**ALHAJI MUSTAPHA ALIYU WUSHISHI**

**V.**

**ENGR. MOHAMMED JIBRIL IMAM & ORS**

IN THE SUPREME COURT OF NIGERIA

THE 3RD DAY OF MARCH, 2017

SC.123/2016

**LEX (2017) - SC.123/2016**

OTHER CITATIONS

2PLR/2017/39 (SC)

(2017) LPELR-41906(SC)

**BEFORE THEIR LORDSHIPS**

WALTER SAMUEL NKANU ONNOGHEN, J.S.C

MARY UKAEGO PETER-ODILI, J.S.C

KUMAI BAYANG AKA'AHS, J.S.C

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

EJEMBI EKO, J.S.C

**BETWEEN**

ALHAJI MUSTAPHA ALIYU WUSHISHI - Appellant(s)

AND

1. ENGR. MOHAMMED JIBRIL IMAM (Chairman, All Progressives Congress, Niger State Chapter)

2. ALL PROGRESSIVE CONGRESS c/o NATIONAL CHAIRMAN, NATIONAL SECRETARIAT WUSE II, ABUJA

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) - Respondent(s)

**ORIGINATING COURT**

COURT OF APPEAL, ABUJA JUDICIAL DIVISION (Judgment of the Court delivered on the 4th day of February, 2016)

FEDERAL HIGH COURT, MINNA JUDICIAL DIVISION (delivered on the 25th day of March, 2015).

**REPRESENTATION/LAWYERS**

M.N. Mohammed, Esq. with him, Isaac Enamudu and Osita Obikwete - For Appellant

Yunus Ustaz Usman, SAN with him, A. B. Mahmoud, Esq., J. J. Usman, Esq., A.O. Philip, Esq., M. K. Bielonwu, Esq., J. A. Sambo and C. C. Ifeneman - for 1st Respondent.  
  
Mahmud Abubakar Magaji, SAN with him, C. K. Udeoyibo, Amina Zukogi, H.M. Tukur, M. Yahaya, S.P. Ashiekaa and Matanmi for - 2nd Respondent  
  
T. M. Inuwa, Esq. with him, R. A. Ugbane, A. Sani, W. Kuku, R. Aminu and B. M. Abubakar - for 3rd Respondent - For Respondent

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

ELECTORAL MATTERS - NOMINATION AND SPONSORSHIP OF CANDIDATE – Circumstance under which a Court would have jurisdiction over the issue of primary nomination of candidate for an election – What an applicant must show

ELECTORAL MATTERS - POLITICAL PARTY PRIMARY:- A party complaining of wrongful exclusion from a concluded primary of a political party with announced winners – Necessary parties thereto – Proper reliefs available

**PRACTICE AND PROCEDURE ISSUES**

ACTION - LOCUS STANDI:- Meaning of - What a party must show to establish locus standi

WORD AND PHRASES:- “Locus standi”

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The action arose from a pre-election matter whereunder the appellant approached the court to challenge the outcome of the primary election conducted by the All Progressive Congress (A.P.C.) for the nomination of its Governorship candidate in Niger State for the 2015 general election.

Appellant is a card carrying member of the All Progressive Congress (A.P.C.). |He had desired to contest nomination of the party as the gubernatorial candidate for the Niger State Governorship election of 2015. He obtained the nomination Form, Zonal clearance and Expression of Intent Forms in accordance with the provisions of the All Progressives Congress (A.P.C.) Constitution and Guidelines for Nomination of Candidates for Public Offices. However, the appellant did not participate or contest as a candidate at the A.P.C. primary election for the nomination of its governorship candidate for the said election held on the 4th day of December, 2014.

Appellant was dissatisfied with the outcome of the primary election particularly as he felt wrongly excluded in the contest and consequently instituted an action at the Federal High Court, Minna. The trial Court in its judgment refused all the reliefs and struck out the case on the basis of the Preliminary Objection of the 1st and 2nd respondents on the ground that plaintiff/appellant lacked the locus standi to question who the party, A.P.C. chose as candidate for the office of Governor of Niger State.

Dissatisfied, the Appellant appealed to the Court of Appeal, Abuja Division which affirmed the judgment of the Federal High Court, Minna.

DECISION(S) APPEALED AGAINST

This is an appeal against the judgment of the Court of Appeal sitting in Abuja delivered on the 4th day February, 2016 wherein that Court dismissed the appellant's appeal against the judgment of the Federal High Court, Minna Division per A. I. Chikere J, that struck out the appellant's suit in a judgment delivered on the 25th day of March,2015.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the learned Justices of the Court of Appeal breached the appellant’s right to fair hearing when they refused to consider the relevant issues raised by the appellant before arriving at their decision? (Ground one).

2. Whether the learned justices of the Court of Appeal were right when they denied jurisdiction to entertain the case of the appellant on the ground that the appellant's case before them is within the domestic jurisdiction of the 2nd respondent (A.P.C.) and thus the appellant lacks the locus standi to question who his party A.P.C. chooses as candidate for the office of Governor of Niger State? (Ground two).

*BY RESPONDENTS*

*BY THE 1ST RESPONDENT*

Whether the Court of Appeal was justified and/or right in dismissing the appellants appeal (Ground 1 and 2 of the Notice and Grounds of Appeal).

*BY THE 2ND RESPONDENT*

i. Considering the fact that appellant did not contest the primary election held on 4th December, 2015 for the nomination of the gubernatorial candidate of 2nd respondent, (A.P.C.) for Niger State, whether he has the locus standi to challenge the outcome of the primaries under Section 87(9) of the Electoral Act 2010 (as amended). (Distilled from Ground 2).

ii. Having found that the trial Court was right in declining jurisdiction to entertain the matter challenging the outcome of the primaries of 2nd respondent, whether the Court of Appeal's refusal to go into the merit of the case and/or consider appellant's Exhibits A, B, C, D and E breached appellant’s right to fair hearing (Distilled from Ground 1).

*AS ADOPTED BY COURT*

[The Court, in the lead judgment, adopted the Issues as presented by the 2nd Respondent]

DECISION OF THE SUPREM COURT

1. It should be noted that despite the fact that a winner of the primary election had emerged prior to the filing of the suit, appellant did not deem it fit and proper to join him in the suit as constituted even though some of the above reliefs, if granted would adversely affect the interest he had acquired by winning the said primary election.

2. It settled law that the question as to who is a candidate of a political party remains within the province of the political parties over which the Courts have no jurisdiction except within the very narrow compass provided under the said Section 87(9) of the Electoral Act 2010 as amended. Under the said Section 87(9) an aspirant who can invoke the jurisdiction of the Court and, as has been held in a long line of cases from this Court, is the one who complains that any of the provisions of the Electoral 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. It follows that for a party/person to qualify or have the locus to institute an action on a matter arising from the nomination of a party's candidate for an election, he must have participated in the nomination exercise of the party and failed irrespective of whether nomination is a process or an event. Where a party did not participate in the primary election of the political party for the nomination of a candidate for an election, he cannot sue on the processes leading to and including the actual primary election because by the provisions of the said Section 87(9) supra the Court will have no jurisdiction to hear and determine the action. In the instant case, appellant did not participate in the primary election conducted by the party to select/nominate its candidate for the gubernatorial election in question neither did he fail in the said exercise.

3. The appellant was not an aspirant within the provisions of Section 87(9) of the Electoral Act, 2010 as amended. It should also be noted that the action of appellant is not designed to seek redress for the sums he paid to the respondents towards his intention to participate in the nomination exercise of the respondents for a candidate for the election into the office of the Governor of Niger State.

4. In the circumstances and having regard to the facts and applicable law, the lower Courts are correct in holding that appellant has no locus standi to institute the action for the reliefs claimed and as such the Courts have no jurisdiction to entertain same.

