**HON. BABANGIDA S. M. NGUROJE & ANOR**

**V.**

**HON. IBRAHIM TUKUR EL-SUDI & ORS**

IN THE COURT OF APPEAL OF NIGERIA

ON MONDAY, THE 17TH DAY OF DECEMBER, 2012

CA/YL/30/2011 (CONSOLIDATED)

**LEX (2012) - CA/YL/30/2011**

**OTHER CITATIONS**

3PLR/2009/30 (CA)

**BEFORE THEIR LORDSHIPS**

SOTONYE DENTON WEST, JCA

IGNATIUS IGWE AGUBE, JCA

ABUBAKAR ALKALI ABBA, JCA

**BETWEEN**

HON. BABANGIDA S. M. NGUROJE - CA/YL/30/2011  
  
AND   
  
PEOPLES DEMOCRATIC PARTY - CA/YL/39/2011  
  
 (CONSOLIDATED) Appellant(s)

**AND**

1. HON. IBRAHIM TUKUR EL-SUDI

2. PEOPLES DEMOCRATIC PARTY - CA/YL/30/2011

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION

AND

1. HON. BABANGIDA S. M. NGUROJE

2. HON. IBRAHIM TUKUR EL-SUDI - CA/YL/39/2011

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION

(CONSOLIDATED) - Respondent(s)

**ORIGINATING COURT**

THE FEDERAL HIGH COURT, YOLA DIVISION (S. M. Shuaibu, J., Presiding)

**REPRESENTATION**

GARBA TETENGI Esq. SAN with ADENIKE (MISS) - For Appellant

AND

O. E. B. OFFIONG Esq., SAN for the 1st Respondent with him A. J. AKAMODE Esq., AHMED UMAR Esq. and I. zo Esq. - For Respondent

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

ELECTORAL MATTERS - DUTY OF COURT:- Rule that Courts cannot choose, select or nominate candidates for political parties even in the face of breaches of the extant Electoral legislation, the Party's Constitution and Guidelines for the conduct of primaries and the Constitution of the Federal Republic of Nigeria – Implications for justiciability of suits brought against the outcome of primaries of a political party - section 87(4)(b)(c) of the Electoral Act 2010 (as amended) – What an aspirant in a party’s primary must show himself within the purview of Section 87(4)(b)(ii),(c)(ii) and (10) of the Electoral Act, 2010 as amended) - Attitude of court to the invocation of the provision in setting up factions within a political party

ELECTORAL MATTERS - NOMINATION OF CANDIDATES: Principle that the nomination of a candidate to contest an election is the sole responsibility of the political party concerned – Implication for the jurisdiction of court - Where the political party nominates a candidate for an election contrary to its own Constitution and Guidelines – Right of a dissatisfied candidate to approach the Court for redress – Proper exercise of limited adjudicatory functions thereto

ELECTORAL MATTERS - NOMINATION OF CANDIDATES:- Authorities with power to conduct primaries of a political party – How determined - Section 87(9) (now 87(10)) of the Electoral Act – Power of court to examine if the primaries elections were conducted in accordance with the party's Constitution and Guidelines – Basis of

CONSTITUTIONAL AND HUMAN RIGHTS LAW - FAIR HEARING:- What the right to fair hearing implies in civil cases – Obligation imposed ona tribunal in pursuance thereto

CONSTITUTIONAL AND HUMAN RIGHTS LAW - FAIR HEARING: Principle of fair hearing as a double-edged sword - Where a party was given ample opportunity to be heard - Whether cannot complain thereafter if he refused, failed and/or neglected to exploit the opportunity so given him

CONSTITUTIONAL AND HUMAN RIGHTS LAW - FAIR HEARING:- A fair trial proceeding – Meaning and essence of – How determined – Principle that it is the totality of the facts and circumstances of the case that determines whether a trial or proceeding had been fair as fair hearing is not a technical doctrine but one of substance – Duty of court thereto

**PRACTICE AND PROCEDURE**

ACTION - COMMENCEMENT OF ACTION:- Order 3 Rule 8 of the Federal High Court (Civil Procedure) Rules - A proceeding wrongly commenced by originating summons – Whether may be permitted by the court for the parties to carry on as if the suit was initiated by a writ of summons

ACTION - ORIGINATING SUMMONS: Proceedings which may be commenced by originating summons - Order 3 Rule 1, of the Federal High Court (Civil Procedure) Rules in review

COURT - JURISIDICTION OF THE COURT:- Fundamental nature and essence of in upholding the competency of a court - Defect in competence of court – Effect of - Claim of the plaintiff and in particular the pleadings and Reliefs sought – Whether determines the jurisdiction of the Court

EVIDENCE - BURDEN OF PROOF: Section 136(1) (c) of the Evidence Act, 2011 - Burden of proof as to any particular fact – On whom lies - Whether the burden may in the course of the case be shifted from one side to the other

EVIDENCE - DOCUMENTARY EVIDENCE:- Relative superiority of documentary evidence over oral evidence - Principle of law that annexed documents provide the anchor upon which depositions in the affidavit would be considered since oral depositions cannot challenge or override the contents of a document –Duty of court confronted with both oral and documentary evidence

JUDGMENT AND ORDER - JUDGMENT:-Judgment of a court – Essence and elements of – Duty of Court to consider all the issues properly raised and joined by parties – Effect of failure thereto - Where the issue or issues disregarded are not relevant in the determination of the case – Whether the Court owes it a duty to specify the reason(s) why such issue(s) is/are considered irrelevant

INTERPRETATION OF STATUTE:- Article 26(3) of the PDP Electoral Guidelines for Primary Election 2010 - Interpretation of

INTERPRETATION OF STATUTE:- Order 3 Rule 1, of the Federal High Court (Civil Procedure) Rules - Interpretation of

INTERPRETATION OF STATUTE:-Section 136(1) (c) of the Evidence Act, 2011 – Interpretation of

INTERPRETATION OF STATUTE:- Section 87(4)(i)(ii), (87)(9) and 87(10) of the electoral act - Interpretation of

**MAIN JUDGMENT**

**IGNATIUS IGWE AGUBE, J.C.A. (Delivering the Leading Judgment):**

These are consolidated Appeals from the judgment of S. M. Shuaibu, J.; of the Federal High Court, Yola Division, in suit No. FHC/YL/CS/16/2011, which judgment was delivered on the 1st day of April, 2011. It would be recalled that by an Originating Summons dated the 21st day of February, 2011 (but filed on the 16th February, 2011); the plaintiff (now 1st Respondent in Appeal NO.CA/YL/30/2011 and 2nd Respondent in Appeal NO.CA/YL/39/2011); sought for the determination of the following questions:-

'"1. Is the plaintiff who was the aspirant of the 1st Defendant and the one that scored the highest number of votes all at the special congress held on the 6th January, 2011 to select a candidate of the first defendant over Gashaka, Kurmi and Sardauna Federal Constituency in the National Assembly of the Republic of Nigeria holding in April, 2011 entitled to have his name submitted by the 1st defendant to the 3rd defendant as its candidate having regard the provisions of Articles 31 and 32 of the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party and Section 87(4) (c) (ii) of the Electoral Act, 2010 (as amended)?

2. Is the purported submission of the name of the 2nd defendant to the 3rd Defendant by the 1st Defendant as it candidate to represent Gashaka Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria in the elections to be held in April, 2011 not a violation of the Electoral Guidelines for primary Election 2010 of the Peoples Democratic Party and Section 87(4) (c) (ii) of the Electoral Act 2010 (as amended) having regards to the fact that the 2nd defendant participated in said Special Congress Primary election of the 1st Defendant held on the 6th January, 2011 and failed to score the highest votes cast at the said election?

3. Is a special congress, convention, conference or meeting however styled or called convened by a political party for the purpose of nominating candidates for elective offices specified in the Electoral Act including elections into membership of the House of Representatives of the National Assembly of the Federal Republic of Nigeria without 21 days prior notice to the 3rd defendant not a contravention of section 85(1) of the Electoral Act 2010 (as amended) and section 228 of the Constitution of the Federal Republic of Nigeria 1999 as amended and therefore invalid?

4. Is a special congress, convention, conference or meeting however styled or called convened by a political party for the purpose of nominating candidates for electives offices specified in the Electoral Act including elections into membership of the House of Representatives of the National Assembly of the Federal Republic of Nigeria without the monitoring of 3rd defendant not a contravention of section 85 (2) of the Electoral Act 2010 (as amended) and section 228 of the Constitution of the Federal Republic of Nigeria 1999 as amended and therefore invalid?

5. Can the 1st defendant validly ignore, disregard, cancel or annul the result of the said Special Congress Primary Election of the 1st Defendant held on the 6th January, 2011 wherein the plaintiff scored the highest number of votes cast when the plaintiff:

i. is not dead; and,

ii. has not withdrawn his candidature; and

iii. was not given any hearing on the decision (if any) to ignore, cancel, disregard or annul the result of the Primary Election aforesaid contrary to Article 31, 32, 33 and 50 of the Electoral Guidelines for Primary Elections 2010 of the People Democratic Party and section 87 of the Electoral Act 2010 (as amended) ad section 36 of the Constitution of the Federal Republic of Nigeria 1999?

IF THE ANSWERS TO QUESTIONS 1 AND 2, 3 AND 4 ARE IN THE AFFIRMATIVE AND THE ANSWER TO QUESTION 5 IS IN THE NEGATIVE THEN PLAINTIFF CLAIMS THE FOLLOWING RELIEFS FROM THE HONOURABLE COURT:

1. A declaration that the plaintiff is entitled to have his name submitted and be deemed to have been presented by the 1st Defendant to the 3rd Defendant as the candidate of the 1st Defendant to represent Gashaka Kurmi and Sardauna Federal Republic Constituency of the National Assembly of the Federal Republic of Nigeria at the general elections to be held in April, 2011.

2. A declaration that the submission of the name of the 2nd defendant by the 1st defendant to the 3rd defendant as the candidate of the 1st defendant to represent Gashaka Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria at the general elections to be held in April, 2011 is a violation of the Electoral Act 2010 as amended and the rules made by the 1st Defendant for primaries and Electoral Guidelines for Primary Election 2010 of the People Democratic Party and therefore illegal, null and void and of no effect.

3. A declaration that 1st defendant cannot ignore or refuse to recognize the result of the Special Congress Primary Election of the 1st defendant held on the 6th of January, 2011 to select or nominate candidate contained in Form PD004/NA/2010.

4. An order of this Honourable Court directing the 3rd defendant to recognize the plaintiff as the candidate of the 1st defendant for election into Gashaka Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria to represent Gashaka Kurmi and Sarduana Federal Constituency in the election to be held in April 2011.

5. An Order restraining the 2nd defendant from parading himself as the candidate of the defendant for the election into Gashaka Kurmi and Sardauna Federal Republic of Nigeria to represent the Constituency in the election to be held in April, 2011.

6. An order restraining 1st and 3rd defendants from recognising or treat the 2nd defendant as the candidate of the 1st defendant for election into the Gashaka Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria to represent the Constituency in the election to be held in April, 2011.

7. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstances of this case.

In support of the Originating Summons, Honourable Ibrahim Tukur El-Sudi (now 1st and 2nd Respondent in the consolidated Appeals and Plaintiff in the lower Court), deposed to an Affidavit of thirty five paragraphs to which documentary Exhibits marked 'A' 'B' 'C' 'D' 'E' 'F' 'G' 'H' 'I' 'J' are annexed. It is noteworthy that:

(i) Exhibit 'A' dated 20th of September, 2010 is the Peoples Democratic Party's EXPRESSION OF INTEREST FOR HOUSE OF REPRESENTATIVES NOMINATION 2010 (CODE PD002/NA/2010 SERIAL NUMBER 0004506) duly completed by the plaintiff (now 1st and 2nd Respondents in the consolidated Appeal).

(ii) Exhibit 'B' is the ELECTORAL GUIDELINES FOR ELECTIONS 2010 OF THE PEOPLES DEMOCRATIC PARTY (PDP), issued by the National Secretariat, Plot 1970, Wadata Plaza; Michael Okpara Street; Wuse Zone 5, Abuja.

(iii) Exhibit 'C' is the PEOPLES DEMOCRATIC PARTY NOMINATION FORM CODE PD003/NA/2010 FOR HOUSE OF REPRESENTATIVES PRIMARY ELECTION 2010 with Serial Number 0002727 duly completed by the plaintiff (now 1st and 2nd Respondent in the consolidated suits).

(iv) Exhibit 'D' is the PDP (Peoples Democratic Party PROVISIONAL CLEARANCE CERTIFICATE (Form CC/PD/NA/2010 with Serial Number 0007338), issued in favour of Ibrahim Tukur El-Sudi duly signed by the Chairman of Screening Committee of the PDP and dated 31/12/2010.

(v) Exhibit 'E' is the PEOPLES DEMOCRATIC PARTY RESULT OF THE NATIONAL ASSEMBLY PRIMARY ELECTION 2010 (CODE PD004/NA/2010 with serial Number 0001451 wherein the plaintiff/1st Respondent in Appeal No. CA/YL/30/2011 is recorded to have scored 315 votes as against the Appellant in Appeal Number CA/YL/30/2011 and 1st respondent's in Appeal No. CA/YL/39/2011 score of 266 votes.

(vi) Exhibit 'F' is the PEOPLES DEMOCRATIC PARTY (PDP) TARABA STATE LIST OF PDP FLAG BEARERS FOR SENATE and HOUSE OF REPRESENTATIVES wherein the plaintiff/1st and 2nd Respondent in the consolidated Appeals is recorded as Number 1 (ONE) amongst the six candidates listed as flag bearers of the House of Representatives Election for Taraba State Federal Constituencies.

(vii) Exhibit 'G' is a Computer Printout of a document tagged "Election Time lines 2010 - 2011," setting out the dates for political activities culminating in the date of Elections into the carious tiers of Government.

