

SHEHU MOHAMMED KOKO

V.

1. **SHEHU MOHAMMED BELLO KOKO**
2. **ALL PROGRESSIVES CONGRESS (APC)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

SUPREME COURT OF NIGERIA

SC/CV/1493/2022

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C. (Presided)

UWANI MUSA ABBA AJI, J.S.C.

MOHAMMED LAWAL GARBA, J.S.C.

IBRAHIM MOHAMMED MUSA SAULAWA, J.S.C.

ADAMU JAURO, J.S.C. (Read the Leading Judgment)

WEDNESDAY, 25TH JANUARY 2023

ACTION - Academic issue - What is - When suit or appeal academic.

ACTION - Pre-election matter - Meaning of - Section 285(14), 1999 Constitution.

APPEAL - Academic issue - What is - When suit or appeal academic.

APPEAL - Finding of court - Holding of court - Where not appealed against - Effect - How treated.

APPEAL - Grounds of appeal - Ground of appeal alleging error of law and misdirection - Whether ipso facto incompetent.

APPEAL - Grounds of appeal - Obiter dictum - Whether can constitute ground of appeal.

APPEAL - Preliminary objection to an appeal - Where raised - Need to consider first - Rationale therefor.

CONSTITUTIONAL LAW - Pre-election matter - Meaning of -Section 285(14), 1999 Constitution.

COURT - Academic issue - Attitude of court thereto.

COURT - Evaluation of evidence - Ascription of probative value thereto - Duty on trial court in respect of - When appellate court can evaluate evidence.

COURT - Issues before the court - Trial court and intermediate court - Need for to consider and determine all issues raised by parties.

COURT - Primary election - Where parties make conflicting claims to - Duty on court.

COURT - Substantial justice - Need for court to do - Attitude of court to technicality.

ELECTION - Candidate for election - Nomination of - Duty of political party to comply with its guidelines and constitution and provisions of Electoral Act.

ELECTION - Pre-election matter - Meaning of - Section 285(14),1999 Constitution.

ELECTION - Primary election - National Working Committee of political party - Decision of on appeal arising from primary election - Finality of.

ELECTION - Primary election - State chapter of political party- Whether can conduct primary election - Where primary election illegal - Result of - Whether can produce candidate.

ELECTION - Primary election - When political party cannot nullify.

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ELECTION - Primary election - Where parties make conflicting claims to - Duty on court.

ELECTION - Primary election - Who can be declared winner of -Section 84(5)(c)(ii), Electoral Act 2022.

EVIDENCE - Evaluation of evidence - Ascription of probative value thereto - Duty on trial court in respect of - When appellate court can evaluate evidence.

JURISDICTION - Issue of jurisdiction - Where raised after parties led evidence - Relevant consideration.

JUSTICE – Substantial justice - Need for court to do - Attitude of court to technicality.

POLITICAL PARTY - Candidate for election - Nomination of – Duty of political party to comply with its guidelines and constitution and provisions of Electoral Act.

POLITICAL PARTY - Primary election - National Working Committee of political party - Decision of on appeal arising from primary election - Finality of.

POLITICAL PARTY - Primary election - State chapter of political party - Whether can conduct primary election - Where primary election illegal - Result of - Whether can produce candidate.

POLITICAL PARTY - Primary election - When political party cannot nullify.

POLITICAL PARTY - Primary election - Who can be declared winner of - Section 84(5)(c)(ii), Electoral Act 2022.

PRACTICE AND PROCEDURE - Academic issue - Attitude of court thereto.

PRACTICE AND PROCEDURE - Academic issue - What is – When suit or appeal academic.

PRACTICE AND PROCEDURE - Appeal - Finding of court -Holding of court - Where not appealed against - Effect – How treated.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal -Ground of appeal alleging error of law and misdirection -Whether ipso facto incompetent.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal -Obiter dictum - Whether can constitute ground of appeal.

PRACTICE AND PROCEDURE - Appeal - Issues for determination- Formulation of - Whether appellate court can adopt issues formulated by parties or formulate its own issues.

PRACTICE AND PROCEDURE - Appeal - Preliminary objection to an appeal - Where raised - Need to consider first – Rationale therefor.

PRACTICE AND PROCEDURE - Evaluation of evidence -Ascription of probative value thereto - Duty on trial court in respect of - When appellate court can evaluate evidence.

PRACTICE AND PROCEDURE - Issue of jurisdiction – Where raised after parties led evidence - Relevant consideration.

PRACTICE AND PROCEDURE - Issues before the court – Trial court and intermediate court - Need for to consider and determine all issues raised by parties.

PRACTICE AND PROCEDURE - Pleadings - Need to consider holistically.

WORDS AND PHRASES - Academic issue - What is.

WORDS AND PHRASES - Pre-election matter - Meaning of -Section 285(14), 1999 Constitution.

Issues:

Whether the Court of Appeal was right in holding that the trial court had the requisite jurisdiction to entertain the 1st respondent's case and in declining same.
Whether the Court of Appeal was right in not striking out grounds 6, 7, 9, 10 and 11 of the 1st respondent's notice of appeal.

Whether the Court of Appeal was right in holding the 1st respondent proved his claims before the trial court with credible evidence to warrant judgment in his favour.

Facts:

The appellant and the 1st respondent were members of the 2nd respondent. They both decided to contest the party's primary election for the selection of its candidate for election into the House of Representatives, for the position of member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State. In line with the 2nd respondent's guidelines, its National Working Committee set up a five-member electoral committee to conduct primary elections for the selection of the party's candidates in the eight Federal Constituencies in Kebbi State, including Koko-Besse/Maiyama Federal Constituency.

The primary election held on 27th May 2022 and both the appellant and the 1st respondent claimed to have won the election. The appellant claimed to have won the election with one hundred and fifteen votes to the 1st respondent's zero vote. The 1st respondent, on the other hand, claimed to have scored eighty-five votes to the appellant's thirty votes. He claimed that the appellant conducted a parallel primary election and declared himself winner of the primary election. He claimed further that the appellant used his influence as a sitting member of the House of Representatives to stop the 2nd respondent from recognising him as the winner of the primary election.

On 3rd June 2022, the Kebbi State Chairman of the 2nd respondent by a letter written to the National Chairman of the party declared the primary election as inconclusive. Predicated on the letter, the primary election of 27th May 2022 was cancelled and another primary was conducted by the Kebbi State executive committee of the 2nd respondent. The appellant emerged as the winner of the re-conducted primary election and his name was thereafter submitted to the 3rd respondent.

Aggrieved by the turn of events, the 1st respondent instituted an action at the Federal High Court, Kebbi seeking inter alia a declaration that the 2nd respondent's primary election for the member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State was conducted

on 27th May 2022 at the Maiyama Local Government; a declaration that the primary election was valid and its result from the votes of democratically-elected delegates was valid and subsisting;

and a declaration that he, having scored the highest number of votes of the delegates at the primary election, is the lawfully elected candidate Koko-Besse/Maiyama Federal Constituency of Kebbi State.

The appellant and the 2nd respondent filed separate statements of defence.

The 1st respondent testified as PW4 and called four other witnesses who testified as PW1, PW2, PW3 and PW5. Through his witnesses, the 1st respondent tendered nineteen documents as exhibits “Koko A” to “Koko P”.

The PW1, a member of the electoral committee appointed by the 2nd respondent’s National Working Committee (NWC), testified that the election was won by the 1st respondent and tendered exhibit “Koko A”, the report of the primary election committee. The result attached to exhibit “Koko A” showed that the 1st respondent won the election by eighty-five votes to the appellant’s thirty votes. The witness testified that he conducted the election and was assisted by a three-member subcommittee.

The PW2 was the secretary of the three-man appeal committee appointed by the 2nd respondent’s NWC to consider appeals in respect of the primary election conducted on 27th May 2022, in line with the party’s guidelines. He stated that after the report of the primary election committee was submitted to the appeal committee, the committee sat from 28th May to 31st May 2022, but did not receive complaints from anyone. The witness tendered exhibit “Koko C”, the report of the appeal committee.

On his part, the appellant called eight witnesses who testified as DW1 to DW8 and through whom thirty-seven exhibits were tendered and admitted in evidence. The 2nd respondent called a lone witness. The 3rd respondent did not call any witness.

At the stage of adoption of final written addresses, the trial court asked counsel for the parties to file written addresses on whether, pursuant to section 84(14) of the Electoral Act 2022,

ithad jurisdiction to entertain the suit. The counsel did as directed and they adopted their final written addresses together with their addresses on the issue raised *suo motu* by the court.

In its judgment, the trial court held that it lacked jurisdiction to entertain the 1st respondent's action and that section 84(14) of the Electoral Act 2022 only pertains to the holding of primary election, not the issuance of certificate of return. It also held that the 1st respondent did not participate in the rescheduled election of 7th June 2022 and therefore could not question same; that having claimed to have won the primary election of 27th May 2022, he had no cause of action until when the 2nd respondent submitted the name of another person to the 3rd respondent, which had not be end one, thereby finding that the action was premature.

However, the trial court considered the suit on its merit and held that the 1st respondent failed to prove his case by credible evidence but that the appellant and the 2nd respondent proved that the election which the appellant won was held in compliance with the Electoral Act and the 2nd respondent's guidelines.

Dissatisfied with the judgment of the trial court, the 1st respondent appealed to the Court of Appeal. In its judgment, the Court of Appeal held that the trial court had jurisdiction to entertain the suit and that the 1st respondent proved his entitlement to the reliefs sought. It allowed the appeal.

Aggrieved by the judgment of the Court of Appeal, the appellant appealed to the Supreme Court.

Held (*Unanimously dismissing the appeal*):

1. *On Meaning of pre-election matter -*

By virtue of section 285(14) of the 1999 Constitution (as amended), pre-election matter means any suit by:

- a) **an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the(a)conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with**

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

The provisions of section 285(14) of the 1999 Constitution (as amended) is the yardstick for determining whether a suit qualifies as a pre-election matter. If the complaint(s) of a plaintiff falls under the umbrella of the provisions, then it is a pre-

election matter. [Danladi v. Udi (2022) 9 [NWLR \(Pt. 1834\) 185](#); A.P.C. v. Moses (2021) 14 [NWLR \(Pt. 1796\) 278](#); Aguma v. A.P.C. (2021) 14 [NWLR \(Pt. 1796\) 351](#) referred to.] (Pp. 289-290, paras. F-G)

2. *On Duty on court where parties make conflicting claims to primary election -*

In a situation where parties lay conflicting claims to primary elections, it is the duty of the court to determine which of the elections is the authentic primary election. [Azubuogu v. Oranezi (2018) 5 [NWLR \(Pt. 1613\) 447](#) referred to.] (P. 293, paras. B-C)

Per JAURO, J.S.C. at page 292-293, paras. G-B:

“Furthermore, the parties laid conflicting claims to different primaries held on 27th May, 2022. The 1st respondent claimed that the primary which he won was conducted by the five-man Electoral Committee appointed by the NWC of the 2nd respondent with the assistance of a three-man subcommittee, consisting of Shehu Yaba Koko, Alh. Maman Mai Kwano and Alh. Abdullahi Andarai, appointed by the Primary Election Committee. He claimed that the primary election relied on by the appellant was conducted by the Kebbi State Executive of the party. The appellant and the 2nd respondent on the other hand claimed that the primary election that produced the appellant as the winner was conducted by a three-man sub committee made up of Babangida Isah Fada, Alh. Zaki Yauri and Alh. Atiku Zauro. Clearly, they laid claim to different primary elections.

In a situation where parties lay conflicting claims to primary elections, it is the duty of the court to determine which of the elections is the authentic primary election.”

3. *On Duty of political party to comply with its guidelines and constitution and provisions of Electoral Act in nomination of candidate for election –*
Guidelines and constitutions of political parties are not made for the sake of it. They are meant to guide the affairs of the parties and their members.

