CHIEF ADEBISI ADEGBUYI

V.

1. ALL PROGRESSIVE CONGRESS (APC)

(Substituted for the defunct Action Congress of Nigeria by order of this court dated 5th May, 2014)

2. ALHAJI SEFIU ADEGBENGA KAKA

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

SUPREME COURT OF NIGERIA

SC.257/2012

JOHN AFOLABI FABIYI. J.S.C. *(Presided and Read the Leading Judgment)*
BODE RHODES-VIVOUR, J.S.C.
MUSA DATT1JO MUHAMMAD, J.S.C.
CLARA BATA OGUNBIY1, J.S.C.
KUMAI BAYANG AKA'AHS. J.S.C.

FRIDAY, 19th DECEMBER 2014

ACTION - Commencement of actions - Originating summons -When appropriate to commence action thereby - When not.

APPEAL - Appellate court - Intermediate appellate court - Duty on to pronounce on all issues raised before it.

APPEAL - Concurrent findings of fact by lower courts - When Supreme Court will not interfere therewith.

APPEAL - Grounds of appeal - Purpose of.

APPEAL - Judgment appealed against - Review of by appellate court - How done - Need to read judgment as a whole.

APPEAL – Record of appeal – Presumption of correctnesss Bindingness of on court and parties.

APPEAL – Record of proceedings – How it should be read – Not read as a whole.

APPEAL - Record of proceedings - Where challenged by a Party – Import of - Party challenging record - Onus on to party – irregularity thereof.

APPEAL - Slip in judgment of court - Whether every slip Judgment will lead to reversal of judgment on appeal

COURT - Appellate court - Intermediate appellate court – Duty to pronounce on all issues raised before it.

COURT - Judgment of Court – Slip in judgment – When court rectify – Relevant consideration.

COURT – Judgment of Court – Slip in judgment – Whether every slip will lead to reversal of judgment on appeal.

COURT – Political issues – Whether court can determine.

COURT – Record of appeal – Presumption of correctness of Bindingness of on court and parties.

COURT- Record of proceedings - Correctness of- Party Challenging - Duty on to swear to affidavit stating inaccuracies In record and serve same on Judge or registrar of court.

COURT – Record of Processings – How it should be read – Need and read as a whole.

COURT - Ruling of court - Alteration or modification of by Judge in chambers after delivery in open court - Allegation of – When made against Judge - Nature and import of.

DOCUMENT - Letter - Writing of - Where not denied by person alleged to be the writer - Presumption raised thereby.

ELECTION - Candidates for election - Candidate who withdrew before conduct of election - Whether can later challenge validity of election.

ELECTION – Primary election – Conduct of – Power of political party in respect of – Nature of.

ELECTION – Primary election – Conduct of where political party has stole aspirant for a selective post – How done – Section 87(6) of Electoral Act, 2010 (as amended).

ELECTION PETITION – Candidate for election – Candidate who withdraw before conduct of election –Whether can later challenge validity of election.

EVIDENCE – Presumptions – Judicial act of recording proceedings in court – Presumption of regularity of record.

JUDGMENT AND ORDER – Judgment appealed against – Review of by appellate court – How done – Need to read judgment as a whole.

JUDGMENT AND ORDER – Judgment of court – Slip in Judgment – Whether every slip will lead to reversal of judgment on appeal.

JUDGMENT AND ORDER – Ruling of court – Alteration or modification of by Judge in chambers after delivery in open court – Allegation of – Where made against Judge – Nature and import of.

NOTABLE PRONOUNCEMENT – On need for pre-election matters to be determined expeditiously before conduct of election.

POLLITICAL PARTY - Primary election - Conduct of – Power political partv in respect of - Nature of.

POLITICAL PARTY - Primary election - Conduct of when political party has sole aspirant for a selective post – How done - Section 87(6) of Electoral Act, 2010 (as amended).

PRACTICE AND PROCEDURE - Appeal - Concurrent findings of fact by lower courts - When Supreme Court will not interfere, therewith.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal Purpose of.

PRACTICE AND PROCEDURE - Appellate court - Intermediate appellate court - Duty on to pronounce on all issues raises before it.

