

IN THE COURT OF APPEAL
IN THE ABUJA DIVISION
HOLDEN AT ABUJA
THIS WEDNESDAY, THE 8TH DAY OF FEBRUARY, 2023

BEFORE THEIR LORDSHIPS:

MONICA BOLNA'AN DONGBAN-MENSEM
UGOCHUKWU ANTHONY OGAKWU
DANLAMI ZAMA SENCHI

PRESIDENT, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/ABJ/CV/1414/2022

BETWEEN:

ALLIED PEOPLES MOVEMENT APPELLANT

AND

- | | | |
|--|---|-------------|
| 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION | } | RESPONDENTS |
| 2. LABOUR PARTY | | |
| 3. MR. PETER GREGORY OBI | | |

JUDGMENT

(DELIVERED BY DANLAMI ZAMA SENCHI, JCA)

The Appellant in this matter is one of the registered political parties in Nigeria. The Appellant is sponsoring a candidate for the Presidential Election fixed by the 1st Respondent herein to take place on 25th February 2023. In the same way, the 2nd Respondent is sponsoring the 3rd Respondent herein as its candidate for the said Presidential Election. The Appellant, contending that the 3rd Respondent is not qualified and/or is disqualified from contesting the said Presidential election, on account of the manner in which he emerged as the candidate of the 2nd Respondent, instituted proceedings by Originating Summons before the Federal High Court, Abuja Division in SUIT NO. FHC/ABJ/CS/1743/2022: ALLIED PEOPLES MOVEMENT vs. INDEPENDENT NATIONAL ELECTORAL

COMMISSION (INEC) & ORS. The Appellant presented the following questions for determination on the Originating Summons:

1. *Whether having regard to the clear and unambiguous provisions of **Section 131(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1), 77 (2) and (3) of the Electoral Act, 2022** which mandate the 2nd Defendant to maintain a register of its members in both hard and soft copy and make such register available to the 1st Defendant not later than 30 days before the date fixed for the party's primaries, the 3rd Defendant is not disqualified from taking part in or otherwise contesting the 2023 presidential election, in the forthcoming presidential elections, now scheduled for 25th of February, 2023.*
2. *Whether having regard to the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1), 77 (2) and (3) of the Electoral Act, 2022** and the fact that the 3rd Defendant became a registered member of the 2nd Defendant less than 30 days to the party's presidential primary election which held on 30th May, 2022, the 3rd Defendant herein is not*

disqualified and ineligible to contest the 2023 Presidential Election as the candidate or flag bearer of the 2nd Defendant, in the forthcoming presidential elections, now scheduled for 25th of February, 2023.

3. *Whether having regard to the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1), 77 (2) and (3) of the Electoral Act, 2022** and the fact that the 2nd Defendant submitted the name of the 3rd Defendant to the 1st Defendant as its member less than 30 days to the party's presidential primary election which held on 30th May, 2022, the 3rd Defendant herein is not disqualified and ineligible to contest the 2023 Presidential Election as the candidate or flag bearer of the 2nd Defendant, in the forthcoming presidential elections, now scheduled for 25th of February, 2023.*
4. *Whether having regard to the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1), 77 (2) and (3) of the Electoral Act, 2022,** the 1st Defendant can validly recognize or give effect to the nomination of the 3rd Defendant as the lawful candidate or flag*

bearer of the 2nd Defendant in the forthcoming presidential elections, now scheduled for 25th of February, 2023.

5. *Whether the 1st Defendant, being an Independent, unbiased Electoral Umpire, ought or should not be restrained, precluded or prohibited from recognizing or further recognizing or giving effect to or further giving effect to the name of the 3rd Defendant that may have been sent to it as the candidate or flag bearer of the 2nd Defendant for the forthcoming presidential election now fixed for 25th of February, 2023.*"

Upon the determination of the said questions, the Appellant claimed the following reliefs:

- "1. ***A DECLARATION*** that in view of the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022** which mandate the 2nd Defendant to maintain a register of its members in both hard and soft copy and make such register available to the 1st Defendant not later than 30 days before the date fixed for the party's primaries, the 3rd Defendant is disqualified from taking part in or otherwise contesting the 2023 presidential election fixed for 25th of February, 2022.

2. ***A DECLARATION*** that in view of the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of**

Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022 and the fact that the 3rd Defendant became a registered member of the 2nd Defendant less than 30 days to the party's presidential primary election which held on 30th May, 2022, the 3rd Defendant herein is disqualified and ineligible to contest the 2023 Presidential Elections as the candidate or flag bearer of the 2nd Defendant, in the forthcoming presidential elections, now scheduled for 25th of February, 2022 by the 1st Defendant.

3. **A DECLARATION** that in view of the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022** and the fact that the 2nd Defendant submitted the name of 3rd Defendant as its member less than 30 days to the party's presidential Primary election which held on 30th May, 2022, the 3rd Defendant herein is disqualified and ineligible to contest the 2023 Presidential Election as the candidate or flag bearer of the 2nd Defendant in the forthcoming presidential elections, now scheduled for 25th of February, 2022.

4. **A DECLARATION** that in view of the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party Primary Elections and Nomination of Candidates for Election, Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022**, the 3^d Defendant should and ought to be prohibited, inhibited, prevented or otherwise restrained from holding out, parading and or advertising himself as the candidate or flag bearer of the 2nd Defendant for the forthcoming presidential election scheduled to hold on 25th of February, 2022 by the 1st Defendant.

5. **A DECLARATION** that in view of the clear and unambiguous provisions of **Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the 1st Defendant's Election time table and Schedule of Activities for the 2023 General Election, the 1st Defendant's Electoral Guidelines for the conduct of 2023 Political Party primary Elections and Nomination of Candidates for Election, Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022**, the 1st Defendant is legally precluded from acting on or otherwise recognizing or further recognising or give effect or further give effect to the name of the 3^d Defendant as the candidate or flag bearer of the 2nd Defendant for the forthcoming presidential elections, now scheduled for 25th of February, 2022 by the 1st Defendant.

6. **AN ORDER** of this Honourable Court disqualifying the 3^d Defendant as the candidate or flag bearer

of the 2nd Defendant in the forthcoming 2023 presidential election, scheduled for 25th of February, 2023 by the 1st Defendant.

7. **AN ORDER OF INJUNCTION** restraining the 1st Defendant from acting on, according recognition to, giving effect to or in any way or manner dealing with the name of the 3rd Defendant as the candidate or flag bearer of the 2nd Defendant in the forthcoming 2023 presidential election in Nigeria scheduled for 25th of February, 2023 by the 1st Defendant.
8. Cost of this action.
9. **And for such other or further Order(s)** as this Honourable Court may deem fit to make in the circumstances of this case."

The 1st Respondent did not file any processes and also did not appear at the lower court. However, the 2nd and 3rd Respondents filed processes in opposition to the action; and as they could not see their way clear with regard to the competence of the action, they filed processes challenging the competence of the action. However, it is only the objection of the 2nd Respondent that is still relevant for the purposes of this appeal.

By a Motion on Notice filed on 18th October 2022, the 2nd Respondent prayed for an order of the lower court striking out or dismissing the Appellant's suit for want of jurisdiction. The application is predicated on the following grounds:

"1. The action is statute barred in that it was filed outside the statutory period required for pre-election matters to be filed - as it was not filed within 14 days of the act complained against.

2. *The main claim and principal reliefs are not against the Federal Government or any of its agencies and as such does not come under the jurisdiction of the Federal High Court.*
3. *The Plaintiff has no locus standi to question the 2nd Defendant's sponsorship of any of its candidates, as this is an internal affair of the 2nd Defendant and the Plaintiff has not shown any threat to, or breach of any of its civil rights or obligations consequential to the actions or inactions of the 2nd Defendant.*
4. *The Action predicated on the sponsorship of a candidate is a political question and is therefore not justiciable and the Courts cannot inquire into such questions except by aspirants who took part in the primary.*
5. *Section 285(14) is a definition section and confers no right or powers on the plaintiff to institute this action and there exists no common law, right or other constitutional or statutory authority for the Plaintiff to incept or maintain this action.*
6. *The Plaintiff's action constitutes an abuse of Court Process as it has a similar matter against the same defendants and over the same subject matter – the qualification/disqualification of the 2nd defendant and its candidate."*

The lower court took the applications challenging the competence of the action alongside the substantive Originating Summons; and in its judgment which was delivered on 30th November 2022, it dismissed the said objections and equally dismissed the substantive Originating Summons. The judgment of the lower court is at pages 308-355 of the Records of Appeal. The Appellant was dissatisfied with the decision dismissing its

Originating Summons and it appealed against the same by Notice of Appeal filed on 12th December 2022. The 2nd Respondent, equally dissatisfied with the decision dismissing its aforesaid application filed a Notice of Cross Appeal on 13th December 2022. So, there is an appeal and a Cross Appeal. The Notice of Appeal is at pages 356-364 of the Records of Appeal, while the Notice of Cross Appeal at pages 364-369 of the Records of Appeal.

The Records of Appeal was compiled and transmitted and in respect of the main appeal, briefs of argument were filed and exchanged by the parties, save the 1st Respondent. Equally, briefs of argument were filed and exchanged between the Appellant/Cross Respondent and 2nd Respondent/Cross Appellant in the cross appeal. The 1st and 3rd Respondents did not file any processes in the cross appeal. The 1st Respondent was not represented at the hearing when learned counsel urged the Court to uphold their respective submissions in the determination of the appeal and cross appeal.

The briefs filed in respect of the main appeal are as follows:

1. *Appellant's Brief of Argument filed on 23rd December 2022.*
2. *2nd Respondent's Brief of Argument filed on 6th January 2023.*
3. *3rd Respondent's Brief of Argument filed on 6th January 2023.*
4. *Appellant's Reply Brief to the 2nd and 3rd Respondents' Briefs of Argument filed on 9th January, 2023.*

In respect of the cross appeal, the following briefs were filed:

1. *Cross Appellant's Brief of Argument filed on 23rd December, 2022.*
2. *1st Cross Respondent's Brief of Argument filed on 28th December 2022.*

3. Cross Appellant's Reply on Points of Law to the 1st Cross Respondent's Brief of Argument filed on 4th January 2023.

The Appellant formulated the following issues for determination in the main appeal:

- "(i) Whether by virtue and purport of Section 77 (2) and (3) of the Electoral Act, 2022, a person or a party member's name through his or her Political Party, must not have been submitted with the names of other party members, at least 30 days before the Party Primaries by making available the Register of Members to INEC; this being the case of the Appellant and the same was misconceived and misunderstood by the trial court (Grounds 1, 2, 3 and 7);*
- (ii) Whether the provision of the Party's Constitution and or Guidelines for Elections overrides the Electoral Act, 2022 (Ground 4);*
- (iii) Whether a court of law is allowed to dwell on speculation and conjectures against the evidence before the court and to raise an issue suo motu without recourse to the parties (Grounds 5 and 6)."*

On its part, the 2nd Respondent distilled two issues for determination in the main appeal, namely:

"ISSUE ONE

Whether considering the circumstances of this case, there was sufficient evidence placed before this Honourable Court by the Appellant to warrant the grant of the reliefs sought by it?

ISSUE TWO

Whether the learned trial Judge was right in holding that there is no law invalidating the nomination of the 3rd Respondent as the 2nd Respondent's Presidential Candidate for the 2023 Presidential Election?"

For the 3rd Respondent, a sole issue sufficed for the determination of the main appeal, as follows:

"Whether considering the evidence adduced by the parties as well as the provisions of extant laws, the Trial Court was right to have dismissed the action of the Appellant as being unmeritorious? (Distilled from Grounds 1, 2, 3, 4, 5, 6 and 7 of the Appellant's Notice of Appeal)"

With regard to the cross appeal, the 2nd Respondent/Cross Appellant nominated three issues for determination in the cross appeal, *videlicet*:

i. ***Whether the trial Court was right when it held that the 1st Cross-Respondent had the requisite locus standi and that the action was not statute barred?***

(Distilled from Ground one, two and three of the Notice of Cross-Appeal)

ii. ***Whether the failure of the learned Judge to consider all the issues raised by the Cross-Appellant in its Motion on Notice of Preliminary Objection did not constitute a serious miscarriage of justice?***

(Distilled from ground four of the Notice of Cross-Appeal)

iii. ***Whether the suit in the lower court was not an abuse of the Court process?***

(Distilled from ground five of the Notice of Cross-Appeal)

The Appellant/Cross Respondent crafted four issues for determination in the cross appeal, *scilicet*:

- "(i) *Whether in the light of Section 131 and Section 285(14)(C) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Section 29 and Section 77(2) and (3) of the Electoral Act, 2022, the 1st Cross Respondent is not clothed with the requisite locus standi to file the Originating Summons to challenge the direct breach of the Constitution and the Electoral Act by the Cross Appellant, the 2nd and 3rd Cross Respondents? (Grounds 1 and 2);*
- (ii) *Whether the 1st Cross Respondent's action is caught by the Statute of limitation and or is statute barred? (Ground 3);*
- (iii) *Whether the trial court did not consider other grounds in the preliminary objection of the Cross Appellant and, if the answer is in the affirmative whether such non-consideration caused any miscarriage of justice to the Cross Appellant? (Ground 4);*
- (iv) *Whether the 1st Cross Respondent's suit is an abuse of judicial process (Ground 5)."*

Now, it is settled law that a cross appeal is a separate and independent appeal from the main appeal. It has a life of its own: **UNITY BANK PLC vs. BOUARI (2008) 7 NWLR (PT 1086) 372 at 413, IGWE vs. KALU (2002) LPELR (1455) 1 at 17, DIAMOND BANK vs.**

AMAEFULE (2018) LPELR (50855) 1 at 5-6, AKPAN vs. BOB (2010) LPELR (376) 1 at 100 and IZEZE vs. INEC (2018) LPELR (44284) 1 at 38-39. I have set out the issues which are to be resolved in both the main appeal and the cross appeal. This issues raised in the cross appeal are threshold in nature as they go to the jurisdiction and competence of the entire action. This being so, conventional wisdom and the trite legal position is that a challenge to jurisdiction must be taken and determined first, since jurisdiction is crucial to the competence of the court. See **OGBORU vs. UDUAGHAN (2012) 2-3 SC 66 at 98-99, PERSONS, NAMES UNKNOWN vs. SAHRIS INT'L LTD (2019) LPELR (49006) 1 at 27** and **PRESIDENT, FRN vs. NATIONAL ASSEMBLY (2022) LPELR (58516) 1 at 24-25.** Accordingly, the law dictates that the cross appeal is to be considered first.

