CHIEF ADEBISI ADEGBUYI

V

1. **ALL PROGRESSIVE CONGRESS (APC)**
   (Substituted for the defunct Action Congress of Nigeria by order of Court dated 5 May 2014)
2. **ALHAJl SEFIU ADEGBENGA KAKA**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

SUPREME COURT OF NIGERIA

JOHN AFOLABIFABIYI JSC *(Presided and Read the Lead Judgment)*
BODE RHODES-VIVOUR JSC
MUSA DATTUO MUHAMMAD JSC
CLARABATA OGUNBIYI JSC
KUMAIBAYANG AKA'AHS JSC

SC. 257/2012

FRIDAY, 19 DECEMBER 2014

APPEAL - Court of Appeal as an intermidiate court - Need for to pronounce on all issues (especially jurisdictional issues) raised before it

APPEAL - Findings of fact by lower court - Where concurrent - Attitude of Supreme Court thereto

APPEAL - Ground of appeal - Purpose of

APPEAL - Record of proceedings/appeal - Presumption of regularity of - How rebutted

APPEAL - Slip or mistake in judgment - When will result in judgment being set aside

COURT - Court of Appeal as an intermidiate court - Need for to pronounce on all issues (especially jurisdictional issues) raised before it

ELECTORAL MATTERS - Primary elections - Exclusive power of political parties to conduct - Impropriety of court dabbling into

ELECTORAL MATTERS - Withdrawal from electoral contest -Appellant who withdraws from an electoral contest - Whether can complain about the conduct of such election

EVIDENCE - Presumptions - Record of proceedings/appeal -Presumption of regularity of - How rebutted

EVIDENCE - Undated letter - Where admitted - Propriety of court acting on content and intendment of

JUDGMENT AND ORDERS-Slip or mistake in judgment - When will result in judgment being set aside

NOTABLE PRONOUNCEMENT - On need for pre-election matters to be fast tracked

PRACTICE AND PROCEDURE - Originating summons procedure -When ideal

PRACTICE AND PROCEDURE - Record of proceedings/appeal -Presumption of regularity of - How rebutted

Issue:

Whether a party who has voluntarily withdrawn from participation in an election can subsequently complain about the conduct of such election as to have it set aside.

Facts:

The appellant as plaintiff, instituted an action against the respondents /as defendants in the trial court and contended by way of originating summons that the 1st respondent did not conduct a primary election in the Ogun East Senatorial District; that he was the only qualified person to be candidate as he was the only aspirant that complied with the party guidelines and that the 2nd respondent was

handpicked contrary to statutory provisions. He consequently prayed the court for an order setting aside the purported nomination of the 2nd respondent by the 1st respondent as the senatorial candidate for the district; an order directing the respondents to recognise and accept him as the bonafide senatorial candidate and an order of perpetual injunction restraining the 3rd respondent from giving cognisance to the 2nd respondent as the qualified candidate for the Ogun East Senatorial District. The respondents filed counter-affidavits and maintained that the appellant withdrew his intention to be considered a candidate *vide* exhibits C and A respectively and that a special congress was held to confirm the candidature of the 2nd respondent in line with section 87(6) of the Electoral Act, 2010 (as amended). The appellant in challenging the averments by the respondent that he withdrew his candidature contended that the said document of withdrawal was not dated. The trial court dismissed the originating summons and of the same time ordered pleadings to be filed. Aggrieved, the appellant filed an appeal to the Court of Appeal, contending that the trial court could not dismiss the originating summons and at the same time order pleadings; that the court's finding that primaries election was not held was contrary to this order of dismissal and that tire judgment of tire court was modified after it was read in open court. The Court of Appeal dismissed the appeal holding *inter alia* that the order of dismissal was a slip and that the appellant was not prejudiced by it. Aggrieved still, the appellant filed a further appeal to tire Supreme Court.

Held: *(Dismissing the appeal)*

1. *Purpose of a ground of appeal* -
The whole purpose of a ground of appeal is to give notice to the other side and the court, the nature of the grouse or complaint which the appellant has against the decision of the lower court. In the instant case, where the passages in the judgment complained of was quoted in clear and unambiguous terms and particulars, the Supreme Court held the stated grounds to be valid. *[Silencer & Exhaust Pipes Co. v. Farah* **(1998) 12 NWLR (Pt. 579) 624 referred to]** *[P. 1498, para. D]*

2. *Need for Court of Appeal as an intermediate court to pronounce on all issues before it, especially issues which bothers an jurisdiction* -
The Court of Appeal should pronounce on all issues as

an intermediate court. It should not restrict itself to one or more issues which in its opinion, may dispose of the matter. The court below had an abiding duty to consider such determinant issues which touches on jurisdiction. In the instant case, the Court of Appeal erred in not considering the issue of withdrawal of the appellant front the senatorial race. It being a jurisdictional assue, the Supreme Court considered same. *[Xtoudos Services Nigeria Limited v. Taisei (W.A.J Limited* **(2006) All FWLR (Pt. 333) 1640, (2006) WRN 46 referred to]** *[P. 1500, paras. E-F]*

3. *Propriety of court acting on content and intendment of letter which is admitted even if undated -*