PRACTICE AND PROCEDURE - Commencement of actions Originating summons - When appropriate to commence action Thereby - When not.

PRACTICE AND PROCEDURE - Judgment appealed against Review of by appellate court - How done - Need to real judgment as a whole.

PRACTICE AND PROCEDURE - Judgment of court - Slip in judgment - Whether every slip will lead to reversal of judgment on appeal.

PRACTICE AND PROCEDURE - Judgment of court - Slip in judgment - When court can rectify - Relevant consideration.

PRACTICE AND PROCEDURE - Record of appeal - Presumption of correctness of - Bindingness of on court and parties.

PRACTICE AND PROCEDURE - Record of proceedings -Correctness of - Parts challenging - Duty on to swear to affidavit stating inaccuracies in record and serve same on Judge or registrar of court.

PRACTICE AND PROCEDURE - Record of proceedings - How it should be read - Need to read as a whole.

PRACTICE AND PROCEDURE - Ruling of court - Alteration or modification of by Judge in chambers after delivery in open court - Allegation of - Where made against Judge - Nature and import Of.

PRACTICE AND PROCEDURE - Technicalities - Duty on parties not to frustrate justice therewith.

Issues:

1. Whether the Court of Appeal was right when it found that the trial court did not make a specific finding that the 2nd respondent's primary election was not held in accordance with section 87 of the Electoral Act, 2010 (as amended).
2. 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 court was incompetent and unproved.
3. Whether the Court of Appeal was not right in its decision that the trial court's ruling should be read together and that the use of the word "dismissal" in the ruling was a slip.

Facts:

The appellant commenced his action against the respondents by way of an originating summons. He sought:

(a) An order setting aside the nomination of the 2nd respondent as its senatorial candidate for Ogun East Senatorial District for the General Elections held in 2011

(b) An order directing the respondents to recognize and accept the appellant as the bonafide senatorial candidate of the 1st respondent for the senatorial district at the election.

(c) An order of perpetual injunction restraining the 3rd respondent from recognizing the 2nd respondent as

the senatorial candidate of the 1st respondent for the senatorial district at the election. The appellant asserted that:

(a) The **1st** respondent did not conduct a primary election in the senatorial district in accordance with section^ of the Electoral Act, 2010.

(b) He was the only person qualified to be the 1st respondent's candidate because he was the only aspirant that complied with the 1st respondent's guidelines; and

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

The respondents Idled counter-affidavits to the appellant's suit. Two officials of the 1st respondent deposed to affidavits that the appellant withdrew from the race for the candidature of the Is1 respondent by his letter which they exhibited. And the letter showed clearly that it related to the post of Senator at the April **2011** election. The 1st respondent's officials also asserted that the 2nd respondent was the preferred candidate who emerged as the sole candidate, and that a special congress was held to confirm his candidature in accordance with section **87(6)** of the Electoral Act, **2010** (as amended). The appellant did not deny that he wrote the letter of withdrawn) referred to by the P' respondent's officials but he maintained that the letter was not dated.

The trial court considered the affidavits filed by the parties but did not make any pronouncement on the letter of withdrawal signed and sent by the appellant to the 1st respondent. The trial court, however, found that the issues raised in the suit were triable and that oral evidence ought to be taken, it therefore dismissed the originating summons and ordered pleadings to be filed, and set a date for hearing.

The appellant appealed to the Court of Appeal. The appellant alleged that the trial court altered and modified its ruling in chambers to include the order directing the time of pleadings after it had delivered the ruling in open court. The appellant, however, did not serve the affidavit containing his allegation on the trial Judge or on the Registrar of the trial court.

The Court of Appeal found that the trial court did not make a specific finding that the primary election was not held in accordance with section 87 0f the Electoral Act, 2010 that the trial court use of the word "dismissal" in its ruling was a slip if the ruling is read as a whole and that the appellant did not prove the ruling of the trial court was altered or modified as he alleged. The Court of Appeal did not pronounce on the issue of the appellant's letter of withdrawal but dismissed the appeal.