THE CROSS APPEAL

I will now review the submissions of learned counsel on the respective issues as distilled and thereafter resolve the cross appeal seamlessly *en bloc*.

SUBMISSIONS OF THE 2ND RESPONDENT/CROSS APPELLANT'S COUNSEL

Arguing the issue number one which is on *locus standi* and whether the action is statute barred, it was submitted that it is only aspirants who participate in a primary election that can challenge the outcome of primary elections. It was stated that the 1st Respondent lacked *locus standi* as it is not an aspirant. The case of **WUSHISHI vs. IMAM (2017) 18 NWLR (PT 1597) 175 at 211** and Section 84 (14) of the Electoral Act, 2022 were referred to. It was posited that the Appellant/Cross Respondent did

not complain about the breach of any of its rights in order to invoke the judicial powers of the court under Section 6 (6) (b) of the 1999 Constitution *vide* **UKEGBU vs. APGA (2020) 8 NWLR (PT 1725) 88 at 117, IHEDIOHA vs. NWOSU (2020) 5 NWLR (PT 1717) 291 at 311-312 and A-G FEDERATION vs. ABUBAKAR (2007) 10 NWLR (PT 1041) 1 at 121.**

The Appellant/Cross Respondent's complaint was said to be that the 3rd Respondent is not qualified or was disqualified from contesting the election, a matter that is grounded in the 2nd Respondent/Cross Appellant's sponsorship of the 3rd Respondent. It was opined that it is only an aspirant who took part in the 2nd Respondent/Cross Appellant's primary election that can make such a complaint. The definition of aspirant in **ANYAKORAH vs. PDP (2022) 12 NWLR (PT 1843) 1 at 26-27** was relied upon.

It was contended that Section 285 (14) (c) of the 1999 Constitution, as amended, is a definition section and neither confers *locus standi*, nor is it a *carte blanche* for a political party to institute an action against another political party over the internal affair of choosing its candidate. The case of **PDP vs. INEC APPEAL NO. CA/PH/480/2022 (unreported)** delivered on 29th November 2022 was called in aid. It was maintained that even if the Appellant/Cross Respondent can come under Section 285 (14) (c) of the 1999 Constitution, as amended, then its principal claim ought to have been against the 1st Respondent, for it to have *locus standi* to maintain the action; but that its reliefs were aimed at challenging the qualification or disqualification of the 3rd Respondent as candidate sponsored by the 2nd Respondent/Cross Appellant, which is non-justiciable except where it is established that there has been a breach of the Constitution, Electoral Act

or political party guidelines. The cases of **AL-HASSAN vs. ISHAKU (2016) 10 NWLR (PT 1520) 230 at 289**, **ODUAH vs. OKADIGBO (2019) 3 NWLR (PT 1660) 433 at 466-467**, **EMENIKE vs. PDP (2012) 12 NWLR (PT 1315) at 556**, **APC vs. MOSES (2021) 14 NWLR (PT 1796) 278 at 320** and **UFOMBA vs. INEC (2017) LPELR-42079 (SC)** were cited in support.

On the cause of action being statute barred, it was stated that the cause of action where the nomination of a candidate is being challenged, is when the primary election was conducted *vide* **IBEZIM vs. ELEBEKE (2022) 4 NWLR (PT 1819) 1 at 37**. It was opined that by Section 285 (9) of the 1999 Constitution, as amended, a pre-election matter is to be filed not later than 14 days from the occurrence of the event, decision or action complained of in the suit. Referring to a previous action filed by the Appellant/Cross Respondent on 26th July 2022, it was stated that the Appellant/Cross Respondent was aware of the 2nd Respondent/Cross Appellant's sponsorship of the 3rd Respondent as at the said 26th July 2022, but did not file the present action until 30th September 2022.

Furthermore, that the personal particulars of the 3rd Respondent were submitted to the 1st Respondent on 7th July 2022 and the same was published within 7 days thereafter; but that the Appellant/Cross Respondent being aware of this, only filed its action on 30th September 2022. The case of **APPEAL NO. CA/ABJ/CV/778/2022: SHERIFF OROHWEDOR vs. DAVID EDEVBIE (unreported)** delivered on 29th August 2022 was referred to. It was asserted that from whatever angle it is considered as to when the cause of action arose, that the case is statute barred, not having been filed within 14 days of the occurrence of the event

complained about. The case of **CHUKWU vs. AMADI (2009) 3 NWLR (PT 1127) 56 at 75** was relied upon.

The contention of the 2nd Respondent/Cross Appellant on its issue number two is that the lower court erred in law when it failed to consider and resolve all the issues raised in its objection; an error that occasioned a miscarriage of justice. The cases of **ORO vs. FALADE (1995) 5 NWLR (PT 396) 385 at 402** and **UZOHO vs. NATIONAL COUNCIL OF PRIVATIZATION (2022) 15 NWLR (PT 1852) 1 at 27** were cited in support. It was posited that only three of the six grounds of objection raised were resolved by the lower court and that the failure to address the other grounds was a violation of 2nd Respondent/Cross Appellant's right to fair hearing, which occasioned a gross miscarriage of justice. The cases of **HOLLOWAY vs. JIMOH (2020) 2 NWLR (PT 1707) at 72-73**, **OGUNGWA vs. WILLIAMS (2020) 8 NWLR [no part stated] at 60-61** and **IBEZIM vs. ELEBEKE (supra) at 49** were called in aid.

The 2nd Respondent/Cross Appellant's third issue is on abuse of process and its contention is that the Appellant/Cross Respondent had filed an earlier action seeking, *inter alia*, the disqualification of the 3rd Respondent, thereby making this later action an abuse of process; since both actions deal with basically the same subject matter and the same parties. It was contended that a party is not allowed to nibble at its claim piecemeal and so the grounds of disqualification raised by the Appellant/Cross Respondent ought not to be split in separate actions as public policy demands that there must be an end to litigation *vide* **DINGYADI vs. INEC (NO. 2) (2010) 18 NWLR (PT 1224) 154 at 194-195** and **DZUNGWE vs. GBISHE (1985) 2 NWLR (PT 8) 528 at**

537, 540 and 544-545. It was conclusively asserted that the claims and reliefs in both cases were on the eligibility of the 3rd Respondent to stand as a candidate for the Presidential election and the process of court having been abused, this action which is later in time is to be dismissed. The cases of **IBEZIM vs. ELEBEKE (supra) at 33, NWOSU vs. PDP (2018) 14 NWLR (PT 1640) 532** and **DINGYADI vs. INEC (NO. 2) (supra)** were referred to.

SUBMISSIONS OF THE APPELLANT/CROSS RESPONDENT'S COUNSEL

It was submitted that it is the processes filed by the Appellant/Cross Respondent that are examined to determine the issue of *locus standi*, and that the said processes show that the case is about the violation of the community reading and application of Section 131 of the 1999 Constitution, as amended, and Sections 29 and 77 (2) and (3) of the Electoral Act, 2022; which culminated in the publication of the 3rd Respondent's name as candidate for the Presidential election. The cases of **TAIWO vs. ADEGBORO (2011) LPELR-3133 (SC), OPOBIYI vs. MUNIRU (2011) LPELR-8232 (SC)** and **ODIMEGWA vs. IBEZIM (2019) LPELR-46939 (SC) at 23** were relied upon.

It was maintained that the Appellant/Cross Respondent, as a political party sponsoring a candidate for the said Presidential election, has the *locus standi* to sue as its complaint, which affected its rights and interests, was not on the internal affairs of the 2nd Respondent/Cross Appellant, but on the violation of the provisions of the 1999 Constitution and the Electoral Act, which is justiciable. The cases of **APC vs. BUBA (2022) LPELR-57495 (CA), AKINREMI vs. SULEIMAN (2022)**

LPELR-56903 (CA) and **ONAYEFEME vs. APC (2022) LPELR-57311 (CA)** were cited in support.

It was posited that the lower court rightly held that the Appellant/Cross Respondent was clothed with jurisdiction by Section 285 (14) (c) of the 1999 Constitution, as amended, since the action questions the validity of both the constitutional and statutory breach and violation which touch on the Appellant/Cross Respondent's civil rights and obligations *vide* **FAWEHINMI vs. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA (2007) 14 NWLR (PT 1054) 275 at 331**. Furthermore, that the said Section 285 (14) (c) of the 1999 Constitution as amended, accords *locus standi* and cause of action to a political party to challenge the actions, decisions or activities of the 1st Respondent where it has not complied with the provisions of the Electoral Act in respect of the nomination of candidates of political parties for an election. In the circumstances of this matter, the propriety of the 1st Respondent recognising, publishing or relating with the 3rd Respondent as a candidate when the 2nd Respondent/Cross Appellant and the 3rd Respondent were in breach and violation of Section 131 (c) of the 1999 Constitution as amended and Sections 29 and 77 (2) and (3) of the Electoral Act, 2022. The case of **NYAKO vs. ARDO (2013) LPELR-20848** was called in aid. It was conclusively stated that the Appellant/Cross Respondent had a reasonable cause of action and the *locus standi* and so the jurisdiction of the lower court was properly activated based on the maxim *ubi jus ibi remedium*. The cases of **RINCO CONSTRUCTION CO. vs. VEEPEE INDUSTRIES LTD (2005) 9 NWLR (PT 929) 85 at 96** and **ORIANZI**

vs. A-G RIVERS STATE (2017) 6 NWLR (PT 1561) 224 at 288 were referred to.

The second issue of the Appellant/Cross Respondent is on whether the action is statute barred. It was stated that the computation of the limitation period is done by ascertaining when the cause of action arose and when the action was filed to see if it was filed within the limitation period. The cause of action was said to be ascertained from the processes filed by the Appellant/Cross Respondent, which cause of action arose when the 1st Respondent published the name of the 3rd Respondent in the final list of nominated candidates on 20th September 2022, and so the action filed on 30th September, 2022 was filed within the limitation period stipulated in Section 285 (9) of the 1999 Constitution, as amended. The cases of **KARSHI vs. GWAGWA (2022) LPELR-57544 (SC) at 29-33** and **APPEAL NO. SC. CV/41/2022: ABDULLAHI vs. LOKO (unreported) [date of delivery not stated]** were relied upon.

It was maintained that the events which culminated in the Appellant/Cross Respondent's cause of action were cumulative and only matured when the final list of candidates was published by the 1st Respondent on 20th September 2022 *vide* **DIAMOND PET. LTD vs. GOV. CBN (2015) NWLR [no volume stated] (PT 1478) 179 at 200-201, EGBE vs. ADEFARASIN (1987) 1 NWLR (PT 47) 1 at 20, AKEREDOLU vs. OMIYALE (2013) LPELR-22800 (CA) at 30 and WOHEREM vs. EMEREUWA (2004) 6-7 SC 161 or (2004) 13 NWLR (PT 890) 398 at 417**. It was asserted that the lower court was correct to hold that the action was not statute barred, since the Appellant/Cross

Respondent properly hoped that the 1st Respondent would rectify the defect by not publishing the name of the 3rd Respondent.

The Appellant/Cross Respondent argued its issue numbers three and four together. It was stated that this action is not an abuse of process as the parties and subject matter in the previous action are different from the instant action.

On the failure of the lower court to pronounce on all the grounds of the 2nd Respondent/Cross Appellant's objection, it was submitted that a court is not mandated to pronounce on every insignificant issue raised, provided that it determines the principal or material issues raised. It was posited that where the pronouncement on the principal issues has a consequence on the ancillary issues, there is no duty on the court to pronounce on the ancillary issue again. The omission to specifically pronounce on all the legs of the objection was said not to be fundamental or fatal and did not occasion a miscarriage of justice. The case of **BOKO vs. NUNGWA (2019) 1 NWLR (PT 1654) 295 at 425** was referred to.

It was posited that the principal issues in the 2nd Respondent/Cross Appellant's objection are the issues of *locus standi* and limitation of action (status bar); while the other issues are ancillary and subsumed under the said issues and the determination of the principal issues totally resolved the other issues. The objection premised on justiciability of the action and Section 285 (14) of the 1999 Constitution, as amended, were said to have been dealt with under *locus standi*, while the objection on abuse of process was subsumed in the substantive matter. The objection on whether reliefs were claimed against a Federal Government Agency was said to be a

non-starter since the 1st Respondent is an agency of the Federal Government and reliefs were claimed against it. It was conclusively contended that even if any issues were not considered, that the 2nd Respondent/Cross Appellant has not shown that it occasioned a miscarriage of justice. The cases of **HONEYWELL FLOUR MILLS PLC vs. ECOBANK (2018) LPELR-45127 (SC)**, **EMEKA vs. OKADIGBO (2012) 18 NWLR (PT 1313) 12 at 92-93** and **NCC vs. MOTOPHONE LTD (2019) LPELR-47401 at 33-37** were relied upon.