A court can conveniently take as established and act on a letter which an appellant does not deny. It must be presumed that he admits the content and intendment of the letter. In the instant case, where the appellant did not deny that he wrote the letter of withdrawal, even though it was undated, the content thereof being clear and with reference to the 2011 elections, the court considered same. *[Oloruntoba-Ojo* v. *Abdulraheem* **(2009) All FWLR (Pt. 497) 1, (2009) 13 NWLR (Pt. 1157) 83, (2009) 26 WRN 1;** *Agbanelo v. U.B.N. Ltd* **(2000) FWLR (PL 13) 2197, (2000) 7 NWLR (Pt. 666) 534;** *Edokpolor and Co. Ltd v. Ohenhen* **(1994) 7 NWLR (Pt. 358) 511;** *Bello v. Eweka* **(1981)12 NSCC 48, (1981) 1 SC 101 referred to]** *[R 1501, paras. D-E]*

4. *Whether an appellant who withdraws from electoral contest can complain about the conduct of the primary election –*

It is basic that an appellant who withdraws from contest cannot validly complain about the conduct of the primary election. He has no competence and authority to complain or institute an action. He cannot be allowed to blow hot and cold at the same time. He has no capacity to approach the court to enforce any right from the same primary. In the instant case, where the appellant wrote a letter that has no intention of participating in the primary election for Ogun East

Senatorial District, he had no further right to complain about the conduct of that same election *[Buhari v. I.N.E.C.* **(2008) All FWLR(Pt. 437) 42, (2008) 18 WRN 36;** *Bamigboyc* v. *Saraki* **(2010) 14 WRN125 referred to]** *[Pp. 1501 -1502, paras. H-A]*

5. *Impropriety of court dabbling into exclusive power of political parties to conduct primary elections -*
It is the political party that has exclusive power to conduct primary election. A court of record should not dabble into political question which remains the exclusive preserve of political parties that should be allowed to do their things - Such powers cannot be interfered with by the courts. *[Onuoha* v. *Okafor* **(1983) 8 SC 52, (1983) 2 SCNLR 244;** *Effiom v. CRS I.N.E.C.* **(2010) All FWLR (Pt. 552) 1610, (2010) 14 NWLR (Pt. 1213) 106, (2012) 43 NSCQR 346 referred to]** *[P. 1502, paras. A-B]*

6. *Presumption of regularity of record of proceedings/appeal and how resulted -*
The act of recording proceedings in court is a judicial act, which enjoys presumption of regularity under the law. In the instant case, where the appellant wanted to impugn the integrity of the trial judge without providing any contrary record, the Supreme Court held that he could not do so. *[Shitta-Bey v. Attorney-General, Federation* **(1998) 7 SCNJ 224, (1998) 10 NWLR (Pt. 570) 392;** *Sommer v. Federal Housing Authority* **(1982) 1 NWLR (Pt. 219) 548 referred to]** *[P. 1502, para. H]* **Per FABIYI JSC: [Pp. 1502 - 1503, paras. D-D]**

> **"The allegation of the appellant in respect of this issue is a very grave one. He alleged that the trial judge tinkered with her ruling in chambers, The affidavit of Oluwakemi Wey maintained that the trial judge altered or modified her record by adding the following, which was not part of the ruling delivered in the open court -**
>
> > **'Accordingly, the plaintiff is ordered to file his pleadings within 14 days from this date hereof. The defendant is given 7 days to file their defence from the date of service of the plaintiff's pleadings.'**

The allegation is a vcry weighty one which touches oa the integrity ofthe learned trial judge. The appellant maintained that this court should apply due courage by denouneing the trial court's style of altering a judgment in chambers after same had been delivered in the open court. According to counsel, such practice is alien to our jurisprudence and ought to be censored by this court in strong expression in order to send the right message to other judicial officers with such proclivity. What a sagacious call by a counsel to this court

The counsel urged the court to use the learned trial judge as a 'scape goat' so that other judges involved in such unwholesome practice would get the right message. Learned counsel for the appellant should appreciate that the act of recording proceedings in court is a judicial act which enjoys presumption of regularity under the law to use the language of Mallam Yusuf Ali, SAN for the 2nd respondent.

The appellant who wants to impugn the integrity of the learned trial judge has a binding duty to prove the contrary: *Shitta-Bey v. Attorney-General, Federation and Ors.* **(1998) 7 SCNJ 224, (1998) 10 NWLR (Pt. 570) 392 at 426;** *Sommer* **v.** *Federai Housing Authorìty* **(1982) 1 NWLR (Pt. 219) 548.**

It is incumbent on the appellant to realize that the court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correetness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record . Such affidavit must be served on the judge or registrar of the court concerned.

The court below found that the affidavit of Oluwakemi Wey was not served on the learned trial judge or the Registrar ofthe court for them to react to same. It found that there is absolutely no evidence to fault the printed record of appeal. Further more, in so far as the learned trial judge was not given any opportunity to be heard on the complaints made by the appellant's counsel, the complaint and/or accusation is incompetent and is therefore discountenanced. 1 agree completely with the decision of the court below.

7. *Whcn slips or mistakes in judgment will result in the judgment being set aside -*

It is not every slip of a judge that can result in the judgmert being set aside. For a mistake to so result, it must be substantial, in the sense that it affected the decision appealed against. *[P. 1503, paras. F-G]* **Per FABIYI JSC: [Pp. 1503 - 1504, paras. G-C]**

"This court said it clearly in *Adebayo* **v.** *Attorney-General, Ogun State* **(2008) Ali FWLR (Pt. 412) 1195, (2008) 2 SCNJ 352 at 366-367 per Niki Tobi JSC that:-**

'In order to pick faults in judgment of a trial judge, appellate court should not take paragraphs or pages in isolation or in quarantine but must take the whole judgment together as a single decision of the court. An appellate court cannot allow an appellant to read a judgment in convenient installments to underrate or run down the judgment.'