In particular, guidelines for the conduct of primary elections are to be complied with by political parties when they hold primaries to select their candidates for elective positions. When it comes to issues relating to the selection and nomination of candidates for an election, political parties must not act arbitrarily but within the confines of their constitutions and electoral guidelines and in accordance with the provisions of the Electoral Act. Political parties must

obey their constitutions and electoral guidelines. Political parties must learn to play by the rules of the game of constitutional democracy as prescribed in the Electoral Act, their constitutions and guidelines specifically enacted by them to regulate and govern primary elections and the nomination of candidates for elections in the country. In the instant case, the evidence of PW1 and PW2 established that the election from which the 1st respondent emerged as the 2nd respondent's candidate was conducted in line with its guidelines. [A.P.C. v. Marafa (2020) 6 [NWLR \(Pt. 1721\) 383](#); Yar'adua v. Yandoma (2015) 14 [NWLR \(Pt. 1448\) 123](#); Emeka v. Okadigbo (2012) 18 [NWLR \(Pt. 1331\) 55](#); P.D.P. v. Oranezi (2018) 7 [NWLR \(Pt. 1618\) 260](#); A.P.C. v. Lere (2000) 1 [NWLR \(Pt. 1705\) 254](#); Musav. Umar (2000) 11 [NWLR \(Pt. 1735\) 231](#); Jegede v. I.N.E.C. (2021) 14 [NWLR \(Pt. 1797\) 409](#); Agumav. A.P.C. (2021) 14 [NWLR \(Pt. 1796\) 351](#); Uba v. Moghalu (2022) 15 [NWLR \(Pt. 1853\) 271](#) referred to.] (Pp. 302-303, paras. H-G)

Per JAURO, J.S.C. at page 300, paras. B-D:

“The Guidelines of the 2nd respondent having vested the power to appoint Electoral Committee on the NWC of the party, it was ultra vires of the Kebbi State Chapter of the party to appoint a committee, subcommittee or a body with any other appellation to conduct the primary election that purportedly led to the emergence of the appellant as the party's candidate for the position of member of the House of Representatives representing Koko-Besse/Maiyama Federal Constituency of Kebbi State. The primary election having been conducted in blatant violation of the 2nd respondent's Guidelines is null and void. See Uba v. Moghalu & Ors (2022) LPELR - 57876(SC), (2022) 15 [NWLR \(Pt. 1853\) 271](#); A.P.C. v. Marafa (supra); Aghedo v. Adenomo (2018) 13 [NWLR \(Pt. 1636\) 264](#).”

4. *On Duty of political party to comply with its guidelines and constitution and provisions of Electoral Act in nomination of candidate for election -*

A political party has the right to choose and select the candidates it would sponsor for elections. However, the process of selection and nomination of such candidates must be in strict compliance with the Electoral Act and guidelines enacted by the party to regulate and govern it. The process of the selection and nomination of candidates is not completely left at the whims and caprices of political parties but specifically provided for in section 84(1) to of the Electoral Act, 2022 as well as the guidelines for party primaries provided by the political parties. The provisions must be complied with for the selection and nomination of candidates to be valid in law under the Electoral Act. The Act in section 84(13) provides the penalty for breach or non-compliance by a political party in the process. (P. 303, paras. A-C)

5. *On Whether State chapter of political party can conduct primary election -*

The State chapter of a political party cannot conduct a primary election and any primary so conducted is illegal. The result of an illegal primary election cannot produce a candidate. Ex nihilo nihil fit - from nothing comes nothing. One cannot base the emergence of a candidate on an illegally conducted primary. Both will collapse. [Akpatason v. Adjoto (2019) 14 ; Emenike v. P.D.P. (2012) 12 [NWLR \(Pt.1315\) 556](#) referred to.] (P. 299, paras. E-G)

Per JAURO, J.S.C. at page 298-299, paras. E-E:

“However, the appellant and 2nd respondents as 1st and 2nd defendants respectively, called evidence to rebut the case of the 1st respondent. Notably, the appellant called DW5, the Secretary of the Primary Election Committee appointed by the NWC and the 2nd respondent

called DW9, a member of the three-member subcommittee that conducted the primary election purportedly won by the appellant.

DW5 gave evidence to the effect that the primary election which produced the appellant as the winner was conducted by DW9 and that the primary election so conducted was the one adopted by him and that the result of the said primary election was the basis of the report of the primary election which he tendered in evidence as exhibit Shehu K. On his part, DW9 testified that he was appointed by the Kebbi State Executive Committee of the 2nd respondent and that the appellant emerged as the winner of the primary election conducted by him. In other words, the election being brandished by the appellant as entitling him to be the candidate of the 2nd respondent was that which the Kebbi State Chapter of the 2nd respondent appointed DW9 and other members of his subcommittee to conduct.

DW9 further testified that he submitted the result of the primary election conducted by him to DW5. The APC Guidelines for the Nomination of Candidates for the 2019 General Election, with similar provisions to its Guidelines for the Nomination of Candidates for the 2023 General Election were considered in the case of *Akpatason v. Adjoto* (2019) 14 [NWLR \(Pt.1693\) 501](#) wherein the court made it clear thus:

‘Paragraph 20(d) of the 2nd respondent’s Guidelines has restricted the power to conduct primary elections to the Electoral Committee constituted by the National Working Committee only, and Hon. Sufiyanu Igbafe not being a member of such committee was just a meddler some interloper in the conduct of 2nd respondent’s primary election in Akoko-Edo Federal Constituency.’

DW9 by his own admission was not a member of the Electoral Committee set up by the NWC. He therefore had no business conducting the primary election. His evidence effectively and conclusively destroyed and demolished any claim by the appellant that he was the lawfully elected candidate of the 2nd respondent.”

6. *On Finality of decision of National Working Committee of political party on appeal from primary election –*

The National Working Committee of a political party has the final say on appeals arising from primary elections. In the instant case, it was not shown that any appeal was submitted to the 2nd respondent’s appeal committee against the victory of the 1st respondent, neither was it shown that the 2nd respondent’s National Working Committee reconsidered a decision of the committee.

In the circumstance, there was no basis for the 2nd respondent to recognise any other candidate apart from the 1st respondent who won the primary election conducted by the primary election committee set up by the NWC and which election was not shown to have been validly set aside. Similarly, there was no basis for the conduct of any subsequent primary election and any such subsequent election lacked legitimacy. (Pp. 299-300, paras. H-B)

7. *On When political party cannot nullify primary election –*

Where the primary election of a political party is conducted by a committee of the National Working Committee in line with Electoral Act and party guidelines for the conduct of primary elections and an aspirant emerges the winner and is so declared, the party cannot, for any reason or under any pretence, nullify such primaries for the purpose of ordering fresh or another primary subsequently. The political party is bound by the result of such primaries conducted in accordance with the Electoral Act and its own constitution and guidelines and

so under a legal duty to comply with the provisions to forward the name of the aspirant declared the winner to the Independent National Electoral Commission as the candidate of the party for the election in question. In the instant case, after the conduct of the primary election of 27th May, 2022 at which the 1st respondent duly emerged and was declared the winner having scored the highest number of votes cast, the provisions of section 84(5)(c)(ii) of the Electoral Act imposed the duty on the 2nd respondent to forward his name to the 3rd respondent as its candidate for the election in question. (*Pp. 301-302, paras. H-C*)

8. *On When political party cannot nullify primary election –*

Where a primary election is conducted in compliance with the Electoral Act and party guidelines and a winner emerges and is duly declared the winner, it would no longer be within the province of the internal affairs of the party to interfere with the outcome or result of the primary election and cannot purport to cancel the concluded primary election or the result duly declared by the committee that conducted the primary election. The conduct of the primary election and outcome or result declared can only be validly challenged in court as provided for in section 84(14) of the Electoral Act, 2022 by an aspirant who participated in the primary election. (*P. 302, paras. E-G*)

9. *On Who can be declared winner of primary election –*

By virtue of section 84(5)(c)(ii) of the Electoral Act 2022, the aspirant with the highest number of votes cast at the end of voting shall be declared the winner of the primaries of the political party and the aspirant's name shall be forwarded to the Independent national Electoral Commission as the candidate of the party. By the provision, the political party has no discretion howsoever to tamper with the outcome of the primary election for the sole

purpose of changing the result or outcome of the primary election in favour of any other aspirant or person who did not participate in the primary election. In the instant case, there is no provision in the 2nd respondent's constitution and/or guidelines for party primaries allowing, permitting or granting the 2nd respondent the unbridled power to cancel the primary election conducted in compliance with the law or the result duly declared for the election. (Pp. 302-303, paras. C-A)

10. *On Need to consider pleadings holistically –*

Pleadings are not to be considered in fragments. In order to get the whole idea of a party's case, his pleadings must be considered holistically. In the instant case, in construing the 1st respondent's amended statement of claim, the trial court ignored other parts of the amended statement of claim that told the full story of the 1st respondent's case. It focused only on paragraphs of the 1st respondent's amended statement of claim which complained about the non-issuance of a certificate of return to the 1st respondent in reaching the conclusion that it lacked jurisdiction to entertain the action.

[*Ostankino Shipping Co. Ltd. v. Owners of MT Bata 1* (2022) 3 [NWLR \(Pt. 1817\) 367](#); *Adama v. K.S.H.A.* (2019) 16 [NWLR \(Pt. 1699\) 501](#); *Azubuogu v. Oranezi* (2018) 5 [NWLR \(Pt. 1613\) 447](#) referred to.] (P. 294,A-D)

Per JAURO, J.S.C. at page 294, paras. A-D:

“Similarly, the 1st respondent participated as an aspirant in the 2nd respondent's primary election which was conducted on 27th May,2022 and his complaints border on the violation of the Electoral Act and the 2nd respondent's Guidelines, hence his claims fall squarely within section 84(14) of the Electoral Act and the trial court had jurisdiction to entertain the suit. See *Anyakorah v. P.D.P. & Ors* (2022)LPELR - 56876 (SC), (2022) 12 [NWLR \(Pt.1843\) 1](#); *Ukachukwu v. P.D.P.* (2014) 17 [NWLR\(Pt. 1435\) 134](#); *P.D.P. v. Sylva* (2012) 13 [NWLR\(Pt. 1316\) 85](#). Had

the learned trial Judge considered the complaints of the appellant holistically, he would not have reached the perverse conclusion that the trial court lacked jurisdiction to entertain the suit. In the light of the foregoing, the lower court rightly set aside the decision of the trial court pertaining to the trial court's jurisdiction.”

11. *On Relevant consideration where issue of jurisdiction raised after parties led evidence –*

Where a jurisdictional issue is raised after evidence had been led by parties, all the materials available before the court are to be considered in determining whether the trial court has jurisdiction to entertain the action. (P. 292, paras. E-F)

12. *On Duty of trial court in respect of evaluation of evidence and ascription of probative value thereto –*

Evaluation of evidence and ascription of probative value thereto are the duties of the trial court who had the privilege and advantage of seeing the witnesses and observing their countenance. Where the question of evaluation has to do with credibility of witnesses, it is the trial court that can properly perform that role. Appellate courts can do very little as they only have the printed record of appeal to work with. However, where the question has to do with improper evaluation or non-evaluation of evidence on record or evaluation of documentary evidence, an appellate court is in as good a position as the trial court to evaluate evidence. Overall, the duty to evaluate evidence lies squarely with the trial court. Where the trial court has properly evaluated evidence on record, an appellate court has no business with re-evaluating evidence. It is only where the trial court has failed to perform its duty to evaluate evidence or where it is improperly done that an appellate court can step in to re-evaluate evidence. [Bello v. F.R.N. (2019) 2 [NWLR \(Pt. 1656\)193](#); Ukanacho v. A.-G., Imo State (2018)

14 [NWLR\(Pt. 1638\) 106](#); *Busari v. State* (2015) 5 [NWLR \(Pt.1452\) 343](#) referred to.] (P. 296, paras. A-D)

13. *On Whether ground of appeal alleging error of law and misdirection ipso facto incompetent –*

A ground of appeal that alleges both error of law and misdirection is not ipso facto incompetent. What is important is to consider whether the appellant's complaint is distillable therefrom. If the appellant's grouse can be easily deduced from the ground, the consideration of whether it alleges both error of law and misdirection of facts is rendered immaterial. As long as the respondent is not misled by the ground, it becomes irrelevant whether the grounds allege both error of law and misdirection of facts. In the instant case, the appellant did not complain that the contentious grounds 6, 7, 9, 10 and 11 of the 1st respondent's notice of appeal at the Court of Appeal misled him. Therefore, there was no basis for the Court of Appeal or the Supreme Court to strike out the grounds or the issues distilled from them. [*Aigbobahi v. Aifuwa* (2006) 6 [NWLR \(Pt. 976\) 270](#); *Garuba v. K.I.C. Ltd.* (2005) 5 [NWLR \(Pt. 917\)160](#); *Hambe v. Hueze* (2001) 4 [NWLR \(Pt. 703\) 372](#) referred to.] (Pp. 294-295, paras. G-A)