2ND RESPONDENT/CROSS APPELLANT'S REPLY ON LAW

It was submitted in the Reply on Points of Law to the 1st Cross Respondent's Brief that the Appellant/Cross Respondent has read into the statutory provisions, what is not there; which is not to be done *vide* **THE NORTHERN ASSURANCE CO LTD vs. WURAOLA (1969) LPELR-25562 (SC)**. It was asserted that there is no need for any special or extraneous aid or to look into any other interpretation of the provisions other than the literal meaning of the clear and unambiguous words used and assigning the plain grammatical meaning to the words in order to get the intention of the lawmaker. The cases of **GANA vs. SDP (2019) LPELR-47153 (SC)**, **A-G FEDERATION vs. A-G LAGOS (2013) 16 NWLR (PT 618) 187**, **ARARUME vs. INEC (2007) 9 NWLR (PT 1038) 127** and **BUHARI vs. OBASANJO (2005) 13 NWLR (PT 941) 1** were referred to.

It was further submitted that the submission that the events which culminated in the cause of action were cumulative is a concession, admission and acknowledgment that the event complained of started

earlier with the nomination of the 3rd Respondent as a candidate for election and so the action is indeed statute barred. The doctrine of continuous injury was said to be inapplicable in election related matters. The case of **NWOKO vs. NWAOBOSHI (2019) LPELR 49202 (SC)** was called in aid.

It was asserted that the issues not considered by the lower court were fundamental and independent of the issues considered and that non-consideration of the said issues occasioned a miscarriage of justice. The case of **LARMIE vs. DPMS LTD (2005) 18 NWLR (PT 958) 438** was referred to on the meaning of miscarriage of justice. It was conclusively submitted that the test in abuse of process is whether the second action is seeking a relief that may have been obtained in the first action *vide* **APP vs. OBASEKI (2022) 13 NWLR (PT 1846) 1 at 35-36**; and not whether there are other parties in the earlier suit and if the reliefs claimed are identical.

RESOLUTION OF THE CROSS APPEAL

The issues raised in this cross appeal interrogates four areas of the law, namely the duty on a court to pronounce on all issues raised before it, Abuse of Process, Limitation of Action and *locus standi*. It is under these sub-heads that I will now resolve the Cross Appeal.

DUTY ON A COURT TO PRONOUNCE ON ALL ISSUES RAISED

It is trite law that a court must give a full and dispassionate consideration to the issues raised and canvassed before it: **C. N. OKPALA & SONS LTD vs. NIG BREWERIES PLC (2017) LPELR (43826) 1 at 17, BRAWAL SHIPPING (NIG) LTD vs. F. I. ONWADIKE CO. LTD**

(2000) 6 SCNJ 508 at 522 and **SIFAX NIGERIA LTD vs. MIGFO NIG LTD (2018) LPELR (49735) 1 at 56-57**. However, it is not in all instances where a court fails to make a pronouncement on an issue raised that it is fatal. In **NCC vs. MOTOPHONE LTD (2019) 4 NWLR (PT 1691) 1 at 37**, it was held that where there is a failure to pronounce on all issues submitted before a court, it would not amount to a denial of fair hearing unless it is shown that a miscarriage of justice was occasioned. Furthermore, in **BRAWAL SHIPPING (NIG) LTD vs. F. I. ONWADIKE CO. LTD (2000) LPELR (802) 1 at 13**, *Uwaifo, JSC* stated as follows:

"It is no longer in doubt that this Court demands of, and admonishes, the lower courts to pronounce, as a general rule, on all issues properly placed before them for determination in order, apart from the issue of fair hearing, not to risk the possibility that the only issue or issues decided by them could be faulted on appeal... Failure to do so may lead to a miscarriage of justice and certainly will have that result if the issues not pronounced upon are crucial."

Equally, in **ORIANWO vs. OKENE (2002) 14 NWLR (PT 786) 156 at 182-183**, *Ogundare, JSC* stated:

"If the issue was vital to the resolution of the dispute between the parties, they would be expected to either order a retrial or resolve the issue themselves upon the evidence available if the question of credibility of witnesses would not arise."

See also **OVUNWO vs. WOKO (2011) LPELR (2841) 1 at 19**, **ONIFADE vs. OLAYIWOLA (1990) LPELR (2680) 1 at 25** and **OGUNDARE vs. ALAO (2013) LPELR (21845) 1 at 39-42**.

The above *dicta* from the apex court sets out several parameters that are meant to act as a beacon for the attitude of an appellate court where a court does not consider all the issues raised before it. These parameters include whether the issue was properly raised, whether the issue is vital, crucial and substantial. In simple terms, it would appear that failure to consider and pronounce on all issues before the court will not, *per se*, be fatal unless it occasioned a miscarriage of justice: **BAMAIYI vs. THE STATE (2001) 8 NWLR (PT 715) 270, HONEYWELL FLOUR MILLS PLC vs. ECOBANK (supra) and EMEKA vs. OKADIGBO (supra)**. *Kalgo, JSC* expressed the position in the following words in **OSASONA vs. AJAYI (2004) LPELR (2790) 1 at 20:**

"It is trite law that a court or tribunal should consider all issues for determination brought before it but failure to consider and pronounce on all issues submitted to the court or tribunal may not necessarily amount to a miscarriage of justice or denial of fair hearing."

See also **UBA vs. NWAOKOLO (1995) 6 NWLR (PT 400) 127, KOLOKO vs. NKWONTA (2020) LPELR (52195) 1 at 29-31 and A-G, NIGER STATE vs. THE EXECUTIVE CHAIRMAN, EFCC (2022) LPELR (57062) 1 at 42-45.**

It seems to me that in order to conclude that there was a miscarriage of justice, the issue which the 2nd Respondent/Cross Appellant contends that the lower court did not pronounce upon ought to have been properly before the lower court, vital, crucial and substantial. Now, did the failure of the lower court to pronounce on all the grounds of objection raised by the

2nd Respondent/Cross Appellant occasion a miscarriage of justice in the circumstances of this matter? It would not seem to be so.

I have already set out the six grounds on which the objection was predicated. The 2nd Respondent/Cross Appellant concedes that three of these grounds were considered and pronounced upon by the lower court. The grounds, which it contends were not pronounced upon, are the grounds dealing with whether the action claimed reliefs against the Federal Government or any of its agencies; justiciability of the action and the extent of the rights created by Section 285 (14) of the 1999 Constitution, as amended; being a definition provision.

Now, in considering the issue of *locus standi*, which is one of the grounds conceded to have been pronounced upon by the lower court, it was held that treating the primary elections conducted by political parties as internal affairs of the party would mean that a breach of the Electoral Act by the political party might go unchallenged, which is not the intention of the lawmaker; and that with the Constitution as amended, the Appellant/Cross Respondent can maintain an action since the breach of statutory provisions cannot be classified under the internal affairs of a political party. (See pages 341-342 of the Records of Appeal). Without a doubt, the above is a decision on the justiciability of the action.

With respect to the ground on the extent of the rights created by Section 285 (14) of the Constitution, as amended, the lower court made a pronouncement thereon and held that the provision extended *locus standi* to political parties. See page 343 of the Records of Appeal. It then conclusively held as follows on the said page:

"... the altered section 285 (14) (c) extends the locus standi to the Political parties. I therefore hold that this matter is not an internal affair dispute of the 2nd Defendant, thus the Plaintiff has requisite locus standi to institute and maintain this action as it affects its interests and borders on the alleged non-compliance with the provisions of the Electoral Act, 2022."

It is effulgent from the above pericope that the 2nd Respondent/Cross Appellant is not correct in its assertion that the lower court did not pronounce on the justiciability of the action and the extent of the rights and powers created by Section 285 (14) (c) of the 1999 Constitution, as amended. It did, even though it is subsumed under the consideration of *locus standi*. The material consideration is that the issue was pronounced upon.

The lower court was silent on the ground in which it was contended that the main claim and principal reliefs are not against the Federal Government or any of its agencies and so the matter does not come within the jurisdiction of the Federal High Court. Howbeit, it does not seem that this is an omission that occasioned a miscarriage of justice as the said ground is neither crucial, fundamental nor vital in the peculiar circumstances of this matter. The reason is not far-fetched. The 1st Respondent, INEC, is an agency of the Federal Government; being a Federal Executive body established under Section 153 (1) (f) of the 1999 Constitution, as amended. Secondly, it is evident from the reliefs claimed, which I have already set out in this judgment, that reliefs have been claimed against the 1st Respondent for a declaration precluding it from recognising the 3rd Respondent as a candidate and for an injunction

restraining it from, *inter alia*, giving effect to the 3rd Respondent as a candidate for the Presidential election. These are principal reliefs claimed against an agency of the Federal Government.

The matter does not end there. By Section 251 (1) of the 1999 Constitution, as amended, the jurisdiction of the lower court, the Federal High Court, thereunder, is in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly. The Electoral Act, 2022 is an Act of the National Assembly. It is agreed on all sides that this matter is a pre-election matter. Sections 29 (5) and 84 (14) of the Electoral Act, 2022, have conferred additional jurisdiction on the lower court in pre-election matters. *Arguendo*, even if as contended by the 2nd Respondent/Cross Appellant that the main claims and principal reliefs are not against an agency of the Federal Government, which is not correct; the matter as pre-election litigation is still within the jurisdictional competence of the lower court, without prejudice to any other defect that there may be in the action. Accordingly, I restate that the said ground is neither crucial, fundamental nor vital; and the failure to pronounce upon the same was not such a violation of the right to fair hearing that would occasion a miscarriage of justice. See **NCC vs. MOTOPHONE LTD (2019) 4 NWLR (PT 1691) 1 at 37, OSASONA vs. AJAYI (supra) at 20 and A-G, NIGER STATE vs. THE EXECUTIVE CHAIRMAN, EFCC (supra) at 42-45.**

ABUSE OF PROCESS

The term abuse of process of a court is a term generally applied to a proceeding which is wanting in *bona fides* and is frivolous, vexatious or

oppressive. Abuse of process can only mean the abuse of legal procedure or the improper use or misuse of the legal process. See **AMAEFULE vs. THE STATE (1988) 2 NWLR (PT 75) 156 at 177**. The court under its inherent jurisdiction or power has the duty to ensure that the machinery of justice is duly lubricated and that it is not abused. Abuse of process simply means that the process of court must be used *bona fide* and properly and must not be abused: **ARUBO vs. AIYELERU (1993) 3 NWLR (PT 280) 126 at 142**, **SARAKI vs. KOTOYE (1992) 9 NWLR (PT 264) 156 at 188**, **OKAFOR vs. A-G (1991) 6 NWLR (PT 200) 659 at 681**, **CBN vs. AHMED (2001) 28 WRN 38 at 60-61** and **MOGAJI vs. NEPA (2003) 8 WRN 42 at 53**.

As stated by *Edozie, JSC* in **AGWASIM vs. OJICHIE (2004) 18 NSCQR (PT 1) 359 at 367**:

"It is trite law that the abuse of judicial process is the improper use of the judicial process by a party in litigation. It may occur in various ways, such as instituting a multiplicity of action on the same subject matter against the same opponent on the same issue or a multiplicity of action on the same matter between the same parties. It also occurs by instituting different actions between the same parties simultaneously in different courts even though on different grounds, where two similar processes are used in exercise of the same right..."

In his own contribution, *Niki Tobi, JSC* at *page 369* put the legal position as follows:

"The above factual position creates a scenario of the appellant pursuing the same

matter by two processes. In other words, the appellants, by the two processes, are involved in some gamble or game of chance to get the best in the judicial process... A litigant has no right to pursue pari passu two processes which will have the same effect in two courts at the same time with a view to obtaining victory in one of the processes or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different positions clearly, plainly and without tricks."

It is hornbook law that instituting several actions on the same subject matter against the same opponent on the same issues even when there is a right to bring the action is an abuse of process of court: **OKORODUDU vs. OKOROMADU (1977) 3 SC 21** and **OYAGBOLA vs. ESSO WEST AFRICAN INC. (1966) 1 ALL NLR 170**. Where there is an abuse of process, it is the action which is later in time that constitutes the abuse of court process. See **NWEKE vs. UDOBI (2001) 5 NWLR (PT 706) 445** at 461-462 and **AFRICAN REINSURANCE CORPORATION vs. JDP CONSTRUCTION NIG. LTD (2003) FWLR 251** at 270.

The 2nd Respondent/Cross Appellant's assertion that this action is an abuse of process is on account of the pendency of the action in **SUIT NO. FHC/ABJ/CS/1215/2022: ALLIED PEOPLES MOVEMENT vs. INDEPENDENT NATIONAL ELECTORAL COMMISSION & 12 ORS.**

The Originating Summons filed in the said action is at pages 126-144 of the Records of Appeal. It is immediately evident from the said process that the parties in the said action are different from the parties in this action.

Furthermore, the subject matter and issues in the said action are on the issue of a "placeholder" and whether the substitution and replacement of the Vice-Presidential nominees of the New Nigeria Peoples Party, Labour Party and All Progressives Congress is acceptable in law. The issues and subject matter in the said action is totally different from the issues in the present action. Furthermore, the peculiar circumstances of this matter are such that the Appellant/Cross Respondent cannot be said to be nibbling at its claim piecemeal since the difference in the parties meant that the issues raised in this action could not have been ventilated in the previous action in order to avoid misjoinder of causes of action and obfuscation of issues. In the circumstances, in the light of the fact that the parties, subject matter and issues in the two actions are not the same, this action is not an abuse of court process.

LIMITATION OF ACTION/STATUTE BAR

Let me iterate that this matter is a pre-election matter. Section 285 (9) of the 1999 Constitution, as amended provides:

"Notwithstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit."