**MAIN JUDGMENT**

WALTER SAMUEL NKANU ONNOGHEN, J.S.C. (DELIVERING THE LEADING JUDGMENT):

This appeal is against the judgment of the Court of Appeal Holden at Abuja in appeal No. CA/A/255/2015 delivered on the 4th day of February, 2016 in which the Court dismissed the appeal of appellant against the judgment of the Federal High Court Holden at Minna in suit No. FHC/MN/CS/EPT/35/2014 delivered on the 25th day of March, 2015 whereby the Court struck out the pre-election suit of the appellant, then plaintiff, on grounds of lack of locus standi.

The facts relevant to the appeal include the following:-

The action was a pre-election matter in which appellant challenged the outcome of the primary election conducted by the All Progressive Congress (A.P.C.) for the nomination of its Governorship candidate in Niger State for the recently conducted 2015 general election.

Appellant is a card carrying member of the All Progressive Congress (A.P.C.) political party who desired to contest nomination of the party as the gubernatorial candidate for the Niger State Governorship election of 2015. He obtained the nomination Form, Zonal clearance and Expression of Intent Forms in accordance with the provisions of the All Progressives Congress (hereinafter referred to as A.P.C.) Constitution and Guidelines for Nomination of Candidates for Public Offices. The above named forms were exhibited to the affidavit in support of the Originating Summons and marked Exhibits ‘A’, ‘B’ and 'C' respectively.

However appellant did not participate or contest as a candidate at the A.P.C. primary election for the nomination of its governorship candidate for the said election held on the 4th day of December, 2014. Appellant was dissatisfied with the outcome of the primary election particularly as he felt wrongly excluded in the contest and consequently instituted an action at the Federal High Court, Minna for the determination of the following question:-

*1.1 Whether considering the provisions of Article 9.1, Sub i, ii, iv, Article 9.3, Sub i and ii, Article 20 Sub iv (a) (b) of the Constitution of the All Progressives Congress (A.P.C.) 2013 and Section 2, 3, Sub 2, Section 4 Sub d of the All Progressives Congress Draft Guidelines for the nomination of candidates for the public offices in Nigeria and Section 40 at* *the 1999 Constitution of Nigeria, any party member or the Appellant was validly qualified to aspire for the office of Governorship position and run primaries under the platform of All Progressives Congress, having paid the prescribed expression of interest nomination fees for the Gubernatorial election of Niger State under the platform of All Progressives Congress.*

*1.2 Whether or not the provision of the All Progressives Congress Guidelines for pages 1, 2, 5 and Article 9.3 Sub i & ii of the All Progress Congress (A.P.C.) Constitution 2013, the Appellant was validly qualified to run the primaries for the Gubernatorial election of Niger State held on 4/12/2014, with other contestants, under the platform of All Progressives Congress (A.P.C.) in Niger State.*

*1.3 Whether or not having observed the provisions of Article 9.3 Sub i & ii, Article 9.1 Sub I, (ii) (iv) of the All Progressives Congress (A.P.C)., 2013 Constitution, the Appellant was validly shut out by the 1st and 2nd Respondents by refusing to give the Appellant a nomination form to contest for the primaries of the gubernatorial primaries of the All Progressives Congress (A.P.C.) held in* *Niger State on 4/12/2014 by the 1st and 2nd Respondents.*

*1.4 Whether or not having observed the provisions of the All Progressives Congress Constitution, 2013 and all the Appellant's documentations as exhibited before the trial Court, a refusal or a denial of the Appellant to obtain nomination form by the 1st and 2nd Respondents and having the Appellant paid all the requisite fees, for the**contest of the primaries of the Gubernatorial election for**primaries conducted by the 1st and 2nd Respondents on 4/12/2014 in Niger State as null and void.*

*1.5 Whether by virtue of the provision of Article 9.3 Sub 1 of the All Progressives Congress 2013 Party Constitution, the Appellant is eligible to contest for the primary election for the post of Governorship conducted by the 1st and 2nd Respondents on 4/2/2014 and having the Respondents failed to give nomination form to the Appellant as a member to contest same can nullify the primaries conducted by the 1st and 2nd Respondents on 4/12/2014 and rerun same by including the Appellant among the contestant.*

*1.6 Whether or not non-observance of Party Constitution or Electoral Act, illegally shut out a registered member of a party or Appellant can render the 3rd Respondents not to recognize the primaries conducted by the 1st & 2nd Respondents on 4/12/2014.*

Appellant also sought the following reliefs:-

*1. A DECLARATION that the 1st and 2nd Respondents illegally excluded the Appellant from running the gubernatorial primaries conducted on 4/12/2014.*

*2. A DECLARATION that the Appellant is a legal and registered card carrying member of 1st and 2nd Respondents and he is eligible, to contest for any position on the platform of All Progressives Congress, including running the primaries held on 4/12/2014 by the 1st and 2nd Respondents.*

*3. A DECLARATION that the gubernatorial primary election conducted by the 1st and 2nd Respondents on 4/12/14 was illegal, having conducted same without due recourse to Article 9.3 Sub 1 of the (A.P.C.) Constitution 2013, having excluded the Appellant from the primaries race by refusing a registered member nomination form to contest.*

*4. A DECLARATION that the 1st Respondent should refuse to recognize the gubernatorial primaries conducted by the 1st and 2nd Respondents on 4/12/2014.*

*5. A DECLARATION that the Court should nullify the primaries conducted by the 1st and 2nd Respondents on 4/12/2014 having excluded a registered and legitimate member as Appellants from contesting the same primary election.*

*6. A DECLARATION that the Appellant is also qualified to contest for the primaries held on 4/2/2014 by the 1st and 2nd Respondents to contest.*

*7. A DECLARATION that the Appellant be given nomination form screened by the 1st and 2nd Respondents, having the Court to nullify the primaries conducted by the 1st and 2nd Respondents on 4/12/2014 with the Appellant to re-run and re-conduct the said primaries.*

*8. A DECLARATION that the 1st and 2nd Respondents cannot conduct the upcoming gubernatorial general election without including the Appellant, a bona-fide member of the All Progressive Congress.*

*9. A DECLARATION that the Niger State Gubernatorial primaries conducted by the 1st and 2nd Respondents on 4/12/2014 was a nullity having been in gross breach of the 2nd Respondent's Constitution of 2013 and party guidelines for congress by not including the Appellant, a legitimate member who paid for the gubernatorial nomination form but was not given the form to contest.*

*10. A DECLARATION that the primaries conducted by the 1st and 2nd Respondents on 4/12/2014 be nullified and another primaries re-conducted by the 1st and 2nd Respondents including the name of the Appellant.*

*11. AN ORDER OF THIS HONOURABLE COURT directing the 3rd Respondent not to deal with and or recognize the conduct of the primaries conducted by the 1st and 2nd Respondents on 4/12/2014 for the general incoming gubernatorial election of Niger State.*

*12. AN ORDER OF THIS HONOURABLE COURT directing the 3rd Respondents not to accept any party activity or decisions emanating from the actions of the 1st and 2nd Respondents gubernatorial primaries held on 4/12/2014 having excluded the Appellant from participating in the said primaries.*

*13 AN INJUNCTION RESTRAINING the 1st, 2nd and 3rd Respondents from conducting the general gubernatorial election of Niger State (A.P.C.) until final determination of this substantial matter before the Court.*

It should be noted that despite the fact that a winner of the primary election had emerged prior to the filing of the suit, appellant did not deem it fit and proper to join him in the suitas constituted even though some of the above reliefs, if granted would adversely affect the interest he had acquired by winning the said primary election.

