

SENATOR AYOKU EZE

V.

1. PEOPLE DEMOCRATIC PARTY (PDP)

**2. THE NATIONAL WORKING COMMITTEE OF THE PEOPLE
DEMOCRATIC PARTY**

**3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
(INEC)**

4. HON. IFEANYI LAWRENCE UGWUANYI

SUPREME COURT OF NIGERIA

OLUKAYODE ARIWOOLA J.S.C. (presided)

MUSA DATTIJO MUHAMMED, J.S.C (Read the Leading
Judgement)

KUDIRAT MOTONMORI OLATUNBO KEKERE-EKUN, J.S.C

EJEMBI EKO, J.S.C.

PAUL ADAMU GALINJE, J.S.C.

FRIDAY, 6TH JULY 2018

*ACTION – Locus standi – Meaning of – issue of – Importance of –
Relationship of with jurisdiction – When can be raised*

*ACTION – Locus standi – Standing to sue – Plaintiff's locus standi –
Where challenged – How determined – What court considers.*

APPEAL – Finding of court – Where not challenged on appeal – How treated – Validity and substance of.

APPEAL – leave – Grounds of appeal – Grounds requiring leave to file – Where leave not sought and obtained – Effect – Exception thereto.

COURT – Competence of court – ingredients of – When court competent to hear a matter – Conditions precedent thereto.

COURT – Jurisdiction – Locus standi – Issue of – Importance of – Relationship of with jurisdiction – When can be raised.

COURT – Jurisdiction of court – Fundamental nature of – Where court lacks jurisdiction – Effects on proceedings.

ELECTION – “Aspirant in relation to election” – Who is.

ELECTION – Nomination of candidate for election – Exclusive preserve of political party with respect thereto – nature of – Matter relating thereto – Whether justiciable – When court can entertain – Section 87 (9), Electoral Act, 2010 (as amended).

ELECTION – primary election – Primary election of a political party – Conduct of – Who can challenge – Jurisdiction of court to enquire into – Section 87 (9), Electoral Act, 2010 (as amended) – Extent and scope of.

JUDICIAL PRECEDENT – Stare decisis – Doctrine of Operation and application of.

JURISDICTION – Competence of court – Ingredients of – When court competent to hear a matter – Conditions precedent thereto.

JURISDICTION – jurisdiction of courts – Fundamental nature of – Where court competent to hear a matter – Condition Precedent thereto.

LOCUSSTANDI-Meaning of locus standi - Issue of- Importance of- Relationship of with jurisdiction- When can be raised

LOCUS STANDI-Standing to sue - Plaintiff's locus standi - Where challenged-How determined- What court considers

POLITICAL PARTY - Nomination of candidate for election - Exclusive preserve of political party with respect thereto - Nature of- Matter relating thereto- Whether justiciable - When court can entertain - Section 87(9), Electoral Act, 2010 (as amended).

POLITICAL PARTY - Primary election - Primary election of a political party- Conduct of - Who can challenge - Jurisdiction of court to enquire into - Section 87(9), Electoral Act, 2010 (as amended) - Extent and scope of.

PRACTICE AND PROCEDURE - Appeal - Leave - Ground of appeal – Ground requiring leave - Where leave not sought and obtained - Effect.

PRACTICE AND PROCEDURE - Finding of court - Where not challenged on appeal- How treated – Validity and subsistence of.

PRACTICE AND PROCEDURE - Locus standi - Plaintiff's locus standi
– *Where challenged - How determined- What court considers*

STARE DECISIS - Doctrine of stare decisis - Operation and application
of

WORDS AND PHRASES- "Aspirant" - Who is.

WORDS AND PHRASES- Locus standi - Meaning of.

Issue:

Whether the court of appeal was not wrong in its view and conclusion that the appellant has no *locus standi* to initiate or institute the action, that his case was based on parallel of PDP, when that was not the case, and in striking out the case on the ground of lack of jurisdiction.

Facts:

The 1st respondent, a political party that sponsored the 4th respondent at the Governorship Election which took place in 2015 throughout Enugu State, had on 1st November 2014 conducted ward congresses in all the wards of that state in which three delegates were elected from each ward. The delegates so elected were saddled with the responsibility of voting in the primary election fixed for 8th December 2014 in order to elect the 1st respondent's candidate for the Governorship Election in Enugu State.

When an issue arose as to the 1st respondent's commitment to utilizing the list of the delegates proceeded to the Federal High Court and initiated Suit No. FHC/ABJ/CS/816/2014, Barr. Orji Chinenye Godwin & Ors. V. People Democratic Party & Ors. In his judgement,

Ademola, J. sanctioned and or recognized the list submitted by the plaintiffs as the authentic delegates to the primary election.

The appellant claimed that he was also elected as the candidate of the 4th respondent at the primary conducted with the list of delegates sanctioned by the Federal High Court. The National Working Committee of PDP, however, appointed a panel under the leadership of Asara A. Asara that conducted Governorship Primaries of PDP pursuant to which the 4th respondent (Hon. Ifeanyi Ugwuanyi) emerged as the Governorship candidate of PDP for Enugu State.

Irked by that development, the appellant approached the Federal High Court by originating summons against the respondents and sought the determination of several questions; and claimed several declaratory and injunctive reliefs against the respondents. The thrust of the appellant's reliefs was that he be declared the duly elected candidate on the platforms of the PDP as Governorship candidate for Enugu State at the general election of 2015.

Upon service of the originating summons and supporting affidavit, the respondents filed notices of preliminary objections as well as their counter-affidavits in opposition to the originating summons.

The trial court heard arguments in respect of the preliminary objections and the substantive suit together. In its judgment on 2nd March 2016, the trial court overruled the preliminary objections, jurisdiction and dismissed the appellant's suit.

Dissatisfied, the appellant appealed to the Court of Appeal. The 1st, 2nd and 4th respondents were also dissatisfied with the judgment of the trial court, and also appealed.

The Court of Appeal in its judgment on 15th February 2017 affirmed the trial court's finding and dismissed the appellant's appeal.

It however allowed the respondents' appeal and struck out the appellant's action for lack of necessary *locus standi*.

Aggrieved, the appellant appealed to the Supreme Court. At the Supreme Court, the appeal turned on whether the appellant had *locus standi* to initiate or institute the action.

Held (Unanimously dismissing the appeal):

1. On fundamental nature of issue of jurisdiction of court -
The issue of jurisdiction is very fundamental and radical. It is the foundation, the bedrock, so to say, of litigation. Where it is lacking, there is want of competence on the part of the court to try the matter. Thus, proceedings of the court embarked upon without the necessary jurisdiction, being a nullity *abinitio*, will be set aside on appeal notwithstanding how well conducted same are. [Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Onagoruwa v. State (1992) 5 NWLR (Pt.224) 713; Ogundipe v. Akinloye (2002) 10 NWLR (Pt.775) 312; Egunjobi v. F.R.N. ((2013) 3 NWLR (Pt.1342)534; Gwede v. INEC (2014) 18 NWLR (Pt.1438) 56 referred to.] (P. 18, paras. B-D)

2. On When court is competent to hear a matter –
A court is competent to adjudicate in a cause or matter in the following circumstances:
 - (a) **When it is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another;**
 - (b) **The subject matter of the case is within its jurisdiction, and there is no feature of the case which**

prevents the court from exercising its jurisdiction;
and

- (c) The case comes before the court initiated by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity, no matter how well conducted; the defect is extrinsic to the adjudication. [*Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Skenconsult (Nig) Ltd v. Ukey* (1981) 1 SC 6; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt.1025) 423; *N.N.P.C. v. Klifco (Nig.) Ltd.* (2011) 10 NWLR (Pt.1255) 209; *Onagoruwa v. State* (1992) 5 NWLR (Pt.224) 713; *Ogundipe v. Akinloye* (2002) 10 NWLR (Pt.775) 312; *Egunjobi v.F.R.N.* ((2013) 3 NWLR (Pt.1342)534; *Gwede v. INEC* (2014) 18 NWLR (Pt.1438) 56 referred to.] (Pp. 18, paras. B-E; 23, paras. B-E)

3. On Meaning and nature of locus standi –

Locus standi is the legal capacity or standing of a party to institute an action in a court of law. The locus standi of a plaintiff or a petitioner is a crucial matter touching on the competence and the jurisdiction of the court to adjudicate on the suit, or petition, or application before it. It is a fundamental jurisdictional question that can be raised at any time during the trial as a preliminary issue or even raised for the first time on appeal. Thus, in this case the *locus standi* of the appellant to institute the action was crucial in determining whether the trial court was clothed with the necessary jurisdiction to entertain the suit. [*Egolum v. Obasanjo* (1999) 7 NWLR (Pt.611) 355 referred to.] (P.23, paras. F-G)