14. *On Need for court to do substantial justice –*

The courts now aim to always do substantial justice and every obstruction to achievement of that aim must be demolished in order that the duty of the court to the public will be achieved. Substantial justice will not be sacrificed on the altar of technicality. In the instant case, the appellant's objection to the 1st respondent's grounds 6, 7, 9,10 and 11 of the 1st respondent's notice of appeal at the Court of Appeal bordered on technicality which is dead and buried, never to be resurrected again. The appellant had notice of the triable issues raised in the contentious grounds. (P. 295,paras. B-D)

15. *On Need to consider preliminary objection to an appeal first where raised and rationale therefor –*

Once a preliminary objection is raised by the respondent in an appeal, the objection must be considered first before taking further steps to hear the appeal. It is prudent to do so, as the purpose of a preliminary objection is to terminate an appeal at its infancy. It will be a time wasting exercise to consider the merit of the appeal, only to discover that the preliminary objection had merit and that the court lacked jurisdiction to entertain the appeal. [*Abdullahi v. Loko* (2023) 6 [NWLR \(Pt.1881\) 445](#); *Backbone Connectivity Network (Nig.)Ltd. v. Backbone Tech Network Inc.* (2022) 6 [NWLR\(Pt. 1826\) 373](#); *Mainasara v. F.B.N.* (2022) 6 [NWLR\(Pt. 1827\) 465](#) referred to.] (P. 272, paras. F-H)

16. *On What is academic issue –*

An academic issue is one which would neither confer benefit on nor injure any of the parties but merely propound the law. A suit or appeal becomes academic when the questions placed before the court for determination are no longer live issues in the subject matter of the suit. [*Ebebi v. Esemokumor* (2022) 1 [NWLR \(Pt. 1812\) 463](#); *Ebebi v. Ozobo* (2022)1 [NWLR \(Pt. 1810\) 165](#); *Agbakoba v. I.N.E.C.* (2008)18 [NWLR \(Pt. 1119\) 489](#) referred to.] (P. 280, paras. A-C)

17. *On Attitude of court to academic issue –*

Courts do not act in vain. Courts are urged not to dissipate scarce judicial energy on the consideration of academic, hypothetical or moot issues or points. If no purpose will be served by an action or appeal or any issue raised in it other than its mere academic interest, the court will not entertain it. In other words, courts have no jurisdiction to entertain academic issues. [*Ogheneovo v. Gov., Delta State* (2023) 2 [NWLR \(Pt. 1868\) 275](#); *Uzoho v. N.C.P.* (2022)15 [NWLR \(Pt. 1852\) 1](#); *Okotere v. Gwagwa* (2022) 9 [NWLR \(Pt. 1834\) 51](#) referred to.] (P. 280, paras. C-E)

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18. *On Whether obiter dictum can constitute ground of appeal –*
A statement or dictum of a court made obiter cannot ground a challenge to the judgment of the court. (P.288, para. G)
19. *On Treatment finding or holding of court not appealed against –*
A failure to appeal against a specific finding, decision or holding of a lower court implies that the parties are satisfied by that finding or holding and same cannot be tampered with by an appellate court. [*Nwiko v. State* (2022) 15 [NWLR \(Pt. 67\) 718](#); *Akere v. Governor, Oyo State* (2012) 12 [NWLR \(Pt. 1314\)240](#); *U.B.A. Plc. v. B.T.L. In Ltd.* (2006) 19 [NWLR \(Pt. 1013\) 61](#) referred to.] (P. 281, paras. C-E)
20. *On Whether appellate court can adopt issues formulated by parties or formulate its own issue –*
An appellate court is at liberty to adopt the issues formulated by the appellant or those of the respondent. The court can even formulate its own issues. The principal consideration in the formulation or adoption of issues is that the court should adopt and resolve issues that would determine the real and actual grievances of the parties. [*Polaris Bank Ltd v. Forte Oil Plc* (2023) 5 [NWLR \(Pt. 1876\) 179](#); *C.B.N. v. Okojie* (2015) 14 [NWLR \(Pt. 1479\) 231](#); *Daniel v. I.N.E.C.* (2015) 9 [NWLR \(Pt. 1463\) 113](#) referred to.] (P. 289, paras. B-C)
21. *On Need for trial court and intermediate court to consider and determine all issues raised by parties –*
The Supreme Court being the final court in the adjudicatory ladder is best placed to decide which issues are relevant to the determination of an appeal. Trial courts and intermediate courts are always admonished to consider and determine all the issues submitted for their determination. (P.289, paras. C-D)

Nigerian Cases Referred to in the Judgment:

- A.P.C. v. Lere* (2020) 1 [NWLR \(Pt. 1705\) 254](#)
- A.P.C. v. Marafa* (2020) 6 [NWLR \(Pt. 1721\) 383](#)
- A.P.C. v. Moses* (2021) 14 [NWLR \(Pt. 1796\) 278](#)
- A.P.C. v. Obaseki* (2022) 2 [NWLR \(Pt. 1814\) 287](#)
- Abdullahi v. Loko* (2023) 6 [NWLR \(Pt. 1881\) 445](#)
- Adama v. Kogi State House of Assembly* (2019) 16 [NWLR \(Pt.1699\) 501](#)
- Ademeso v. Okoro* (2005) 14 [NWLR \(Pt. 945\) 308](#)
- Agbakoba v. I.N.E.C.* (2008) 18 [NWLR \(Pt. 1119\) 489](#)
- Aghedo v. Adenomo* (2018) 13 [NWLR \(Pt. 1636\) 264](#)
- Aguma v. A.P.C.* (2021) 14 [NWLR \(Pt. 1796\) 351](#)
- Aigbobahi v. Aifuwa* (2006) 6 [NWLR \(Pt. 976\) 270](#)
- Akere v. Gov., Oyo State* (2012) 12 [NWLR \(Pt. 1314\) 240](#)
- Akpatason v. Adjoto* (2019) 14 [NWLR \(Pt. 1693\) 501](#)
- Anyakorah v. P.D.P.* (2022) 12 [NWLR \(Pt. 1843\) 1](#)
- Ararume v. Ubah* (2021) 8 [NWLR \(Pt. 1779\) 511](#)
- Azubuogu v. Oranezi* (2018) 5 [NWLR \(Pt. 1613\) 447](#)
- Backbone Connectivity Network (Nig.) Ltd. v. Backbone Tech.Network Inc* (2022) 6 [NWLR \(Pt. 1826\) 373](#)
- Bello v. F.R.N.* (2019) 2 [NWLR \(Pt. 1656\) 193](#)
- Busari v. State* (2015) 5 [NWLR \(Pt. 1452\) 343](#)
- C.B.N. v. Okojie* (2015) 14 [NWLR \(Pt. 1479\) 231](#)

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- Dahiru v. APC* (2017) 4 [NWLR \(Pt. 1555\) 218](#)
- Daniel v. I.N.E.C.* (2015) 9 [NWLR \(Pt. 1463\) 113](#)
- Danladi v. Udi* (2022) 9 [NWLR \(Pt. 1834\) 185](#)
- Ebebi v. Esemokumor* (2022) 1 [NWLR \(Pt. 1812\) 463](#)
- Ebebi v. Ozobo* (2022) 1 [NWLR \(Pt. 1810\) 165](#)
- Emeka v. Okadigbo* (2012) 18 [NWLR \(Pt. 1331\) 55](#)
- Emenike v. P.D.P.* (2012) 12 [NWLR \(Pt. 1315\) 556](#)
- F.C.M.B. v. Ogbuefi* (2021) 10 [NWLR \(Pt. 1783\) 1](#)
- Fidelity Bank Plc v. M.C. Ind. Ltd.* (2022) 7 [NWLR \(Pt. 1829\) 358](#)
- Garba v. State* (2022) LPELR 57677
- Garuba v. K.I.C Ltd* (2005) 5 [NWLR \(Pt. 917\) 160](#)
- Hambe v. Hueze* (2001) 4 [NWLR \(Pt. 703\) 372](#)
- Jegede v. INEC* (2021) 14 [NWLR \(Pt. 1797\) 409](#)
- Jev v. Iyortyom* (2014) 14 [NWLR \(Pt. 1428\) 575](#)
- Karshi v. Gwagwa* (2022) 9 [NWLR \(Pt. 1834\) 139](#)
- Kyari v. Alkali* (2001) 11 [NWLR \(Pt. 724\) 412](#)
- Mainasara v. F.B.N.* (2022) 6 [NWLR \(Pt. 1827\) 465](#)
- Mbani v. Bosi* (2006) 11 [NWLR \(Pt. 991\) 400](#)
- Musa v. Umar* (2000) 11 [NWLR \(Pt. 1735\) 231](#)
- Nsirim v. Nsirim* (1990) 3 [NWLR \(Pt. 138\) 285](#)
- Nwadike v. Ibekwe* (1987) 4 [NWLR \(Pt.67\) 718](#)
- Nwiko v. State* (2022) 15 [NWLR \(Pt. 1852\) 69](#)

- O.S. Co. Ltd. v. Owners, M.T Bata* (2022) 3 [NWLR \(Pt. 1817\)367](#)
- Ogheneovo v. Gov., of Delta State* (2023) 2 [NWLR \(Pt. 1868\)275](#)
- Okotere v. Gwagwa* (2022) 9 [NWLR \(Pt. 1834\) 51](#)
- Olomoda v. Mustapha* (2019) 6 [NWLR \(Pt. 1667\) 36](#)
- Onyirimba v. Uwajumogu* (2019) LPELR – 49196
- O para v. Dowel Schlumberger (Nig.) Ltd.* (2006) 15 [NWLR\(Pt.1002\) 342](#)
- Ovunwo v. Woko* (2011) 17 [NWLR \(Pt. 1277\) 522](#)
- P.D.P. v. Oranezi* (2018) 7 [NWLR \(Pt. 1618\) 260](#)
- P.D.P. v. Sylva* (2012) 13 [NWLR \(Pt. 1316\) 85](#)
- Polaris Bank Ltd v. Forte Oil Plc* (2023) 5 [NWLR \(Pt. 1876\)179](#)
- Re: Ijelu* (1992) 9 [NWLR \(Pt. 266\) 414](#)
- Saki v. APC* (2020) 1 [NWLR \(Pt. 1706\) 515](#)
- Saraki v. FRN* (2016) 3 [NWLR \(Pt. 1500\) 531](#)
- U.B.A. Plc v. B.T.L. Ind. Ltd.* (2006) 19 [NWLR \(Pt. 1013\) 61](#)
- Uba v. Moghalu* (2022) 15 [NWLR \(Pt. 1853\) 271](#)
- Ukachukwu v. P.D.P.* (2014) 17 [NWLR \(Pt. 1435\) 134](#)
- Ukanacho v. A.-G., Imo State* (2018) 14 [NWLR \(Pt. 1638\) 106](#)
- Uzoho v. NCP* (2022) 15 [NWLR \(Pt. 1852\) 1](#)
- Wali v. APC* (2020) 16 [NWLR \(Pt. 1749\) 82](#)
- Yar’adua v. Yandoma* (2015) 14 [NWLR \(Pt. 1448\) 123](#)

Foreign Case Referred to in the Judgment:

UAC v. Macfoy (1962) AC 153

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended), S. 285

Electoral Act, 2022, S. 84(14)

Nigerian Rules of Court Referred to in the Judgment:

Court of Appeal Rules, O. 7 2(2)

Appeal:

This was an appeal against the decision of the Court of Appeal allowing the appeal against the judgment of the Federal High Court which dismissed the 1st respondent's suit. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:*Supreme Court:*

Names of Justices that sat on the appeal: Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C. (Presided); Uwani Musa Abba Aji, J.S.C.; Mohammed Lawal Garba, J.S.C.; Ibrahim Mohammed Musa Saulawa, J.S.C.; Adamu Jauro, J.S.C.
(Read the Leading Judgment) Appeal No.: SC/CV/1493/2022

Date of Judgment: Wednesday, 25th January 2023

Names of Counsel: Abdul Mohammed, SAN, FCI Arb(UK); Ibrahim Abdullahi, SAN; Sanusi Musa, SAN; (with them, Shamsu A. Daudu, Esq. and Chiemelie Ayo, Esq.) - *for the Appellant*

Mallam Yusuf Ali, SAN; Hussaini Zakariya, SAN; M. O.Adebayo, SAN (*with them*, Yakub Dauda, Esq. and AlexAkoja, Esq.) - for the 1st Respondent

Lagalo Dan Lagalo, Esq. (*with him*, N. D. Paul, Esq.) - for the 2nd Respondent

Ahmad B. Mahmud, Esq. - for the 3rd Respondent

Court of Appeal:

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

Appeal No.: CA/S/162/2022

Date of Judgment: Wednesday, 23rd November 2022

High Court:

Name of the High Court: Federal High Court, Kebbi

Counsel:

Abdul Mohammed, SAN, FCIArb (UK); Ibrahim Abdullahi, SAN; Sanusi Musa, SAN; (*with them*, Shamsu A. Daudu, Esq. and Chiemelie Ayo, Esq.) - for the Appellant

Mallam Yusuf Ali, SAN; Hussaini Zakariya, SAN; M. O.Adebayo, SAN (*with them*, Yakub Dauda, Esq. and Alex Akoja, Esq.) - for the 1st Respondent

Lagalo Dan Lagalo, Esq. (*with him*, N. D. Paul, Esq.) - for the 2nd Respondent

Ahmad B. Mahmud, Esq. - for the 3rd Respondent

JAURO, J.S.C. (Delivering the Leading Judgment): The appeal herein is against the judgment of the Court of Appeal, Sokoto Division, delivered on 23rd November, 2022, wherein the judgment

of the Federal High Court, Kebbi Division was set aside, and the 1st respondents claims were granted.