The appellant appealed further to the Supreme Court. He filed grounds of appeal which contained quoted passages of the judgment of the Court of Appeal he complained of and particulars of his complaints.

The 2nd respondent filed a preliminary objection against the appellant's grounds of appeal.

Held *(Unanimously dismissing the appeal):*

1. *On Presumption raised where authorship of a letter is not denied -* ***Where a party does not deny writing a letter, as in this case, it must be presumed that the party admits the content and intendment of the*** **letter. And a court of a record can conveniently take same as established and act on it.** *[Agbanelo v. UBEL Ltd.* (2000) 7 **NWLR (Pt.** 666) 534; *Edokpoh & Co. Ltd.* v. *Ohenhen* (1994) 7 **NWLR (Pt.** 358) 511; *Bella v. Eweka* (1981) 1 **SC** 101 **referred to.]** *(P. 22. paras. B-C)*

2. *On Whether court can determine political issues -* ***A court of record should not dabble into political questions which remain the exclusive preserve of political parties.*** *{Onuoha* ***v. Okafor*** *(*1983) 2 **SCNLR** 244; *Effiom v. CRSIEC* (2010) 14 **NWLR (Pt.** 1213) 106 **referred to.]** *(Pp. 22-23. paras. H-A)*

3. *On Power of political party to conduct primary election –*

A political party has exclusive power to conduct its primary election. (P. 22, para. H)

4. *On How to conduct primary election involving sole aspirant –*

By virtue of section 87(6) of the Electoral Act, 2010 **(as amended), where there is only one aspirant in a political party for any of the selective positions mentioned in section 87(4)(a), (h), (c) and (d) of the Act, the party shall commence a special convention or congress at a designated centre on a specific date for confirmation of such aspirant and the named the aspirant shall be forwarded to the Commission as the candidate of the party. In this case, the appellant withdrew from the senatorial race. So the 2nd respondent was the only candidate. In the circumstance, the conduct of the primary election by way of a special congress to confirm the 1st respondent as the 2nd respondent's candidate was in accord with section 87(6) of the Electoral Act, 2010 (as amended).** (P. 22, paras. D-F)

5. *Whether candidate who withdrew before conduct of election can challenge its validity-*
A candidate who withdrew before the conduct of an election has no competence and authority to complain or institute an action in respect of the election. In this case, the appellant withdrew from the primary election. In the circumstance, he had no capacity to approach the court to enforce any right from the same election because he ought not to be allowed to approbate and reprobate at the same time on the same matter. [*Buhari v. INEC* **(2008) 4 NWLR (Pt. 1078) 546:** *Bamigbove v. Saraki* **(2010) 14 WRN 125 referred to.]** (P. 22. paras. F-H)

6. **NOTABLE PRONOUNCEMENT:**

On Need for pre-election matters to be determined expeditiously before conduct of election –

Per RHODES-VIVOUR, J.S.C. at pages 25-26, paras. F-A:

> **"This suit was instituted on the 8th day of February 2011. It was filed to determine who won the primaries of the defunct Action Congress Party (now A PC). The primaries were conducted to select the parties candidate for Ogun East Senatorial Seat for the General Elections of 2011. This is a pre-election matter. The General Elections conducted in 2011 was to elect senators for senate for a tenure which ends in 2015. Primaries 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 primaries in 2011 in 2014. It is about time a time limit is placed on such actions. It is seriously suggested that preelection 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."**

7. On Whether every slip in judgment of court will lead to its reversal on appeal –
It is not every slip of a judge in a judgment that can result in the judgment being set aside. For a mistake to so result, it must be substantial in the sense that it affected the decision appealed against. In this case, the Court of Appeal rightly

found that the trial court made a slip when it used the word "dismissal" at the material point in its ruling. [Omtjohi **v.** Okuupekun **(1985) 11 SC (Pt. 2) 156 referred to.] I** Pp. 24. paras. F-G; *25.* paras. B; C-D)

8. On When court ran rectify slip in judgment –**A court can rectify any slip in a judgment as long as it does not amount to a miscarriage of justice.** [Alh. I. Y. Ent. Ltd. v. Omolaboje **(2006)** 3 **NWLR (Pt. 966) 195 referred to.]** (P. 25. paras. B-C)