The facts necessary to resolve this issue on limitation of action are not convoluted. In ascertaining whether an action is statute barred, the court looks at the date when the action was instituted and the date when the cause of action arose. Now, a cause of action is the operative fact or facts (the factual situation) which give rise to a right of action. In simple terms, a cause of action arises the moment a wrong is done to the plaintiff by the

defendant. See **EGBE vs. ADEFARASIN (1987) 1 NWLR (PT 47) 1 at 20** and **ADEKOYA vs. FHA (2008) 11 NWLR (PT 1099) 539 at 551 and 557.**

The determination of whether an action is caught by the statute of limitation is a matter of calculation of raw figures and a court of law has no discretion in the matter: **ADEKOYA vs. FHA (supra) at 557.** It is necessary to distinguish a cause of action from a right of action. A right of action is the right to enforce presently a cause of action. A right of action is a remedial right. A statute of limitation however removes the right of action and leaves the plaintiff with a bare and empty cause of action which he cannot enforce. See **EGBE vs. ADEFARASIN (supra) at 20, EBOIGBE vs. NNPC (1994) 5 NWLR (PT 347) 649 at 659, ODUBEKO vs. FOWLER (1993) 7 NWLR (PT 308) 637, AREMO II vs. ADEKANYE (2004) 13 NWLR (PART 891) 572 at 592-593** and **P. N. UDDOH TRADING CO. LTD vs. ABERE (2001) 11 NWLR (PT 723) 114 or (2004) 24 WRN 1.**

Now, I have insightfully considered the processes filed by the Appellant/Cross Respondent. In order to ascertain when the cause of action arose, the depositions in Paragraphs 12-16 of the affidavit in support of the Originating Summons are relevant. They read:

"12. I know as a fact that the 3^d Defendant up until the 24th of May, 2022 was a member of the Peoples Democratic Party and an aspirant in the Presidential Primary Election of the party. Herewith attached and marked as Exhibit 'D Series' are online media reports of the 3^d Defendant as an aspirant of

the Peoples Democratic Party with the Certificate of Compliance.

13. *That by a letter dated the 24th of May, 2022; the 3^d Defendant withdrew his membership of the Peoples Democratic Party and also withdrew from the Party's Presidential primary election. **Herewith attached and marked as Exhibit 'E Series' are copies of the 3^d Defendant's resignation letter from the Peoples Democratic Party dated 24th of May, 2022 and online media reports of the 3^d Defendant resignation from the Peoples Democratic Party with the Certificate of Compliance.***
14. *I am aware that having resigned from the Peoples Democratic Party on the 24th of May, 2022, the 3^d Defendant was nominated by the 2nd Defendant on the 30th of May, 2022 as its candidate and flag bearer for the forthcoming presidential election, scheduled for the 25th of February, 2022.*
15. *That the aforesaid nomination of the 3^d Defendant as the candidate and flag bearer of the 2nd Defendant was widely publicized by various print and online media platforms. **Herewith attached and marked as Exhibit 'F Series' are online media reports of the nomination of the 3^d Defendant as the presidential candidate of the 2nd Defendant with the Certificate of Compliance.***
16. *I am aware that on the 20th of September, 2022, the 1st Defendant*

published the final list of candidates nominated by the 18 political parties as their candidates and flag bearers for the 2023 Presidential Election including the name of the 3rd Defendant and other candidates of various political parties. Herewith attached and marked as Exhibit 'G' is a copy of the final list of the candidates nominated by various political parties for the 2023 General election published by the 1st Defendant with the Certificate of Compliance."

(See page 12 of the Record of Appeal)

In considering the above depositions, I am not in any doubt whatsoever that even though references were made to the resignation of the 3rd Respondent from the Peoples Democratic Party on 24th May 2022, that he thereafter joined the 2nd Respondent/Cross Appellant, and that the 2nd Respondent/Cross Appellant's primary election took place on 30th May, 2022; it is however limpid that the operative fact which the Appellant/Cross Respondent complains about and on which it pivots its cause of action is as deposed to in paragraph 16, already reproduced above, *id est*, the publication by the 1st Respondent of the name of the 3rd Respondent in the final list of nominated candidates for the Presidential election on 20th September 2022. The wrong alleged in this cause of action is that since there was a breach of the community and integral reading of the stipulations of Section 131 (c) of the 1999 Constitution, as amended, and Sections 29 and 77 (2) and (3) of the Electoral Act, 2022, by the 2nd Respondent/Cross Appellant and the 3rd Respondent; that the name of the 3rd Respondent ought not to have been published in the final list of

candidates for the Presidential election. In **KARSHI vs. GWAGWA (2022) LPELR (57544) 1 at 56** or **(2022) 9 NWLR (PT 1834) 139 at 182**, the apex court held that a cause of action cannot arise until all that needs to take place to complete the complaint has happened. In the circumstances, it is only when the final list was published by the 1st Respondent and the 3rd Respondent's name was published, that the wrong which the Appellant/Cross Respondent alleges was complete/occurred: **MUSA vs. UMAR (2020) 11 NWLR (PT 1735) 213 at 259** and **APC vs. AGODA (2019) LPELR (47174) 1 at 32-34 and 42**. It is agreed that the publication was done on 20th September 2022. This is the date from which the computation of the limitation period is to be done. In computing from the said 20th September 2022, the action was filed on 30th September 2022, being the eleventh day from the accrual of the cause of action. In consequence, the action is not statute barred, having been *"filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit"*, *id est*, publication of the 3rd Respondent's name in the Final List of candidates for election by the 1st Respondent. The action, having been commenced within the limitation period stipulated in Section 285 (9) of the 1999 Constitution, as amended, is not statute barred. See **APC vs. PDP (2023) LPELR (59254) 1 at 36-39**.

Even though the cause of action is not statute-barred and the right of action has not been removed by statute, it is a totally different consideration if Appellant/ Cross Respondent has the *locus standi*, standing or title to sue, to maintain the action. This is what will now captivate our attention, as we consider the legal principle/concept of *locus standi*.

LOCUS STANDI

The term *locus standi* denotes the legal capacity to institute proceedings in a court of law. The fundamental aspect of *locus standi* is that it focuses on the party seeking to get his complaint before the court and not on the issue he wishes to have adjudicated. Where the plaintiff does not have the requisite legal capacity to maintain the action, the trial court will be robbed of jurisdiction to entertain the action. See **ADESANYA vs. PRESIDENT OF NIGERIA (1981) 5 SC 112** or **(1981) 2 NCLR 358**, **ODIMEGWA vs. IBEZIM (2019) 9 NWLR (PT 1677) 244** at **256-257** and **260**, **SUPERMARITIME (NIG) LTD vs. ESSENTIAL SEAFOODS LTD (2018) LPELR (45109) 1** at **4-5** and **AFRICAN PRUDENTIAL REGISTRARS PLC vs. MACAULAY (2020) LPELR (49593) 1** at **15**.

In order for a person to have *locus standi*, he must show that his civil rights and obligations have been or are in danger of being infringed and that he has sufficient legal interest in seeking redress in court. See **FAWEHINMI vs. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA (supra)**, **ADENUGA vs. ODUMERU (2002) 8 NWLR (PT 821) 163** and **ETALUKU vs. NBC PLC (2004) 15 NWLR (PT 896) 370** at **398**. Given the fact that *locus standi* denotes the capacity to institute proceedings in a court of law, it can be a matter of law only or a question of fact only. It is a matter of law when a statute specifically and mandatorily provides for the category of person or persons who can commence a particular action. It is a question of fact only, when the law does not specifically provide for the category of person or persons who can sue. In this latter situation, the claimant in his pleadings avers to facts

which show that he has the standing to sue. See **ALBIN CONSTRUCTION vs. RAO INV. AND PROPERTIES LTD (1992) 1 NWLR (PT 219) 583 at 594**. The claimant need not state that he has *locus standi*, all he needs to do is to proffer facts establishing his rights and obligations in respect of the subject matter of the suit. See **OROGAN vs. SOREMEKUN (1986) 2 NSCC 1231 at 1240**.

In determining whether a claimant has *locus standi*, it is the cause of action that has to be examined: **OLORIODE vs. OYEBI (1984) 5 SC 1 at 28**; a cause of action being the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts giving rise to the right to sue and it consists of two elements:

- (a) The wrongful act of the defendant which gives the claimant his cause of complaint and;
- (b) The consequent damage.

See **THOMAS vs. OLUFOSOYE (1986) 1 NWLR (PT 18) 669**, **EGBE vs. ADEFARASIN (1987) 1 NWLR (PT 47) 1 at 20** and **SAVAGE vs. UWAECHIE (1972) 3 SC 214**.

This matter is a pre-election matter. The contention of the Appellant/Cross Respondent is that the 3rd Respondent is not qualified and or is disqualified from contesting the forthcoming Presidential election. The Appellant/Cross Respondent anchors its contention on an integral construction and interpretation of the stipulations of Section 131 (c) of the 1999 Constitution, as amended, and Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022. The said Sections stipulate as follows:

Section 131 (c) of the Constitution:

"A person shall be qualified for election to the office of the President if –

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

Sections 29 (1), and 77 (2) and (3) of the Electoral Act, 2022 read:

"29 (1) Every political party shall, not later than 180 days before the date appointed for a general election under this Act, submit to the Commission, in the prescribed Forms, the list of the candidates the Party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party."

"77 (2) Every registered political party shall maintain a register of its members in both hard and soft copy.

(3) Each political party shall make such register available to the Commission not later than 30 days before the date fixed for the party primaries, congresses or convention."

It is on these provisions that the Appellant/Cross Respondent has anchored its cause of action in this pre-election matter, wherein it seeks to secure the disqualification of the Presidential candidate of a different political party, based on the perceived infractions committed by the said political party and its candidate, namely, the 2nd Respondent/Cross Appellant and the 3rd Respondent. At this stage of considering *locus standi*, the focus is not on whether the Appellant/Cross Respondent is correct in its contention. Rather, the focus is on whether the Appellant/Cross Respondent can even

be heard at all or be seen to raise such a contention. Put differently, whether it has the standing, title to sue or *locus standi* to approach the court in the first place.

Let me restate that *locus standi* can be a matter of law only or a question of fact. It is a matter of law when a statute has specifically and mandatorily provided for the category of person or persons who can commence a particular action. Pre-election litigation has become a closed shop. It is no longer an all-comers affair; the law has provided for the category of person(s) who would have the *locus standi* to maintain a pre-election matter. In this wise, the stipulations of Sections 29 (5), 84 (14), 152 of the Electoral Act, 2022 and Section 285 (14) of the 1999 Constitution as amended have provided for the category of persons that can bring a pre-election matter. By Sections 29 (5) and 84 (14) of the Electoral Act, 2022, it is an aspirant, which is defined in Section 152 of the Electoral Act, 2022 as *a person who aspires or seeks or strives to contest an election to a political office*; that can bring pre-election litigation. The Appellant/Cross Respondent is a political party, it is not an aspirant; so, it does not have *locus standi* under Section 29 (5) and 84 (14) of the Electoral Act, 2022.

Section 285 (14) of the Constitution stipulates:

"285 (14) For the purpose of this section, 'pre-election matter' means any suit by –

- (a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the*

conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;

- (b) an aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election; and*
- (c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in*

respect of preparation for an election."

Once again, for not being an aspirant, the Appellant/Cross Respondent cannot come within the purview of Section 285 (14) (a) and (b) of the Constitution. The provision relevant, in the context of this matter is Section 285 (14) (c). Even though the 2nd Respondent/Cross Appellant contends that the provision is a definition section and does not confer *locus standi*, the brass tacks is that in defining what a pre-election matter is, it has further stated who can bring a pre-election matter. In that wise, it has as a matter of law stated who can bring a pre-election matter. So, for the Appellant/Cross Respondent to have the requisite *locus standi*, its cause of action must come within the ambit in which the law has conferred *locus standi* on a political party to bring a pre-election matter.

In upholding the Appellant/Cross Respondent's *locus standi*, the lower court relied on Section 285 (14) (c) of the 1999 Constitution, as amended. At the risk of prolixity, let me restate that the Appellant/Cross Respondent's complaint is on the alleged non-compliance by the 2nd Respondent/Cross Appellant and 3rd Respondent with the extant legal provisions which form the fulcrum of its action. This is underscored by the submission in paragraph D.8 of the Appellant/Cross Respondent's Brief where it is, *inter alia*, submitted:

*"We submit that this constitutional provision donates **locus standi** and **cause of action** to a 'Political Party' ... to challenge the actions, decisions or activities of ... (INEC)..."*

In other words, the proprietary [sic] of ...(INEC), in recognizing, publishing the

name of the 3rd ... Respondent or relating with him in whatsoever manner, as the Presidential Candidate of the Cross Appellant, the said 3rd Respondent and the Cross Respondent having breached and violated the provision of Section 77(2) and (3) the Electoral Act, among others, activated the locus of ... any Political Party to challenge such failure to comply with the provisions of the Electoral Act."

So, the *casus belli* is that the 2nd Respondent/Cross Appellant and the 3rd Respondent "*breached and violated the provision of Section 77 (2) and (3) [of] the Electoral Act*".

It is settled law that the court considers the words used in a statute in order to discover their ordinary meaning and then give effect to their ordinary meaning as they relate to the subject matter of the action. See **BAYERO vs. AGUNDI (2021) 16 NWLR (PT 1802) 347**, **CHUKWUOGOR vs. CHUKWUOGOR (2021) 15 NWLR (PT 1799) 357** and **ANYA vs. ANYA (2020) 9 NWLR (PT 1729) 411**. Equally trite law is that the provisions of the statute are to be interpreted without any embellishment; nothing is to be read into the words, other than apply their ordinary meaning: **ABEGUNDE vs. ONDO STATE HOUSE OF ASSEMBLY (2015) LPELR (24588) 1 at 41**, **A-G FEDERATION vs. A-G LAGOS STATE (2013) 16 NWLR (PT 1380) 249** and **NUP vs. INEC (2021) 17 NWLR (PT 1805) 305**.