Both the appellant and the 1st respondent are members of the 2nd respondent, the All Progressives Congress (APC), and both were desirous of contesting the party's primary election for the selection of its candidate for election into the House of Representatives for the position of member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State. In preparation for the primary election scheduled to hold on 27th May, 2022, the appellant and the 1st respondent obtained Nomination and Expression of Interest Forms and were screened and cleared to contest the primary election. In line with the 2nd respondent's Guidelines, its National Working Committee set up a five-member Electoral Committee consisting Hon. Chamberlain Dunkwa Nnamdi, Barr. Yusuf Ibrahim Wukari, Aminu Fari, Hon. Sanusi Olufemi and Hon. Ofor Ikechukwu Vincent to conduct primary elections for the selection of the party's candidates in the eight Federal Constituencies in Kebbi State, including Koko-Besse/Maiyama Federal Constituency.

The primary election held on 27th May, 2022 and both the appellant and the 3rd respondent claimed to have won the election, with the appellant claiming to have won the election with 115 votes to the 1st respondent's zero vote. The 1st respondent on the other hand, claimed to have scored 85 votes, to the appellant's 30 votes. He claimed that the appellant conducted a parallel primary election and declared himself winner of the primary election. On 3rd June, 2022, the Kebbi State Chairman of the 2nd respondent by a letter written to the Chairman of the party declared the primary election as inconclusive.

The 1st respondent also claimed that the appellant used his influence as a sitting member of the House of Representatives to stop the 2nd respondent from recognizing him as the winner of the primary election. Against this background, the 1st respondent took out a writ of summons and statement of claim at the trial court and sought the following reliefs:

- “(i) A declaration that the 2nd defendant's primary election for the member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State, was conducted on the 27th May 2022 at the Maiyama Local Government Secretary (sic).

- (ii) A declaration that the 2nd defendant's primary election for the member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State, conducted on the 27th May 2022 at the Maiyama Local Government Secretary (sic) is valid and its result from the vote of democratically elected delegates is validly and(ii) subsisting.
- (iii) A declaration that the claimant having scored the highest number of votes of the democratically elected delegates at the primary election conducted on 27th May 2022 is the lawfully elected candidate for member representing Koko-Besse/Maiyama Constituency of (iii) Kebbi State.
- (iv) A declaration that neither the 2nd defendant nor the 2nd defendant can change the result of primary election it conducted for Koko-Besse/Maiyama Federal constituency of Kebbi State in which the plaintiff emerged winner and was so declared by the 2nd (iv) defendant.
- (v) A declaration that the claimant having been the duly elected candidate is the person entitled to the certificate of return to contest in the election for the Koko-Besse/Maiyama Federal Constituency of Kebbi State.
- (vi) A declaration that the 2nd defendant cannot lawfully issue a certificate of return in respect of the Primary Election for member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State for the Primary Election conducted on the 27th May 2022 at the Maiyama Local Government Secretary (sic) to a person who did not win the primary election.
- (vii) A declaration that it is unlawful for the 2nd defendant to issue the certificate of return to the 1st defendant as member representing Koko-Besse/Mayama Federal Constituency of Kebbi State in the primary election conducted on the 27th May 2022 at the Maiyama, Local Government Secretary (sic); having not scored the majority of lawful vote cast by democratically elected delegates at the primary election.

- (viii) A declaration that it is unlawful for the 2nd defendant to recognize and forward the name of any other candidate other than the plaintiff to the 3rd defendant as its candidate for the Koko-Besse/Maiyama Federal Constituency of Kebbi state having emerged as the winner of the primary election.
- (ix) A declaration that the 1st defendant having not scored the highest number of votes in the primary election for the member representing KokoBesse/Maiyama Federal Constituency of Kebbi State, conducted on the 27th May 2022 at the Maiyama Local Government Secretary (sic); cannot lawfully be presented to the 3rd defendant as the 2nd defendant's flagbearer in the (ix) forthcoming general election.
- (x) A declaration that the report of the five man primary election committee and the report of the three mall Primary Election Appeal Committee submitted to the 2nd defendant on 27th and 31st May 2022 is valid, subsisting and cannot be tampered with by the 2nd defendant.
- (xi) A declaration that any primary election to be conducted (or conducted) by the 2nd defendant in respect of the Koko-8essel Maiyama Federal Constituency after the report of the five Man Election Committee and three man election appeal committee submitted on 27th and 31st May 2022 is illegal, null and void.
- (xii) An order directing the 3rd defendant not to accept the name of the 1st defendant as the flag bearer for the member representing Koko-Besse/Maiyama Federal Constituency; having not scored the majority of lawful vote of the democratically elected delegate in the primary election for member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State, conducted 'on the 27th May 2022 at the Maiyama Local Government Secretary (sic).

- (xiii) An order directing the 2nd defendant to issue certificate of return to the claimant having been duly declared as the validly elected candidate of the party at the conclusion of the conduct of the primary election for member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State, conducted on the 27th May 2022 at the Maiyama Local Government Secretary(sic).
- (xiv) An order directing the 2nd defendant to present the name of the claimant to the 3rd defendant as the duly elected candidate of the 2nd defendant to contest in the general election for the Koko-Besse/Maiyama Federal Constituency having scored the highest number of lawful votes of the democratically elected delegates for member representing Constituency of Kebbi State, in the primary election conducted on the 27th May 2022 at the Maiyama Local Government Secretary (sic).
- (xv) An order directing the 3rd defendant to accept, recognize and treat the claimant as the candidate of the 2nd defendant for Koko-Besse/Maiyama Federal constituency for the forthcoming general election.
- (xvi) An order of injunction restraining the 1st defendant from parading himself as the winner of the primary election and the candidate of the 2nd defendant for Koko-Besse/Maiyama Federal Constituency of Kebbi State.
- (xvii) An order directing the 1st defendant to refund the cost filing and prosecution of this suit by the claimant which assessed at Fifty Million Naira (N50,000,000.00) only.
- (xviii) Any other order(s) as the court may deem fit to make.”

Predicated on the letter written by the 2nd respondent’s Kebbi State Chairman on 3rd June, 2022, the primary election of 27th May,2022 was purportedly cancelled and another primary was conducted. The appellant emerged as the winner of the re-conducted primary election with 109 votes and his name was thereafter submitted to INEC.

The appellant and 2nd respondent filed their separate statements of defence and also raised preliminary objections to the jurisdiction of the trial court. After the parties concluded the filing and exchange of pleadings, the matter proceeded to trial wherein the 1st respondent testified as PW4 and called four other witnesses who testified as PW1, PW2, PW3 and PW5. Through his witnesses; the 1st respondent tendered nineteen documents tendered as exhibits Koko A to Koko P. On his part, the appellant called eight witnesses who testified as DW1 - DW8 and through whom 37 exhibits were tendered and admitted in evidence as exhibits Shehu A - Shehu R. Lastly, the 2nd respondent called a lone witness, DW9 who tendered exhibit APC 1. The 3rd respondent chose to maintain its neutrality by not calling evidence, even though it was represented by counsel throughout.

Upon the conclusion of trial, parties filed their final written addresses. At the stage of adoption, the learned trial Judge asked counsel for the parties to file written addresses on whether, pursuant to section 84(14) of the Electoral Act, 2022, the trial court had jurisdiction to entertain the suit. Counsel did as directed and each adopted their final written addresses together with their addresses on the issue raised suo motu by the court. In his judgment, the learned trial Judge held that the court lacked jurisdiction to entertain the 1st respondent's action. It was held that section 84(14) of the Electoral Act only pertains to the holding of primary election, not the issuance of certificate of return. It was also held that the 1st respondent did not participate in the rescheduled election of 7th June, 2022 and could therefore not question same. The court also held that having claimed to have won the primary election of 27th May, 2022, the 1st respondent had no cause of action until when the 2nd respondent submitted the name of another person to INEC, which had not been done. In that sense, it was held that the action was premature.

The trial court nevertheless considered the suit on the merit and held that the 1st respondent failed to prove his case by credible evidence. It was held that the evidence of his witnesses was at variance with his pleadings. On the other hand, it was held that the appellant and the 2nd respondent proved that the election which the appellant won was held in compliance with the Electoral Act and the 2nd respondent's

Guidelines. It was further held that the evidence of DW9 (a member of three-member subcommittee that conducted the primary election won by the appellant) and that of DW5 (a member of the Electoral Committee set up by the NWC) showed indeed that the appellant won the election.

The 1st respondent was utterly dissatisfied by the judgment of the trial court and he appealed to the lower court. His appeal was favourably considered by the court, which found merit therein. It was held that the trial court had jurisdiction to entertain the suit and that the 1st respondent proved his entitlement to the reliefs sought. The appellant was peeved by the lower court's judgment and, has now appealed against same via a notice of appeal anchored on 17 grounds.

At the hearing of the appeal on 11th January, 2023, respective learned counsel identified and adopted their briefs as follows:

- In urging the court to allow the appeal, learned senior counsel for the appellant, Ibrahim Abdullahi, SAN identified and adopted the appellant's brief of argument filed on 8th December, 2022, which was settled by Shamsu A. Daudu, Esq. Learned silk also identified the appellant's reply brief filed on 15th December, 2022, also settled by Shamsu A. Daudu, Esq.
- Learned Senior Advocate, Yusuf Ali for the 1st respondent, adopted the 1st respondent's brief of argument filed on 13th December, 2022 and settled by Hussaini Zakariya, SAN. Learned senior counsel moved the notice of preliminary objection embedded in the 1st respondent's brief and urged that the appeal be struck out or the appeal dismissed.

The 2nd and 3rd respondents did not file briefs of argument.

As indicated above, the 1st respondent filed a notice of preliminary objection challenging the jurisdiction of the court to entertain the appeal. It is settled that once a preliminary objection is raised by the respondent in an appeal, the objection must be considered first before taking further steps to hear the appeal. It is prudent to do so, as the purpose of a preliminary objection is to terminate an appeal

at its infancy. It will amount to nothing but a timewasting exercise to consider the merit of the appeal, only to discover that the preliminary objection had merit and that the court lacked jurisdiction to entertain the appeal. See *Abdullahi v. Loko & Ors* (2022) LPELR - 57578 (SC); (2023) 6 [NWLR \(Pt. 1881\) 445](#); *Backbone Connectivity Network (Nig.) Ltd. & Ors. v. BackboneTech Network Inc & Ors.* (2021) LPELR - 56884 (SC); (2022) 6 [NWLR \(Pt. 1826\) 373](#); *Mainasara v. F.B.N.* (2021) LPELR - 56612(SC); (2022) 6 [NWLR \(Pt. 1827\) 465](#).

It is for this reason that I will commence with a consideration and determination of the 1st respondent's preliminary objection.

Notice of Preliminary Objection

Learned senior counsel for the 1st respondent objected to the jurisdiction of this court to entertain the appeal by challenging

“the locus standi of the appellant before this court having not appealed against the decision of the Court of Appeal on issue 4 in its judgment’ which made this Appeal an academic exercise and this honorable court not competent to grant the appellant’s prayers on its notice of appeal.”

Counsel formulated two issues for the determination of the objection thus:

“(1) Whether the appellant having admitted without any appeal to the Court of Appeal, the holding of the trial court that in the light of the foregoing, it is my humble view that the 2nd respondent, having admitted that the 3rd defendant, witnessed and monitored the primary election conducted on 27th May 2022 cannot be allowed in law to challenge the validity of that election, can appear before this court to challenge the lower court’s affirmation of the primary election held on 27th May 2022.