4. *On What court considers indetermining plaintiff's locus standi –*

Where a plaintiff's *locus standi* to maintain an action is challenged, it is the plaintiff's claim that determines the objection. If, however, the action is commenced by an originating summons, it is the averments in the affidavit in support alone that is examined in determining whether or not the court is competent to proceed. [*Izenkwe v. Nnadozie* (1953) 14 W.A.C.A.361; *Adeyemi v. Opeyori* (1976) 9-10 SC 31; *Tukur v. Govt., Gongola State* (1989 4 NWLR (Pt.117) 517 referred to.] (P. 18, paras. E-F)

5. *On Jurisdiction of court to look into complaints arising from conduct of political party's primary election –*

Ordinarily, matters relating to the selection and nomination of candidates for an election are within the sole preserve of the political party and the courts do not have jurisdiction to look into into any complaint arising therefrom. However, section 87(9) of the Electoral Act, 2010 (as amended) gives the courts very limited jurisdiction to ensure that in the selection or nomination process, political parties do not act arbitrarily but within the confines of their constitution and Electoral Guidelines, and in accordance with the provisions of the Electoral Act. Section 87 (9) of the Act provides a window for an aspirant who complains that any of the provisions of the Electoral Act or his party's guidelines have not been complied with in the selection or nomination of the party's candidate for the election, to ventilate his grievance before the Federal High Court, a State High

Court or the High Court of the Federal Capital Territory. Not only must his complaint relate to non-compliance with the Act or his party's Guidelines, he must also bring himself within the purview of the subsection by showing that he was an aspirant in the election complained of. [Onuoha v. Okafor (1983) SCNLR 244; Dalhatu v. Turaki (2003) 15 NWLR (Pt.843) 310; Agi v. P.D.P. (2017) 17 NWLR (Pt.1595) 386 referred to.] (P. 24, paras. B-E)

6. On Who is an "aspirant" in relation to election –

An aspirant is a person who contested the primary election of his party. He must be someone who actually participated in the primary election he is challenging. The primary election he is complaining about must have been conducted by the National Executive Committee or National Working Committee of the party. In the instant case the appellant did not participate in the primary election conducted by the King Asara A. Asara Election Committee set up by 1st respondent (PDP). Having not participated in the primary election conducted by the King Asara A. Asara Electoral Panel, mandated by the 1st and 2nd respondents to conduct the primary election, the appellant failed to bring himself within the purview of section 87(9) of the electoral Act. He therefore lacked the *locus standi* to institute the action. [P.D.P v. Sylva (2012) 13 NWLR (Pt. 1316) 85; Lado v. C.P.C. (2011) 7 NWLR (Pt.1279) 689; Shinkafi v.Yari (2016) 7 NWLR (Pt.1511) 340; Emenike v. P.D.P. (2012) 12 NWLR (Pt.1315) 556; Yar'Adua v. Yandoma (2015) 4 NWLR (Pt.1448) 123 referred to.] (P. 24, paras. E-H)

Per GALINJE, J.S.C. at page 27, paras. D-E:

“Section 87(1) of the Electoral Act, 2010 provides that a political party seeking to nominate candidates for elections under the Acts shall hold primaries for aspirants to all elective positions. It is therefore very clear that primary election can only be held by a political party that seeks to nominate a candidate. In the instant case, the only panel appointed to conduct the governorship primary election in Enugu state in 2015 is the one headed by King Asara A. Asara. Since the appellant refused to participate in that primary election, he was not a candidate in the said primary election and therefore lacks *locus standi* to challenge its outcome. Section 87(9) of the Electoral Act is so clear, as it gives the right to challenge the outcome of a primary election to only aspirants.”

7. *On Operation and application of the doctrine of stare decisis*

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The doctrine of *stare decisis* or judicial precedent requires all subordinate courts to subsequently follow the earlier decisions of the Supreme Court. A lower court, therefore, would be impertinent to refuse to be bound by the earlier authoritative pronouncements of the Supreme Court on same or similar issues it is asked to subsequently determine. Being the foundation on which the consistency of our judicial decisions rest, an inferior court’s decision in clear breach of the doctrine, being perverse, will be set aside on appeal. [*Olu of Warri v. Kperegbeyi* (1994) 4 NWLR (Pt. 339) 416; *N.A.B. Ltd v. Barri Engineering Nig. Ltd.* (1995) 8 NWLR (Pt. 413) 257;

Osagie II v. Offor (1998) 3 NWLR (Pt. 541) 205; *Dalhatu v. Turaki* (2003) 15 NWLR (Pt. 843) 310 referred to.] (P. 21, paras. G-H)

8. *On Treatment of a finding of court not challenged on appeal*

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A finding of a court against which there is no appeal remains binding and conclusive. In the instant case, the trial court's finding that appellant's suit was not founded on two primary elections, which finding was not appealed against at the court of Appeal, persisted even in the Supreme Court. It follows that it is only the trial court's finding that appellant's action rested on a single primary election of the 1st respondent as reviewed by the Court of Appeal that formed the subject matter of the instant appeal.[*Dabup v. Kolo*(1993) 9 NWLR (Pt. 317) 254;*Awodi v. Ajagbe* (2015) 3 NWLR (Pt. 1447) 578 referred to.] (P. 18, paras. G-H)

9. *On Effect of failure to obtain leave to file grounds of appeal*

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Where an appellant requires leave of court to file his grounds of appeal but does so without having obtained the leave of court, such grounds, unless they are grounds challenging the jurisdiction of the court against which judgment the appeal is brought, being incompetent must be discountenanced. Similarly, incompetent grounds of appeal, cannot give rise to competent issue. [*Nalsa and Team Associates v. NNPC* (1991) 8 NWLR (Pt. 212) 652; *Olanrewaju v. Ogunleye* (1997) 2 NWLR (Pt. 485) 12; *Organ v. N.L.N.G. Ltd.* (2013) 16 NWLR (Pt. 1381) 506;

Akeredolu v. Mimiko (2014) 1 NWLR (Pt. 1388) 402; *FBN Plc v. A.C.B.* (2006) 1 NWLR (Pt. 962) 438 referred to.]
(Pp. 15-16, paras. F-C)

Nigerian Cases Referred to in the judgment:

A.-G., Fed. V. Shode (1990) 1 NWLR(Pt. 128) 500
A.-G., Ogun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395
Abubakar v. Joseph (2008) 13 NWLR (Pt. 1104) 307
Abubakar v. Yar'adua (2008) 18 NWLR (Pt. 1120) 1
Adesanya v. President, F.R.N. (1981) 2 NCLR 236
Adeyemi v. Opeyori (1976) 9-10 SC 31
Agi v.P.D.P. (2017) 17 NWLR (Pt.1595) 386
Agu v. General Oil Ltd.(2015) 17 NWLR (Pt. 1488) 327
Akeredolu v. Mimiko (2014) 1 NWLR (Pt. 1388) 402
American Cynamid Company v. Vitality Pharmaceuticals Ltd. (1991) 2 NWLR (Pt. 171) 15
Awodi v. Ajagbe (2015) 3 NWLR (Pt. 1447) 578
Awolowo v. Shagari (1979) 6-9 SC 51
Chukwu v. INEC (2014) 10 NWLR (Pt. 1415) 385
CPC v. Lado (2011) 14 NWLR (Pt. 1266) 40
Dabup v. Kolo (1993) 9 NWLR (Pt. 317) 254
Dalhatu v. Turaki (2003) 15 NWLR (Pt.843) 310
Daniel v. INEC (2015) 9 NWLR (Pt. 1463) 113
Dingyadi v. INEC (2011) 10 NWLR (Pt. 1255) 347
Egolum v. Obasanjo (1999) 7 NWLR (Pt.611) 355
Egunjobi v. F.R.N. (2013) 3 NWLR (Pt.1342)534
Gwede v. INEC (2014) 18 NWLR (Pt.1438) 56
FBN Plc v. A.C.B. (2006) 1 NWLR (Pt. 962) 438
In Re: Ijelu (1992) 9 NWLR (Pt. 266) 414
Inakoju v. Adeleke (2007) 4 NWLR (Pt.1025) 423
Izenkwe v. Nnadozie (1953) 14 W.A.C.A.361
Lado v. C.P.C. (2011) 7 NWLR (Pt.1279) 689