Applying this principle of interpretation to the facts of this matter, it is limpid that Section 285 (14) (c) of the Constitution has two limbs. The first limb is in respect of a challenge by a political party on the disqualification of its candidate by INEC; while the second limb is on a

complaint that INEC *has not complied* with the Electoral Act or other provisions of the applicable laws regarding the conduct of elections. The disjunctive word **OR** is employed by the drafters of the Constitution to separate the two limbs: **IWOK vs. NYANG (2022) 16 NWLR (PT 1855) 175 at 197**. The first limb of this provision is inapplicable in the peculiar facts of this matter as there is no complaint by the Appellant/Cross Respondent that its candidate was disqualified by INEC. With regard to the second limb, it is where INEC, the 1st Respondent herein *has not complied* with the Electoral Act or other provisions of the applicable laws regarding the conduct of elections, that a political party has been imbued with *locus standi* to sue.

For purposes of clarity, the right of action created under Section 285 (14) (c) of the 1999 Constitution as amended and vested in a political party is exercisable where:

- (i) *the political party challenges INEC for disqualifying its candidates from participating in an election; or*
- (ii) *the political party complains that the provisions of the Electoral Act or other applicable laws **has not been complied with** by INEC in respect of nomination of candidates, timetable for election, registration of voters and other activities of INEC in respect of preparation for an election.*

In the latter instance, it has to be a manifest non-compliance which can be laid at the doorsteps of INEC and not as, in the circumstances of this matter, where the complaint is that the 2nd Respondent/Cross Appellant and the 3rd Respondent "*breached and violated the provision of Section 77 (2) and (3) [of] the Electoral Act*". That is not the sphere in which *locus standi* has been conferred on a political party such as the Appellant/Cross

Respondent. The *locus standi* is in respect of a complaint that *"the provisions of the Electoral Act or other applicable laws has not been complied with by INEC in respect of nomination of candidates, timetable for election, registration of voters and other activities of INEC in respect of preparation for an election."*

I am cognisant of the contention that the cause of action crystallised when the 1st Respondent published the 3rd Respondent's name in the Final List of Candidates. It is in this regard that the lower court held as follows at pages 330-331 of the Records of Appeal:

"According to the Plaintiff, the emergence of 3rd Defendant as nominee of the 2nd Defendant was irregular and it properly hoped that the 1st Defendant would rectify the defect but this was not done and the name of the 3rd Defendant was published by 1st Defendant as the candidate of the 2nd Defendant for the Presidential Elections in the 2023 General Elections."

The pertinent question to ask at this stage is whether the 1st Respondent has a discretion in the publication of the names of candidates submitted to it by political parties; such that it could be said that it did not comply with the stipulations of the law when it publishes the names forwarded to it by political parties?

Sections 29 (1) and (3) and 32 (1) of the Electoral Act, 2022 provide as follows:

"29 (1) Every political party shall, not later than 180 days before the date appointed for a general election under this Act, submit to the Commission, in the prescribed

forms, the list of the candidates the Party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party.

(3) The Commission shall, within seven days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election."

Section 32 (1) goes on to provide as follows:

"32 (1) The Commission shall, at least 150 days before the day of the election, publish by displaying or causing to be displayed at the relevant office or offices of the Commission and on the Commission's web site, a statement of the full names and addresses of all candidates standing nominated."

From the above provisions, there would seem to be no wrongful act done by the 1st Respondent as it has done no more than scrupulously comply with the provisions of the Electoral Act, 2022 by publishing the names of the candidates submitted by the political parties as required by Sections 29 (3) and 32 (1) of the Electoral Act, 2022. The complaint that INEC, the 1st Respondent, accepted and published the name of the 3rd Respondent upon its being submitted by the 2nd Respondent/Cross Appellant as its candidate for the Presidential election cannot be non-compliance by the 1st Respondent as envisaged by Section 285 (14) (c) of the Constitution, as amended, since by Sections 29 (3) and 32 (1) of the Electoral Act, 2022, the 1st Respondent has the duty to accept and publish the list of candidates

submitted to it by a political party. The performance of this duty is compliance with the provisions of the law as opposed to being non-compliance by the 1st Respondent with the provisions of the law. The right to complain under Section 285 (14) (c) is given to a political party who complains that the provisions of the laws applicable to elections "has not been complied with" by the 1st Respondent, INEC. It does not extend to the complaint of the Appellant/Cross Respondent in this action that a rival political party and its candidate "breached and violated the provisions of Section 77 (2) and (3) [of] the Electoral Act".

At the pre-election stage, the manner in which a political party nominates its candidate for election cannot occasion an actionable wrong which a rival political party can litigate on. In **APC vs. PDP (2021) LPELR (55858) 1 at 21**, this Court per *Ekanem, JCA*, dealing with whether Section 285 of the 1999 Constitution, as amended, grants a political party the right to complain about the conduct of the primaries of another political party held thus:

"... (they) do not set out to clothe a political party with the standing to dabble into or peep at the internal affairs of another political party. To advocate a contrary position is nothing but a postulation for political voyeurism".

In **APPEAL NO. CA/PH/481/2022: PDP vs. INEC & ORS** (unreported) delivered on 29th November, 2022, this Court, per *Kolawole, JCA* held as follows:

"Let me state further, that the new provision in Section 285 (14) (a), (b) and in particular (c) was not intended by the Legislature to

create a new cause of action in favour of the political parties to embark as it were on poaching into the outcome of other parties' primaries so as to raise perceived issues of non compliance with the provisions of the Electoral Act, supra or the applicable provisions of the Constitution, 1999 As Amended and use it to drag INEC into the fray of partisan politics by seeking orders to compel INEC to disqualify the nominated candidates of an adverse party."

This Court then proceeded to conclusively hold that:

"... the Appellant (PDP) is in no way entitled to complain about the conduct of the primaries of 2nd Respondent (ADC), and to request the Court to make orders against the 1st Respondent (INEC) to compel it to disqualify the 3rd to 13th Respondents (ADC Candidates), and I so hold."

See also **APPEAL NO. CA/PH/480/2022: PDP vs. INEC & ORS** (unreported) delivered on 29th November 2022, **APC vs. PDP (2023) LPELR (59254) 1** at 43-45 and **NKASI vs. PDP (2023) LPELR (59355) 1** at 48-50.

On the facts on which the Appellant/Cross Respondent predicated its action, the 1st Respondent cannot be said to have failed to comply with the provisions of the applicable electoral laws. I am therefore unable to agree with the lower court that the Appellant/Cross Respondent was clothed with *locus standi* to maintain the action by virtue of Section 285 (14) (c) of the 1999 Constitution, as amended. The cross appeal therefore succeeds on the ground of absence of *locus standi* by the Appellant/Cross Respondent to maintain the action.

Locus standi is linked to the issue of jurisdiction of a trial court. Where a plaintiff does not have the standing to sue, the trial court cannot properly assume jurisdiction to entertain the matter: **ODIMEGWA vs. IBEZIM (2019) 9 NWLR (PT 1677) 244 at 260, DADA vs. OGUNSANYA (1992) LPELR (908) 1 at 24-25, EMEZI vs. OSUAGWU (2005) LPELR (1130) 1 at 16-17, OPOBIYI vs. MUNIRU (supra) at 17-18 and ECOBANK vs. ANCHORAGE LEISURES LTD (2019) LPELR (52128) 1 at 44.** When a court does not have jurisdiction in a matter, its decision, no matter how brilliantly arrived at, and even if correct, is a nullity. See **OLOBA vs. AKEREJA (1988) 3 NWLR (PT 84) 508 at 520, A-G LAGOS vs. DOSUNMU (1989) LPELR (3154) 1 at 10, FHA vs. OLAYEMI (2017) LPELR (43376) 1 at 81-82 and UNION BANK vs. BEAR MARINE LTD (2018) LPELR (43692) 1 at 24.** As a consequence, the decision of the lower court is hereby set aside and the Appellant/Cross Respondent's action is hereby struck out for want of jurisdiction.

With the manner of resolution of the cross appeal, I ought to end this judgment at this stage. However, because I neither lay claim to infallibility nor to being a repository of knowledge; and as an intermediate appellate court, I will now proceed to consider the main appeal, in the unlikely event that I may have arrived at a wrong decision in the cross appeal.

THE MAIN APPEAL

I have already set out the issues formulated by the parties. I will review their submissions on the respective issues and then resolve the appeal ensemble.

SUBMISSIONS OF THE APPELLANT'S COUNSEL

The Appellant states that where the words of a statute are explicit, clear and unambiguous, they must be given their simple ordinary, literal, natural grammatical meaning *vide* **YUSUF vs. OBASANJO (2003) 16 NWLR (PT 847) 532, OKUMAGBA vs. EGBE (1965) 1 ALL NLR 62** and **OGBUANYINYA vs. OKUDO (1979) 6-9 SC [no page stated]**. It was posited that the combined reading of Section 131 (c) of the 1999 Constitution, as amended, Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022 indicate:

- (i) That a presidential aspirant must be a member of a political party and must be sponsored by that political party for the office of President;
- (ii) The person's name must be on the Register of members of the Political party and must have been so far at least 30 days before the party primaries;
- (iii) The Register of members must have been submitted to INEC at least 30 days before the Party Primaries.

It was stated that political parties have a sacred obligation to act within the law and abide by their respective constitutions, the Electoral Act and the Nigerian Constitution. The cases of **APC vs. MARAFA (2020) 6 NWLR (PT 1721) 383 at 434** and **EMEKA vs. OKADIGBO (2012) 18 NWLR (PT 1331) 55 at 89** were referred to.

It was contended that the 2nd and 3rd Respondents' were in breach of the aforesaid mandatory statutory provisions and so the 3rd Respondent is ineligible and not qualified to be presented as the Presidential candidate of the 2nd Respondent since he was not a member of the 2nd Respondent thirty (30) days before the primary election of the 2nd Respondent. The

Exhibit E series attached to the affidavit in support of the Originating Summons and paragraphs 12-16 of the said affidavit, which were said not to have been denied, were referred to. It was stated that what is admitted requires no further proof. The cases of **BIEZAN EXCLUSIVE GUEST HOUSE LTD vs. UNION HOMES SAVINGS & LOAN LTD (2011) 7 NWLR (PT 1246) 246 at 285** and **AROMOLARAN vs. OLADELE (1990) 7 NWLR (PT 162) 262 at 368** was relied upon. The Appellant maintained that the lower court was wrong when it held that it is not stipulated in the Constitution or Electoral Act that for a person to be qualified as a Presidential candidate, he must have been a member of a political party for at least thirty (30) days before the primary election.

It was contended that the issue made by the lower court of the failure to exhibit the Register of Members of the 2nd Respondent was unnecessary as the Register of Members did not form the substratum of the Appellant's case; the principal issue in the case being that the 3rd Respondent's name could not have been submitted together with that of other members of the 2nd Respondent at least thirty (30) days before the Presidential Primary of the 2nd Respondent which took place on 30th May 2022; the 3rd Respondent having only resigned his membership of the Peoples Democratic Party on 24th May 2022. The period between 24th May 2022 and 30th May 2022 when the primary election was held was said to be short of the mandatory thirty (30) days prescribed by Section 77 (3) of the Electoral Act.

Still in argument, the Appellant submitted that the lower court speculated that the 3rd Respondent could have been a member of more than one political party, which was not an issue raised by the parties. The

Appellant asserted that its case was built on the fact that the 3rd Respondent was not a member of the 2nd Respondent for up to thirty (30) days before the primary election where he emerged as a Presidential candidate. It was contended that it is the Appellant's process that recourse is had to in order to ascertain the cause of action; and that since the 2nd and 3rd Respondents did not specifically deny the crucial question of 3rd Respondent having resigned from the Peoples Democratic Party on 24th May 2022 and emerged as 2nd Respondent's candidate at a primary election six days later on 30th May 2022, the issue of making available the Register of Members raised by the lower court was needless.

It was opined that the Appellant discharged the burden of proof on it and that the onus then shifted to the 2nd and 3rd Respondents to adduce evidence to prove that as at 24th May 2022, the 3rd Respondent belonged to both Peoples Democratic Party and the 2nd Respondent or that his name was in the Register of Members submitted by the 2nd Respondent to the 1st Respondent thirty (30) days before its primary election. Section 133 (1) and (2) of the Evidence Act on the principle of shifting burden of proof was referred to and it was stated that the findings made by the lower court were perverse and occasioned a miscarriage of justice.

It was further submitted that the 1st Respondent has the constitutional and statutory responsibility of ensuring that the 2nd and 3rd Respondents act lawfully and in accordance with the mandatory provisions of the 1999 Constitution, as amended and the Electoral Act; and that it should therefore desist from according recognition to the 3rd Respondent as the 2nd Respondent's Presidential candidate since the Appellant had proved

its case in line with the provisions of Section 131 of the 1999 Constitution, as amended, and Sections 29 and 77 (2) and (3) of the Electoral Act, 2022.

The Appellant's submission on its second issue is that by Section 1 (1) of the 1999 Constitution, as amended, the Constitution is the *grundnorm* and its provisions are supreme and binding and foremost in the hierarchy of laws *vide* **A-G ABIA STATE vs. A-G FEDERATION (2002) 6 NWLR (PT 763) 264 at 479-480** and **SHEMA vs. FRN (2018) 9 NWLR (PT 1624) 337 at 374**. It was stated that the constitution of a political party is inferior to the Electoral Act and therefore the waiver allegedly granted to the 3rd Respondent by the 2nd Respondent cannot cure a statutory breach of the requirements of Section 77 (2) and (3) of the Electoral Act. It was asserted that the lower court was wrong to hold that the waiver removed all impediment to the 3rd Respondent's membership of the 2nd Respondent.

