**ALL PROGRESSIVE CONGRESS, APC**

**V.**

**KARFI**

SUPREME COURT OF NIGERIA

WEDNESDAY, 12 JULY 2017

SC.957/2015

**LEX (2017) - SC.957/2015**

OTHER CITATIONS

2PLR/2017/2 (SC)

**BEFORE THEIR LORDSHIPS:**

KUMAI BAYANG AKAAHS JSC (Presided)

JOHN INYANG OKORO JSC (Read the Lead Judgment)

AMIRU SANUSI JSC

EJEMBI EKO JSC

SIDI DAUDA BAGE JSC

**BETWEEN**

1. ALL PROGRESSIVES CONGRESS (APC)

2. ALH. UMAR HARUNA DOGUWA (APC Chairman, Kano State)

3. ALH. HATATU MUSA DORAWAR SALLAU

AND

1. HON. DANLADI IDRIS KARFI

2. THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

3. ALH. MOHAMMED SHEHU (Chairman, Electoral Committee)

**ORIGINATING COURT(S)**

COURT OF APPEAL, KADUNA DIVISION (judgment delivered on 27 November 2015).

**REPRESENTATION/LAWYERS**

M. D. Duru Esq. (with him, Robert Emukpoeruo Esq., U. U. Eteng Esq. and Samuel Akporiodo Esq.) - for the Appellants.

Magaji Mato Ibrahim Esq. (with him, Anyanwu Eusebus Esq.) - for the Respondent.

Tunde Babalola Esq. (with him, W. A. Adeniran Esq. and David O. Ogundipe Esq.) - for 2nd Respondent.

Olayode Delano Esq. (with him, Ahmed Oyegbami Esq.) - for the 3rd Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

ELECTION PETITION - OVER-VOTING DURING ELECTION – How same may be proved - Legal consequences thereof.

ELECTORAL MATTERS - HOUSE OF ASSEMBLY - Whether court is vested with the requisite jurisdiction to order a member thereof to vacate his seat - Sections 6 and 109, 1999 Constitution and sections 87(9), Electoral Act, 2010 considered.

ELECTORAL MATTERS - POLITICAL PARTY:– Membership of - How constituted – Whether members are obligated to comply with its constitution

ELECTORAL MATTERS - INCONCLUSIVE PRIMARIES:– Whether the Court of Appeal can order a rerun of after expiration of time prescribed by INEC.

ELECTORAL MATTERS - PRIMARY ELECTION:- Locus standi to challenge - Who possesses - Section 82 (9), Electoral Act examined.

ELECTORAL MATTERS - NOMINATION OF CANDIDATE(S) FOR GENERAL ELECTION:- Where based on inconclusive primaries – Legal validity of – The proper order a court of law must make.

CONSTITUTIONAL LAW:- SECTION 240, CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED):– Whether the Court of Appeal has exclusive jurisdiction to hear appeals from the Federal High.

CONSTITUTIONAL LAW - SECTION 241(1)(a), CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED):- Right of appellant to appeal against judgment of a trial Court- Fundamental nature of – Basis of

**PRACTICE AND PROCEDURE ISSUES**

ACTION - CONSEQUENTIAL ORDER - Power of court to make - Nature and purport of

ACTION - CONSEQUENTIAL ORDER – Whether can made after having made a decision – Whether such consequential order amounts to court giving order after it becomes functus officio.

APPEAL - APPEAL AGAINST HIGH COURT’S DECISION - Whether operates as stay - Section 17, Court of Appeal Act, 2004 examined

APPEAL - Appeals from Court of Appeal to the Supreme Court - Exclusive jurisdiction to determine - Section 240, 1999 Constitution considered.

APPEAL - RIGHT OF APPELLANT TO APPEAL AGAINST JUDGMENT OF TRIAL COURT – The statutory and fundamental nature of - Section 241(1)(a), 1999 Constitution dissected.

COURT - CONSEQUENTIAL ORDER - Whether court can make without calling for the address of parties – Whether comments made thereto are consequential.

COURT - INHERENT POWER OF COURT – When may be exercised - Scope of.

COURT - FAIT ACCOMPLI:- Where a party foists same on a court of law by conduct - Impropriety thereof – Attitude of court thereto

JUDGMENT AND ORDER - DECISION NOT APPEALED AGAINST – Whether binding.

JUDGMENT AND ORDER - ENFORCEMENT OF JUDGMENT - APPEAL AGAINST HIGH COURT’S DECISION TO COURT OF APPEAL - Whether operates as a stay - Section 17, Court of Appeal Act, 2004 examined

JUDGMENT AND ORDER - STAY OF EXECUTION – Whether operates as a stay of a high court decision - Section 17, Court of Appeal Act, 2004 considered

JUDGMENT AND ORDERS - JUDGMENT OF TRIAL COURT - Right to appeal against – When would inure to an appellant - Section 241(1)(a), 1999 Constitution considered

JUDGMENT AND PRDER - CONSEQUENTIAL ORDER – Whether court mandated to call for address of parties before making same – Effects of comments while making same.

INTERPRETATION OF STATUTE - CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) - SECTION 240 THEREOF – Whether the Court of Appeal has exclusive jurisdiction to hear appeals from the Federal High.

INTERPRETATION OF STATUTE - CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) - SECTION 241(1)(a) THEREOF - Right of appellant to appeal against judgment of a trial Court- Fundamental nature of.

INTERPRETATION OF STATUTE - CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) - Sections 6 and 109 and sections 87(9), Electoral Act, 2010, juxtaposed – Member of House of Assembly - Whether a court of law is vested with power the requisite jurisdiction to order such a member to vacate his seat

INTERPRETATION OF STATUTE - COURT OF APPEAL ACT, 2014, SECTION 17 – Whether appeal against High Court’s decision operates as stay of execution.

INTERPRETATION OF STATUTE - ELECTORAL ACT, SECTION 87(9) - Primary election – Who possesses the locus standi to challenge same.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The 1st and 2nd appellants organized primary election on 2 December 2014 in Kura/Garun Malam constituency to produce their candidate for election into the Kano State House of Assembly. At the close of voting and counting of votes, the election was declared inconclusive by the Electoral Committee of the 1st Appellant on the ground of over voting.

A fresh primary election was recommended, in accordance with the 1st appellant’s electoral guidelines. In spite of the inconclusive verdict of their committee, the 1st and 2nd appellants forwarded the name of the 3rd appellant to INEC as the candidate of the 1st appellant in the said election. Based on the appellants’ refusal to abide by the outcome of the primaries and the provisions of their Constitution, the 1st respondent filed an originating summons at the Federal High Court, Kano.

The federal High Court ordered that a fresh primaries be conducted. The Defendant being dissatisfied, appealed to the Court of Appeal, Kaduna Division. The Court of Appeal delivered its judgment on the 27th day of November 2015, affirming the decision of the Federal High Court. Dissatisfied, the Appellant approached the Supreme Court.

DECISION(S) APPEALED AGAINST

The Court of Appeal, Kaduna Division entered judgment on 27 November 2015 upholding the judgment of the trial Federal High Court, Kano which had ordered the conduct of fresh primaries of the 1st appellant to produce its candidate for the Kura/Garun Malam State House Constituency of Kano State, preparatory to the impending general elections).

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the court below was in error and acted without jurisdiction when it suo motu held the appellants in contempt of the order for fresh primaries and invalidated the general election in a purely preelection matter.

2. Whether the court below was in error to hold that the 1st respondent’s complaint in the originating summons was within the jurisdiction of the Federal High Court and cognizable under the provisions of section 87 of the Electoral Act, 2010 (as amended).

3. Whether their lordships of the court below drew the wrong inference from the evidence presented by the 1st respondent and were in error to affirm the finding of over-voting at the primary election of the 1st appellant conducted on 2 December 2014 and the order for fresh primary election.

4. Whether having regard to the provisions of section 31(1) of the Electoral Act, 2010 (as amended) the order for fresh primary election was in vain, academic and outside the limited jurisdiction conferred on the Federal High Court by sections 87(4) (c) (11) and 87 (9) of the Electoral Act, 2010 (as amended).

5. Whether the court below was in error to make consequential orders, directing the 3rd appellant to vacate his seat in the House of Assembly, for the conduct of fresh primary election and another election for the Kura/Garun Mallam Constituency, Kano State.

BY RESPONDENTS

The 1st respondent adopted the five issues formulated by the appellants.

The 2nd respondent adopted the five issues formulated by the appellants.

The 3rd respondent distilled two issues for determination thus:-

1. Whether the Court of Appeal was right when it held that the trial court had jurisdiction to grant an order for fresh primaries to be held.

2. Whether the Court of Appeal was right to make the orders that it made on appeal.

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Appellant]

DECISION OF THE SUPREME COURT

1. It is well settled that issue of nomination and/or sponsorship of a candidate for an election falls within the domestic affair of a political party being a pre-primary duty of the party. However, any dissatisfied contestant at the primary is empowered by section 87(9) of the Electoral Act, 2010 to ventilate his complaint before the Federal High Court or High Court of a State or of the Federal Capital Territory.

2. Fresh election will not always meet the justice of the case where an election is nullified. There is no better case for invocation of the restorative jurisdiction or power of the court under section 6(6) of the Constitution than the instant case. Where the political party and its candidate had acted with impunity against a court order and the mandatory provisions of the party’s Constitution/Guidelines for Nomination,

3. The appellants while exercising their undoubted right of appeal, had blatantly refused to repeat the primary election as ordered by the Federal High Court. They had at the same time, and in collusion with INEC, audaciously put up the 3rd appellant as the candidate of the 1st appellant, APC, for Kura/Garun Mallam Constituency in complete disdain and contempt of the orders made by the Federal High Court on 9th March 2015. INEC was also in contempt of the orders made against it on 9 March 2015 by the Federal High Court.