Lawal v. Younan & Sons & Co. Ltd. (1961) 1 ALL NLR 254
Madukolu v. Nkemdilim (1962) 2 SCNLR 341
N.A.B. Ltd v. Barri Engineering Nig. Ltd. (1995) 8 NWLR
(Pt. 413) 257
N.N.P.C. v. Klifco (Nig.) Ltd. (2011) 10 NWLR (Pt.1255)
209
Nalsa and Team Associates v. NNPC (1991) 8 NWLR (Pt.
212) 652
Argo v. Nyako (2014) 10 NWLR (Pt. 1416) 591
Obaro v. Hassan (2013) 8 NWLR (Pt. 1357) 425
Odeneye v. Efunuga (1990) 7 NWLR (Pt. 164) 618
Odofin v. Agu (1992) 3 NWLR (Pt. 229) 350
Ogundipe v. Akinloye (2002) 10 NWLR (Pt.775) 312
Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377
Okadigbo v. Emeka (2012) 11 NWLR (Pt. 1311) 237
Olanrewaju v. Ogunleye (1997) 2 NWLR (Pt. 485) 12
Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508
Olu of Warri v. Kperegbeji (1994) 4 NWLR (Pt. 339) 416
Onagoruwa v. State (1992) 5 NWLR (Pt.224) 713
Onuoha v. Okafor (1983) SCNLR 244
Organ v. N.L.N.G. Ltd. (2013) 16 NWLR (Pt. 1381) 556
Osagie II v. Offor (1998) 3 NWLR (Pt. 541) 205
P.D.P v. Sylva (2012) 13 NWLR (Pt. 1316) 85
Shinkafi v.Yari (2016) 7 NWLR (Pt.1511) 340
Skenconsult (Nig) Ltd v. Ukey (1981) 1 SC 6
SLB Consortium Ltd v. N.N.P.C. (2011) 9 NWLR (Pt. 1252)
317
Tarzoor v. Loraer (2016) 3 NWLR (Pt. 1500) 463
Tukur v. Govt., Gongola State (1989 4 NWLR (Pt.117) 517
Ukachukwu v. PDP (2014) 17 NWLR (Pt. 1435) 134
Utih v. Onoyivwe(1991) 1 NWLR (Pt. 166) 166

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria (as amended),
Ss. 6(6)(a), 40, 233(2)(a) & (3)

Electoral Act 2010, Ss. 85; 86; 87(4)(b)(i)(ii),(9); 156

Nigerians Rules of Court Referred to in Judgment:

Supreme Court Rules, O. 2 r. 9(1)

Appeal:

This was an appeal against the decision of the Court of Appeal dismissing the appellant's appeal against the judgment of the Federal High which dismissed the appellant's claim. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the case:

Supreme Court:

Names of justices that sat on the appeal: Olukayode Ariwoola, J.S.C. (Presided) Musa Dattijo Muhammed, J.S.C. (Read the Leading Judgment) ; Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C.; Ejembi Eko, J.S.C.; Paul Adamu Galinje, J.S.C.

Appeal No.: SC. 248/2017

Date of judgement: Friday 6th July 2018

Names of Counsel: Yusuf Ali, SAN; Adebayo Adelodun, SAN; K. K.

Eleja, SAN (with them, Prof. Wahab Egbewole and Yakub Dauda, Esq.) – for the Appellant

Dr. Onyechi Ikpeazu, SAN (with him, Tochukwu Odo, Esq.; Tobeckukwu Nweke, Esq., Nwachukwu Ibegbu, Esq. and Julius Mba, Esq. – for the 1st and 2nd Respondents

T.M. Inuwa, Esq. (with him, Alhassan A. Umar, Esq. and Wendy Kuku, Esq.) – for the 3rd Respondent

Chief Wole Olanipekun, SAN; P.I.N. Ikwueto, SAN (with them, C.D. Ezeh; Akintola Makinde and Adelani Ajibade) – for the 4th Respondent

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought:

Court of Appeal, Abuja

Names of justices that sat on the appeal: Tinuade Akomolafe Wilson, J.C.A. (Presided); Peter Olabisi Ige, J.C.A. (Read the Leading Judgment); Emmanuel Akomaye Agim, J.C.A.

Appeal No.: CA/A/157/2015

Date of Judgment: Wednesday, 15th February 2017

Names of Counsel: Adebayo Adelodun, SAN; K. K. Eleja, SAN (with them, A. C. Adeyi, Esq.; Professor Wahab Egbewole, S. A. Oke; K. C. Onyeke; Alex Akoja, Esq.; K. T. Sulu; Hassan [Mrs.]; Patricia Ikpeazu [Mrs.]; C. O. Lawal, Esq.; M. A. Adelodun, Esq.; A. O. Usman, Esq.; A. B. Elebum Ike, Esq.; C. C. Ibezim [Miss]; C.

N. Akuneto, Esq. and Usman Idris, Esq.) – for the Appellant

O. Ikpeazu, SAN (with him, Alex Ejiesieme, Esq.; Tobechukwu Nweke, Esq.; Julius Mba. Esq. and A. A. Akaahs) – for the 1st and 2nd Respondents

T.M. Inuwa, Esq.; A. Sani, Esq.; R. Aminu [Mrs.]; M. B. Abubakar, Esq.; M. Ibrahim [Mrs.] and C. C. Nannah [Miss] – for the 3rd Respondent

Chief Wole Olanipekun, SAN; P.I.N. Ikwueto, SAN (with them, Alex Esq. Chinasa Juliet Nwataifo [Mrs.]; Tochukwu Odo, Esq.; C. K. Alabi Esq.; E. Ogbuefi, Esq.; C. D. Eze, Esq.; Vanessa Onyemauwa [Miss] and Adebayo Majekogbe) – for the 4th Respondent

High Court:

Name of the High Court: Federal High Court, Abuja

Name of the Judge: Chukwu,J.

Suit No.: FHC/ABJ/C5/997/2014

Date of Judgment: Monday, 2nd March 2015.

Counsel:

Yusuf Ali, SAN; Adebayo Adelodun, SAN; K. K. Eleja, SAN (with them, Prof. Wahab Egbewole and Yakub Dauda, Esq.) - for the Appellant

Dr. Onyechi Ikpeazu, SAN (with him, Tochukwu Odo, Esq.; Tobechukwu Nweke, Esq., Nwachukwu Ibegbu, Esq. and Julius Mba, Esq. -for the 1st and 2nd Respondents

T.M. Inuwa, Esq. (with him, Alhassan A. Umar, Esq. and Wendy Kuku, Esq.) – for the 3rd Respondent

Chief wole Olanipekun, SAN; P.I.N. Ikwucto, SAN (with them,
C. D.Ezeh; Akintola Makinde and Adelani Ajibade) - for the 4th
Respondent

M.D. MUHAMMAD, J.S.C. (Delivering the Leading Judgment): This is an appeal against the judgment of the Court of Appeal, Abuja Division, hereinafter referred to as the lower court, delivered on the 15th day of February 2017 strikingout Suit No. FHCIABJ/C5/ 997/2014 at the Federal High Court sitting as Abuja, hereinafter referred to as the trial court, for incompetence having been commenced by the appellant who lacks the locus standi to institute same.

The appellant herein, as plaintiff at the trial court, on the 12th December 2015 filed an originating summons against the respondents, as the defendants, seeking answers to the following five questions:-

- “a. Whether having regard to the decision of the Federal High Court in suit No. FHC/ABJ/CS/830/2014 Between Barr. Orji Chineye Godwin & 2 Ors v. Peoples Democratic Party & 4 Ors delivered on the 24th November, 2014 the defendants are entitled to rely on the list of adhoc delegates other than the list sanctioned by the decision in the above case for the conduct of elections for the nomination of governorship candidate for Enugu State at its primary election for that purpose.
- b. .Whether having regard to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 85-87 of the Electoral Act 2011 (as

amended) the Constitution of the 1st defendant 2014 and the Electoral guide lines for primary elections 2014 issued by the 1st defendant, the 1st defendant could jettison, set aside, refuse to use or in any other manner ignore the result of the Ward Congresses held on 1 November, 2014 where adhoc delegates from the 260 wards of Enugu primary elections to elect the governorship candidate of the 1st defendant for the general, elections in 2015.

- c. whether the defendants possess the right, vires and/or authority to side-track, ignore or fail to make use of the results of the ward congresses in the 260 wards of Enugu State held on the 1st November, 2014 as sanctioned and/or or recognized by the judgment of the Federal High Court in suit “No. FHCIABI/CS/816/2014 Between Barr Orii Chineye Godwin & 2 Ors v. Peoples Democratic Party & 4 Ors in the conduct of its primary elections for the election of its governorship candidate for Enugu State in the General Election of 2015.
- d. whether any candidate that emerged as the governorship candidate of the 1st defendant for Enugu State for the general election of 2015 at any purported primary election where the list of adhocdelegates used for the conduct of the purported election, is based on any list other than the list emerged at the ward congresses of November, 2014 can be lawful, constitutional and legitimate candidate of the 1st defendant having regard to the judgment of the Federal High Court in suit No. FHCIABJ/CS/816/14 between Bar Orju Chineye Godwin and 2 Ors v. Peoples Democratic Party and

4 Ors, the provisions of the Constitution of the FRN T99, Section 87 of the Electoral Act 2010, constitution of the 1st defendant and the guide lines for the primary election 2014 of the 1st defendant.

- e. Whether the, plaintiff who was duly elected with the majority of lawful votes cast at the primary election held for the governorship candidate of the , defendant at Enugu on 8 December, 2014 with the use of the list of adhoc delegates that emerged at the congress that were conducted on the 1 November, 2014 and duly sanctioned by the FHC in its Judgment in suit No. FHCTABJCS/816/14 between Bar Orji Chineye Godwin & 2 Ors v. Peoples Democratic Party & 4 Ors is the candidate whose name must be forwarded by the 1st and 2nd defendant to the 3rd defendant as their duly elected candidate to be presented at the general election of 2015.”