(viii) Exhibit 'H' is a Certified True Copy of INDEPENDENT ELECTORAL COMMISSION 2011 SENATORIAL ELECTIONS SUBMISSION OF NAMES OF CANDIDATES BY A POLITICAL PARTY as well as the House of Representatives for the Peoples Democratic Party (PDP) dated 9th February, 2011 (Form CF 001) which contains the name of Hon. Babangida S. M. Nguroje as the candidate representing or to contest the election for the Gashawa, Kurmi and Sarduana Federal Constituency of Taraba State.

(ix) Exhibit 'I' are two Certified True Copies Electoral Commission letters (Referenced INEC/TR/AD/S.1/VOL.II/143 signed by the Resident Electoral Commissioner Taraba State and the Administrative Secretary INEC Taraba State on the 9th February, 2011. The letters dated 1st February, 2010 respectively and addressed to the Honourable Chairman, Independent National Electoral Commission and for the attention of the Honourable Secretary, are captioned "RE: REPORT OF PARTY PRIMARIES"; forwarded the list of nominated candidates by respective political parties to the Chairman and Secretary of the Independent National Electoral Commission respectively. Finally,

(x) Exhibit 'J' dated 16th January, 2011 from the Peoples Democratic Party Taraba Chapter and addressed to the Commissioner of Police Taraba command is captioned "REPORT ON THE JUST CONCLUDED PDP PRIMARY ELECTIONS IN THE STATE", and signed by Alhaji (DR) Abdulmumini Yaki (Turakin Tashaka) State Chairman of the party. The letter in the concluded paragraph also forwarded the list of all those who contested the Primary Elections and their winners in the respective positions to the Commissioner of Police Taraba State.

As can be gleaned from the Records of the lower Court, the 1st Defendant/2nd Respondent did not file a Counter-Affidavit against the Originating Summons in the first place but rather filed a Further and Better Counter Affidavit dated 28th March, 2011, to which no documentary Exhibits were annexed. The 2nd Defendant (now Appellant in Appeal No.CA/YL/30/2011 and 1st Respondent in Appeal No.CA/YL/39/2011); also filed his Counter - Affidavit of 29 paragraphs dated 3rd day of March 2011 with 10 documentary Exhibits annexed thereto, as follows:

(1) Exhibit A is an Enrolled Order of the Federal High Court Yola dated 2nd February, 2011 in suit No. FHC/YL/CS/6/2011;

(2) Exhibit B is the Originating processes in the said suit aforementioned;

(3) Exhibit C dated 7th January, 2011 is the Petition by the 2nd Defendant/Appellant to the Appeal Committee of the 2nd Respondent/PDP against the Primary Election into the House of Representatives for the Constituency in question on grounds of gross irregularities and malpractices;

(4) Exhibit D is the Report on the Appeal filed by the Appellant on said Primary Election;

(5) Exhibit E is photocopy of Nigerian Tribune of Friday 28th January, 2011;

(6) Exhibit G is captioned "Report of The Electoral Panel on Kurmi, Gashaka and Sardauna Federal Constituency of Taraba State Between 29 - 30th January 2011", page 2 thereof which contains the result of the election declaring Babangida S. M. Nguroje/Appellant winner with 234 votes as against Ibrahim Tukur El-Sudi/1st Respondent's 0 (zero) votes;

(7) Exhibit G1 is a letter captioned 'ELECTORAL PANEL FOR ASPIRANTS TO MEMBERSHIP OF HOUSE OF REPRESENTATIVES' dated 27th January addressed to one Stella Okeke-Oje and signed by Prince Uche Secondus (the National Organizing Secretary of the PDP), informing her of membership of the freshly constituted Panel as approved by the National Working Committee (NWC) of the Peoples Democratic Party for the conduct of the Rerun Election.

(8) Exhibit G2 is the Result of National Assembly Primary Election 2010 code PD004/NA/2010 purportedly issued to the Appellant.

(9) Exhibit G3 is captioned "INDEPENDENT NATIONAL ELECTORAL COMMISSION 2011 SENATORIAL ELECTIONS SUBMISSION OF NAMES OF CANDIDATES BY A POLITICAL PARTY," where the name of the Appellant appears as Number 4; and

(10) Exhibit H, the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party (PDP).

Reacting to the Counter-Affidavit of the 2nd Defendant/Appellant, the Plaintiff/1st Respondent deposed to a Further And Better Affidavit of thirty-nine paragraphs and annexed thereto Exhibit TE1 (the Petition by Senator Anthony G. Manzo to the Chairman PDP Senatorial Primary Election Appeal Panel against the conduct of the primary election for Taraba North Senatorial Zone held on 7th January 2011 at Jalingo which also has the Reply to the Petition dated 10/10/11 from the Appeal Panel to the Petitioner duly attached); Exhibit TE3 dated 2nd January, 2011 captioned "Electoral Panel For Aspirant To Membership Of the National Assembly" is a letter from the Peoples Democratic Party National Organizing Secretary Prince Uche Secondus addressed to Hon. Salisu Dabo Chairman, National Assembly Electoral Panel Taraba State and intimating him of the approved members of his panel and also has the Report of the conduct of the primaries by the Panel duly signed by the Chairman and Secretary attached to that Exhibit.

Exhibits TE5(A) is the list of delegates to PDP Senatorial Special Congress 2011, Bali Local Government; TE5(B), the list of delegates to the PDP Special Congress 2011, Gassol Local Government; TE5(C) the list for Sardauna Local Government; TE5(D) for Gashaka Local Government; TE5(E) for Kurmi Local Government; TE6 Notice Of Discontinuance of Suit No. FHC/YL/CS/6/2011 signed by Akanmode A. J. Esq. learned Counsel for the Plaintiff/1st Respondent. Finally, Exhibit TE(7) is a letter from the Secretary INEC Headquarters dated 1st March, 2011 and addressed to the Ag. Chairman Peoples Democratic Party about petitions on the conduct of the Party's Primaries (the list of the Petitioners including the name of Ibrahim Tukur El-Sudi which is attached to the said letter).

The 2nd Defendant/Appellant in response to the plaintiff/1st Respondents Further And Better Affidavit, further filed what he termed supplementary Counter-Affidavit through Ifegwu M. J. Esq.; a legal practitioner in the Law Firm representing the 2nd Defendant/Appellant. Annexed to that Supplementary Counter-Affidavit is a document marked Exhibit PDP1 and captioned "Report On The Appeal Filed By Senator Dahiru Bako Gassol On The Primary Election For Taraba Central Senatorial District Held on The 7th January 2011 at Jalingo." It is also pertinent to note that the Appellant and 2nd Respondent filed Notices of Preliminary Objections against the hearing of the suit under the Originating Summons procedure.

On the 30th day of March, 2011, learned Counsel for the respective parties adopted their written Addresses in support or against the Notices of preliminary objections as well as the originating summons of the plaintiff (now 1st Respondent in CA/YL/30/2011 and 2nd Respondent in CA/YL/39/2011). Thereafter the learned trial Judge adjourned the case to the 1st day of April, 2011 for Judgment which was accordingly so delivered that day.  
Dissatisfied with the Judgment of the lower court, the 2nd Defendant (now Appellant in Appeal No.CA/YL/30/2011); gave Notice of Appeal with four Grounds which he subsequently amended with leave of court. That Amended Notice of Appeal with five Grounds dated the 4th day of January 2012 but filed on the 5th day January 2012; was deemed filed with the leave of this Honourable Court on the 27th day of June, 2012.

Following the transmission of the Record of Appeal from the lower court and in line with the Rules of this Honourable Court, the Appellant also with the leave of this court filed his Amended Appellant's Brief of Argument dated 4th day of January, 2012 on the 5th day of January, 2012 and same was deemed to have been duly filed on the 27th day of June, 2012. Further to the filing of the Amended Brief of Argument of the Appellant, the 1st Respondent was upon the Motion dated 12th October, 2012 but filed on 15th October, 2012, by O. E. B. Offiong Esq. SAN; of O. E. B. Offiong & Co Chambers, granted extension of time within which to file the 1st Respondent's Amended Brief of Argument which Amended Brief was deemed duly filed and served on the Appellant on the 18th day of October, 2012.

The 2nd Respondent in Appeal No. CA/YL/30/2011 (then 1st Defendant in the lower court) filed her 2nd Respondents Brief dated 13th July, 2012, on the 16th day of July, 2012; while the 3rd Respondent's Brief dated 6th July, 2011 and filed on the 8th of July, 2011 was deemed filed on 11th July, 2011 with the leave of Court. Upon the receipt of the respective Briefs of the 1st and 3rd Respondents, the Appellant filed Appellant's Reply Briefs in response to the arguments of the learned Counsel to the 1st and 3rd Respondents. The Reply Brief in respect of the 1st Respondent is dated and filed on the 18th of October, 2012 while that for the 3rd Respondent is dated and filed on 25th July, 2011.  
I shall proceed first with the consideration of Appeal No.CA/YL/30/2011 which is the basis of the Briefs highlighted above. For the avoidance of doubt, the Learned Senior Counsel for the Appellant Dr. Garba Tetengi (Mni), SAN; in the Amended Brief settled on behalf of the Appellant formulated for issues for

"a. Whether the lower court was right in refusing to order parties to file pleading in the face of fundamental facts in dispute? (Grounds 1 and 2).

"b. Whether the 1st Respondent was afforded fair hearing by the Appeal Committee of the 2nd Respondent when it ordered a rerun or run-off election? (Ground 3).

"c. Whether the lower court was right to have ignored or refused to pronounce on an issue for its determination as to party supremacy over its candidates? (Ground 4).

"d. Whether the lower court was competent to adjudicate over an inconclusive primary election as envisaged under section 87(9) of the Electoral Act 2010 (as amended)?" (Ground 5).

The Learned Senior Counsel for the 1st Respondent O. E. B. Offiong SAN; on the other hand in the 1st Respondent's Amended Brief of Argument distilled the following issues as calling for determination:-

"1. Whether it was necessary for the learned trial Judge to order pleadings and call evidence in this suit that was commend by Originating Summons more so where on the available evidence the facts in issue can only be proved by documentary evidence to wit the Report of the National Electoral Appeal Panel of the 2nd Respondent (1st Defendant) which report was already tendered in evidence before the learned trial Judge? Grounds 1 and 2.

"2. Whether the 2nd Respondent accorded the 1st Respondent fair hearing before purporting to divest 1st Respondent of the candidature of the 2nd Respondent vested by Exhibit E on the 1st Respondent as required by section 87 (4) (c) (ii) of the Electoral Act, 2010 (as amended)? Ground 3.

"3. Was the learned Justice of the lower Court obliged to pronounce upon the issue of alleged supremacy of the political party (in this case the 1st Defendant/2nd Respondent) over its members having held that the decision of the Party claimed was a nullity and if so, does the failure vitiate the judgment herein? GROUND 4.

"4. Whether the lower court had jurisdiction to adjudicate on the claims of the 1st Respondent pursuant to section 87(9) of the Electoral Act, 2010 (as amended)? Ground 5.

On his part, Chief Olusola Oke who settled the Brief of the 2nd Respondent distilled the following salient issues for determination thus:-

1. "Whether the trial Court had jurisdiction to entertain the claim giving rise to this appeal?

2. "Whether the lower Court was right in refusing to order parties to file pleadings in the face of fundamental facts in dispute?

3. "Whether having regard to the claim, affidavit evidence and the Exhibits before the Trial Court, the court was right in granting the reliefs sought?"

The learned Counsel for the 3rd Respondent Hassan M. Liman Esq. identified three Issues for determination couched as follows:

ISSUE NUMBER ONE (1) "WHETHER THE TRIAL COURT WAS RIGHT IN UPHOLDING THE USE OF ORIGINATING SUMMONS IN COMMENCING AND DETERMINING THE CASE OF THE 1ST RESPONDENT?-

"2. WHETHER THE 1ST RESPONDENT WAS AFFORDED FAIR HEARING BY THE APPEAL COMMITTEE OF THE 2ND RESPONDENT WHEN IT ORDERED RE-RUN OR RUN-OFF ELECTION? AND

3. WHETHER HAVING REGARDS TO THE COMPELLING PROVISIONS OF THE ELECTORAL ACT, 2010 (AS AMENDED) AND OTHER ANCILLARY LEGISLATIONS THERE TO, THE NATIONAL WORKING COMMITTEE OF THE 2ND RESPONDENT (PDP) CAN USURP THE POWERS OF THE COURT?"

ARGUMENTS OF LEARNED COUNSEL AND RESOLUTION OF ISSUES:

In the determination of this Appeal and the issues raised by the respective parties, I intend to adopt the Four Issues formulated by the Appellant since he is the aggrieved party appealing against the judgment of the learned trial Judge, and it would appear that the issues formulated by the 1st, 2nd and 3rd Respondents have been subsumed within the issues as formulated by the learned Senior Counsel for the Appellant. Before delving into the submissions of counsel and the resolution of issues, it is only apt to have a resume of the facts of the case as presented before the lower Court which are that the Plaintiff (now 1st Respondent) was an aspirant at the Special Congress held on the 6th of January, 2011 for the selection/nomination of a candidate to fly the flag of the 1st Defendant (now 2nd Respondent/PDP) at the April, 2011 General Elections as member of House of Representatives for the Gashaka/Kurmilsardauna Federal Constituency of Taraba State. The present Appellant (Honourable Babangida S. M. Nguroje) contested the Primary Election along with the 1st Respondent for the candidature of the PDP for the said Constituency as well.

At the end of the primary Election conducted by the party on the said 6th January, 2011 (not 17th or 7th January, 2011 as contained in the Appellant's Brief); the 1st Respondent scored 315 votes against the Appellant's 266 votes. Rather than submit the name of the 1st Respondent as her (2nd Respondent's candidate) to 3rd Respondent (INEC), as mandated by section 87(4)(c)(ii) of the Electoral Act 2010 (as amended), the 2nd Respondent failed, refused and/or neglected so to forward the 1st Respondent's name as its duly elected candidate for the General Elections. The 2nd Respondent did not stop at that but on Saturday, the 28th of January, 2011, the 1st Respondent while in Abuja became aware of a publication in 'The Nigerian Tribune' Newspaper that the 2nd Respondent was taking steps to ignore and disregard or discard, annul and cancel the result of the primary held on the 6th January, 2011 in breach of the Electoral Act, 2010 (as Amended), the 2nd Respondent's Constitution and Guidelines for the conduct of the Party's Primaries and the Constitution of the Federal Republic of Nigeria 1999 (as amended). As a result of the above development, the 1st Respondent (then Plaintiff) commenced this action in the Federal High Court, Yola Division by way of Originating Summons and for the resolution of the questions posed therein.