4. This appeal is therefore completely devoid of merit and is accordingly dismissed with, inter alia, the following consequential orders:-

i. the 3rd appellant, Alhaji Hayatu Musa Dorawar Sallau is ordered to vacate the seat of the Kura/Garun Mallam Constituency in the Kano State House of Assembly forthwith.

ii. the Independent National Electoral Commission (INEC) is ordered to withdraw the certificate of return issued to Alhaji Hayatu Musa Dorawar Sallau immediately and issue same to the runner up in the general election into the Kano State House of Assembly.

iii. the Speaker of the Kano State House of Assembly or the Clerk of the House (whichever is applicable) is ordered to swear in the runner up in the said election on which INEC has issued certificate of return to represent the Kura/Garun Mallam constituency of Kano State.

iv. The 3rd appellant, Alhaji Hayatu Musa Dorawar Sallau is hereby ordered to refund all the salaries/allowances and/or emoluments he collected while occupying the seat in the House of Assembly within ninety (90) days of this order to the Kano State House of Assembly.

Appeal dismissed.

**MAIN JUDGMENT**

**OKORO JSC** (Delivering the Lead Judgment):

This is an appeal against the decision of the Court of Appeal, Kaduna Division delivered on 27 November 2015, wherein the lower court upheld the judgment of trial Federal High Court, Kano which had ordered the conduct of fresh primaries of the 1st appellant to produce its candidate for the Kura/Garun Malam State House Constituency of Kano State, preparatory to the impending general elections. A synopsis of the facts giving birth to this appeal would illuminate the judgment.

The 1st and 2nd appellants organized primary election on 2 December 2014 in Kura/Garun Malam constituency to produce their candidate for election into the Kano State House of Assembly. At the close of voting and counting of votes, the election was declared inconclusive by the Electoral Committee under the chairmanship of the 3rd respondent, herein as contained in exhibit KARFI 3B at pages 146 - 147 of the record of appeal.

The committee gave as reason, over voting. A fresh primary election was recommended in accordance with the 1st appellant’s electoral guidelines. The 1st and 2nd appellants, in spite of the inconclusive verdict of their committee, forwarded the name of the 3rd appellant to INEC, the 2nd respondent in this case as the candidate of the 1st appellant in the said election. As a result of the appellants’ refusal to abide by the outcome of the primaries and the provisions of their Constitution, the 1st respondent, by an originating summons filed at the Federal High Court, Kano, sought for the following orders:-

1. An order of the honourable court returning the plaintiff as the winner and lawful candidate of the 1st defendant.

Or on the alternative:

An order directing the 1st - 3rd defendants to conduct a fresh primary election for Kura/Garun Malam Constituency for the office of Kano State House of Assembly as prescribed by the 2014 Guidelines and the Constitution of the 1st defendant.

2. An order restraining the 4th defendant from recognizing or otherwise dealing with the 5th defendant as the candidate of the 1st defendant in the election into the office of Kano State House of Assembly or issuing any form of certificate of recognition by whatsoever name described or called or printing the name of the 5th defendant in the ballot paper or any other candidate other than the plaintiff, arising from any such inconclusive primary election as conducted contrary to the 2014 Guidelines and the Constitution of the 1st defendant.

3. Any such further order(s) this court may deem fit to make in the circumstance. At the close of hearing, the learned trial judge entered judgment in favour of the plaintiff (now 1st respondent) and made the following orders:-

“1. That the 1st - 3rd defendants are hereby directed to conduct a fresh primary election for Kura/Garun Mallam Constituency for the office of Kano State House of Assembly as prescribed by the 2014 guidelines and the constitution of the 1st defendant within seven (7) days from the date of this judgment.

2. That the 4th defendant is hereby restrained from recognizing or dealing with the 5th defendant as the candidate of the 1st defendant in the election into the office of the House of Assembly or issuing any form of certificate of recognition by whatsoever name described or called or printing the name of the 5th defendant in the ballot papers or any other candidate other than the plaintiff, arising from any such inconclusive primary election as conducted contrary to the 2014 guidelines and the constitution of the 1st defendant.”

Dissatisfied with the judgment of the trial court which was delivered on 9 March 2015, the appellants appealed to the lower court which dismissed the appeal in a judgment delivered on 27 November 2015. As part of the judgment of the lower court, the 3rd appellant was ordered to vacate the seat of the Kura/Garun Mallam Constituency in the Kano State House of Assembly at once, conduct fresh primaries by the 1st appellant and the conduct of fresh election by INEC, the 2nd respondent herein. Not being satisfied with the judgment of the court of appeal, the appellants have further appealed to this court. Notice of appeal dated 30 November 2015 is contained on page 592 of the record. There is no indication of the date it was filed. However, the appellants filed an amended notice of appeal on 8 May 2017, which was deemed properly filed and served on 23 May 2017. There are thirteen (13) grounds of appeal in the said notice.

On 12 June 2017 when this appeal was heard, both parties identified, adopted and relied on their respective briefs of argument. In the appellants brief settled by E. Robert Emukpoeruo Esq. filed on 8May 2017 and deemed properly filed on 23 May 2017, five (5) issues have been distilled from the thirteen (13) grounds of appeal filed. The five issues are as follows:-

1. Whether the court below was in error and acted without jurisdiction when it suo motu held the appellants in contempt of the order for fresh primaries and invalidated the general election in a purely preelection matter.

2. Whether the court below was in error to hold that the 1st respondent’s complaint in the originating summons was within the jurisdiction of the Federal High Court and cognizable under the provisions of section 87 of the Electoral Act, 2010 (as amended).

3. Whether their lordships of the court below drew the wrong inference from the evidence presented by the 1st respondent and were in error to affirm the finding of over-voting at the primary election of the 1st appellant conducted on 2 December 2014 and the order for fresh primary election.

4. Whether having regard to the provisions of section 31(1) of the Electoral Act, 2010 (as amended) the order for fresh primary election was in vain, academic and outside the limited jurisdiction conferred on the Federal High Court by sections 87(4) (c) (11) and 87 (9) of the Electoral Act, 2010 (as amended).

5. Whether the court below was in error to make consequential orders, directing the 3rd appellant to vacate his seat in the House of Assembly, for the conduct of fresh primary election and another election for the Kura/Garun Mallam Constituency, Kano State.

The learned counsel for the 1st respondent, Magaji Mato Ibrahim Esq, in a brief he filed on 15 May 2017, adopted the five issues formulated by the appellants, though he would have loved it reduced to three issues as argued by the appellants.

In the brief of the 2nd respondent, filed on 9 May 2017 by Tunde Babalola Esq. but deemed filed on 23 May 2017, the five issues submitted by the appellants are adopted by the 2nd respondent.

The 3rd respondent, in a brief filed by his counsel, Olayode D. Delano Esq, distilled two issues for determination thus:-

1. Whether the Court of Appeal was right when it held that the trial court had jurisdiction to grant an order for fresh primaries to be held.

2. Whether the Court of Appeal was right to make the orders that it made on appeal.

I shall resolve the issues in the order as set out by the appellants.

On the 1st issue, the learned counsel for the appellants submitted that by virtue of section 241(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the exercise of a constitutional right of appeal by the appellants was wrongly stigmatized by the court below as an act of contempt of the order to conduct fresh primaries. He contended that it was in the exercise of the aforesaid constitutional right of appeal that the appellants filed their notice of appeal on 11 March 2015 challenging the judgment of the Federal High Court. Learned counsel opined that the sanctioning of the appellants for exercising their constitutional right of appeal and applying for stay in order to preserve and protect that constitutional right of appeal was an incongruity and clearly perverse. The following cases were cited in reliance - I. O. Eyesan v. Y. O. Sanusi (1984) LPELR – 1185 (SC); Ben Anachebe Esq. v. Kingsley Ijeoma & Ors. (2014) LPELR - 23181 (SC); Attorney-General, Federation v. BiCourtney Ltd (2014) LPELR - 22968 (CA); F.A.T.B. v. Ezegbu (1992) NWLR (Pt. 264) 132, Group Danone v. Voltic (Nig.) Ltd (2008) All FWLR (Pt. 417) 51, (2008) 7 NWLR (Pt. 1087) 637 at 660.

Learned counsel further argued that the issue of contempt of the order of the Federal High Court was not raised or argued in the briefs of any of the parties and that it was raised suo motu by the court below without affording the parties any hearing on the matter. According to him, this attitude of the court below rendered its findings null and void, relying on the cases of Omokuwajo v. Federal Republic of Nigeria (2013) All FWLR (Pt. 684) 1, (2013) LPELR - 20184 (SC); Dalek Nig. Ltd v. OMPADEC (2007) All FWLR (Pt. 364) 204 at 227 - 228; Achiakpa v Nduka (2001) 4 SCNJ 73 at 86. It was the submission of learned counsel that in view of the fact that the primary election was never voided by the election committee or the trial court, the order for the conduct of fresh primaries was in the circumstance patently seriously flawed. Thus, according to him, it was not right for the court below to have held the appellants to be in contempt of such fundamentally flawed order.

Finally on the issue, the learned counsel for the appellants submitted that section 87(9) of the Electoral Act, 2010 (as amended) does not in its terms or spirit confer jurisdiction on any of the courts named therein, to make an order to invalidate or to conduct a general election. That the limited jurisdiction conferred on the Federal High Court is in respect of pre-election matters that fall within the narrow confines of section 87(4) (c) (i) (ii) of the Electoral Act, 2010 (as amended), relying on the case of Vivian Clems Akpamgbo-Okadigbo & Ors. v. Egbe Theo Chidi & Ors. (2015) All FWLR (Pt. 781) 1400, (2015) LPELR - 24564 (SC). He then urged the court to resolve this issue in favour of the appellants.

