

IN THE COURT OF APPEAL OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
ON WEDNESDAY THE 23RD DAY OF NOVEMBER, 2022
BEFORE THEIR LORDSHIPS:

HON. JUSTICE THERESA NGOLIKA ORJI-ABADUA, PRESIDING JUSTICE, COURT OF APPEAL.
HON. JUSTICE TUNDE OYEBAMIJI AWOTOYE, JUSTICE, COURT OF APPEAL.
HON. JUSTICE SYBIL ONYEJI NWAKA-GBAGI, JUSTICE, COURT OF APPEAL.

APPEAL NO. CA/B/225/2022

BETWEEN:

1. HON. OMOREGIE OGBEIDE-IHAMA
2. HON. PASCHAL UGBOME
3. DR. MICHAEL ONOLEMEMEN
4. EMMANUEL AGBAJE
5. BARR. NOSA ADAMS
6. FELIX AKHABUE
7. LEWIS OSOBASE
8. ENGR. MOSES OMO-IKIRODAH
9. DCN. EFOSA IDUGBOE
10. LAWRENCE O. OGIEVA
11. BARR. LUCY OMAGBON
12. PATRICK A. GIWA
13. CHRISTABEL O. EKWU
14. JAFARU INUA SHAIBU
15. EKUNDAYO UKPONMWAN
16. OJEIFOH DONATUS
17. OMOKHEGBELE O. CALEB
18. THADDEUS IRABOR E.M.
19. OJIEZELE OSEZUA O.
20. ZUBERIOUS E.O. EDEOGHON
21. PETER I. IGBAERA
22. WILLIAM I. USMAN
23. ABU SHAIBU
24. AFEBU AIGBONOGA
25. OJIE E. INEGBEBOH
26. DESMOND IYEN OSAWEMWENZE
27. OSAHON TERRY OKONEDO
28. PATRICK EREGIE
29. NDIDI AGHIMIEN
30. EHIGIATOR N. CHARLES
31. IDOWU PETER AYENI
32. BARR. FRANK UNUIGBOJE
33. EWAEN SORAE
34. HONSETY AGINBATSE
35. NOSAKHARE OMORUYI
36. IGHODARO E. VEADAM

APPELLANTS



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AND

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COUNT OF APPEAL
BENIN
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DENNIS P. ANYANWA, ESQ.
SIGN

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25/11/22

- 1.HON. MATHEW IDUORIYEKEMWEN
2. SENATOR CLIFFORD ORDIA
- 3.HON. SUNDAY IZUHUNWA AGUEBOR
- 4.HON. OMOSEDE IGBINEDION
- 5.HON. KABIRU ADJOTO
- 6.HON. JIMOH I. OJEIU
- 7.HON. MARCUS ONOBUN I.
- 8.RT. HON. ROLAND ASORO
9. HON. ANDREW MOMODU
10. HON. EMMANUEL OKODUWA E.
11. NATASHA IROBOSA OSAWARU
12. DONALD OKOGBE
13. HON. HENRY OKHUAROBO
14. UYI FRANK OMOSIGHO
15. AISOSA AMADASUN
16. DAMIAN LAWANI
17. HON. KINI IDIAYE
18. AMINU KADIRI
19. EMMANUEL AKHABA
20. SUNDAY EIGBIREMOLEN FADA
21. HON. SUNDAY OJIEZELE
22. OJIE EUGENE INEGBEBOH
23. OMOZOGIE IHENYEN
24. HON. BLESSING AGBEBAKU
25. HON. MARIE OMOZELE EDEKO
26. MOSES UADIALE EBOSETALE
27. OTSE MOMOH OMOROGBE
28. HON. OKUNBOR NOSAYABA
29. AIGUOBARUEGHIAN C. IGUODALA
30. KAYCEE OSAMWONYI
31. ANDREW UZAMERE OSADALO
32. DESTINY O. ENABULELE
33. BRIGHT IYAMU
34. FELIX IYALOMHE
35. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
36. PEOPLES DEMOCRATIC PARTY
37. DR. IYORCHIA AYU

RESPONDENTS

JUDGMENT

(DELIVERED BY HON. JUSTICE TUNDE OYEBAMIJI AWOTOYE, (JCA)

