ENGR. M US TAP HA YUNUSA MAIHAJA

V.

1. ALHAJI IBRAHIM GAIDAM

2. ALL PROGRESSIVE CONGRESS (APC)

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

SUPREME COURT OF NIGERIA

SC.7 58/2016

WALTER SAMUEL NKANU ONNOGHEN, C.J.N.
(Presided)
MUSA DATT1.IO MUHAMMAD. J.S.C.
KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J .S .C
ELEMBI EKO, J.S.C.
SIDI DAUDA BAGE, J.S.C**.** *(Read the Leading Judgment)*

FRIDAY, 2ND JUNE 2010

ACTION - Locus standi - Plaintiff who did not participate in party's primary election - Whether can sue under Section 87(9) of the Electoral Act, 2010 (as amended) to complaint about its outcome.

ACTION - Locus standi - Who can sue to challenge conduct of party's primary election.

ACTION - Right of action - Allegation that a candidate gave false information to electoral body - Right to sue in respect of.

CONSTITUTIONAL LAW - Governor of a state - 'hold office of Governor' in section 191(1) of the 1999 constitution (as amended) - meaning of.

CONSTITUTIONAL LAW - governor of a state - office of - holding' in section 191(1) of the 1999 constitution (as amended) - meaning of.

CONSTITUTIONAL LAW - governor of a state - office of deputy governor - when can hold office as governor of a state.

CONSTITUTIONAL LAW - governor of a state - qualification therefor - disqualifying factors.

CONSTITUTIONAL LAW - governor of a slate - where deputy governor holds office as governor under section 191(1) 1999 constitution - implication of - whether subject to section 182(1)(b) 1999 constitution as amended.

CONSTITUTIONAL LAW - office of governor of a state - "hold" in section 191(1) of the 1999 constitution (as amended) - meaning of.

CONSTITUTIONAL LAW - provisions of the constitution - interpretation of - principles governing.

CRIME - criminal allegation - where made in civil suit - standard of proof of.

CRIMINAL LAW AND PROCEDURE - forgery - allegation of presentation of forged certificate to independent national electoral commission - how proved.

CRIMINAL LAW AND PROCEDURE - offences - forgery and false declaration - how proved.

CRIMINAL LAW AND PROCEDURE-proof - criminal allegation in civil suit - standard of proof of.

DOCUMENT - forgery - allegation of - how proved - where made in civil suit -standard of proof of.

DOCUMENT - testimonial - meaning and purpose of.

ELECTION - "false information" for purpose of election Section 31(5), electoral act, 2010 - what it must relate to.

ELECTION - aspirant - meaning of.

ELECTION - candidate for an election - discrepancy in age thereof - when can disqualify him - when it cannot.

ELECTION - candidate for election - candidate who falsifies his age - what to prove to disqualify him.

ELECTION - candidate for election - documents required to submit to electoral commission.

ELECTION - election to the office of governor of a state - election thereto - qualification for.

ELECTION - primary election - conduct of - right to challenge condition precedent thereto.

ELECTION - primary election - conduct of - who can challenge.

EVIDENCE - proof - criminal allegation in civil suit - standard of proof of.

EVIDENCE - proof - allegation - failure to prove - lmplication and effect.

EVIDENCE - proof- allegation of forgery and false declaration how proved.

EVIDENCE - proof - burden of proof of assertion - on whom lies.

EVIDENCE - Proof - Falsification of age on part of candidate for election - What to prove to disqualify him.

EVIDENCE - Proof - Forgery - Allegation of presentation of forged certificate to Independent National Electoral Commission -How proved.

EVIDENCE - Proof - Onus of proof of an assertion - On whom lies.

LOCUS STANDI - Primary election of a political party - Conduct of - Who can challenge.

POLITICAL PARTY - Primary election of a political party - Conduct of - Who can challenge or complain of.

PRINCIPLES OF INTERPRETATION - Constitutional provisions - Interpretation of - Principles governing.

WORDS AND PHRASES – 'Holding' in Section 191(1) of the 1999 Constitution (as amended) - Meaning of.

WORDS AND PHRASES - "Hold office of Governor" in Section 191(1) of the 1999 Constitution (as amended) - Meaning of.

WORDS AND PHRASES - Aspirant for election - Meaning of.

WORDS AND PHRASES - Testimonial - Meaning and purpose of.

Issues:

1. Whether the Court of Appeal was right in holding that the appellant was not an aspirant in the 2nd respondent's primaries held on 4th December 2034 for the purpose of invoking the provision of Section 87(9) of the Electoral Act (As amended).
2. Whether the Court of Appeal was right in holding that the appellant did not establish the allegations of forgery of documents and false declaration of age made against the 1st respondent.
3. Whether the court of appeal was right in holding that the 1st respondent was not elected into office as governor of Yobe State more than twice in two previous elections prior to the governorship election in April 2015.

Facts:

The appellant instituted an action via an originating summons, against the respondents at the federal high court sitting in Abuja in suit no. FHC/ABJ/CS/220/2015.

By the action, the appellant challenged the nomination of this respondent as the flag bearer of the 2nd respondent in the 2015 governorship election of Yobe State. The grouse of the appellant was that the 1st respondent made false information in his form Cf001 and affidavit of personal particulars by annexing

a primary school leaving testimonial dated 22nd day of December 1969 issued by Yunusari Local Education Authority (LEA) of Borno State of Nigeria when Borno State was not in existence as at December 1969; that therefore the testimonial was a forged document; that the 1st respondent also furnished some other documents along will form CF001 and which documents bore some other dates of bull different from 15th September, 1956 contained in form CF001 am the birth certificate issued by the National Population Commission to the 1st respondent. The appellant further contended that the 1st respondent was not eligible to contest the governorship election of Yobe State held in April 2015 on the ground that he had twice occupied the office of the governor of Yobe State. Finally, th appellant contended that being the only other aspirant for the office of governor of Yobe State in respect of the April 2015 governorship election under the platform of the 2nd respondent, he was entitled to take the place of the 1st respondent.

On their part, the respondents contended that the appellant did not submit his expression of interest and nomination forms a required by the guidelines of the 2nd respondent and because that he did not participate in the party primaries on 30th November 2014 where the 1st respondent emerged as the party's flag bearer the governorship election: that prior to the governorship election of April 2015. The 1st respondent had only completed the term of the late former Governor of the State and had only been elected as the Governor of the State once and that was in the election of April 2011. The 1st and 2nd respondents also raised a preliminary objection to the hearing of the originating summons. The trial court heard both the originating summons and the preliminary objection together.

In its judgment delivered on 16th November 2016, the trial court upheld the preliminary objection of the 1st and 2nd respondents and struck out the originating summons for want of jurisdiction, Aggrieved, the appellant appealed to the Court of

Appeal. The court of Appeal partially resolved the first issue in favour of the appellant on the question of the jurisdiction of the Federal High court to entertain the originating summons. It, however, resolved he main issues two and three in favour of the 1st and 2nd respondents and dismissed the appellant's appeal.

Still aggrieved, the appellant appealed to the Supreme Court.

HELD *(Unanimously dismissing the appeal):*

1. *On Right to challenge conduct of primary election –*

By **virtue of Section 87(9) of the Electoral Act, 2010 (as amended), notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or of the Federal Capital Territory for redress.** *(Pp. 478, paras. B-D; 480, para. G; 484, paras. B-C: 500, paras.C-E)*

2. *On Right to challenge false information submitted to electoral body -*

By virtue of Section 31 (5) and (6) of the Electoral Act, 2010 (as amended),a person who alleges that a candidate for an election has given false information in the forms or processes filed with the Independent National Electoral Commission for the purpose of an election can approach the

court for redress. *(Pp. 495, paras. E-F: 498, paras. C-D)*

3. *On Who can challenge conduct of political parf primary election* -

In order to be qualified to complain about the conduct of a primary election of a political party, that complainant would need to show convincingly by unassailable evidence that he actually participate in the said primary election that formed the basic of the action. Otherwise, he would have robbed himself of a legal right, and his suit would lack the legal potency to avail him any protection under Section 87(9) of the Electoral Act, 2010 (as amended). [*P.D.P. v. Sylva* **(2012) 13 NWLR (Pt. 1316) 85 referred to]** (P. 481, paras. F-H)

4. *On Who can challenge conduct of political party primary election* -

Before a candidate at a political party's primaries I can have *locus standi* **to sue on the conduct of the primaries, he must have been screened, cleared by his political party and participated at the primaries. Thus, a person who did not participating in the primaries could be conveniently classified as an interloper with no real interest in the primaries** *(P. 483, para. A-B)*

5. *On Who can challenge conduct of political parti' primary election* -

The right conveyed by virtue of section 87(9) of Electoral Act, 2010 (as amended) falls within the category of 'closed rights'. It does not admit of exclusion, prevention or obstruction from participating in a party's primaries orchestrated by or through the instrumentality of third parties or agencies. In the instant case, by his own affidavit evidence, the appellant did not participate in the primary election conducted by the 2nd responded on 4th December 2014 and was thus unable to take benefit of the provision of Section 87(9) of ft Electoral Act, 2010 (as amended). *(Pp. 483-484 paras. H-B: D-E*)

6. *On Who can challenge conduct of political party's primary election* -

Only an aspirant who took part in the primary election for the nomination of a party's candidate for a particular election has the *locus standi* **to approach the court for reliefs against the result or conduct of the said election. This means that any person who did not participate in the said primary election as an aspirant lacks the locus standi to challenge the result of the said election. In the instant case, the appellant did not participate in the primary election scheduled for the nomination of the governorship candidate of the 2nd respondent for the Yobe State Governorship election of 2015. He therefore lacked the** *locus standi* **to contest the result of the said**

primary election in any court of law, and the court did not have the requisite jurisdiction to entertain his complaint(s). [PDP v. *Sylva* **(2012) 13 NWLR (Pt. 1316) 85; A.P.GA.** *v. Anyanwu* **(2014) 7 NWLR (Pt. 1407) 541;** *Ukachukwu* **v. P.D.P. (2014) 17 NWLR (Pt. 1435) 134;** *Daniel* **v. INEC (2015) 9 NWLR (Pt. 1463) 113 referred to.]. (P. 495,** *paras.* **A-E)**

7. *On Conditions precedent to challenging conduct of primary election* -

To invoke the provision of section 87(9) of the Electoral Act, 2010 (as amended) would necessarily require that:

(a) **there must be a complaint that the party's guidelines or the provisions of the Electoral Act were not observed in the nomination process; and**

(b) **that the complainant must have participated in the primary election.** (P. 482, paras. D-E)

8. *On Meaning of 'aspirant'* -

By virtue of Section 156 of the Electoral Act. 2010 (as amended), an 'aspirant' is a person who aspires

Or seeks or strives to contest an election to political office. *(P. 478, para. E)*

9. *On qualification for election to the office of Governor of a State* -

By virtue of section 177 of the 1999 constitution, (as amended) a person shall be

qualified for election the office of governor if -

(a) he is a citizen of Nigerian by birth;

(b) he has attained the age of thirty-five years; and

(c) he has been educated up to at least the school certificate level or its equivalent.