In response, the learned counsel for the 1st respondent submitted that until section 87(9) of the Electoral Act, 2010 (as amended) is repealed by the National Assembly, the Federal High Court shall continue to have jurisdiction to hear and determine complaints bordering on pre-election matters, as in the instant case. He cites and relies on the cases of P.D.P. v. Sylva (2012) All FWLR (Pt. 637) 606, (2012) 13 NWLR (Pt. 1315) 85; Emeka v. Okadigbo (2012) All FWLR (Pt. 651) 1426, (2012) 18 NWLR (Pt. 1316) 55; APGA v. Anyanwu & 2 Ors. (2014) All FWLR (Pt. 735) 266; Uwazurike v. Nwachukwu (2013) All FWLR (Pt. 680) 1205, (2013) 3 NWLR (Pt. 1342) 526; Lado v. CPC (2012) All FWLR (Pt. 607) 598, etc. Learned counsel concedes to the right of the appellants to appeal against the decision of the trial court to the court below, but submitted that the court below has power to make consequential orders to give effect to the judgment. He submitted that such power should not be taken to mean punishment for contempt. He relies on the case of Dingyadi v. INEC (2011) All FWLR (Pt. 573) 1842 at 1884, paragraphs D - E. Learned counsel submitted that the power of a court to make consequential orders is inherent, flowing from its jurisdiction to try the matter with the vice to making sure that justice is not only done, but also seen and felt by the parties and the society to have been done, relying on the case of PDP v. Sylva at 645 - 646, paragraphs G - A. He urged the court to resolve this issue against the appellants. The learned counsel for the 2nd respondent (INEC), although he adopted the five issues formulated by the appellants, has not proffered any argument on them but rather has chosen to be neutral in this appeal.

For the 3rd respondent, his counsel submitted on the issue of raising contempt matter suo motu by the lower court, that although the general principle is that where a court takes a point suo motu, the parties must be given an opportunity to be heard, non-observance of this principle amounts to a misdirection which would only be overturned if there has been a substantial miscarriage of justice, relying on the case of Suade v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 408. In the instant case, learned counsel submitted that there was no miscarriage of justice. He urged the court to resolve this issue against the appellants.

There is an appellants’ reply brief to the 1st respondents’ brief of argument which was filed on 7 June 2017. The said reply brief responds to all the arguments made by the 1st respondent.

This is not the purpose or function of a reply brief. It only responds to new issues raised in the respondent’s brief and not an opportunity to reargue the appellant’s appeal. See Akinrimade v. Lawal (1996) 2 NWLR (Pt. 429) 218; Eze Uneji & Ors. V Attorney-General, Imo State & Ors. (1995) 4 NWLR (Pt. 391) 552. Accordingly, the said reply brief is hereby discountenanced.

In considering this issue, it is necessary to state that both parties to this appeal agree that there was over voting at the primary election of the 1st appellant held on 2 December 2014, which purportedly produced the 3rd appellant as the candidate of the 1st appellant in the general election. For whereas, the total number of accredited delegates were 595 persons, the number of votes cast at the primary election was 603 with an excess of eight (8) votes. The learned trial judge, relying on exhibit KARF I5, the 2014 guidelines for the nomination of candidates for public office of the 1st appellant, particularly, Article 7 (viii) on page 13 thereof, and exhibit KARFI 3B - the report of the primary election committee of the 1st appellant and other evidence therein, ordered for fresh primaries and restrained the INEC, the 2nd respondent herein from recognizing the 3rd appellant as candidate of the 1st appellant.

Article 7 (viii) on page 13 of exhibit KARFI 5 provides:-

“No delegate shall vote for more than one aspirant and where the votes cast exceed the number of accredited delegates, the election shall be declared void by the election committee and the exercise be repeated.”

In view of the fact that the votes cast at the election exceeded the number of accredited delegates, the election committee in exhibit KARFI 313 declared the election inconclusive in line with the guidelines of the 1st appellant for that purpose. When the judgment of the trial court was appealed to the court below, the position of the learned trial judge was affirmed. This court has stated clearly in CPC v. Omugadu (2013) 18 NWLR (Pt. 1385) 79, a case which was relied upon by the court below that an inconclusive primary election cannot produce a candidate. In fact, this court emphatically held at page 126, paragraphs C - D that -

“... I wish to add that there can be no nomination of a candidate and acquisition of vested interest in an inconclusive party primary election.”

It is beyond doubt that over-voting is a serious electoral malpractice which should not be treated with levity. Any proven case of over-voting in an election should render such an election void. The 2014 Guidelines for Election for Public Office of the 1st appellant clearly states that any over-voting renders such primary election void. It follows that the two courts below were just giving effect to the provisions of 1st appellant’s guidelines for primary elections. Several judicial pronouncements also give vent to the above position. See Louis v. INEC (2010) LPELR - 4442; Awuse v. Odili (2004) All FWLR (Pt. 212) 1611, (2004) 8 NWLR (Pt. 876) 481; PDP v. INEC (2008) LPELR - 8597.

On page 578 of the record of appeal, the court below, in the second paragraph affirmed the judgment of the learned trial judge as follows:-

“This appeal thus lacks merit and it is hereby dismissed and the judgment of the lower court is affirmed.”

It must be noted that at the time the lower court delivered its judgment, the general election had been conducted and the 3rd appellant fielded as the candidate of the 1st appellant via the inconclusive (void) primary election alluded to above. The court below was then faced with what consequential orders to make. In the process of arriving at an appropriate consequential order, the lower court made the following remarks on pages 578 - 579 of the record:-

“The outcome of this appeal is that the name of the 3rd appellant was unlawfully and illegally placed on the ballot paper as the candidate of the 1st appellant in the said election and this was done in utter disobedience of the order of the Federal High Court.”

Thus, when the court below, as part of its consequential orders, directed the 3rd appellant to vacate the seat of the Kura/ Garun Mallam Constituency in the Kano State House of Assembly so that fresh primary election could be conducted, the appellants decided to interpret this to mean punishment for contempt. They also raised a complaint that the court below raised the issue of contempt suo motu.

For me, all the arguments by the learned counsel for the appellants as regards issue of contempt, raising same suo motu and the right of a party to appeal against a judgment he does not like and the authorities cited therein are diversionary in the hope to sway the mind of the court away from the main issue in controversy. The power of a court of law to make consequential orders is inherent and flows from its jurisdiction to try the case.

All superior courts of record possess inherent powers not necessarily derivable from any law. It is embedded in a court to ensure and enhance a free flow of justice to end users. A consequential order is therefore an order which gives effect to the judgment already given by the court. It is not granted as a fresh, unclaimed or unproven relief. See Awoniyi v. Regd. Trustees, AMORC (2000) FWLR (Pt. 25) 1592, (2000) 10 NWLR (Pt. 676) 522, (2000) 6 SC (Pt. I) 103, (2000) 6 SCNJ 141 .

There is no doubt that the appellants’ right of appeal against the judgment of the Federal High Court is guaranteed under section 241(1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). That right is fundamental and cannot be taken away from an aggrieved party. Indeed, the court below did not make any order stopping the appellants from appealing against its judgment. Neither did the trial court make such an order. See Eyesan v. Sanusi (1984) LPELR - 1185 (SC); Ben Anachebe v. Kingsley Ijeoma & Ors. (2014) LPELR - 23181 (SC).

As I said earlier, the above complaint was unnecessary, as the consequential order made by the lower court did not suggest that the appellants had lost their right of appeal. After a court has decided a case and there is need to make a consequential order to give effect to the judgment, it is not the practice of the court to invite parties to address it on what should be the consequential order to make. So, where in the process of considering the consequential order to make, a court makes certain comment in the process, it cannot be the reason for the decision which had already been made. At best it is an orbiter which is not the reason for the judgment.

As to whether the court below had jurisdiction to make the orders it made at the end of its judgment, my simple answer is that by section 240 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal High Court and other courts listed therein. It is trite law that where a court has jurisdiction to hear and determine a matter, it also has jurisdiction to make consequential order(s) accordingly. It is on this note that

I resolve the first issue against the appellants.

The learned counsel for the appellants argued issues two and four together. I shall treat both issues as argued. According to the learned counsel for the appellants, the critical question thrown up by issue two is whether the complaint in the originating summons rested as it was, on an alleged infraction of the 1st appellant’s guidelines alone, was cognizable by the court under the provisions of section 87(9) of the Electoral Act, 2010 (as amended) or indeed raised a non-justiciable issue as enunciated by this court in the case of Onuoha v. Okafor (1983) 2 SCNLR 244. Learned counsel opines that this issue revolves around the proper interpretation of section 87 (9) of the Electoral Act (supra). Learned counsel submitted that the nature of the complaint provided for in section 87 (9) of the Electoral Act 2010 (as amended) is an infraction the Electoral Act and the guidelines of a political party. He opined that an infraction of the guidelines of a political party only will not ignite the court’s jurisdiction.

That the use of the word “and” in the sub-section is conjunctive and imposes a duty on an aspirant to found his cause of action on an infraction of both the Electoral Act and the guidelines of the political party.

Finally in this issue, learned counsel submitted that the guidelines issued by political parties for the conduct of primaries to nominate candidates for election is a domestic instrument of the parties, that any complaint that resolves wholly around the lines of political party is therefore strictly a complaint on the domestic affairs of the political party until the complaint is conjoined with a complaint on an infraction of the provisions of the Electoral Act, relying on the case of Onuoha v. Okafor.

It is learned counsel’s further submission that by section 87(4) (c) (ii) of the Electoral Act, the 3rd appellant who scored the highest number of votes was entitled to be declared winner of the election and that the constitution and guidelines of the 1st appellant created no legal right in the 1st respondent. According to him, all the cases relied upon by the court below were cases where the complainants won the primaries.

On issue 4, learned counsel submitted that in view of the provision of section 31(1) of the Electoral Act (supra) which requires the submission of names of candidates for election to INEC sixty (60) days before the date of the conduct of election, the order by the trial court to conduct fresh primaries 34 days to the general election was vain and academic. Also, that the order of the lower court for fresh primaries after the general election was an unenforceable order as there is no provision for extension of time to conduct fresh primaries. It is his submission that the lower court misapprehended the provisions of section 31(1) of the Electoral Act (supra). Learned counsel then urged the court to hold that it is this misapprehension which made the lower court to affirm jurisdiction in the Federal High Court to entertain the originating summons. He then urged the court to resolve the two issues in favour of the appellants.