The case of the Appellant and 2nd Respondent on the other hand, is that the victory of the 1st Respondent at the primary held on 6/1/11 was annulled by the 2nd Respondent's National Assembly Electoral Appeal Panel pursuant to the consideration of the Appeal lodged by the Appellant who alleged electoral malpractices at that primary which the Appeal Panel/Committee purportedly investigated and found substantiated. Following the cancellation of the first primary, the 2nd Respondent proceeded to conduct a rerun election without the 1st Respondent and subsequently declared the Appellant winner and submitted the said Appellant's name to the 3rd Respondent as the authentic candidate of the 2nd Respondent at the April, 2011 General Elections into the House of Representatives for the Federal Constituency in question. Dissatisfied with the conduct of the 2nd Respondent as aforesaid, the 1st Respondent instituted the action the gravamen of his grouse being that he was not afforded a hearing by the Appeal panel before the annulment of his earlier victory and conduct of the rerun election. After a consideration of the Affidavits and Counter Affidavits of the parties and the avalanche of documentary Exhibits annexed to the respective Affidavits, the learned trial Judge found merit in the Plaintiff/1st Respondent's case and granted him all the Reliefs sought. It is against the judgment of the learned trial Judge that the Appellant and 2nd Respondent have now appealed to this Honourable Court.

Now, having considered the issues formulated by the learned Senior Counsel for the Appellant together with those of the Respondents, I propose to rearrange the Issues for Determination in the following Order:- ISSUE (d) or (4) shall now be Issue Number 1; Issue (a) or (1) shall now be Issue Number 2; Issue (b) or (2) shall now be issue Number 3, and Issue (c) or (3) shall now be Issue Number 4 respectively.

ISSUE NUMBER 1 "WHETHER THE LOWER COURT WAS COMPETENT TO ADJUDICATE OVER AN INCONCLUSIVE PRIMARY AS ENVISAGED UNDER SECTION 87(9) OF THE ELECTORAL ACT 2010 (as amended)? I would rather re-couch the question to read

"WHETHER THE LOWER COURT WAS RIGHT TO ADJUDICATE OVER THE OUTCOME OF THE PRIMARY ELECTION OF THE 2ND RESPONDENT CONDUCTED ON THE 29TH JANUARY, 2011 PURSUANT TO SECTION 87(10) OF THE ELECTORAL ACT, 2010 (AS AMENDED), THE 1ST RESPONDENT HAVING BEEN EARLIER DECLARED WINNER OF THE PRIMARY ELECTION OF 6/1/2011?" I am minded to reframe the above question in view of the fact that the learned Senior Counsel for the Appellant cannot approbate and reprobate having contended that his client won the primary of 29th January, 2011 and his name was submitted to the 3rd Respondent as the candidate of the 2nd Respondent in the House of Representatives Elections for the Gashaka/Kurmi/Sardauna Federal Constituency of Taraba State. Thus the Primary Election by his assertion ought to have been concluded.  
Furthermore, I have rather brought the question within the ambit of Section 87(10) of the Electoral Act, 2010 (as amended) in view of the recent Supreme Court decision in Senator Yakubu Garba Lado & ors v. Congress for Progressive Change (CPC) & Ors (SC/157/2011 and Dr. Yushau Armriya'u V. Congress for Progressive Change (CPC) & Ors (SC.334/2011 which considered section 87(10) rather than section 87(9) of the Act as conferring a right of redress on an aspirant to apply to any of the Courts mentioned by subsection (10) of section 87 of the Electoral Act 2010 (as amended).

Arguing on this vexed issue of jurisdiction, the learned Senior Advocate answered the question posed above in the negative in view of recent decisions of the Supreme Court in the (unreported cases of Senator Yakubu Garba Tado & ors v. Congress for Progressive Change (CPC) & Ors (SC/157/20110) and Dr Yushau Armriya'u v. Congress for Progressive Change (CPC) & Ors (SC/334/2011. Relying on the above authorities and others like A. G. Anambra v. A. G. Federation (1993) 8 NWLR (pt.302) 392; Madukolu v. Nkemdilim (1992) 2 SCNLR 341; Oloriede v. Oyebi (1984) NWLR (pt.2) 332; Diapalong v. Dariye (2007) 8 NWLR (Pt.1036) 332 and Skensconsult v. Ukey (1981) S.C. 6; which he submitted reportedly decided that the issue of jurisdiction is fundamental or radical question of competence, he maintained that the issue of jurisdiction as raised in the lower Court related to the nomination of candidates by political parties for general elections which are within the exclusive domestic jurisdiction of the political parties and to the exclusion of Courts of law.

Still on the issue of party supremacy, non-justifiability of the political questions of sponsorship and nomination of candidates for political parties as decided in the recent cases of Lado V. CPC and Dr. Armiya'u V. CPC (supra); he relied on the dicta of Onnoghen JSC at page 24 lines 1-6 of the judgment and insisted that section 87(10) of the Electoral Act 2010 (as Amended) only gives a right to sue from the conduct of a single political party primary election and not where there are more than one primary elections with all parties claiming the right to be nominated as in the instant case which were conducted by the 2nd Respondent on the 7th January, 2011 and 30th January, 2011 respectively the first one which was cancelled thus necessitating the second which threw up the Appellant.

In line with the dicta of Onnoghen, and Adekeye JJSC in Lado & Armiyau (supra) at pages 8 and 31-32 of the Judgment, which facts according to him are in pari materia with the Appeal now on ground in that there are two inconclusive primary Elections and a dispute as to which of the two candidates was or ought to be the authentic candidate of the party, the learned Senior Counsel to the Appellant enthused that the lower Court lacked the jurisdiction to adjudicate on the two primaries candidate over the same constituency as the Court cannot choose a candidate for a party. The lower court in his view, was wrong to have decided on the 1st Respondent's claim as the candidate of the party when that Court had no jurisdiction. We were finally urged to answer the question in the negative and set aside the decision of the lower Court while affirming the Appellant as the 2nd candidate who should be ordered to take his rightful place in the House of Representatives. In the alternative Learned Senior Advocate called on us to declare that the lower Court had no jurisdiction over the matter.  
In response to the above argument of the learned Senior Counsel for the Appellant, the learned Senior Counsel for the 1st Respondent answered the question posed by the issue in the affirmative on the ground that the 1st Respondent's claim is predicated on the refusal or the unwillingness of the 2nd Respondent to forward the name of the 1st Respondent to the 3rd Respondent after the 1st Respondent had won the 2nd Respondent's primaries which the Appellant came second, contrary to the provisions of Section 87(4)(c)(ii) of the Electoral Act 2010; and without giving the 1st Respondent a hearing the 2nd Respondent was scheming to ignore, cancel, disregard or annul the election result held on 6th January, 2011 for the Gashaka/Kurmi/Sardauna Federal Constituency.

References were made to Exhibit TE3 attached to the Further And Better Affidavit of the 1st Respondent dated 11th March, 2011 which shows that the election was held on the 6th of January, 2011; Exhibit E attached to the Affidavit in support of the Originating Summons (the Result of the Primary Election) which was issued to the 1st Respondent as having scored the highest votes and Exhibit B which prescribes a hearing by an Electoral Appeal Panel regarding a complaint against the victory of the winner of the primary election; to submit that the 2nd Respondent purported to have annulled the primary election based on the recommendation of the Electoral Appeal Panel while the 1st Respondent claims he was not given a hearing by the Appeal Panel before making the recommendation and eventual cancellation of his victory.

Learned Senior Counsel on this score alluded to the decisions Ikechi Emenike V. PDP & Ors (2012) 12 NWLR (Pt.1315) 556; Per Fabiyi, and Rhodes-Vivour, JJSC at pages 590 para, D to 591 para, D and 60 para E respectively, PDP V. Timipre Sylva (2012) 13 NWLR (pt.1316) 85 particularly at 125 paras C -F Per Rhodes-Vivour, JSC; Uzodinma V. Izunas (2011) 17 NWLR (pt.1275) 30 at 50 Para. H - 60 para. E.; Ugwu v. Araarume (2007) 12 NWLR (pt.1048) 367 and Dalhatu V. Turaki (2003) 15 NWLR (pt.843) 310; on the scope of jurisdiction of the Courts under section 87(10) of the Electoral Act, 2010 (as Amended) submitting that it is the claim of the Plaintiff that determines the jurisdiction of the Court. Adetona v. I. G. Enterprises Ltd. (2011) 7 NWLR (pt.1247) 535 at 570 para, G and Onwukwusi v. R.T.C.M.Z.C. (2011) 6 NWLR (pt.1243) 341 at 359 para. D; were further cited to reiterate that the claims of the 1st Respondent clearly were within the jurisdiction of the Court and within the ambit of the pronouncement of the Supreme Court.

On the Applicability of Lado & Ors v. C. P.C. the learned Senior Counsel referred to the facts of that case and the dictum of Onnoghen, JSC, therein and distinguished the said Supreme Court case with the present, having particular regard to paragraph 18 of the Affidavit sworn to by the Appellant which shows that in the Appeal before this Court none of the parties asserts that there were two parallel primaries like those in Lado's case where two separate Primaries were conducted one by the National Executive and the other by the State Executive of the C.P.C in Katsina State amongst other reasons.

He finally opined that the 1st Respondent predicated his case on the fact that the purported decision upon which the rerun was predicated, was fundamentally defective in that it was done in violation of the 1st Respondent's right to hearing which rendered that decision a nullity by virtue of non-compliance with the 2nd Respondent's Guidelines before the cancellation of the result of the primary of 6th January, 2011. Therefore, he concluded, the lower Court had Jurisdiction to hear the 1st Respondent's complaint and accordingly, the issue should be resolved in favour of the 1st Respondent and the Appellant's Appeal dismissed.  
Chief Olusola Oke, learned Counsel for the 2nd Respondent, on this first issue of the 2nd Respondent; submitted in the first instance that from a succinct reading of the processes filed by the parties, three salient facts were not in dispute inter alia:-

(i) That the central issue to be resolved in the Originating Summons process before the lower court was between the Appellant and the 1st Respondent who was/is the candidate of the 2nd Respondent for the Federal Constituency in question,

(ii) That in the resolution of the above question the processes filed invited the trial Court and this Court is invited to determine which of the two primaries alleged conducted by the 2nd Respondent on 17/1/2011 and 29/1/2011 was/is valid or produced the actual candidate of the 2nd Respondent for the said Constituency; and

(iii) That the 1st Respondent did not dispute that he did not participate in the 2nd Respondent's primary election which produced the Appellant on 29/1/2011.

Flowing from the above facts it was contended by the learned Counsel for the 2nd Respondent aligning with the submissions of the learned Senior Counsel for the Appellant that the lower Court had no jurisdiction to entertain the claims of the 1st Respondent and to determine which of the two primaries produced the candidate of the 2nd Respondent/PDP remains a domestic affair of the 2nd Respondent as already resolved by the Supreme Court in Lado V. CPC (2012) ALL FWLR (pt.607) 598 and PDP V. Timipre Sylva (supra). Learned Counsel further submitted on the authorities of Lado V. CPC (supra) 623 and PDP V. Timipre Sylva (supra), that in the determination of whether the Court has jurisdiction to determine a suit brought pursuant to section 87(10) of the Electoral Act, 2010, the Court is at liberty to consider the pleadings and evidence adduced apart from the reliefs sought and that in the case at hand, from the pleadings of the parties it is in disputable that the 1st Respondent claimed to have emerged from the primary conducted by 2nd Respondent on 6th January, 2011 for the Gashaka/Kurmi/Sardauna Federal Constituency for the nomination of the 2nd Respondent's candidate whereas the Appellant claimed that the only valid primary of 29/1/2011 which produced him.

According to the learned Counsel, the 1st Respondent having admitted from his Affidavit in support of the Originating Summons that he never part took in the primary of 29/1/11 which produced the Appellant, the 1st Respondent did not qualify as an aspirant under section 87 (10) of the Electoral Act, 2010 and ought not to have instituted this action as he lacked the locus standi to so do. Thus, he maintained, the reliefs sought by the Originating Summons cannot be countenanced by this Court since the jurisdiction of this Court must be taken as that of the lower Court for the purposes of this case. On the whole, he conceded to the issue of jurisdiction as raised by the Appellant to the effect that the trial Court lacked same.

RESOLUTION OF ISSUE NUMBER ONE (1)

Now, as can be gleaned from the authorities cited by the parties particularly the learned Senior Counsel for the Appellant whose position is anchored on the recent supreme court cases of Lado v. CPC (2012) ALL FWLR 601 and DR. Yasha'u Armiyau V. CPC & Ors (SC/334/2011); as well as other earlier authorities like Oloriode v. Oyakhire (1985) 1 NWLR (pt.2) 195; Katto V. C.B.N. (1991) 22 NSCC (pt.1) 736 and the locus classicus of Madukolu V. Nkemdilim (1962) 1 ALL NLR (pt.4) 587 ably cited by his Lordship Onnoghen, J.S.C, in his lead judgment in Lado V. CPC (supra); jurisdiction is the life-blood and font et origo of the adjudicatory process. I agree therefore with the submission of the learned Senior Counsel for the Appellant, as it has now become trite that because of its fundamental and threshold nature, once the issue of jurisdiction is raised in any proceedings, the Court be it of first instance or appellate, must tarry a while to determine its jurisdictional competence before proceeding to determine the main issues in contention as regards the rights of the disputants. As was stated in Madukolu V. Nkemdilim (supra); a Court is said to be competent when:-

(a) It is properly constituted as to its members and no member is for any reason or the other disqualified to sit.

(b) The subject matter of the dispute is within its jurisdiction and there is no feature in the case which presents the Court from exercising its jurisdiction; and

(c) The case comes before the Court initiated by due process of law and upon fulfillment of a condition precedent to the exercise jurisdiction.