Where a candidate lacks any of these requirement he would be ineligible to contest the election. *(P.497, paras. G-H)*

10. *On Disqualifying Factor For Election To Office of Governor Of A State* **-**

By virtue of section 182(1) (j) of the 1991 constitution (as amended), no person shall be qualified for election to the office of governor of a state if he has presented a forged certificate to the independent national electoral commission, (P. 487, paras. B-C.)

11. *On when the deputy governor can hold office of governor of a state* **- by virtue of section 191 (1) of the 1999 constitution if the office of governor of a state becomes vacant by reason of death, resignation, impeachment permanent incapacity or removal of the governor from office for any other reason in accordance with, section 188 or 189 of the constitution, then the deputy governor shall hold the office of governor.** *(Pp. 493-494, paras. H-B)*

12. *On meaning of to 'hold the office of governor'-*

To *"hold the office of governor***" in section 191 of the 1999 constitution, means the person only acts in position of governor by "holding" the office in a kind of public trust till the expiration of the tenure of the governor. (***P. 494, paras. B-C)*

13 *On what "hold" in section 191 of the 1999 constitution connotes* **-**

“Hold" in section 191 of the 1999 constitution connotes acting in the capacity of governor. The person "holding" the office of governor under the provision continues to function, and may step-aside in the very unlikely event that the former governor resurrects from the dead, or, under miraculous circumstances, had his permanent incapacity turned around to become subsequently active and capable. (*P. 494, PARAS. D-E)*

14 **On** *what "hold" in section 191 of the 1999 constitution connotes* **-**

Section 191 of the 1999 constitution (as amended), does not envisage "permanence" or a permanent tenure. It envisages holding office in an interim, stop gap arrangement to avoid a vacuum. Therefore, section 182(l)(b) of the 1999 constitution, (as amended), is not applicable to such a situation and therefor not affect or impact on the tenure created by

operation of section 191(1). (*P. 494, paras. E-F)*

15. *On principles governing interpretation of constitutional provisions* **-**

The principles of interpretation of the provisions of the constitution enjoin the court to interpret the constitution as a whole taking into consideration related sections. ***(P. 492, para. B*****)**

16. *On principles governing interpretation of constitutional provisions* **-**

Constitutional language is to be given a reasonable construction and absurd consequences are to be avoided. Constitutional provisions dealing with the Same subject matter are to be construed together. Seemingly conflicting parts are to be harmonized, If possible, so that effect can be given to all parts of the constitution. [*marwa v. Nyako* **(2012) 6 NWLR (Pt. 1296) 199 referred to.]. (***P. 493, paras. A-B***)**

17. *On documents candidate for election needs submit if electoral body* **-**

By virtue of section 31(2) of the electoral act, 2010 (as amended), the list or information submitted by each candidate for an election shall be accompanied by an affidavit sworn to by the candidate at the federal high court or the high court of a state or the high court of the federal capital

territory indicating that he has fulfilled all the constitutional requirements for election into that office. (*P. 498, paras. A-B)*

18. *On what false information referred to in section 31(5) of the electoral act, 2010 (as amended) must relate to –*

The false information referred to in section 31(5) of the electoral act, 2010 (as amended) must relate to the 1999 constitutional requirements for election into the office in dispute. (*P. 498, paras. D-E)*

19. *On proof of allegation of forgery and false declaration –*

To succeed on an allegation of forgery and false declaration, the complainant must prove:

(a) the existence of a document in writing;

(b) that the document or writing was forged;

(c) that the forgery was by the person being accused;

(d) that the party who made it knew that the document or writing was false; and

(e) That the party accused intended the forged document to be acted upon as genuine .

[*Imam v. Sheriff* **(2005) 4 NWLR (Pt. 914) 80;** *A.P.C v. P.D.P***. (2015) 15 NWLR (Pt. 1481) 1 referred to.] (Pp. 487-488, paras. G-B)**

20. *On effect of submitting forged document to the independent national electoral commission and how proved* **-**

The consequence of submitting a forged document to the independent national electoral commission is grave. It therefore requires direct, sharp and somewhat precise evidence and proof. The nature of evidence required in this kind of situation is similar to that of "mathematical precision". (*P. 488, paras. G-H***)**

21. *On proof of allegation of submitting forged certificate to the independent national electoral commission –*

Where an allegation of presentation of forged certificate to the independent national electoral commission is in issue, the accusing party must prove:-

(a) **that the certificate presented to the commission was forged and**

(b) **that it was the candidate that presented the certificate who forged it.**

These two ingredients must be proved beyond reasonable doubt. [*Audu v. INEC* **(no 2) (2010) 13 NWLR (Pt. 1212) 456 referred to.] (***P.489, paras. C-D***)**

22. *On when discrepancy in the age of candidate for Election can disqualify him* **-**

If there is any discrepancy in the age of a candidate for an election, it must have a bearing on the constitutional requirement before it can have the effect of disqualifying him. In the instant case, as regards the age of the is' respondent, the onus was on the appellant to prove that as at the time he contested the election, the 1st respondent had not attained the age of 35 years as required by section 177 (c) of the 1999 constitution. [*Agi v. P.D.P*. (2017) 17 NWLR (Pt. 1595) 386 referred to.]** *(P. 499, paras. C-D)*

23. On Need to prove intent on part of candidate who falsifies his age to circumvent the Constitution –

There must be evidence of an intention by a candidate who falsifies his age to circumvent the provisions of the 1999 Constitution. In the instant case, no such intention was established. *(P.499 paras. D* **)**

24. *On Onus of proof in civil cases* **-**

By virtue of section 132 of the Evidence Act, 2011 the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all was given on either side. (*Pp. 496, paras. F-G; 502, para G)*

25. *On Onus of proof of an assertion* **-**

By virtue of Section 131 of the Evidence Act, 2011 whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. In

other words, he who asserts must prove his assertion. [*Pp. 496, para. F; 502, paras. E-F)*

26. *On Onus of proof of an assertion* **-**

Where there is an allegation made pursuant to section 31(5) of the Electoral Act, 2010 (as amended), that an information given by a candidate in an affidavit or any document submitted by that candidate is false, the burden is on the person who makes the assertion to prove that fact. (*P. 496, para H***)**

27. *On Standard of proof of criminal allegation in civic suits* **-**

By virtue of Section 135(1) of the Evidence Act 2011, w here the commission of a crime by a part to a civil proceeding is alleged, like forgery in this case, the alleged criminal offence must be prove beyond reasonable doubt. The burden of provitt the commission of the criminal offence beyond reasonable doubt is on that person who asserts it [*Nwobodo v. Onoh* **(1984) 1 SCNLR 1 referred to.] (***Pp.496, para. G 502-503. paras. H-A***)**

Per KEKERE-EKUN, J.S.C. at Pp. 498-499, E-B;

> **"The appellant therefore had the onus on satisfying the court below not only that to testimonial was forged but also that the 1st respondent does not possess the educational qualification stipulated in section 177(c) of the Constitution. He failed woefully on both counts. Having alleged forgery,**

which is a criminal offence, the onus was on him to establish that fact beyond reasonable doubt notwithstanding the fact that the allegation was made in civil proceedings. I agree with the court below that the appellant failed to tender any evidence, such as a disclaimer from the authority that issued the testimonial, stating that it was forged document. Not only must it be proved that the document was forged, it must also be proved that it was the 1st respondent who forged the document. See: *Ansa* **v.** *Ishie* **(2005) 15 NWLR (Pt. 948) 210;** *Eya* **v.** *Olopade & Anor***. (2011) LPELR - 1184 (SC); (2011) 11 NWLR (Pt. 1259) 505;** *A.P.C. v. PDP* **(2015) LPELR - 24587; (2015) 15 NWLR (Pt. 1481) 1. It must also be shown that the person relying on the document knew it to be false and presented it with the intent that it may be used or acted upon as genuine to the prejudice of any person or with intent that any person may, in the belief that it is genuine be induced to do or refrain from doing any act, whether in Nigeria or elsewhere. See:** *Ndoma-Egba* **v.** *ACB Plc* **(2005) 14 NWLR (Pt. 944) 79. There was no such evidence before the trial court. There was also no evidence before the court to contradict the 151**

respondent's claim of having attended Yunusari Primary School from 1963-1969. The fact that Borno State was not in existence in 1969 is not proof that the school did not exist.