On the third issue, it was posited that the lower court raised the issue of when the 3rd Respondent joined the 2nd Respondent *suo motu* and resolved the same without hearing the Appellant on the issue; thereby violating the Appellant's right to fair hearing, in consequence of which the decision reached is a nullity and ought to be set aside. The cases of **STIRLING CIVIL ENGINEERING (NIG) LTD vs. YAHAYA (2005) LPELR-3118 (SC) at 32-33**, **LAMIDO vs. PDP (2021) LPELR-55828 at 23-24** and **OKOYE vs. C.O.P. (2015) LPELR-24675 at 40** were referred to. It was further submitted that it was not open to the lower court to speculate as to whether the 3rd Respondent belonged to both Peoples Democratic Party and the 2nd Respondent at the same time, since a Court acts on evidence before it and avoids any manner of speculation.

The cases of **PEACE vs. FRN (2021) LPELR-56410** at 6-7, **TRADE BANK PLC vs. DELE MORENIKEJI (NIG) LTD (2005) 6 NWLR (PT 921) 309** at 328 and **FCDA VS. MTN NIG COMM LTD (2017) 10 NWLR (PT 1573) 217** at 230 were cited in support.

SUBMISSIONS OF THE 2ND RESPONDENT'S COUNSEL

It is submitted that the Appellant failed to produce sufficient evidence to entitle it to the grant of the reliefs claimed since the law is that he who asserts must prove. Section 131 of the Evidence Act and the case of **EDOSA vs. OGIEMWANRE (2019) 8 NWLR (PT 1673) at 14** were called in aid. It was posited that the Appellant needed to have produced the 2nd Respondent's Register of Members in order to establish that the 3rd Respondent's name was not on the Register as at the time the 2nd Respondent conducted its Presidential primary election, instead of relying on online hearsay reports that were culled from the internet.

It was contended that declaratory reliefs having been claimed, the same must be proved as it cannot even be granted based on admission. It was maintained that the Appellant failed to prove its case and that the Court cannot act on conjecture and speculation *vide* **ADIGWE vs. FRN (2015) LPELR-24694 (SC)** or **(2015) 18 NWLR (PT 1490) 105 at 133**. It was stated that it was uncharitable for the Appellant to charge the lower court with speculating on whether a person can belong to more than one political party when learned counsel had addressed the court on the issue, stating that there was no law that made such a prohibition.

The 2nd Respondent's submission on its second issue is that the primary duty in interpretation of a statute or the Constitution is to seek the

intendment of the lawmaker and where the words are plain and clear, their simple and ordinary meaning should be maintained. The cases of **BUHARI vs. INEC (2008) LPELR-814 (SC) at 208** or **(2008) 19 NWLR (PT 1120) 246 at 446** and **INEC vs. MUSA (2003) 3 NWLR (PT 806) 72 at 214** were referred to. It was opined that if the lawmaker intended that a person is to be disqualified because he was not a party member at least thirty (30) days to a party primary election, it would have been expressly stated in Section 137 of the 1999 Constitution, as amended. The Latin maxim *expressio unis exclusio alterius* and the case of **BUHARI vs. YUSUF (2003) LPELR-812 (SC) or (2003) 14 NWLR (PT 841) 446 at 500** and Section 131 of the 1999 Constitution, as amended on qualification for the Office of President were referred to. It was asserted that the qualification required is that the candidate is a member of a political party and that he is sponsored by the said political party; which requirement the 3rd Respondent met; since there is no time limit for membership of a political party stated in the 1999 Constitution, as amended.

It was maintained that a court cannot read into a statute what is not contained therein and so the lower court rightly held that there is nothing in the Constitution or Electoral Act stipulating that a person must be a member of political party for at least thirty (30) days before the primary election, before he can be qualified to be a Presidential candidate. The cases of **GWEDA vs. D. S. H. A. (2019) 8 NWLR (PT 1673) 30 at 47** and **A-G, CROSS RIVER vs. FRN (2019) 10 NWLR (PT 1681) 401 at 445** were relied upon. The duty of the Court was said to be to expound the law and not to expand the law; and that even where there is a lacuna,

which is not so in this case, that it is for the legislature, not for the court to fill the lacuna. The cases of **A-G, ONDO vs. A-G EKITI (2001) 17 NWLR (PT 743) 706 at 763** and **DICKSON vs. SYLVA (2016) LPELR-41257 (SC) or (2017) 8 NWLR (PT 1567) 167** were cited in support.

It was further submitted that in giving effect to the intendment of the lawmaker, the judicial interpretation is to construe the provision in a manner to save it and avoid making nonsense of the statute. The cases of **KASSIM vs. SADIKU (2021) 18 NWLR (PT 1807) 123 at 138**, **ARAKA vs. EGBUE (2003) 17 NWLR (PT 848) 1** or **(2003) LPELR-532 (SC)**, **INAKOJU vs. ADELEKE (2007) 4 NWLR (PT 1025) 427** and **ABACHA vs. FRN (2014) 6 NWLR (PT 1402) 43** were called in aid. It was asserted that the provisions of Section 77 (3) of the Electoral Act, 2022, has nothing to do with the qualification or disqualification of candidates for election, the same having been exhaustively dealt with and the field covered by Sections 131 and 137 of the 1999 Constitution as amended; making it unnecessary to recourse to any other statute or regulation. The cases of **INEC vs. MUSA (supra) at 158**, **AGI vs. PDP (2017) 17 NWLR (PT 1595) 386** or **(2016) LPELR-42578 (SC)**, **ABUBAKAR vs. INEC (2020) 12 NWLR (PT 1737) 37 at 173** and **ANPP vs. USMAN (2008) 12 NWLR (PT 1100) 1 at 53** were relied upon.

SUBMISSIONS OF THE 3RD RESPONDENT'S COUNSEL

The 3rd Respondent proffered his submissions in the appeal on the sole issue he nominated for determination in the appeal. It is stated that

the Appellant failed to evidentially and legally prove its case and so the decision dismissing the case is the correct decision. It was submitted that the Appellant is to succeed on the strength of its case and not the weakness of the defence. The Register of Members of the 2nd Respondent, which was said to be the focal point of the Appellant's case, was said not to have been placed before the lower court to establish the absence of the 3rd Respondent's name therein, since it is the document itself that is to be the proof. The cases of **ADESINA vs. AIR FRANCE (2022) 8 NWLR (PT 1833) at 555-556**, **GLOBE MOTORS HOLDING NIG LTD vs. IBRAHEEM (2021) LPELR-54550 (CA)** and **OJO vs. KAMALU (2005) 18 NWLR (PT 958) 523** were referred to.

It was opined that the 3rd Respondent's resignation from the Peoples Democratic Party on 24th May 2022 did not negate the possibility that he was a member of the 2nd Respondent even before the resignation, especially as learned counsel agreed at the lower court that no law prohibited a person from belonging to more than one political party at the same time. It was maintained that the Appellant did not adduce sufficient evidence for the burden of proof to shift, since the burden of proof on the Appellant was not to prove that the 3rd Respondent resigned from the Peoples Democratic Party; but rather that his name was not in the Register of Members of the 2nd Respondent that was submitted to the 1st Respondent. It was asserted that in the absence of the Register of Members, it would be left for the court to speculate as to its contents and that a declaratory relief can only be granted when the evidence establishes the material facts in issue. The cases of **ANYAOKE vs. ADI (1986) 3 NWLR (PT 31) 731**, **ONI vs. ARIMORO (1973) 3 SC 163** and **CLAY**

INDUSTRIES (NIG) LTD vs. AINA (1997) 8 NWLR (PT 516) 208 were relied upon.

Still in argument, it was submitted that since the Appellant's case borders on the 3rd Respondent's membership of the 2nd Respondent, that it cannot be sustained legally since the membership of a political party is the internal affair and prerogative of the political party. The cases of **ATAGO vs. NWUCHE (2017) 1 NWLR (PT 1545) 147, AGI vs. PDP (2017) 17 NWLR (PT 1595) at 459-460, APGA vs. ANYANWU (2014) 7 NWLR (PT 1407) at 582-583 and ONUOHA vs. OKAFOR (1983) 2 SCNLR 244** were called in aid.

It was further argued that even if it was proved that the 3rd Respondent's name was not on the 2nd Respondent's Register of Members and that the court can inquire into the memberships of a political party; that the absence of the name was not sufficient to disqualify the 3rd Respondent since the stipulation of Section 131 (c) of the 1999 Constitution, as amended, is for the candidate to be a member of a political party and to be sponsored by the party. The provisions of the constitution were said to be supreme and any contrary law will be null and void *vide* **OKOROCHA vs. PDP (2014) 7 NWLR (PT 1406) 213, EKEJIUBA vs. INEC (2016) LPELR-40926 (CA), PDP vs. EDEDE (2022) LPELR-57460 (CA), ANPP vs. USMAN (2008) 12 NWLR (PT 1100) 17 and TARZOOR vs. IORAER (2016) 3 NWLR (PT 1500) at 523.**

It was contended that the plain and ordinary meaning of Section 77 of the Electoral Act, 2022, does not envisage the disqualification of the 3rd Respondent as a community reading of Section 77 (2) and (3) discloses

that the intendment of the provision is administrative in nature, so that INEC would be updated on the list of members of a political party. It was asserted that in the absence of a clear provision in the Electoral Act vitiating the candidature of an individual whose name is not on the Register of Members submitted pursuant to Section 77 (3) of the Electoral Act, 2022, that acceding to the Appellant's argument would be reading into Section 77 (3) what is not there, and which would defeat the intendment of the provision, make it absurd and turn the court to the lawmaker. The cases of **ADBULKADIR vs. MOHAMMED (2019) 12 NWLR (PT 1687) 450 at 498-499**, **DICKSON vs. SYLVA (2017) 8 NWLR (PT 1567) 167** and **PDP vs. INEC (1999) 11 NWLR (PT 626) 200 at 261** were cited in support.

APPELLANT'S REPLY ON LAW

The Appellant maintains that it adduced sufficient evidence to support its case as the Exhibit E series of the supporting affidavit, especially the 3rd Respondent's letter of resignation was not denied by the Respondents. It was posited that the Appellant's case was not strictly on membership of the 2nd Respondent which would ordinarily not be justiciable, but that once there is an element of infraction of the Electoral Act or the Constitution, the matter is no longer the internal affair of a political party and therefore justiciable. It was maintained that the Appellant's case is about the violation of Section 131 of the Constitution, as amended, and Sections 29 and 77 (2) and (3) of the Electoral Act. The cases of **APC vs. BUBA (2022) LPELR-57495 (CA)**, **AKINREMI vs. SULEIMAN (2022) LPELR-56903 (CA)** and **ONAYEFEME vs. APC (2022) LPELR-57311 (CA)** were referred to.

It was further submitted that the Constitution is to be read holistically and that to achieve this, there should be a community or combined reading of Section 131 of the 1999 Constitution, as amended, and Sections 29 and 77 (2) and (3) of the Electoral Act. The section of a law, it was asserted, must not be read in isolation but together; hence the lawmakers have used Section 77 (3) of the Electoral Act to be read together with Section 131 of the Constitution and Section 29 of the Electoral Act. The cases of **LAFIA LOCAL GOVT. vs. THE EXECUTIVE GOV, NASARAWA STATE (2012) LPELR-20602 (SC) at 16-17** and **ORUBU vs. NEC (1998) 5 NWLR (PT 94) 323 at 382** were relied upon.

RESOLUTION OF THE MAIN APPEAL

The facts of this matter are not convoluted. The simple and straightforward facts disclose that the 3rd Respondent was a member of the Peoples Democratic Party and he resigned his membership of the party on 24th May 2022. It is also not confuted that the 3rd Respondent emerged the Presidential candidate of the 2nd Respondent at the primary election of the 2nd Respondent which was held on 30th May 2022. It is on this set of facts that the Appellant commenced this action, contending that the period between the 3rd Respondent's resignation from the Peoples Democratic Party and when he emerged the candidate of the 2nd Respondent was such that Section 77 (3) of the Electoral Act was violated and that the 3rd Respondent's name was not submitted together with the names of other members in the Register of Members submitted to the 1st Respondent by the 2nd Respondent pursuant to Section 77 (3) of the Electoral Act.

The parties are agreed on the rudimentary law that the burden of proof is on the Appellant to prove its case, being the party who would fail if no evidence is adduced at all. The Appellant however, asserts that the burden of proof shifted to the Respondents. The phrase 'burden of proof' in civil cases has two distinct meanings which can be confusing. Firstly, there is the burden of proof as a matter of law and the pleadings; this is the legal burden of proof, or the burden of establishing a case. Then, secondly, there is the burden of proof in the sense of adducing evidence, which is described as the evidential burden. The burden of proof in the first sense is always stable but the burden of proof in the second sense oscillates and constantly shifts, just like a chameleon changing its colour, according to how the evidence preponderates on the scale of justice. See **ODUKWE vs. OGUNBIYI (1998) LPELR (2239) 1 at 17, ADIGHIJE NWAOGU (2010) 12 NWLR (PT 1209) 419 at 463 and OKOYE vs. NWANKWO (2014) LPELR (23172) 1 at 21.**

It is settled law that in civil cases the legal burden of proof in the sense of establishing a case lies on the claimant, being the person who would fail if no evidence was adduced at all. However, this is not invariably so as there are circumstances in our adjectival law, when the burden of proof shifts to the defendant. See **OSAWARU vs. EZEIRUKA (1978) 6-7 SC 135 at 145, NWAVU vs. OKOYE (2008) LPELR (2116) 1 at 31** and **EZEMBA vs. IBENEME (2004) LPELR (1205) 1 at 20-21.** Section 133 (1) and (2) of the Evidence Act, 2011 stipulate as follows:

"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

produced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact 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 successively, until all the issues in the pleadings have been dealt with."