However the 1st and 2nd respondents jointly filed a conditional appearance and preliminary objection to the suit on grounds of lack of locus standi and jurisdiction of Court which was duly upheld by the trial judge in the judgment delivered on the 25th day of March, 2015 which resulted in the appeal to the lower Court earlier referred to in this judgment and which appeal was dismissed. The instant appeal is a further appeal by appellant.

The issues formulated by learned Counsel for appellant, M. N. MOHAMMED, ESQ in the appellant brief on 15/3/16 and adopted in argument of the appeal at the hearing of same on the 7th day of December, 2016 are as follows:

*1. Whether the learned Justices of the Court of Appeal breached the appellant’s right to fair hearing when they refused to consider the relevant issues raised by the appellant before arriving at the decision?*

*2. Whether the learned Justices of the Court of Appeal were right when they declined jurisdiction to entertain the case of the appellant on the ground that the appellant’s case before them is within the domestic jurisdiction of the 2nd respondent (A.P.C.) and thus the appellant lacks the locus standi to question whose party A.P.C. chose as candidate for the office of governor of Niger State?*

On the other hand, learned Senior Counsel for the 1st respondent, YUNUS USTAZ USMAN, SAN in the 1st respondent’s brief filed on 27/3/16 formulated a single issue for the determination of the appeal, to wit:

*Whether the Court of Appeal was justified and/or right in dismissing the appellants appeal (Ground 1 and 2 of the Notice and Grounds of Appeal).*

On his part, learned Senior Counsel for the 2nd respondent, MAHMUD ABUBAKAR MAGAJI, SAN, in the 2nd respondent’s brief on 31/3/2016 submitted the following two issues for determination:

*i. Considering the fact that appellant did not contest the primary election held on 4th December, 2015 for the nomination of the gubernatorial candidate of 2nd respondent, (A.P.C.) for Niger State, whether he has the locus standi to challenge the outcome of the primaries under Section 87(9) of the Electoral Act 2010 (as amended). (Distilled from Ground 2).*

*ii. Having found that the trial Court was right in declining jurisdiction to entertain the matter challenging the outcome of the primaries of 2nd respondent, whether the Court of Appeal's refusal to go into the merit of the case and/or consider appellant's Exhibits A, B, C, D and E breached appellant’s right to fair hearing (Distilled from Ground 1).*

Looking closely at the two issues formulated by learned Counsel for appellant and 2nd respondent, I am of the considered view that the sequence of the issues formulated by learned Senior Counsel for 2nd respondent is more logical and consequently preferable and this appeal will be considered in accordance with the sequence of the issues as so presented together.

I, however, wish to state that though learned Counsel for 3rd respondent, T. M. Inuwa, Esq. filed a notice of preliminary objection which was argued in the 3rd respondent's brief filed on 12/4/16, the said notice was withdrawn at the hearing of the appeal on 7/12/16 and consequently struck out.

On appellant’s issue 2, learned Counsel submitted thatappellant was qualified by the Constitution of A.P.C. to contest the Niger State gubernatorial primaries on 4/12/14 after satisfy the requirements for the contest but was never allowed by the respondents *“who willfully refused to issue nomination form (form) to the Appellant despite the fact that he fulfilled all the requisite preconditions”;* that having regard to the Constitution of 2nd respondent and its draft Guidelines For Nomination of Candidates for Public Offices in Nigeria, appellant was qualified to contest the nomination and ought to have been issued a nomination form to enable him participate in the said primary election to which submission learned Counsel cited and relied on Article 9(3) (1) of the A.P.C. Constitution, 2013 and Articles 20 thereof in addition to Sections 2 and 3 of the Draft Guidelines for Nomination of Candidates for Public Offices in Nigeria; that the respondents received appellant's payment of the sum of N5 million for nomination form but refused to issue the form to appellant despite the fact that appellant also paid the sum of N25,000 being the sum required for zonal clearance for Niger Zone ‘C’, etc.

It isthe further contention of learned counsel for appellant that the lower Court was in error in affirming the decision of the trial Court that appellant has no locus standi to institute the action when the complaint was on non-compliance with the party’s Constitution and Guideline and in such a case the jurisdiction of the Court cannot be shut out, relying on the provisions of Section 87(9) of the Electoral Act, 2010 as amended; that a complainant who ought to have taken part in his political party’s primaries has the locus standi to institute an action under the said Section 87(9) of the Electoral Act, 2010 as amended; learned Counsel also relied on the case of Ukachukwu v. P.D.P. (2014) 17 NWLR (Pt. 1435) 201; that *“having shown that the trial Court has jurisdiction, and that the respondents admitted the case of the appellant, this Honourable Court has the power to order for a re-run of the primaries to enable the appellant participate”.* The above submission is made notwithstanding the fact that a general election had long been conducted and a winner declared for the office of Governor of Niger State!!

With regard to appellant's issue 1, learnedCounsel submitted that the failure of the lower Court to consider his complaint against the trial Court’s decision on the matter without reference to the relevant exhibits, particularly Exhibits A, B, C, D and E amounted to a denial of his right of fair hearing which renders the proceedings null and void, and urged the Court to resolve the issues in favour of appellant and allow the appeal.

On his part, learned Senior Counsel for 1st respondent stated that by the admission of appellant in paragraphs 7 and 8 of the affidavit in support of the Originating Summons, appellant did not satisfy all the requirements for him to be regarded as an aspirant of the party as he only paid for an “intent form” of N5 million but was not issued with a nomination form to contest the primary election; that the lower Courts were right in holding that appellant was not an aspirant at the primary election of 4/12/14; that appellant not being an aspirant who participated at the said primary election cannot bring himself within the provisions of Section 87(9) of the Electoral Act, 2010, as amended, relying onP.D.P. & Anor v. Sylva & Ors (2012) LPELR 7814; (2012) 13 NWLR (Pt. 1316) 85, 15, 148; Nobis-Elendu v. I.N.E.C. (2015) 6 SCM 117 at 136; Uzodinma v. Izunaso (2011) 17 NWLR (Pt. 1275) 60; Gwede v. I.N.E.C. (2014) 18 NWLR (Pt. 1438) 56 at 93**;** that haven not participated in the primary election of the 2nd respondent, appellant has no locus standi to challenge the result of the primaries. Finally, that since appellant lacks the locus standi to institute the action as rightly found and affirmed by the lower Courts, the lower Courts have no jurisdiction to entertain the action and can, therefore, not go into the merits of the case by examining the exhibits, etc, relying on James v. I.N.E.C. (2015) 12 NWLR (Pt. 1474) 538 at 584; that a Court of law cannot make an order binding a non-party to the action such as the present Governor of Niger State who emerged the winner of the Governorship election in Niger State following the general election but was not made a party to the action praying for nullification of both the primary election and the general election.

Learned Senior Counsel then urged the Court to resolve the issues against appellant and dismiss the appeal.

On his part, learned SeniorCounsel for 2nd respondent M. A. MAGAJI, SAN in the 2nd respondent’s brief of argument filed on 31/3/2016 submitted that the trial Court haven examined the facts and law and come to the conclusion that appellant had no locus standi in instituting the action, was right in striking out the matter and that the lower Court was right in affirming that decision; that sponsorship of candidates for election is the primary responsibility of political parties over which the Courts have no jurisdiction; that appellant not being a party envisaged by Section 87(9) of the Electoral Act, 2010 as amended, has no locus standi to institute the action neither can he question any irregularity in the primary election in question; that appellant was neither screened nor cleared to contest the primary election nor did he participate in the said primary election to nominate the party’s gubernatorial candidate and urged the Court to resolve the issues against appellant and dismiss the appeal.