Anticipating the answers to the questions to be in his favour, the appellant prayed the court for:-

- a. A declaration that the defendants have no right nor authority to use any list of delegates for the conduct of its, primary election For the election for its candidate for governorship primary election of Enugu State other than the list of delegates that emerged in its congresses held on 1st November, 2014 which list has been sanctioned and authenticated by the judgment of the Federal High court of 24th November,2014 in suit no. FHC/ABJ/CS/816 *Between Bar. Orji Chineye Godwin & 2 Ors. V. peoples Democratic party & 4 Ors.*
- (b) A declaration that it is unconstitutional, illegal, unlawful and against the rule of law for the 1st and 2nd defendant to use and or rely, on the list of delegates other than the list produced from the ward

congresses held on the 1st November, 2014 which was duly sanctioned, recognized and authenticated by the judgment of the Federal High court in suit No. FHC/ABJ/CS/816/14 *Between Bar. Orji Chineye Godwin & 2 Ors v. peoples Democratic Party & 4 Ors* in primary elections conducted to choose its governorship candidate for Enugu State in the 2015 election.

(c) A declaration that by the combined provisions of section 40 of the constitution of the FRN 1999 as amended, the constitution Of the 1st defendant and the Electoral guideline for the primary elections of 2014, the defendants cannot constitutionally or lawfully rely on, use or employ any list of delegates for the governorship election of Enugu state for the general election 2015 other than the list of delegates that emerged at the ward congresses of the 1st defendant held on the 1st November, 2014.

(d) A declaration that any candidate that emerged from any primary election conducted for the purpose of electing the governorship candidate of the 1st defendant for the 2015 general elections in Enugu State where the list of delegates used was not the list of delegates that emerged from the ward congresses of the 1st defendant held on the 1st November, 2014 as recognized and sanctioned by the federal High court in suit No. FHC/ABJ/CS/816/14 *Between Bar. Orji chineye Godwin & 2 Ors v. People Democratic Party & 4 Ors* is not the lawful nor rightful candidate for the 1st defendant for the said election.

(e) A declaration that the plaintiff having by the majority of the lawful vote cast at the primary election held on 8th December, 2014 for the election of a governorship candidate for the 1st defendant where the authentic and authenticated List of delegate for the 1st defendant held on 1st November, 2014 and sanctioned and recognized by the Federal High Court of judgment of 24th November, 2014 is the right candidate of the 1st and 2nd defendant whose name must be submitted to the 3rd defendant as their rightful candidate for the general election of 2015.

(f) An order of injunction restraining the 1st and 2nd defendants either by themselves. Their agents, privies, servants, officers, official or any other person deriving authority through them however and whatsoever from submitting, forwarding and/or tendering the name any other person to the 3rd defendant and/or any authority as their governorship candidate for Enugu State for the 2015 general election other than the name of the plaintiff.

(g) An order of injunction restraining the 3rd defendant from accepting , recognizing acknowledge or put on the ballot the name of any person other than plaintiff as the governorship candidate of the 1st defendant for Enugu State for the 2015 general election.

(h) Any other relief to which the plaintiff may be found entitled by the Honourable Court.”

The originating summons is supported by a twenty one paragraph affidavit, deposed to by the appellant, annexed to which are exhibits 1 to 3 respectively. The appellant also filled 2nd, 3rd, 4th, 5th and 6th further affidavit in support of his originating summons. Various documents are annexed to the further affidavits.

Upon being the originating summons, the 1st -2nd respondents filed a notice of preliminary objection to it and subsequently a counter – affidavit in opposition thereto .

The 3rd respondent also filed its counter-affidavit to the originating summons.

The 4th respondent on being joined, following the order of court in that regards, filled his preliminary objection and to the originating summons in addition to his counter-affidavit in opposition.

Argument in respect of the preliminary objection and the substantive suit were heard together by the trial court which, in a considered

judgment dated 2nd March 2015, overruled the preliminary objections, assumed jurisdiction and dismissed appellant's suit it adjudged unmeritorious.

Dissatisfied with the trial court's dismissal of his suit on the merit, the appellant appealed to the lower court in appeal No. CA/A/157/2015. Equally aggrieved, the 1st and 2nd as well as the 4th respondents appealed against the trial court's assumption of jurisdiction over appellant's, suit in appeal Nos. CA/A/157/2015 and CA/A/157B/2015 respectively. The lower appeal No. CA/A/157/2015, the court affirmed the trial court's finding that the appellant has failed to prove his case and dismissed same.

In allowing appeals Nos. CA/A/157A/2015 and CA/A/157B/2015 the court struck out the suite at the trial court having been commenced by the appellant who is lacking the necessary *locus standi*.

Aggrieved, the appellant has appealed against these findings of the lower court vide his notice containing seven grounds filed on the 2nd day of march 2017.

At the hearing of the appealing, counsel having identified their earlier filed and exchanged briefs, including appellant's reply briefs, adopted and relied on same as parties respective argument for and against the appeal. In the appellant's brief settled by Yusuf Ali,SAN filed on the 30th Day of May 2017, three issues distilled as having arisen for the determination of the appeal read:-

“1. Whether for learned justices of the court below were not wrong in their view and their conclusion that the appellant has no locus-standi to initiate or institute the action , that his case was based on parallel primary of PDP when this was not the case and in striking out the case on the ground of lack of jurisdiction Ground 1, 2& 3.

2. Whether the learned justices of the court below were not wrong in the very narrow and restrictive view they look of the case of the appellant was based solely on the judgment of Ademola.J in the suit No. FHC/ABJ/CS/816/2014 when issues No. 2 and No.5 agitated at the trial court were not based on Hon. Justice Ademola's judgment, and in holding that the appellant's appeal is moribund Grounds 4& 5.

3. Whether the court below did not misrepresent and set up a case for the respondents by agreeing with the trial court that there was an "harmonized delegates list and thereby truncating the appellant's right to fair hearing and dismissing his case, Grounds 6 & 7."

(Italic supplied for emphasis)

The 1st and 2nd respondents' joint brief contains three issues the resolution of which they consider should determine the appeal Court as follows :-

“1. Whether the learned justice of the Court of Appeal were correct to hold that the appellant lack the requisite locus standi to maintain the originating summons not having brought his case with the contemplation of section 87 of the Electoral Act, 2010 (as amended)

2. Whether the learned Justices of the Court of Appeal were correct to in affirming the decision of the trial Judge to the effect that the strong hold of the appellant's case was the bare declaratory relief in FHC/ABJ/CS/816/2014 which had been set aside by the Court of Appeal.

3. Whether the learned justices of the Court of Appeal were corrected when they held that the Federal High Court did not in FHC/ABJ/2014 sanction the use of any list delegates for the primary election and the appellant's case that the list of adhoc delegates was sacrosanct for election of the 1st respondents

candidate was contrary to the provisions of the 1st" respondent's Guidelines for the governorship election. Grounds 6 and 7 (Italic supplied emphasis) .

The two issues formulated by the 3rd respondent at page 10 of its brief read:-

“ 1. Whether having regard to the provision of section 87(4)(c) and 9 of the Electoral Act, 2010 (as amended) and the decisions of the Honorable Court on the scope of the same, the lower court was right in holding that the trial Federal High Court lacked the jurisdiction to hear and determine the case of the plaintiff appellant.

2. Whether the appetant can rely on the judgment of Ademola J. in Suit No. FHC/ABJ/CS/816/2014 Barr. Orji Chinenye Godwin & 2 Ors. v. People Democratic Party (PDP) & 4 Ors as the basis for his claim in this case commenced by originating summons.

(Italic supplied for emphasis).

The two issues formulated at Paragraph 3 of the 4th respondent's brief as calling for the resolution in the determination of the appeal are :-

“I . Having regards to the depositions in the appellant's affidavit in support of his originating summons to the effect that he did not participate in the PDP Governorship primaries recognized and sanctioned by the PDP NWC And monitored by INEC, whether the lower court was wrong in its decision that the appellant lacked the locus standi to institute his action at the trial court to challenge the said primaries. (Grounds 1,2 and 3 in the Notice of appeal.)

ii. Having regards to the case made out by the appellant before the two lower courts, whether the lower courts was not correct in affirming then judgment of the trial court that there was no merit in the appellant's case

and there dismissed same. (Grounds 4,5,6 and 7 in the notice of appeal.)”(italic supplied for emphasis).

Pursuant to sections 6(6)(a),233(2)(a) 233(3) of the 1999 constitution as amended, Order 2 Rule 9(1) of the Supreme Court Rules and the inherent jurisdiction of this court, the 4th respondent on the 6th October 2017 filed a notice challenging the competence of grounds 4,5,6 and 7 in the appellant’s brief of argument.