I cannot fault the approach of the court below. The reasoning process of the judge before the use ofthe word 'dismissed', to my mind, after a slow and careful reading of same, shows that it is a slip. The law allows a court to rectify any slip in a judgment as long as it does not amount to a miscarriage of justice: *Yakuhuv. Omolaboje* **(2006) WRN 23 at 176. A party should not employ technicality to frustrate the justice of a case:** *Falobi v. Falobi* **(1976) 9-10 SC. 1; (1976) 1 NMLR 169.**

The court below was right when it found that the word 'dismissal' employed by the trial judge at the material point in her ruling is a mere slip. The issue is also resolved against the appellant."

8. *Notable pronouncement on need forpre-election matters to be fast tracked -*

Per RHODES-VIVOUR JSC: [P. 1504, paras. F-H]

"It is slowly becoming comical that the courts are still considering and trying to determine who won primaries in 2011 in 2014. It is about time a time limit is placed on such actions. It is seriously

suggested that pre-election matters shouid be determined before the elections are conducted. In that regard, such causes of action should be fast tracked with time limitations of two weeks for hearing in each tier of our court system.

This no doubt, is in the best interest of all concerned."

9. *When originating summons procedure is ideal –*
Originating summons procedure is not for causes in which facts remain hostile and are in conflict. The procedure is ideal for the determination of short and straight forward questions of construction and interpretation of documents or statutes. It is never the applicable procedure in controversial causes, where the facts on which the court is invited to construe or interprete the document or legislation in relation to remains violently in conflict. In the instant case, where facts have remained in contention notwithstanding the affidavits for and against the originating summons, the Supreme Court held that the lower court was right to affirm the trial court's directive that parties should file pleadings. *[National Bank of Nigeria* **v.***Alakija* **(1978) AH NLR 231, (1978) 9-10 SC 59 referred to]** *[P. 1505, paras. B-D]*

10. *Supreme Court's attitude to concurrent findings of fact by lower court –*
Concurrent findings of two lower courts would not ordinarily be interfered with. *[Gbafe* **v.***Gbafe* **(1996) 6 SCNJ 167, (1996) 6 NWLR (Pt. 455) 417;** *Nwose* **v.***Board ofCustoms and Excise* **(1998) 12 SC (Pt. Ili) 77;** *Tiza* **v.** *Begha* **(2005) AH FWLR (Pt. 272) 200, (2005) 5 SC 1;** *Akpagbue* **v.***Ogu* **(1976) 6 SC 63;** *Amadi* **v.***Nwosu* **(1992) 6 SCNJ 58, (1992) 5 NWLR (Pt. 241) 273;** *Ezekwesiìi v. Agbapuonwu* **(2003) FWLR (Pt. 162) 2016, (2003) 9 NWLR (Pt. 825) 337 referred to]** *[R 1507, paras. A-B]*

Per OGUNBIY1 JSC: [P. 1507, paras. C-D]

"As rightly submitted on bchalf of the respondents. the appellant has not established that the concurrent findings complained against are either perverse, unsupported by credible evidence or that they were rendered in violation of any salient

principle of law or that they have occasioned any miscarriage of justice.

Consequently therefore, I hold a firm view that the concurrent findings by the two lower courts are on a solid foundation and no reason has been advanced for this court to interfere therewith."

Nigerian Cases Referred to in the Judgment:

Abdullahi v. Oba (1998) 6 NWLR (Pt. 554) 520
Adebayo **v.***Attorney-General, Ogun State* (2008) All FWLR (Pt. 412) 1195, (2008) 2 SCNJ 352
Adeleke **v.***Asani* (2002) FWLR (Pt. 106) 982, (2002) 8 NWLR (Pt. 768)26
Agbanelo v. U.B.N. Ltd (2000) FWLR (Pt.13) 2197, (2000) 7 NWLR (Pt. 666) 534 *Akpagbue v. Ogu* (1976) 6 SC 63
Amadi v. Nwosu (1992) 6 SCNJ 58. (1992) 5 NWLR(Pt. 241) 273 *Amajideogu* **v.***Ononaku* (1988) 2 NWLR (Pt. 78) 614
Babbo v. Tafashiya (1999) 5 NWLR (Pi. 603) 468
Bamigboye v. saraki (2009) All FWLR (Pt. 484) 1573,(2010) 14 WRN 125
Bello v.Eweka (1981)12 NSCC 48, (1981) 1 SC 101 *Buhari v. INE. C.* (2008) Ali FWLR (Pt. 43 7) 42, (2008) 18 WRN 36
Edokpolor and Co. Ltd **v.***Ohenhen* (1994) 7 NWLR (Pt. 358) 511 *Effiom v. CRS1.N.E.C.* (2010) All FWLR (Pt. 552) 1610. (2010) 14 NWLR (Pt. 1213) 106, (2012) 43 NSCQR 346 *Ezekwesili* **v.***Agbapuonwu* (2003) FWLR (Pt. 162) 2016. (2003) 9 NWLR (Pt. 825) 337
Falobi v. Falobi (1976) 9-10 SCI; (1976) 1 NMLR 169
First Bank of Nigeria Ltd v. Njoku (1995)3 NWLR (Pt. 384) 457 *Gbafe v. Gbafe* (1996) 6 SCNJ 167, (1996) 6 NWLR (Pt. 455) 417 *National Bank of Nigeria v. Alakija* (1978) All NLR 231, (1978) 9-10SC59
Nsirim v. Nsirim **(1***990)* 5 SCNJ 174, (199**(1)** 3 NWLR (Pt. 138) 285
Nwora v. Nwabueze (2011) All FWLR (Pt. 589) 1002, (2011) 12 SC (Pt. III) 1
Nwose v. Board of Customs and Excise (1998) 12 SC (Pt. 111)77