9. On Bindingness of record of appeal on court and parties -**The court and parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved.** *(P. 24, paras. A-B)*

10. On Presumption of regularity of judicial acts –
The act of recording proceedings in court is judicial act which enjoys presumption of regularity under the law. *(P. 23, paras. Odd)*

11. On Need to read record of proceedings as a whole –
A record of proceedings of court must be considered holistically to avoid doing violence to its real content and in justice to the Judge and the court. In this case, an holistic reading of the ruling of the trial court shows that the use of the word "dismissal" of the originating summons was a mere slip as the trial court clearly evinced an intention to hear oral evidence on the matter. The Court of Appeal was therefore right when it dismissed the appellant's appeal. *(Pp. 26, paras. F-G; 29. paras. D-E)*

12. On Burden of proof (in party challenging record of proceedings-
A party who challenges the record of proceedings of court and. thereby, the integrity of the Judge, as in this case, has the binding duty to prove that the record is not regular. *[Shitta Bey v.A.-G., Federation* **(1998) 11) NWLR (Pt. 570) 392;** *Sommer v. F.H.A.* **(1992) 1 NWLR (Pt. 219) 548 referred to.]** *(Pp. 23-24, paras. H-A)*

13. On Ditty on party challenging correctness of record nt proceedings -**A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts of part of the proceedings omitted or wrongly stated in the record. And such affidavit must be server! on the Judge or registrar of the court concerned. In this case, the affidavit containing the allegation against the trial Judge was**

not served on the trial judge or the Registrar of the trial court for either of them to react to the same. In the circumstance, the trial Judge was not given any opportunity to be heard on the allegations made by the appellant. Consequently, the allegations ought to be discountenanced. *(P. 24, paras. B-D)*

14. *On Nature and import of allegation of alteration of ruling by Judge after its delivery –*

An allegation that a Judge altered or modified his ruling in chambers, after delivering it in open court, by adding an order which the Judge did not make in open court, is a very weighty allegation which touches on the integrity of the Judge. *(P. 23. paras. C D; E)*

15. *On Duty on appellate court reviewing judgment appealed against* **-In order to find faults in the judgment of a trial court, an 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 instalments to underrate or run down the judgment. In this case, the Court of Appeal rightly found that the trial court could not have intended to use the word "dismissal" after stating clearly that the issues in the suit were triable and oral evidence ought to be taken.** *[Adebayo.A.-G. Ogun State* **(2008) 7 NWLR (Pt. 1085) 201 referred to.]** *(Pp. 24-25. paras. F-A***.**

16. *On When appropriate to commence action by originating summons and when not –*

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 interprets the document or legislation are violently in conflict.** *[N.B.N. Ltd. v.Alakija (WIS)* **9-10 SC** *59* **"referred to.]** *(P. 26. paras. D-E)*

17. *On Duty* on intermediate *appellate court to* pronounce *on all issues raised before it-***An intermediate appellate court, such as the Court of Appeal has the duty to pronounce on all issues raised before it and should not restrict itself to or more** issues which in **its opinion may dispose of the matter. For this**

case, the issue of the appellant's withdrawal from the senatorial race was raised and canvassed for the Court of Appeal, in the circumstance, the court of Appeal ought to have considered it *[Xtoudus Serv. (Nig.) Ltd.* **v.** *Taisei W. A. Ltd.* **(2006) 15 NWLR (Pt. 10031 533 referred to.]** *(P.21, paras A-D)*

18. *On When Supreme Court will not interfere wish concurrent findings of fact by lower courts***The Supreme Court will not interfere with concurrent findings of fact by lower courts where the appellant fails to show, as in this case, that:**
(a) the findings perverse or unsupported by credible evidence; or
(b) the findings were rendered in violation oi any salient principle of law; and
(c) the findings occasioned a miscarriage of justice
In the circumstance, the Supreme Court will not interfere with the concurrent findings made by the trial court and the Court of Appeal in favour of the respondents. *[Gbafe. v Gbafe* **(1996) 6 NWLR (Pt. 455) 417;** *Nwosu v. Board of Customs and Excise* **(1988) 5** *NWLR Pt 93)* **225;** *Tiza v. Begha* **(2005) 15** *NWLR* **(Pt. 949) 616;** *Akpagbue v. Ogu* **(1976) 6 SC 63;** *Amadi v. Nwosu* **(1992) 5 NWLR (Pt. 241) 273;** *Ezekwesili v. Agbapuonwu* **(2003) 9 NWLR (Pt. 825) 337 referred to.]** *{Pp. 26. para. G; 28. paras. D-G)*