It has also been held by a plethora of decided authorities that any defect in competence as highlighted above renders the proceedings of the Court and its decision therein a nullity, no matter how brilliantly conducted because of the intrinsic nature of the competence of a Court in the adjudicatory process. Furthermore, there are also authorities galore and all learned counsel in this case are ad idem that it is the claim of the plaintiff and in particular the pleadings and Reliefs sought that determine the jurisdiction of the Court. See   
A. G. Anambra State v. A. G. Federation (1993) 8 NWLR (pt.302) 692; Dapialong V. Dariye (2007) 1 NWLR (pt.1036) 332 and Skensconsult V. Ukey (1981) S.C. 6; Adetona v. I. G. Enterprises Ltd (2011) 7 NWLR (pt.1247) 535 at 570 para. G and Onwuka v. R. T. C. M. Z. C. (2011) 6 NWLR (pt.1243) 341 at 359 para. D ably cited by the respective learned Senior Counsel.In the instant case, it is the questions posed for determination, the Affidavits in support (which constitute the pleadings in the Originating Summons), and the Reliefs sought by the Plaintiff/1st Respondent that the court ought to look at in the determination of the question as to whether it was seised with the requisite vires to adjudicate on the Plaintiff's claim.

A cursory look at the questions posed by the Originating Summons in the lower Court by the 1st Respondent as reproduced at pages 2 - 5 of this judgment would reveal in the main that he was calling on the Court below to interpret the provisions of Articles 31, 32, 33 and 50 of the Electoral Guidelines for primary Elections 2010 of the Peoples Democratic Party and Sections 87(4) (c) (ii); 85(1) and (2) and other Sections relevant to the conduct of primary elections in the Electoral Act, 2010 (as amended); sections 36 and 228 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); in that:

(a) he contested and won the 2nd Respondent (PDP's) primary for General Elections into the Gashaka, Kurmi and Sardauna Federal Constituency in the National Assembly of the Federal Republic of Nigeria holding in April, 2011;

(b) the said party Guidelines and the Electoral Act were violated as a result of the acts of the 2nd Respondent in that the Appellant had earlier participated in the said the Special Congress Primary election of the 2nd Respondent held on the 6th January, 2011 and failed to score the highest votes cast at the said election.

(c) He was entitled to have his name submitted by the 2nd Respondent (PDP) to the 3rd Respondent (INEC) as its candidate having regard to the above Statutes and Guidelines but that the 2nd Respondent purportedly submitted the name of the Appellant to the 3rd Respondent as its candidate to represent the said Federal Constituency at the said General elections;

He also called on the Court below to answer the question whether a special congress' convention, conference or meeting however styled or called convened by a political party for the purpose of nominating candidates for elective offices specified in the Electoral Act including elections into membership of the House of Representatives of the National Assembly of the Federal Republic of Nigeria without 21 days prior notice to the 3rd Defendant is not a contravention of the Electoral Act 2010 (as amended) and the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore invalid?

Furthermore, the Court below was called upon to determine whether a Special Congress, Convention, Conference or Meeting however styled or called convened by a political party for the purpose of nominating candidates for elective offices specified in the Electoral Act including elections into membership of the House of Representatives of the National Assembly of the Federal Republic of Nigeria without the monitoring of 3rd Respondent is not a contravention of the Electoral Act 2010 (as amended) and the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore invalid?

Finally the trial Court was also to determine the question whether the 2nd Respondent can validly ignore, disregard, cancel or annul the result of the said Special Congress Primary Election of the 2nd Respondent held on the 6th January, 2011 wherein the 1st Respondent scored the highest number of votes cast when the 1st Respondent

i. is not dead; or,

ii. has not withdrawn his candidature; and

iii. was not given any hearing on the decision (if any) to ignore, cancel, disregard or annul the result of the Primary Election aforesaid, contrary to the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic Party and the Electoral Act 2010 (as amended) and the Constitution of the Federal Republic of Nigeria 1999.

AS FOR THE RELIEFS SOUGHT, they were both declaratory and injunctive and merely sought for a restoration of his vested right as guaranteed him by Exhibit E to the Originating Summons (See pages 3 and 4 of this Judgment, 4 and 5 of the Originating Summons and 6 and 7 of the Records).

In respect of the Affidavit in support of the Originating Summons, paragraphs 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34; are very instructive, relevant and supportive of the questions for determination and reliefs sought. The above enumerated paragraphs aver as follows:

(AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS)

"4. That I am a member of the 1st Defendant and the aspirant that scored the highest number of votes cast at the special congress to select a candidate to represent the 1st Defendant for Gashaka, Kurmi, and Sardauna Federal Constituency in the general election to the National Assembly of the Federal Republic of Nigeria.

5. That the 1st Defendant is a political party registered in accordance with the provision of the Electoral Act, 2010 and its activities include canvassing for votes in support of a candidate for election in accordance with the provisions of the Electoral Act, 2010 and has its office at Wadata Plaza, Plot 1970 Wuse Zone 5 Abuja, within the jurisdiction of this Honourable Court.

6. That the 2nd Defendant is a member of the 1st Defendant who participated with me and other aspirants for selection for candidates of the 1st Defendant to represent Gashaka, Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria.

7. That the 3rd Defendant is a constitutional and statutory body charged with several responsibilities for conduct of election into elective offices and other matters prescribed in the constitution of the Federal Republic of Nigeria, 1999.

8. That sometime in September, 2010, the Defendant requested its members who were interested in being sponsored for the National Assembly Election to express interest by the collection and submission of expression of interest Form.

9. That I collected the Form which I completed to express my interest to contest election for the Gashaka Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria. A copy of my Form for expression of interest dated 20th September, 2010 is hereby attached and marked as Exhibit "A"

10. That the 1st Defendant further issued an electoral guideline for the conduct of the Primary Election of the Party. A copy of the guideline issued by the 1st Defendant is hereby attached and marked as Exhibit "B"

11. That part V of the Electoral guidelines issued by the 1st Defendant relates to the conduct of National Assembly Primary Election by the 1st Defendant.

12. That I met all the conditions stipulated in paragraph 24 to 26 of Exhibit "B" and was cleared in line with paragraph 27 of Exhibit "B" to contest the primary Election of the 1st Defendant for Gashaka, Kurmi and Sardauna Federal Constituency.

13. That I obtained the nomination of the 1st Defendant to contest the Gashaka, Kurmi and Sardauna Federal Constituency and was cleared by the 1st Defendant to contest the Party Primary Election. A copy of my nomination turn and the clearance certificate issued to me by the 1st Defendant after screening are hereby attached and marked as Exhibits "C" and "D" respectively.

14. That the 1st Defendant in accordance with paragraphs 28 to 32 of Exhibit "B" conducted the party primary for Gashaka, Kurmi and Sardauna Federal Constituency of the 6th January 2011.

15. That the names and scores of the aspirants who contested the primary Election aforesaid and the votes scored by them are as follows:

i. HON. INUSA SIMON DOGARI         96 Votes

ii. HON. IBRAHIM T.  EL-SUDI         315 Votes

iii. HON. BABANGIDA S. M. NGUROJE     266 Votes

iv. HON. ALH. MUSA USMAN KARAMJI     7 Votes

v. ALIYU SULE ASENS           4 Votes

16. That I scored the highest number of the lawful vote cast at the primary Election at the end of voting and was declared the winner of election.

17. That the result of the election was entered into the 1st Defendants Form PD004/NA/2010 and the returning officer duly declared me as the winner of the election. A copy of the Form PD/004/NA/2010 issued to me by 1st Defendant is hereby attached and marked as Exhibit "E".

18. That my nomination as the candidate of the 1st Defendant was concluded upon the issuance of Exhibit "E" to me.

19. That also on the Notice Board of the 1st Defendant in its office in Jalingo it displayed a list of all its flag bearers for all legislative offices and I was listed as a flag bearer of the 1st Defendant for Gashaka, Kurmi and Sardauna Federal Constituency. A copy of the list is hereby attached and marked as Exhibit "F,'.

20. That by article or paragraph 33 of Exhibit "B" a special; congress for the purpose of electing or nominating another candidate after a successful nomination can only take place where the person so nominated dies or withdraws or is otherwise incapacitated.

21. That I am alive willing to fly the flag of the 1st Defendant and not in any way incapacitated.

22. That I was never informed by the 1st Defendant that my declaration as the candidate of the 1st Defendant in the primary Elections which I won in respect of Gashaka, Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria was disputed by any of the contestants in the election.

23. That I am aware that the 3rd Defendant in accordance with powers vested in it by the constitution of the Federal Republic of Nigeria and the Electoral Act, 2010 promulgated guidelines and regulations specifying, among other things, the timelines within which political parties should conduct party primaries to select candidates that they will sponsor to contest the several offices under the Constitution in the elections to be held in April, 2011 general elections.

24. That I am aware that the 3rd defendant caused information of these regulations and guidelines on the timeline to be published to the public by several means including television and radio announcements, publication on the web site and notice boards of the 3rd Defendant A copy of such publication downloaded from the website of the 3rd Defendant is shown to me attached herewith and marked Exhibit "G".

25. That I am aware that the time within which the 1st Defendant could conduct party primaries to select candidates for election to offices prescribed under the Constitution of the Federal Republic of Nigeria 1999 including membership of the House of Representatives of the National Assembly of Federal Republic of Nigeria in connection with the general elections to be held in April, 2011 as stipulated by the Guidelines and Regulations of the 3rd Defendant ended on the 15th January, 2011.

26. That I am aware that after the 15th of January 2011 the 3rd Defendant had publicly declared that its staff would no longer monitor any congress, meetings or conventions of political parties to select candidates in respect of the election to be held in April, 2011 as such congresses, meetings and conferences could not be fair or transparent and would therefore be unlawful.

27. That I am aware that the 1st Defendant did not give 21 days prior notice to the 3rd Defendant before 26th January, 2011 of its intention to hold a meeting or special congress which it styles re-run for the purpose of a selection of a candidate for election to the House of Representatives to represent Gashaka Kurmi and Sardauna Federal Constituency.

28. That as at the 26th January 2011 the time prescribed by the regulations and guidelines of the 3rd Defendant for political parties to conduct party primaries which it can monitor had expired and I am aware that the 3rd Defendant was no longer monitoring any such congress.

29. That I know that there is no provision for a re-run under the 1st Defendants Guidelines for primary elections.

30. That 1st Defendant never notified me that there was any appeal or complaint against the declaration made by the 1st defendant that I won the primary election neither was I invited to respond to an appeal or a complaint (if any) against my nomination as the candidate of the in Defendant to represent Gashaka Kurmi and Sardauna Federal Constituency in the April, 2011 general election.

31. That I discovered to my utter dismay that 1st defendant had submitted the name of the 2nd Defendant to the 3rd Defendant as its candidate whereupon I instructed the Film of I.T. El-Sudi and Associates who applied for and obtained a Certified True Copy of Submission of Names by A Political Party for 1st Defendant in respect of Taraba State. I attach a copy herewith marked Exhibit "H".

32. That I state that the 2nd Defendant did not score the highest number of votes cast at the primary elections aforesaid held on 6th, January 2011 which was monitored by the 1st Defendant. A certified true copy of the 3rd Defendant's report on party Primaries dated 1st February 2011 is attached herewith and marked as Exhibit "I"

33. That I know that the Taraba State Chairman of the 1st Defendant wrote to the Commissioner of Police of Taraba State informing him of the outcome of the 1st Defendant's Primary Election listing the names of the contestants and those who won in the said primary election. A copy of the said report is attached and marked as Exhibit "J".

34. That in consequence of the development narrated in paragraph 31 above I withdrew my suit No. FHC/YL//CS/6/2011 which I had earlier filed against 1st and 3rd Defendant, the reliefs therein sought having been overtaken by events and to enable me institute the present suit/proceedings that will recognize the cause of action presented by the developments, as the 2nd Defendant was not a party because his name was submitted after the suit was filed and served on the 1st and 3rd Defendants".

As stated earlier, the documentary Exhibit marked 'A' 'B' 'C' 'D' 'E' 'F' 'G'' 'H' 'I' 'J' annexed to the affidavit in support of the originating summons have been enumerated at pages 4 - 7 of this judgment. See also Exhibit TE1, TE3, TE5(A) - 5(E), TE(6) and TE(7) annexed to the Further And Better Affidavits of the 1st Respondent as recorded in pages 8 and 9 of the judgment.

In the case of Lado v. C. P. C. (supra) cited with relish by the learned senior counsel for the Appellant nay learned counsel for the 2nd Respondent, my Lord Onnoghen, JSC; in the lead judgment had a reminiscence of pre-election matters emanating from nomination or selection of candidates to contest elections under the platforms of political parties which were hitherto no go areas for the courts no matter the horse trading, chicanery back-stabbing or bare-faced fraudulent activities of political parties and their smart members in the course of such exercise, The courts, in the circumstances it would appear then, demonstrated downright reticence or paid blind eyes in the face of such unwholesome developments right from the inception of the second and third Republics perhaps because of the state of the law. See for instance the Supreme Court decisions in Onuoha v. Okafor (1983) 2 SCNLR 244, Dalhatu v. Turaki (2003) 15 NWLR (pt.843) 310 at 334 - 335; Ugwu v. Ararume (2007) ALL FWLR (pt 377) 807; and subsequent like matters. Of course, the usual mantra was that disputes emanating from such exercise were purely political questions exclusively within the domain of political parties and accordingly not justiciable by Courts of law.   
The non-justifiability of so called political questions assumed a near calamitous dimension when between 2003 and 2005, it culminated in the chaotic imbroglio of the Anambra State PDP intra party squabbles where candidates who were screened and cleared and were duly nominated by majority of their members at the primary elections and indeed contested and won their respective General elections and were duty so declared; had their victories annulled over night and their certificates of returns awarded like chieftaincy titles to favourite surrogates of political God Fathers with the tacit connivance of the Resident Electoral commissioner and INEC Headquarters, Abuja; under the guise of substitution. Cases like Abana v. Obi & ors (2005) 6 NWLR (pt 920) 183; Agbakoba v. INEC (2008) 18 NWLR (pt.1119) 489; Ukachukwu v. Uba, Amaechi v. INEC and other cases of like nature abound in our Law Reports like rashes.