Whether the appellant; a beneficiary of the illegality of the 2nd respondent can appeal against the 2nd respondent’s illegality of its State Chapter

conducting a primary election that declared the appellant winner on 27th May 2022; when the 2nd respondent has accepted its illegal act by not appealing against same.”

Learned silk argued both issues together. He submitted that the learned trial Judge faulted the 2nd respondent for attempting to impugn the primary election which held on 27th May, 2022 and that the trial court held that the 2nd respondent was precluded from challenging the primary election. He noted that the appellant did not appeal against that decision of the trial court. It was also submitted that the lower court in re-evaluating the evidence on record considered on issue 4 before it and held that going by the guidelines of the 2nd respondent, the State chapter cannot conduct the primary election. He submitted that the court below set aside the primary election wherein the appellant purportedly emerged winner, same having been conducted by the State chapter of the party.

It was submitted that having not appealed against the decision that the primary election that purportedly produced the 1st respondent was conducted by the state chapter of the party and that the state chapter lacked the vires to conduct the primary election, the instant appeal is merely academic. Reliance was placed on the cases of *A.P.C. v. Obaseki* (2022) 2 [NWLR \(Pt. 1814\) 287](#); *Fidelity Bank Plc v. M.C. Ind. Ltd.* (2022) 7 [NWLR \(Pt. 1829\) 358](#); *UAC v. Macfoy* (1962) AC 153; *Olomoda v. Mustapha & Ors* (2019) LPELR- 46438 (SC); (2019) 6 [NWLR \(Pt. 1667\) 36](#); *Re: Ijelu* (1992) LPELR - 1464 (SC); *Reported as In Re: Ijelu* (1992) 9 [NWLR \(Pt. 266\) 414](#); *Opara v. Dowel Schlumberger (Nig.) Ltd. & Anor* (2006) LPELR - 2746 (SC); (2006) 15 [NWLR \(Pt.1002\) 342](#).

Learned senior counsel urged the court to strike out the appeal, citing in support the case of *Saraki v. FRN* (2016) LPLER - 40013(SC); (2016) 3 [NWLR \(Pt. 1500\) 531](#); *Dahiru & Ors v. APC & Ors* (2016) LPELR - 42089 (SC); (2017) 4 [NWLR \(Pt. 1555\) 218](#).

Appellant's Reply to the Notice of Preliminary Objection

Learned counsel submitted that counsel for the 1st respondent quoted the trial court only in part as the court went further to state the 2nd respondent was precluded from challenging the election of 27th May, 2022 only on the ground that the 3rd respondent did not monitor the said primary election. It was further submitted that learned trial Judge further stated in his judgment that his pronouncement was not a definite decision of the court that the primary election was valid.

Learned counsel also submitted that grounds 3 and 6 of the notice of appeal in this appeal challenge the decision of the lower court to the effect that the primary election that purportedly produced the appellant was conducted by the state chapter of the party and that the State chapter lacked the vires to conduct the primary election. Counsel also submitted that the holding of the trial court was that the 2nd respondent, not the appellant, is estopped from challenging the primary election on the ground that INEC did not monitor same; hence there is nothing precluding the appellant from challenging same. Learned counsel finally urged the court to dismiss the objection for being devoid of merit.

Resolution of the Preliminary Objection

The contention of the 1st respondent is that by reason of the appellant's failure to appeal against certain findings made by the two courts below, the instant appeal is rendered academic.

An academic issue is one which would neither confer benefit on, nor injure any of the parties, but merely propound the law. A suitor appeal becomes academic when the questions placed before the court for determination are no longer live issues in the subject matter of the suit. See *Ebebi v. Esemokumor* (2022) 1 [NWLR \(Pt. 1812\) 463](#); *Ebebi v. Ozobo* (2022) 1 [NWLR \(Pt. 1810\) 165](#); *Agbakoba v. I.N.E.C.* (2008) 18 [NWLR \(Pt. 1119\) 489](#). It is trite law that courts do not act in vain. Courts are urged not to dissipate scarce judicial energy on the consideration

of academic, hypothetical or moot issues/points. If no purpose will be served by an action or appeal or any issue raised in it other than its mere academic interest, the court will not entertain it. Put in other words, courts have no jurisdiction to entertain academic issues. See *Ogheneovo & Anor v. Governor of Delta State & Anor* (2022) LPELR - 58062 (SC); (2023) 2 [NWLR \(Pt. 1868\) 275](#); *Uzoho & Ors v. National Council of Privatization & Anor* (2022) LPELR - 57680 (SC); (2022) 15 [NWLR \(Pt. 1852\) 1](#); *Okotere & Ors v. Gwagwa & Ors* (2022) LPELR - 57535 (SC); (2022) 9 [NWLR \(Pt. 1834\) 51](#).

The 1st respondent has contended firstly that the trial court held that the appellant was precluded from challenging the primary election held on 27th May, 2022. It is disheartening that learned senior counsel in contending as he did, deliberately refused to quote the full pronouncement made by the learned trial Judge. The full extract of the dictum of the trial court goes thus:

“In the light of the foregoing, it is my humble view that the 2nd defendant, having admitted that the 3rd defendant witnessed and monitored the primary election conducted on 27th May, 2022 *cannot be allowed in law to challenge the validity of that election on the basis that the primary election was not monitored by the 3rd defendant* as required by section 84(1) and of the Electoral Act, 2022. In other words, the law would not allow the 2nd defendant to approbate and reprobate over the same issue which it earlier admitted.” (Italics supplied by me for emphasis).

The appellant herein is not challenging the emergence of the 1st respondent on the ground that the primary election of 27th May, 2022 was not monitored by INEC. Hence, the contention of the 1st respondent is without basis.

The 1st respondent has also submitted that the appellant failed to appeal against the holding of the lower court that the primary election that purportedly produced the appellant was conducted by the state chapter of the party and that the state chapter lacked the vires to conduct the primary election. Learned Senior

Advocate for the 1st respondent submitted that assuming it is found by this court that the appellant emerged from the said - primary election, he still would not be eligible to be declared as the 2nd respondent's candidate because of the finding that the election was conducted by the state executive committee. Learned appellant's counsel countered that the said holding of the lower court was appealed against. It is well settled that failure to appeal against a specific finding, decision or holding of a lower court implies that the parties are satisfied by that finding or holding and same cannot be tampered with by an appellate court. See *Nwiko v. State* (2022) LPELR -57747 (SC); (2022) 15 [NWLR \(Pt. 1852\) 69](#); *Akere v. Governor, Oyo State* (2012) 50 11 NSCQR 345; (2012) 12 [NWLR \(Pt. 1314\) 240](#); *U.B.A. Plc v. B.T.L. Ind. Ltd.* (2006) 19 [NWLR \(Pt. 1013\) 61](#).

I have perused the grounds of appeal contained in the grounds contained in the notice of appeal by which the appellant triggered the jurisdiction of this court and it is crystal clear that ground six challenges the decision of the lower court that the Kebbi State executive committee of the 2nd respondent lacks the power to conduct the primary election in question and the finding of the lower court that the election that purportedly produced the appellant as the candidate of the 2nd respondent was conducted by the state executive committee of the party. There is no basis whatsoever for this leg of the 1st respondent's preliminary objection.

Furthermore, the appellant did not admit that the State chapter of the party conducted the election that purportedly produced him as the winner. His argument is rather that the three-man subcommittee that conducted the election was appointed by the five-man Electoral Committee, with the result to be ratified by the electoral committee. It was therefore the appellant's case that the primary election that produced him was, in effect, conducted by the electoral committee set up by the NWC. Whether or not this position is correct, *vis-à-vis* the evidence on record, is a matter to be considered in the substantive appeal.

Flowing from the foregoing, the appellant's notice of preliminary objection is baseless and unmeritorious and same is hereby dismissed in its entirety.

I will now proceed to consider the merit of the substantive appeal.

Issues Formulated by Respective Counsel for the Parties

The following issues were formulated for determination by learned counsel for the appellant:

- “1. Was the court below not in error to have held that the trial court had the requisite jurisdiction to entertain the 1st respondent’s case and for no cogent reasons declined same? (Decoded from ground 1 of the grounds of appeal).
2. Was the court below correct in law when it failed to strike out grounds 6, 7, 9, 10 & 11 of the notice of appeal filed by the 1st respondent; which grounds alleged both error of law and misdirection at the same time? (Decoded from ground 2 of the grounds of appeal).
3. Whether from the peculiar nature of the evidence adduced by parties, the court below was correct in law to have relied on the evidence of PW1, PW2, PW3, exhibits Shehu J2, Koko A and Koko C to hold that that there was a primary election conducted by the National Working Committee of the 2nd respondent on the 27th of May 2022 which produced the 1st respondent as the winner of the primary election? (Decoded from ground 4 of the grounds of appeal).
4. Was the court below correct in law when it held that the State Chapter of the 2nd respondent conducted the Primary election that declared the appellant as the winner of the primary election and therefore contrary to Paragraph 18 (d) and of the Guidelines of the 2nd respondent decoded in exhibit Shehu J2? (Decoded from ground 6 of the grounds of appeal).

5. Whether the court below did not misconceive the decision of the trial court when it held that the trial allowed the 2nd respondent to conduct another primary election after the trial court had hitherto found that the 3rd respondent did not monitor the primary election conducted on 27th of May 2022 and therefore the 2nd respondent cannot be allowed to challenge the validity of the election? (Decoded from ground 3 of the grounds of appeal).
6. Whether having resolved issue 5 in favour of the appellant which validated expunging of the evidence of PW4 as well as all the exhibits tendered through him, the Court below was justified in entering judgment in favour of the 1st respondent? (Decoded from ground 7 of the grounds of appeal).
7. Was the court below correct in law to have held that the 1st respondent had proved his claims before the trial court with credible evidence? (Decoded from grounds 5 & 8 of the grounds of appeal).”

On his part, learned silk for the 1st respondent formulated three issues for determination as follows:

- “(1) Whether the learned Justices of the Court of Appeal did not rightly hold that the trial court has jurisdiction to entertain the 1st respondent’s case under section 84 (14) of the Electoral Act, 2022.
- (2) Whether the learned Justices of the Court of Appeal did not rightly rely on the decision in *F.C.M.B. v. Ogbuefi* (2021) 10 NWLR (Pt. 1783) 1 and *Garba v. State* (2022) LPELR 57677 when it dismissed the (2) appellant’s application.
- (3) Whether the learned Justice of the Court of Appeal relying Paragraph 18, 19 and 20 of the 2nd respondent’s guideline did not rightly return the 1st respondent as the winner of the Primary Election conducted by the National Working Committee of the 2nd

respondent on 27th May 2022 as the candidate for Koko-Besse/(3) Maiyama Federal Constituency of Kebbi State.”

The appellant’s issues 1, 2, 3, 4 and 7 and the arguments canvassed thereon are apt and sufficient for the determination of the appeal. On the other hand, I will also consider the 1st respondent’s issues 1, 2 and 3.

Appellant’s Submissions and Arguments

Arguing issue 1, learned counsel submitted that for a complaint of non-compliance with the Electoral Act, the constitution and Guidelines of a political party to come within the compass of Section 84 (14) of the Electoral Act, 2022, such non-compliance must relate to the nomination of a candidate of a political party. He relied on the cases of *Uba v. Moghalu & Ors* (2022) LPELR - 57876 (SC);(2022) [15 NWLR \(Pt. 1853\) 271](#); *Ararume v. Ubah* (2021) 8 [NWLR\(Pt. 1779\) 511](#). It was submitted that considering the reliefs sought for by the 1st respondent together with the averments in paragraphs 23, 27, 34 and 36 of his amended statement of claim, the substance of his case before the trial court bordered on the alleged failure of the 2nd respondent to issue him a certificate of return, having been purportedly declared the winner of the primary election conducted on 27th May, 2022. Relying on the case of *Onyirimba v. Uwajumogu & ORS* (2019) LPELR - 49196 (CA), learned counsel submitted that failure to issue a certificate of return to a person who claims that he was declared the winner of a primary election, cannot ignite the jurisdiction of the court under section 84 (14) of the Electoral Act. It was further submitted that there is no provision in the Electoral Act, the Constitution and Guidelines of the 2nd respondent to the effect that a person who is declared winner of the primary election must be issued a certificate of return.