T. M. INUWA, ESQ for 3rd respondent leaves the decision on the merit at the discretion of the Court but stated that based on the facts of the case as admitted by appellant,appellant lacks the locus standi to institute the action as found by the lower Courts particularly as he was not an aspirant within the provisions of Section 87(9) of the Electoral Act, 2010 as amended.

From the record, the following facts are not in dispute:

(1) that appellant instituted suit No. FHC/NN/CS/35/2014 on 5/12/14 against the present respondents for reliefs earlier reproduced in this judgment.

(2) that appellant was not an aspirant at the primary election of the 2nd respondent held on 4th December, 2014, the result of which he wants the Court to declare a nullity.

(3) that the primary election of the 2nd respondent was duly held and a winner emerged, who proceeded to contest the Niger State Gubernatorial election of 2015 and won;

(4) that the said winner of the said primary and gubernatorial election was not joined or made a party in the action by appellant though some of the reliefs claimed affect his interest.

As earlier stated in this judgment, it is the decision of the Lower Courts that appellant has no locus standi to institute and maintain the action and as such the Courts have no jurisdiction to hear anddetermine the said action. The question to be decided herein is therefore whether the lower Courts are correct in their determination?

In resolving the issue, it is necessary to take a look at the provisions of Section 87(9) of the Electoral Act, 2010 as amended, which confers jurisdiction on the Court to hear and determine matters arising from nomination of candidates by political parties to contest general elections. I have to, once more point out that the jurisdiction conferred on the Court to hear matters arising from political party nomination of candidates is an exception to the general principle of law that sponsorship of candidates by political parties for an election is the prerogative of the political parties concerned and as such the Court has no jurisdiction to interfere in such a matter, same being within the internal affairs of the political parties see Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310; Jang v. I.N.E.C. (2003) LRECN 299; P.D.P. v. Sylva (2012) 13 NWLR (Pt. 1316) 85 at 148; Ukachukwu v. P.D.P. (2014) LPELR 22115; Nobis-Elendu v. I.N.E.C. (2015) 6 SCN 117 at 136; Uzodinma v. Izunaso (2011) 17 NWLR (Pt. 1275) 60; Ugwu v.Ararume (2007) 12 NWLR (Pt. 843) 310; Onuoha v. Okafor (1983) 2 SCNLR 244, Gwede v. I.N.E.C. (2014) 18 NWLR (Pt. 1438) 56 at 93 Shinkafi v. Yari (2016) LPELR 26050 etc, etc. Now to the provisions of Section 87(9) of the Electoral Act 2010, as amended which provides as follows:-

*(a) Notwithstanding the provisions of the Act or rules of a Political Partly, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or F.C.T. for redress.*

In dealing with the above provision in the case of Ardo v. Nyako (2014) 10 NWLR (Pt. 1461) 591 at 629, I stated the position of the law inter alia, as follows:-

*It is in that respect that I have to say that it is settled law that the question as to who is a candidate of a political party remains within the province of the political parties over which the Courts have no jurisdiction except within the very narrow compass provided under the said Section 87(9) of the Electoral Act 2010 as amended. Under the said Section 87(9) an aspirant who can invoke the jurisdiction of the Court and, as has been held in a long line of cases from this Court, is the one who complains that any of the provisions of the Electoral 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 - see Lado v. C.P.C. (2012) 17 NWLR (Pt. 1275) 20 at 59-60; Emenike v. P.D.P. (2012) 12 NWLR (Pt. 1315) 556;...*

*It follows that for a party/person to qualify or have the locus to institute an action on a matter arising from the nomination of a party's candidate for an election, he must have participated in the nomination exercise of the party and failed irrespective of whether nomination is a process or an event.*

*Where a party did not participate in the primary election of the political party for the nomination of a candidate for an election, he cannot sue on the processes leading to and including the actual primary election because by the provisions of the said Section 87(9) supra the Court will have no jurisdiction to hear and determine the action. In the instant case, appellant did not participate in the primary election conducted by the party to select/nominate its candidate for the gubernatorial election in question neither did he fail in the said exercise.*

The above remains the law as this Court has not taken a contrary position on the matter.

As found earlier in this judgment, there is no doubt, whatsoever, that appellant was not an aspirant within the provisions of Section 87(9) of the Electoral Act, 2010 as amended. It should also be noted that the action of appellant is not designed to seek redress for the sums he paid to the respondents towards his intention to participate in the nomination exercise of the respondents for a candidate for the election into the office of the Governor of Niger State.

In the circumstances and having regard to the facts and applicable law I hold the considered view that the lower Courts are correct in holding that appellant has no locus standi to institute the action for the reliefs claimed and as such the Courts have no jurisdiction to entertain same.

It is my further opinion that jurisdiction being a fundamental/peripheral issue andthe lower Courts haven determined same against appellant, the Courts had no business proceeding any further to consider the substantive matters on the merit and their failure has not resulted in any miscarriage of justice in the instant case as the appellant’s right to fair hearing is in no way adversely affected thereby.

In conclusion, I find no merit whatsoever in this appeal which is consequently dismissed by me.

I, however, make no order as to costs.

Appeal dismissed.

**MARY UKAEGO PETER-ODILI, J.S.C.:**

I agree in totality with the judgment and reasonings just delivered by my learned brother, Walter Nkanu Onnoghen Ag. C.J.N. and to register my support, I shall make some remarks.

This is an appeal against the judgment of the Court of Appeal sitting in Abuja delivered on the 4th day February, 2016 wherein that Court dismissed the appellant's appeal against the judgment of the Federal High Court, Minna Division per A. I. Chikere J, that struck out the appellant's suit in a judgment delivered on the 25th day of March,2015.

Briefly, this appeal emanated from a pre-election matter that challenged the outcome of a primary election conducted by the All Progressives Congress (A.P.C.) for the nomination of its Governorship candidate, for Niger State for the 2015 general election. The trial Court in its judgment refused all the reliefs and struck out the case on the basis of the Preliminary Objection of the 1st and 2nd respondents on the ground that plaintiff/appellant lacked the locus standi to question who the party, A.P.C. chose as candidate for the office of Governor of Niger State.

The suit was initiated by an originating summons with a supporting affidavit but the 1st and 2nd respondents filed a conditional appearance with a notice of preliminary objection challenging the competence of the suit on the ground that appellant lacked the the locus standi to approach the Court and therefore the jurisdiction of the Court was queried. The fuller details of the facts and backgrounds are well set out in the lead Judgment and so no need to repeat them.

On the 7th day of December, 2016 when the hearing took place, learned counsel for the appellant, M. N. Mohammed, Esq.adopted his brief of argument filed on 15/2/16 and in it raised two issues for determination which are as follows:-

1. Whether the learned Justices of the Court of Appeal breached the appellant’s right to fair hearing when they refused to consider the relevant issues raised by the appellant before arriving at their decision? (Ground one).

2. Whether the learned justices of the Court of Appeal were right when they denied jurisdiction to entertain the case of the appellant on the ground that the appellant's case before them is within the domestic jurisdiction of the 2nd respondent (A.P.C.) and thus the appellant lacks the locus standi to question who his party A.P.C. chooses as candidate for the office of Governor of Niger State? (Ground two).

Mr. Yusuf Ustaz Usman, SAN adopted 1st respondent's brief of argument filed on the 24/3/16 and he identified a single issue being:-

Whether the Court of Appeal was justified and or right in dismissing the appellant's appeal.