This is the judgment in respect of the pre-election appeal filed by the Appellants against the decision of the Federal High Court in Suit No. FHC/B/CS/78/2022 delivered on 27/9/2022 wherein the

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learned trial Judge after hearing the parties entered judgment inter alia granting the reliefs sought by the 1st – 34th Respondents in the following terms:

- 1) Whether the trial court was right in holding that Exhibits E¹-E² satisfied the requirements of section 82(1) of the electoral Act which prescribes 21 days notice to INEC for the holding of political primary election. This issue was distilled from ground 5 of the Grounds of Appeal.**
- 2) Whether the trial court properly evaluated the evidence of the Appellants and the respondents before granting the reliefs contained in the originating summons. This issue was distilled from grounds 2, 8,9,10,12 and 13 of the Grounds of Appeal**
- 3) Whether the trial court was right when it held that the Appellants herein cannot rely on exhibit 6 (103) to establish the point that the primary election by which they emerged winners was monitored and supervised by INEC? This issue was distilled from grounds 3 and 11 of the Grounds of Appeal.**
- 4) Whether the failure of the learned trial Judge to consider and/or resolve all the issues or points raised by the Appellants does not amount to a denial of fair hearing, guaranteed under section 36(1) of the constitution, 1999 (as amended). This issue is distilled from grounds 4,7, of the Grounds of appeal.**

- 5) Whether having regards to the provisions of section 285(14) of the Constitution, 1999 (as amended) and section 84(1) (2)(5) and (14) of the Electoral Act, the learned trial court was right when it held that the issue of delegates is a matter outside the purview of pre-election proceedings? This issue was distilled from ground 6 of the Grounds of Appeal.
- 6) Whether the trial court was right when it proceeded to determine the suit by way of originating summons instead converting the same to a Writ of summons and/or calling on the parties to adduce evidence to reconcile the seemingly irreconcilable differences in the affidavit evidence. This issue is distilled from ground 1 of the Ground of appeal.

Miffed by the above decision the appellants filed their Notice of Appeal challenging the said decision on thirteen grounds as follows:

GROUND OF APPEAL

GROUND ONE

The learned trial Judge of the Federal High Court erred in law when he despite the irreconcilable conflicts in the Affidavits filed by the parties held (at page 55 of the judgment) as follows:

"In the instant case, the question raised by the proceeding is a question of law. In my view, there appears to be no dispute oral evidence to resolve disputes". as to the facts to warrant calling for pleadings and oral.

GROUND TWO

The learned trial Judge of the Federal High Court misdirected himself when he held (at pages 64-65 of the judgment), without any scintilla of evidence as follows:

"I have seen exhibit PDP 6B. it is clear that it emanated from the Edo State Chapter of the Peoples Democratic party.

I find that exhibit 6B, sharply contradicted the averments in paragraph 8 of the composite further counter affidavit of the 4th-39th Defendants.

Furthermore(sic) exhibit PDP 6B annexed to the composite further counter affidavit of the 4th-39th Defendants failed to support the averment in paragraph 11 of the composite further counter affidavit.

GROUND THREE

The learned trial Judge of the Federal High Court erred in law when he wrongly construed and applied the provisions of section 84 (1) of the Electoral Act, 2022 (at page 67 of the judgment) as follows:

"In my view, the provisions of the 84(1) of the Electoral Act 2022 on the power of the 1st Defendant herein to monitor the conduct of primaries for aspirants to elective positions are clear and unambiguous. The power under section 84(1) of the election Act 2022 as conferred on the Independent National electoral Commission (INEC) the 1st Defendant herein is limited to the monitoring and supervision of the conduct of primaries of a political party. The power as conferred on the Commission does not extend to the declaration of results of the primaries.

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In his written address filed along with further counter-affidavit, the learned Senior Advocate and Lead counsel for the 2nd Defendant, herein the PDP Nureini Jimoh, SAN argued that exhibit PDP 6 (1-3) attached to the Counter Affidavit by the 4th -39th defendants, did not emanate from the right authority that ought to issue them. The learned Senior Counsel for the 2nd Defendant, the PDP further argued that INEC cannot be the rightful authority to declare result of a primary election.

