 SC (Pt. 11) 72 and *CPC V. INEC* (2012) 2 - 3 SC.

Secondly, and this much the trial court has noted, an action by an originating summons the appellant's herein chose to exploit, is used when facts of the case are not in dispute. Where, as in the instant case, the facts remain violently in contention the procedure becomes unsuitable for the hostile proceedings it gives rise to. See *Director of SSS & Anor V. Agbakoba* (1999) 3 NWLR (Pt 595) 425, *Amasike V. Registrar General C.A.C.* (2010) 13 NWLR (Pt 1211) 337.

Now, has the appellant made out the first leg of his claim pertaining to 3<sup>rd</sup> respondent's failure to pay his membership dues and the effect of the failure on his status as an aspirant? He has not.

The two lower courts are one and correctly too that paragraph 48(f) of 1<sup>st</sup> respondent's Electoral Guidelines, has removed the bottom off the 1<sup>st</sup> leg of appellant's claim. Even where there is breach of Section 8(10) and (15) of the 1<sup>st</sup> respondent's Constitution on the issue of 3<sup>rd</sup> respondent's membership, once cleared by the National Executive Committee whose decision is final, having been taken on the basis of paragraph 48(f) of the party's Electoral guidelines, the appellant cannot challenge same pursuant to Section 87(9) of the Electoral Act 2010 as amended. A decision so taken is still one that is in compliance with the party's Constitution, electoral guidelines. Most importantly, the painstaking and unassailable examination of the vast body of affidavit evidence undertaken by both courts put their eventual concurrent findings of fact on the question in issue beyond reproach.

The 2<sup>nd</sup> leg of appellant's claim, the issue of presentation of false declaration of age by the 3<sup>rd</sup> respondent, does make the commission of crime an issue. The two courts below are indeed right in their findings that the allegation made by the appellant of 3<sup>rd</sup> respondent's presentation of false and inconsistent declarations of age is rooted in the offences of forgery and perjury which, by Section 135(1) of the Evidence Act 2011 CAP E 14 laws of the Federation must be proved beyond reasonable doubt. Indeed, it cannot be argued that though not impossible to establish appellant's allegations in the manner the law requires such allegations to be proved, it is impracticable to attain such level of proof on the basis of the hostile affidavit evidence available in this matter. The act of making a false document or altering a genuine one for same to be used, see Black's Law Dictionary, 8<sup>th</sup> Edition, is what forgery is. Like the two courts below, I am unable to agree with the appellant that in presenting the age declarations with seemingly inconsistent dates the 3<sup>rd</sup> respondent's intention is to gain undue advantage over the appellant. It is not that he is below the statutory age and indulged in the act to secure his party's nomination which he otherwise could not have been entitled to. The lower court cannot be faulted in its finding that the inconsistencies in the dates on the various documents are genuine mistakes on the part of the 3<sup>rd</sup> respondent.

It is for the foregoing and more so the very detailed and more serene reasons contained in the lead judgment of my learned brother Ogunbiyi that I find no merit in this appeal and dismiss same. I also make no order as to cost.

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**NWEZE JSC**

My Lord, Ogunbiyi, JSC, obliged me with the draft of the leading judgment just delivered now. The said judgment has dealt with all the issues which the parties canvassed before this court. As such, this contribution would be limited only to the adumbration of one matter. That is, the question of jurisdiction which was the subject of the third respondents Preliminary Objection.

It was the submission of the distinguished senior counsel for the third respondent that, since the subject matter jurisdiction of the trial Federal High Court is circumscribed to the matters listed In Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), it is impermissible for the said court to venture  
 B beyond them and deal with matters aliunde (that is, from elsewhere).

With respect; this submission is, only, partially, correct. Incidentally, this court has had occasion to deal with this question in recent times. Thus, in Wema Securities and Finance Plc v NAIC  
 C (2015) 6- 7 SC (pt IV) 163, 204 -205, this court (per Nweze, JSC) held that:

Section 251 (1) (supra) now delineates the jurisdiction of that Court, INEC v Musa (2003) 3 NWLR (pt 806) 72; NNPC v Orhiowesele and Ors (2013) LPELR -2034 (SC) 14-19, E-G;  
 D Ladoja v INEC (2007) 40 WRN 1; and circumscribes it (the said jurisdiction) to only eighteen items, Adetona and Ors v Igele Gen Ent Ltd (2011) LPELR -159 (SC) 47-53, G-B; Onuorah v KRPC Co Ltd (supra); Gafar v Govt of Kwara (2007) 4 NWLR (pt 1024)  
 E 375; Ports and Cargo Handling and CHS C Ltd M Migfo Nig Ltd (2012) LPELR -9725 (SC); Olutola v UNILORIN (2004) 18 NWLR (pt 905) 416, 462. Such matters are, exclusively, reserved for the Federal High Court, Adetona and Ors v Igele Gen Ent (supra).