Olorumoba-Ojo v. Abdulraheem (2009) All FWLR (Pt. 497) 1, (2009) 13 NWLR (Pt. 1157) 83, (2009) 26 WRN 1
Onajobi v. Olanipekun (1985) 11 SC (Pt. 2) 156
Onuoha v. Okafor (1983) 8 SC 52, (1983) 2 SCNLR 244
Shitta-Bey v. *Attorney-General, Federation* (1998) 7 SCNJ 224. (1998) 10 NWLR (Pt. 570) 392
Silencer and Exhaust Pipes Co. v. *Farah* (1998) 12 NWLR (Pt. 579)624
Sommer v. Federal Housing Authority (1982) 1 NWLR (Pt. 219) 548
Tiza v. Begha (2005) All FWLR (Pt. 272) 200, (2005) 5 SC 1
Xtoudos Services Nigeria Limited v. *Taisei (W.A.) Limited* (2006) All FWLR (Pt. 333) 1640, (2006) WRN 46
Yakubu v. *Omolaboje* (2006) WRN 23

Nigerian Statute Referred to in the Judgment:

Electoral Act, 2010 (as amended), section 87(6)

Counsel:

Taiwo Kupolati- *for the Appellant.*

Yomi Siwoniku -*for the Ist Respondent.*

Yusuf Ali, SAN (with him, A. K. Adeyi, Esq., Rasaq Okesiji, Esq.,
K.K. Eleja, Esq., Ajibola Kaka, Esq., Alex Akoja, Esq., P.I. Ikpegbu (Mrs.), Patience Adejoh (Miss), A. O. Usman, Esq). and Obumneke Onuoha, Esq.) - *for the 2ndRespondent.*
S.O. Ibrahim - *for the 3rdRespondent.*

FABIYI JSC (Delivering the Lead Judgment): This is an appeal against the judgment of the Court of Appeal, Ibadan Division ('the court below' for short) delivered on 24 May 2012. Therein, the decision of the Federal High Court, Abeokuta (trial court) delivered by Ajumogobia, J on 1 April 2011 was affirmed. The appellant has decided to further appeal to this court.

It is apt to state briefly the salient facts of this matter. The appellant as plaintiff at the trial court instituted lus action against the respondents, as defendants, by way of originating summons on **8** February 20**11**. Thereat. A he claimed that:-

(a) The 1st respondent did not conduct a priinary election in the Senatorial District in accordance with section **87** of the

Electoral Act. 2010 (as amended).

(b) That he (the plaintiff) was the only person qualified to be the candidate, being the only aspirant that compii ed with the party guidelines.

(c) That the 2nd respondent was handpicked contrary to statutory provisions.

Sequel to the above, the appellant as the plaintiff, made supplication for three declarations, put briefly, as follows:-

"1. That by virtue of being the only Senatorial aspirant for the District who complied with the provisions of section 87 of the Electoral Act, 2010 and relevant guidelines of the lst respondent, his name should he forwarded to the 3rd respondent as the duly nominated candidate representing Ogun East Senatorial District.

2. That the handpicking or imposition of the 2nd defendant by the 1st defendant is null and void.

The plaintiff, then prayed for three orders as follows:-

3. An order setting aside the purported nomination of the 2nd defendant by the lst defendant as the Senatorial candidate for the stated District.

4. An order directing the defendant to recogirize and accept the plaintiff as the *bona fide* Senatorial candidate of the District on the platform of the 1st defendant.

5. An order of perpetual injunction, restraining the 3rd defendant from recognizing the 2nd defendant as Senatorial candidate of the stated District in the general election fixed for 2 April 2011."

The respondents filed counter-affidavits. Two officials of the lst respondent maintained that the appellant withdrew his intention to be considered as a candidate *vide* his letter marked exhibit 'C' to the first counter-affidavit and exhibit 'A' in the second one. They asserted that the 2nd respondent was the preferred candidate who emerged as the sole candidate. A special congress was held to confirm his candidature in tune with section 87(6) of the Electoral Act, 2010 (as amended).

It is of moment to note that the issue of the appellant's withdrawal from the Senatorial race was not challenged or controverted at any time by the appellant. He did not deny the issuance of the withdrawal letter but he maintained that same was not dated.

The trial court did not make any pronouncement in respect of the withdrawal letter signed and sent by the appellant to the 1st responden!. The trial court considered the affidavits and counter-affidavit before it and dismissed the originating summons

and thereafter ordered pleadmgs to be filed and set a date for hearing.

The appellant felt unhappy wtth the position taken by the trial judge and appealed to the court below. Thereat. he maintained that:-

(a) The trial court cannot order pleadmgs to be filed after dismissing the suit.

(b) The court in its ruling said primary election was not conducted.

(c) The judgment of the court was modifted after being (sic) read in the open court.

The court below heard the appeal and dismissed same in its judgment handed out on 24 May 2012. The court below found that-

(a) it cannot be said that the learned trial judge made a specific finding that primary election was not held in accordance with section 87 of the Electoral Act.

(b) that the use of the word 'dismissal' in dismissing the originating summons was a 'slip' when reading the whole judgment together and tltat the appellant could not have been prejudiced by the slip.

(c) The appellant had not proved that the record of the court was modifted having not shown a contrary record and there is a presumption of correctness of the court records until the contrary is proved.

The appellant still felt irked with the position taken by the court below and appealed to this court.