I agree with these submissions in the light of the clear provisions of Section 84(1) of the Electoral Act, 2022, that limited the role of the 1st Defendant herein to only monitor and/or supervise the conduct of party primaries.

Consequently the 4th – 39th Defendants cannot in the circumstances rely on exhibit PDP 6(1-3) to establish the point that the primary election in which the 4th – 39th Defendants emerged winners was monitored and supervised by INEC, the 1st Defendant herein.”

GROUND FOUR

The learned trial Judge of the Federal High Court erred in law in failing to hold that the non-production of INEC Report by the Plaintiffs amounted to withholding of evidence under section 167(d) of the Evidence Act, 2011.

GROUND FIVE

The learned trial Judge of the Federal High Court erred in law when he wrongly relied on Exhibits E1-E2 to hold that the 1st - 34th Respondents gave adequate Notice to the 35th Respondent

for the Conduct of the Primaries relied upon by the 1st – 34th Respondents when the said Exhibits were in clear breach of the provisions sections 82(1) & (5) and 84(1) of the electoral Act as follows:

"On the other hand, there are Exhibits E1-E2 attached to the affidavit in support of the further amended originating summons. These are letters to the Chairman, Independent national Electoral Commission (INEC) issued from the National Headquarters of PDP, by which the PDP gave notice of the conduct of the party's primaries for the selection and nomination of candidates for the election, 2023. Exhibits E1 and E2 are dated 16th May, 2022 and 19th May, 2022 respectively notifying the Independent National Electoral Commission of the conduct of party's primaries for the section and nomination of candidates for election fixed for 22nd and 23rd May, 2022.

GROUND SIX

Having regards to the provisions of Section 285 (14) of the Constitution of the Federal Republic of Nigeria, 1999 and Section 84(1) (2) (5) and (14) of the Electoral Act, Learned trial Judge of the Federal High Court erred in law and occasioned a miscarriage of justice when he held as follows:

"Now the 4th-39th Defendants have also argue that they were elected candidates of the 2nd Defendant by authentic delegated that constitute the electorates for the primary election conducted to select and nominate candidates of the party for the general elections, 2023.

All I need to say on this argument, is that an issue that calls for a determination on Delegates for primary election is one that is outside the preview of a pre-election proceedings. It is an issue falling within the domestic affairs of a political party".

GROUND SEVEN

The learned trial Judge of the Federal High Court erred in law when he failed to resolve all the issues submitted to him for determination by the Appellants and thereby denied the Appellants fair hearing contrary to the provisions of Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

GROUND EIGHT

The learned trial Judge of the Federal High Court erred in law when it failed to evaluate and/or properly evaluate the Exhibits tendered by parties in the suit and make specific finding on them before coming to the conclusion that the suit has merit.

GROUND NINE

The learned trial Judge of the Federal High Court erred in law in failing to invalidate in failing to invalidate Exhibit **MAM H(1-35)** relied upon by the 1st -34th Respondents when the said result was not in conformity with the Peoples Democratic Party's Guidelines tendered as **Exhibit MAM B(1-2)**.

GROUND TEN

The learned trial Judge of the Federal High Court erred in law when he held (at page 69 of the Judgment) as follows and gave judgment to the 1st -34th Respondents:

"On the whole and based on the judicial authorities on the point, I resolve the issue for determination in favour of the Plaintiffs. I find that the legal, valid and authentic primary election by which the Plaintiffs emerged candidates of the 2nd Defendant, is the one conducted by the National Working Committee of the 2nd Defendant through the three (3) Electoral Committee set up by the National Working Committee."

GROUND ELEVEN

The learned trial Judge of the Federal High Court erred in law in granting the reliefs sought by the Plaintiffs in the absence of any proof that the 35th Respondent (INEC) monitored their election and contrary to section 84 of the Electoral Act, 2022.

GROUND TWELVE

The learned trial Judge of the Federal High Court erred in law when (at pages 69-70 of the judgment) he concluded as follows albeit without any factual or legal justification:

Consequently, questions 1,3, 6 and 7 as contained on the body of the Originating Summons are answered and resolved in the affirmative.

Questions 2, 4 and 5 are answered in the negative. Consequently, the reliefs sought by the proceedings are hereby granted as the suit by the Plaintiffs has merit. It succeeds."