In his response, the learned counsel for the 1st respondent submitted that the court below was right to hold that the learned trial judge had jurisdiction to hear this case relying on section 87 (9) of the Electoral Act (supra), PDP v. Sylva (2012) 13 NWLR (Pt. 1315) 85; Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1316) 55.

Learned counsel further argued that bearing in mind the facts of this case and the 2014 Electoral Guidelines of the 1st appellant at page 13 thereof, particularly Article 7 (viii), (ix), (xi) and (xii) of the party’s Constitution; the law is well settled that where a statute has vested a body or any individual with powers to act in a particular way or manner, the carrying out of such action through another method like in the case at hand would be void, relying on Bamisile v. Osasuyi (2007) 19 NWLR (Pt. 1042) 225; Auchi Poly v. Okuoghae (2005) 10 NWLR (Pt. 933) 279 and Togun v. Oputa (No. 1) (2001) 16 NWLR (Pt. 740) 594.

Learned counsel further argued that a political party need not go contrary to all laws before section 87 (9) of the Electoral Act can be ignited. Also, a party need not break the provisions of the Electoral Act together with that of the guidelines of the party before the jurisdiction of the High Court can be ignited. A breach of one according to him will suffice, relying on the case of APGA v. Atyanwu & 2 Ors. (2014) All FWLR (Pt. 735) 266. As regards the status of an inconclusive primary election, the learned counsel referred to the case of C. P. C. v. Omugadu (2013) 8 NWLR (Pt. 1385) 79 and submitted that an inconclusive primary election cannot produce a candidate. He urged the court to resolve the two issues against the appellant.

The learned counsel for the 3rd respondent, in his own argument submitted that by virtue of section 87 (9) of the Electoral Act, 2010 (as amended), the issues brought by the 1st respondent were properly within the scope of jurisdiction of the trial court and the Court of Appeal was accordingly right in upholding the decision of the trial court. Learned counsel opined that the 1st respondent raised the issue of violation of the 2014 All Progressives Congress (APC) Guidelines and the party’s Constitution, thus bringing the suit squarely within the purview of section 87 (9) of the Electoral Act (supra). He urged the court to resolve this issue against the appellants.

Now, in resolving issues 2 and 4, I shall bring to the fore the relevant section of the Electoral Act (supra) which the 1st respondent has stated he derives his locus standi to maintain this action and for which the two courts below derive jurisdiction to try this case. Section 87 (9) of the Electoral Act provides:-

“87(9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court, or the High Court of a State or FCT, for redress ...”

The above provision is very clear and unambiguous. It is a settled principle of interpretation of statutes that (where the language used in the provisions of a statute and or the Constitution is plain and unambiguous, effect must of necessity be given to its plain ordinary meaning. It is that clear and unambiguous language that best convey the intention of the lawmaker.) See Attorney-General, Federation v. Abubakar (2007) All FWLR (Pt. 375) 406 at 521. Thus by section 87 (9) of the Electoral Act (supra), it is an aggrieved aspirant who physically participated in a primary election conducted by the National Executive Committee of his party that is imbued with locus standi to approach either the Federal High Court or High Court of a State or FCT for redress.

This can take place where the provisions of the Electoral Act and the Constitution or Guidelines of a political party is breached and/or not complied with. See Mahmud Aliyu Shinkafi & Anor. v. Abdulazeez Yari & Ors. (2016) All FWLR (Pt. 862) 1399, (2016) 1 SC (Pt. 11) page 1; Daniel v. Independent National Electoral Commission (2015) All FWLR (Pt. 789) 993, (2015) 9 NWLR (Pt. 1463) 113 at 115, 156 - 157; P.D.P. v. Sylva (2012) All FWLR (Pt. 637) 606, , (2012) 13 NWLR (Pt. 1316) 85; Lado v. CPC (2011) 18 NWLR (Pt. 1279) 689; Emenike v. P.D.P. (2012) All FWLR (Pt. 640) 1261 (2012) 12 NWLR (Pt. 1315) 556.

The learned counsel for the appellant seems to have agreed that there was a breach and non compliance with the 1st appellant’s 2014 Electoral Guidelines, particularly, page 13 thereof. His contention is that before the court can assume jurisdiction, there must be a concurrent breach of the provisions of the Electoral Act. In other words, that there must be a breach of the two extant laws before the jurisdiction of the High Court can be ignited. With the greatest respect to the learned counsel, this line of argument seems puerile. Throughout the appellants’ argument, no reference was made to any law or authority which gives vent to such argument. It is my well considered opinion that failure to comply with the provisions of the Electoral Act or the provisions of the guidelines and/or constitution of a political party in the process of party primaries will be enough to imbue an aspirant with locus standi to approach the court for redress. The High Court will, in such circumstance have the requisite jurisdiction to entertain the complaint.

Learned counsel for the appellants argued that the party’s Constitution and Guidelines for Election is a domestic instrument of the party and that a breach of same cannot confer jurisdiction on the High Court. According to him, it is only the political party that can see to what can be done to remedy the breach. The breach being alluded to in this case is that there was over voting in the primary election which produced the 3rd appellant and that the Electoral Committee set up by the 1st appellant for that purpose declared the primary election inconclusive in accordance with the guidelines of the party.

At the risk of repetition, article 7 (iii) on page 13 of the 2014 Electoral Guidelines of the 1st appellant’s Constitution provides thus:-

“No delegate shall vote for more than one aspirant and where the votes cast exceed the number of accredited delegates, the election shall be declared void by the election committee and the exercise be repeated.”

I have stated the figures earlier in this judgment. I need not do so again. Having declared the election inconclusive, (void) what was left for the committee to do was to repeat the exercise. But in defiance of its guidelines, the 1st appellant submitted the name of 3rd appellant to INEC as its candidate. The 1st respondent approached the Federal High Court for redress. Can political parties be allowed to behave as they like? Can they choose to obey or disobey their constitution and regulations at will? Is there no remedy to an affected aspirant who actually took part in the primary election? This is where section 87 (9) of the Electoral Act 2010 (as amended) is relevant.

In CPC v. Lado at pp 91 - 92, paragraphs D - G, this court held as follows:-

“Having subscribed to the provisions under the Constitution of their party, they are enjoined to observe and obey same. A constitution is the organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the members. The members are bound by its provisions.”

Again, this court in Uzodinma v. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30 at 60 paragraph E emphasized that:-

“The courts will never allow a political party to act arbitrarily or as it likes. Political parties must obey their own constitution, and once this is done, there would be orderliness and this would be good for politics and the country.”

The learned counsel for the appellant argued that the court below was wrong to rely on the case of CPC v. Omugadu in this case. My view is that the decision in that case binds the facts of the case. In CPC v. Omugadu, this ... inconclusive primary election cannot produce a ... instant case, the primary election was inconclusive ... and sadly too, that no candidate was produced for ... the circumstance. What the 1st appellant ought to have done was to repeat the exercise in line with its guidelines. Even when both the trial Federal High Court and the court below drew its attention, no remedy was made. This may turn out to be costly, I must say.

On the argument that the order of the trial court for fresh primaries which was affirmed by the court below was contrary to section 31(1) of the Electoral Act, the question may be asked, was it the reason the 1st appellant failed/refused to obey its guidelines for the primary election? My view is that whether the consequential order was right or wrong, it had nothing to add to or subtract from the fact that in the conduct of 1st appellants’ primary election for Kura/Garun Mallam State Constituency, it failed to do so in accordance with its constitution and guidelines regulating same. This failure led to an inconclusive primary election which cannot produce a candidate. In summary, it is my view that the appellants have failed to impress on the court why issues 2 and 4 should be resolved in their favour. Accordingly, issues 2 and 4 are hereby resolved against the appellants.

The third (3) issue questions the inferences or conclusion drawn by the court below from the evidence presented by the 1st respondent in support of the originating summons. Making reference to paragraphs 9, 10, 14, 15 and 16 of the affidavit in support of the originating summons, learned counsel submitted that the affidavit of the 1st respondent presented a classic case of a party who was inconsistent in making and proving his case. He argued that the 1st respondent somersaulted from one position to the other in his affidavits in support of the originating summons, whereas he ought to be consistent with his case, relying on the case of Ajide v Kelani (1985) NWLR (Pt. 12) 248 at 269.

Learned counsel submitted further that what is distillable from a communal reading of the 1st respondents’ affidavit is that the real reason for filling the originating summons was the nonsubmission of his name as the candidate of the 1st appellant and as such, the order for the conduct of fresh primaries ought not to have been made by the court below. It is his contention that the decision by the 1st appellant not to reckon with the 12 invalid votes was not contrary to natural justice. That if the 12 invalid votes were ignored, the 3rd appellant scored the highest number of votes at the primaries. Learned counsel then urged this court to resolve this issue in favour of the appellants.

In response to this issue, the learned counsel for the 1st respondent submitted that counsel to the appellants is in error of law and is unable to appreciate the world of difference between material contradiction and minor discrepancy in evidence of parties before the court. That the agreement of counsel on the existence of exhibit KARFI 3B being report of the electoral committee issued by the 3rd respondent in his official capacity as the chairman with facts and figures on what actually transpired at the primaries surpasses any-other oral evidence that might have been adduced. These minor discrepancies, according to him do not affect the substance of the matter before the court, relying on the cases of Ngun v. Mobil (2013) All FWLR (Pt. 677) 665; Dantata v. Mohammed (2013) All FWLR (Pt. 675) 279 and Odunlami v. Nigerian Navy (2014) All FWLR (Pt. 720) 105. He urged the court to resolve this issue against the appellants. Paragraphs 10, 15 and 16 of the 1st respondents’ affidavit in support of his originating summons states as follows:-

“10. At the close of polls, a total of 595 persons were accredited as delegates and indeed voted from all the wards but upon counting the votes, the following emerged:-

(a) No. of accredited voters: 595

(b) Invalid votes: 12

(c) Plaintiff: 258 vote

(d) 5th Respondent: 262 votes

(e) Mudasir Aliyu 70 votes

(f) Yahaya Tijani 1 vote

15. That immediately thereupon, I made an appeal through a complaint to the 1st defendant and after series of deliberations, I was returned as the party’s candidate by the relevant committee of the party and was given INEC FORMS EC 4B (iii) and C.F 001 i.e Form for nomination of member of State House of Assembly and affidavit in support of personal particulars respectively, duly filled and submitted. Attached and marked as “KARFI 4” are duplicates of such forms.