Learned counsel for the 2nd respondent, Mahmud Abubakar Magaji, SAN adopted its brief of argument filed on 31/3/16 and in it formulated two issues for determination which arethus:-

i. Considering the fact that appellant did not contest the Primary Election held on 4th December, 2015 for the nomination of the Gubernatorial Candidate of 2nd respondent (A.P.C.) for Niger State, whether he has the locus standi to challenge the outcome of the primaries under Section 87(9) of the Electoral Act, 2010 (as amended).

ii. Having found that the trial Court was right in declining jurisdiction to entertain the matter challenging the outcome of the primaries of 2nd respondent, whether the Court of Appeal's refusal to go into the merit of the case and/or consider Appellant’s Exhibits A, B, C, D and E breached appellant’s right to fair hearing.

For the 3rd respondent, learned counsel, T. M. Inuwa adopted its brief of argument filed on 12/4/16 and adopted the issues as framed by the appellant.

I shall make use of issue two as crafted by the appellant in the determination of this appeal and that is as follows:-

**ISSUE TWO:**

Whether the learned justices of the Court of Appeal were right when they declined jurisdiction to entertain the case of the appellant on the ground that the appellant’s case before them is within the domestic jurisdiction of the 2nd respondent A.P.C. and thus the appellant lacks the locus standi to question who its party A.P.C. choose as candidate for the office of Governor of Niger State.

For the appellant, M. U. Mohammed, Esq. submitted that the appellant established that he had the competence to sue as can be gleaned from the supporting affidavit to the originating summons wherein he stated the following:-

That he is a registered member of the 2nd respondent as shown in Exhibit A. That he sought to contest for the position of governor of Niger State under the platform of the 2nd respondent and paid N5 million Naira for nomination form via Exhibit B, and that the respondents collected this money and refused to issue out nomination form to enable the appellant to contest the primaries with other aspirants. The appellant also paid N25,000.00 via Exhibit C to the respondent being the money for the zonal clearance and the respondent despite this refused to issue nomination form to the appellant.

The appellant also paid the sum of N500,000.00 Naira via Exhibit D to the respondents for intent form to run forthe position of the Governor of Niger State under the platform of A.P.C., but the respondent collected this money and refused to issue out nomination form to the appellant to be screened and run for the primaries with other aspirants held on 4/12/2014 in Niger State.

That the appellant also obtained a clearance form, Exhibit E of which the appellant's ward Chairman signed, the Local Government Chairman and Zonal Chairman signed, but the 1st respondent deliberately refused to sign and issue the appellant the Gubernatorial aspirant nomination form.

The appellant also paid N50,000.00 via Exhibit F being the A.P.C. branch charges and despite this, the respondent refused to include him among others to participate in the 2nd respondents primaries in Niger State.  
That the A.P.C. Constitution provided for equal treatment of party members and the respondents prejudiced the appellant despite fulfilling all the requirements to contest for the primaries. That the appellant exhausted all avenues to seek redress within the party to no avail. That it would serve the interest of justice if the primaries conducted by the respondents on 4/12/14 isnullified and a re-run ordered, to enable the appellant to participate with other contestants.

It was submitted that considering the Constitution of the 2nd respondent (A.P.C.) and the Draft Guidelines for Nomination of Candidates of the said party, the appellant was qualified to contest the Niger State gubernatorial primaries of the A.P.C. and as such ought to have been issued with a nomination form to enable him participate in the said primaries.

That the appellant met all the conditions precedent listed in the said Guidelines and so failure of the 2nd respondent to issue him with the nomination form and the implication of being excluded from the primaries vitiated the process of the primaries held on the 4/12/14 and so another primary ought to be conducted by the 1st and 2nd respondents to give the appellant and other parties equal opportunity to participate. That the trial Court had jurisdiction to make the order for a re-run of the primaries.

Learned counsel for the 1st respondent, Yusuf Ustaz Usman, SAN submitted that the appellant did not clear the mandatory hurdles set up the A.P.C. in the first place on his own admission and sowas not in a position to ask for the reliefs he has prayed for. That the suit is non-justiciable and so the appellant has no locus standi to contest the questions he raised in Court as he was not an aspirant. He cited Guda v. Kitta (1999) 12 NWLR (Pt. 629) 21; Jang v. I.N.E.C. & Ors (2003) LRECN 299; PDP & ANOR v. Timipre Sylva & Ors (2012) 13 NWLR (Pt. 1316) 85 at 148.

Learned Senior Counsel Mahmud Magaji for the 2nd respondent contended that the peculiar facts of the concurrent judgments of the two Courts below did not deny appellant fair hearing to warrant the invocation of the principle of fair hearing to enable the appellant be accorded the reliefs he seeks.

T. M. Inuwa for the 3rd respondent submits to whatever decision the Court would make as the 3rd respondent is the umpire and would want to keep within an unbiased stance. He cited Uzodinma v. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30; A-G Federation & Ors v. Atiku Abubakar & Ors 32 NSCQR 1 at 174-175.

The dispute before the Court centres on the appellant asking that the primary election conducted by the 1st and 2nd respondents on 4/12/2014 be nullified andanother such process conducted to give the parties including the appellant equal opportunity to participate. On the other hand the 1st and 2nd respondents contend that the trial Court indeed lacked jurisdiction to entertain the matter as the appellant lacked the locus standi to institute it.

The learned trial judge had no hesitation in dispatching the application on the ground that the plaintiff does not have the locus standi to question who his party, A.P.C. choose as candidate for the office of Governor of Niger State. She also held that the nomination and sponsorship of a candidate to run for a political office is the internal affair of the party. The Court of First instance relied on Section 87 (1) of the Electoral Act 2010.

On appeal, the Court below per Abdu Aboki, JCA as seen at pages 250-255 in affirming what the Court of trial did state as follows:-

The only person who has locus standi to complain that any of the provisions of Electoral Act and the guideline of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, is the dissatisfied aspirant whoparticipated in the primary election concerned, in this case it is those who participated in the Gubernatorial primary election conducted by the 1st and 2nd respondents on 4/12/2014.

The Court of Appeal stated further thus:-

"It is my view that the appellant is not an aspirant and/or a dissatisfied contestant at the gubernatorial primaries election conducted by the 1st and 2nd respondent on 4/12/2014. Therefore has no locus under Section 87 (9) of the Electoral Act, 2010 (as amended) to challenge his party's primaries by instituting this action".

The appellant at the Court of trial had agitated the jurisdiction of that Court asking for the following reliefs:-

1. A DECLARATION that the 1st and 2nd respondents illegally excluded the appellant from running the gubernatorial primaries conducted on 4/12/2014.

2. A DECLARATION that the appellant is a legal and registered card carrying member of 1st and 2nd respondents and he is eligible to contest for any position on the platform of All Progressive Congress, including running the primaries held on 4/12/2014 by the the 1st and 2nd respondents.

3. A DECLARATION thatthe gubernatorial primary election conducted by the 1st and 2nd respondents on 4/12/2014 was illegal, having conducted same without due recourse to Article 9.3 Sub 1 of the (A.P.C.) Constitution 2013, having excluded the appellant from the primaries by refusing a registered member nomination form to contest.

4. A DECLARATION that the 3rd respondent, should refuse to recognize gubernatorial primaries conducted by the 1st and 2nd respondents on 4/12/2012.

5. A DECLARATION that the Court should nullify the primaries conducted by the 1st and 2nd respondents on 4/12/2014 having excluded a registered and legitimate member as appellant from contesting the said primary election held on 4/12/2014 by the 1st and 2nd respondents.

6. A DECLARATION that the appellant is also qualified to contest for the primaries held on the 4/12/2014 by the 1st and 2nd respondents.

7. A DECLARATION that the appellant be given nomination form, screened by the 1st and 2nd respondents, having the Court to nullify the primaries conducted by the 1st and 2nd respondents on 4/12/2014 with the appellant to re-run and re-conduct the said primaries.