28. *On Effect of failure to prove an allegation* -

When a fact is asserted without proof, then the existence of the alleged fact is not established. (***P.*** *502, paras. F-G)*

Per EKO, J. S. C. at P. 503, paras. A-B:

> **"Allegations beyond imaginable conjecture and speculations in political times and proof beyond reasonable doubt of such allegation of criminal offences are not one and the same thing. The former may be of unacceptable political desperation. The latter is an imperative in criminal law practice and procedure."**

29. *On Implication of failure to prove an allegation –*

What is alleged without proof can be denied without proof. (P. 502, para. F)

30. *On Meaning of testimonial* -

A testimonial is a formal written statement or testimony, often by a former teacher or employer about somebody's abilities, qualities and character

(P. 502. para. A)

31. *On Purpose of a testimonial –*

A

testimonial, normally or in its usual context, affirms or confirms facts that existed in the past, It can be assured at a later date to confirm fact existing on record of very many years before. (*Pp. 495, para. H; 502, paras. A-B)*

Nigerian Cases Referred to in the Judgment:

A.T. Ltd. V.*A.D.H. Ltd*. (2007) 17 NWLR (Pt. 1595) 386

Agi v. PDP (2017) 17 NWLR (Pt. 1595) 386

Ansa v. Ishie (2005) 15 NWLR (Pt. 948) 210

Anyanwu v. Ogunenwe (2014) 8 NWLR (pt. 1410) 437

APC v. PDP (2015) 15 NWLR (Pt. 1481) 1

APGA v. Anyanwu (2014) 7 NWLR (Pt. 1407) 541

Arebi v. Gbabijo (2008) 2 LRECN 467

Audu v. INEC (No. 2) (2010) 13 NWLR (Pt. 1212)456

Daniel v. INEC (2015) 9 NWLR (Pt. 1463) 113

Eya v. Olopade (2011) 11 NWLR (Pt. 1259) 505

Imam v. Sheriff'(2005) 4 NWLR (Pt. 914) 80

Kakih v. PDP (2014) 15 NWLR (Pt. 1430) 374

Marva *v. Nyako* (2012) 6 NWLR (Pt. 1296) 199

Ndoma-Egba v. A.C.B. Plc (2005) 14 NWLR (Pt. 944) 79

ywobodo v. Onoh (1984) 1 SCNLR 1

Ojukwu v. Obasanjo (2004) 12 NWLR (Pt. 886) 169

PDP v. Sylva (2012) 13 NWLR (Pt. 1316) 85

Saleh v.Abah(20\l) 12 NWLR (Pt. 1578) 100

Ugwu v.Ararume (2007) 12 NWLR (Pt. 1048) 367

Ukachukwu v. P.D.P. (2014) 17 NWLR (Pt. 1435) 134

Uwazurike v. Nwachukwu (2013) 3 NWLR (Pt. 1342) 503

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended);Ss. 177, 180(1)(a)(2)(a), 181(1)(b**),** 1**8**2(1**)(b**)(j)(3),185(1), 186, 191(1),251,285

Electoral Act. 2010 (as amended**);** Ss**.** 31(2)(5)(6) 87**(a).** 156 Evidence Act, 2011; Ss.122(2)(a), 131. 132, 135(1)

National Population Commission Act. Cap. N67, Laws of the Federation of Nigeria, 2004, S.6 (l)(b)

State (Creation and Transitional Provisions) Decree No. 12 of 1976

Book Referred to in the Judgment:

Oxford Advanced Learner's Dictionary

Appeal:

This was an appeal against the judgment of the Court of Appeal which affirmed the judgment of the trial High Court and dismissed the appeal of the appellant. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Walter Samuel Onnoghen, C.J.N. (Presided): Musa Dattijo Muhammad. J.S.C.; Kudirat Motonmori Olatokunbo Kekere-Ekun**.**

J.S.C.; Ejembi Eko. J.S.C.; Sidi: Dauda Bage, J.S.C.

(Read the Leading Judgment)

Appeal No.: SC.758/2016

Date of Judgment: *Friday, 2nd June 2017*

Names of Counsel: *Y. C. Maikyau. SAN* (with him Messrs. *T. R. Agbanyi, N. Obasi-Obi; T. A. Rapu; M. Adelodun; P.A. Joseph; A. Belgore: H.A. Matunji; C.P Nwozor: A.C. Ekwoabe: N. Umar and S. Mohammed.*

for the Appellant

Yusiif Ali, SAN - (with him *messrs H.T. Fajimite; B Olomu. Esq; S.A. Oke Esq; Alex Akoja. Esq; K.T Sulyman (Mrs); Patricia Ikpegbu (Mrs.); Musa AdeIodun, A.B. Eleburuike; Usman Idris, Esq.; C.N. Akuneto, Esq. Bolarinwa Okiji, Esq.; A.A. Agbaje, Esq.,*

B.E. Okoro MA. A. Shehu; S.A. Yelwa: K. O. Lawal; A. O. Usman; S.A. Oke and Kehinde Pele, Esq. - for vie 1st and 2nd *Respondents*

T. M. Inuwa Esq - (*with him. G.A. Ismail and B.M. Abubakar - for the 3rd Respondent*

Court of Appeal:

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

Names of Justices that sat on the appeal: *Moore Aseimo Abraham Adumein, J.CA.* (*Presided and Read the Leading Judgment*); *Joseph Eyo Ekanem. J.C.A.; Muhammed Mustapha, J.CA.*

Appeal No.: *CA/A/809/2015*

Date of Judgment: *Thursday, 28th July 2016*

Names of Counsel: *Y. C. Maikyau, SAN and* M. *A. Mogaji SAN (*with them, A. *Z. Teru, Esq.; T. R. Agbanyi,*

Esq., Nwabueze Obasi-Obi, Esq..T. A. Rapu (Miss.) and Mohammed Adelodun, Esq.) - for the Appellant

*Hassan T. Fajimite, Esq. (*with him, *Lawrence John, Esq.,*

A. O. Usman. Esq; Ahmed Musa, Esq.. CS. Akuneto, Esq.. and Tejumola Opejimi, (Miss.) - for the 1st and 2nd Respondents

High Court:

Name of the High Court**:** *Federal High Court, Abuja*
Appeal No: *FHCABJ/CS/220/2015*

Counsel:

Y. C. Maikyau. SAN (with him Messrs. T. R. Agbanyi**,** N

Obasi-Obi;T. A**.** RAPU: M. ADELODUN: **P**.A. JOSEPH: A. BEIGCN H.A. Matunji; C.P. Nwozor**:** A.C. Ekwoabe; N. Umar and S. Mohammed – *for the appellant*

Yusuf Ali- SAN – (with him messrs H.T. Fajimite; B. Olomu, Esq: S.A. Oke Esq: Alex Akoja, Esq: K.T. Suiyman (Mrs); Patricia Ikpegbu (Mrs.): Musa Adelodun: A.B. Eieburuike; p'sman Idris.Esq.: C.N. Akuneto. Esq.: Bolarinwa Okiji,Esq.; A.A- Agbaje, Esq.. B.E. Okoro (MISS.); A. A. Shehu**:** S.A. Yehva: K. O. Laval: A. O. Usman: S.A. Oke and Kehinde Pele, Esq. - FOR THE 1ST AND 2ND RESPONDENTST.

T. M. Inuwa Esq. – (with him, GA. ISMAIL AND B.M. ABUBAKAR .- FOR THE 3RD RESPONDENT

BAGE. *J.S.C* (Delivering the Leading Judgment): This appeal emanates from the judgment of the court below, that is the Court of Appeal. Abuja Judicial Division in appeal No. CA/A/809/2015 between *Engr. Mustapha Yunusa Maihaja v. Alhaii Ibrahim Gaidam & 2 Others*.Coram Moore A.A. Adumein, Joseph E. Ekanem and Muhammed Mustapha JJCA. The judgment being appealed against was delivered by the court below on the 28th of July, 2016 is

captured at pages 824 to 867 of the record of appeal. In the judgment, the court below partly resolved issue one (out of the three issues formulated) in favour of the appellant but dismissed the appeal of the appellant.

Dissatisfied with the said judgment, the appellant filed a notice of appeal dated 11th August, 2016 containing five (5) grounds of appeal. The notice of appeal is contained at pages 868 to 876 of the record of appeal. The appellant also filed another notice of appeal on the 12th of October, 2016 in expressing his grievances and dissatisfaction with the judgment of the Court of Appeal. He (the appellant) has however indicated in paragraph 5.1 of his brief of argument to rely on his notice of appeal filed on the 12th day of October, 2016 containing six (6) grounds of appeal as set out on pages 30 to 44 of the supplementary record of appeal transmitted to this honourable court at the instance of the appellant.

SUMMARY OF THE FACTS

The appellant was a plaintiff in an originating summons filed in suit No. FhC/ABJ/CS/220/2015, Engr. Mustapha Yunusa Maihaja v. Alhaji Ibrahim Gaidam & 2 Ors dated 19th of March, 2015 and filed at the registry of the Federal High Court Abuja. The suit sought a number of declaratory reliefs and sundry orders including nullification of the nomination of the 1st respondent as the candidate of the 2nd respondent in the 2015 governors election of Yobe State.

The grouses of the appellant, from the inception of the polity tussle, are summarised thus; that:

i) The 1st respondent made false information in his form CF001, affidavit of personal particulars (exhibit Maihaja 1 attached to the originating summons) by annexing a primary leaving

testimonial dated 22nd day of December, 1969 issued by Yunusari Local Education Authority (LEA) of Borno State of Nigeria.

ii) The appellant also alleged that the 1st responded: submitted the said primary school leaving Testimonial to the 3rd respondent knowing same to be a forged certificate contrary to section 182(l)(j) of the constitution of the federal republic of Nigeria, 1999 (as amended) and pursuant to section 31(5) oft the electoral act 2010 (as amended).

iii) the appellant also claimed that the 1st respondent-ought to be disqualified from contesting for the office of the governor of Yobe State on the grounds of false declaration in form CF001 and for allegedly presenting a forged certificate to the 3rd respondent contrary to the provision of section 182(l)(j) of the constitution (supra) and pursuant to section 31(5) of the electoral act 2010 (as amended).

iv) The 1st respondent was also alleged to have furnished some other documents along with form CF001 and which documents bear some other dates of birth different from 15th September, 1956 contained in form CF001 and the birth certificate exhibit Maihaja 13A Issued by the National Population Commission to the 1st respondent.

v) The 1st respondent was alleged not to be eligible to 185(1) of the constitution (supra) he had been twice elected into the office of the governor of Yobe State, and

vi) The appellant's position is that, being the only other aspirant for the office of governor of Yobe

State in respect of the 11th April, 2015 governorship election under the platform of the 2nd respondent, he was entitled to take the place of the 1st respondent.