Learned senior counsel contends that the grounds of appeal which are at best grounds of mixed law and facts’’ require the leave of court obtained first before being filed. In the absence of the leave the grounds as well as issues 2 and 3 for the determination of the appeal purported distilled from the grounds being incompetent are liable to be struck out.

Appellant seems, to have conceded 4th respondent’s objection to the competence of the grounds and issues formulated from them for, inspite of his reply brief to the 4th respondent’s brief of argument filed on 4/4/2018 and been joined in the reply brief with the objection raised and argued by the 4th respondent on the competence of the said grounds and issues.

It is indeed trite that where an appellant requires leave of court to file, his grounds of appeal but does so without having obtained the leave of court such grounds, unless they are grounds challenging the jurisdiction of the court against which judgment the appeal is brought, being incompetent must be discountenanced . incompetent grounds of appeal, I further agree with learned senior counsel Chief Wole Olanipekun for the 4th respondent, cannot give rise to competent issues. See *Nalsa and Team Associative v. NNPC* (1991) 8 NWLR (Pt 212) 652, *Olarewaju v. Ogunleye* (1997) 2 NWLR (Pt. 482) 12 and *Organ and ors*

v. N.L.N.G Ltd and amor (2013) LPELR-20942 (SC); (2013) 16 NWLR (Pt.1381) 506.

In the case at hand, grounds 4, 5, 6 and 7 in the notice of appeal, though said to be errors of law, are all founded on disputed facts. Appellant's complaints in grounds 4 and 5 relate to the lower court's findings as to whether or not appellant's action, as found by the trial court is built entirely on the judgment of Ademola J in suit No. FHC/ABJ/CS/816/2014 and the effect of the judgment on the claimant's fortunes. Undoubtedly, the two grounds, in my firm and considered

View; question the lower court's evaluation of evidence contained in the affidavit In support of the appellant/plaintiff's originating summons in relation to the Judgment of Ademola J. A ground that raises such a complaint 15 a ground of fact.

Grounds 6 and 7, learned senior counsel is correct too, are also complaints, on the lower court's assessment of the evidence on which appellant's suit is based. The two grounds challenge the concurrent findings to the two courts below on the use by the 1st respondent of a harmonized delegates list in the conduct of its primary election. Again, these are also grounds of fact. Grounds 4, 5, 6 and 7 all being grounds of fact and filed without the prior leave of court obtained are incompetent. Appellant's 2nd and 3rd issues purportedly distilled from the incompetent issues cannot be otherwise. Learned senior counsel's reliance inter-alia on *Akeredolu v. Mimiko* (2014) 1 NWLR (Pt. 1388) 402 at 476 and *FBN Plc v ACB* (2006) 1 NWLR (PL. 962) 438 at 463 is apposite.

Accordingly, the incompetent grounds and issues, are struck out.

Resultantly, appellant's first issue, similarly distilled by all, the three sets of respondents as arising for the determination of the appeal, remains the sole extant issue. It touches on the competence of appellant's suit and by extension the trial court's jurisdiction to legally and authoritatively pronounce on same. Its resolution shall determine the real issue in controversy between the parties.

On the lone issue, the facts on record, learned counsel contends, clearly show that the appellant participated in and emerged the winner of the one and only primary election conducted by the 2nd respondent, the National Working

Committee of the People's Democratic Party, the 1st respondent. Instead of inferring appellant's locus standi from these facts the lower court. It is argued base its conclusion on the non-sustainability of the judgment of Justice Ademola.

Appellant's locus standi to prosecute his case, learned counsel further submit lies, in the clear word of the 1st respondent Constitution's and Guidelines for conduct of primaries which illegalizes the primary election conducted by the Asara A. Asara led Committee. Appellant's suit, it is argued, challenges the respondent's unlawful return of the 4th respondent as its candidates in the 2015 Enugu State gubernatorial election. Relying on *Madukolu v Nkemdilim* (1962) All NLR 587, (1962)2 SCNLR 341; *Dingyadi v. INEC* (2011) LPELR-950 (SC); (2011) 10 NWLR (Pt. 1255) 347 and *Utih v Onoyivwe* (1991) 1 NWLR (PL. 166) 166, learned counsel submits that with the trial court being properly constituted and nothing in the appellant's case which prevents the court from entertaining the case as enabled by section 87(9) of the Electoral Act as amended, the lower court's otherwise findings at pages 971-972 and 976-977 are perverse.

The concept of locus standi, it is also argued, is not a static one and depends on the peculiar facts of each case. Learned senior counsel relied on *ijelu & ors v Lagos State Development and Property Cooperation* (1992)9 NWLR (Pt. 266) 414, *Adesanya v. The President Federal Republic of Nigeria* (1981) 2 NCLR 236, *Odeneye v Efunuga* (1990) 7 NWLR (Pt. 164) 618 and *Chukwu v INEC* (2014) 10 NWLR (Pt. 1415) 285. Further relying on *Nyako v Ardo* (2013) LPELR 20848 SC Reported as *Ar dov Nyako* (2014) 10 NWLR (Pt. 1416) 591, *A.-G., Ogun State v. Aberuagba* (1985) 1 NWLR (Pt. 3) 395. *Awolowo v Shagari* (1979) 6-9 SC 51 and *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 67) 377, in emphasizing that, notwithstanding the decision of Ademola J, the appellant having participated in the primary conducted by the 1st respondent, the clear and unambiguous words of section 87(9) of the Electoral Act confers on him the locus standi to institute his action and obtain the reliefs he canvasses. Learned senior counsel urges the resolution of the issue in appellant's favour and the review of his case which the two Courts wrongly adjudge unmeritorious in their concurrent judgments.

Responding on the issue learned senior counsel, Dr. Onyechi Ikpeazu, for the 1st and 2nd respondents, contends that paragraphs 12, 13, 14, 15 and 16 of the affidavit in support of the appellant's originating summons 'contain appellant's clear and unmistakable admission that he did not participate in the legitimate primary election of the 1st and 2nd, respondents conducted by the Electoral Panel headed by Asara A. Asara. The reliefs the appellant canvasses along with the averments in the affidavit in support of the originating summons, the originating process, learned senior counsel submits, constitute" appellant's pleadings from which he cannot resile. Relying on *Abubakar v Joseph* (2008) 13 NWLR (Pt. 1104) 307, *Agu v General Oil Limited* (2015) 17 NWLR (Pt. 1488) 327, *American Cynamid Company v Vitality Pharmaceuticals Ltd* (1991) 2 NWLR (Pt. 171) 15 and *PDP v Sylva &*

ors (2012) 13 NWILR (Pt. 1316) 85 at 127 learned senior counsel further submits that with such admission on appellant's part, the fact so admitted requires no further proof. In the result, it is argued, the appellant has taken his case completely outside the purview of section 87(9) of the Electoral Act 2010 as interpreted by this court. The lower court's inference from the facts contained in appellant's claim, learned senior counsel maintains, cannot be faulted. Learned senior counsel urges us to uphold and apply inter-alia, *CPC v Lado* (201) 14 NWLR (PL. 1266) 40, *Ukachiukwu v PDP* (2014) 17 NWLR (PL. 1435) 134 at 181 to 182, *Emcka v Okadigho* (2012) 18 NWLR (Pt. 1331) 55 at 87; *Emenike v PDP* (2012) 12 NWLR (P 1315) 556 at 594 and *Yar 'adua & Ors v. Yandoma & ors* (2015) 4 NWLR (PL. 1448) 123 at 198, all decisions of this court, in dismissing appellant's unmeritorious appeal. In a concise but equally forceful, submission, T.M. Inuwa for the 3d respondent cites the decisions in *Uih v Onoyivwe* (1991) 1 SCNJ 25 at 49; (1991) 1 NWLR (PL. 166) 166; *Odofin v Agu* (1992) 3 NWLR (PL. 229) 350; *A-G, Federation v. Shode* (1990) 1 NWLR (PL. 128) 500 at 542 and *Madukolu v ikemdilim (supra)* in reiterating the threshold nature of jurisdiction in adjudication.

Learned counsel refers to the concurrent findings of the two courts below at pages 752-755 and 971 of the record of appeal respectively and relies virtually on all the decisions of this court cited by learned senior counsel for the 1- 2nd respondent in concluding that the appellant who, by his pleadings, has not brought himself within the purview of section 87(9) of the Electoral Act, lacks the locus to institute his action. The action being incompetent, learned counsel also submits, the lower court is right to have struck it out. Learned counsel urges the resolution of the issue against the appellant and the dismissal of his appeal too.

On the issue, Chief Wole Olanipekun SAN for the 4th respondent contends that the appellant by his affidavit sets up his case

on two competing primaries. The primary election the appellant asserts he contested and emerged the winner from, it is contended, is the election conducted with the list of delegates purported sanctioned by the Federal High Court. The other primary election, learned senior counsel submits, being the one conducted by the King Asara A. Asara led panel with the list of delegates approved by the 2nd respondent.