19. *On Purpose of grounds of appeal –*
The purpose of a ground of appeal is to give notice to the other side and the court of the nature of the grouse of complaint which the appellant has against the decision of the lower court. In this case, the appellant quoted the passages of the judgment he complained about in his grounds of appeal, and then gave particulars of his complaint. In the circumstance, the appellant's grounds of appeal were valid grounds of appeal. *[Silencer & Exhaust Pipes Co. v. Farah* **(1998) 12 NWLR (Pt. 579) 624;** *Babba v. Tafashiya* **(1999) 5 NWLR (Pt. 603) 468 referred to.]** *(P. 18. paras.F-G)*

20. *On Duty on parties not to frustrate justice with technicalities –*
A party should not employ technicality to frustrate the justice of a case. *[Falobi v. Falobi* **(1976** .1 **9-10 SC 1 referred to.]** *(P. 25. para. C)*

Nigerian Cases Referred to in the Judgment:

Abdullahi v. Oba (1998) 6 NWLR (Pt. 554) 420
Adebayo v. A.-G. Ogun State (2008) 7 NWLR (Pt. 1085) 201
Adeleke v. Asani (2002) 8 NWLR (Pt. 768) 26

Akpagbue v. Ogu (1976) 6 SC 63
Alh. I. Y. Ent. Ltd. v. Omalaboje (2006) 3 NWLR (Pt. 966) 195
Amadi v. Nwosu (1992) 5 NWLR (Pt. 241) 273
Amajideogu v. Onanaku (1988) 2 NWLR (Pt. 78) 614
Bamigbove v. Saraki (2010) I4 WRN 125
Bello v. Eweka (1981) 1 SC 101
Buhari v. INEC (2008) 4 NWLR (Pt. 1078) 546
Edokpolo & Co. Ltd. v. Ohenhen (1994) 7 NWLR (Pt. 358) 511
Effiom v. CRSIEC (2010) 14 NWLR (Pt. 1213) 106
Ezekwesili v. Agbapuonwu (2003) 9 NWLR (Pt. 825) 337
F.B.N. v. Njoku (1995) 3 NWLR (Pt. 384) 457
Falobi v. Falobi (1976) 9-10 SC 1
Gbafe v. Gbafe (1996) 6 NWLR (Pt. 455) 417
*N.N.B. v. Alakija (*1978) 9- II) SC 59
Nsirim v. Nsirim (1990) 3 NWLR (*P*t. 138) 285
Nwora v. Nwubueze (2011) 15 NWLR (Pt. 1271) 467
Nwosu v. Board of Customs and Excise (1988) 5 NWLR (pt 93)225
Oloruntoba-Oju v. Abdulraheem (2009) 13 NWLR (Pt. 1157)83
*Onajobi v. Olanipekun (*1985) 11 SC (Pt. 2) 156
Onuoha v. Okafor (1983) 2 SCNLR 244
Shtita Bey v. A.G, Fed. (1998) 10 NWLR (Pt. 570) 392
Sommer v. F.H.A. (1992) 1 NWLR (Pt. 219) 548
Tiza v. Begha (2005) 15 NWLR (Pt. 949) 616
Xtoudos Service (Nig.) Ltd. v. Taisei (W. A.) Ltd. (2006) 15 NWLR (Pt. 1003) 533

Nigerian Statute Referred to in the Judgment:

Electoral Act 2012, S. 87(6)

Appeal:

This was an appeal against the decision of the Court of Appeal where the appellant's appeal was dismissed. The Supreme Court, unanimous**,** decision dismissed the appeal.