GROUND THIRTEEN

Judgment is against the weight of evidence and the law on the subject matter.

After transmission of records of appeal to the court part filed and exchanged briefs of argument.

- 1) **Appellants' brief of argument which was filed on 24/10/22**
- 2) **1st-34th Respondents' Brief of Argument filed on 31/10/22.**
- 3) **36th Respondents' Brief of Argument filed on 2/11/2022.**
- 4) **37TH Respondents' Brief of Argument filed on 3/11/2022**
- 5) **Appellants' Reply Brief to the 1st -34th Respondents' Brief of Argument filed on 31/10/2022**
- 6) **Appellants' Reply Brief to the 36th Respondents' Brief of Argument filed on 2/11/22.**
- 7) **Appellants' Reply Brief to the 37th Respondents' Brief of Argument filed on 3/11/2022**

The Appellants' Brief of Argument was prepared by Chief Ferdinand Oshioke Orbih SAN. The Senior Counsel formulated six issues for determination as follows:

- 1) **Whether the trial court was right in holding that Exhibits E¹-E² satisfied the requirements of section 82(1) of the electoral Act which prescribes 21 days notice to INEC for the holding of political primary election. This issue was distilled from ground 5 of the Grounds of Appeal.**
- 2) **Whether the trial court properly evaluated the evidence of the Appellants and the respondents before granting the reliefs**

contained in the originating summons. This issue was distilled from grounds 2, 8,9,10,12 and 13 of the Grounds of Appeal

- 3) Whether the trial court was right when it held that the Appellants herein cannot rely on exhibit 6 (103) to establish the point that the primary election by which they emerged winners was monitored and supervised by INEC? This issue was distilled from grounds 3 and 11 of the Grounds of Appeal.
- 4) Whether the failure of the learned trial Judge to consider and/or resolve all the issues or points raised by the Appellants does not amount to a denial of fair hearing, guaranteed under section 36(1) of the constitution, 1999 (as amended). This issue is distilled from grounds 4,7, of the Grounds of appeal
- 5) Whether having regards to the provisions of section 285(14) of the Constitution, 1999 (as amended) and section 84(1) (2)(5) and (14) of the Electoral Act, the learned trial court was right when it held that the issue of delegates is a matter outside the purview of pre-election proceedings? This issue was distilled from ground 6 of the Grounds of Appeal.
- 6) Whether the trial court was right when it proceeded to determine the suit by way of originating summons instead converting the same to a Writ of summons and/or calling on the parties to adduce evidence to reconcile the seemingly irreconcilable differences in

the affidavit evidence. This issue is distilled from ground 1 of the Ground of appeal.

Learned Senior Counsel Mahmud Abubakar Magaji SAN in the 1st - 34th Respondents' Brief of Argument raised the same issues with modifications as follows:

ISSUE FOR DETERMINATION

Without prejudice to the outcome of the motion filed by the 37th Respondent praying this Honourable Court to strike out issue No. 1, the 37th Respondent adopts the 6 issues formulated for determination by the 1st - 34th Respondents. The issues are:

- i. Whether the trial Court was not right to have held that Exhibit E1-E2 satisfied the requirements of Section 84(1) of the Electoral Act. (Ground 5 of the Grounds of Appeal).***
- ii. Whether the trial Court properly evaluated the evidence of the Appellants and the Respondents before granting the reliefs contained in the Originating Summons. (This issue was distilled from grounds 2, 8, 9, 10, 12 and 13 of the grounds of Appeal).***
- iii. Whether the trial Court was right to have held that the Appellants cannot rely on INEC Reports (exhibit 6(1-3)) to establish that the primary election that produced the appellants was conducted by the 36th Respondents national Working Committee. (This issue was distilled from grounds 3 and 11 of the Grounds of Appeal).***

- iv. Whether the learned trial Judge did not consider and/or resolve all the issues or points raised by the Appellants at the trial court. (This issue is distilled from grounds 4, 7 of the Grounds of appeal).**
- v. Whether the learned trial court was not right when it held that the issue of delegates is a matter outside the purview of pre-election proceedings? (This issue was distilled from ground 6 of the Grounds of Appeal).**
- vi. Whether the trial Court was not right to have determined the Suit by way of Originating Summons. (This issue is distilled from ground 1 of the Grounds of Appeal).**

Nureini Jimoh SAN on behalf of the 36th Respondent donated two issue for determination to wit:-

ISSUES FOR DETERMINATION

- a. Whether the suit at the trial court was rightly commenced and determined by Originating Summons. Ground 1**
- b. Whether the trial court rightly granted the reliefs sought by the 1st – 34th Respondents. Grounds 2-12**

Learned Senior Counsel, Abdullahi Aliyu on behalf of the 37th respondent identified the 6 issues formulated for determination by the 1st -34th Respondents.