Given that the general rule is that he who asserts must prove, the Appellant had the burden to first adduce *prima facie* evidence in support of its case. It submits that it successfully did so by the Exhibit E series and paragraphs 12-16 of the affidavit in support of the Originating Summons. If it had successfully done so, which the lower court did not agree that it did, then the burden would have shifted to the Respondents to adduce counter evidence to sustain their defence. It is pertinent to state that where an allegation is made, positively or negatively and it forms an essential part of a party's case, the proof of such allegation rests on him. In the circumstances of this matter, the Appellant had the burden of proving that the stipulations of the said Section 77 (2) and (3) of the Electoral Act, 2022 were not complied with. See **NDUUL vs. WAYO (2018) LPELR (45151) 1 at 51-53, PLATEAU STATE vs. A.G FEDERATION (2006) 3 NWLR (PT 967) 345 at 417, IMANA vs. ROBINSON (1979) 3-4 SC (Reprint) 1 and IGBA vs. ANGBANDE (2021) LPELR (53295) 1 at 45-48**. This is a burden it is to discharge by establishing that the 2nd Respondent maintains a Register of its Members in hard and soft copy; that the 2nd Respondent made available the said

Register of Members to INEC, the 1st Respondent, thirty (30) days before its primary election of 30th May 2022, and that the name of the 3rd Respondent was not in the said Register of Members that was made available to the 1st Respondent. The case the Appellant is to establish is not the resignation of the 3rd Respondent from the Peoples Democratic Party, which is the evidence afforded by the Exhibit E series and Paragraphs 12-16 of the supporting affidavit. The critical component of the Appellant's case is evidence positively establishing the violation of Section 77 (2) and (3) of the Electoral Act, 2022. The evidence is not to be based on conjecture or speculation. It is only where there is such, *prima facie*, positive evidence that the burden of proof would shift to the Respondents.

There is absolutely no concrete evidence on record establishing that that the 2nd Respondent maintains a Register of its Members in hard and soft copy; that the 2nd Respondent made available the said Register of Members to INEC, the 1st Respondent, thirty (30) days before its primary election of 30th May 2022, and that the name of the 3rd Respondent was not in the said Register of Members that was made available to the 1st Respondent. The Appellant did not put in evidence the Register of Members of the 2nd Respondent which it keeps in hard and soft copy and which it submitted to the 1st Respondent thirty (30) days before its primary election. It is the Register of Members itself that will afford the best evidence of its contents and whether the name of the 3rd Respondent is on the Register. This is the Best Evidence Rule. See **IBRAHIM vs. YAKUNDIMA (2019) LPELR (48984) 1 at 11-12, BAKARI vs. OGUNDIPE (2020) LPELR (49571) 1 at 62 and FAGBENRO vs. AROBADI (2006) LPELR (1227) 1 at 35.**

The documents, Exhibit E series, which the Appellant relies upon, no doubt establishes that the 3rd Respondent resigned from the Peoples Democratic Party on 24th May 2022; it then builds its case on this for the court to speculate that in the circumstances the 3rd Respondent's name would not have been on the Register of Members which the 2nd Respondent submitted to the 1st Respondent, thirty (30) days before it conducted its primary election on 30th May 2022. Meanwhile, there is no whit, scintilla or iota of evidence that any Register of Members was in fact submitted to the 1st Respondent by the 2nd Respondent, or indeed that the 2nd Respondent even keeps a Register of Members in hard and soft copy. In considering whether a court can act on speculations, it was held as follows in **ASONIBARE vs. ADEBAYO (2021) LPELR-55593 at 30-31:**

*"Though the Appellant forcefully argued that he was not given an authenticated copy of the Judgment within seven days of delivery of the Judgment as stipulated in Section 294 (1) of the Constitution, there is nothing on Record showing when the Appellant was given an authenticated copy of the Judgment. To accede to the Appellant's contention in this regard will be speculative. The court can make inferences or analytical deductions from certain established facts and situations before the court, but the court must never speculate. Speculation is a mere imaginative guess which even when it appears plausible should not be allowed by the court to fill any gap in the evidence before it. In pauciloquent terms, a court of law cannot speculate or conjecture as it is a dangerous thing to do in the absence of evidence. See **OLUFEAGBA vs. ABDUR-RAHEEM (2009) LPELR (2613) 1 at 40, IKENTA BEST (NIG) LTD vs. A-G***

RIVERS STATE (2008) LPELR (1476) 1 at 51 and OLALOMI INDUSTRIES LTD vs. NIDB (2009) LPELR (2564) 1 at 44. Therefore, in the absence of evidence, I will not embark on speculation or conjecture that the authenticated judgment was not given to the Appellant within the constitutionally stipulated period."

See also **OVERSEAS CONSTRUCTION CO. LTD vs. CREEK ENTERPRISES LTD (1985) LPELR (2835) 1 at 7-8, IVIENAGBOR vs. BAZUAYE (1999) 9 NWLR (PT 620) 552 at 561 and KASUNMU vs. ADEPEGBA (2010) LPELR (4393) 1 at 12** [per *Dongban-Mensem, JCA* now *PCA*].

In the circumstances, it was not open to the lower court to engage in speculation. The lower court consequently arrived at the correct decision when in concluding that the Appellant's case lacks merit, it *inter alia*, reasoned and held as follows at pages 351-353 of the Records:

"Furthermore, the Plaintiff has not furnished this Court with any evidence as to when exactly the 3rd Defendant joined the 2nd Defendant. At best, the 2nd Defendant speculates that the 3rd Defendant joined the 2nd Defendant after his resignation from the Peoples Democratic Party on 24th May, 2022 and was nominated by the 2nd Defendant as its presidential candidate on the 30th of May, 2022. Thus the Plaintiff speculates that the 3rd Defendant joined the 2nd Defendant between 24th and 30th of May, 2022. While this might be plausible, this Court reasons that the 3rd Defendant could as well already [have] been a member of the 2nd Defendant prior to resigning from the Peoples Democratic Party. After all there is no law against a person belonging to more than one party. The law is only activated

when a person becomes an aspirant of a party or a nominated candidate of such party. Documentary evidence as to the exact day he joined the 2nd Defendant would have been the best evidence to prove the assertion of the Plaintiff.

With respect to the question of whether indeed the name of the 3^d Defendant is contained in the register of members of the 2nd Defendant, the only credible evidence to prove this, is by the production of the register of members of the 2nd Defendant. The Plaintiff failed to exhibit such register thereby failing in its duty to prove what it asserts.

Holding that the register of members of the 2nd Defendant was inchoate due to the alleged absence of the name of the 3^d Defendant in the register would be delving into the realms of speculations. It is the 1st Defendant as receiver of this register to say if the register was submitted in the first place or if it was incomplete. Also the Plaintiff on its part did not even exhibit anything showing that the register of members of the 2nd Defendant is incomplete or was submitted at all. The Plaintiff is expected to rely on the strength of its own evidence to succeed in this suit."

Assuming that the Appellant's evidence established violation of Section 77 (2) and (3) of the Electoral Act, 2022, but I still maintain that it did not; it does not appear to me that such a non-compliance is such on the basis of which it can be said that the 3rd Respondent is not qualified and/or is disqualified from standing as a candidate for the Presidential Elections. The Appellant anchors its case on the stipulations of Section 131 (c) of the 1999 Constitution, as amended, and Sections 29 and 77 (2) and (3) of the Electoral Act 2022. The provisions of Section 131 of the 1999

Constitution, as amended, Sections 29 (1) and 77 (2) and 93) of the Electoral Act, 2022 read as follows:

"131. A person shall be qualified for election to the office of the President if –

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

"29. (1) Every political party shall, not later than 180 days before the date appointed for a general election under this Act, submit to the Commission, in the prescribed Forms, the list of the candidates the party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party."

"77 (2) Every registered political party shall maintain a register of its members in both hard and soft copy.

(3) Each political party shall make such register available to the Commission not later than 30 days before the date fixed for the party primaries, congresses or convention."

Also relevant in the context of this matter is Section 137 of the 1999 Constitution, as amended: It stipulates:

"137. (1) A person shall not be qualified for election to the office of President if –

- (a) *subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or*
- (b) *he has been elected to such office at any two previous elections; or*
- (c) *under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or*
- (d) *he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or*
- (e) *within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or*
- (f) *he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or*
- (g) *being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or*

(h) he is a member of any secret society; or

(i) he has presented a forged certificate to the Independent National Electoral Commission.

(2) Where in respect of any person who has been –

(a) adjudged to be a lunatic;

(b) declared to be of unsound mind;

(c) sentenced to death or imprisonment; or

(d) adjudged or declared bankrupt,

any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier.

(3) A person who was sworn-in as President to complete the term for which another person was elected as President shall not be elected to such office for more than a single term."

In articulating its contention on how the relevant provisions of the law in issue in this matter is to be interpreted, the Appellant opined as follows on page 7 of its Reply Brief to the 2nd and 3rd Respondents' Briefs of Argument:

"Hence, it is our respectful submission that the lawmakers have used Section 77(3) of the Electoral Act, 2022 to be read together with Section 131 of the Constitution and Section 29 of the Electoral Act, 2022."

In making explicit the construction to be placed on these provisions of Section 131 (c) of the 1999 Constitution, as amended, Section 29 (1) and

77 (2) and (3) of the Electoral Act in paragraph E.2 of the Appellant's Brief, the Appellant then proceeded to state in paragraph E.3 on pages 8-9 of the Appellant's Brief:

"E.3. We submit that a combined reading of the above provisions of both the Constitution of the Federal Republic of Nigeria 1999 as amend[ed] and the Electoral Act 2022, will clearly indicate without any controversy the following;

- i. A Presidential Aspirant **must be a member of a political party and must be sponsored by that political party** for the office of the President of the Federal Republic of Nigeria;*
- ii. The person's name must be on the Register of Members of the Political Party and **must have been so for at least 30 days before the party primaries;***
- iii. The Register of members **must have been submitted to the Independent National Electoral Commission (INEC) at least 30 days before the Party Primaries.**"*

Now, the duty of the court to is interpret the statute and the cardinal principle of interpretation of statutes is that where the provisions are clear and unambiguous, effect must be given to them in their plain and ordinary meaning without the court resorting to any aid, internal or external. It is the duty of the court to interpret the words of the lawmaker as used. See **FIDELITY BANK PLC vs. MONYE (2012) LPELR (7819) 1 at 32-33 (SC)** and **CITY ENGINEERING (NIG) LTD vs. NIGERIA AIRPORTS AUTHORITY (1999) 11 NWLR (PT 625) 76**. However, in giving the

words used their plain and ordinary meaning, the court is under a duty to ensure that in so doing the construction does not lead to some absurdity or that would be repugnant to the intention manifested in other provisions of the statute. See **BUHARI vs. OBASANJO (2005) ALL FWLR (PT 273) 1 at 189**. In the words of *Ngwuta, JSC* in **BRITANIA-U (NIG) LTD vs. SEPLAT PETROLEUM DEVELOPMENT CO. LTD (2006) LPELR (40007) 1 at 57 -58:**

"...In construing the provisions reproduced above, there is no need to resort to external sources. The words used in them ought to be given their grammatical and ordinary meanings. In THE LEVY EX PARTE WULTIN (1881) 17 ChD 746 at 751 Jessel M.R. opined: 'The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical or ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.'"

Put differently, by the canons of interpretation of statutes, it is a cardinal principle that, where the ordinary and plain meaning of the words used are clear and unambiguous, effect must be given to those words in their natural and ordinary meaning or literal sense, without resorting to any intrinsic or external aids. In other words, in interpreting a statute, where the words used are clear, plain and unequivocal, there is no need to give them any other meaning than their ordinary, natural and grammatical meaning would permit, except where it would lead to absurdity. See **ADETAYO vs. ADEMOLA (2010) 15 NWLR (PT 1215) 169 at 205**, **OKOTIE-EBOH vs. MANAGER (2004) LPELR (2502) 1 at 30**,

NWOBIKE vs. FRN (2021) LPELR (56670) 1 at 25, INEC vs. PDP (2021) LPELR (57379) 1 at 48-49 and INEC vs. PDP (2021) LPELR (57380) 1 at 50.