History of the case:

Supreme Court:

Names of Justices that sat on die appeal: John Afolabi Fabiyi, J.*S.C. (Presided and Read the* Leading Judgment**);** Bode Rhodes-Vivour, J.S.C.; Musa Dattijo Muhammad, J.S.C.; Clara Bata Ogunbiyi. J.S.C.; Kumai Bayang Aka'ahs
Appeal No.: SC.257/2012
Date of Judgment: Friday, 19th December 20 14
Names of Counsel: Taiwo Kupolati. Esq. - *for the Appellant*
Yomi Siwoniku, Esq. - *for the 1st Respondent*

Yusuf Ali. SAN *(with him,* A. K. Adeniyi, Esq.; Rasaq Oke.siji, 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 2nd Respondent*
S. O. Ibrahim, Esq. *-for the 3rd Respondent*

Court of Appeal:
Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Ibadan
Names of Justices that sat on the appeal: Stanley Shenko Alagoa. J.C.A. *(Presided):* Adzira Gana Mshelia, J.C.A.; Joseph Shagbaor Ikyegh, J.C.A. *(Read the Leading Judgment)*
Appeal No.: CA/1/123/2011
Date of Judgment: Thursday. 24th May 2012
Names of Counsel: Mr. Rasaq Okesiji - *for the Appellant*
Mr. Taiwo Kupoiati - *for the 1stRespondent*

High Court:
Name of the High Court: Federal High Court. Abeokuta
Name of the Judge: Ajumogobia, J.
Date of Judgment: Friday, L' April 2011

Counsel:
Taiwo Kupolati, Esq. - *for the Appellant*
Yomi Siwoniku. Esq. - *for the 1st Respondent*

Yusuf Ali, SAN *(with him.* A. K. Adeniyi, Esq.; Rasaq Okesiji. Esq.; K. K. Eleja, Esq.; Ajibola Kaka. Esq.; Alex Akoja. Esq.; P. 1. Ikpegbu [Mrs.]; Patience Adejoh [Miss|; A. O. Usman. Esq. and Obumneke Onuoha, Esq.) - *for the 2nd Respondent*
S. O. Ibrahim. Esq. - *for the 3rd Respondent*

FABIYI. J.*S.C.* (Delivering the Leading Judgment): This is an appeal against the judgment of the Court of Appeal, Ibadan Division ('the court below' for short) delivered on 24"[l] May, 2012. Therein, the decision of the Federal High Court, Abeokuta (trial court) delivered by Ajumogobia, J on I" day of April, 201 1 was affirmed. The appellant has decided to further appeal to this court.

It is apt to state briefly the salient facts of tins matter. The appellant as plaintiff at the trial court instituted his action against the respondents, as defendants, by way of originating summons on 8th February, 2011. Thereat, he claimed that:

(a) The 1st respondent did not conduct a primary election m 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 complied with the party guidelines.
(c) That the 2"d respondent was handpicked contrary to statutory provisions.

Sequel to the above, the appellant, as 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 provisions of section 87 of the Electoral Act, 2010 and relevant guidelines ^ of the J" respondent, his name should be 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 E[l] the defendant is null and void. E

The plaintiff then prayed for three orders as follows:

3. An order setting aside the purported nomination of the 2nd defendant by the I[s]' defendant as the senatorial candidate for the stated district.
4. An order directing the defendant to recognize and accept the plaintiff as the bonafide senatorial candidate of the district on the platform of the 1" defendant.
5. An order of perpetual injunction restraining the 3rd defendant from recognizing the 2"" defendant as senatorial candidate of the stated district in the general **Q** election fixed for 2nd April. 2011

The respondents filed counter-affidavits. Two officials of the 1st 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 2nd one. They asserted that the 2nd respondent was 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 the 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 respondent. The trial court considered the affidavits and counter - affidavit before it and dismissed the originating summons and thereafter ordered pleadings to be filed and set a date for hearing. The appellant felt unhappy with the position taken by the trial judge and appealed to the court below.

Thereat, he maintained that:

(a) The trial court cannot order pleadings 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 modified after being (sic) read in the open court.