It is appropriate at this point to observe that the 2nd respondent, in his notice of preliminary objection, challenged the competence of grounds 1,3.4 and 5 as contained in the amended notice of appeal filed by the appellant on 12 May 2014.

Senior counsel for the 2nd respondent maintained that the stated grounds are not complaints against the reasons for the decisions of the court below. He felt that the grounds are prolix, verbose, unwieldy and argumentative. He stressed that the complaints in the stated grounds are academic and superfluous and the offensive grounds of appeal are liable to be struck out. In support, he cited the cases of *Abdullahi v. Oba* (1998) 6 NWLR (Pi. 554) 520 at 528; *Adeleke v. Asani* (2002) FWLR (Pt. 106) 982. (2002) 8 NWLR (Pt. 768) 26 at 43: *First Bank qf Nigeria Ltd v. Njoku (1995)* 3 NWLR (Pt. 384) 457 and *Nsirim* v. *Nsirim* (1990) 5SCJN 174, (1990) 3 NWLR (Pt. 138)285.

Senior counsel obseived that the substantive suit at the trial court is no longer alive as same was Struck out on 8 March 2012 for want of diligent prosecution. He stated that there is a pending appeal at the court below challenging the striking ont of the suit. He strongly asserted that the legal plank upon which this appeal rests has been removed. The appeal senior counsel submits, has become academic. In support, he cited the case of N*wora and 3 Ors. v. Nwabueze and Ors.* (2011) All FWLR (Pt. 589) 1002, (2011) 12 SC (Pt. III) 1 at 22. He urged that the suit be dismissed in its entirety. On behalf of the appellant, learned counsel submitted that the objection is unfounded in all respect. He maintained that each of the stated grounds with their particulars attacked specific findings and decision of the Court of Appeal. He maintained that there is no difficulty in identifying the precise complaint of the appellant. He cited the case of *Amajideogu* v *Ononaku* (1988) 2 NWLR (Pt. 78) 614 at 621.

It should be noted that the whole purpose of a ground of appeal is to give notice to the other side and the court the nature of the grouse or complaint which the appellant has against the decision of the lower court.

A close look at the attacked grounds of appeal shows that the passages in the judgment complained about, were quoted in clear terms and then followed by particulars. The stated grounds alleged error or misdirection in law. They are, no doubt, valid grounds. Refer to *Silencer & Exhaust Pipes Co.* v. *Farah* (1998) 12 NWLR (Pt. 579) 624 and *Babba v. Tafashiya* (1999) 5 NWLR (Pt. 603) 468 at 474.

I cannot surmise how this appeal is academic. The final resolution of vital issues will confer benefit on one of the parties and the entire controversy will be resolved once and for all times. I strongly feel that the prelirninary objection is not maintainable. It is accordingly overruled. Lite appeal shall be considered on its merit *anon.*

When the appeal was heard on 3 December 2014, counsel to the respective parties adopted and relied on briefs of argument which were filed. The appellan's counsel urged that the appeal be allowed. Senior counsel for the 2nd respondent as well as counsel for the 3rd respondent stressed that the appeal should be dismissed. On behalf of the appellant, three issues formulated for the determination of the appeal read as follows:-

> "3.1 Whether, upon its holding that it was not sufficiently convinced that primary election was held in accordance with Electoral Act', and this being the core question in the appellant's originating summons, the

Court of Appeal was right in upholding the trial court's directive to the parties tofile pleading when –

(i) no other issue which derogates from the core question or raise any dispute/controversy concerning its detemination was directly/ specifically identified by the trial court and the Court of Appeal;

(ii) sufficient materials needed to detemine the admissibility of exhibit 'A' (page 250 of the record of appeal) was before the trial court and no further occasion for calling oral evidence had arisen. (Grounds 1 and 4 of the notice of appeal).

3.2 Was the trial court's decision dismissing the appellant's action begun by originating summons a slip as held by the Court of Appeal? If not, having dismissed the originating summons, was there any action the trial judge could further hear by pleadings? (Grounds 2 and 3 of the notice of appeal).

3.3 Whether the addition made privately in chambers to the decisión of 1 April 2011 by which the parties were directed to file pleadings after the disrnissal of the action, was not proved, given that-

(i) The trial judge was well notified of the affidavit deposition of Oluwakemi Wey of counsel, the trial judge being the sole judge (administrative and presiding) of Abeokuta División, who had custody, control and knowledge of all processes filed in her Registry;

(ii) the respondents did not legally contradict or deny the fact in the said affidavit. (Ground 5 of the notice of appeal)."

On behalf of the 1st respondent, the three issues decoded for detemiination of the appeal read as follows:-

"8.1 Whether the Court of Appeal had answered extensively and conclusively, the core and fundamental question relating to conduct of a primary election and other issues incidental to it-

(a) Who is to conduct primary election.

(b) Whether the letter of withdrawal was legally issued.

(c) Whether an aspirant who withdraws can validly complain about the election.

(d) Whether the courts can listen to such an aspirant.

(e) Whether an election can be done in accordance with section 87(6) of Electoral Act.

8.2 Whether the Court of Appeal was not right in its decisión that judgment should be read togethei' and ihat the use of the A word 'dismissal' was a slip.

8.3 Whether the Court of Appeal was not right in holding that there is a presumption of correctness of the record of proceedings unil contrary one is presented or proved."

The two issues submitted for detemiination on behalf of the 2nd respondent, read as follows:-

"1. Whether the Court of Appeal was right in its conclusion that there was no evidence to contradict the printed record of appeal and that the accusation of alteration of record against the trial judge was incompetent and unproved.