Relying more particularly on *Daniel v. INEC* (supra) 148 at 155, *Abubakar v. Yar 'adua* (2008) 18 NWLR (Pt. 1120) I at 154 and *Okadigbo v Emeka* (2012) SCM 202 at 214, (2012) 11 NWLR (PL. 1311) 237, learned senior counsel Further reiterates that no court has the jurisdiction of adjudging which of the two primaries of a political party produced its candidate for an election. Whichever way the averments in the affidavit in support of appellant's originating summons are viewed, the two lower courts, learned senior counsel argues, cannot be faulted in their concurrent findings that the appellant lacks the locus standi of Instituting his suit and that same be struck out.

Now, the place of jurisdiction in adjudication which issue the appeal particularly raises, counsel on both sides are right, cannot be over-emphasized. It is trite, that the issue of jurisdiction is very fundamental, and radical. It is the foundation, the bedrock so to say, of litigation since where it is lacking, there is want of competence on the part of the court to try the matter. Thus proceedings of the court embarked upon without the necessary jurisdiction, being a nullity ab initio will be set-aside on appeal notwithstanding how well conducted same are. *See Madukolu v. Nkemdilim, Onagoruwa v State* (1992) 5 NWLR (Pt. 224) 713; (*supra*) *Ogundipe v Akinloye* (2002) 10 NWLR (PL.775) 3 12, *Egunjobi v. Federal Republic of Nigeria* (2012) LPELR-15537 (SC); (2013) 3 NWLR (Pt.1342) 534 and *Gwede v INEC & Ors* (2014) LPELR-23763 (SC); (2014) 18 NWLR (PL. 1438) 56.

Again, where a plaintiff's locus standi to maintain an action 1st challenged, it is the plaintiff's claim that determines the objection. If, however, the action is commenced by an originating summons it is the averments in the affidavit in support alone that is examined in determining whether or not the court is competent to proceed. See *Fenkwe v Nnadozie* 14 W.A.C.A. 361 at 363, Adeyemi Opeyori (1976) 9-10 SC 31 and 51 and *Tukur v. Government of Gongola State* (1989) LPELR-3272 (SC); (1989) 4 NWLR (Pt. 117) 517.

It is also trite that a finding of a court against which there is no appeal remains binding and conclusive. In the instant case, the trial courts finding that appellant's suit is not founded on two primary elections, which finding has not been appealed against at the lower court, persists even in this court. It follows that it is only the trial court's finding that appellant's action rests on a single primary election of the respondent as reviewed by the lower court that forms the subject matter of the instant appeal. See *Dabup v. Kolo* (1993) LPELR-905 (SC); (1993) 9 NWLR (Pt. 317) 254 and *Awodi & anor v. Ajagbe* (2014) LPELR-24219 (SC), 2015) 3 NWLR (Pt. 1447) 478.

Now, paragraphs 12, 13, 14, 15 and 16 of the affidavit in support of appellant's originating summons are herein under reproduced for their relevance and ease of reference:-

“12. That when the Committee-set up by the 1st defendant and led by King Asara A. Asarato conduct the said primaries from Abuja got to Enugu State, I as an aspirant demanded for the list of the delegates sent from Abuja, I was denied, as same was not shown to me.

13. That I know as a fact that the King Asara in turn demanded for a copy of my own list of ad hoc delegates which was sanctioned by the Federal High Court and I duly obliged him with same.

14. That I know as a fact that on giving him the list of the ad hoc delegates that emerged on the of November, 2014 and sanctioned by the Federal High Court, he informed me that the list they brought from Abuja was different from the one I gave him which I earlier deposed was sanctioned by the judgment of the Federal high Court.

15. That I know as a fact that the Governorship primary was conducted based on the list of the ad hoc delegates sanctioned by the Federal High Court and I emerged as the 1st defendant's Governorship candidate for the 2015 General election in Enugu State having polled a total 530 votes out of 661 lawful votes case. A copy of the said result is attached and marked as exhibit 2.

16. That I also know as a fact that another primary was purportedly conducted based on a strange list of delegates brought by king Asara and another candidates purportedly emerged as the governorship candidate of the 1st Defendant. (Italic supplied for emphasis)

The trial court in relation to the foregoing averments held, contrary to the Seemingly endless decisions of the lower court and this court, at page 702 of the record thus:-

"...so one will ask based on the originating summons and the supporting affidavit, does this court have the jurisdiction to entertain this matter, my obvious answer will be in the affirmative and I so hold.

In coming to this decision I will place reliance on my unreported decision in suit No. FHC/ABJ/CS/782/2014... Where in unequivocal terms, I stated that matters within the domestic affairs of the party are not justiciable but where it relates to the party obeying and complying with the provisions of its Constitution, Electoral Act and Electoral

Guidelines, the court must intervene to enforce strict compliance under section 87 of the Electoral Act 2010.

In effect I hold that I have the jurisdiction to entertain this suit and the preliminary objection of the 1st and 2nd defendants are accordingly dismissed."

After assuming jurisdiction, the trial court at page 752 of the record of appeal, in a most untidy manner, recommenced its evaluation of the very content of the supporting affidavit to appellant's originating summons it has found does not tender appellant's suit incompetent thus.-

"The said paragraphs of the plaintiff affidavit in no small measure bears out the reason for the plaintiff's grouse. But one thing is clear that the plaintiff remained silent on the role King Asara A. Asara performed after the exchange of the list of delegates. In paragraph 15 of his affidavit he stated that he won the primaries as he puked (sic) a total of 560 votes out of 661 lawful votes the cast. He annexed the results as exhibit 2.

In paragraph 16 he now alleged that he knew that another primary took place and another candidate emerged as the governorship candidate but that is was based on the strange list of delegates brought by King Asara A. Asara.

One will ask in the one he won was it conducted by any member of the PDP either from the State or National body. The one he alleged declared that was won by another candidate who conducted it and did he take part in it. If yes how many votes did he pull (sic)? If the answer to these questions are in the affirmative then the case of the plaintiff falls within the purview of section 87(9) of the Electoral act 2010 as amended but if no

then definitely it is outside the purview of the said Act and ordinarily the suit will become unjusticiable. If justiciable then it will be settled as parallel election and different considerations will apply.”

Sinking irretrievably deeper, the trial court proceeded at page 733 thus:-

“In answering questions, I will consider the counter affidavits of the defendants.....The cumulative effect of the said averments is that there was only one delegate (sic) which the National Executive committee organize.....Secondly, that the court never sanctioned authenticated and approved any delegate list in preference to any other in the suit No. FHC/ABU/CS/861/2014.....In the end, the plaintiff’s case fails in its entirety and it is accordingly dismissed”

The lower court, at pages 971-972 and 976-977 of the record, on the other hand, held firstly as follows:-

“A cumulative or community reading of the paragraphs of the said affidavit glaring shows that the appellant did not take part and did not participate in the PDP Gubernatorial Primaries conducted by HRH King Asara A. Asara Electoral panel mandated by the 1st and 2nd respondents to conduct the said governorship primary election to elect the Governorship candidate for PDP in Enugu state on 8/12/2014....whereas the 4th respondent emerged as the governorship candidate of 1st and 2nd respondents for the general elections conducted by 3th respondent in 2015.

All the appellant has succeeded in doing in this suit is that he has wittingly or unwittingly completely taken himself out of the purview of section 87(4)(b)(i)(ii) and 87(9) of the Electoral Act 2010 as amended and has no locus standi to institute or maintain the action herein against

any respondents. In other words the limited jurisdiction of the court under section 87 of the

Electoral Act 2010 as amended cannot be invoked in the appellant's favor. It does not enure for the benefit of the appellant since he was neither an aspirant nor a participant at the Primary Election organized by the 1st and 2nd respondent.

.....I hereby hold that the appellant lacked the locus standing to initiate or institute this action and the lower court and this court and this court have no jurisdiction to entertain this Suit since it borders on the Gubernatorial Primary Election of PDP conducted under the aegis of 1st and 2nd respondents to select his flag bearer for the office of governor in 2015 General Elections and in which appellant did not participate.”(Italic supplied for emphasis).

The lower court rationalized further at pages 978-979 of the record of appeal thus:-

“One does not begin to look at a statement of defense or examination of the or examination of the counter affidavit against the affidavit in support of the originating summons to determine the pivotal questions relating to jurisdiction of the court. The perfect, settled and immutable position of the law is that the court seized of the matter must confine itself to scrupulous examination of the writ of summons and statement of

the claim in order to determine whether or not the court has jurisdiction to adjudicate on the plaintiff's or claimant's suit. Where as in this case it is an action begun by originating summons the processes to be examined are the originating summons and the affidavit of the plaintiff in support of the originating summons and no other documents(s). See (1) PDP v. Sylva & Ors (2012) 13 NWLR (Pt.1316) 85 at 127 D-f where the apex per Bode Rhodes-Vivour JSC held.”(Italic supplied for emphasis).

In the foregoing, not only has the lower court bound itself to the superior authority of the apex court in this country in arriving at the correct decision, it further dwelt on the decisions of the court to clearly indicate where the trial court faltered.