The SUBMISSIONS OF COUNSEL are as contained in their respective briefs, and the record of this court.

RESOLUTION OF ISSUES

I have deeply considered all the issues as formulated by counsel. I shall adopt the six issues identified by the Appellants (who are the aggrieved) because they are wide enough for the just determination of this appeal. It is to be noted that issue one has just been struck out in an earlier ruling of this court today.

ISSUE TWO

whether the trial court properly evaluated the evidence of the appellants and the respondents before granting the reliefs contained in the originating summons.

The fulcrum upon which this issue rests and turns is on the results of the primary election monitored by INEC (35th Respondent). The party seeking to rely on such result must show that it is a result a primary election monitored by 5th Respondent. This will be in line with Section 84 (1) of the Electoral Act 2022 which reads as follows:

"A political party seeking to nominate candidates for election under this Act shall hold primaries for aspirants to all elective positions, which shall be monitored by the Commission."

The monitoring of such primary election is a fact which must be proved in order for such result emanating therefrom to be valid.

The Appellants asserted that the election, were monitored by INEC. One would expect such a result emanating from such INEC monitored election to be so endorsed with the signature of the INEC official present and his designation in order not to give room for speculation. This is moreso, in the face of the contention of the Respondents to the contrary.

Secondly, it is trite law that it is only the National Executive Committee of a party that has the responsibility of conducting

party primaries. See **EMENIKE V. P.D.P. (2012) NWLR (PT. 1315) page 556; U.B.A. Vs OZIGBO (2022) 10 NWLR (PT.1839) page 431.** Any person who seeks to rely on any result emanating from a party primary must show that such primary was conducted by the National Execution Committee. In the face of the conflicting result relied upon by the parties at the lower court there was no way such conflicts could have been resolved other than by adducing oral evidence. Exhibit PDP6B on which the case of the Appellants rests does not show that the primary election on which it is based was organized by the National Working Committee of the P.D.P.

Resolution and settlement of the violently conflicting averments can only be by oral evidence. See **HON. ABDULLAHI ADAMU MAMMAGI vs. HUSSAINI E.L.C. (2019) 3593 S.C.** In realization of this the Appellants at the lower court applied unsuccessfully but regrettably for an order directing the parties to lead oral evidence on the irreconcilable material and crucial areas of conflict which cannot be affidavit evidence or the annexures thereto be determined or reconciled. **See pages 4882 – 4884 of vol. 4 of record of Appeal** where the court ruled thus:

" RULING

A party shall not serve a notice of an application on another party on the date fixed for hearing.

Accordingly the motion is hereby struck out.

"However, as it was rightly argued in the course of this proceedings, the 4th -39th Defendants have nothing to loss as the Court has the power to suo motu call for oral evidence even after the case is adjourned for judgment, if the Court in the course of considering the processes filed and the issues therein, is of the view that

the issues raised are such that cannot be determined by affidavit evidence.

Consequently, the motion on notice filed by the Learned Senior Advocate and lead Counsel for the 4th – 39th Defendants is hereby struck out for reason already given herein before now”.

Calling officials of I.N.E.C and the P.D.P to give oral evidence to resolve the conflicts in the affidavit filed on whether primary election which led to the issuance of Exhibit P.D.P6B was conducted by National Working Committee of the P.D.P or monitored by INEC. One can only resolve the conflicts in the absence of the oral evidence by speculation. It is trite that courts are not to decide issues based on speculation. See **ORISA V. STATE (2018) 11 NWLR PART 1631 P.453**; **UWAIFO JSC in IVIENAGBOR VS. BAZUAYE & ANOR (1999) 9 NWLR PART 620 at 552** had this to say on this point.