2. Whether the Court of Appeal was not right having regards to the materials contained in the printed record in affirming the trial court's decisión that issues are in controversy and that filing of pleadings and calling of oral evidence was necessary and further that the use of the word 'dismissal in the trial court's ruling is a mere slip."

The core and fundamental issue of the withdrawal of the appellant from the Senatorial race as contained in page 250 of the record deserves a definite determination as seriously canvassed by the learned counsel for the 1st respondent. As stated by him, it is correct that as contained in the 1st respondent's brief of argument before the Court of Appeal, at pages 371 - 375 the issue was properly canvassed. But the court below did not consider same. It erroneously maintained that there was no argument in support of same. The court below had an abiding duty to consider such a determinant issue which touches on jurisdiction, as it were. The court should pronounce on all issues as an intermediate court. It should not restrict itself to one or more issues which in its opinion may dispose of the matter: *Xtoudos Services Nigeria Limited v. Taisei (W.A.) Limited* (2006) All FWLR (Pt. 333) 1640, (2006) WRN 46 at 37.

Since it is an issue touching on jurisdiction, it has again been brought to the fore before this Court. It shall be considered, *anón.*

The said letter of withdrawal is contained on page 250 of the record of appeal. It reads as follows:-

" Action Congress of Nigeria
Ogun State.
Dear Sir,
Notice of withdrawal of my candidature
I hereby voluntarily withdraw as a candidate of the Action Congress of Nigeria for the post of Senator in the April, 2011 election for personal reasons.
I express my gratitude to the party and my supporters, I assure the party of my continuous loyalty.
Thank you.
Yours failhfiilly.
Signature
Adegbuyi Adebisi
Name
In the presence of:
National Secretary: Oluwaranti Oyebade
National Organising Secretary: David Oluwole Adeniyi."

The only point raised by the appellant in respect of his letter of withdrawal from the Senatorial race of the stated District is that the letter was not dated. The letter, no doubt, is not dated. But it refers to the 2011 election. As such, the intention of the appellant is clear. With due regard to the appellant, such a prank did not catch the fancy of this court. Such a child's play that can inhibit a due determination of such a substantial issue must be shunned: *Olorwuoba-Ojo v. Abdulraheem and Ors* 2009) All FWLR (Pt. 497) 1, (2009) 13 NWLR (Pt. 1157) 83, (2009) 26 WRN 1.

It is significant that the appellant did not deny that he wrote the letter of withdrawal. It must be presumed that he admits the content and intendment of the letter. A court of record can conveniently take same as estabhshed and act on it: *Agbanelo v. U.B.N. Ltd* (2000) FWLR (Pt. 13) 2197, (2000) 7 NWLR (Pt. 666) 534 at 549; *Edokpolor and Co. Ltd v. Ohenhen* (1994) 7 NWLR (Pt. 358) 511 at 513; *Bello v. Eweka (* 1981) 12 NSCC 48,(1981) 1 SC 101.

The appellant, having withdrawn from the race, the 2nd respondent became the preferred candidate. The State Chairman of the 1st respondent swore to an affidavit that the primary election was conducted by a special congress which was accord with the dictâtes of section 87(6)
of the Electoral Act, 2010 (as amended) which stipulâtes as follows:-

> "Where there is only one aspirant in a political party for any of the selective positions mentioned m sub-section 4(a), (b), (c), and (d). the party shall convene a special convention or congress at a designated centre on a specific date for confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the party."

It is basic that the appellant who withdrew from the contest cannot validly complain about the conduct of the primary election. He has no competence and authority to complain or institute an action. He cannot be allowed to blow hot and cold at the same time. He has no capacity to approach the court to enforce any right from the same primary: *Buhari* v. *I.N.E.C. & Ors.* (2008) All FWLR (Pt. 437) 42. (2008) 18 WRN 36; *Bamigboye v. Saraki* (2010) 14 WRN 125 cited by 1st respondent's counsel.

The appellant must realize that it is the political party that has exclusive power to conduct primary election. A court of record should not dabble into political question which remains the exclusive preserve of political parties that should be allowed to do their things. Such powers cannot be interfered with by the courts: *Onuoha* v. *Oka for* (1983) 8 SC 52. (1983)2 SCNLR 244; *Effwm v. CRSLN.E. C.* (2010) All FWLR (Pt. 552) 1610,(2010) 14 NWLR (Pt. 1213) 106, (2012) 43 NSCQR346.

The appellant had no answer in respect of this very crucial and determinant issue. It is accordingly resolved in favour of the respondents. The next issue that is worthy of consideration reads as follows:-

> "Whether the Court of Appeal was right in its conclusion that there was no evidence to contradict the printed record of appeal and that the accusation of alteration of record against the trial judge was incompetent and unproved."

The allegation of the appellant in respect of this issue is a very grave one. He alleged that the trial judge tinkered with her ruling in Chambers, The affidavit of Oluwakemi Wey maintained that the trial judge altered or modified her record by adding the following, which was not part of the g ruling delivered in the open court-

> "Accordingly, the plaintiff is ordered to file his pleadings within 14 days from date hereof. The defendant is given 7 days to file their defence from the date of service of the plaintiff's pleadings."

The allegation is a very weighty one which touches on the integrity of the learned trial judge. The appellant maintained that this court should apply due courage by denouncing the trial court's style of

altering a judgment in Chambers after same had been delivered in the open court. According to counsel, such practice is alien to our jurisprudence and ought to be censored by this court in strong expression in order to send the right message to other judicial officers with such proclivity. What a sagacious call by a counsel to this court.