The court below heard the appeal and dismissed same in its judgment handed out on 24th 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 that the appellant could not have been prejudiced by the slip.

(c) The appellant had not proved that the record of the court was modified 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 points 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 field by the appellant on 12th 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 fell 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 (Pt. 554) 420 at 428; *Adeleke v. Asani* (2002) 8 NWLR (Pt. 768) 26 at 43; *First Bank of Nigeria v. Njoku* (1995) 3 NWLR (Pt. 384) 457 and *Nsirim v. Nsirim* (1990) 3 NWLR (Pt. 138) 285.

Senior counsel observed that the substantive suit at the trial C 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 out of the suit. He strongly asserted that the legal plank upon which this appeal rests on has been removed. The appeal, senior counsel submits, has **d** become academic. In support, he cited the case of *Nwora & 3 Ors v. Nwabueze & Ors.* (2011) 12 SC (Pt. Ill) 1 at 22 (2011) 15 NWLR (Pt. 1271) 467. 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 g; 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. F

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 j terms and then followed by particulars. The stated grounds alleged j error or misdirection in law. They are, no doubt, valid grounds. I 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 time. I strongly feel that **t**he preliminary objection is not maintainable. It is accordingly overruled. The appeal shall be considered on its merit; anon**.**

When the appeal was heard on 3rd of December, 2014, learned counsel/senior counsel to the respective parties adopted and relied on briefs of argument which were filed. The appellant'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 to file pleading when –

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

(ii) Sufficient materials needed to determine 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 decision of 1st April, 2011 by which the parties were directed to the file pleadings after the dismissal 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 Division, 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 B the notice of appeal)."

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

"8.1 Whether the Court of Appeal had answered extensively and conclusively the core and the fundamental question C 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. o

(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 g to section 87(6) of Electoral Act:

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

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

The two issues submitted for determination 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 decision 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, f should not restrict itself to one or more issues which in its opinion may dispose of the matter. See *Xtoudos Serv.* Nig. *Ltd.* v. *Taisei (W. A.) Ltd.* (2006) WRN 46 at 37, (2006) 15 NWLR (Pt. 1003) 533. Since it is an issue touching on jurisdiction, it has again been brought to the fore before this court. It shall be considered, *anon.*

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 WITHDRAWALOFMYCAND1DTURE
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 Faithfully,

Signature
ADEGBUYI ADEBISI
Name
In the presence of:
National Secretary: Oluvvaranti Oyebade
National Organizing Secretary: David Oluwole Adenivi."

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 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 it the fancy of this court. Such a child's play that can inhibit a due b| determination of such a substantial issue must

be shunned. See! *Oloruntoba-Oju v. Abdulraheem & Ors.* (2009) 26 WRN 1, (2009) | 13 NWLR (Pt. 1157) 83.

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 the same as established and act on it. See: Agbanelo v. UBN Ltd. (2000) *I* 7 NWLR (Pt. 666) 534 at 549; Edokpolo & Co. Ltd. v. Ohenhen (1994) 7 NWLR (Pt. 358) 511 at 513; Bella v. Eweka (1981) 1 SC 101

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

> "Where there is only one aspirant in a political party for any of the selective positions mentioned in subsection 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. See: Buhari v. INEC & Ors. (2008) 18 WRN 36, (2008) 4 NWLR (Pt. 1078) 546; 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. See: Onuoha v. Okajor (1983) 2 SCNLR 244; *Effiom v. CMS INEC* (2012) 43 NSCQR 346 [Reported as Effiom v. CRSIEC (2010) 14 NWLR (Pt. 1213) 106].

The appellant had no answer m 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 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' 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 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. See Shitta Bey v Attorney-General Federation Ors. (1998) 10 NWLR (Pt. 570) *392 at 426*; Sommer v. Federal Housing Authority (1992) 1 NWLR (Pt. 219) 548.