The case of the 1st and 2nd respondents on the originating summons as canvassed at the trial stage was that:

"i) The appellant did not submit his forms as required by the guidelines of the 2nd respondent and because of the said failure, he could not participate in the screening of the aspirants on 30th of November, 2014.

ii) The appellant therefore was not an aspirant at the primary election where the 1st respondent emerged as the winner.

iii) The 1st and 2nd respondents also state that prior to the election of 11th April 2015, the 1st respondent had only been elected as the governor of Yobe State once and that was in the election of April 2011.

iv) It was also the case of 1st and 2nd respondents that the 1st respondent was born on the 15th September, 1956 as shown in his birth certificate issued by the national population commission (exhibit a) and the 1st respondent only noticed the discrepancy in the date and month of his birth wrongly stated in 1st respondent's National Youth Service Corp Exemption Certificate and in his voters' card when he read the affidavit in support of the originating summons.

iv) It was also contended that there was no time the 1st respondent gave any information that he was born on any other date other than 15th September, 1956 to the national youth service corps and for

> the 3rd respondent and that his school leaving testimonial of primary education was issued to the 1st respondent by the relevant authority long after he left the school." & 2nd respondents and judgment was delivered by the trial court, the 16th November, 2015 upholding the preliminary objection of the 1st & 2nd respondents and striking out the entire suit of the appellant for want of jurisdiction.

Aggrieved by the decision of the trial court, the appellant for an appeal at the lower court which appeal was heard on 31st May, 2016 and judgment delivered on 28th day of July, 2016 as earlier indicated above. The lower court allowed the appeal in part while substantially dismissed the appeal of the appellant. The lower court after dismissing the preliminary objection filed by the 1st and; respondents to the appeal partially resolved in favour of the appellant, issue no. 1 on the question of the jurisdiction of the federal hi; court to entertain the appellant's originating summons and dm of the trial court to express its opinion or decision on all issues canvassed before it even if the preliminary objection succeeded, the court of appeal resolved issues No. 2 and 3 in the appeal in favour of the respondents and also dismissed the appeal wit costs. But, being dissatisfied with the judgment of the court appeal, the appellant decided to come meet us upstairs; ant. Too long journey of a few meters from the Abuja division of the Court of appeal to the Supreme Court. That, in not-too-brief is summary of the facts and background to this appeal towards resolving the knotty issues in this appeal appellant filed his brief of argument dated 25th November, 2016 and a reply brief in response to the 1st and 2nd respondents date 28th February, 2017. The appellant formulated three issues fort determination of this appeal contained in pages 7-8, paragraph 7 - 7.5 of the brief of argument as follows:-

"whether having regard to the provisions of section 31(5) of the electoral act, 2010 (as amended) m together with section 182(l)(j) of the Constitution the Federal Republic of Nigeria 1999 (as amended the undisputed depositions contained in it affidavit in support of the originating summons, t provisions of the states (creation and transition provisions) decree no. 12 of 1976. Which clear established the creation of Borno State on the 1st of February 1976 the lower court properlv came issued by Borno State Government of Nigeria, on the 22nd of December 1969, which the 1st respondent presented to INEC along with his form cf001 (affidavit of personal particulars) was forged, as to disqualify him (the 1st respondent) from contesting the election for the office of governor of Yobe State, held on the 11th of April 2015? Grounds 1 and 6.

Whether having regard to the provisions of section 182(1)(b) of the constitution of the federal republic of Nigeria 1999 (as amended) and the false representation made by the 1si respondent in his form Cf001 as to his eligibility to contest for the office of governor of Yobe State and the decision of this court in *marwa* v. *Nyako* {*supra*), the lower court was not wrong in coming to the conclusion that the 1st respondent was not elected in two (2) previous elections, as to disqualify him from contesting the election into the office of governor of Yobe State held on 11th April 2015 and further that the appellant's case did not fall within the jurisdiction of the federal high court under section 251 of the constitution of the federal republic of Nigeria 1999 (as amended) and 87(a)

of the electoral act 2010 (as amended)? Grounds 2 and 3.

Whether giving the peculiarities' of the appellant's case as constituted in the originating summons, the lower court was not wrong in coming to the conclusion that the appellant was not an aspirant and that his complaint did not fall within the ambit of section 87(a) of the electoral act 2010 (as amended)? Grounds 4 and 5."

On their part, the 1st and 2nd respondent filed their respondents brief on 14th February, 2017 and also formulated three issues for determination at pages 5-6. paragraphs 3.1 TO 3.1.3 of the respondents brief of argument as follows:-

"Whether having regard to the appellant's affidavit clear provisions and intendments of section 87(9) of the electoral Act, 2010 (as amended), the lower court was not right to have held that the appellant was not an aspirant who could in law invoke the provisions of section 87(9) of the electoral act, 2010 (as amended) to complain of any breach of the guideline of the 2nd respondent in the conduct of the said primary election and/or that the appellant was otherwise excluded from the said primary election? (Grounds 4 & 5). Whether the lower court was not right in holding that the appellant did not in law establish his allegation that the 1st respondent forged the documents) attached to the 1st respondent's INEC form CF001 or that the 1st respondent otherwise gave false information in his in form CF001 sufficient in law to disqualify the v respondent from contesting the gubernatorial election of Yobe State in the 2015 general election? (Grounds l and 6).

Whether having regard to the clear and unambiguous provisions of section 182(1)(3) of the constitution, of the Federal Republic of Nigeria, 1999 (as amended), the lower court was not correct in law to have distinguished the facts in the case of *Marwar v. Nyako* (2012) 6 NWLR (pt. 1296) 199 in coming to; the conclusion that the 1st respondent had not beer, elected into the office of governor of yobe state and. had not taken oath of office and oath of allegiance as a governor more than once before April 11, 2015 election when he contested and won the election; to remain in office as governor of Yobe State? (Grounds 2 & 3)."

The 3rd respondent, the "referee" in the election that culminates in the subject matter of this appeal also followed the path charted b) the appellant and 1st and 2nd respondents respectively by likewise formulating three issues at pages 7-8, paragraphs 3.0 of its brief of argument dated 4th January, 2017 as follows:-

"Whether the lower coma was right when a held hit the appellant had no *locus standi*, to question there.

Whether the appellant discharged the evidential burden of proof that the 1st respondent presented forged certificate to the 3rd respondent or gave false information in INEC form CF001 and *ipso facto* disqualified from contesting the Yobe State governorship election conducted in April, 2015.

Whether having regarded to the materials placed before the court, the 1st respondent has been shown to have been elected as governor of Yobe state in two previous elections prior to the April, 2015 governorship election in Yobe state."

On this side, I am in accord with the parties that the several issues in this appeal will, and could, be adequately resolved and answered under three issues. therefore, for the purpose of this judgment. I have reformulated three (3) issues not entirely different from those formulated by the parties, but with necessary modifications to avoid verbosity and long sentences as grammarians have taught us, thus;

"1) whether the lower court was right to have held that the appellant was not an aspirant in the 2nd respondent's primaries dated 4th December, 2014 culminating in this appeal for the purpose of invoking the provisions of section 87(9) of the electoral act (as amended).

2) whether the lower court was right in holding that the appellant has not established the allegation of forged documents and declaration regarding the 1st respondent's INEC form CF001 bordering his certificate and date of birth.

3) whether the lower court was right in holding that the l51 respondent had not been elected into office as governor of Yobe State more than twice m two previous elections prior to the April 2015 governorship election."

CONSIDERATION AND RESOLUTION OF RELEVANT ISSUES:

ISSUE 1:

"whether the lower court was right to have held that the appellant was not an aspirant in the 2nd respondent's primaries dated 4th December, 2014 culminating in this.

The first issue formulated by the court in this appeal were made issue No.l by the appellant. In his arguments on the issues the learned senior counsel to the appellant contended that the l0l, court was wrong in holding that the appellant did not

participating in the primary election conducted by the 2nd respondent. Court hinged his submission on the fact that the learned justices of the lower court faded to advert their minds to the jurisdiction off federal high court over political matters under section 87(9); the electoral act 2010 (as amended) which states that:

> "notwithstanding the provisions of this act or rut of a political party, an aspirant who complains to any of the provisions of this act and the guideline of a political party has not been complied with in the selection or nomination of a candidate of a politic party for election, may apply to the federal high court or the high court of a state or federal capital territory, for redress."

The learned senior counsel argued that the appellant1 originating summons complained specifically about breach of specific provisions of the electoral act, the 2nd respondent constitution and the 2014 guidelines for the nomination i candidates for public office. Reliance was placed on section 156 of the electoral Act 2010 (as amended) which defines "Aspirants" It mean a person who aspires or seeks or strives to contest an election to a political office.

Counsel cited the case of *Ukachukwu v. PDP* (2014) 17 NWLR (pt. 1435) pages 134 PER KEKERE-EKUN JSC at page 182 paragraphs E-H. Counsel also quoted in page 57, second paragraph of the appellant's brief the reference made in the above cited case to *Uwazurike v. Nwaehukwu* (2013) 3 NWLR (pt. 134 503 at 526, E-G to the effect that. "... The complainant must be an aspirant who participated in the primary that produced the sponsored candidate".

In urging this court to reverse the decision of the lower court on the issue, the learned senior counsel concluded his submission by amplifying the fact that since there was no

primaries and having demonstrated the steps taken in purchasing the necessary materials.

The 1st and 2nd respondents argued in support of issue one in this appeal which also forms issue number one in their brief of argument. The learned counsel submitted that it is now settled that in order to be qualified to complain about the propriety of the conduct of a primary election of a political party, a member of the political party must establish by preponderance of evidence that he actually participated in the said primary election otherwise, he would be held by the courts to lack the *locus standi* under the provision of section 87(9) of the electoral act, 2010. Counsel cited the case of *Peoples Democratic Party v. Timipre Sylva & Ors* (2012)13 NWLR (Pt 1316) 85 at 126.