It is against the background of this guiding principle of the approach of courts in interpreting the clear and unambiguous words of a statute, that I will now construe the pertinent provisions in this matter. The court has the power to interpret the law, it has no power to veer into the legislative arena or constitute itself a legislator. See **SETRACO vs. KPAJI (2017) LPELR (41560) 1 at 25-26, ABUBAKAR vs. DANKWAMBO (2015) LPELR (25698) 1 at 71-72 and BASINCO MOTORS LTD vs. WOERMANN-LINE (2009) LPELR (756) 1 at 25-26.**

The words employed in Section 29 (1) and 77 (2) and (3) of the Electoral Act, 2022, which I have reproduced above are clear, plain and unambiguous. Effect is therefore to be given to the literal, ordinary and plain meaning of the words used, more so, when doing so would not lead to any absurdity. It is instructive that the said provisions do not deal with the qualification or disqualification of a candidate for election. The provisions dealing with the qualification or disqualification of a candidate for the Presidential election are Sections 131 and 137 of the 1999 Constitution, as amended, the text of which I have already set out in this judgment. The Appellant seeks to import and read into the said constitutional requirements what is not provided therein by harvesting from Section 77 (3) of the Electoral Act, 2022 a qualification requirement that is not in the Constitution. The qualification requirement as it relates to membership of a political party is in Section 131 (c) which provides that a person shall be qualified for election to the office of President if he is a

member of a political party and is sponsored by that party. The quest by the Appellant to read into this clear and unambiguous provision what is not there with the integral interpretation *that "the person's name must be on the Register of Members of the Political Party and must have been so for at least 30 days before the party primaries"*; has no support in law. It is hornbook law that you cannot read into a statute what is not contained therein: **A-G, ABIA vs. A-G FEDERATION (2005) 12 NWLR (PT 940) 452 at 503, BUHARI vs. INEC (2008) 19 NWLR (PT 1120) 246 at 344 and A-G, CROSS RIVER vs. FRN (supra) at 445.** Equally, trite is that the words used in Section 131 (c) of the 1999 Constitution, as amended, being clear and unambiguous; there is no need to resort to the external aid of Section 77 (3) of the Electoral Act in order to interpret the clear, plain and unequivocal stipulation of Section 131 (c) of the Constitution, as amended. See **OKOTIE-EBOH vs. MANAGER (supra) at 30 and INEC vs. PDP (supra) at 50 and INEC vs. PDP (supra) at 48-49.**

The Constitution is the *grundnorm*, it is supreme and ranks over and above all other laws. It has made specific provisions in Section 131 and 137 for the qualification and disqualification of a person for the office of President of Nigeria. The constitutional provisions having covered the field in this regard, the Appellant cannot import Section 77 (3) of the Electoral Act, 2022 and seek to add the same to the qualification provision elaborately stated in the Constitution. It is not permissible. See **A-G ABIA STATE vs. A-G FEDERATION (2002) 6 NWLR (PT 763) 264, ABUBAKAR vs. INEC (supra) at 173 and ANPP vs. USMAN (supra) at 53.**

In considering this issue, the lower court reasoned as follows at page 346 of the Records of Appeal:

"I have painstakingly gone through the Constitution of the Federal Republic of Nigeria 1999 as amended and Electoral Act 2022 and there is nowhere that a person must be a member of a political party for at least 30 days before the Primaries before he can be qualified to be a Presidential candidate."

It then proceeded to conclusively and, in my view, correctly hold as follows at page 354 of the Records of Appeal:

*"The requirement for a Presidential candidate under the Constitution of the Federal Republic of Nigeria 1999 as amended is simply to be a member of a political party. The Constitution is supreme and any law inconsistent with any of its provisions is void to the extent of its inconsistency. Kindly see section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); **INEC VS. MUSA (2003) 1 SC (Pt. 1) 106; OKOCHA VS. INEC (2010) LPELR (SC) 4718; OBASANJO VS. YUSUF (2004) 9 NWLR (Pt. 877) 144 @ 183.** The 3rd Defendant has shown that he is a member of the 2nd Defendant by virtue of the waiver granted to him by the 2nd Defendant to contest in its Presidential primary. He has fulfilled the requirements of the Constitution as per section 131 (c) and that is sufficient to validate his nomination as the presidential candidate of the 2nd Defendant.*

In final analysis, the Plaintiff have failed to make out a case for the disqualification of the 3rd Defendant as the Presidential candidate of the 2nd Defendant. The 3rd Defendant's nomination was proper and remains valid in line with the electoral laws of Nigeria. Consequently, the case of the Plaintiff lacks merit and it is accordingly dismissed."

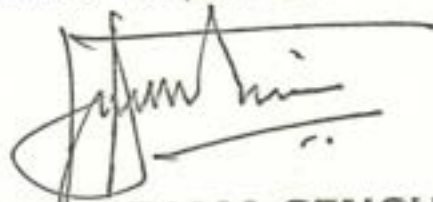
The above finding of the lower court cannot be faulted. The 3rd Respondent was qualified by the provisions of Section 131 (c) of the Constitution and he was not disqualified under any of the stipulations in Section 137 of the Constitution.

Before I end this judgment, let me state that I did not lose sight of the Appellant's issue that the provisions of the Constitution of a political party or guidelines for election cannot override the Electoral Act, 2022. However, the issue is moot in the light of the finding that the Appellant did not adduce sufficient *prima facie* to establish the requirements of Section 77 (3) of the Electoral Act, as it relates to whether the name of the 3rd Respondent is on the Register of Members of the 2nd Respondent, within the terms of Section 77 (3) of the Electoral Act.

Furthermore, the Appellant's charge in its issue number three that the lower court dwelt on speculation and conjecture and raised an issue *suo motu* without recourse to the parties is not borne out by the Records of Appeal. In the proceedings at the lower court on 31st October 2022, [see page 296 of the Records of Appeal], learned counsel addressed the lower court on whether there is any law stopping or prohibiting anybody from being a member of two political parties at the same time. Even though it was raised *suo motu*, the lower court followed the prescriptions of the law by hearing the learned counsel on the issue. See **SANI vs. AYE (2022) LPELR (58094) 1 at 12**. Its resolution of the said issue raised *suo motu*, premised on the submissions of learned counsel on the point, cannot be said to be speculative and conjectures. This is against the background that the decision of the lower court is that the Register of Members of the 2nd Respondent is not in evidence from which it would have been ascertained if

the 3rd Respondent's name is on it, since it was agreed on all sides that no law prohibits a person from being a member of two political parties at the same time.

In conclusion, from the totality of the foregoing, this appeal is devoid of merit, the same fails and it is deserving of dismissal. However, given the manner of resolution of the Cross Appeal, the proper order to make is a striking out. But for the success of the Cross Appeal, the appeal would have been dismissed. The appeal is hereby struck out with costs of ₦200,000.00 in favour of each of the 2nd and 3rd Respondents.



DANLAMI ZAMA SENCHI
JUSTICE, COURT OF APPEAL

Appearances:

K. O. Balogun, Esq. for the Appellant/Cross Respondent.

Oluwole Osaze-Uzzi, Esq. (with E.C. Ezeh, Esq. & F. N. Ogbe, Esq.) for the 2nd Respondent/Cross Appellant.

Alex Ejesieme, Esq. SAN (with Chukwuemeka Achugbu, Esq.) for the 3rd Respondent.

1st Respondent duly served, but absent and not represented by Counsel.

CA/ABJ/CV/1414/2022

I agree with the lead Judgment prepared by my learned brother, **DANLAMI ZAMA SENCHI, JCA**, allowing the Cross Appeal and striking out the main appeal.

The Appellant/Cross Respondent, which is a Political Party sought the disqualification of another Political Party's Presidential Candidate that is the 2nd and 3rd Respondents based on Section 131 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended), the 1st Respondent's Election Time Table and Guidelines and Sections 29 (1) and 77 (2) and (3) of the Electoral Act, 2022.

The law is unequivocal that the issue of nomination of candidates to represent a Political Party in an Election is strictly an internal affair of the Political Party. This means that outsiders, other Political Parties and persons who did not participate in the Primaries being complained of are precluded from instituting an action challenging same. By the clear provision of **Section 285 (14) (a) (b) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)**, the Appellant/Cross Respondent lacks the requisite *locus standi* which the legal right to institute the instant suit not being a Member of the 2nd Respondent. Without *locus standi*, the lower Court does not have the jurisdiction to entertain the suit. I crave indulgence to extensively reproduce the findings of the Apex Court in the case of **AISHA JUMMAI ALAHASSAN & ANOR. V. MR. DARIUS DICKSON ISHAKU & ORS. (2016) LPELR-40083 (SC)** anon;

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

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

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

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

nomination as there is no law backing him up.

Per OKORO, J.S.C. (Emphasis mine).

Contributing to the same judgment cited above, MARY UKAEGO PETER-ODILI, J.S.C. states thus;

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

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

the matter in a plethora of judicial authorities that it is only a candidate/aspirant at the primaries of a party that has the locus standi to complain about the conduct of such primaries and so, the grouse of the Appellants have nothing to stand on as they are clearly interlopers in regard to how the 1st Respondent emerged as candidate and also how, where and when the 2nd Respondent produced its candidate, Therefore, no matter how loudly the Appellants shout on the irregularity, impropriety of the primaries of the 1st and 2nd Respondents, the noise will remain unheard and unattended to, coming from those whose voices ought not to be heard in the internal matters of another. I refer to the following cases for assistance being:- *Onuoha v Okafor* (1983) 14 NSCC 494; *Dalhatu v Turaki* (2003) 15 NWLR (Pt.843) 310; *Ardo v Nyako* (2014) LPELR - 22878 (SC); *Emeka v Okadigbo* (2012) 18 NWLR (Pt.1331) 55 at 88; *PDP v Sylva* (2012) All FWLR (Pt.637) 606 at 654." (Emphasis mine).

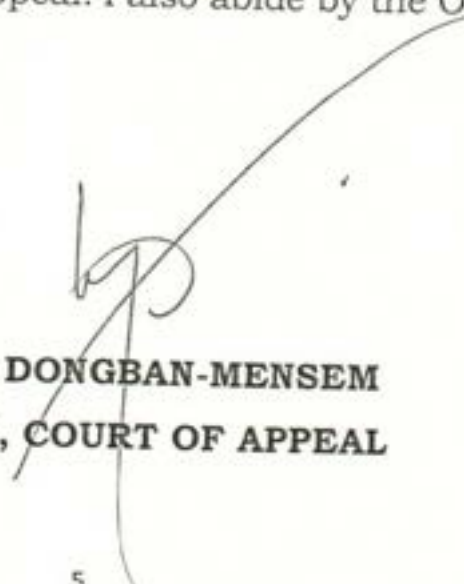
Similarly, AMIRU SANUSI, J.S.C. contributed to the lead judgment by holding that;

"On the issue of primary elections, this Court in plethora of decided authorities emphasized that only a member of a political party can challenge

its primary election and even such challenger must be "an aspirant." Anybody who is not a member of such political party cannot challenge its primary election because he is not an aspirant and also he is merely an interloper or a busy body.
See Sections 85, 86 and 87 of the Electoral Act 2010 as amended." (Emphasis mine).

From the above, the Appellant/Cross Respondent who sought the disqualification of the 3rd Respondent as the Presidential Flag Bearer of the 2nd Respondent in the 2023 Presidential Elections is a meddlesome interloper and a busy body trying to poke its nose in the domestic affairs of a Political Party to which it does not belong. The conduct of the Appellant/Cross Respondent in filing this suit can be likened to a case of crying more than the bereaved or taking Panadol for someone else's headache who has evidently waived its requirements for the 3rd Respondent.

On the whole, for the fuller reasons expounded in the lead Judgment, I too hereby strike out this appeal. I also abide by the Order made as to costs.


MONICA B. DONGBAN-MENSEM
PRESIDENT, COURT OF APPEAL

CA/ABJ/CV/1414/2022

{UGOCHUKWU ANTHONY OGAKWU, JCA}

The leading judgment of my learned brother, *Danlami Zama Senchi, JCA*, which has just been delivered was made available to me in draft. I agree with the reasoning and conclusion and the manner of resolution of both the appeal and the cross appeal.

I only wish to add a few words to avow my concurrence. The Appellant, a political party sponsoring a candidate at the forthcoming Presidential election, seeks in this matter to have the 3rd Respondent, the candidate of the 2nd Respondent, a rival political party; disqualified from participating in the election. The conspectus of the Appellant's action is that the 2nd and 3rd Respondent's did not comply with the stipulations of Sections 29 (1) and 77 (3) of the Electoral Act, 2022, and that when the said provisions are read in conjunction with Section 131 of the 1999 Constitution, as amended; that the 3rd Respondent is not qualified and/or disqualified from standing as a candidate at the election.

The leading judgment has admirably analysed and demonstrated that the Appellant does not have the standing to maintain this cause of action as it does not fall within the orbital orb in which a political party has been vested with *locus standi* to pursue a pre-election matter by Section 285 (14) (c) of the 1999 Constitution, as amended. The said provision reads:

"285 (14) For the purpose of this section,
'pre-election matter' means any suit
by –

(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election."

By the above stipulation, a political party can present a pre-election matter in two instances, *videlicet* – where INEC, the 1st Respondent herein, disqualifies its candidate from participating in the election; and secondly, where INEC has not complied with the relevant laws in respect of preparation for an election. As already stated, the Appellant's complaint is that the 2nd and 3rd Respondents did not comply with Sections 29 (1) and 77 (3) of the Electoral Act, 2022; the non-compliance for which the Constitution has imbued the Appellant with *locus standi* is where the complaint of non-compliance is against INEC, which is not the Appellant's grouch in this matter.

I am mindful of the kerfuffle made by the Appellant that the 1st Respondent, INEC, ought not to have published the name of the 3rd Respondent in the Final List of Candidates for the Presidential election, since the 2nd and 3rd Respondents are in violation of Section 77 (3) of the Electoral

Act, 2022. It is effulgent from the exposition of Sections 29 (3) and 32 (1) of the Electoral Act, 2022 in the leading judgment, that INEC has no discretion when it comes to publication of the list of candidates submitted to it by a political party, such that it can be said that it has not complied with the legal prescriptions by publishing the list of candidates. Accordingly, the publication of the 3rd Respondent's name in the Final List of Candidates, is compliance, rather than non-compliance by INEC, with the stipulations of the law. The concomitance is that the Appellant is not cloaked with *locus standi* to complain that INEC published any name in the list submitted to it by a political party, since such a complaint does not fall within the second limb of Section 285 (14) (c) of the 1999 Constitution, as amended; which is applicable, only where INEC "*has not been complied*".

The fact that the Appellant lacks *locus standi* spells doom for the action and *a fortiori*, the jurisdiction of the court to entertain the action: **ODIMEGWA vs. IBEZIM (2019) 9 NWLR (PT 1677) 244 at 260**. It is for the foregoing reason and the more elaborate reasoning and conclusion articulated in the leading judgment that I am allegiant to and endorse the terms of the decision as set out in the leading judgment.



UGOCHUKWU ANTHONY OGAKWU
JUSTICE, COURT OF APPEAL

CHURWU ANTHONY OGAKWU
JUSTICE, COURT OF APPEAL