“A court cannot decide issues on speculation no matter how close what it relies on may seem to be on the facts. Speculation is not an aspect of inference that may be drawn facts that are laid before the Courts. Inference is a reasonable decision from facts whereas speculation is a mere variant of imaginative guess which, even when it appears plausible should never be allowed by a Court of Law to fill any hiatus in the evidence before it. See OVERSEAS CONSTRUCTION CO. LTD. VS. CREEK ENTERPRISES LTD. (1985) 16 NSCC (Pt.2) 1371 at 1375; (1985) J NWLR (Pt. 113) 409”

The case of the Appellants at the lower Court rested heavily on the pillar of PDP6B. Once the pillar cracks and collapse, the whole case falls like a pack of cards. I resolve issue 2 in the circumstance in favour of the Appellants.

ISSUE THREE

Whether the trial Court was right when it held that the Appellants herein cannot rely on Exhibit 6(1-3) to establish the point that the Primary Election by which they emerged winner was monitored and supervised by INEC

The direct roles of each of INEC (the commission) and the political party seeking to nominate candidate for election are clearly defined under S. 84 (1) of the Electoral Act 2022. Section 84(1) of the Act states

"A political party seeking to nominate candidates for Elections shall hold Primaries (and declare results of the Primaries (impliedly) to all elective positions which shall be monitored by the commission."

To monitor as stipulated by Section 84(1) of the Act implies that the representatives of the commission shall be present at the primaries to watch over and supervise the said primaries. See ***AMAECHI VS. INEC (2007) 18 NWLR Part 1065 P. 105***. It would also imply in my opinion that the names of the representatives of the commission and designation and signature shall be endorsed on the result of the primaries as having been present to monitor the Election. It does not, by any stretch of imagination mean that the commission shall declare the result.

It is the political party that is conducting the primaries. It is the commission that monitors. The Black's Law Dictionary online defines the word monitor as "***To keep track of, to check to supervise or watch***"

Any result that shows that the commission has done more than the stipulated monitoring violate the provision of the Act. The

party officials and the representatives of INEC should jointly sign the result to show that they were at the venue at the same time.

The finding of the learned trial Judge on Exhibit PDP6(1-3) is unimpeachable in the light of the above. I resolve the issue as well against the Appellants.

ISSUE IV

Whether the failure of the learned trial Judge to consider and/or resolve all the issues on points raised by the Appellants does not amount to a denial of fair hearing guaranteed under Section 36(1) of the Constitution 1999 (as amended).

Indeed Court has a duty to consider all issues raised by a party provided they are material and fundamental. See **HONEYWELL FLOOR MILLS PLC VS. ECOBANK (2018) LPELR – 45127 (SC),**

The contention of the Appellants is that the lower Court failed to resolve who as between the 1st – 34th Respondents and the Appellants were elected by the authentic 3 ad-hoc delegates that emerged from the Ward Congresses conducted in Edo State on the 30th April 2022. The learned trial Judge ruled that he had no jurisdiction over the matter. In my view the decision of the lower Court that it had no jurisdiction is itself a resolution that the Appellant can challenge an appeal and that cannot amount to a denial of right of fair hearing as guaranteed under Section 36(1) of the 1999 Constitution as amended. I resolve this issue as well against the Appellants.

ISSUE V

Whether having regards to the provisions of Section 285 (14) of the Constitution and (14) of

the Electoral Act the learned trial Court was right when it held that the issue of delegates is a matter outside the purview of pre-election proceedings?

I resolve this issue in favour of the Appellants in view of the clear provision of Section 84(14) of the Electoral Act 2022 and Section 285 (14) of the Fourth Alteration No 21) Act 2017 of Constitution of the Federal Republic of Nigeria.

It is a complain of violation of the provisions of the Electoral Act regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party. It is clearly a pre-election matter.

ISSUE VI

Whether the trial Court when it proceeded to determine the suit by way of originating summons instead converting the same to Writ of Summons and/or calling on the parties to adduce evidence to reconcile the seemingly irreconcilable differences is the affidavit evidence.