The learned counsel also relied on the case of *Ukachukwu v. PDP* (2014) 17 NWLR (Pt. 1435) 134, where this court again laid down two conditions that would confer the necessary *locus standi* on a person before he could invoke the provisions of section 87(9) of the electoral act, 2010 (as amended) which are that: (a) there must be complaint that the party's guidelines or the provisions of the electoral act were not observed in the nomination process, and (b)the complainant must have participated in the primary election. These two conditions must be present and not as alternatives. the learned counsel quoted extensively the position of this court PER KEKERE-EKUN, JSC in *Ukachukwu v. PDP* (supra) at page 182 paragraphs f-h on the effect and purport of that section 87(9) of the electoral act as well as the case of *Uwazurike v. Nwachukwu* (2013)3 NWLR (Pt. 1342) 503 at526,E-G."

The learned counsel also placed reliance on the decision of this honourable court on the provision of section 87(9) of the electoral act 2010 (as amended) in *Daniel v. INEC & Ors* (2015) 3-4 MJSC 1 at 45,F-G;(2015)9 NWLR (Pt. 1463) 133 to the effect that before a candidate for the. primaries can have a *locus standi* to sue on the conduct of the primaries, he must be

screened, cleared by his political PARTY and PARTICIPATE AT THE said primaries.Anything short of that, the candidate who did not participated in the primaries could be conveniently classified as a meddlesome interloper with no real interest in the primaries. The learned counsel to the 1st and 2nd respondent concluded that the only conclusion to draw in of the 2nd respondent for the 2015 gubernatorial election in Yobe State, He therefore urged this court to uphold the position of lower court on this issue.

The 3rd respondent also formulated issue number one as sap, in this regards with slight modification. The 3rd respondent position that having clearly admitted in paragraph 24 of the affidavit support of the originating summons deposed to by the appellant the claim made by the appellant is at best on pre-primaries issue and an internal affair(s) of the 2nd respondent in respect of which tfe courts had no jurisdiction. The learned counsel to the 3rd respondent further submitted that the limited jurisdiction vested in the court under section 87(9) of the Electoral Act 2010 (as amended) is no exercisable in respect of powers of a political party. Counsel relief on the case of *PDP* v. *SYIVA* (2012) 13 NWLR (Pt. 1316) 85 at 125 paras. C-E and also the case of *APGA* ***v.*** *ANYANWU* (2014) 7 NWLR (Pt. 1407) 541. 575. *ANYANWU* ***v.*** *OGANENWE* (2014) 8 NWLR (Pt.1410) 437 and *UKACHUKWU V.* ***PDP*** (2014) 17 NWLR (Pt. 1435 134. In his concluding arguments, the learned counsel submitted that having not participated in the primaries of the 2nd Respondent dated 4th December, 2014 the appellant cannot avail himself the benefit of section 87 of the Electoral Act *(SUPRA)*. Counsel cited the case of *PDP V.* ***SYLVA*** *& 2 ORS* (2012) 18 NWLR (Pt. 1316) 8: and urged his lordships to affirm the decision of the lower court and resolve issue one against the appellant.

I have chewed and digested the respective arguments put forward for and against by the parties on issue one. One central fad keeps resonating as to the position of the law under section 87(91 whether it exists for the benefit of a party who did not

participated in the party primaries. Having quoted the said provisions verbatim above, what remains for me to do is x-ray the law *VIZ-À-VIZ* the facts of this matter on issue one. Beyond doubt**,** the said section permits an aspirant who complains that any of the provision of to Electoral *Act (SUPRA) or* the guideline of a political party has not been complied on these legal arguments. The evidence of the appellant is contained in pages 14-18, paragraphs S, 9, 14.15, 24 and 25, of the appellant's affidavit in support of the originating summons, is to the effect that another agency or institution prevented him from submitting his nomination forms which he spent Five hundred Thousand Naira (N500,000) for the expression of interest and another Five million naira (N5m) to procure. To be specific-paragraph 14 of the affidavit is to that effect that men of the Nigeria *Police* Force directly and/or on the alleged instruction of the State party chairman of the 2nd defendant prevented the appellant from fining access to the State Secretariat of the party to submit his expensive nomination forms, among other formalities. Regrettably, neither the Police nor the Chairman of the Yobe State chapter or die 2nd respondent against whom specific allegations have been made was made a party to the suit when it was filed.

More revealing are the depositions in paragraphs 24 and 2o of the appellant's affidavit of 9th March, 2015 in support of the originating summons which unequivocally showed, from the horse's mouth (by the appellant) that no access was allowed for dm' conduct of the primaries and that, as a matter of fact (deposed on oath by noon other than the appellant himself), no primary election was conducted on 4TH December, 2014 by the 2nd respondent.

Two possibilities exist here. One is the appellant was excluded or prevented from accessing the secretariat of the 2nd respondent by the Police. The other possibility is

that the appellant; for personal- private, political, religious or other considerations failed to participate in the said primaries. The law is too well settled to warrant restatement. For the avoidance of doubt, this court we endeavour to repeat itself on this vital issue of law. It was, and remains our firm conviction, informed by law, that in order to be qualified to complain about the propriety of the conduct of a primary election of a political party, the appellant would need to show convincingly, by un assailable evidence, that he actually participated in the said primary that formed the basics of this appeal. Otherwise, he would have robbed himself of the legal right, put differently, his suit will lack the legal potency to avail him any protection under section 87(9) of the Electoral Act, 2010.

> "Section 87(9) of the Electoral Act confers jurisdiction on the courts to hear complaints from a candidate who participated at his party's primaries and complains about the conduct of the party's primaries and complains about the conduct of the party's primaries The fact in this case are conclusive that the 1st respondent did not participate as a candidate in the PDP primaries which held on 19/11/11, to choose the party candidate for general election for Governor of Bayelsa State which was fixed for 12/2/12. The I st respondent not being a candidate at the primaries cannot be heard to complain about the conduct of the primaries. Section 87(9) of the Electoral Act is thus not applicable. The PDP has the right to bar the P1 respondent, or any of its members from contesting its primaries if it so desires"

We are also bound by our earlier decision in *Ukachukwu v. PDP* (2014) 17 NWLR (Pt.1435) 134, on this issue where we

restated that to invoke the provisions of section 87(9) of the Electoral Act, 2010 (as amended) would necessarily require that: (1) there must be complaint that the party's guidelines or the provisions of the Electoral Act were not observed in the nomination process and (2) The complainant must have participated in the primary election. In the words of this court per Kekere-Ekun, JSC in *Ukachukwu* v. *PDP* (supra) at page 182 paragraph E - H. The learned jurist had stated the unambiguous position of the law as follows:-

> "The point being made by this court is that section 87(9) of the Electoral Act is very narrow in scope as to the jurisdiction exercisable by the court. The literal interpretation of section 87(9) of the Elector Act is that an aspirant has a right to complain where the provision of the electoral act and/or the guidelines of a political party have not been complied with in the selection or nomination of a candidate for election… however, the provision is not at large. The complainant must be an aspirant who participated in the primary election that produced the…

The above position was also re-stated in *Daniel v. INEC & Ors*, ***(****2015*)3-4 MJSC 1 at 45,F-G;(2015)9 NWLR (Pt. 1463) 113 that before a candidate for the primaries can have a ***locus standi*** to sue on the conduct of the primaries, he must be screened, cleared by his political party and participate at the said primaries. Anything short of that, the candidate who did not participate in the primaries could he conveniently classified as a meddlesome interloper with no real interest in the primaries.

As stated above, the evidence of the *appellant* as stated in pages 14-18, paragraphs 8,9, 14, 15. 24 and 25 of his affidavit in support $_0$f the originating summons, is to the effect that, another agency or institution prevented him from submitting his nomination forms which he spent Five Hundred Thousand Naira

(N500.000) for the expression of interest and another Five Million Naira (N5m) to procure. The lower court also got it right, in my opinion on the issue of the affidavit evidence of the appellant upon which the Court of Appeal found, and rightly so, at page 27 of its judgment contained at pages 850 - 851 of the record of appeal thus:-

> "ln this case, by his depositions in the affidavit in support of the originating summons, the appellant alleged unequivocally that he was not screened by his political party. By his own showing as stated earlier, the appellant did not participate in any primary election which produced the 1st respondent as the 2nd respondent's candidate for the election in issue. Therefore, the appellant, who was not screened by his political party in respect (sic) of any governorship primary election and who did not participate in any governorship primary election has no *locus standi* as *he* failed to bring himself *with* (sic) the provision of section 87(9) of Electoral *Act. 2010* (as amended).”

By his own admission, the appellant did well in stating correctly what transpired before the primary election conducted by the 2nd respondent on 4th December, 2014. While I Sympathise with the appellant, I am unable to close my to the reasoning facts of non-participating in the primaries. Assuming he was wrongly (as amended) appears *to* me to fall within the category of “close rights", ft is not open-ended. I am of the considered view that' does not capture (wrongful) exclusion, prevention or obstruct orchestrated by or through the instrumentality of third parties, agencies. May be this is saved for future amendment of the elector Act. A recap of the provision of section 87(9) of the Electoral Act 2010 (as amended) states that:

> "Notwithstanding the provisions of this Act or ruf of a political party, an aspirant who complains

> that any of the provisions of this Act and the guideline, of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or Federal Capital Territory, for redress".

Given the above analyses and expositions on facts statutory provisions and case law, I resolve issue one against tip appellant. I hold that, by his own affidavit evidence, the appellant did not participate in the primary election conducted by the 2nd respondent on 4th December. 2014 and thus unable to take benefit of the provisions of section 87(9) of the Electoral Act 2010 (as amended).

Issue 2:

> "Whether the lower court was right in holding that the appellant has not established the allegation r forged documents and declaration regarding the 1st respondent's INEC form CF001 bordering his certificate and date of birth,"

This is argued as issue number one in the appellant's brief of argument.