The counsel urged the court to use the leamed trial judge as a 'scape goat" so that other judges involved in such unwholesome practice would get the right message. Learmed counsel for the appellant should appreciate that the act of recording proceedings in court is a judicial act which enjoys presumption of regularity under the law to use the language of Mallam Yusuf Ali, SAN for the 2nd respondent.

The appellant who want to impugn tlie integrity of the leamed trial judge has a binding duty to prove the Contran,". *Shitta-Bey* v. *Attorney-General, Federation and Ors.* (1998) 7 SCNJ 224. (1998) 10 NWLR (Pt. 570) 392 at 426; *Sommer* v. *Federal Housing Authority* (1982) 1 NWLR (Pt. 219) 548.

It is incumbent on the appellant to realize that the court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record. Such affidavit must be served on the judge or registrar of the court concerned.

The court below found that the affidavit of Oluwakemi Wey was not served on the leamed trial judge or the Registrar of the court for them to react to same. It found that there is absolutely no evidence to fault the, printed record of appeal. Further more, in so far as the leamed trial judge was not given any opportunity to be heard on the complaints made by the appellant's counsel, the complaint and/or accusation is incompetent and is therefore discountenanced. I agree completely with the decision of the court below.

The appellant failed to prove his allegation in tune with the required procedure and the law. The invitation to this court to censore the leamed trial judge hit the rock. It is hereby refused. A party along with his counsel should be wary of attempting to destroy the court unjustly. I say no more. The issue is resolved against the appellant.

The last issue which should be touched briefly reads as follows:

> "Whether the Court of Appeal was not right in its decision that judgment should be read together and thât the use of the word 'dismissal' was a slip."

The court below found that 'the trial judge could not have intended to use the word 'dismissal' after stating clearly that the issues are triable and evidence would have to be taken.' It rightly found that it is not every slip of a judge that can resuit in the judgment being set aside. For a mistake to so resuit, it must be substantial in the sense that it affected tire decision appealed against. The case of *Onajobi v. Olanipekun* (1985) 11 SC (Pt. 2) 156 is in point.

This court said it clearly in *Adebayo v. Attorney-General, Ogun Siate* (2008) All FWLR (Pt. 412) 1195, (2008) 2 SCNJ 352 at 366-367 per Niki Tobi JSC that:-

> "In order to pick faults in judgment of a trial judge, appellate court should not take paragraphs or pages in isolation or in quarantine but must take the whole judgment together as a single decision of the court. An appellate court cannot allow an appellant to read a judgment in conveinent installments to underrate or run down the judgment."

I cannot fault the approach of the court below. The reasoning process of the judge before the use of the word 'dismissed", to my mind, after a slow and careful reading of same, shows that it is a slip. The law allows a court to rectify any slip m a judgment as long as it does not amount to a miscarriage of justice: *Yakubu* v. *Omolaboje* (2006) WRN 23 at 176. A party should not employ technicality to frustrate the justice of a case: *Falobi v. Falobi* (1976) 9-10 SC. 1; (1976) 1 NMLR 169.

The court below was right when it found that the word 'dismissal' employed by the trial judge at the material point in her ruling is a mere slip. The issue is also resolved against the appellant.

I come to the conclusion that the appeal lacks merit, It is hereby dismissed by me. The originating summons is dismissed. The appellant shall pay the sum o f N100,000.00 (one hundred thousand naira) as costs to each of the lst and 2nd respondents.

RHODES-VIVOUR JSC : For the reasons given by my learned brother, Fabiyi JSC which I was privileged to read in draft, I agree that this appeal should be dismissed with cost as proposed by his lordslrip. This suit was instituted on 8 February 2011. It was filed to determined who won the primaires of the defunct Action Congress Party (now APC). The primaires were conducted to select the parties candidates for Ogun East Senatorial Seat for the general election of 2011. This is a pre-election matter. The genera! elections conducted in 2011 was to

elect senators for senate for a tenure which ends in 2015. Primaires to select candidates to contest the 2015 general elections have been conducted and concluded by all political parties.

It is slowly becoming comical that the courts are still considering and trying to determine who won primaires in 2011 in 2014. It is about time a time limit is placed on such actions. it is seriously suggested that pre-election matters should be determined before the elections are conducted. In that regard such causes of action should be fast tracked with time limitations of two weeks for hearing in each tier of our court system.

This, no doubt is in the best interest of all concerned.

MUHAMMAD JSC: I read in draft the very succinct lead judgment of my learned brother. Fabiyi JSC before now. I agree with his lordship's reasoning and conclusion therefrom that the appeal lacks merit.

It is significant to observe that appellant's petition is yet to be heard on the merits. Parties thereto were ordered to file pleadmgs in respect of the appellant's suit commenced by way of an originating summons. The trial court had found that inspite of the affidavits for and against the summons, facts have remained in serious contention.

The affirmation of the trial court's judgment by the lower court cannot be faulted. The principle has become trite that the originating summons procedure is not for causes in which facts remain hostile and in conflict. The procedure is ideal for the determination of short and straight forward questions of construction and interpretation of documents or statutes. It is never the applicable procedure in controversial cases where the facts on which the court is invited to construe or interprete the document or legislation in relation to remain violently in conflict: *National Bank of Nigeria* v. *Alakija* (1978) All NLR 231, (1978) 9-10 SC 59.

The appellant must realize that there is presumption of regularity in, respect of court records and where a party sets out to impugn the record, he must abide by the procedure known for so doing. Most importantly, the record must be considered holistically to avoid doing violence to its real content and injustice to the judge and the court. It is for this reason that the appellant's complaint regarding the trial court's record must be ignored.