Counsel submitted that where a person claims to have won the primary election of his party, he cannot have a cause of action recognized under section 84(14) of the Electoral Act until his name is replaced with another person who did

not win the said election. Reliance was placed on *Karshi & Ors v. Gwagwa* (2022) LPELR -57544 (SC); (2022) 9 [NWLR \(Pt. 1834\) 139](#); *Saki v. APC* (2020) 1 [NWLR \(Pt. 1706\) 515](#).

Learned counsel also submitted that there is no paragraph in the 1st respondent's amended statement of claim where he stated that his name was replaced with that of the appellant as at 6th June, 2022 when he instituted his suit at the trial court and that as at the time the suit was instituted, the name of the appellant was yet to be submitted to INEC. It was therefore submitted that the 1st respondent's cause of action was yet to crystallize when the suit

was instituted. Learned counsel submitted that the lower court failed to rely on or distinguish the case of *Saki v. APC* (supra) from the instant case.

Counsel submitted that the jurisdictional issue was raised by the trial court after the evidence had been led in the case and that the entirety of the evidence before the trial court ought to be considered in ascertaining whether the trial court had jurisdiction. Reference was made to *Karshi & Ors v. Gwagwa* (2022) LPELR-57544 (SC); (2022) 9 [NWLR \(Pt. 1834\) 139](#); *A.P.C. v. Lere* (2020) 1 NWLR (Pt. 1705) 254; *Wali v. APC* (2020) 16 [NWLR \(Pt. 1749\) 82](#). He submitted that in paragraphs 22 of the appellant's statement of defence, paragraph 12 of the 1st respondent's reply to the appellant's statement of defence and paragraph 18 of the 2nd respondent's statement of defence, parties agreed that the name of the appellant was forwarded to the 3rd respondent pursuant to the primary election conducted on the 7th June, 2022, which the 1st respondent did not participate. It was therefore submitted that it is only in relation to the primary election conducted on the 7th June, 2022 that complaint may arise, and that the 1st respondent did not participate in the said primary election, hence he is therefore precluded from complaining about same. The case of *Uba v. Moghalu & Ors* (2022) LPELR - 57876 (SC); (2022) 15 [NWLR \(Pt. 1853\) 271](#) was cited in support.

Counsel urged the court to resolve this issue in favour of the appellant.

The submissions of counsel on issue 2 are to the effect that grounds 6, 7, 9, 10 and 11 of the 1st respondent's notice of appeal before the lower court complained of both error of law and misdirection at the same time and were thus incompetent and ought to have been struck out along with issues distilled therefrom. Reliance was placed on Order 7 rule 2(2) of the Court of Appeal Rules as well as the cases of *Ovunwo v. Woko* (2011) 17 [NWLR\(Pt. 1277\) 522](#); *Nsirim v. Nsirim* (1990) 3 [NWLR \(Pt. 138\) 285](#); *Nwadike v. Ibekwe* (1987) 4 [NWLR \(Pt.67\) 718](#); *Jev v. Iyortyom* (2014) 14 [NWLR \(Pt. 1428\) 575](#); *UAC v. Macfoy* (supra).

Counsel urged the court to resolve this issue in favour of the appellant and against the 1st respondent.

On issue 3, counsel submitted that in holding that there was a primary election on 27th May, 2022 which was organized by the National Working Committee (NWC) of the 2nd respondent and which produced the 1st respondent as the winner, the court below did not take into consideration that even on the basis of the evidenced as well as the pleadings of the 1st respondent, it was shown that the said primary election was not conducted by the NWC. Counsel submitted that there was a myriad of contradictions in the evidence of the 1st respondent's witnesses as to who actually conducted the election.

He submitted that evidence which is at variance with or outside of a party's pleadings goes to no issue. Reliance was placed on *Ademeso v. Okoro* (2005) 14 [NWLR \(Pt. 945\) 308](#); *Kyari v. Alkali* (2001) 11 [NWLR \(Pt. 724\) 412](#); *Mbani v. Bosi* (2006) 11 [NWLR \(Pt. 991\) 400](#).

Counsel urged the court to resolve the issue in favour of the appellant.

Arguing issue 4, it was submitted that both the appellant and the 1st respondent agreed that the three-man committee that conducted the primary election was appointed by the five-man electoral committee appointed by the NWC and that the result was to be ratified by the Electoral Committee. It was further submitted that the trial court made a finding to the effect that the five-man election

committee appointed by the NWC cannot possibly operate in all the eight Federal Constituencies in Kebbi State where the primary election had been scheduled to take place and that the acts of the sub-committee on the approval of the election committee were acts of an agent of a disclosed principal.

It was submitted that the trial court in its evaluation of evidence, reasoned that DW5 who was the secretary of the Primary Election Committee, stated that he signed the result sheet contained in exhibit Shehu K relied on by the appellant and denied signing the result sheet contained in exhibit Koko C. Counsel also submitted that DW9 who was a member of the three-member sub-committee confirmed that the appellant won the primary election held on 27th May, 2022. He submitted that paragraph 19 of the Guidelines of the 2nd respondent empowers the Primary Election Committee to appoint a returning officer to supervise areas where they cannot cover. He therefore submitted that it cannot be argued that an election so conducted was not conducted by the NWC.

Counsel's arguments on issue 7 are basically a summary of his submissions on other issues.

1st respondent's Submissions and Arguments

Arguing the 1st respondent's issue 1, counsel submitted that the issue emanated not from the judgment of the lower court, but from the judgment of the trial court. He submitted that although the issue is jurisdictional in nature, since it is not being raised for the first time in this court, it ought not to be allowed as it constitutes an appeal directly from the trial court.

On the merit of the issue, counsel submitted that the locus standi of the 1st respondent is derived from section 285(9) of the Constitution and section 84 (14) of the Electoral Act, which grant him the right as an aspirant to protest against the primary election conducted by his party. Reliance was placed on *A.P.C. v. Lere* (2020)1 [NWLR \(Pt. 1705\) 254](#). It was also submitted that the issues in this case such as the existence of two conflicting results and the failure to issue a certificate

of return to the 1st respondent who purportedly won the primary election are issues that are commonly agitated in pre-election matters. The case of *A.P.C. v. Marafa* (2020) 6 [NWLR \(1721\) 383](#) was cited in support.

On issue 2, it was submitted that contrary to the appellant's contention, the 1st respondent's grounds 6, 7, 9, 10 and 11 before the court below only alleged errors of law and particularized same. He submitted that assuming the grounds in fact alleged errors of law and misdirection at the same time case, the objection ought to be discountenanced as it is based on technicalities. It was further submitted that the lower court was right, based on *F.C.M.B. v. Ogbuefi* (2021) 10 [NWLR \(Pt. 1783\) 1](#), when it dismissed the appellant's application because appeals are argued on issues, not on grounds of appeal. Counsel urged the court to resolve this issue in favour of the 1st respondent.

Arguing issue 3, counsel, submitted that in re-evaluating the evidence on record, the court below considered the provisions of the 2nd respondent's primary election guidelines (exhibit Shehu J2) and the evidence of PW1, PW2, PW3 and exhibits Koko A, exhibit Koko C and compared same with the appellant's evidence in DW5, DW9, and exhibit APC 1 and concluded that on a preponderance of evidence; the 1st respondent is the validly elected winner of the 2nd respondent's primary election conducted on 27th May, 2022.

He submitted that the evidence of PW1 was to the effect that he conducted the primary election and was assisted by members of the three-member subcommittee. Counsel also referred to the evidence of PW2 who testified that exhibit Koko A which shows that the 1st respondent won the election was submitted to the appeal committee.

Learned senior counsel submitted that by the evidence of DW5, a member of the primary election committee and DW9, a member of the three-member subcommittee who testified that the subcommittee was appointed by the State executive via exhibit APC 1 shows that the primary election that produced the

appellant was in violation of the party's guidelines. Reliance was placed on *Akpatason v. Adjoto* (2019) 14 [NWLR \(Pt. 1693\) 501](#).

Counsel finally urged the court to dismiss the appeal.

Reply Brief

Counsel for the appellant submitted that the case of *Akpatason v. Adjoto* (*supra*) relied on by the 1st respondent does not favour his case, but that it is rather helpful to the case of the appellant.

Resolution

As stated earlier, of the seven issues formulated by the learned counsel for the appellant, only issues 1, 2, 3, 4 and 7 are material to the determination of the appeal. In other words, I deem the appellant's issues 5 and 6 immaterial. I will demonstrate the reason for this presently.

Issue 5 queries the decision of the lower court that after the trial court held that the 2nd respondent could not challenge the primary election of 27th May 2022 on the ground of non-monitoring of same by INEC, the trial court ought not to have sanctioned the holding of the primary election of 7th June, 2022. Evidently, the primary election of 7th June is not in issue here, hence it has no bearing on the appeal. What purpose will a decision on whether the trial court's decision played a part in the conduct of the primary election of 7th June serve? Moreover, the statement or dictum of the lower court that issue five seeks to challenge was made obiter and same cannot ground a challenge to the judgment of the court.

Issue 6 raises the question of whether the lower court ought to have allowed the 1st respondent's appeal despite agreeing with the trial court's decision expunging the evidence of PW4 as well as the exhibits tendered through him. Much like issue 5, this is not a relevant point in the appeal. Not once did the lower court rely on the evidence of PW4 in allowing the appeal before it. What is important is whether having regard to the admissible evidence on record, the decision of the

lower court was correct. That will be considered in the course of resolving the appeal.

It ought to be borne in mind that an appellate court is at liberty to adopt the issues formulated by the appellant or those of the respondent, and the court can even formulate its own issues. The principal consideration in formulation or adoption of issues is that the court should adopt and resolve issues that would determine the real and actual grievances of the parties. See *Polaris Bank Ltd v. Forte Oil Plc* (2022) LPELR - 58598 (SC); (2023) 5 [NWLR \(Pt. 1876\) 179](#); *C.B.N. & Ors v. Okojie* (2015) LPELR - 24740(SC); (2015) 14 [NWLR \(Pt. 1479\) 231](#); *Daniel v. I.N.E.C. & Ors* (2015) LPELR - 24566 (SC); (2015) 9 [NWLR \(Pt. 1463\) 113](#).

Furthermore, this court being the final court in the adjudicatory ladder is best placed to decide which issues are relevant to the determination of an appeal. Trial courts and intermediate courts are always admonished to consider and determine all the issues submitted for their determination. Against this background, I adopt and will determine the appeal on the appellant's issues 1, 2, 3, 4, and 7, as earlier indicated.

Issue 1

Was the court below not in error to have held that the trial court had the requisite jurisdiction to entertain the 1st respondent's case and for no cogent reasons declined same?

The argument of the appellant is that the case of the suit filed by the 1st respondent is not actionable as a pre-election matter, particularly under section 84 (14) of the Electoral Act, 2022. The definition of a pre-election matter is contained in Section 285(14) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) thus:

“For the purpose of this section, “pre-election matter” means any suit by –

- (a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions(a)

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

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

See *Danladi v. Udi* (2022) 9 [NWLR \(Pt. 1834\) 185](#); *A.P.C. v. Moses* (2021) 14 [NWLR \(Pt. 1796\) 278](#); *Aguma v. A.P.C.* (2021) 14 [NWLR \(Pt. 1796\) 351](#).

The provisions of the above-reproduced subsection is the yardstick for determining whether a suit qualifies as a pre-election matter. If the complaint(s) of a plaintiff falls under the umbrella the provisions, then it is a pre-election matter.

In the instant case, the appellant argued that the trial court was right to hold that the 1st respondent’s suit does not qualify as a pre-election matter because his complaints revolve around the failure of the 2nd respondent to issue him a certificate

of return. It appears to me that the learned trial Judge misunderstood the case put forward by the 1st respondent. The trial court chose to focus on paragraphs 23, 25 and other paragraphs of the 1st respondent's amended statement of claim, which complains about the non-issuance of a certificate of return to the 1st respondent, in reaching the conclusion that it lacked jurisdiction to entertain the action. It is trite that pleadings are not to be considered in fragments. In order to get the whole idea of a party's case, his pleadings must be considered holistically. See: *Ostankino Shipping Co. Ltd. v. The Owners of the MT Bata 1 & Ors* (2021) LPELR - 58308 (SC); (2022) 3 [NWLR \(Pt. 1817\) 367](#); *Adama & Ors v. Kogi State House of Assembly & Ors* (2019)LPELR - 47424 (SC); (2019) 16 [NWLR \(Pt. 1699\) 501](#); *Azubuoguv. Oranezi & Ors* (2017) LPELR - 42669 (SC); (2018) 5 [NWLR \(Pt. 1613\) 447](#).