16. That to my greatest shock and dismay, when the 4th defendant released its list of candidates of the various parties inclusive of the 1st defendant herein, my name did not appear in the list rather it was the name of the 5th respondent. Attached and marked as exhibit “KARFI 4B” is a duplicate of the relevant list as released by the 4th respondent.”

I have taken pains to reproduce the above paragraphs of the affidavit in support of the originating summons in order to easily assess same to discover the “temous, illogical and contradictory evidence presented by the 1st respondent in support of the originating summons” as argued by the learned counsel for the appellants. Paragraph 10 of the affidavit clearly shows that instead of 595 accredited delegates at the election, the total number of votes cast at the election was 603 i.e. 8 votes more than the accredited delegates. There is also no contrary evidence against exhibit KARFI 3B which declared the election inconclusive. It is indisputable that the 1st appellants’ guidelines for the said election describes a election where there is over voting as “void” and that the exercise be repeated. It follows that all the negotiation between the 1st appellant and the 1st respondent on the one hand and the 1st appellant and 3rd appellant on the other hand as to who should be declared winner, did not obliterate the fact that there was no conclusive primary election which could produce a candidate for the general election.

Learned counsel for the appellants had argued that the 1st appellant did not breach any rule of natural justice when it decided to ignore the 12 invalid votes and adopt the 3rd appellant as its candidate in the election. But, is there any part of its constitution and/or guidelines which allowed the 1st appellant to ignore the excess votes or is it invalid votes? No such provision was made known to this court. The issue here is, even if I am to repeat myself, political parties must obey their constitution, guidelines and regulations. The era of recklessness and impunity by political parties is over. It is an aspect of corruption for a political party to disobey its constitution and guidelines in order to impose candidates on the electorate. This court has taken a firm stand that this must stop. It is in the interest of our nation that political parties observe internal democracy for the smooth running of our democratic processes. The fact that the 1st respondent asked that he be made the candidate of the party has not regularised the breach of party‘s guidelines. Accordingly, this issue, to my mind, does not avail the appellants at all.

The 5th and last issue is whether the court below was in error to make consequential orders, directing the 3rd appellant to vacate his seat in the House of Assembly for the conduct of fresh primary election and another election for the Kura/Garun Mallam Constituency of Kano State.

In his argument, learned counsel for the appellants argued that the consequential orders were made by the court below after dismissing the appeal. According to him, after dismissing the appeal, the lower court became functus officio and was no longer at liberty to proceed with a further consideration of the appeal relying on the case of Olowu v. Abolore (1993) 5 NWLR (Pt. 293) 255.

Secondly, he submitted that since the primary which returned the 3rd appellant was not nullified by any order of court as no such order was sought for on the face of the originating summons, there existed no foundation on which to make the consequential orders by the court below relying on Eze & Ors. v. Governor of Abia State & Ors. (2014) LPELR - 23276 (SC); Obayabona v. Obazee (1972) 5 SC 247; Inakoju v. Adeleke (2007) All FWLR (Pt. 353) 3, (2007) 4 NWLR (Pt. 1025) 423; Attorney-General, Federation v. AIC Ltd (2000) 10 NWLR (Pt. 675) 293.

Finally, learned counsel argued that the ground on which the 3rd appellant was ordered to vacate his seat is unknown to the provisions of section 109(1) of the 1999 Constitution (as amended). He urge the court to resolve this issue in favour of the appellants.

Although the learned counsel for the 1st respondent made an elaborate response to this issue, he seems to have missed the point. Except his response to the issue as regards section 109 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the rest of his arguments on issues are irrelevant. On the said section 109 (1) of the Constitution (supra), he submitted that the learned counsel for the appellant raised the said argument in vain as the said section has no place in this kind of matter and cannot operate to stop the court from making any order(s) appropriate to correct wrongs which are found to be committed at any stage as no man can be allowed to benefit from his wrong. He then urged this court to resolve this issue against the appellants.

The learned counsel for the appellant had argued that the court below became functus officio when it made the consequential order. Without much ado, this argument does not fly at all. As the name implies, a consequential order is made consequent upon a decision being made in order to give effect to the said judgment. A consequential order cannot be made before a decision is taken. Thus, a consequential order is part and parcel of the judgment .

Whenever an appeal is allowed or dismissed, the court may proceed make certain consequential orders in order to give effect to the judgment. It is usually made contemporaneously with the decision. I know that whenever a court has delivered its judgment, it becomes functus officio. Such a court cannot add to or subtract from the said judgment thereafter except to correct accidental slips or grammatical errors. This position of the law was clearly made in the cases of Olowu v. Abolore ; Eze & Ors. v. Governor of Abia State; Attorney-General, Federation v. AIC Ltd, all cited by the learned counsel for the appellants. None of those cases decided that a consequential order made at the close of a case was made after the court became functus officio. This court is not persuaded by this line of the argument as it stands on quick sand. Again, the argument by the appellants that the primary election which produced the 3rd appellant was never nullified is not supported by the facts and judgment of the two courts below.

It was clearly stated that since the primary election was inconclusive, it could not produce the 3rd appellant as a candidate of the 1st appellant. More so, the failure of the 1st appellant to obey its own constitution and guidelines for the primary election made matters worse for the appellants. That was why the two courts below ordered for fresh primaries. Let it be known that the said primary was effectively nullified by the trial Federal High Court and affirmed by the court below.

Finally, it was argued that a member of the House of Assembly cannot be ordered to vacate his seat in the House except as provided for in section 109(1) of the 1999 Constitution (supra).

The said section 109(1) of the Constitution provides:-

“109(1) A member of a House of Assembly shall vacate his seat in the House if -

(a) He becomes a member of another legislative house;

(b) Any other circumstances arise that, if he were not a member of that House, would cause him to be disqualified for election as such a member.

(c) He ceases to be a citizen of Nigeria;

(d) He becomes President, Vice President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State or a Special Adviser;

(e) Save as otherwise prescribed by this Constitution, he becomes a member of a commission or other body established by this Constitution or by any other law;

(f) Without just cause he is absent from meetings of the House of Assembly for a period amounting in the aggregate to more than one third of the total number of days during which the House meets in any one year;

The above provisions of the Constitution are clear and ambiguous and I need not dissipate energy on them as there is no call for it. But that is not all. By section 6 of the said Constitution, the judicial powers of the federation shall be vested in the courts established either by the constitution or any other law enacted by the National or State assemblies. Thus by section 87 (9) of the Electoral Act, 2010 (as amended), an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court, High Court of a State or FCT, for redress.

There is no gainsaying, and I am sure the learned counsel for the appellants is quite aware of this, that where a court of law adjudges any member of the House of Assembly or any other legislative house to have been illegally sworn into such a house, the court is imbued with power to order such a person to vacate the house with or without conditions. Section 109 of the Constitution or any other section for that matter does not state that a court of law, in deserving cases cannot order a member to vacate his seat. So, the argument of the learned counsel on this issue lacks merit and is accordingly resolved against the appellants.

By the 2014 Guidelines for Election of the 1st appellant, particularly page 13 thereof (supra) a primary election in which the votes cast are more than the accredited delegates, is deemed to be void and the exercise is to be repeated. Instead of obeying its guidelines, the appellants chose to observe it only in a breach.

Even lifeline granted the 1st appellant by the two courts below to conduct fresh primaries and obey their constitution and guideline was treated with levity. The 1st appellant breached its constitution with impunity. The logical outcome of that misbehavior is that the 1st appellant had no candidate at the general election into the Kano State House of Assembly which purportedly produced the 3rd appellant.

By section 31(1) of the Electoral Act, 2010 (as amended), every political party shall, not later than 60 days before the date appointed for a general election under the Act, submit to the commission (INEC) in the prescribed forms, the list of candidates the party proposes to sponsor at the election. By section 33 of the same Act, a political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of the Act, except in the case of death or withdrawal by the candidate.

I am aware that the commission is empowered to extend time for nomination of candidates if at the close of nomination, there is no candidate validly nominated. But where there is a candidate validly nominated at the close of nomination, such person shall be the elected, except the election to the office of President or Governor. See section 41 of the Electoral Act (supra).

After the close of nomination and elections held, won and lost, there is no provision in the Electoral Act which allows the court to extend time for a political party to conduct fresh primaries in order that another general election be conducted. If this is done, it will amount to rewarding the breach which the offending political party committed. The inevitable outcome of all I have endeavoured to say above is that the 1st appellant had no validly nominated candidate at the election which produced the 3rd appellant.

This appeal is therefore completely devoid of merit and is accordingly dismissed. I shall therefore make the following consequential orders:-

1. I hereby order the 3rd appellant, Alhaji Hayatu Musa Dorawar Sallau to vacate the seat of the Kura/Garun Mallam Constituency in the Kano State House of Assembly forthwith.

2. I also order the Independent National Electoral Commission (INEC) to withdraw the certificate of return issued to Alhaji Hayatu Musa Dorawar Sallau immediately and issue same to the runner up in the general election into the Kano State House of Assembly.

3. I order the Speaker of the Kano State House of Assembly or the Clerk of the House (whichever is applicable) to swear the runner up in the said election on which INEC has issued certificate of return to represent the Kura/Garun Mallam constituency of Kano State.

4. The 3rd appellant, Alhaji Hayatu Musa Dorawar Sallau is hereby ordered to refund all the salaries/allowances and/or emoluments he collected while occupying the seat in the House of Assembly within ninety (90) days of this order to the Kano State House of Assembly.