The appellant contended that, in completing or deposing to form CF001 (Affidavit of personal Particular), the 1st respondent falsely indicated he never presented a forged certificate to the 3rd respondent. The contention of the learned senior counsel is that the primary school leaving testimonial (as against certificate) presented by the 1st respondent was purportedly issued to him (1st respondent) on 22nd December, 1969 by Borno State Government Forged certificate to the 3rd respondent contrary to section 31 (5) of Electoral act 2010 (as amended) and section 182(f)(j) of the constitution of the federal republic of Nigeria 1999 (as amended). Counsel relied on the case of *Audu v. INEC* (no.2) (2010) 13 NWLR (Pt. 1212) page 456; *Arebi v. Gbabijo*

(2008) 2 LRECN page 467 and states (creation and transitional provision) decree no. 37 of 1991 as well as section 122(2)(a) of the evidence act 2011 in concluding that the lower court was wrong to have held otherwise.

On the sub-issue of date of birth, the appellant contended that the 1st respondent's date of birth indicated on exhibit *Maihaja* 13A3 was 115th September, 1956 which also appeared on the voter's card 0f the is' respondent as well as the certificate issued by the national population commission (*Maihaja* 13A1). Counsel harped on the fact that certificate of exemption purportedly issued by national youth service corps (exhibit Maihaja 13a6) gave the date of birth of the 1st respondent as 8th February, 1956 and 22nd September 1956 respectively. Counsel also contended that the certificate of bachelor of science degree in accounting dated 14th august 1990 from Ahmadu Bello University (Maihaja 13A4) and the certificate of exemption (maihaja 13A6) all issued to "Ibrahim Geidam" and Geidam Ibrahim" respectively who was born on three different dates of birth. He therefore concluded by urging us to hold that the 1st respondent, having made false declarations in his affidavit of personal particulars, Maihaja 13, and having presented Maihaja 13A9 to the 3rd respondent, coupled with the falsity in his alleged date of birth, was not qualified or was disqualified from contesting office of Governor of Yobe State.

In strenuous opposition to the submissions of the appellant, the 1st and 2nd respondents addressed this issue also as issue number two (2) in their brief of argument. On whether or not Borno State was in existence at the material time, counsel submitted that the 1st respondent did not in anyway state that Borno State was created in 1969 and/or that it was Borno State that issued the testimonial n question. On the face of the said testimonial, nothing indicates fact that the testimonial was issued by Borno State or by Yunusari Local Education Authority. He

contended that there is no evidence from the appellant that "unusari Primary School"

On the allegations of dates of birth, the counsel countered that by virtue of paragraph 21 (c) and (d) of the counter affidavit filed by the 1st respondent at page 247 of the record of appeal, he (the l[st] respondent) was born on 15th September, and this, according to him, is further corroborated by form CF001 filed on oath (page 118 of record of appeal) by the I[st] responds and by exhibit Maihaja 13A1 which was issued by National Population Commission which has the statutory responsibly under section 6(1)(b) of the National Population Commission Ac-Cap. N67, Laws of Federation, 2004. In his final submission, the learned counsel prayed us to resolve issue two in favour of the 1st and 2nd respondents. On his parts, the 3rd respondent submission on issue two tallies with that of the I[st] and 2nd respondents. I will therefore not repeat same having extensively given what qualify as a "detailed" summary of submission of parties on the issue In sum, the learned counsel to the 3rd respondent also hinged his arguments on failure to prove perjury and/or forgery against 1st respondent. In his conclusion, the learned counsel to the 3rd respondent urged us to resolve issue two against the appellant and affirm the decision of the lower court as, according to him same is correct and unassailable.

Beyond doubts, having carefully read and digested that submissions of counsel to the parties on this issue, I felt immerse in the waters of criminal procedures. This, although unintended has, therefore, becomes unavoidable given the direction of the respective arguments and submissions of parties which made legal, clinical and evidentiary details of criminal proceedings handy in resolving those weighty allegations bordering on certificate forgery, inconsistencies in dates of birth, and false declaration particularly in Form CF001 submitted to the 3rd respondent.

I recall the ugly days of the "Toronto Saga" where a convicted. but later pardoned former speaker of the House of Representative was found to have forged his certificate to assume that prominent National Office. This court has since taken a stern position on the issue of falsification of document or forgery of certificate particularly to secure unmerited political advantages. Only recently, in another similar but different scenario involving political declaring that every forgery requires proof of requisite *mens rea*, i.e knowledge that the document presented was going to be fraudulently or dishonestly as genuine, which onus must be discharged by the appellant. This becomes crucial in view of the far reaching implications of the provisions of section 182(l)(j) of the 1999 Constitution (as amended) which is to the effect that,

Quote:

"182(1) No person shall be qualified for election to the office of Governor of a State if-

(j) He has presented a forged certificate to the independent National Electoral Commission."

The law is very clear to warrant any form of colourated interpretations. The question is whether a certificate that mrned out to be forged has ever been presented, and not whether the forger has ever been charged, tried or convicted on this. I made it abundantly clear in *Saleh v.Abah* (Supra), and our position in that case is instructive in this circumstances, that:

> "The intention of the constitution is that anyone who had presented a forged certificate to INEC should stand automatically disqualified. No decent system or polity should condone, or through judicial policy and decisions, encourage the dangerous culture of forging certificates with impunity to seek electoral contest. This court must take the lead in righting the wrongs in our

> society, if and when the opportunity presents itself as in this appeal. Allowing criminality and certificate forgery to continue to percolate into the streams, waters and oceans of our national polity would only mean our waters are, and will remain dangerously contaminated. The purification efforts must start now, and be sustained as we seek, as a nation, to now 'change' from our old culture of reckless impunity."

The above is a pointer that our position is stern against certification forgery when and if we found it sufficiently and satisfactorily proved. The necessary question is what must a part) prove to succeed on the allegation of forgery and false declaration.

As rightly held by the court below, it is crucial to prove:

> 4) That the party who made it knew that the document or writing was false; and
>
> 5) The party alleged intended the forged document be acted upon as genuine."

See *Alhaji Kashim Ibrahim Imam & 2 Ors v. Senator Ali mottu Sheriff & I I Ors*. (2005) 4 NWLR (Pt.914) 80 and APC v. PDP (2015) 15 NWLR (Pt. 1481) 1.

1 have noted conjectures, speculative and inferential analogical on the part of the appellant in drawing a nexus between I documents submitted by the I$^{s'}$ respondent to the 3rd respondent form CF001 (exhibit Maihaja 13). The 1st respondent did not start in the said declaration that Borno State was created in 1969 and/ that it was Borno State that issued the testimonial in question. The appellant has also not debunked or disproved the fact that, on the face of the said testimonial, nothing indicates the fact that it was issued by Borno State or by Yunusari Local Education Authority, I also agree with the learned counsel to the 1st and 2nd respondent that there is no evidence from the appellant that

"Yunusari Prima: School", which the 1st respondent stated in his Form CF00l (exhibit Maihaja 13) that he attended between 1963 to 1969, was never existence at that particular period.

The allegations of dates of birth made by the appellant; basis for seeking the nullification of the Ist respondent elect is also, in our considered view misplaced. This is because the deposition in paragraph 21 (c) and (d) of the counter-affidavit filed by the 1st respondent at page 247 of the record of appeal that the 1st respondent indicated that he was born on 15th September 1956. This evidence is unchallenged and also further corroborate by form CF001 filed on oath (page 118 of record of appeal) by the 1st respondent and by exhibit Maihaja 13A1 which was issue by National Population Commission which has the statutory responsibility under section 6(1)(b) of the National Popuiatic Commission Act, Cap. N67, Laws of Federation, 2004.

The consequence of submitting forged document to the 3rd respondent is grave. It therefore required direct, sharp and somewhat precise evidence and proof which leads to no other conclusion that the 1st respondent forged documents and made false declaration to the 3rd respondent. two multiplied by two equals four (2x2=4). In *Kakih v. PDP* (2014) 15 NWLR (Pt. 1430) 374, this court held thus:

> "By virtue of sections 362 and 363 of the Penal Code a party who asserts that another person presented a forged certificate must prove beyond reasonable doubt that the certificate was presented with the knowledge that it would be used fraudulently or dishonestly as genuine. In this case, for the appellant to succeed in his case of presentation of forged certificate, he ought to have presented evidence that the 4th respondent presented a forged certificate to the 2nd respondent knowing that it would be used fraudulently or dishonestly as genuine"

In politically-oriented litigations, where the allegation of presentation of forged certificate to INEC is in issue, the accusing party must prove that the certificate presented to the INEC was forged and that it was the candidate that presented the certificate and that the two ingredients must be proved beyond reasonable doubt as held in *Audu v. INEC* (No. 2) (2010) 13 NWLR (Pt. 1212) 156 at 507 paras E-F.

In resolving issue two, it is my considered view that the lower court was right to have held on page 859 of the record of appeal that lie appellant in order to establish criminal allegation of forgery of he testimonial in question under the provision of section 135 of the Evidence Act, 2011 must do so by proof beyond reasonable doubt if the said allegation. I see no logical or legal basis for disturbing the mandate of the 1st respondent on this ground.

The existence of those facts, if at all, only resonates in the imagination of the appellant who has refused and/or failed to prove hat there is no "Yunusari Primary School" that could have issued rich certificate, or that the 1st respondent was not born on the 15th September. 1956 being the date declared in form CF001.

In view of the above, issue two is also resolved against he appellant. Put differently, issue two is resolved in favour of the 2nd and 3rd respondents.

Issue 3:

> …previous elections prior to the April 2015 governorship election."

The appellant dealt with issue three as issue number two his brief of argument. The appellant contention was that the 1st respondent contested as running mate of Late Senator Mamman,, Ali and took oath of allegiance and office on the 29th of May 2007 and continued to hold office as Governor of Yobe State from 28 January 2009 until his re-election in the year 2011 when he alleged took a second oath of allegiance and office on the

29th May. 2011 for a term of four years which ended on the 29th May, 2015.

The learned senior counsel to the appellant relied on the provisions of section 180(l)(a),181(1),182(l)(b), 185(1), 186 ant 191 of the Constitution of the Federal Republic of Nigeria 19C (as amended) and the decision of this court in the case of *Marwa v. Nyako & Ors* (2012) 6 NWLR (Pt. 1296) page 199 and submitted that having been elected into the office of Governor of Yobe State and taken oath of allegiance and office at two previous elections' the lst respondent is ineligible to contest or be elected as Governor of Yobe State.