In construing the 1st respondent's amended statement of claim, the court ignored other parts of the amended statement of claim that tell the full story of the 1st respondent's case. The 1st respondent averred thus in his amended statement of claim:

- “24. Indistinctly, the 1st defendant subsequently self-declared himself as the winner of the primary election conducted and also stormed the 2nd defendant's office, prevented them from issuing a certificate of return and also insist he must be declared as the winner.
35. After submitting the report of the five man Election Committee and the three man Appeal Committee; all the listed winners were accepted by the 2nd defendant but the 1st defendant used his office and position to lured (sic) the 2nd defendant not to accept the plaintiff as the winner of the primary election.
36. This made the 2nd defendant to refuse to issue certificate of return as the winner to the plaintiff as the winner out of eight other winners.

37. The 1st defendant also used his influence as a sitting member of the House of Representatives to lure the 2nd defendant to be preparing together with its State Chapter in Kebbi State to conduct a kangaroo election wherein the 1st defendant will be declared winner.
38. The 1st and 2nd defendants also lured some members to subvert the majority decision of the democratically elected delegates from the Koko-Besse/Maiyama Federal Constituency of Kebbi State.
39. The 2nd defendant has no any basis of accepting seven names of winners from a report from the conduct of primary election submitted to it by its appointed (7) five man Primary Election Committee and three man Primary Election appeal report and refused to accept the eight on the report just because it wants (3) to please some individuals.
40. The 2nd defendant has no power to accept part of a whole report and refused to accept a part thereof.
41. The five man primary election report submitted to the 2nd defendant on the 27th May, 2022 and the appeal report submitted on 31st May, 2022 are final and cannot be tampered with.”

From the foregoing, it is apparent that the complaint of the 1st respondent goes beyond the non-issuance of certificate of return. He complained that the appellant connived with some delegates and other members of the 2nd respondent as well as the Kebbi State Executive of the 2nd respondent so as not to recognize him as the winner of the primary election. He also complained that there was a plan to hold a kangaroo primary election to produce the appellant as the winner.

As rightly submitted by learned counsel for the appellant, the jurisdictional issue under consideration was raised by the learned trial Judge after evidence had been led by the parties, hence all the materials available before the court are to be considered in determining whether the trial court had jurisdiction to consider the

action. In the course of trial, exhibit Shehu P, a letter written by the Kebbi State Chairman of the 2nd respondent which declared the primary election of 27th May as inconclusive, was tendered in evidence, which showed that indeed there was a plan to hold an other election as alleged by the 1st respondent and that he was not accepted as the winner of the primary election.

Furthermore, the parties laid, conflicting claims to different primaries held on 27th May, 2022. The 1st respondent claimed that the primary which he won was conducted by the five-man Electoral Committee appointed by the NWC of the 2nd respondent with the assistance of a three-man subcommittee, consisting of Shehu YabaKoko, Alh. Maman Mai Kwano and Alh. Abdullahi Andarai, appointed by the Primary Election Committee. He claimed that the primary election relied on by the appellant was conducted by the Kebbi State Executive of the party. The appellant and the 2nd respondent on the other hand claimed that the primary election that produced the appellant as the winner was conducted by a three-man subcommittee made up of Babangida Isah Fada, Alh. Zaki Yauri and Alh. Atiku Zauro. Clearly, they laid claim to different primary elections.

In a situation where parties lay conflicting claims to primary elections, it is the duty of the court to determine which of the elections is the authentic primary election. In *Azubuogu v. Oranezi* (2018) 5 [NWLR \(Pt. 1613\) 447](#) at 462, paras. A - F, this court, per M.D. Muhammad, JSC held thus:

“Granting without conceding that paragraph 31 of the statement of claim is an actual reference to three primaries, one must agree with learned 1st respondent’s counsel that, unlike the trial court, the lower court in the discharge of its responsibility rightly insists that 1st respondent action is still justiciable. In *Ugwu v. P.D.P.(supra)* this court per Aka’ahs, JSC at page 478 of the law report has enthused as follows:-“

“I am of the considered view that the trial court will be abdicating its responsibility if it declares that the suit is not

justiciable. It has a duty to say which of the two primaries is the authentic one. This is the reason while section 87(4)(i),4(c), (i), and has been put in place and to avoid arbitrariness by some officials of the political party who may want to impose their preferred candidates who probably did not take part in primaries because of the conflicting claims by the parties. It is only the court that could resolve the issue. This is the dimension which the decision in *C.P.C. v. Ombugadu (supra)* introduced.”

One is unable, in the light of the facts of this matter and the applicable law, therefore, to agree with learned appellant counsel’s submission that the trial court’s manifestly perverse decision, properly adjudged so and set aside by the lower court, be restored.

The 1st respondent, having participated in the 2nd respondent’s primary election is the aspirant the Electoral Act in section 87(4) and provides a platform for to seek the reliefs he circumscribes in his claim.”

Similarly, the 1st respondent participated as an aspirant in the 2nd respondent’s primary election which was conducted on 27th May,2022 and his complaints border on the violation of the Electoral Act and the 2nd respondent’s Guidelines, hence his claims fall squarely within section 84(14) of the Electoral Act and the trial court had jurisdiction to entertain the suit. See *Anyakorah v. P.D.P. & Ors* (2022) LPELR - 56876 (SC); (2022) 12 [NWLR \(Pt. 1843\)1](#); *Ukachukwu v. P.D.P.* (2014) 17 [NWLR \(Pt. 1435\) 134](#); *P.D.P. v. Sylva* (2012) 13 [NWLR \(Pt. 1316\) 85](#). Had the learned trial Judge considered the complaints of the appellant holistically, he would not have reached the perverse conclusion that the trial court lacked jurisdiction to entertain the suit. In the light of the foregoing, the lower court rightly set aside the decision of the trial court pertaining to the trial court’s

jurisdiction. Issue 1 is resolved in favour of the 1st respondent and against the appellant.

Issue 2

Was the court below correct in law when it failed to strike out grounds 6, 7, 9, 10 & 11 of the notice of appeal filed by the 1st respondent; which grounds alleged both error of law and misdirection at the same time?

The grouse of the appellant under this issue is that grounds 6, 7, 9, 10 & 11 contained in the notice of appeal by which the 1st respondent invoked the trial court's jurisdiction were incompetent because they alleged both error of law and misdirection at the same time. I have gone through the vexed grounds of appeal and they clearly alleged both error of law and misdirection on the part of the trial court.

The law is that a ground of appeal that alleges both error of law and misdirection is not *ipso facto* incompetent. What is important is to consider whether the complaint of the appellant is distillable therefrom. If the grouse of the appellant can be easily deduced from the ground, the consideration of whether it alleges both error of law and misdirection of facts is rendered immaterial. As long as the respondent is not misled by the ground, it becomes irrelevant whether the grounds allege both error of law and misdirection of facts. See *Aigbobahi & Ors. v. Aifuwa & Ors* (2006) LPELR - 267(SC); (2006) 6 [NWLR \(Pt. 976\) 270](#); *Garuba v. K.I.C Ltd & Ors* (2005) LPELR - 1310 (SC); (2005) 5 [NWLR \(Pt. 917\) 160](#); *Hambe & Anor v. Hueze & Ors* (2001) LPELR - 1350 (SC); (2001) 4 [NWLR \(Pt. 703\) 372](#). In the instant appeal, the appellant has not complained that the contentious grounds misled him. Hence, there was no basis for the lower court or this court to strike out those grounds or the Issues distilled from them.

The objection is one which borders on technicality which is dead and buried, never to be resurrected again. The courts now aim to always do substantial justice and every obstruction to achievement of that aim must be demolished in order that the duty of the court to the public will be achieved. Substantial justice will not be sacrificed on the altar of technicality when the appellant clearly had notice of the triable issues raised in the contentious grounds.

In the circumstance, issue 2 is also resolved in favour of the 1st respondent.

Issues 3, 4 and 7

3. Whether from the peculiar nature of the evidence adduced by parties, the court below was correct in law to have relied on the evidence of PW1, PW2, PW3, exhibits Shehu J2, Koko A and Koko C to hold that that there was a primary election conducted by the National Working Committee of the 2nd respondent on the 27th of May 2022 which produced the 1st respondent as the winner of the primary election?
4. Was the court below correct in law when it held that the State Chapter of the 2nd respondent conducted the primary election that declared the appellant as the winner of the primary election and therefore contrary to Paragraph 18 (d) and of the Guidelines of the 2nd respondent decoded in exhibit Shehu J2?
7. Was the court below correct in law to have held that the 1st respondent had proved his claims before the trial court with credible evidence?

I will consider issues 3, 4 and 7 together as they all centre on the merit of the case, the evaluation of evidence by the trial court and the re-evaluation of same by the lower court.

It is a well-known principle that evaluation of evidence and ascription of probative value thereto are the duties of the trial court who had the privilege and advantage of seeing the witnesses and observing their countenance. Where the question of evaluation has to do with credibility of witnesses, it is the trial court that can properly perform that role. Appellate courts can do very little as they only have the printed record of appeal to work with. However, where the question has to do with improper evaluation or non-evaluation of evidence on record or evaluation of documentary evidence, an appellate court is in as good a position as the trial court to evaluate evidence. Overall, the duty to evaluate evidence lies squarely with the trial court. Where the trial court has properly evaluated evidence on record, an appellate court has no business with re-evaluating evidence. It is only where the trial court has failed to perform its duty to evaluate evidence or where it is improperly done so that an appellate court can step in to re-evaluate evidence. See *Bello v. F.R.N.* (2019) 2 [NWLR \(Pt. 1656\) 193](#); *Ukanacho v. A.-G., Imo State* (2018) 14 [NWLR \(Pt. 1638\) 106](#); *Busari v. State* (2015) 5 [NWLR \(Pt. 1452\) 343](#).

In the case on appeal, the 1st respondent as plaintiff called five witnesses, the appellant called seven witnesses, the 2nd respondent called a single witness, while the 3rd respondent declined to call any witness. Several documentary evidence were tendered through the witnesses called by the parties, including Exhibit Shehu J2, the 2nd respondent's Guidelines for the Conduct of Primary Elections.

The 1st respondent by his suit complained of non-compliance with the 2nd respondent's Guidelines in the conduct of the primary from which the appellant purportedly emerged as its candidate for the position of

member representing Koko-Besse/Maiyama Federal Constituency of Kebbi State in the House of Representatives. Guidelines and constitutions of political parties are not made for the sake of it. They are meant to guide the affairs of the parties and their members. In particular, Guidelines for the conduct of primary elections are to be complied with by political parties when they hold primaries to select their candidates for elective positions. In *A.P.C.v. Marafa* (2020) 6 [NWLR \(Pt. 1721\) 383](#) at 434 - 435, paras. F - B, the rule was emphasized thus:

“This court has held in several cases that when it comes to issues relating to the selection and nomination of candidates for an election, political parties must not act arbitrarily but within the confines of their constitution and electoral guidelines and in accordance with the provisions of the Electoral Act. Political parties must obey their constitution and electoral guidelines. See *Ayogu Eze v. P.D.P. & Ors* (2018) LPELR - 44902; (2019) 1 [NWLR \(Pt. 1652\) 1](#); *Senator Abubakar Saddiq Yar’Adua & ors v. Senator Abdu Umar Yandoma & Ors* (2015) 4 [NWLR \(Pt. 1448\) 123](#), pages 182-183; *Emeka v. Okadigbo* (2012) 18 [NWLR \(Pt. 1331\) 55](#).

Where a political, party fails to comply with the provisions of its constitution and electoral guidelines, an aggrieved candidate who contested in that primaries is empowered to ventilate his grievance before ...

“Paragraph 18 (d) and of the 2nd respondent’s Guidelines provide as follows:

“(d) There shall be a 7-Member for State House of Assembly Election Committee, 5-member for Senate Election Committee and 5-Member for House of Representatives Election Committee for each State of the Federation and, FCT. They will be recruited from outside of their States for

their assignment and shall comprise of a Chairman, Secretary and 3 other members. They shall be responsible for the overall conduct of the exercise in the State and the FCT.

- (e) The memberships of the various Electoral Committees shall be as constituted by the National Working Committee (on behalf of NEC).”

Paragraph 21 of the Guidelines provides as follows:

“There shall be Polling Officers appointed by the Election Committee for each election that shall assist the Returning Officer in the conduct of the exercise.”