8. A DECLARATION thatthe 1st and 2nd respondents cannot conduct theupcoming gubernatorial general election without including the appellant, a bonafide member of the All Progressive Congress.

9. A DECLARATION that the Niger State Gubernatorial primaries conducted by the 1st and 2nd respondents on 4/2/2014 was a nullity having been in gross breach of the 2nd respondent's Constitution of 2013 and party guidelines for congress by not including the appellant, a legitimate member who paid for the gubernatorial nomination form but was not given the form to contest.

10. A DECLARATION that the primaries conducted by the 1st and 2nd respondents on 4/12/214 be nullified and another primaries re-conducted by the 1st and 2nd respondents including the name of the appellant.

11. AN ORDER OF THIS HONOURABLE COURT directing the 3rd respondent not to deal with and/or recognize the conduct of the primaries conducted by the 1st and 2nd respondents on 4/12/2014 forthe general incoming gubernatorial election of Niger State.

12. AN ORDER OF THIS HONOURABLE COURT directing the 3rd respondent not to accept any party activity or decisions emanating from the actions of the 1stand 2nd respondents gubernatorial primaries held on 4/12/2014 having and excluded the appellant from participating in the said primaries.

13. AN INJUNCTION RESTRAINING the 1st, 2nd and 3rd respondents from conducting the general gubernatorial election of Niger State (APC) until final determination of this substantial matter before the Court.

The respondents, 1st and 2nd, in response, through a Preliminary Objection, opposed the appellant’s approach to the Court, contending that he lacked the locus standi to so enter the Court and ask for the reliefs above stated. This naturally threw up the question whether in fact the appellant had the right he assumed and if the answer was in the affirmative, the Court’s jurisdiction would be properly ignited and if the answer was in the negative then the Court's vires would not be in existence to enable the Court get into the adjudication being sought.

This Court has, time without number, restated the true position on locus standi. The term locus standi is in my humble view, the legal right of a party to an action to be heard in litigation before the Court of law and it entails that capacity to institute orcommence or initiate an action in a competent Court of law or Tribunal without let, hindrance, obstruction or inhibition from any person or body whatsoever. The question that does not come in is whether or not the party making the approach has an interest to protect or a legal right, what is in issue is whether aggrieved, he has the capacity to approach the Court to ventilate his grievance.

This apex Court has at every given opportunity restated what the position of things is inInakoju v. Adeleke (2007) 7 NWLR (Pt. 1025) 502, where the Supreme Court held thus:-

"To have a locus standi to sue, the plaintiff must show sufficient interest in the suit. One criterion of sufficient interest is whether the party could have been joined as a party to the suit. Another criterion is whether the party seeking the redress or remedy will suffer some injury or hardship from the litigation. If the Court is satisfied that he will suffer, then he must be heard as he is entitled to be heard.

The appellant has gone to great lengths to refer to the Constitution and Guidelines of the 2nd respondent, the A.P.C. and contending that the appellant beingqualified within the criteria of those guidelines and Constitution ought to be granted the prayers he seeks.

My reaction in the prevailing circumstances is, not so fast, as the first hurdle must be tackled, that is if the Court can enter into the qualification or otherwise of the appellant within those guidelines and Constitution. The Court must first have jurisdiction before that can happen and that vires is predicated on the appellant’s legal capacity to have his cry heard. The situation on ground is really very narrow as it anchors on the specific provisions of Section 87 (9) of the Electoral Act, 2010 as amended and a lot has been said in that regard already and I shall refer to what my learned brothers have said on it as guide.

In A.P.G.A. v. Anyanwu & Ors (2014) 7 NWLR (Pt. 1407) 541 at 577-578 paras. D-A, this Court per KEKERE-EKUN, JSC held thus:-

"Since the sponsorship of candidates is the prerogative of the political party, it would be absurd to interpret the provisions of Section 31 (5) above as permitting members of the same political party to challenge the party's choice in Court.

This brings me to Section 87 (9)of the Act which provides:-

"Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guidelines of a political party 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 for redress".

It has been held that the jurisdiction of the Court to entertain a complaint under this Section is very narrow in scope. A complainant must bring himself squarely within the confines of the provision. He must be an aspirant who participated in the primary and his complaint must relate to non-compliance with the provisions of the Electoral Act or the guidelines of the political party. See Uwazurike v. Nwachukwu (2013) 3 NWLR (Pt. 1342) 503 at 526; P.D.P. v. Sylva (2012) 13 NWLR (Pt. 1316) 85 at 148 C-D; Lado v. C.P.C. (2012) All FWLR (Pt. 607) 598 at 622-623 F-H".

The appellant had by his own admission in the process at the trial Court conceded that he did not participate at those primaries aforesaid. On such a situation Rhodes-Vivour, JSC had this to say in:-

Daniel v. I.N.E.C. (2015) 9 NWLR (Pt. 1463) 113 at 153-154 paras. H-C,  
"An admission, clearly and unequivocally made is the best against the person making it. Paragraphs 26 and 30 are conclusive evidence that the appellant did not participate in the re-run primaries conducted by P.D.P. on the 15th January, 2011. They are clear admissions by the appellant. Since the appellant did not participate in the re-run primaries there was no way he could complain about the conduct of the primaries and so had no locus standi to institute an action as provided by Section 87 (9) of the Electoral Act. Put in another way, before a candidate for the primaries can have the locus standi to sue on the conduct of the primaries, he must be screened, cleared by his political party and participate at the said primaries. Anything short of that, the candidate who did not participate in the primaries could conveniently be classified as a meddlesome interloper with no real interest in the primaries.

The Court of Appeal to my mind was wrong. The appellant has no locusstandi to institute this suit because he did not participate in the re-run primaries. Notwithstanding hisirreconcilable pleadings and his outlandish claims, the appellant remains doggedly resolute, and undeterred in proceeding with this appeal which is dismally devoid of any merit whatsoever. The appeal is dismissed with no order on costs".

In his contribution to this judgment at page 155 paragraphs B-D, His Lordship, Fabiyi, JSC held thus:

"...the real determinant issue is whether the appellant/cross-respondent who admitted that he did not physically participate in the re-run primary election of 15/1/2011 has the requisite locus standi to complain in respect of same.

Let me make some remarks on the provision of Section 87 (9) of the Electoral Act, 2010 (as amended). 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 raise a finger of complaint. See Peoples Democratic Party v. Sylva & 2 Ors (2012) 13 NWLR (Pt. 1316) 85; Lado v. C.P.C. (2011) 18 NWLR (Pt. 1279) 689".

Aka'ahs, JSC in his own contribution stated at page 158 of the said judgment as follows:-

He was clearly excluded from the re-runprimaries. The party has a right to exclude a candidate from participating in primaries even after he has been screened and cleared to contest the primaries and the candidate so excluded has no legal remedy against the action taken by the party.  
See P.D.P. v Sylva & 2 Ors (2012) 13 NWLR (Pt. 1316) 85. The minority decision of Tur, JCA which agreed with the decision of the trial that the appellant lacked the locus standi to institute the action is right since he did not participate in the re-run he cannot question the conduct or result of the re-run. Consequently, the main appeal fails and it is dismissed while the cross-appeal of 2nd and 3rd respondents have merit and they are followed accordingly.

It is clear and at the risk of repetition or echoing again and again what has been said that the nomination or sponsorship of a candidate for election is a political matter within the sole discretion of the political party, an internal affair which is not a matter for the public domain being pre-election and therefore domestic. It is after the conduct of the party’s primary that an aggrieved contestant at the process can complain about the conduct and itis then that the Courts have jurisdiction to hear such a party. A person who has not so contested has no legroom to invoke that jurisdiction of the Court.