The concurrent findmgs of the two courts cannot be interfered with as neither is perverse.

For the foregoing but more so the fuller reasons marshalled in the lead judgment, also dismiss the unmeritorious appeal. I abide by

consequential orders made in the said judgment including the order of costs.

OGUNBIYI JSC: I read in draft, the lead judgement just delivered by my learned brother, John Afolabi Fabiyi JSC. I agree that the appeal is devoid of any merit for the reasons and conclusions arrived therein. Just for purpose of emphasis, I wish to say a word or two on the appellant's letter of withdrawal from the Senatorial race which same had been reproduced in the lead judgement of my learned brother and the following opening phrase is worthy of note:-

> "I hereby voluntarily withdraw as a candidate of the Action Congress of Nigeria for the post of Senator in the April, 2011 election for personal reasons," (Emphasis is mine)

The said letter was duly signed by the appellant himself in the presence of two principal officers of the party to wit: National Secretary and National Organizing Secretary. The making of the letter as well as the substance thereof were not denied by the appellant. Also for purpose of confirmation, reference can be made to the counter-affidavit filed by the 1st respondent wherein Ogun State Chainnan of the party, Action Congress of Nigeria, Alhaji Tajudeen Bello deposed to at pages 298 - 299 of the record of appeal and said thus at paragraphs 8, 9.10 and 11.

"8. That the party in an attempt to avoid internal disputes and strife called all aspirants and advised them to step down for the favoured candidate. This they all agreed to do.

9. That as a result of the discussion mentioned in the above paragraph 8, the plaintiff/applicant also at a time withdrew his intention to be considered for nomination as candidate under the Action Congress of Nigeria Ogun State. (Copy of his withdrawal letter is hereby attached and marked exhibit C).

10. That the withdrawal of all other aspirants made Sefiu Adegbenga Kaka the only aspirant.

11. That on Tuesday, January 11, 2011, the party convened a special congress to confirm the nomination of Sefiu Adegbenga Kaka as the Party candidate for the position of Ogun East Senatorial Seat. This is in line with section 87(6) Electoral Act, 2010."

On a communal reading of the foregoing, it leaves no one in doubt that the appellant's withdrawal from the political race was on his

own volition. This is evidenced at page 250 of the record wherein he appended his signature on the withdrawal letter in the presence of the party dignitaries.

It is not shown also on the record that the appellant denied the averments on the counter affidavit reproduced *supra.* The scenario is therefore intriguing that the same appellant should now emerge as if from a world of deep slumber and suddenly realized that he ought not to have withdrawn from the race. The attitude, I hold is very strange and this court will not subscribe thereto.

The appellant sought to disassociate himself from the undated notice of withdrawal which counsel submits has no evidential value. The submission I hold, has no basis and the court will not be used as an instrument of trial and see. This I say because the court is a place of serious business. On this note, the appellant's counsel is hereby well advised.

I further wish to stress that from the grounds of appeal filed by the appellant, it IS manifestly clear that the substratum of his complaints relate to the concurrent decisions premised upon concurrent fmdings by the Two lower courts. This court lias positioned in a long Ime of authorities that concurrent findings of two lower courts would not ordinarily be interfered with: *Gbafe v. Gbafe* (1996) 6 SCN.l 167,(1996) 6 NWLR (Pt 455) 417 at 436 and *Nwose v. Board of Customs and Excise* (1998) 12 SC (Pt. 111) 77 at 88. Also *Tiza v. Begha* (2005) All FWLR (Pt. 2 72) 200, (2005) 5 SC 1 at *17:Akpagbue v. Ogu* (1976) 6 SC *63;Amadi v. Nwosu* (1992) 6 SCNJ 58, (1992) 5 NWLR (Pt. 241) 273 and *Ezekwesili v. Agbapuonwu* (2003) FWLR (Pt. 162) 2016, (2003) 9 NWLR (Pt. 825) 337.

As rightly submitted on behalf of the respondents, the appellant has not established that the concurrent findings complained against are either perverse, unsupported by credible evidence or that they were rendered in violation of any salient principle of law or that they have occasioned any miscarriage of justice.

Consequently therefore, I hold a firm view that the concurrent findings by the two lower courts are on a solid foundation and no reason has been advanced for this court to interfere therewith. The appeal on the totality has no merit and the reason which I also subscribe to the judgement of my learned brother, John Afolabi Fabiyi, that it should be dismissed on the totality. I also abide by the order made therein the lead judgement as to costs.

AKA'AHS JSC : My learned brother, fabiyi JSC made available to me before now, a copy of his lead judgement dismissing the appeal. I agree with my lord's reasoning and conclusion.

Allthough the learned trial judge dismissed the originating summons he clearly indicated that the issues are triable and evidence would have to be adduced and considered to make a finding. Even if the learned trial judge was not sufficiently convinced that a primary election was held, there was the avement in the counter-affidavit of Alhaji Tajudeen Bello ; he stated :-

(i) that as a result of the discussion mentioned in the above paragraph 8, the plaintiff/applicant also at a time withdrew his intention to be considered for nomination as candidate under the Action Congress of Nigeria Ogun State (copy of his withdrawal lette ris hereby attached and marked exhibit 'C') "

A holistic readding of the ruling by the learned trial judge reveals that the use of the word "dismissal" of the originating summons was a mere slip as the learned trial judge clearly evinced an intention to hear oral evidence on the matter. The lower court was therefore right in dismissing the appeal.

I too find no merit in the appeal and i accordingly dismiss it. I abide by the order made on costs in the lead judgement. : "

Appeal dismissed