In effect, the drafts person, deliberately, itemised the matters  
 F which are intended to be under the exclusive jurisdiction of that court, Onuorah v KRPC Ltd (supra) at 1364. Simply put, therefore., that court is a court of enumerated jurisdiction and, *a fortiori*, its exclusive jurisdiction is, expressly, tied to those items enumerated  
 G there-under, NNPC and Ors v Orhiowesele and Ors (supra) 14-19, E-G; Onuorah v KRPC Ltd (supra). As such, in the exercise of its said exclusive jurisdiction, that court (the Federal High Court) can only orbit within the universe of those enumerated issues *and to others as may be conferred upon It by an Act of the National*  
 H Assembly, Gassol v Tutare (2013) LPELR - 20232 (SC) 39, B-F; Omnia (Nig) Ltd v Dyketrade (2007) 15 NWLR (pt 1058) 576, 603 - 604. (Italics supplied for emphasis)

Surely, the reasoning in the above italicized portion derives

its potency from the very ippssissima verba of Section 251 (1) (supra). From its tenor that “(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...* (italics supplied for emphasis), it is obvious that the said Federal High Court could, by an Act of the National Assembly, be empowered to exercise jurisdiction in matters other than those consecrated in Section 251 (1) (supra). B

Such additional jurisdiction has been conferred on the said court by the National Assembly. Thus, by the provision of C section 31(5) of the Electoral Act (as amended), just like the other categories of courts mentioned therein, the Federal High Court has the requisite jurisdiction to determine the question whether a person submitted false information to the third respondent (INEC), Jev v lyortom (2014) 14 NWLR (pt.1428) 575, 611- 613; Lokpobiri v D Ogala and Ors [2016] 3 NWLR (pt.1499) 328; Gbileve v Addingi (2014) 16 NWLR (pt 1432 394, 418 -419; 424 -425; 427 -428; 431 -432.

Accordingly, I endorse the submission of the learned E counsel for the appellant that, having regard to the averments in paragraphs 16, 17 and 18 of the affidavit in support of the Originating Summons, the Federal High Court was the proper forum for the ventilation of the appellant’s grievance or complaint F in the matter that culminated to this appeal.

It is for these, and the more detailed, reasons in the leading judgment that I, too, hold that the tower court, rightly, upheld the trial court’s exercise of jurisdiction over the appellant’s complaint. G

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### **SANUSI JSC**

I was availed with a copy of judgment of my learned brother Clara Bata Ogunbiyi JSC. The reasons and conclusion she arrived at in the said judgment that this appeal is devoid any merit and deserves to be dismissed is agreeable to me. While agreeing with the reasons and conclusion reached in the leading judgment; I wish to by way of emphasis to chip in few comments. H

The gravamen of the appellant's complaint in this appeal in my opinion are basically two folds, namely:-

(a) *That the 3<sup>rd</sup> respondent did not pay to his party subscription fee due to the as a member for the year 2014.*

B (b) *That the 3<sup>rd</sup> Respondent had falsified his age as per his various age declarations to the 1<sup>st</sup> respondent, claiming variously that he was born on 2/3/1968, 2/3/1969 and 2/3/1966.*

Both the trial High Court and the lower court dismissed these reasons or complaint and dismissed the appellant's case and C appeal respectively. It is worthy of note, that the complaints stemmed out and pursued by the appellant in both courts as a result of the nomination of the 3<sup>rd</sup> respondent as its (PDP's) candidate to contest the governorship election in Cross River State on the platform of the party. In the said primary election the D appellant scored eleven (11) votes, as against the 3<sup>rd</sup> respondent's score of 752 votes thereby coming as 2<sup>nd</sup> and 1<sup>st</sup> respectively in score of votes at the primary elections.

On the first complaint adumbrated above, I entirely agree E with the finding of the lower court that the alleged non-payment of party subscription fee is of no moment or relevance. By the provisions of Paragraph 48 (f) of the Guidelines, payment or non payment of party subscription fee is not a ground to disqualify a candidate who wins primary election to contest an election, provided F that the said party approves the candidate to represent it at the election. To my mind, the National Executive Committee of the party has the final say and whenever it approves or endorses a candidate to contest on the party's platform, he stands nominated G and no other member can oppose that approval or nomination. The party is therefore supreme and has the final say or decision. See PDP v Sylva [2012] 3 NELR (pt.316) 85. Every member of a political party in order to remain in the party must be loyal and be bound by the rules and regulations of his party and also must respect H the party's decision.

Now as regards the second complaint of alleged falsification of age by the 3<sup>rd</sup> respondent, the important point to note is that none of the ages given by the 3<sup>rd</sup> respondent was below 35years,

which is the minimum age for any candidate to contest election for the post of governor of a state as prescribed by the provisions Section 177 of the Constitution of the Federal Republic of Nigeria 1999. The 3<sup>rd</sup> respondent had attributed the disparities in the years he supplied to be a genuine or honest mistake as opposed to intentional or ill-motive of nomination and or sponsorship of a candidate to contest an election on its behalf or platform, is purely within the domain or precinct of such political party and the courts lack jurisdiction to nominate or part-take in the process of nomination of a candidate for a political party to represent or contest election on its behalf. See *Onuoha vs Okafor* (1983)2 SCNLR 244; *Dalhatsu vs Turaki* (2003)15 NWLR (pt.843)310; *Emeka vs Okadigbo & Ors* (2012) LPELR 93381 SC.

Thus, with these few comments, and for the fuller and more detailed reasons contained in the leading judgment of my learned brother Clara Bata Ogunbiyi JSC which I also adopt as mine, I too see this appeal to be bereft of substance. I therefore dismiss the appeal for being meritless. I make no order or costs.

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