What I am labouring to put across has been effectively laid to rest by this Court in many decided cases but the one that seems to have had the present occasion in mind is that of Lado v. C.P.C. (2011) 18 NWLR (Pt. 1279) 692, Onnoghen, JSC (as he then was) at pages 718-719 that:-

"The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the purview of Section 87 (b) (ii); and (9) of the Electoral Act 2010 (as amended) supra. It is only if he can come within theprovisions of those Sub-sections that his complaints can be justiciable as the Courts cannot still decide as between two or more contending parties which of them is the nominated candidate of a political party; that power still resides in the political parties to exercise. The enactment is not designed to encourage factions emerging from the political parties with each electing its candidates but claiming same to be candidates of the politicalparty concerned.

Although the National Assembly has attempted to infuse internal democracy in the political parties by ensuring that candidates who have been nominated to stand elections are not substituted arbitrarily, nonetheless the party still retains the right to set the parameters for nomination/selection of the candidates".

It follows that the issue herein had been in effect answered and I would say that the appellant does not qualify, has no locus standi to initiate an action on the matter arising from the nomination of a party's candidate for an election as he has not participated in the nomination exercise of the party. He cannot therefore sue on the processes leading to and including the actual primary election and the implication is that the Court has no jurisdiction to hear and determine what he has to say in regard to those processes and the primary. He therefore shouts in vain as his noise cannot be heard. I place reliance on Lado v. C.P.C. (2011) 18 NWLR (Pt. 1279) 629 per Onnoghen, JSC (as he then was).

"At the risk of repetition it is necessary to reiterate that the term locus standi connotes the legal capacity toinstitute proceeding in a Court of law. It is used interchangeably with the term "standing" or "title to sue". It is often on aspect of justiciability and also an issue of jurisdiction. If a plaintiff is not competent because he has no locus standi to bring an action, the Court would, in turn be incompetent and without jurisdiction to entertain the plaintiff's action. See Adesanya v. President, F.R.N. (1981) 2 NCLR 236; Owodunni v. Registered Trustees of C.C.C. (2000) 10 NWLR (Pt. 675) 315.

It is really important to note that the locus standi to sue does not depend on the success or merits of a claim. That is, it is a condition precedent to a determination in the merits, consequently if a plaintiff has no locus standi to sue, it is not necessary to consider whether or not there is a genuine case on the merits, all that matters is whether the party has the leg to stand on while initiating the action. See Adesanya v. President (supra): A-G Akwa Ibom State v. Essien (2004) 7 NWLR (Pt. 872) 288".

Finally, I see no basis for going outside of what the concurrent findings and decisions of the two Courts below showcased and in line with the better andwell articulated reasoning in the lead judgment conclude that this appeal lacks merit and is dismissed. I abide by the consequential orders made.

**KUMAI BAYANG AKA’AHS, J.S.C.:**

I read in draft the judgment of my learned brother, Onnoghen Ag. Chief justice of Nigeria, affirming the decisions of the two lower Courts and dismissing the appeal as lacking in merit.

I am in total agreement that the appellant had no locus standi to institute the action since he did not participate in the primaries that produced the gubernatorial candidate of the A.P.C. in Niger State for the 2015 General Elections. The fact that he is a registered member of the party who paid for the nomination form and also obtained the Zonal Clearance and Expression of Intent Forms did not qualify him as an aspirant so as to bring within the contemplation of Section 87(9) of the Electoral Act, 2010 as amended. This Court has handed down several judgments that it is only when a person has contested the primaries for an elective position that will enable him approach the Court to complain that any of the provisions of the Electoral Act and the Guidelines of a Political Party have not been followed in the selection or nomination of a candidate of the party for an election. In other words, a person cannot approach the Court to complain that the Political Party prevented him from participating in the primaries of the Party since sponsorship of candidates by political parties for an election is the prerogative of the political parties concerned and the Court lacks jurisdiction to interfere in such a matter which is an internal affair of the political parties. See: Lado v. C.P.C. (2011) 18 NWLR (Pt. 1279) 689; P.D.P. V Sylva (2012) 13 NWLR (Pt. 1316) 85; Ardo V Nyako (2014) 10 NWLR (Pt. 1416) 591; Gwede v. I.N.E.C. (2014) 18 NWLR (Pt. 1438) 56.

The appellant falls in the category of those who were excluded from contesting the primaries and the Court cannot entertain the action. The two lower Courts were right to decline jurisdiction.

For this and the more comprehensive reasoning contained in the lead judgment of my Lord Onnoghen, Ag. C.J.N, I find no merit in the appeal and it is accordingly dismissed. I also make no orders on costs.

**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C.:**

I have had the benefit of reading in draft the judgment of my learned brother, WALTER SAMUEL NKANU ONNOGHEN, AG. CJN just delivered. I am in complete agreement with the manner in which the issues in contention in this appeal have been resolved and the reasoning and conclusion reached.

The facts giving rise to this appeal have been aptly summarized in the lead judgment. Suffice it to say that the trial Court dismissed the appellant's suit instituted vide Originating Summons on the ground that having not participated in his party’s primary election into the office of Governor of Niger State, the appellant lacked the locus standi to question who his party, the ALL PROGRESSIVES CONGRESS (A.P.C.) chooses as its candidate for the office, The appellant's complaint as deposed to in paragraphs 6, 7, 8, 9, 10, 13, 18 & 19 of the Originating Summons is that his party refused to sponsor him or unlawfully excluded him from contesting for the office of Governor of Niger State notwithstanding the fact that he had paid the sum of N5 million for expression of intent form and the amount charged for the Zonal Clearance for Niger Zone C.

The trial Court held, relying on Section 87 (1) of the Electoral Act, 2010 as amended, that the nomination and sponsorship of a candidate to run for political office is the internal affair of the party. That the APC having nominated and sponsored its candidates for the primary and the name of the winner submitted to I.N.E.C., the appellant lacked the locus standi to challenge the decision. The appellant's reliefs were accordingly refused. The lower Court affirmed the decision.

As my learned brother did in the lead judgment, I adopt the 2nd respondent's issues in making my contribution in support thereof.

I must start by stating that the long settled position of the law is that the nomination and sponsorship of a candidate at an election is a matter within the internal affairs of a political party and therefore not justiciable, except in the limited circumstances provided in Section 87 (9) of the Electoral Act 2010, as amended, where a co-aspirant alleges that the relevant guidelines of the political party or the provisions of the Electoral Act were not complied with. See: Faleke v. I.N.E.C. (2016) 9 SCNJ 1 @ 104-105; Ukachukwu v. P.D.P. (2014) 17 NWLR (Pt. 1435) 134; Amaechi v. I.N.E.C. (2007) 18 NWLR (Pt. 1065) 170 @ 203 A-C; P.D.P. v. Onwe (2011) 4 NWLR (Pt. 1230) 166 @ 172-173 C-B.

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. (Underlining mine for emphasis).

This Court, in a plethora of decisions has settled the question as to who qualifies as an aspirant within the meaning of Section 87 (9) of the Electoral Act. He is a person who participated in the primaries. A person who has been screened and cleared by his political party to participate in the primaries. See: Daniel v. I.N.E.C. (2015) 9 NWLR (Pt. 1463) 113 @ 153-154 H - C; 158 G - H; Lado v. C.P.C. (2011) 18 NWLR (Pt. 1279) 689 @ 723-724 H-A; Emenike v. P.D.P. & Ors. (2012) 12 NWLR (Pt. 1315) 556; P.D.P. v. Sylva (2012) 13 NWLR (Pt. 1315) 85 @ 126 C; 141- 142 E-A.

By his own showing in paragraphs 7, 8 & 9 of the affidavit in support of his Originating summons, the appellant was never screened, cleared nor nominated by his party to contest the aforesaid primaries. He therefore failed to bring himself within the purview of Section 87 (9) of the Electoral Act.