5. Cost of this action is assessed at N500,000.00 (five hundred thousand naira) in favour of the 1st respondent against the 3rd appellant only.

Appeal dismissed.

**AKAAHS JSC**:

I had a preview of the judgment of my learned brother, Okoro JSC just delivered dismissing the appeal as lacking in merit and ordering the 3rd appellant to vacate the seat of the Kura/Garun Malam Constituency in Kano State House of Assembly and to refund to the House all the salaries/allowances and/or emoluments which he has collected while occupying the seat within 90 days from the date of this judgement. I fully endorse the judgment and all the consequential orders contained therein.

In compliance with section 87(1) and (4) of the Electoral Act, 2010 (as amended) and the guidelines of the All Progressive Congress (APC), a primary election was held to nominate the candidate of the party who was to contest the election for the House of Assembly seat for Kura/Garun Malam Constituency of Kano State in the 2015 general elections but the result of that primary was inclusive because there was over voting. At the close of the polls 595 persons were accredited to vote but after voting and during the counting of the votes obtained by each candidate, the plaintiff (now 1st respondent) secured) 258 votes while the 3rd appellant (5th respondent) was credited with 262 votes. One of the contestants, Mudasir Aliyu had 70 votes while Yahaya Tijjani got 1 vote. 12 invalid votes were recorded. These brought the total votes cast to 603 instead of the 595 that were accredited to vote. There was over voting by 8 votes. The electoral committee recommended that a fresh ballot be taken but the party ignored the recommendation and forwarded the name of the 3rd appellant to INEC as the candidate it was sponsoring for the election.

The plaintiff took out an originating summons before the Federal High Court, Kano which also ordered the holding of a fresh primary. By this time the election had taken place and the 3rd appellant was declared the winner. The 3rd appellant together with the party and state chairman appealed against the decision of the Federal High Court which dismissed the appeal and ordered the 3rd appellant to vacate the seat. Since the appellants decided to disobey their own guidelines and constitution, this court possesses the inherent jurisdiction to make consequential orders that will meet the justice of the case. See Jev v. Iyortom (2015) 15 NWLR (Pt. 1483) 484. The Kura/ Garun Mallam Constituency of the Kano State House of Assembly is entitled to be represented by the runner up in that election who is the appropriate person to take up the seat.

It is for this reason and the fuller reasons contained in the judgment of my learned brother, Okoro JSC that I too find merit in the appeal. It is accordingly dismissed. I endorse the consequential orders contained in the lead judgment including costs.

**SANUSI JSC**: I have been supplied before now, with a copy of lead judgment in this appeal prepared and just delivered by my learned brother, John Inyang Okoro JSC. While agreeing entirely with the reasons and conclusion arrived at by his lordship that the appeal is devoid of any merit, I would also like to offer few comments in support of the said judgment.

The facts giving rise to this appeal and submissions of learned counsel for the parties had been ably and adequately summarised in the lead judgment and therefore need not be repeated here.

One of the salient issues raised and canvassed by the learned counsel to the parties relates to whether, in the first place, the trial court had jurisdiction to entertain the suit filed before it, in view of the fact that the matter relates to the conduct of the election by a political party, especially in view of the provisions of section 87 (1) of Electoral Act, 2010 (as amended). In the instant case, evidence abounds from exhibit KARFI 5 that there was evidence of over-voting, which therefore, led to the declaration of the primary election inconclusive by the committee.

The party affected, however despite the anomaly, decided to send the name of the 2nd appellant to INEC as the person sponsored by it as its candidate. The trial court ultimately ordered the conduct of fresh primary election when approached by the 1st respondent who felt aggrieved by the action of his party, the 1st appellant.

The appellants herein, challenged the decision of the trial court on the ground that the court lacked jurisdiction to delve into the exercise of nomination/sponsorship of a candidate by a political party.

Admittedly and in fact, by the provisions of section 87(1) of the Electoral Act, 2010 (as amended), the right to nominate or sponsor a candidate by a political party is a domestic right or affair of such political party. It is within the precinct of such political party, or to put it in another way, it is the political party’s legal right to sponsor or nominate its own candidate. Therefore, a court of law lacks the jurisdiction to determine which candidate a political party should sponsor. It is the political party only, that owns such discretion and it is not for a court to nominate or sponsor a candidate. However, where a political party chooses to conduct its primary election in order to come up with a candidate or candidates, then any candidate who feels aggrieved or is dissatisfied with the way and manner a primary election was conducted, he is at liberty to challenge such manner or conduct of such primary election conducted by his party in the Federal High Court, that is, Federal or State High Court as done by the 1st respondent in this case. See section 87(a) of the Electoral Act, 2010 (as amended) and the cases P. D. P. & Anor. v. Timpre Sylva (2012) All FWLR (Pt. 637) 606, (2012) LPELR-7814 (SC) (consolidated); Hope Uzodinma v. Senator Osita Izunaso (2011) 1 MJSC Vol. 5 (Pt. 1) 27. In the instant case, I am also of the view that the two lower courts were correct in holding that the trial court had jurisdiction to hear and determine the matter. Thus, for these few remarks and for the detailed and fuller reasons given in the lead judgment of my learned brother, J. I.

**OKORO JSC**,

I also hereby dismiss this appeal for being meritless and dismiss it accordingly. I abide by the orders made in the said judgment. Appeal dismissed.

**EKO JSC**:

The judgment just delivered by my learned brother, John Inyang Okoro JSC, in this appeal has said all. On all the issues,

I agree with my learned brother and I adopt the judgment.

I also find no merit in this appeal. I will however add a few remarks of mine.

The 1st appellant (APC) on 2 December 2014 conducted its primary election to elect or nominate its candidate for the Kura/Garun Malam State House of Assembly Constituency of Kano State. The 3rd respondent was the chairman of the election committee. The committee accredited only 595 delegates/voters to elect one out of the 4 aspirants. The 3rd appellant and the 1st respondent were among the aspirants vying for the one slot. At the end of the poll, the final result showed that a total of 603 were cast. It was a clear case of over-voting. The breakdown of the 603 votes is as follows-

(i) Invalid votes: 12

(ii) 3rd Appellant 262

(iii) 1st Respondent: 258

(iv) Mudasir Aliyu 70

(v) Yahaya Tijani 1

Total 603 votes

The primary election was said to be peaceful. INEC, the 2nd respondent confirmed that the election was peaceful. However, because of the over-voting, the election committee declared the election inclusive. Paragraph 14.5 at page 13 of exhibit KARFI 5 of the APC-Guidelines for the nomination of candidates for public office provides in clear terms that:

“Where the votes cast exceed the number of accredited delegates the election shall be declared void by the election committee and the exercise shall be repeated”.

Prima facie, the election committee headed by the 3rd respondent was in order and had acted properly when it voided the 2 December 2014 primary election and declared it inconclusive.

The appellants, despite repeated demands by the 1st respondent that the primary election be repeated, were not moved or budged to do so. When it became obvious that the appellants, particularly the 1st and 2nd appellants, were going to present the 3rd appellant as the APC “candidate” for the constituency, in flagrant disregard of the Electoral Act, 2010, (as amended), the APC Constitution and exhibit KARFI 5 - the Guidelines for nomination of candidates, the 1st respondent approached the Federal High Court for redress.

The originating summons was taken out on 6 February 2015.

The Federal High Court stating, on the authority of C.P.C. v. Ombugadu (2013) 18 NWLR (Pt. 1385) 79, that sole purpose of a political party’s primary election is the emergence of one of the contestants as the party‘s candidate; held correctly in my view that “an inconclusive primary election cannot produce a candidate”.

It consequently made the following orders, that is -

“i. An order directing the 1st and 2nd appellants and the 3rd respondent to conduct a fresh primary election for Kura/Garun Malam Constituency within 7 days from the date of the judgment delivered on 9 March 2015.

ii. An order restraining INEC from recognising or otherwise dealing with the 3rd appellant as the candidate of the 1st appellant in the election into the office of Kano State House of Assembly or issuing any form of certificate of recognition, or printing the name of the 3rd appellant on the ballot papers or any other candidate of the APC arising from the inconclusive primary election as conducted contrary to the 2014 APC Guidelines for Nomination and the APC Constitution”.

These orders are in no way ambiguous. The Federal High Court had thus made it clear that until, and only when, the APC conducted a valid primary election in Kura/Garun Malam Constituency, none of the aspirants, including the 3rd appellant and 1st respondent, was and would be regarded as a candidate of the APC for that constituency. The effect of these orders is that APC, the 1st appellant, had no candidate until the orders made in the judgment of the Federal High Court were carried out and obeyed to the letter.

The judgment of the Federal High Court, including the orders made therein, enjoyed the presumption of regularity enacted into section 168(1) of the Evidence Act, 2011. Every decision, including orders of a court of law subsists and remains binding on the parties until set aside by a court of competent jurisdiction. It does not lie in the discretion of the party against whom the decision or judgment, including injunctive orders therein, are made to disregard the orders merely because, in his wisdom, he thinks that the orders are invalid and not binding on him. Our jurisprudence will not brook of such treachery that leads only to anarchy. See Rossek v. A.C.B. (1993) 10 SCNJ 20 at pages 39 - 40; Arubo v. Aiyeleru (1993) KLR 23. Interestingly, INEC was a party in the said suit at the Federal High Court. It was bound by the orders made on 9 March 2015, particularly the orders specifically directed against it.

On 11 March 2015, the three appellants herein lodged their appeal to the Court of Appeal (the lower court) challenging the decision of the Federal High Court. INEC, in spite of the orders of the Federal High Court directing it not to recognise or otherwise deal the candidate of the APC, 1st appellant, in the general election and/or placing the 3rd appellant or any other candidate of the APC on the ballot in consequence of the inconclusive primary election of 2 December 2014, did not appeal the decision of the Federal High Court. I need only re-state or emphasise the trite principle of law that decisions of court not appealed against remain valid, binding, subsisting and taken as acceptable between the parties until the decision is set aside. See Akere v. Governor, Oyo State (2012) All FWLR (Pt. 634) 53, (2012) 50 II NSCQR 345 at 424 - 415; LSBPC v. Purification Technique (Nig.) Ltd (2012) 521 NSCQR 274 at 309.