To stem the tide of arbitrariness that characterised the conduct of primary elections and other untoward malpractices by political gladiators and the opprobrium generated within the polity, the National Assembly (introduced) section 34 of the 2006 Electoral Act which provided for a limitation period of 60 days within which a political party may change or substitute its candidate for election and for such substitution to be mandatorily in writing with verifiable reason advanced to INEC. The section also conferred a right on a candidate who was substituted contrary to the provision of section 34 of the Act to challenge such substitution in a Court law.

There is no doubt as was rightly held by the learned and seminal Law Lord Onnoghen, JSC and his equally erudite brothers Adekeye and Fabiyi JJSC; in their concurring judgments in Lado v. INEC (supra) at pages 622 para A-F and 628; that the introduction of section 34 of the 2006 Electoral Act, did not change, modify or alter the pre-existing principle of non-interference by courts on the internal affairs of a political party as to who its candidate should be but merely restricted the right or power a political party to change or substitute its candidate at their whims and caprices before an election.

Be that as it may, even though the present Electoral Act 2010 (as amended) does not provide for substitution of nominated candidates by political parties there are salutary provisions in sections 87(1) which provides for the holding of Party Primaries for nomination of candidates; 87(4)(c),(i), (ii), 87(9) and more particularly 87(10) thereof which regulate the conduct of parties primaries. For instance, section 87(4)(c) (i) and (ii) which deal with the subject matter of this Appeal that is to say nomination of candidates for any elective positions by a political party, stipulate thus:-  
'87(4) A political party that adopts the system of indirect primaries for choice of candidate shall adopt the procedure outlined below:-

87(4)(c) in the case of nominations to the position of a Senatorial candidate, House of Representatives and State House of Assembly a political party shall where they intend to sponsor candidates

(i) hold special congress in the Senatorial District, Federal Constituency and the State Assembly  Constituency respectively, with delegates voting for each of the aspirant in designated centres on specified dates.

(ii) the aspirant with the highest number of votes at the end of voting, shall be declared winner of the primaries of the party and the aspirant's name shall be forwarded to the commission as the candidate of the party.

Section 87(9) of the Act further provides: "Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue."  
Finally, Section 87(10) provides that:-

"Notwithstanding the provisions of the Act or rules of the 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," See also Sections 85, 86, and 30 - 33 of the Electoral Act, 2010 (as amended),

In NDIC V. Okem Enterprises (2004) 10 NWLR (pt.880) 107 at 182 para. H. Per Uwaifo, JSC; defined the term 'notwithstanding' while interpreting the provision of section 251 of the Constitution which deals with the jurisdiction of the Federal High Court as connoting thus:

"When the term 'notwithstanding' is used in a section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself. It follows that as used in section 251(1) of the Constitution, no provision of that Constitution shall be capable of undermining the said section."

Going by the above authority, section 87(10) of the Electoral Act excludes any impinging or impeding effect of any other provision of the Act or even the Guidelines for primary elections made pursuant to the Constitution of the PDP/2nd Appellant (which by its Preamble admits at page I thereof that: "The Electoral Guidelines for Primary Elections, 2010 of the Peoples Democratic Party were, therefore drawn up, to conform strictly with the provisions of..., the Electoral Act, 2010 and the Constitution of the Federal Republic of Nigeria)from that section of the Electoral Act fulfilling itself in the regulation of party primaries. In other words, by the above authority, every other section of the Electoral Act, the PDP Constitution and Guidelines for the conduct of primary Elections; are subordinated to Section 87(10) of the Electoral Act which guarantees an aspirant in a Party Primary the right to seek redress in a Court of Law provided his complaint is that any of the provisions of the Act, Rules or Guidelines of the Political Party has not been complied with in the selection or nomination of a candidate of such a political party for an election.

It is pertinent to note that in Lado V. CPC (2012) ALL FWLR at page 263 paragraphs G-H to 624 paragraph A; Onnoghen, JSC, again commenting on the provisions of the Electoral Act above highlighted, reiterated the position of defunct Electoral Laws on the impotence of the Courts to choose, select or nominate candidates for political parties even in the face of breaches of the extant Electoral Act 2010, the Party's Constitution and Guidelines for the conduct of primaries and the Constitution of the Federal Republic of Nigeria 1999 (as amended) in the course of such exercise as an aspirant cannot invoke the jurisdiction of either the Federal High Court or High Court of the State as provided for under section 87(10) unless such an aggrieved aspirant brings himself within the ambit of section 87(4)(b)(c) of the Electoral Act 2010 (as amended). Hear His Lordship:

"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(4)(b)(ii),(c)(ii) and (10) of the Electoral Act, 2010 as amended) supra. It is only if he can come within the provisions of those subsections that his complaint 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 with the political party 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 political party concerned. In the instant case, evidence on record shows that there were two primaries and the contending parties claim their right to represent the 1st respondent not from a single primary conducted by the 1st respondent "

At page 627 paragraphs F - H to 628 paragraphs A - C; His Lordship in the concluding part of the judgment further emphasized the point that:  
"As stated earlier in this judgment, section 87 of the Electoral Act, 2010 as amended, deals with the procedure needed for the nomination of a candidate by a political party for any election and specifically provided remedy for an aggrieved aspirant who participated at the party primaries which produced the winner by the highest number of votes. Where, however there is a dispute, as in the instant case as to which of two primaries of a political party produced the nominated candidate that dispute is not justiceable under the provisions of section 87(4)(b)(ii), (c)(ii) and (10) supra and the Courts will have no jurisdiction to entertain same.

In the instant case, the jurisdiction in question is statutory and is very limited in scope. On the face of the claim, it would appear that the Courts have jurisdiction under section 87(4)(b)(ii), (c)(ii) and (10) of the Electoral Act, 2010 (as amended), if the right being claimed by the appellants and in dispute between the parties arose from the primaries of 15 January, 2011, alone.

Once there arises a dispute as to which of the two primaries conferred a right of candidature on the parties to represent a political party in an election, the matter is taken outside the purview of section 87(4)(b)(ii), (c)(ii) and (10) of the Electoral Act, 2010 (as amended)."

From the stand point of undiscerning minds on the dicta of Onnoghen, JSC; above highlighted (and it would appear that the learned Senior Counsel for the Appellant and 2nd Respondent have taken these positions in their respective arguments), once there are two primaries conducted by a political party for the selection of a candidate to fly her flag at an election in a particular Constituency; the Courts will automatically be divested of jurisdiction to entertain any dispute emanating from such exercise. This position poses the pertinent question as to the essence of Sections 87(4) (b)(ii), (c)(ii), 87(9), 87(10), 85 and 86 and even 30 - 33 of the Electoral Act, 2010 (as amended), respectively; Articles 31, 32, 33 and 50(e) of the Electoral Guidelines for Primary Elections 2010 of the Peoples Democratic party and the constitution of the Federal Republic of Nigeria particularly sections 6(6)(a) and (b) and 36 (1)(2) (a) and (b) thereof.

Where, as in this case, (a) the 1st Respondent claims to have been duly elected at the special congress primary duly convened and conducted by the National Executive committee (NEC) of the PDP (2nd Respondent) on 6th January, 2011 and supervised by the statutory Regulatory Agency (3rd Respondent/INEC) in line with the provisions of the Electoral Act, the party's constitution and Guidelines; (b) the Party (2nd Respondent) purporting to act upon the complaint of the Appellant to the Party's Election Appeal panel refused to submit the name of the 1st Respondent as provided by sections 87(4)(c)(ii) and 87(9) of the Electoral Act, 2010 (as amended), should the court helplessly fold its arms and watch the desecration of Electoral Act, the Party constitution and Guidelines and even the constitution of the Federal Republic of Nigeria on the ostensible reason that two primary elections have been conducted even where the one that was not conducted by the proper organ or in accordance with the party's constitution and the Electoral Act, is challenged by an aspirant?

Secondly, where 1st Respondent further alleges that the 2nd Respondents Appeal Panel rather cancelled his election without giving him a hearing; proceeded to conduct a rerun-election behind (his) 1st Respondents back whereby the Appellant was purportedly declared winner and his name submitted to 3rd Respondent/INEC; would it not tantamount to manifest absurdity for the courts not to interfere simply because the Appellant/2nd Respondent and its Appeal panel have precipitated a situation where there were two primaries leading to the nomination of the 2nd Respondents candidate for the election into the Federal constituency? I dare ask these questions with the hindsight of the impregnable doctrine of judicial precedent and with the trepidation of a penultimate Court bound willy-nilly to follow the decisions of the Supreme Court.  
Fortunately, I find solace and umbrage in a number of recent decisions which have been brought to our attention by the learned Senior Counsel for 1st Respondent and even the Appellant. For instance, in Uzodinma V. Izunaso (No 2) (2011) 17 NWIR (pt.1275) 30 at 59 para. H to page 60 paras A - E, the Supreme Court Per Rhodes-Vivour JSC; held inter alia on this subject matter:  
"The nomination of a candidate to contest an election is the sole responsibility of the political party concerned. The Courts do not have jurisdiction to decide who should be sponsored by any political party as its candidate in an election. See: Ugwu V. Ararume (2007) 12 NWLR (pt 1048) para 367; Dalhatu V. Turaki (2003) 15 NWLR (pt.843) para, 310 Onuoha V. Okafor (1983) 2 SCNLR p. 244. But where the political party nominates a candidate for an election contrary to its own Constitution and Guidelines a dissatisfied candidate has every right to approach the Court for redress. In such a situation, the Courts have jurisdiction to examine and interpret relevant legislations to see if the political party complied fully with legislation on the issue of nomination. The Court 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 above stance of His Lordship found resonance in the dictum of Fabiyi, JSC; while pronouncing on the scope of Section 87(10) in Chief Ikechi Emenike V. Peoples Democratic Party & Ors (2012) 12 NWLR (pt.1315) Pg 556, thus: "From the above, it occurs to me that for a complaint to come within the narrow compass of the above provision of the law and be cognizable by a Court, the aspirant must show clearly and without any equivocation that the National Executive Committee of the political party conducted a primary election in which he was an aspirant and that the primary election was conducted in breach of specific provisions of the Electoral Act/Electoral Guidelines." page 590 para. D to page 591 para. D.

"It must be elementary now, that the only valid primary is the one conducted by the Executive Committee of the PDP. The primaries, which that Appellant participated in was illegal, it having been conducted by the State Executive Committee of the PDP. That explains why the Appellant's case crumbled like a pack of cards with concurrent findings of fact by the Courts below stating the obvious position of the law.....

But where the political party conducts its primaries and a dissatisfied contestant at the primaries complains about the conduct of the primaries, the Courts have jurisdiction by virtue of provisions of Section 87(9) (now 87(10)) of the Electoral Act to examine if the primaries elections were conducted in accordance with the party's Constitution and Guidelines. See Hope Uzodinma V. Senator O. Izunaso 2011 Vol. 5 (pt.1) M.J.S.C. P.27, (2011) 17 NWLR (pt.1275) 28. This is so because in the conduct of its primaries the court will never allow a political party to act arbitrarily or as it likes." Per Rhodes Vivour, JSC page 60 para. E. Before the decisions in the above cited cases Tobi, Oguntade and Muhammad JJSC; (although the subject matter of the case then was substitution under Section 34(2) of the 2006 Electoral Act), had laid the foundation for the current trend of the Law and the insistence that the breach of the Electoral Act, the Party Constitution and Guidelines for conduct of primaries confers an aspirant with the locus standi to challenge the outcome of a Party's nomination when they held in the first place that it makes nonsense of the Electoral Guidelines of the PDP if the party will not follow its Constitution and Guidelines for the conduct of the Parties' Primary (Per Tobi JSC). On the part of Oguntade, JSC; the emeritus judicial icon ever so pungently put it beyond peradventure that Courts of law would no longer shy away from so-called political questions where a party desecrates its Constitution or Guidelines for the conduct of Primary Election; when he remarked:

"If the political parties, in their wisdom had written it into their Constitutions that their candidates for election would emerge from their party primaries it becomes unacceptable that the Court should run away from the duty to enforce compliance with the provisions of the parties' Constitution. The Court did not draft the constitutions for these political parties. Indeed, the Court, in its ordinary duties, must enforce compliance with the agreements reached by the parties in their contract."

Finally, Muhammad, JSC; in lending his voice to those of his colleagues intoned inter alia: "Where a member of a political party feels aggrieved because both the political party to which he belonged and INEC sidelined him, after having been initially and properly screened and nominated to contest for an election but at the nick of time had been substituted by another member of the party, I think, he has every right to ask the Court of law to intervene and protect his right to be allowed to contest the election". In fact and indeed, this is the scenario that was created in this case thus warranting the Plaintiff/1st Respondent to run to the Federal High Court for redress.