I am therefore in full agreement with the two lower Courts that the appellant lacked the locus standi to institute the action at the trial Court.

Apart from lacking the locus standi to institute the action, the appellant failed to join the person who emerged as the winner of the primary election and eventually won the Governorship election of Niger State, a person whose interest would certainly have been adversely affected by a favourable decision in the appellant's favour.

Having regard to all the circumstances of this case the appellant's redress, at best, lies in a claim for damages against his party. See: Tukur v. Uba & Ors. (2012) LPELR-9337 (SC) @ 96-97; P.D.P. v. Sylva (supra) @ 146 C-E.

For these and the fuller reasons advanced in the lead judgment, I find the appeal to be devoid of merit. It is accordingly dismissed with no order as to costs.

**EJEMBI EKO, J.S.C.:**

I had the privilege of reading in draft the judgment just delivered by my learned brother, W.S.N. ONNOGHEN, Ag. CJN.

The judgment represents my views on the appeal, and I hereby adopt it. I however wish to put in a few words.

The All Progressive Congress (A.P.C.) conducted its primary election to elect the candidate of the party in the Governorship Election in Niger State on 4th December, 2014. The appellant took out this suit on Originating Summons at the Federal High Court, Minna, claiming a total of 13 reliefs on 5th December, 2014. The said 13 reliefs are –

"(1) A DECLARATION that the 1st and 2nd defendants illegally excluded the plaintiff from running the gubernatorial primaries conducted on 4/12/2014.

(2) A DECLARATION that the plaintiff is a legal and registered card carrying member of 1st and 2nd defendants and he is eligible to contest for any position in the platform of All Progressive Congress, including to run the primaries held on 4/12/2014 by the 1st and 2nd defendants.

(3) A DECLARATION that the gubernatorial primaries election conducted by the 1st and 2nd defendants on 4/12/2014 is illegal, having conducted same without the recourse to Article 9.3 Sub 1 of the (A.P.C.) Constitution 2013, having exclude (sic) the Plaintiff from the primaries race by refusing a registered member nomination form to contest.

(4) A DECLARATION that the 3rd defendant should refuse to recognize the gubernatorial primaries conducted by the 1st and 2nd defendants on 4/12/2014.

(5) A DECLARATION that the Court should nullify the primaries conducted by the 1st and 2nd defendants on 4/12/2014 having excluded a register (sic) and legitimate member as plaintiff from contesting of same primaries election.

(6) A DECLARATION that the plaintiff is also qualified to contest for the primaries held on 4/12/2014 by the 1st and 2nd defendants to contest.

(7) A DECLARATION that the plaintiff be given nomination form, screened by the 1st and 2nd defendants, having (sic) the Court to nullify the primaries conducted by the 1st and 2nd defendants on 4/12/2014 with the plaintiff to re-run and re-conduct the said primaries.

(8) A DECLARATION that the 1st and 2nd defendants cannot conduct the incoming gubernatorial general election without including the plaintiff a bonafide member of the All Progressive Congress.

(9) A DECLARATION that the Niger State gubernatorial primaries conducted by the 1st and 2nd defendants on 4/12/2014 is a nullity having being (sic) in gross breach of the 2nd defendant Constitution of 2013 and party guidelines for congress by not including plaintiff legitimate member who paid for gubernatorial nomination fees but was refused given a form to contest with other aspirants.

10. A DECLARATION that the primaries conducted by the 1st and 2nd defendants on 4/12/2014 be nullify (sic) and another primaries be re-conducted by the 1st and 2nd defendants including the name of the plaintiff.

(11) AN ORDER OF THIS HONOURABLE COURT directing the 3rd defendants not to deal with and or recognize the conduction of the primaries conducted by the 1st and 2nd defendant on 4/12/2014 for the general incoming Gubernatorial election of Niger State.

(12) AN ORDER OF THIS HONOURABLE COURT directing the 3rd defendants not to accept any activity or decisions emanating from the actions of the 1st and 2nd defendant’s gubernatorial primaries held on 4/12/2014 having excluded the plaintiff from participating in the said primaries.

(13) AN INJUNCTION RESTRAINING the 1st, 2nd and 3rd defendants from conducting the general gubernatorial election of Niger State (A.P.C.) until final determination of this substantial matter before the Court.

It is clear that Reliefs 4, 8, 11, 12 and 13 are not strictly about the primary election within the APC. They are directed against the "Upcoming gubernatorial general election" which is a contest inter parties between the candidates sponsored by the A.P.C. and the other political parties. Neither the candidates of those other political parties nor the political parties were made parties in this suit. The declaratory and injunctive orders sought in reliefs 8, 11 and 13 will adversely affect those other political parties and/or their candidates.

Accordingly, those persons or parties that would be adversely affected, in the interest of justice or fair hearing as required by Section 36(1) of the Constitution (as amended), are entitled to be joined and heard. This action, particularly Reliefs 8, 11, and 13 as couched, is not properly constituted without those proper and necessary parties. In any case, the appellant, as the plaintiff, has not disclosed his cause of action against those who ultimately would be affected by the grant of reliefs 4, 8, 11 and 13, but who are not parties in the suit.

The complaint of appellant for the remaining reliefs is that his party, the A.P.C., prior to the primary election on 4th December, 2014 had demanded from him and he paid various sums of money to enable him contest in the primary election. That he was not given the nomination Form that he had paid for. And that he was not given an opportunity to contest in the primary election. He did not participate in that primary election, because all the preliminary prerequisites were denied to him. In P.D.P. v. SYLVA (2012) All FWLR (Pt. 537) 654 at 565 this Court had stated, loud and clear, that an aspirant excluded by his political party from contesting the party primary election, and who in actuality was not a contestant at the said party primary election, has no locus standi to challenge the outcome of the primary election. The appellant, on this authority and in the peculiar circumstances of the case, did not have the requisite locus standi to bring the suit in the terms he took it out on the originating summons at the trial Court.

The fact that the appellant paid for nomination forms which were not given to him and in the absence of the duly filled and returned nomination forms he was not placed on the ballot for primary election would give a different remedy and not the remedy under Section 87(9) of the Elections Act, 2010, as amended, which provides –

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

The redress under Section 87(9) of the Electoral Act is only available to the person who participated in the primary election of his party for the nomination of a candidate of the party at the general election. It does not avail those persons, like the appellant, who did not participate in the party primary election. See ARDO v. NYAKO (2014) 10 NWLR (Pt. 1461) 591 at 629.

The jurisdiction vested in the Federal High Court is additional jurisdiction to its normal jurisdiction under Section 251 of the Constitution and Section 7 of the Federal High Court Act. This additional jurisdiction of the Federal High Court vested by Section 87(9) of the Electoral Act, 2010, as amended, cannot be stretched to money had and received for services not rendered or nomination forms not supplied. The grouse of the appellant entitles him to sue his party (A.P.C.) for money had and received for nomination forms not supplied. This, he cannot bring under Section 87(9) of the Electoral Act, 2010, as amended.

At the time, on 5th December, 2014, when the originating summons was taken out from the Federal High Court, Minna, the A.P.C. had concluded its primary election and a winner had emerged therefrom. That person who emerged the winner, entitled to be regarded as the A.P.C. candidate in the gubernatorial election, was not made a party in this suit, notwithstanding that the grant of the reliefs in this suit would adversely affect his interest. Without his joinder, as a proper and necessary party, the suit was not properly constituted.

I have not been shown any good cause to disturb the decision of the Court of Appeal in the appeal No. CA/A/225/2015 delivered on 4th February, 2016.

The appeal, lacking in substance, is hereby dismissed.