The instant appeal is against the findings of the lower court which draws room all the earlier decisions of the of this court alluded to by counsel as being appropriately applied, for being apt, to the facts and legislation in issue. That is what the doctrine of stare decisis or precedent is all about. The doctrine requires all subordinate courts to subsequently follow the earlier decision of this court. A lower court, therefore, would be impertinent to refuse to be bound by the earlier authoritative pronouncements of this court on same or similar issues it is asked to subsequently determine. Being the foundation which the consistency of our judicial decision rests, an inferior court's decision in clear breach of the doctrine, being perverse, will be set aside on appeal. See *Olu of warri v. Kpergbeyi* (1994) 4 NWLR (Pt. 339) 416, *N.A.B. Ltd v. Barri Engineering Nig Ltd* (1995) 8 NWLR (Pt.413) 257 at 289, *Osagie II v Offor*(1998) 3 NWLR (Pt.541) 205 and *Dalhatu v. Turaki* (2003) 15 NWLR(Pt.843) 310 and 350.

In the case at hand, the crucial facts on which the appellant seeks redress pursuant to section 87(4) and (9) of the Electoral Act as amended are as contained

more particularly in paragraph 15 and 16 of this supporting affidavit earlier reproduced in this judgment. The lower court's interference from these paragraphs that appellant's dissatisfaction, with the emergence of the 4th respondent's gubernatorial candidate, is in relation to the primary election conducted on the basis of a delegate list sanctioned by the Federal High Court in its decision in suit No. FHC/ABJ/CS/80/2014, rather than the King Asara A. Asara led primary election of the 1st respondent conducted by the 2nd respondent, is behind reproach. The fact as so held, excludes the appellant from being a participant in the very primary election that produced the 4th respondent as the Enugu State Gubernatorial Candidate of the 1st respondent, which fact the appellant purports, by his action, to contest. This court on the basis of the very fact maintains, in the many decisions of this court the lower court resorted to and applied, that the platform created by section 87 (4) (b)(i)(ii) and (9) of the Electoral Act 2010 (as amended) enures only to an "ASPIRANT", which term, by section 156 of the Act means a person who partook in the primary election of the party with which conduct is dissatisfied.

In the case at hand the lower court, contrary to what the trial court wrongly held, on finding that the relevant averments in the affidavit in support of appellant's originating summons have taken him outside the purview of section 87(4) and (9) of the Electoral Act 2010 as amended, rightly concludes that the appellant, not being an "ASPIRANT" in the primary elections he challenges, lacks the locus standi to pursue the reliefs he seeks by the instant suit is not, therefore, justiciable. In Daniel

v. INEC (2015) 9 NWLR (Pt.1463) 113 at 148-154, paras F-H this court particularly held thus:-

“...It amounts to inverse reasoning for a party who says he scored the highest number of votes in a primary election, he says he never participated in to expect a court to consider his claims after he has taken such a stance... The stance taken by the appellant makes further consideration of his claims a worthless exercise.... No reasonable court can do anything to assist such slippery claimant. Refer to Ajide v. Kelani(1985) 3 NWLR (Pt.12) 248”

The foregoing decision and numerous others still bind not only the lower court but this court as well. Arising from this reality, the overwhelming issue in the appeal is accordingly resolved against the appellant and his unmeritorious appeal dismissed. The lower court's unassailable judgment is hereby affirmed. The appellant shall pay the costs of the appeal assessed at one million naira (1,000,000.00k) to the respondent.

ARIWOOLA, J.S.C.: I had the privilege of reading in draft the lead judgment of my learned brother M.D Muhammad. JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and should be dismissed. I too will dismiss the appeal.

Appeal dismissed.

I abide by the consequential orders in the lead judgment including the order on costs

KEKERE-EKUN, J.S.C.: I have had the benefit of reading in draft the judgment of my learned brother, Musa Datijjo Muhammad, JSC just delivered. His reasoning and conclusion are in accord with mine. My brief comments are to show my support and for emphasis.

The sole issue for determination in this appeal is whether the appellant had the locus standi to institute his action at the trial court. The lower court found that the appellant, who did not participate in the primary election complained of failed to bring his suit within in the confines of section 87(4) and (9) of the Electoral Act 2010, as amended and therefore lacked the locus standi to institute the action.

A court is competent to adjudicate in a cause or matter in the following circumstances:

- “1. When it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and
2. the subject matter of the case is within its jurisdiction, and there is no feature of the case which prevents the court from exercising its jurisdiction; and

3. the case comes before the court initiated by due process of law and upon the fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity, no matter how well conducted: the defect is extrinsic to the adjudication.”

These are the immortal words of Bairamian, JSC in the well-known and oft-cited case of *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341. See also *Skenconsult (Nig) Ltd v. Ukey* (1981) 1 SC 6 @ 62; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt. 1025) 423 @ 588 F; *N.M.P.C. v. Klifco Nig. Ltd.* (2011) 4 SC (Pt.1) 108; (2011) 10 NWLR (Pt. 1255) 209.

One of the features of a case that might affect the jurisdiction of the court is the competence of the claimant to institute the action in the first place. The legal capacity or standing of a party to institute an action in a court of law is what is known as *locus standi*. The term was explained in *Egolum v. Obasanjo* (1999) 7 NWLR (Pt. 611) 355 @ 410 E-F thus:

“it is trite that the *locus standi* of a plaintiff or a petitioner is a crucial matter touching on the competence and the jurisdiction of the court to adjudicate on the suit, or petition, or application before it. It is a fundamental jurisdictional question that can be raised at any time during the trial as a preliminary issue or even raised for the first time on appeal.”

At page 386 A-B (SUPRA), Ogundare JSC referred to the statement of Ademola, CJN in *Lawal v. Younan & Sons & Co. Ltd* (1961) 1 ALL NLR 254 @ 253, to wit:

“we think it is settled that competency to Institute an action is an essential or indeed a vital factor in deciding the competency of the action itself, and if challenged by a defendant, the plaintiff has the onus of establishing it.”

Thus, the *locus standi* of appellant to institute the action is crucial in determining whether the court was clothed with the necessary jurisdiction to entertain it.

The appellant’s complaint relates to the primary election conducted by his party (PDP) on 8th December 2014 to select its candidate for the Governorship Election of Enugu State in the 2015 general elections, in which the 4th respondent was returned as the winner. He contends that his claims falls within the purview of section 87(9) of the Electoral Act 2010, as amended.

This court has held in several cases that ordinarily, matters relating to the section and nomination of candidates for an election are within the sole preserve of the political party and the courts have no jurisdiction to look into any complaint arising therefrom. See: *Onuoha v. Okafor* (1983) SCNLR 244; *Dalhatu v. Turaki* (2003) 15 NWLR (Pt. 843)310; *Agi v. P.D.P* (2017) 17 NWLR (Pt.1595) 386. However, section 87 (9) of the Electoral Act 2010, as amended gives the courts very limited jurisdiction to ensure that in the selection or nomination process, political parties do not act arbitrarily but within the confines of their Constitutions and electoral guidelines and in accordance with the provisions of the Electoral Act.

Section 87 (9) of the Act provides a window of an aspirant who complains that any of the provisions of the electoral Act or his party’s guidelines have not been complied with in the selection or nomination of the party’s candidate for the election, to ventilate his grievance before the Federal High Court, a state High Court or the High Court of the FCT.

Not only must his complaint relates to non-compliance with the Act or his party's Guidelines, he must also bring himself within the purview of sub-section by showing that he was an aspirant in the election complained of.

Who is an aspirant? An aspirant is a person who contested in the primary election of his party. He must be someone who actually participated in the primary election he is challenging. See: *P.D.P v. Sylva* (2012) 13 NWLR (Pt. 1316) 85 @ 126 A-E; *Lado v. C.P.C* (2011) 18 NWLR (Pt. 1279) 689; *Shinkafi v. Yari* (2016) 7 NWLR (Pt. 1511) 340. What is more, the primary election he is complaining about must have been conducted by the National Execution Committee or National Working Committee of the party. See: *Emenike v. P.D.P .& Ors* (2012) 12 NWLR (Pt. 1315) 556; *Lado v. C.P.C. (supral) Yar'Adua v. Yandoma* (2015) 4 NWLR (Pt. 1443) 123 @ 198 A-H.

By his own showing, the appellant did not participate in the primary election conducted by the King Asara A. Asara Election Committee set up by the 1st respondent. He was adamant that the election conducted using ad-hoc list of delegates sanctioned by the Federal High Court in suit No.FHC/ABJ/C5/8I6/2014, *Barr. Orji Chinyere Godwin 2 Ors. V. P.D.P & 4 Ors.* was the authentic election.

The resolution of this matter is quite straightforward. Having not participated in the primary election conducted by HRH King Asara A. Asara Electoral Panel, mandated by the 1st and 2nd respondents to conduct the primary election, the appellant failed to bring himself within the purview of section 87 (9) of the Electoral Act He was not an aspirant in the primary election from which the 4th respondent emerged. He therefore lacked the *locus standi* to institute the action .There is no reason to interfere with the sound reasoning of the two lower courts.