On the question of Party Supremacy and non-justifiability of this case as being bandied about by learned Senior Counsel for the Appellant and 2nd Respondent; His Lordship emphasized on the right of a citizen of this Country as guaranteed him by the Constitution to vie for any elective position or political offices created under the Constitution upon satisfaction of the parameters for such contests and capped it up with this notable admonition:

"Where any of such enactment, rules or policies come in conflict with any section of the Constitution, that enactment, rule or policy must surrender to the Constitution. Except where it is meant to say that a member of a political has no right at all, in election matters, I cannot see why a political party should be permitted, once it has given its commitment or mandate to a candidate whom it has already nominated whether wrongly or rightly to bulldoze its way to rescind that mandate for no justifiable cause. Politics is not anarchy; it is not disorderliness. It must be punctuated by justice, fairness and orderliness." I adopt the above quoted dicta of their Lordships of the apex Court as far as the issue of jurisdiction in this case is concerned herein hook line and sinker.  
In the light of the above, and from the questions posed for determination and particularly the pleadings in the 1st Respondent's Affidavit in Support of the Originating Summons together with annexed Exhibits, the 1st Respondent is challenging the non compliance with the Party's Constitution and Guidelines, the Electoral Act and the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in the conduct of the 2nd Respondent's primary since according to him, his right to fair hearing as guaranteed him by the Constitution of the Federal Republic of Nigeria was violated before the cancellation of his election and the purported conduct of a rerun primary. He also complained of non-compliance and consideration of the provisions of Articles 31, 32, 33, and 50 of the party Guidelines (Exhibit B to the Affidavit in support of the originating summons) which the 1st Respondent called on the Court to determine whether they could be ignored in the course of cancellation of his nomination.  
Going by the totality of the claim of the 1st Respondent in the lower court, therefore, the Court below had the jurisdiction to hear the claim of the plaintiff/1st Respondent. In so holding I derive inspiration from the dicta of Rhodes-Viviour, JSC in Uzodinma v. Izunaso (No 2) (2011) 17 NWLR (pt.1275) 30 at 60 paras. C-E. Fabiyi, JSC; in Chief Ikechi Emenike v. Peoples Democratic Party & Ors (2012) 12 NWLR (pt.1315) pg.556; Tobi, Oguntade and Muhammad JJSC; in Ugwu V. Ararume (2007) 12 NWLR (pt.1048) 367, (2008) 2 CCLR 215.  
I further hold the considered view and agree with the submissions of learned Senior Counsel for the 1st Respondent that notwithstanding the decisions of the supreme court above cited, by the learned senior counsel for the Appellant and indeed learned counsel for the 2nd Respondent, (particularly the dicta of Onnoghen, J.S.C in Lado v. C.P.C (supra) and Dr. Yasha'u Armiya'u v. C.P.C. (supra), (which even support the Respondent's case); the present case by  Before the decisions in the above cited C.P.C (supra), (which even support the Respondents case); the present case by virtue of the dicta of their Lordships Rhodes-Viviour, JSC in Uzodinma V. Izunaso (No 2) (2011) 17 NWLR (pt.1275) 30 at 60 paras. C-E. Fabiyi, JSC; in Chief Ikechi Emenike v. Peoples Democratic Party & Ors (2012) 12 NWLR (pt.1315) pg.556; Tobi, Oguntade and Muhammad JJSC; in Ugwu V. Ararume (2007) 12 NWLR (pt.1048) 367, (2008) 2 CCLR 215; above cited, which I consider very revolutionary and relevant to the peculiar facts of this case, there is a subtle distinction between Lado v. C.P.C. and Armiya'u v. CPC on the one hand and the instant case on the other.

As can be gleaned from the facts in Lado v. CPC and Armiya'u v. CPC, and ably submitted by the learned senior counsel for the 1st Respondent, the crux of their case was the conduct of two primaries by two rival factions of the same party one by the National Executive Committee and the other by the State Executive Committee and the question thereat was, as between the two, which of the primaries produced the authentic candidate for the party. In the case at hand, none of the parties complained of two parallel primaries one of which was not conducted by the National Executive Committee of the Party. The grouse of the 1st Respondent herein is rather on the primary conducted by the National Executive Committee of the 2nd Respondent on the 6th of January, 2011 which he won but the Appellant and 2nd Respondent claimed same was cancelled without affording him (1st Respondent) fair hearing talk-less of a hearing on the complaint of malpractices by the Appellant before the Appeal Panel of the 2nd Respondent ordered a re-run on 29th January, 2011.

The contention of the 1st Respondent was/is that a re-run primary could only be conducted after the 2nd Respondent/Appeal Panel had apprised him of the 1st Appellants complaint and given him a hearing under section 36 of the constitution of the Federal Republic of Nigeria and paragraph 50(e) of the 2nd Respondent's Guidelines for primary Erections 2010 in respect of the his victory at the primary and that the cancellation of his nomination was in violation of the party constitution/Guidelines, the Electoral Act, 2010 (as amended) and the constitution of the Federal Republic of Nigeria 1999 (as amended); in that he was not afforded a hearing before the exercise.

On the whole am of the considered view that the 1st Respondent who was an aspirant and won the cancelled primary erection of 6th January, 2011, had a right or locus standi under section 87(4)(C)(ii) of the Electoral Act, 2010 (as amended) and the court below by virtue of section 87(10) of the Act had the jurisdictional competence to examine and interpret relevant legislations and the constitution of the Federal Republic of Nigeria as well as the 2nd Respondent's Constitution and Guidelines to see if the Political Party (2nd Respondent) complied fully with those legislations in the conduct of its primaries for nomination of its candidates for the General Election of 2011. The Courts now have been empowered to bark and bite to stem the tide of unbridled acts of lawlessness and recklessness that characterise the practice of party politics under the guise of political questions or party supremacy in this country even in this twenty first century. For it is sad that the behemoth that prides itself as the largest political party in Africa cannot internalise democratic ethos in the conduct of its affairs particularly its primary elections for which Guidelines have been provided both in the Constitution of the Federal Republic of Nigeria and the Electoral Act and even under the Constitution of the party. ISSUE NUMBER 1 is therefore resolved against the Appellant.

ISSUE NUMBER- 2 "WHETHER THE LOWER COURT WAS RIGHT IN REFUSING TO ORDER PARTIES TO FILE PLEADINGS IN THE FACE OF FUNDAMENTAL FACTS IN DISPUTE?"

On this issue, the Learned Senior counsel for the Appellant has submitted that there were substantial disputes of facts warranting the Court to have ordered for pleadings to be filed and has cited Dalhatu  v. A. G. Katsina State (2008) ALL FWLR (Pt.405) 1676- 1677; Ajagun Obade v. Adeyelu (2001) 16 NWLR (Pt.738) 126. Osundade v. Oyewunmi (2007) ALL FWLR (Pt.368) 1004 at 1012 and Odukwe v. Achebe (2008) ALL FWLR (Pt.427) 145 at 159 para. D - G. Per Denton West, J.C.A; to buttress his contention that from the totality of the averments in the affidavits and counter-affidavits of the parties; the lower Court deprived itself of the opportunity of resolving the substantial and fundamental issues in dispute between the parties when it refused to order the parties to file pleadings. The refusal to order filing of pleadings also misled the Court into looking at a single document in concluding that the 1st Respondent was not afforded hearing before the 2nd Respondents Appeal Panel nullified his (1st Respondent's) election and ordered the rerun, he further submitted.  
In support of the views expressed by the learned Senior Counsel for the Appellants, the learned Counsel for the 2nd Respondent relied on N. B. N. LTD. v. Alakija (1978) 8 - 10 S.C.71 at 79 and Ossai v. Wakwah (2006) ALL FWLR (PT.303) 239; where the Supreme Court laid down the Guidelines for the applicability or otherwise of the Originating Summons procedure; to submit that from the questions raised in the Originating Summons in the case now on Appeal, the Reliefs sought and the Counter-Affidavits of the Appellant and 2nd Respondent, there were serious disputes as to the issue of fair hearing which could only be resolved by oral evidence and not on affidavit evidence.   
On his part, the learned Senior Counsel for the 1st Respondent in his rather verbose arguments, has in sum submitted per contra relying on Agbakoba v. INEC & Ors (2008) 18 NWLR (pt.1119) 489 at 539 paras. F-G; pages 537 paras. E - G, 538 C - D, per Chukwuma - Eneh, JSC; Amaechi V. INEC (2008) 5 NWLR (pt.1080) 227; Inakoju V. Adeleke (2007) 4 NWLR (pt. 1025) 423i Nwosu V. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 688, and Uzodinma V. Izunaso & Ors. (2011) 17 NWLR (pt.1275) 30 at 75 - 76 per Onnoghen, JSC; on the nature of Originating Summons, that this case is not of hostile nature as facts do not have a pride of place therein. More so, where the questions in the suit called for construction of sections of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act as well as the Constitution and Guidelines on Primary Elections issued by the 2nd Respondent and other documents relating to the National Assembly Primary Election annexed to the Affidavits and Counter-Affidavits of the parties to the dispute herein; the learned Senior Counsel insists, even if there are controversial facts in this case, Originating Summons is not improper if the controversial facts are not relevant to the determination of the questions submitted for determination.  
RESOLUTION  
In resolving this issue it is necessary to have resort to the provisions of the Federal High Court (Civil Procedure) Rules 2009 on forms of commencement of actions and in particular proceedings which may be commenced by originating summons as well as where the right of the litigant depends on construction of enactments and the exercise of the discretion of a Judge in the determination of questions submitted before him in the course of originating Summons proceeding.

Order 3 Rule 1, of the Rules provides thus: "subject to the provisions of any enactment, civil proceedings may be begun by wit, originating summons, originating motion or petition or by any other method required by other rules of Court governing a particular subject matter."

By Rule 6 thereof, "Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested'.

Under order 3 Rule 7, "Any person claiming any legal or equitable right in a case where the determination of the question whether such a person is entitled to the right depends upon a question of construction of an enactment may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed."

Finally as far as this issue is concerned, order 3 Rule 8, is explicit that: "A Judge shall not be bound to determine any such question of construction if in the Judge's opinion it ought not to be determined on originating summons but may make such orders as the Judge deems fit."

As I said elsewhere, (see Kwara Polytechnic v. Oyebanji (2008) ALL FWLR (pt.447) 141 at 192 paras. E - H to page 193 paras, A - H and 194 paras. A - H) the originating summons is no doubt an extra-ordinary process, which was hitherto unknown to Nigerian jurisprudence until recently when it was incorporated into the Civil Procedure Rules of our High Courts, See L. E. D. B. v. D. A. Awode (1955) 12 N.L.R. 80 Ademiluyi Anor V. A. C. B. LTD (1965) N.M.L.R. 24, where the Court held that if it is not clear as between the commencement of action by writ or by originating summons, the former should be preferred. In the causus classicus of Doherty v. Doherty (1968) NMLR 241 and National Bank of Nigeria V. Ayodele (1978) 9 & 10 S. C. 59; the Supreme Court held that where facts are in dispute and the proceedings are hostile the procedure of originating summons should not be adopted. See the case of FAMFA OIL LTD v. A. G. FED. (2003) 18 NWLR (PT.852) 453 at paras. D - G; where the Supreme Court again, on the nature and purpose of originating summons, quoted with approval the dictum in Doherty v . Doherty (supra) and stated inter alia:

"It is a procedure where the evidence in the main is by way of documents and there is no serious dispute as to their existence in the pleadings of the parties to the suit In such a situation there is no serious dispute as to facts but what the plaintiff is claiming is the declaration of rights. If there are serious disputes as to facts, then a normal writ must be taken out and not originating summons.  
In matters where facts are not in issue, the originating summons, which must be supported by affidavit of fact must be taken out and will become operative once a judge in chambers has signed it thus giving direction for its service Doherty vs. Doherty (1968) NWLR 144" Per Belgore JSC (as he then was).  
See also the recent cases of Ejura V. Idris (2006) ALL FWLR (pt.318) 646; Michael V. Mima Project Ventures Ltd. (2003) FWLR (pt.140) 1780 per Rhodes- Vivour, JCA (as he then was); Dalhatu V. A. G. Katsina State (2008) ALL FWLR (Pt.405) 1676-1677; Ajagun Obade v. Adeyelu (2001) 16 NWLR (pt.738) 126. Osundade V. Oyewunmi (2007) ALL FWLR (Pt.368) 1004 at 1012 and Odukwe v. Achebe (2008) ALL FWLR (pt.427) 145 at 159 para. D - G. Per Denton West, J.C.A.; Agbakoba V. INEC & Ors (2008) 18 NWLR (pt.1119) 489 at 539 paras. F-G; pages 537 paras. E - G, 538 C - D, per Chukwuma - Eneh, JSC; Amaechi v. INEC (2008) 5 NWLR (pt.1080) 227; Inakoju V. Adeleke (2007) 4 NWLR (pt.1025) 423; Nwosu V. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 688 and Uzodinma V. Izunaso & Ors. (2011) 17 NWLR (pt.1275) 30 at 75 - 76 per Onnoghen, JSC; ably cited by the respective Senior Counsel for the Appellant and 1st Respondent as well as the 2nd Respondent.  
  
  
By virtue of Order 3 Rule 8, a proceeding wrongly commenced by originating summons may be permitted by the court for the parties to carry on as if the suit was initiated by a writ of summons. See Din vs. A. G. Of Federation (1986) 1 NWLR 471 and Taiwo Vs. Okeowo (1983) 7 S. C. 85. Against the foregoing background, we shall now consider whether the learned trial Judge was right in allowing the case to be heard on the originating summons procedure and same concluded in spite of the preliminary objections raised by the Learned Counsel for the Appellant and the 2no Respondent in the lower Court.

I am of the firm view that the Learned Counsel for the 2nd Respondent hit the nail on the head when he cited Ossai V. Wakwah (supra) at 253 to 258, where the Supreme Court per Mahmud Mohammed, JSC; appropriately laid down the guidelines as to how to determine whether there is such a dispute so as warrant a case to be or not be heard by way of originating summons. In this respect, I had earlier held, and reiterate without fear of any contradiction that a cursory look at the questions for determination and the Reliefs sought, the Affidavits and Counter-Affidavits of the parties to the dispute herein; and the documents relating to the National Assembly Primary Election as annexed to the respective Affidavits, clearly demonstrate that the gravamen of this case is whether by the proper construction and interpretation of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act as well as the Constitution and Guidelines on Primary Elections issued by the 2nd Respondent, the 1st Respondent was given a hearing before the cancellation of his victory at the January 6 2011 primary for the Gashaka/Kurmi/Sardauna Federal Constituency by the 2nd Respondent's Election Appeal Panel before the conduct of the purported rerun primary purportedly won by the Appellant. By that holding, this is a case that was fought purely on documentary evidence. The only disputed facts are as contained in paragraphs 22, 30 and 31 of the 1st Respondent's Affidavit in support of the Originating Summons where he first averred as follows:

22. That I was never informed by the 1st Defendant that my declaration as the candidate of the 1st Defendant in the Primary Elections which I won in respect of Gashaka, Kurmi and Sardauna Federal Constituency of the National Assembly of the Federal Republic of Nigeria was disputed by any of the contestants in the election.

30. That 1st Defendant never notified me that there was any appeal or complaint against the declaration made by the 1st Defendant that I won the primary election neither was I invited to respond to an appeal or a complaint (if any) against my nomination as the candidate of the 1st Defendant to represent Gashaka, Kurmi and Sardauna Federal Constituency in the April, 2011 general election.