In his conclusion, the learned senior counsel for the appellant urged us to resolve this issue in favour of the appellant and to hold that, on the authorities of *PDP* **v** *INEC (Supra) m Marwa* **v.** *Nyako (supra),* the 1st respondent was disqualified from contesting the election held on the 11th of April, 2015 into the office of Governor of Yobe State. In the 1st and 2nd respondent brief of argument, the learned counsel contended, in opposition to the appellant's submission that a calm reading and analytics perception of sections 180(1), (a), (2)(a). 181(1), 182(l)(b), 185, 186 and 191(1) of the Constitution of the Federal Republic o Nigeria 1999 (as amended), will reveal that the Ist respondent had not been elected into the office of Governor of Yobe twice prior to the holding of the Governorship election on the 11th of April 2015 in Yobe Slate. Counsel submitted further that the operate phrase in the section is "elected" to such office at any two previous elections".

Counsel contended that the 1st respondent was only firs sworn in as Governor by operation of section 191(1) of the Constitution submitted that the situation at hand where the 1st respondent will more than eight (8) years cumulatively as Governor is contemplated by section 182 (l)(b) of the Constitution and before not prohibited by any provision of the Constitution. In his conclusion, the learned counsel to the 1st and

2nd respondents urged this court to hold that the 1st respondent having not been elected and sworn in as Governor of Yobe State before the 29th day of May, 2011 had not held office as elected governor of Yobe State on two previous occasion. He implored us to resolve the issue in favour of the 1st and 2nd respondents by holding that the 1st respondent was not disqualified under the provision of section 182 (l)(b) of the Constitution or under any of its other provisions to contest the governorship election of Yobe State in 2015.

The 3rd respondent (INEC) dealt with issue three summarily, its brief of argument, the learned counsel to the 3rd respondent contended that the appellant had unambiguously stated in paragraphs 36, 37 and 38 of the affidavit in support of originating summons that the 1st respondent became the Governor of Yobe State on 28th January, 2009 by operation of the Constitution of the Federal Republic of Nigeria following the death of Senator Ali Mamman who was elected Governor in 2007. He contended that the 1st respondent by necessary implication only stepped in and completed the tenure of Late Senator Ali Mamman as Governor. He stressed further that the 1st respondent only contested and won for the first time as Governor of Yobe State in his own right in 2011, and thus qualified to contest the Governorship election in Yobe State in 2015. In his final submission, the learned counsel to the 3rd respondent cited and interpreted the provisions **of** section 181 (l)(b) of the Constitution **(**SUPRA**)** and the case *of Chief Chukwuemeka Odumegwu Ojukwu v. Chief Olusegun Obusanjo* (2004) 12 NWLR (Pt. 886) at 169 and *urged* this court to resolve this issue against the appellant.

The salient issue here is whether section 182(l)(b) of tot Constitution affects or impacts on when tenure is spent-out Y operation of section 191 (1) of the same Constitution. The duty of court particularly as the said court is to interpret the

> "A statute is always said is "the will of the legislate and any document which is presented to it as a statue is an authentic expression of the legislative will function of the court is to interpret that document according to the intent of those who made it. That the court declares the intention of the legislature"

The principles of interpretation of the provisions of the constitution enjoin the court to interpret the Constitution as a who is taking into consideration, related sections. The lead judgment, this court in *BRIG. GEN. Mohammed Buba Marwa & Ors. v. Admiral Muritala Nyako & Ors* (supra) is instructive.

Quoting the decision in A.T ltd v. A .D.H. ltd (2007) 15 NWLR (Pt. 1056) 118 at 166-167, in the lead judgment, Onnoghen JSC (and he then was; now CJN) stated thus:

> "The law is settled law that when a court is faced with the interpretation of a constitutional provision, the entire provision must be read together as a whole so as to determine the object of that provision. Secondly it is settled principle of law that where a court faced with alternatives in the course of interpreting the Constitution or statute, the alternative construction that is consistent with smooth running of the system shall prevail as held in *Tukur v. Government Gongola State* (1989) 4 NWLR (Pt. l 17) 517 at 579; I must remember that this court has said it several times that the provisions of the constitution ought to be read and interpreted as a whole in the related sections must be construed together.... Finally, I must approach from the view point that since decision of this court in *Rabin v. Ogun State* (1981) 2 NCLR 293, this court has

> opted for the principles of construction often expressed in the *maxim*: *ut ra magis valeat quam pereat*. This means that even alternative construction are equally open. I shall for that alternative which is to be consistent with constitution read as a whole as set out to regulate and …"Some word omitted"

Constitutional language is to be given *a* reasonable construction and absurd consequences are to be avoided. Constitutional provisions dealing with the same subject matter are to be construed together. Seemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the Constitution. See *BRIG. Gen.MOHAMMED BUBA MARWA & ORS. V. ADMIRAL MURLALA NYAKO & ORS* (supra) Per Onnoghen, J.S.C (Pp. *52-54,* paras. C-B).

Turning to the issue at hand, there is no dispute as to the fact that the 1st respondent became governor by operation of section 191(l) of the Constitution *(supra)* upon the demise of the then governor of Yobe State. Put differently, the 1st respondent did not assume office as Governor in *2009* as a result of his election into that office. He was constitutionally "holding", and held the office in trust for the duration of the remaining tenure of the late Governor Senator Ali Mamman. Section *182* (l)(b) of the Constitution does Lot affect or impact on when tenure is spent-out by operation of Lection *191 (1)* of the same Constitution. A community reading of Lections *180(1).* (a), *(2*)(a). *181(1), 182(l)(b), 185, 186* and *191(1)* of the Constitution of the Federal Republic of Nigeria *1999* (as amended) reveal that the 1st respondent had not been elected into the office of Governor of Yobe State twice prior to the holding of *the* governorship election on the 11th of April, 2015 in Yobe State.

The above becomes even more compelling given the fact that the appellant had unambiguously stated in paragraphs 36, 37 and 38 of the affidavit in support of originating summons that the

1st respondent became the Governor of Yobe State on 28th January, 2009 by operation of the constitution of the Federal Republic of Nigeria following the death of Senator Ali Mamman who was elected Governor in 2007. The 1st respondent, by necessary implications, only stepped in and completed the tenure of Late Senator Ali Mamman as Governor in holding capacity. Therefore, the 1st respondent validly, legally and constitutionally contested and won for the first time as governor of Yobe State in his own right in 2011. and thus qualified to contest the governorship election in Yobe State in 2015.

For clarity. I will endeavour to shed further lights on the court section 191(1) of the constitution it states and I changed does not, in my considered view, make the statement the fact that 1st respondent attended that institution for the in question, false. "

Apart from that, appellant has failed woefully to prove the falsity of the document in accordance with the provisions of law, which makes the standard of proof to be beyond reasonable doubt, being a criminal allegation.

It is for the above reasons and those contained in the lead judgment that I too find no merit, whatsoever, in the appeal and consequently dismiss same. I abide by the consequential order contained in the said lead judgment including the order as to costs.

M.D. MUHAMMAD, J.S.C.: My learned brother, Sidi Dauda Bage, J.S.C. did oblige me in draft his lead judgment just delivered. On perusal, I agree with his lordship's reasoning and conclusion that the appeal lacks merit and stands dismissed. I abide by the! consequential orders made in the lead judgment including the order on costs.

KEKERE-EKUN, J.*S.C.:* I have had a preview of the judgment of my learned brother, SIDI DAUDA BAGE, JSC just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and ought to be dismissed.

The law is settled that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, shall prove that those facts exist. It is also the law that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Where the commission of a crime is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. See sections 131, 132 and 135 (c) of the Evidence Act 2011

It follows that where there is an allegation made pursuant to section 31 (5) of the Electoral Act 2010 (as amended).

The appellant's contention before the trial court was that the respondent was not qualified to contest the office of the Governor of Yobe State in the general election which took place on 11th April 2015 because he had given false information in his form CF001 (Affidavit of Personal Particulars - exhibit Maihaja 13) submitted to the 3rd respondent (INEC) to wit:

(l) That this Primary School Leaving Testimonial purportedly issued by Yunusari Local Education Authority of Borno State in 22/12/69 was false because Borno State was not in existence as at the date the testimonial was issued. That the said testimonial is a forged document presented to the 3rd respondent by the 1st respondent in breach of section 182 (1) (j) of the 1999 Constitution.

(2) That the documents submitted to INEC contain discrepancies as to the 1st respondent's actual date of birth.

It was also contended that the 1st respondent was not eligible to contest the said election into the office of Governor of

the State having been elected on two previous occasions into the said office. Reliance was placed on sections 180(2) (a), 181(1), 182(1) (b) and 185 of the 1999 Constitution and the case of *Marwa v. Nyako* (2012)6NWLR (Pt.1296) 199.

The facts that gave rise to the appeal have been sufficiently captured in the lead judgment. I need not repeat the exercise.

The attack on the 1st respondent's Primary School Leaving Testimonial is based solely on the fact that Borno State was not in existence as at 22nd December 1969 and it is thus contended that the testimonial issued by the Yunusari Local Education Authority of Borno State must have been forged. Section 177 of the 1999 Constitution provides as follows:

117. A person shall be qualified for election to the Office of Governor if -

(a) He is a citizen of Nigerian by birth:

(b) He has attained the age of thirty-five years, and

(c) he has been educated up to at least the School Certificate Level or its equivalent

Section 31 of the Electoral Act provides for the submission the list of candidates and their affidavits by political parties. Section 31 (2) & (5) provide:

"31(2). The list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the Federal High Court High Court of a State or Federal Capital Territory, indicating that he has fulfilled all the constitutional requirements for election into that office.

(5) Any person who has reasonable grounds to believe, that any information given by a candidate in affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or Federal

> Capital Territory against such person seeking; declaration that the information contained in the affidavit is false."