There are eight Federal Constituencies in Kebbi State and I agree with the learned trial Judge that it is impossible for the members of a five-man committee to cover all eight at once. It is in recognition of the impossibility that the Guidelines made provisions and Polling Officers to assist the Electoral Committee. It should be noted that the Guidelines only make provisions for the appointment of officers to assist the Electoral Committee.

PW1, a member of the Electoral Committee appointed by the NWC of the 2nd respondent testified that the election was won by the 1st respondent and that he tendered exhibit Koko A, the report of the Primary Election Committee. The result attached to exhibit Koko A shows that the 1st respondent won the election by 85 votes to the appellant’s 30 votes. The witness testified that he conducted the election, but was assisted by a three-member subcommittee.

PW2 was the Secretary of the three-man appeal committee appointed by the NWC of the 2nd respondent to consider appeal in respect of the primary election conducted on 27th May, 2022, in line with the party’s Guidelines. He stated that after the report of the Primary Election Committee was submitted to the Appeal Committee, the committee sat from 28th May to 31st May, 2022, but they received no complaint from anyone. The witness tendered exhibit Koko C, the report of the Appeal Committee. It is worth pointing out here that by virtue of Paragraph 20 (c) of the 2nd respondent’s guidelines, an aspirant may seek a review of the decision of the Primary Election Committee at the Election Appeal

Committee and the final decision on all appeals lies with the NWC on behalf of the NEC of the party.

In my view, these pieces of evidence sufficiently established the case of the 1st respondent at the trial court as they established that the election from which the 1st respondent emerged as the candidate of the 2nd respondent was conducted in line with the party's Guidelines. However, the appellant and 2nd respondents as 1st and 2nd defendants respectively, called evidence to rebut the case of the 1st respondent. Notably, the appellant called DW5, the Secretary of the Primary Election Committee appointed by the NWC and the 2nd respondent called DW9, a member of the three-member subcommittee that conducted the primary election purportedly won by the appellant.

DW5 gave evidence to the effect that the primary election which produced the appellant as the winner was conducted by DW9 and that the primary election so conducted was the one adopted by him and that the result of the said primary election was the basis of the report of the primary election which he tendered in evidence as exhibit Shehu K. On his part, DW9 testified that he was appointed by the Kebbi State Executive Committee of the 2nd respondent and that the appellant emerged as the winner of the primary election conducted by him. In other words, the election being brandished by the appellant as entitling him to be the candidate of the 2nd respondent was that which the Kebbi State Chapter of the 2nd respondent appointed DW9 and other members of his sub-committee to conduct. DW9 further testified that he submitted the result of the primary election conducted by him to DW5.

The APC Guidelines for the Nomination of Candidates for the 2019 General Election, with similar provisions to its Guidelines for the Nomination of Candidates for the 2023 General Election were considered in the case of *Akpatason v. Adjoto* (2019) 14 [NWLR \(Pt.1693\) 501](#) wherein the court made it clear thus:

“Paragraph 20(d) of the 2nd respondent's Guidelines has restricted the power to conduct primary elections to the Electoral Committee constituted by the National Working Committee only, and *Hon. Sufiyanu Igbafe* not being a

member of such committee was just a meddlesome interloper in the conduct of 2nd respondent's primary election in Akoko-Edo Federal Constituency."

DW9 by his own admission was not a member of the Electoral Committee set up by the NWC. He therefore had no business conducting the primary election. His evidence effectively and conclusively destroyed and demolished any claim by the appellant that he was the lawfully elected candidate of the 2nd respondent. It was also held in *Akpatason v. Adjoto (supra)*, relying on the decision in *Emenike v. P.D.P.* (2012) 12 [NWLR \(Pt. 1315\) 556](#), that the State Chapter of a political party cannot conduct a primary election and any primary so conducted is illegal. The result of the primary election conducted by the subcommittee set up by the Kebbi State Executive of the party was the foundation for exhibit Shehu K. The result of an illegal primary election cannot produce a candidate. Ex nihilo nihil fit - from nothing comes nothing; you cannot base the emergence of a candidate on an illegally conducted primary, both will collapse.

As stated earlier, the NWC has the final say on appeals arising from primary elections. It has not been shown that any appeal was submitted to the Appeal Committee against the victory of the 1st respondent, neither has it been shown that the NWC of the 2nd respondent reconsidered a decision of the Election Appeal Committee. In the circumstance, there is no basis for the 2nd respondent, to recognize any other candidate apart from the 1st respondent who won the primary election conducted by the Primary Election Committee set up by the NWC and which election was not shown to have been validly set aside. Similarly, there is no basis for the conduct of any subsequent primary election and any such subsequent election lacks legitimacy.

The Guidelines of the 2nd respondent having vested the power to appoint Electoral Committee on the NWC of the party, it was ultra vires of the Kebbi State Chapter of the party to appoint a committee, subcommittee or a body with any other appellation to conduct the primary election that purportedly led to the emergence of the appellant as the party's candidate for the position of member of the House of Representatives representing Koko-Besse/Maiyama Federal Constituency of Kebbi State. The primary election having been conducted in blatant violation of the 2nd respondent's Guidelines is null and void. See *Uba*

v. Moghalu & Ors (2022) LPELR - 57876 (SC); (2022) 15 [NWLR \(Pt. 1853\) 271](#); *A.P.C. v. Marafa* (*supra*); *Aghedo v. Adenomo* (2018) 13 [NWLR \(Pt. 1636\) 264](#).

Flowing from the foregoing, there is no gainsaying that the lower court was right to have re-evaluated the evidence on record as the learned trial Judge failed to properly evaluate same. The lower court was also on a *terra firma* in setting aside the judgment of the lower court which dismissed the 1st respondent's suit. Without further ado, I resolve the appellant's issues 3, 4 and 7 in favour of the 1st respondent.

In conclusion, I hold that the appeal lacks merit and it fails. Same is hereby dismissed. The judgment of the Court of Appeal, Sokoto Division delivered on 23rd November, 2022 in appeal No. CA/S/162/2022 is hereby affirmed. Parties shall bear the irrespective costs. This judgment also binds SC/CV/1494/2022, a sister appeal to the instant appeal. That appeal is equally dismissed.

KEKERE-EKUN, J.S.C.: I have had a preview of the judgment of my learned brother, Adamu Jauro, JSC just delivered. His Lordship has meticulously considered and very ably resolved all the issues in contention in the appeal. I adopt the reasoning and conclusion as mine, having found no merit in the appeal. It is hereby dismissed. The judgment of the lower court delivered on 23rd November, 2022 in Appeal No. CA/S/162/202 is affirmed.

The parties shall bear their respective costs.

This judgment is binding on Appeal No. SC/CV/1494/2022, which is also dismissed.

ABBA AJI, J.S.C.: The appellant and the 1st respondent, both being members of the 2nd respondent (APC) contested for the primary election of the 2nd respondent conducted on 27/5/2022. However, both claimed to have won the primary election; the appellant claimed to have won with 115 votes, the 1st respondent claimed to have scored 85 votes, alleging that the appellant conducted a parallel primary election and declared himself winner. On 3/6/2022, the APC Chairman of Kebbi State wrote to the Chairman of the 2nd respondent declaring the said primary election inconclusive. When another primary election was scheduled to 7/6/2022, the appellant emerged winner with 109 votes and his name was

subsequently submitted to the 3rd respondent (INEC). As a result, the 1st respondent vide a writ of summons instituted this matter in court. He lost at the trial court and when the appellant appealed, he succeeded at the lower court, hence this appeal by the appellant.

My learned brother, Adamu Jauro, JSC, who wrote the lead judgment dismissed the 1st respondent's preliminary objection and considered the appeal on its merit, dismissing same. I in the same light concur with his reasoning and conclusion in this appeal that the judgment of the lower court be affirmed. The appeal is dismissed.

This judgment also binds SC/CV/1494/2022 as agreed by the parties. Appeal SC/CV/1494/2022 is hereby dismissed.

GARBA, J.S.C.: I have had the benefit of reading a draft of the lead judgment delivered by my learned brother, Adamu Jauro, JSC in this appeal and completely agree that the appeal is bereft of merit.

I would want to emphasize that after the conduct of political party primaries by a committee of the National Working Committee in line with Electoral Act and party guidelines for the conduct of primary elections where an aspirant emerges the winner and was so declared, the party cannot, for any reason or under any pretense, nullify such primaries for the purpose of ordering fresh or another primary, subsequently. The political party is bound by the result of such primaries conducted in accordance with the Electoral Act and its own constitution and Guidelines and so under a legal duty to comply with the provisions to forward the name of the aspirant declared the winner, to the INEC as the candidate of the party for the election in question. In this appeal, after the conduct of the primary election of 27th May, 2022 at which the 1st respondent duly emerged and was declared the winner having scored the highest number of votes cast, the provisions of section 84(5)(c)(ii) of the Electoral Act, imposes the duty on the 2nd respondent to forward his name to the 3rd respondent as its candidate for the election in question. The provisions are in the following terms:-

“84(5)(c)(ii) The aspirant with the highest number of votes cast at the end of voting shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the Commission as the candidate of the party.” (Italics provided).

The 2nd respondent, by the above provisions, has no discretion, howsoever, to tamper with the outcome of the primary election for the sole purpose of changing the result or outcome of the primary election in favour of any other aspirant or person’s who did not participate in the said primary election. Once primary election was conducted in compliance with the Electoral Act and party Guidelines and a winner emerged and was duly declared the winner, it would no longer be within the province of the internal affairs of the party to interfere with the outcome or result of the primary election and cannot purport to cancel the concluded primary election or the result duly declared by the committee that conducted the said primary election. The conduct of the said primary election and outcome or result declared can only be validly challenged in court as provided for in section 84 of the Electoral Act, 2022, by an aspirant who participated in the primary election.

No provision of the 2nd respondent’s constitution and/or Guidelines for party primaries is shown to exist allowing, permitting or granting the 2nd respondent the unbridled power to cancel the primary election conducted in compliance with the law or the result duly declared for the said election. Although, the political party has the right to choose and select the candidates it would sponsor for elections, the process of selection and nomination of such candidates must be in strict compliance with the Electoral Act and Guidelines enacted by the party to regulate and govern it.

The process of the selection and nomination of candidates is not completely left at the whims and caprices of the political party, but specifically provided for in section 84 - of the Electoral Act as well as the Guidelines for party primaries provided by the political parties.

These provisions must be complied with for the selection/nomination of candidates to be valid in law under the Electoral Act as the Act, in section 84(13); has provided the penalty for breach or non-compliance by a political party in the process.

This court has consistently stated and restated the law that political parties are bound, I should say, strictly, by the provisions of the Electoral Act, their constitution and Guidelines in the conduct of party primaries for the purpose of selecting candidates to be nominated as candidates by the parties for elections. See the decisions in *Yar'adua v. Yandoma* (2015) 14 [NWLR \(Pt. 1448\)123](#), *Emeka v. Okadigbo* (2012) 18 [NWLR \(Pt. 1331\) 55](#), *P.D.P.v. Oranezi* (2018) 7 [NWLR \(Pt. 1618\) 260](#), *A.P.C. v. Lere* (2000) 1 [NWLR \(Pt. 1705\) 254](#), *Musa v. Umar* (2000) 11 [NWLR \(Pt. 1735\) 231](#); *Jegede v. INEC* (2021) 14 [NWLR \(Pt. 1797\) 409](#), *Aguma v. A.P.C.* (2021) 14 [NWLR \(Pt. 1796\) 351](#), *Uba v. Moghalu* (2022)15 [NWLR \(Pt. 1853\) 271](#) at 311-312, *A.P.C. v. Marafa* (2020) 6 [NWLR \(Pt. 1721\) 383](#). political parties must learn to play by the Rules of the game of constitutional democracy as prescribed in the Electoral Act, their constitution and Guidelines specifically enacted by them to regulate and govern primary elections and the nomination of candidates for elections in the Country.

The courts, in the discharge of their constitutional role as“Impartial Referees” assisted by “V.A.R.”, are there to ensure that the game is played by the Rules by all stakeholders in our practice of democracy.

I join the lead judgment in dismissing the appeal for lacking in merit.

SAULAWA, J.S.C.: Having read, before now, the judgment just delivered by my learned brother, the Hon. Justice Adamu Jauro, JSC, I cannot but concur with the reasoning reached therein, to the conclusive effect that the instant appeal grossly lacks merits, thus ought to be dismissed.

Hence, I too hereby dismiss the appeal for being devoid of merits.

No order as to costs:

I abide by the consequential order, to the effect that the instant judgment shall bind the sister appeal No. SC/CV/1494/2022 which is equally dismissed.

Appeal dismissed