31. That I discovered to my utter dismay that 1st Defendant had submitted the name of the 2nd Defendant to the 1st Defendant as its candidate whereupon I instructed the Firm of I. T., El-Sudi and Associates who applied for and obtained a certified true copy of Submission of Names by A Political Party for 1st Defendant in respect of Taraba State, I attach a copy herewith marked Exhibit "H".

As for the Appellants, the relevant paragraphs are 7, 9, 13, 14, 16, 17, 18, 19, 23, 25-28 of his counter-affidavit to the originating summons dated 3rd day of March, 2011 wherein the 2nd Defendant/Appellant deposed to the following facts:

7. The Plaintiff cannot feign ignorance of the fact of the existence of the National Assembly Appeals Panel and the acceptance of their decisions nationwide culminating in the National Working Committee of 1st Defendant accepting their decisions and ordering re-run elections. Plaintiff has failed to espouse the fact that National Assembly Electoral Appeals Panel is provided for in Exhibit "B" in his affidavit, see Paragraph 27 (ix) of the Electoral Guidelines.

9. That paragraph 22 is not true because the Plaintiff has deliberately refused to tell this court the truth of the matter, He is aware of the process; he deliberately refused to appear before the Appeals Committee, he was fully aware that petitions were upheld including his constituency by the National Working Committee of in Defendant.

13. That paragraph 30 and 31 are not true. The Plaintiff was fully aware of the petition but refused deliberately to come and make representation as he admitted seeing newspaper publication mentioning the constituency as one of the several Senatorial and Federal Constituencies slated for a re-run election.

14. That paragraphs 32 and 33 are not true that the annulled election was conducted on 6th January 2011, so the election that the Plaintiff claims upon which the present matter is only known to him.

16. That record paragraph 33 is not true. The matter is still subsisting and constitutes an abuse of court process. That plaintiff is lying because why did he file the suit if he did not know that his name was not submitted by 1st Defendant

17. That I protested against the conduct of the election to the National Assembly Electoral Appeal Panel established by the 1st Defendant vides my letter dated 7th January, 2011, same is attached as Exhibit "C".

18. That the National Assembly Electoral Appeal Panel agreed with my petition and nullified the election and ordered a re-run. The finding is attached as Exhibit "D".

19. That the National Working Committee of the 1st Defendant accepted the decision above and ordered a re-run which was published to the whole world both in the electronic and print media, including the notice board of 1st Defendant One of the newspaper cuttings evidencing same is attached as Exhibit "E" and the extract of the meeting of the NWC also evidencing same is attached as Exhibit "F".

20. A new electoral panel was empanelled and mandated to conduct the re-run to the notice of all including the Plaintiff. The election was eventually held with the following results.

1. BABANGIDA S. M. NGUROJE     -    234  
2. IBRAHIM TUKUR EL-SUDI    -     0  
3. ALI ASEN              -    0  
4. MUSA KARAMTI USMAN        -     0  
5. INUSA SIMON DOGASRI       -    2  
a. Void Votes           -     2  
b. Total Votes Cast        -     236.

21. That having scored the highest number of votes cast I was declared the winner. The report of the Electoral Panel, the appointment letter of the Electoral Panel and the result sheet on PD04/NA/2010 are attached as Exhibits G, G1 & G2.

22. That consequent upon my victory 1st Defendant issued to me all the necessary Forms, which I filled and returned to 1st Defendant and same forwarded to 3rd Defendant as her candidate for Kurmi/Gashaka/Sarduana Federal Constituency of Taraba State for the 2011 General Election. The evidence of the approved and forwarded list is attached as Exhibit "G3".

23. That the Electoral Guidelines issued by the 1st Defendant to her members provided for National Assembly Electoral Appeal Panels to hear and determine petitions arising from the conduct of the elections and make their report thereon. See paragraphs 27 (ix), (x) and (xi) and (xi) which makes the decision of the National Working Committee of 1st Defendant binding on all aspirants including the plaintiff which he signed to uphold. Attached as Exhibit H is the said guidelines.

24. That 1st Defendant duty complied with paragraphs 31, 32, 33 and 50 of the Electoral guidelines as the re-run election was a continuation of an invalid and nullified election and not as a result of the envisaged happenings in paragraph 33 of the guidelines.

25. The 1st Defendant duly complied with section 87 of the Electoral Act, 2010 and Section 36 of the Constitution of Federal Republic of Nigeria, 1999 as amended. Plaintiff knew about all that happened from my petition and the re-run and deliberately refused to participate.

26. That the purpose of the establishment of the National Assembly Electoral Appeal Panel is manifold to uphold the result of an election, disqualify an unqualified candidate, cancel a discredited election, order a re-run and much more.

27. That the 1st Defendant complied with provisions of Sections 85 (2), 87(4) of the Electoral Act 2010 and Section 228 of the Constitution of the Republic of Nigeria 1999 as amended.

28. That Plaintiff is not entitled to the reliefs/declaration claimed by him, having among others agreed that he was aware of the re-run election, refusing to participate, insisting that his name and/or document for the candidate in the constituency be given him and submission of same to 3rd Defendant without meeting the clear and unambiguous conditions for a candidate to be sponsored by 3rd Defendant amongst other disqualifying actions;" are very germane to this issue.

In reaction to the above averments the 1st Respondent in his Further and Better Affidavit in support of the Originating Summons dated 11th of March, 2011 deposed in paragraphs 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 35 thereof as follows:

3. That I have seen Exhibit "C' attached to the counter-affidavit of the 2nd Defendant and I verily state that I had never seen this document prior to it's being exhibited to the counter-affidavit of the 2nd Defendant dated the 3rd March, 2011.

4. That I am a Legal Practitioner of 21 yeas standing in the profession having been called to the Bar in June 1990 and I have been in active legal practice culminating in my service as the Attorney General of Taraba State between May, 2009 to June, 2010 and by reason of this I know about processes relating to legal issues very intimately.

5. That if Exhibit "C" were served on me and I was given opportunity of being heard on it I would have offered a very robust and compelling response to it.

6. That I have seen Exhibit "D" attached to the counter-affidavit of the 2nd Defendant dated 3rd March, 2011 in this case and I state verily that at no time did the 1st Defendant's National Assembly Electoral Appeal Panel for Taraba State give me any opportunity to be heard before the making of Exhibit "D".

7. That I verily state that the persons that allegedly produced Exhibit "D" never furnished Exhibit "Co to me nor was I invited to respond to Exhibit "D".

8. That I was never made aware of the alleged sitting of the National Assembly Electoral Appeal Panel for Taraba where Exhibit "C" attached to the counter-affidavit of 2nd Defendant was allegedly considered and Exhibit "D" attached to the same counter-affidavit was allegedly made nor as required by the guidelines in Exhibit "B" attached to my affidavit in support of the originating summons has the decision of the Appeal Panel been communicated to me in writing till date.

9. That I verily believe that both Exhibits "Co & "D" attached to the 2nd Defendant's counter-affidavit dated 3rd March, 2011 were cooked up and contrived behind my back to give an appearance that there was an appeal against my election when there was none,

10. That under the Guidelines of the 1st Defendant embodied in Exhibit "B", there was only one National Assembly Electoral Appeal Panel to be constituted for each state of the Federation.

11. That on or about the 8th January 2011 members of the said 1st Defendant's National Assembly Electoral Appeal Panel consisting of Godwin Oke, Mke Malechi & Dickson Tariaghi arrived Jalingo for their assignment and held their sitting at the peoples Democratic Party Secretariat located at Barde way Jalingo directly opposite my Law Firm in Jalingo.

12. That as the winner of the PDP primary election for Gashaka/Kurmi/Sardauna Federal Constituency I monitored their sitting to know whether there was any petition against my election.

13. That Barrister Habibu Aliyu, the appointed chairman of the National Assembly Electoral Appeal Panel of 1st Defendant did not come to Jalingo with other members of the said Appeal Panel and his place was fitted by one Godwin Oke.

14. That the only petition the Panel received and treated while in Jalingo was the petition of Senator Dr. Anthony Manzo against the winner of the 1st Defendant's Senatorial Primary Elections for Northern Senatorial District of Taraba State one Hajiya Aisha Jummai Al-Hanssan.

15. That the National Assembly Electoral Appeal Panel for Taraba State heard the petition of Senator (Dr.) Anthony Mano and on the 10th January, 2011 it delivered its decision which it communicated to Dr. Anthony Manzo in writing and it was signed and dated by each of the Panel members who heard the Appeal. A copy of the petition and decision of the Appeal Panel is shown to me and attached here with and marked Exhibit "TE1" & "TE2".

16. That the members of the 1st Defendant's National Assembly Election Appeal Panel left Jalingo on the 1st January, 2011 having heard the only petition that was presented to it, being the petition of Dr. Anthony Manzo aforesaid.

35. That the failure of the 2nd Defendant and the 1st Defendant's National Assembly Electoral Appeal Panel to serve me with 2nd Defendant's Petition/Complaint to my attention and to hear me on same deprived them of this fundamental evidence which I would have presented to rebut the petition of the 2nd Defendant in Exhibit "C" attached to his counter-affidavit.

The appellant further deposed to a Supplementary Counter-Affidavit dated 28th March, 2011 through one Ifegwu M. J., a legal practitioner in the law firm representing the 2nd Defendant/Appellant in paragraphs 3(f), (k), (i), (m) and (n) thus:

3(f) That every party member was given opportunity to appeal and be heard, including the Plaintiff, who deliberately and wilfully refused to appear before the panel.

(k) That paragraphs 4, 6, 7 and 8 of the said Further and Better Affidavit are not true as Plaintiff was duly informed and he admitted monitoring the sitting of the Panel and claimed that only one petition was considered. That Plaintiff also admitted seeing the notice on the pages of Newspaper.

(i) That every notice concerning this matter and others of its like were duly published in Newspapers, 1st Defendant's Notice Board, electronic media; State office of 1st Defendant's notice board; the matters were treated as a whole, especially sitting and hearing dates and time, which allows one to extract the one concerning you and make the appropriate response.

(m) That the Plaintiff has never complained to the 1st Defendant about any misgiving he has save to now insult the ft Defendant after holding the 1st Defendant in contempt.

(n) That Plaintiff after denying the existence of re-run and claiming that 1st Defendant has no power to order a re-run now says he was not giving fair hearing which he all along denied himself.

It would be recalled that the 1st Defendant/2nd Respondent also deposed to a Further and Better Counter-Affidavits through one Paul Itodo the Litigation Officer in the office of the National Legal Adviser of the Peoples Democratic Party (PDP) 1st Defendant/2nd Respondent paragraphs 7, 1- 6.

7. That Chief Olusola Oke informed me at our office at Plot 2105, Herbert Macaulay Way, Wuse Zone 6, Abuja on 25th March, 2011 at about 2:30pm and I verily believe him that:-

i. That Plaintiff was aware and was given copy of the 2nd Defendant's petition, Exhibit "C" attached to 2nd Defendant's counter affidavit by the Appeal Panel even though he refused to sign for the same.

ii. That his reaction was that of out rightly dismissing the allegations therein.

iii. That the Plaintiff threatened to institute a legal action against the 1st Defendant if the Appeal Panel and the 1st Defendant considered Exhibit "C" (attached to the 2nd Defendant's counter affidavit).

iv. That Plaintiff had ample opportunity to present his case.

v. That a copy of the report of the Appeal Panel was served on the Plaintiff but the Plaintiff in deep anger refused to acknowledge receipt.

vi. That Plaintiff has at all material times been aware of the existence of Exhibit "C" and "D".

Upon a consideration of the respective averments of the parties and submissions of learned Counsel on the necessity vel non of the filing of pleadings to resolve the contestations of the parties as to whether the 1st Respondent was aware of the petition or was given a hearing by the Appeal Panel the learned trial Judge, at page 734 lines 8 to 10; observed:

"...I agree with the learned Counsel to the 2nd Defendant that the three issues of fact he identified are fundamental. They may well be in dispute..."

It is incontestable that the learned trial Judge further held at page 738 lines 11 to 14 of the Records that;

"In my view, crucial issue or question that has arisen is whether the plaintiff was heard by the Electoral Appeal Panel of the 1st Defendant that sat on the petition by the 2nd Defendant that led to the annulment of the result of the primary election in which the Plaintiff emerged winner. The resolution of this issue is dependent on a calm consideration of the affidavit evidence and the facts as disclosed by the documents annexed to these affidavits and counter-affidavits before the court. This is so because the question as to whether the plaintiff was heard or not is a matter of hard fact, or evidence and legal submission of lamed counsel as contained in their written addresses cannot be substituted for evidence." See page 739 lines 4-17 of the Records. The above remarks of the learned trial Judge were also in response to the three fundamental issues identified by the learned Senior Counsel for the Appellant in the lower Court as appearing to be substantial disputes which called for resolution by oral evidence. However, it would appear that the learned senior counsel for the Appellant quoted the excerpts of the judgment that suited his case and cleverly parried away the kernel of his Lordships reasoning and conclusion on the vexed issue in question.