My understanding of subsection (5) of section 31 is that the false information complained of must relate to the constitution; requirements for election into the office in dispute- in this case the requirements of section 177 (b) & (c) of the Constitution.

The appellant therefore had the onus of satisfying the court below not only that the testimonial was forged but also that the 1 respondent does not possess the educational qualification stipulate in section 177 (c) of the Constitution. He failed woefully on both counts. Having alleged forgery, which is a criminal offence, the onus was on him to establish that fact beyond reasonable doubt notwithstanding the fact that the allegation was made in civil proceedings. I agree with the court below that the appellant failed to tender any evidence, such as a disclaimer from the authority that issued the testimonial, stating that it was a forged document Not only must it be proved that the document was forged, must also be proved that it was the 1st respondent who forgt the document. See: *Ansa v. ishie (2005) 15 NWLR (Pt.948) 21 Eya v. Olopacle & Anor. (2011)* LPELR-*11*84 (SC); (2011) LPELR-1184 (SC); (2011) 11 NWLR (Pt. 505)

With the intent that it may be used or acted upon as genuine to the prejudice of any person or with intent that any person may, in the belief that it is genuine be induced to do or refrain from doing any whether in Nigeria or elsewhere. See: *Ndoma-Egbu v. ACB* (2005) 14 NWLR (Pt. 944) 79. There was no such evidence ore the trial court. There was also no evidence before the court contradict the 1st respondent's claim of having attended Yunusari primary School from 1963-1969. The fact that Borno State was not in existence in 1969 is not proof that the school did not exist, regards the age of the 1st respondent, the *onus* was on the

appellant to prove that as at the time he contested the election, the respondent had not attained the age of 35 years as required by section 177 (c) of the Constitution. If there is any discrepancy in cage of a candidate, it must have a bearing on the constitutional requirement before it can have the effect of disqualifying him. see *Joe Odey Agi, SAN v. PDP & Ors.* (2016) 12 SC (Pt. l) 74 @ 38-141 (2017) 17 NWLR (Pt. 1595) 386. It was also held in this, see that there must be evidence of an intention by the candidate to circumvent the provisions of the constitution. There was none established in this case.

For these and the more comprehensive reasons advanced in lead judgment, I find no merit in this appeal. It is accordingly *dismissed.* I abide by the order on costs.

EKO, J.S.C.: I had the privilege of reading in draft the Judgment just slivered in this appeal by my learned brother, SIDI DAUDA BAGE, JSC.

The first issue, raised and argued, in the appeal is enough to determine the fate of the appeal and the parties thereto. The issue is:

> "Whether the lower court was right to have held that the appellant was not an aspirant in the 2nd respondent's primaries dated 4th December, 2014 culminating in this appeal for purpose of invoking the provisions."

The summary of the facts on this has been adroitly done by learned brother, Sidi Dauda Bage, JSC, and I hereby adopt it. The appellant, as the plaintiff did admit in the affidavit in support of his originating summons that for sundry reason he could not submit his "completed expression of interest a nomination forms" to the 2nd respondent, All Progressives Congress (APC)

(the political party he intended to seek its sponsorship a candidate for the general election), either at the National or State Secretariats of the Party. The appellant, in consequence there; could not or did not participate in the primary election of the APC to nominate the APC candidate to contest for the office of the Governor of Yobe State.

Section 87(9) of the Electoral Act. 2010, (as amended), is unambigously clear that it is only an aspirant who complains that the provisions of the Act and the guidelines of his political par have not been complied with in the selection or nomination is a candidate of his political party for the general election has to *LOCUS STANDI* to apply to the Federal High Court, or the High Court of a State, or the High Court of the Federal Capital Territorial ft redress. The provisions of section 87(9) of the Electoral Act, 2010 (as amended), have been interpreted in a number of cases by the court to the effect that the plaintiff or complainant who did m participate in the party primary election, as an aspirant, has no *loci standi* to complain about the outcome of the said primary election See *PDP v. Sylva (2012) 13 N WLR (Pt. 1316) 85 at 125; Uwazuruike v. Nwachukwu (2013) 3 NWLR (Pt.1342) 503 at 526; A.P.G.A, v. Anyanwu (2014) 7 NWLR (Pt. 1407) 541 at 575; Anyanwu v. Ogunenwe (2014) 8 NWLR (Pt. 1410) 437; Ukachuikwu v. PDP (2014) 17 NWLR (Pt.1435) 134; Daniel v. INEC & Ors. (2015)34 MJSC 1 at 45; (2015) 9 NWLR (Pt. 1463) 113.*

The point was made more poignant in *PDP V. SILVA* (supra); *126* where this court stated the law thus -

> "Section 87(9) of the Electoral *Act* confers jurisdiction on courts to hear complaints from candidate who participated at his party***'s*** primaries**.** The fact in the case are conclusive that the 1st Respondent did not the general election for (election of the) Governor of

> Bayelsa State-.the general election for (election of the) governor of Bayelsa state-.
>
> The 1st respondent not being a candidate at the primaries cannot be heard to complain about the conduct of the primaries. Section 87(9) of the electoral act is thus not applicable. The PDP has the right to bar the 1st respondent, or any of its members from contesting its primaries if it so desires.

The appellant, by his own showing, did not participate in the primary election of his party, APC, for the election of the party's candidates for the election to the office of governor of Yobe State. He, therefore, did not have the *locus standi* under section 87(9) of the electoral act. 2010, as amended, to approach the federal high court to complain about the conduct of the APC primary election for the election/nomination of the party's candidate for the office of governor of Yobe State. To this extent he was, being a busybody, rightly shut out by the courts. I have no cause therefore to disturb the concurrent findings or judgments of the trial court and the court below on this issue, which is resolve against the appellant.

Issue 2 argued in this appeal seemingly was brought before he trial court under section 31(5) & (6) of the electoral act. In that wise, as a member of the public, the appellant was empowered by subsection (5) of section 31 of the act to approach the high court to seek "a declaration that the information contained in the affidavit" required under subsection (2) thereof to accompany the 1st respondent's nomination forms is false. The high court if satisfied, on the complaint or application that the information contained in the nomination form of the i31 respondent was false, is obligated to issuing an order disqualifying the respondent from contesting the election.

It was alleged that the 1st respondent furnished to INEC among the document accompanying his nomination forms, duly verified

by his Affidavit of personal particular, a primary School Leaving Testimonial purporting that it was issued to him on 1st December, 1969 by Borno State Government. The senior counsel of the Constitution, (as amended), the Testimonial was a forged document. A testimonial, as it appears from the word, is formal written statement or testimony, often by a former teach or employer, about somebody's abilities, qualities and character See Oxford Advanced Learner's Dictionary. A testimonial normally or in its usual context, affirms or confirms facts to existed in the past.

The testimonial in dispute forms part of exhibit Maihaja It is exhibit Maihaja 13 A9 and it is at page 130 of the record certifies that the lst respondent attended a named primary school and completed his primary education thereat on 22nd December 1969. The appellant asserts that this information on oath false and also that the testimonial is a forgery. By that assertion some criminal offences had allegedly been committed. That in perjury, forgery and using as genuine a forged document.

On these weighty allegation of the commission of criminal offences, it is not enough for the appellant to contend that the Yunusari Primary School never existed between 1963 and 19(A more empirical evidence proving beyond reasonable doubt that the information on oath was false, that the primary school never existed in actuality and that the testimonial was a forgery should have come from the appellant in view of sections 131(1), 132a 135 of the Evidence Act.

Section 131(1) of the Evidence Act, 2011 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he assert shall prove that those facts exist. Put streetwise, he who assert must prove his assertion. It therefore logically follows that which is alleged without proof can be denied without proof. Whet fact is asserted without proof then the existence of the alleged fact is not established. That is why section 132 of the Evidence/

provides further that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Where, as in this case, the commission of a crime by a party to the proceeding is alleged the alleged criminal affidavit must be that person who asserts it. See Section 135(1) of the Evidence, See *Nwobodo v. C.C. Onoh & Ors.* (1983) 14 NSCC 478; (4) 1 SCNLR 1. Allegations beyond imaginable conjectures and regulations in political times and proof beyond reasonable doubt h allegations of criminal offences are not one and the same The former may be of unacceptable political desperation, latter is an imperative in criminal law practice and procedure. The appellant also makes the same blunder on the assertion he 1st respondent presented false particulars of his date of Not only that the appellant failed to prove the perforative delegation beyond reasonable doubt, he was effectively tied and silenced by the overwhelming evidence marshaled in paragraph 21 (c) & (d) of the counter-affidavit of the 1st respondent, appellant just failed to, or did not, prove the allegation that is final in nature beyond reasonable doubt, as the law requires. Issues 1 and 2, as argued in this appeal are hereby resolved against the appellant. I am in complete agreement with my learned together, SIDI DAUDA BAGE, JSC, on these issues as he did involve them.

Issues 1 and 2, as argued, are matters touching on the tape and operation of sections 87(9) and 31(2), (5) & (6) of the Electoral Act, 2010, (as amended). The questions they raised are sly pre-election issues. 1 have held that the appellant lacked *locus standi* under section 87(9) of the Act to complain about the nary election of his political party that he never participated He also failed to prove the allegations that 1st respondent had published false information to the affidavit verifying his personal particulars in the nomination form that the latter submitted to INEC, the 3rd respondent. The proof of the said allegations would have obligated the trial High Court to issue an order,

under section 5) of the Electoral Act. 2010. (as amended), disqualifying the respondent from contesting in the election to the office of the

governor of Yobe State.

The resolutions of issues 1 and 2 in the appeal are enough to the dispute. The appellant did not, eventually, participate in the governorship election to warrant his challenging the election of the 1st respondent on the ground that the 1st respondent having been elected to the office of governor prior to the April, 2015 governorship election was no longer qualified, under section 182(1) (b) of the Constitution, to be elected to that office.

The appellant did not bring the question under section 3l of the Electoral Act, albeit in any polymer act of stretching things, (f warrant the trial High Court exercising its jurisdiction to entertain it.

There is no substance in this appeal. It is hereby dismissed. Parties shall bear their respective costs.

Appeal dismissed