Even where an appeal had been lodged against the decision of the High Court to the Court of Appeal, section 17 of the Court of Appeal Act, 2004, categorically and in no mistaken terms, tells or warns the litigants that appeal per se shall not operate as stay of execution. See also Vaswani Trading Co. v. Savalakh & Co. (1972) 7 NSCC 692, (1972) 12 SC 77, which interpreted section 24 of the Supreme Court Act almost in pari materia with section 17 of the Court of Appeal Act.

This takes me to issue 1 argued in this appeal by the appellants. They rely on Eyesan v. Sanusi (1984) LPELR – 1185 (SC); Anachebe v. Ijeoma & Ors. (2014) LPELR - 23181 (SC); Attorney-General, Federation v. Bi-Courtney Ltd (2014) LPELR - 22964 (CA) to submit that the right of appeal is a constitutional right. That is correct. They however, got it wrong in their thinking that because they had exercised their right of appeal, constitutionally; it behooved them to resort to self-help and behave in a manner not only to stifle the exercise by the appellate court of its jurisdiction vested by the Constitution, but also to overreach the 1st respondent. Self-help has no place in a democratic society that savours the Rule of law, our constitution does expressly. See Union Bank of Nigeria v. Alh. Adams Ajabule (2011) LPELR - 8239 (SC).

This court in Vaswani Trading Co. v. Savalakh & Co. frowned seriously at the conduct or action of a litigant which tended to stifle the exercise by this court of its undoubted jurisdiction and discretion to consider and decide the pending application for stay of execution of a subsisting judgment on its merits. For obvious and subtle purpose of stifling the exercise by this court of its discretion, within its jurisdiction, to consider the application for stay of execution on its merits, the judgment creditor executed writ of possession during the pendency of the appeal against the judgment he was executing, and the application for stay of execution of the said judgment. The writ of possession was of course set aside, since it was done in contempt and abuse of the court’s process.

No party in litigation is permitted to unilaterally alter the status quo in order to undermine the authority of the court, particularly of the appellate court, in order to foist a fait accompli, and also overreach the adversary in litigation. See F.A.T.B. v. Ezegbu (1992) NWLR (Pt. 264) 132. The outlawry of the appellants which drew the ire of the court below at pages 578 and 579 of the record, that is the subject of the complaint in issue 1, was expressly admitted by the appellants in their counter-affidavit.

The totality of the counter-affidavit is that the time was too short for them to repeat the primary election and of necessity they had to disregard the express and mandatory provisions of the APC 2014 Guidelines for Nomination, exhibit KARFI 5, and the orders of the Federal High Court directing them to repeat the primary election within 7 days after 9 March 2015.

The appellants while exercising their undoubted right of appeal, had blatantly refused to repeat the primary election as ordered by the Federal High Court. They had at the same time, and in collusion with INEC, audaciously put up the 3rd appellant as the candidate of the 1st appellant, APC, for Kura/Garun Mallam Constituency in complete disdain and contempt of the orders made by the Federal High Court on 9th March 2015. INEC was also in contempt of the orders made against it on 9 March 2015 by the Federal High Court. These were what prompted the Court of

Appeal to holding that -

“The name of the 3rd appellant was unlawfully and illegally placed on the ballot paper as the candidate of the 1st appellant in the said election and this was done in letter disobedience of the order of the Federal High Court.

What has happened in this case is a worrisome development, which constitutes a danger to the growth of the rule of law in this country. It is a negation of justice, equity and good conscience. A situation where a court order/decision/judgment is rendered nugatory by the acts of a party in the suit should not by any means be encouraged as same would result in chaos, anarchy and self-help. It is now well settled that a person who is in contempt of a subsisting court order is not entitled to be granted the court’s discretion to enable him continue with the breach - Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621; Shugaba v. Union Bank of Nigeria Plc. (1999) 11 NWLR (Pt. 627) 459; Jev. Iyortom (2014) 14 NWLR (Pt. 1428) 575. This court will therefore not fold its hands and watch the judgment of a court being trivialised and/or rendered nugatory without doing something to give effect to same. What then is the proper consequential order to be made to meet the justice of the case?”

That is the question.

The courts never tolerated such action or conduct designed purposely to stifle their discretion in a pending litigation and thereby foist on them a fait accompli. In Vaswani Trading Co. v. Savalakh & Co., the offensive writ of possession was set aside and the parties brought back to the status quo ante. The courts never condoned such conduct or action. They also never ratified it. The courts always resorted to their inherent powers to discipline the erring party in order to maintain, restore and preserve the dignity and respect for judicial authority. They do this by resort to restorative or mandatory injunction to undo whatever had been done by the erring party irrespective of what they would decide on merits eventually when the matter is heard. In the English case: Daniel v. Ferguson (1891) 2 CH. 27, the Court of Appeal ordered the demolition of a building hurriedly erected after the defendant had received notice that an injunction was going to be sought against him by the plaintiff. This case was cited with approval, and indeed applied, in F.A.T.B. v. Ezegbu. In Chief M. O. Abbi v. Chief (Prof) J. J. T. Princewill (2011) LPELR - 3952 (CA), I had stated of section 6(6) of the 1999 Constitution and the inherent power of the court to issue restorative injunction thus:

“The inherent power of the court under section 6(6) of the 1999 Constitution to issue restorative injunction is twofold. Firstly, it is to enable the court protect itself from unwarranted interference, and secondly, to sustain its dignity in order to promote fair dispensation of justice”.

There is no better case for invocation of the restorative jurisdiction or power of the court under section 6(6) of the Constitution than the instant case. It is clear from the counter-affidavit of the appellants, as the defendants at the trial Federal High Court, that they had set out deliberately to disdainfully snub the provisions of the Electoral Act, 2010 (as amended), as well as the APC Constitution, and 2014 APC Guidelines for Nomination, exhibit KARFI 5. It was clear from their body language that nothing, including pending proceeding at the Federal High Court, would stop their outlawry. They had imbibed in themselves impunity and worn a false toga of being above the law. Paragraph 4.06 of the appellants’ brief at the lower court appears to confirm this impression the appellants hold of themselves. It states that the Federal High Court -

“By granting the alternative prayers, the learned trial judge did so completely oblivious of the fact that the election (was) only a few days away and most importantly that the period allowed for political parties to conduct their primaries by the 2nd respondent (INEC) had since elapsed”.

And in paragraph 5.05 of the said appellants’ brief the appellants, resorting to the necessity for their snub, disdain or disregard of the orders of the Federal High Court, submit that -

“The consequence of the order of the Federal High Court would have been that the 1st appellant would not have had a candidate in the constituency in the general election”.

The law is trite: orders of court are meant to be obeyed.

Oputa JSC, in Governor of Lagos State v. Ojukwu, stated emphatically that “the law is no respecter of persons, principalities, governments or powers” and that the courts stand between citizens and government or principality alert to see that all are bound by the law and must respect the law. The learned jurist further adds, at page 641 of the report, on “the most ominous, most menacing and most portentous impact” of disdainful act of flagrant malfeasance by a party in litigation to foist a fait accompli on the court, that such conduct or action -

“Is an assault they make on the entire court system.

The court system cannot be maintained without the willingness of the parties to abide by the findings and orders of a court competent until reversed on appeal.

This presupposes that no party and no court of subordinate or even co-ordinate jurisdiction can say:-

“I do not like the order made and I will not obey it”.

The posture has to be condemned in the strongest of terms if we are not to say good-bye to the rule of law”.

From all I have so far said on issue 1, as argued in the appeal, I cannot agree with the appellants that their right of appeal is synonymous with any perceived right to act in disobedience of an order or decision of a competent court of law being appealed. No law court, administering justice, will exercise its discretion in aid of a litigant who resorts to self-help in defiant disobedience of a subsisting court order. See DPCC Ltd v. B.P.C. Ltd (2008) 1 - 2 SC 68, (2008) 4 NWLR (Pt. 1077) 376. The court from which appeal lies as well as the court to which appeal lies both have a duty to preserve the res for the purpose of ensuring that the appeal, if successful, is not nugatory. See Kigo (Nig.) Ltd v. Holman Bros (Nig.) & Anor. (1980) 5 - 7 SC 60.

In resolving this issue 1 against the appellants, I hereby adapt for this judgment the portion of the opinion of Oputa JSC at pages 643 - 644 in Governor of Lagos State v. Ojukwu as follows:-

1. A judgment or ruling of a competent court ought not to be illusory, but ought to have its consequences. One consequence of the orders made by the Federal High Court on 6 March 2015, which I hereby restored as the Court of Appeal did, is that until, and unless, the 1st and 2nd appellants and the 3rd respondent repeated the APC primary election in Kura/Garun Mallam State Constituency, the 1st appellant would have no candidate for that constituency at the general election.

2. A judgment once given should be accepted as correct until the contrary is proved. Only the Court of Appeal was competent to set aside the judgment and orders made on 6 March 2015 by the Federal High Court, upon further appeal therefrom, only this court can set aside the judgment of the Court of Appeal.

3. He who is in defiant disobedience of the law - here an order of court - cannot appeal to the same law to help him continue in his disobedience.

4. The appellants in this appeal are asking the Court of Appeal to exercise its discretion in their favour. The exercise of discretion is equitable and the function of equity is to supplement the law never to counteract or contradict with law.

The Court of Appeal made four consequential orders at page 580 of the record. I will not interfere with the orders directing the 3rd appellant, Alhaji Hayatu Musa Dorawar Sallau, to forthwith vacate the seat of the Kura/Garun Malam Constituency in the Kano State House of Assembly and the order as to costs. However, the justice of the matter does not justify the affirmation of the orders directing the 1st and 2nd appellants and the 3rd respondent to conduct fresh primary election in the said Kura/Garun Mallam Constituency within 14 days. Doing so will tantamount to the court system gratifying appellants for their misconduct. They had their day and they wasted it. The law as I shall show anon, is that at the close of the period fixed for nominations for the general election, which all political parties intending to field candidates are obligated to comply with, the 1st appellant, APC, had no candidate for Kura/Garun Mallam Constituency at the general election.