I also resolve this issue in favour of the Appellants. It is true the need for oral evidence arises only where the conflict in the affidavits are significant and material. See **EZECHUKWU VS. ONWUKA (2016) 5 NWLR (Pt. 1506) 529 at 548**. But it must also be noted as earlier stated in this Judgment that a Court should not speculate in the resolution of issues before it. See **ORISA V. STATE (Supra) and IVENAGBOR BAZUAYE & ANOR (Supra)**.

When the conflict in the affidavit are narrow and can be over looked and ignored the need for oral evidence is obviated. See **EZE CHUKWU VS. ONWUKA (Supra)**. But when the conflicts

are in major areas oral evidence has to be adduced to avoid speculation.

I agree with the Appellants in their submission on page 29 of their Appellants brief that there are conflicts in the following areas.

- (i) There are two sets of delegates who voted for the Appellants and the 1st – 34th Respondents
- (ii) That two parallel primaries were conducted
- (iii) That two sets of results were tendered
- (iv) That both parties centered that INEC monitored their primaries.

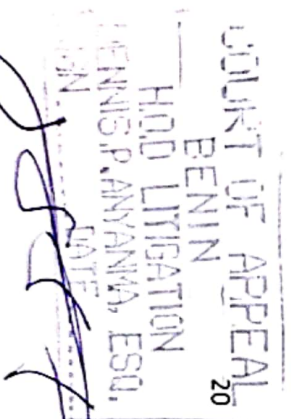
The conflicts in the above areas cannot be swept under the carpet.

I agree there was no proper evaluation of the evidence.

Suit No. FHC/B/CS/78/2022: **Hon Ogbeide-Ihama & Ors Vs. Hon. Mathew Idurijekemwen & Ors** is hereby struck out for want of jurisdiction in view of the incomplete record of appeal.

Parties are to bear their respective costs.


Tunde Oyebamiji Awotoye
Justice, Court Of Appeal.



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Appearances:

Appellants/Applicants:

Chief Ferdinand Oshoke Orbih, SAN.,
Chief P. O. Itua,
Anderson U. Asemota Esq.,
I.G. Ighodalo, Esq.,
C. O. Osabuohien, Esq.,
I. P. Aigbe, Esq.

1st-34th Respondents:

Mahmud Abubakar Magaji, SAN.,
O. E, Osemede, Esq.,
Benita Odigie, Esq.,

36th Respondent:

Nureini Jimoh, SAN. With him
O.D. Osunde

37th Respondent:

A.M. Aliyu, SAN.,
K.C. Wisdom Esq.,

35th Respondent:

Nil.

APPEAL NO: CA/B/225/2022

CONTRIBUTION

THERESA NGOLIKA ORJI-ABADUA, PJCA.

I have had an in-depth study of the leading judgment in this appeal just delivered by my learned brother, Awotoye, J.C.A., and I wholly agree with His Lordship in his resolutions of issues 2, 4, 5 and 6 in favour of the Appellants.

Accordingly, I find this appeal meritorious and it is hereby allowed. Consequently, the judgment of the Federal High Court delivered on 27/9/2022 in suit No. FHC/B/CS/78/2022 is hereby set aside. I would have made an order remitting this suit to the Chief Judge of the Federal High Court for re-assignment to another Judge for trial de novo since the lower Court still have the remaining part of its 180 day period for hearing and determination of pre-election matter, running, but for the ruling of this Court on the incompleteness of the record of appeal before it.

I abide by the order made in the leading judgment of this Court.



Theresa Ngolika Orji-Abadua,
Presiding Justice, Court of Appeal.



CA/B/225/2022

SYBIL NWAKA GBAGI, JCA

I read in advance the judgment delivered by my learned brother, **TUNDE OYEBAMIDI AWOTOYE, JCA.**

I agree entirely with the reasoning and conclusion of my learned brother which I also adopt that the appeal is meritorious and it is also allowed by me. Suit No. **FHC/B/CS/78/2022 Hon. Ogbeide Thoma & Ors. vs. Hon. Mathew Iduoriye Kemwen & Ors.** is hereby struck out for want of jurisdiction in view of the incompetent record of appeal.

I also endorse the consequential order made therein including order as to costs.



**HON. JUSTICE SYBIL NWAKA GBAGI
JUSTICE, COURT OF APPEAL**

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JAN 11 2022**