It is incumbent on the appellant to realize that the court and the panic: arc bound by the record of appeal as certified and n is presumed correct unless the contrary is proved. A party who B 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 die learned 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. Furthermore, in so far as the learned trial Judge was not given tiny opportunity to be heard on the complaints made by the appellant's counsel, the complaint p 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 censure the learned trial Judge hit the rock. It is hereby refused, g party along with his counsel should be wary of attempting to destroy the court unjustly. 1 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 p decision that judgment should be read together and that tile 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 result in the judgment being set aside. For a mistake to so result, it must be substantial in the sense that it affected the 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, g Ogun State (2008) 2 SCNJ 352 at 366-367, (2008) 7 NWLR (Pt. 1085) 201 @ pg 221 paras. C-D 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 lake the whole judgment together as a single decision of the court. An appellate court cannot allow an appellant to read a judgment in convenient instalments to underrate or run down the judgment."

I cannot fault the approach of tile court below. The reasoning process of the Judge before the use of the word 'dismissed', lo 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. See *Alh. I.Y. Ent. Ltd. V. Omolaboje* (2006) WRN 23 at 176. (2006) 3 NWLR (Pt. 966) 195. A party should not employ technicality to frustrate the justice of a case. See *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 of N 100,000.00 as costs to each of the 1" and 2"[d] respondents.

RHODES-VIOUR, J.S.C.: For the reasons given by my learned brother, Fabiyi, JSC which 1 was privileged to read in draft I agree that this appeal should be dismissed with cost as proposed by his Lordship. This suit was instituted on the 8'" day of February 201). It was filed to determine who won the primaries of the defunct Action Congress Party (now APC). The primaries were conducted to select the parties candidate for Ogun East Senatorial Seat for the general elections of 2011. This is a pre-election matter. The general elections conducted in 2011 was to elect senators for senate for a tenure which ends in 2015. Primaries to select candidates to contest the 2015 Genera! 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 primaries in 2011 in 2014. It is about time a time limit is placed on such actions. U 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.

M.D. MUHAMMAD, J.S.C.: 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 pleadings in respect of the appellant's suit commenced by way of an originating summons. The trial court had found that in spite 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 interprets the document or legislation in relation to remain violently in conflict. See *'National Bank of Nigeria v.Alakija* (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 the procedure known for so doing. Most importantly, the record must be considered wholistically 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 findings 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 I also dismiss the unmeritorious appeal. I abide by consequential orders made in the said judgment including the order of costs.

OGUNBIYI,,J.S.C: I read in draft die lead judgment just delivered by my learned brother, John Afolabi Fabiyi, JSC. 1 agree that the

appeal is devoid of" any merit for the reasons and conclusions arrived therein. Just for purpose of emphasis, 1 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 judgment 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." (Italics 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 mailing 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 Chairman 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 pace 250 of the record u 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 B {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 which 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 1 hold has no basis and the court will not be used as an instrument of trial and see. Tins 1 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 findings by the two lower courts. This court has positioned in a long line of authorities that concurrent findings of two lower courts would not ordinarily be interfered with; see *Gbafe v. Gbafe* (1996) 6 NWLR (Pt. 455) 417 at 436 and *Nwosu v. Board of Customs and Excise* (1998) 12 SC (Pt. Ill) 77 at 88, (1998) 5 NWLR (Pt. 93) 225. See also *Tiza v. Begha* (2005) 5 SC 1 at 17, (2005) 15 NWLR (Pt. 949) 616 *Akpagbue v. Ogu* (1976) 6 SC 63; *Amadi v. Nwosu* (1992) 5 NWLR (Pt. 241) 273 and *Ezekwesili v. Agbapuonwu* (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 ϱ they have occasioned any miscarriage of justice.

Consequently, therefore, I hold a firm view that the concurrent findings by tire 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 judgment 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 judgment as to costs.

AKA'AHS,.J.S.C: My learned brother, Fabiyi, JSC made available to me before now a copy of his leading judgment dismissing the appeal. 1 agree with my Lord's reasoning and conclusion.

Although the learned trial Judge dismissed 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 averment in the counter-affidavit of Alhaji Tajudeen Bello, the Ogun State Chairman of the party which made it imperative for the trial Judge to hear oral evidence. In paragraph (i) of 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 letter

is hereby attached and marked exhibit "C").

A holistic reading 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. 1 abide by the order made on costs in the leading judgment.

Appeal dismissed.