The undisputed facts of this case are that the primary election of the APC, 1st appellant, to nominate its candidate for Kura/Garun Mallam constituency was voided and declared inconclusive by the APC Electoral Committee in accordance with the APC Constitution, and the APC 2014 Guidelines for Nomination. This fact was affirmed by the Federal High Court, which ordered the APC to repeat the exercise within 7 days. It was not done as ordered. Section 87 (1) of Electoral Act, 2010 (as amended) makes it mandatory for a political party seeking to nominate its candidate for general election to hold or conduct primary election for aspirant seeking its sponsorship.

The laws are made to be obeyed. All persons and authorities including political parties must obey the laws of the land. See Buhari v. Independent National Electoral Commission (2009) All FWLR (Pt. 459) 419, (2009) 4 E.P.R 623. On the principle of equality before the law, the law is no respecter of any person, including the INEC, APC and all political parties. As Akintan JSC, stated in Ehinlawo v. Oke (2009) 2 ERR 494 at 555, the courts are bound to ensure that relevant specific provisions, particularly those mandatory provisions of the Electoral Act are complied with. It is no longer in dispute that where a political party fails to comply with the mandatory provisions of the Electoral Act, on nomination of its candidate(s) before the general election, the court will intervene and declare such purported nomination invalid; and the affected political party, here in the instant case the APC, will be taken or deemed to have fielded no candidate for the general election. See Ehinlawo v. Oke at page 546.

The 3rd appellant herein was not at all and at anytime nominated to be the APC candidate for Kura/Garun Malam Constituency. No primary election for that purpose, being the sine qua non for the proper nomination, was ever conducted. It is now settled that for a nomination to be valid, it must follow and meet the statutory procedures. The Court of Appeal stated so in Owanta v. INEC & Ors. (2011) LPELR 9184 (CA) relying on PPA v. INEC (2010) 12 NWLR (Pt. 1207) 70 at 105 - 106; Dingyadi v. Wamako (2008) 17 NWLR (Pt. 1116) 315. I completely agree. A candidate as the 3rd appellant herein, not validly nominated as required by law, both municipal and the laws of his own party, cannot be said to have qualified to be placed on the ballot in an election, let alone elected. See Udomu v. Ugochukwu 3 E.N.L.R. 1; Amonahini v. Onemayan (1991) LREQN 64 at 69; Anazodo v. Audu (1999) 4 NWLR (Pt. 600) 530.

I do not think, and I so hold, that the Court of Appeal was not right in its third order that-

“The second respondent, Independent National Electoral Commission (INEC), is hereby ordered to conduct election into the vacant seat of Kura/Garun Malam Constituency in the Kano State House of Assembly within 90 days of the receipt of duly selected/nominated candidate of the 1st appellant”.

The order is wrong and/or ultra vires in several respects. Not all the parties, including candidates in the general election conducted in Kura/Garun Malam constituency were before the Court of Appeal. For the purpose of fair hearing, particularly audi alteram partem, they were entitled to be heard before an order nullifying the said election and directing a fresh election could be validly made. Secondly, the order seems to pamper the 1st appellant, APC, and give it undeserved preferential treatment. INEC does not conduct general election at the convenience, whims and caprice of one political party, be it ruling or minority party.

Thirdly, an appeal before the Court of Appeal being “by way of rehearing” and a continuation of the proceedings at the trial court by dint of Order 7, rule 2 of the Court of Appeal Rules, 2011, and section 15 of the Court of Appeal Act, 2004, the Court of Appeal upon hearing the appeal cannot make any order, be it consequential, which the trial court is jurisdictionally not empowered or authorised to make.

I should think that only an election tribunal established under section 285(1) of the 1999 Constitution, and duly empowered by section 140 of the Electoral Act, 2010, and not the Federal High Court, that has the requisite jurisdiction to nullify an election conducted by INEC and consequentially order its re-run.

Accordingly, as this power does not vest in the Federal High Court, the Court of Appeal had therefore acted ultra vires upon hearing and allowing the appeal arising from the decision of the Federal High Court, to have made an order which the trial Federal High Court does not, in the first place, have power to make.

The core or fundamental issue in this appeal is; whether the APC, in purporting to present the 3rd appellant as its candidate for Kura/Garun Malam Constituency, complied with the mandatory procedure for nomination of the said candidate? The attempt on 2 December 2014 to conduct the primary election, which is mandatory by virtue of section 87(1) of the Electoral Act, 2010, was voided and declared inconclusive by the APC Election Committee. The said election was marred by over-voting. In the circumstance paragraph 14 V at page 13 of the APC 2014 Guidelines for Nomination, exhibit KARFI 5, makes it mandatory that the election be repeated. The APC refused or did not repeat the primary election, and thereafter presented the 3rd appellant as its candidate for the constituency. That is the cause of action the 1st respondent stood on to bring the action at the Federal High Court.

In the circumstance, I do not think that the appellants are right in their argument that the Federal High Court lacks jurisdiction, under section 87(9) of the Electoral Act, 2010, to entertain the cause of action of the 1st respondent. The facts of this case clearly show that the 1st and 2nd appellants flagrantly flouted APC 2014 Guidelines for Nomination and section 87(1) of Electoral Act in their presentation of, or holding out, the 3rd appellant as the APC candidate. I am accordingly not persuaded by the argument of the Appellants’ counsel that the Federal High Court has no jurisdiction to entertain the cause of action of the 1st respondent as the plaintiff. PDP v. Sylva (2012) 13 NWLR (Pt. 1315) 85 is an authority, supporting the contention of the 1st respondent, that the High Courts, including the Federal High Court, have jurisdiction by virtue of section 87(9) of the Electoral Act if an aspirant complains that the provisions of the Electoral Act and the political party’s Guidelines for Nomination have not been complied with.

A court does not run the affairs of a political party. That is true only to some extent. The courts will also not allow a political party, whose constitution is a bye-law of the constitution or municipal law, to run its affairs with impunity and in total disregard of the municipal laws or its own charter. Jev. Iortyom (2014) 14 NWLR (Pt. 1428) 575; Gbileve v. Addingi (2014) 16 NWLR (Pt. 1433) 394, both laid down the principle that the courts will intervene when a political party acts whimsically and arbitrarily in the choice of its candidate. Both authorities reject the impunity of party supremacy in the decision as to who its candidate should be.

In sum total, APC had no candidate in the general election conducted by INEC to elect the member representing Kura/Garun Malam Constituency in Kano State House of Assembly. The 3rd appellant was not at all a candidate in that election. Apropos, he could not, in law, have been elected or returned as a member of Kano State House of Assembly representing Kura/Garun Malam constituency as purported by INEC.

It is for the foregoing reasons and the fuller reasons contained in judgment of my learned brother, John Inyang Okoro JSC, that I dismiss this appeal and support and adopt all the consequential orders made therein.

**BAGE JSC**:

I have had the benefit of reading in draft, the lead judgment of my learned brother, John Inyang Okoro JSC, just delivered. I agree entirely with the reasoning and conclusion reached. I will add a few words of my own. The issue in this case bothered on the jurisdiction of the Federal High Court Kano where the court assumed jurisdiction and order for fresh primaries in the suit filed by the 1st respondent.

The contention of the appellant is that, the issue is entirely a party matter and that the trial court did not have the jurisdiction to tried the case. This argument is not tenable, going by the provision of section 87(9) of the Electoral Act. The section provided thus:-

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

It is now well settled that issue of nomination and/or sponsorship of a candidate for an election falls within the domestic affair of a political party being a pre-primary duty of the party.

However, any dissatisfied contestant at the primary is empowered by section 87(9) of the Electoral Act, 2010 to ventilate his complaint before the Federal High Court or High Court of a State or of the Federal Capital Territory. See PDP v. Sylva (2012) 13 NWLR (Pt. 1315) page 85; Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1316) page 52; All Progressives Grand Alliance v. Anyanwu (2014) All FWLR (Pt. 735) 243, (2014) All FNLR (Pt. 735); Lado v. CPC (2012) All FWLR (Pt. 607) page 598.

Looking at exhibit KARFI BB which can be found at pages 146 - 147 of the record of appeal, the primary election which the 1st respondent complained of as declared inconclusive by chairman of the committee, due to the fact that the total vote casted was above the accredited delegates.

The 1st and 2nd appellants sent the name of the 3rd appellants as their candidate to the office of the 2nd respondent. It was in the light of all these, that the 1st respondent rushed to the trial court as plaintiff seeking nullification of that primary election

Going by the provision of section 87(9) as cited above, the Federal High Court has jurisdiction to try the matter, the decision of the lower court dismissing this appeal is hereby affirmed.

I also dismissed the appeal, and abide by the following orders contained in the lead judgment.

1. I hereby order the 3rd appellant Alhaji Hayatu Musa Dorawar Sallau to vacate the seat of the Kura/Garun Mallam Constituency in the Kano State House of Assembly forthwith.

2. I also order the Independent National Electoral Commission (INEC) to withdraw the certificate of return issued to Alhaji Hayatu Musa Dorawar Sallau immediately and issue same to the runner up in the general election into the Kano State House of Assembly.

3. I order the Speaker of the Kano State House of Assembly or the Clerk of the House (whichever is applicable) to swear in the runner up in the said election on which INEC has issued certificate of return to represent the Kura/Garun Mallam constituency of Kano State.

4. The 3rd appellant, Alhaji Hayatu Musa Dorawar Sallau is hereby ordered to refund all the salaries/allowances and/or emoluments he collected while occupying the seat in the House of Assembly within ninety (90) days of this order to the Kano State House of Assembly.

5. Cost of this action is assessed at N500,000.00 (five hundred thousand naira) in favour of the 1st respondent against the 3rd appellant only.

Appeal allowed