I agree With my learned brother, Musa Dattijo, JSC that this appeal is devoid of merit. I hereby dismiss it.

The judgment of the lower court is affirmed. I abide by the order in costs.

EKO, J.S.C.: My Lords, the appellant, as the plaintiff, had at the trial court admitted in the affidavit supporting his originating summons that

—

- I. there were two parallel primary elections to elect the governorship candidate of his party, the Peoples Democratic Party (PDP), for the general election to elect the Governor of Enugu State; and
- II. He participated in the Governorship primary election conducted by a panel based on the list of hoc delegates sanctioned by the Federal High Court in Suit No. FHC/ABJ/CS/816/2014 between *Barr. Orji Chinenye Godwin & Ors v. People's Democratic Party & Ors*, and emerged as the person duly elected to be the candidate of the PDP; while the 4th respondent, who participated in the primary election conducted by the King Asara A. Asara committee set up by the National working Committee of his party PDP, emerged as the Governorship candidate of the PDP for Enugu State.

By this admission, contained in paragraphs 12, 13, 14, 15 and 16 of his own affidavit, the appellant cannot be heard to complain that the lower court's decision, rooted firmly in the binding and authoritative decisions of this court i-

-*PDP v. Sylva* (2012) 13 NWLR (Pt. 1316) 85 at 128.3

-*Tarzoor v. Ortom Samuel loraer* (2016) 5 SCM 152 at 163,(2016) 3 NWLR (Pt. 1500) 463

-*Shinkafi v. Yari* (2016) 3 SCM 133 at 155, (2016) 7 NWLR (Pt. 1511) 340

was wrong. The lower court made it clear, in its Judgment at pages 971-972 and 976-977 of the record, and I agree, that “ the appellant did not take part and did not participate in the PDP Gubernatorial primaries conducted by King Asara A. Asara”, the only legitimate and authentic electoral panel appointed for that purpose by the PDP, and that –

All the appellant has succeeded in doing, in this suit, is that he has wittingly or unwittingly completely taken himself out of the purview of section 87(4)(b)(i) & (ii) and 87(9) of the Electoral Act, 2010, as amended, and thus has no locus standi to institute or maintain the action herein against any of the respondents. In other words, the limited jurisdiction of the court under section 87 of the Electoral Act, 2010, as amended cannot be invoked in (the) appellant's favour. It does not ensure for the benefit of the appellant since he was nether an aspirant nor a participant at the primary election organized by the 1st and 2nd respondents.

The lower court, on the basis of the appellant, himself, admitting that he was a mere busy body as regards the legitimate primary election conducted by the duly authorized electoral panel appointed by the PDP, held that

“The appellant lacked the *locus standi* to initiate or institute this action”

and that the trial court "had no jurisdiction to entertain the suit". Since the appellant did not acknowledge the authority of the PDP NEC/NWC he was clearly an outsider and the PDP conducted their primary election without him. He cannot therefore rely on his own outlawry to set aside the primary election conducted in accordance with PDP's internal rules which also are in accordance with the Electoral Act.

The issue has since been settled by the court form -

-Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 at 87;

-Emenike v. PDP (2012) 12 NWLR (Pt.1315) 556 at 594;

-Yar 'adua v. Yandonma (2015) NWLR (Pt. 1448) 123 at 198,

-Lado v. CPC (2012) ALL FWLR (Pt. 607) 623, (2011) 18 NWLR (Pt. 1279) 689

that the only legitimate or valid primary election of a political party is the primary election conducted by the electoral panel constituted by either the National Working Committee (NWC) or the National Executive Committee (NEC) of the political party: in this case the King Asara A. Asara led Electoral Panel.

My learned brother, Musa Dattijo Muhammad, JSC, in the lead judgment in this appeal has given fuller reasons for the dismissal of this frivolous appeal wholeheartedly adopt the judgment, including all the consequential orders made therein.

GALINJE, J.S.C.: I have had the privilege of reading in draft, the judgment Just delivered by my learned brother, M.D Muhammad, JSC and I agree with reasoning contained therein and the conclusion arrived thereat. The first respondent, a political party that sponsored the 4th respondent at the Governorship Election which took place in 2015

throughout Enugu State had on the 1st of November, delegates were elected from each ward. The delegates so elected were saddled with the responsibility of voting in the primary election fixed for 8th December 2014 in order to elect the 1st respondent's candidate for the Governorship Election in Enugu State. When an issue arose as to the 1st respondent's commitment utilizing the list of the delegates, some delegates proceeded to the Federal High Court and initiated suit No. FHC/ABJ/CS/816/2014, *Barr. Orji Chinenye Godwin & Ors v. Peoples Democratic Party & Ors*. In his judgment, Ademolla sanctioned and or recognized the list submitted by the plaintiffs as the authentic delegates to the primary election.

The National Working Committee of the respondent appointed a panel under the leadership of His Royal Highness King Asara A. Asara to conduct the primary election of 8th December, 2014. The appellant refused to participate the primary election conducted by H.R.H Asara A Asara, on the ground that the list submitted for the primary election which was in possession of King Asara A Asara deviated from his own. It is his claim that a parallel primary election in which the list of delegates sanctioned by the Federal High Court was used in conducting the election, had elected him as the Governorship candidate of the 1st respondent. The appellant did not give particulars of the body that appointed the panel that conducted the primary in which he was elected the gubernatorial candidate of the 1st respondent. He however admitted at paragraph 11, 12, 13 and 16 of his supporting affidavit that he did not participate in primary election organized by the panel that was appointed by the 1st and 2nd respondents. For the avoidance of doubt, the said paragraphs of the supporting affidavit are reproduced hereunder as follow:-

“ 11. That I know as a fact that the 1st respondent thereafter fixed 8th December, 2014 for its primary election

to elect its governorship candidate in Enugu State in the 2015 General Election.

12. That when the committee set up by the 1st respondent and led by King Asara A. Asara to conduct the said primaries from Abuja got to Enugu State, I as an aspirant demanded for the list of the delegates sent from Abuja. I was denied, as same was not shown to me.

13. That I know as a fact that the King Asara A. Asara in turn demanded for a copy of my own list of adhoc delegates which was sanctioned by the Federal High Court and I duly obliged him with same.

16. That I also know as a fact that another primary was purportedly conducted based on a strange list of delegates brought by King Asara A. Asara and another candidate purportedly emerged as the governorship candidate of the 1st defendant. "

Section 87(1) of the Electoral Act, 2010 provides that a political party seeking to nominate candidates for elections under the Acts shall hold primaries for aspirants to all elective positions. It is therefore very clear that primary election can only be held by a political party that seeks to nominate a candidate. In the instant case, the only panel appointed to conduct the governorship primary election in Enugu State in 2015 is the one headed by King Asara A. Asara. Since the appellant refused to participate in that primary election, he was not a candidate in the said primary election and therefore lacks *locus standi* to challenge its outcome. Section 87(9) of the Electoral Act is so clear, as it gives the right to challenge the outcome of a primary election to only aspirants. This section provides as follows:

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

In *PDP & Anor v. Sylva & Anor* (2012) 13 NWLR (PL. 1316) 85 at 126, paras. A-B this court, per Rhodes-Vivour, JSC held:

"An aspirant is a person with a strong desire to achieve a position of importance or to win a competition. Indeed section 87(1) of the Electoral Act states that: "A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective position. From the above it is clear that an aspirant is a person who contested the primaries. An aspirant is thus a candidate in the primaries."

In *Shinkafi & Anor v. Yari & Ors* (2016) 3 SCM 133 (2016) 7 NWLR (Pt. 511) 340. My learned brother Okoro, JSC emphasized the point that a person who is not a candidate in the primary election cannot challenge the outcome in the following words:

"Equally settled is the fact that as at the moment, the only window opened for the courts to entertain action on and/or concerning nomination of candidates for any election by political parties is as provided under section 87(8) or (9) or (10) of the Electoral Act 2010, as amended....

As a result of the above provision conferring (sic) this court has held, in very many cases, that only an aspirant in the primary election conducted by the political party can question the result or nomination or declaration of any person by the party as the winner of the primary election and

consequently the sponsored candidate of the political party concerned in the election in issue. It follows therefore, that no other person or member of the political party concerned, has the locus to challenge or question the nomination of any candidate by a political party for any election.”

Even at the risk of repetition, the appellant was not a candidate in the governorship primary election that was held in Enugu State in 2015, as such he lacked the locus to challenge the declaration of the 4th respondent as the winner of the said primary.

With these few words and the fuller reasoning contained in the lead judgment, I find no merit in this appeal. Accordingly same shall be and it is hereby dismissed. I endorse all the consequential orders made in the judgment of my learned brother, M. D. Muhammad, JSC, including order as to costs.

Appeal dismissed