For instance, at page 734 lines 13 - 27 and page 735 lines 1-4 of Record of Appeal, the learned trial Judge aptly and unassailably stated the correct position of the law when he held that it is not the law that once there is a dispute on a material fact in a proceeding commenced by way of originating summons, the court must as a matter of course resort to ordering pleadings without more. His Lordship, in my candid opinion, was on very sound pedestal when he posited inter alia:

"In my view, it is not the law that once there is a dispute on a material fact in a proceeding begun by an originating summons, the Court must without more, order the filing of pleadings. Where such dispute on a fundamental or material fact is capable of being resolved by the Affidavit evidence before the Court and the Annexure thereto, it is not necessary in the circumstance to order for filing of pleadings. This is in accord with the principle that the fact that a counter-affidavit is filed to an affidavit in support of an originating summons does not automatically make the proceedings a hostile proceeding. Originating summons as a mode of commencing an action is intended to facilitate trial in proceedings where the adoption of that mode in commencing an action is appropriate. Given the peculiar and special circumstances of this case, the interest of justice will be better served by refusing the application to order of filing of pleadings. The three fundamental issues identified by the learned counsel in his written address in support of the preliminary objection are capable of being resolved by the affidavit evidence before the Court. See the case of Agbakoba v. INEC (2009) All FWLR Vol. 462 page 1037,"

I cannot but agree more with the learned trial Judge on the position he has taken which is in line with the leading authorities on the originating summons procedure. See Ossai v. Wakwah supra at page 256, Dagogo v. A. G. of Rivers State (2002) FWLR (pt.131) 1956 at 1981 and the dictum of Onnoghen JSC, in Uzodinma V. Izunaso (2012) 17 NWLR (Pt.1275) 30 at 75 - 76, In the instant case, the question whether the 1st Respondent was given a hearing can be gleaned from the contents of Exhibits C and D which are the petition of the Appellant to the 2nd Respondents Primary Appeal Panel and the Report of that Panel. The dispute relating to the VCD which the 1st Respondent alluded to in his Further And Better Affidavit and which the Appellant and 2nd Respondent have made so much heavy weather on, was for purposes of establishing the fact that the cancelled election of 6th January 2011 was free and fair and devoid of any of the malpractices contrary to the claim by the Appellant in his petition to the 2nd Respondents Electoral Appeal Panel and the contention of the 1st Respondent in that respect is that he would have led robust evidence by tendering same, were he to be afforded the opportunity to be heard by that Panel. With the greatest respect to the learned senior counsel to the Appellant and the 2nd Respondent; that VCD was irrelevant to the determination of the questions in the Originating Summons as to whether he was apprised of Exhibit C or was heard before Exhibit D was issued and even after the making of the said Exhibit D; whether the 1st Respondent was also served thereby leading to the cancellation of his election/nomination?

In the circumstances and from the foregoing analysis, no oral evidence was necessary to prove the facts as can be gleaned from Exhibits C and D on whether the 1st Respondent was given a hearing or not. The basic position of the law is that the annexed documents provide the anchor upon which depositions in the affidavit would be considered since oral depositions cannot challenge or override the contents of a document. The cases of First Bank vs. May Clinic (2001)4 S.C.N.J 1 at 12, Ndadugba v. Nwosu; Nana Impex Ltd v. Awukam and Shipcare Ltd v. Owners of M. v. Fortunato (2003) FWLR (Pt.179) 1238 at 1256; cited by the learned Senior Counsel are quite instructive and we are properly so guided by them.

In F.A.T.B. Ltd v. Partnership Inv. Co. Ltd (2003) 18 NWLR (Pt.851) 35 at 74; per Iguh, J.S.C., emphasized the importance and superiority of documentary evidence over oral averment when he succinctly said: "Documentary evidence, where it is relevant, ought to be produced and tendered as they speak for themselves as against the ipse dixit of a witness which may not be readily accepted by the Court. See BON Ltd vs. Saleh (1999) 1 NWLR (Pt.678) 331 referred. See also Section 132 (1) of the Evidence Act Cap.112 Laws of the Federation," On our part, see also sections 128 on 129 of the Evidence Act 2011 and the cases of U.B.N. Ltd. V. Ozigi (1994) 3 NWLR (pt. 333) 385 Nnubia V. A. G. River State (1999) 3 NWLR (pt.593) 82, Ogundele & Ors v. Agiri & Ors. (2008) 18 NWLR (pt.1173) 219 at 239 paragraph A. See further Augustus Kimde v. Military Governor of Gongola State (1988) 5 S.C.47 at 95 and Essien v. Etukudoh (2009) FWLR (pt.496) 1886 at 1904 - 1905, on the legal proposition that where there are oral evidence as well as documentary evidence as in the instant case, documentary evidence should be used as a hangar from which to assess oral testimony.

On the whole, I agree intoto with the submission that the Appellant and 2nd Respondent have not shown what other evidence they would have adduced if pleadings were to be ordered to be filed and that from all the surrounding circumstances of the case the learned trial Judge was right to have overruled the preliminary objection of the learned Senior Counsel for the Appellant and 2nd  
Respondent and determined the Originating Summons on the Affidavit Evidence and bundle of documents annexed thereto by the respective parties. Issue Number Two (2) is also resolved against the Appellant.

ISSUE NUMBER 3 "WHETHER THE 1ST RESPONDENT WAS AFFORDED FAIR HEARING BY THE APPEAL COMMITTEE OF THE 2ND RESPONDENT WHEN IT ORDERED A RERUN OR RUN OFF ELECTION:-

As had been decided earlier the question whether the 1st Respondent was afforded a hearing or not, was contested in the paragraphs of the 1st Respondent's Affidavit, Further And Better Affidavit in support of the Originating Summons and the Counter-Affidavits and supplementary Counter-Affidavit of the Appellant and 2nd Respondent respectively as highlighted in Issue Number Two (2). In the resolution of this Issue, therefore, it is pertinent to note that the 1st Respondent respectively contends in his averments that he was never served with the complaint or Petition of the Appellant nor was he aware that his nomination and the result of the Election conducted by the Party on the 6th of January, 2011 which he won had been cancelled by the Party's Electoral Appeal Panel which ordered the conduct of a rerun without giving him (1s Respondent) the opportunity to defend himself).

The Appellant and the 2nd Respondent on the other hand contend on the contrary that the Plaintiff/1st Respondent was aware and was obliged with a copy of the Appellant's petition marked Exhibit C attached to the Counter Affidavit of the Appellant but that the 1st Respondent out rightly dismissed the allegations therein. The above assertion apart, the 1st Respondent was said to have also threatened to sue the 2nd Respondent if the Appeal Panel and the 2nd Respondent considered the said complaint/petition (Exhibit C). Furthermore, the 1st Respondent had ample opportunity to present his defence and a copy of the Report of the Appeal Panel was served on the 1st Respondent but with deep anger he refused to acknowledge Receipt. Thus, the 1st Respondent had at all material times been aware of the existence of Exhibits (C) and (D), they have insisted.

It is also worthy to note that the Appellant in his Counter- Affidavit to the Originating Summons further contends that the 1st Respondent was aware of the Petition and the rerun ordered by the party and that in any case the fact of the conduct of a rerun of its primaries in some states was contained in the Nigerian Tribune of Friday 28th January, 2011 which publication was notice to the whole world that the rerun was to be conducted in Gashaka/Kurmi/Sardauna Federal Constituency. The learned Senior Counsel for the Appellant and 2nd Respondent have also argued that the preponderance of evidence weighs in favour of the Appellant that the 1st Respondent was given the opportunity to be heard but he (1st Respondent) chose to ignore the opportunity. This fact of ignoring the opportunity was said to have been corroborated by the averments in the 2nd Respondent's Counter-Affidavit.

RESOLUTION

It is necessary to recall that the Court below upon a calm consideration of the facts deposed to in the Affidavits, Counter- Affidavits and the annexed Exhibits of the respective parties on this issue of fair hearing reasoned at page 738 lines 4 - 20 that the crucial issue or question for determination was whether the Plaintiff/1st Respondent was given a hearing by the 2nd Respondent's Appeal Panel that sat on the Petition of the Appellant leading to the annulment of the result of the primary of which the 1st Respondent emerged winner. The above question, according to him, was crucial because the validity of the rerun primary election was dependent on that resolution of the question. After reviewing the case of the Appellant as contended in Exhibits C and D and the contention of the 1st Respondent in that respect, and reproducing the content of Exhibit D (the Report and Proceedings of the Election Appeal Panel), came to the inevitable and sound conclusion that:-

"There is nothing in Exhibit D the proceedings, findings and Ruling of the Electoral Appeal Panel to show that the Plaintiff was heard before that Panel arrived at the conclusion to annul the result of the primaries conducted on or about the 6th January 2011. Paragraph 50(e) of the Electoral Guidelines issued by the 1st Defendant, the Peoples Democratic Party provides that before deciding on any matter the Electoral Appeal Panels shall give an opportunity to parties concerned to present their respective cases and shall communicate their decisions to the aspirants in writing within 48 hours of the determination of the dispute or so soon thereafter as circumstances may permit. "See page 740 lines 17 - 23 and page 741 lines 1 - 3.

On the same page 741 lines 4 - 25, the learned trial Judge maintained that whether or not the Electoral Appeal Panel in the instant case had complied with the provision of paragraph 50(e) of the Electoral Guidelines of the 1st Defendant (now 2nd Respondent), can be determined by a consideration of the Record of proceedings of the panel which contained its decision adding that no amount of depositions in the affidavits or the legal submissions of Counsel as contained in their Written Addresses can establish this fact. He then reiterated that:  
"In fact Exhibit D to the Counter Affidavit of the 2nd Defendant shows that the Electoral Appeal Panel failed to comply with the mandatory provisions of paragraph 50(e) of the Electoral Guidelines issued by the 1st Defendant."  
The learned Senior Counsel for the Appellant has pilloried the reasoning and conclusion of the learned trial Judge above highlighted as being erroneous because according to him, His Lordship misinterpreted the Report as being the proceedings of the Committee. He has maintained that a Report is only a summary of the events calumniating in the decision of the Committee. Accordingly, in his view, the Report which the Court mistakenly took for proceedings of the Committee could not have reflected if the 1st Respondent was given a hearing. Out rightly, let me remark that the lower Courts findings are unassailable. By the simple rule of Evidence as encapsulated in Section 136(1) (c) of the Evidence Act, 2011: "The burden of proof as to any particular fact lies on that person who wishes the hurt to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of the case be shifted from one side to the other." See Abdulraham V. COP (1971) NWLR 87; Arase v. Arase (1981) 5 SC 33; Savannah Bank of Nigeria Ltd V. Agencies Ltd. (1987) 1 NWLR (Pt.49) 212. Fadlallah V. Arewa Textiles Ltd. (1997) 8 NWLR (pt.518) 546 and Buhari v. INEC (2008) 19 NWLR (Pt.1120) 246 at 355 paras. B - D. See also the provisions of Section 131(1), (2), 132, 133(1) and in particular section 133(2) of the Evidence Act 2011.In this case, the burden of first proving that he was not given a hearing before the annulment of his election or that he was not even aware of the Petition and subsequent sitting of the Panel, lay on the 1st Respondent which he discharged by his averments and documentary Exhibits tendered since he was the one who desired the Court below to give judgment in his favour. Thereafter, the burden shifted to the Appellant and 2d Respondent to prove the contrary otherwise judgment would be given against them, if no further evidence were adduced. With particular reference to section 136(1) of the Evidence Act, the burden was on the Appellant and the 2nd Respondent to prove the fact that the 1st Respondent was given a hearing or afforded opportunity to be heard but 1st Respondent ignored that opportunity since they had particular knowledge of the facts and have tendered Exhibits C and D in that respect.

Where, as in the instant case, the documents tendered as Exhibits C and D by the Appellant and 2nd Respondent had/has no inkling or iota of evidence prima facie that the 1st Respondent was served with the said documents or even partook in the proceedings that resulted in the Committee's Report, the Learned Senior Counsel for the Appellant and even learned Counsel for the 2nd Respondent, cannot be heard to insinuate that the learned trial Judge misinterpreted Exhibit D. For the avoidance of doubt and since this is a case fought purely on documentary evidence of which the credibility of witnesses is not on the front burner, a Court of Appeal is seised with the power to peruse the bare Records and draw the necessary inferences which the Court below ought to have drawn, assuming the findings of the Court were perverse (which is not the case here).

A look Exhibit D for instance, would reveal that the Committee simply reproduced the complaint of the Appellant and his prayers and proceeded to make its findings according to it "In consideration of the facts in this appeal and after adequate inquiries on the conduct of the primaries..." However, there is no indication of the persons from whom the inquires were made nor is there any indication that the 1st Respondent was invited but he refused to appear so as to dispense with his attendance and cancel his election. Furthermore, there is also no evidence on Record as to who effected the service of the Exhibits on the 1st Respondent nor was there any endorsement on either the Petition (Exhibit C) or the Report (Exhibit D) to the Counter-Affidavit of the Appellant in this respect.   
Assuming that the Report as tendered is or was a summary of the proceedings of the Appeal Panel, what stopped the Appellant and 2nd Respondent (if there were any such Record of proceedings), from tendering same in their Supplementary Further - Counter-Affidavit? I am of the candid view that no such Record of proceedings existed/exists except for the cooked-up/conjured Report calculated to deprive the 1st Respondent of his vested right to contest the election into the constituency in question. See section 167 of the Evidence Act 2011 and the cases of Olufosoye v. Fakorede (1993) 1 NWLR 747; Obo v. Commissioner of Education Bendel State & Anor (1993) 2 NWLR 46 at 61 and Ehikioya & Anor. v. C. O. P. Bendel State (1992) 4 NWLR 52. I maintain my above position in respect of Exhibit C since from the averments of the Appellants and 2nd Respondent that document also does not indicate when the 1st Respondent was served and by whom, where and who was/were present during such service and his (1st Respondent's) threats to sue the 2nd Respondent if the Appellants petition were to be heard.

The above apart, assuming the contentions of the learned senior counsel for Appellant and 2nd Respondent are anything to go by, that the publication in the Nigerian Tribune of 28th January 2011 was notice to the whole world, where the rerun primary was to take place on the 29th of January 2011, how court the 1st Respondent have campaigned and mobilised his supporters for the said primaries? From the conduct of the 2nd Respondent and their so called Appeal panel, it is clear that it was conducted in total breach of paragraph 50(e) of the 2nd Respondents Guidelines to Primary Election as well as section 85(1) of the Electoral Act thereby depriving the Independent National Electoral commission of the opportunity to monitor the so called rerun primary since the commission was not given its mandatory 21 days Notice to enable it keep records of the rerun primaries, if at all. Again, even from the content of Exhibit F (the Nigerian Tribune of 2ge January, 2011); the Appellant and 2nd Respondent have hung themselves on their own petard as the Report is even a clear indication that the rerun was conducted after the announcement by the chairman of INEC that nominations had dosed by 15th January, 2011.

In this wise, the submissions of the Learned Senior Counsel for the Appellant nay that of the 2nd Respondent citing Adamu v. Akukalia (2007) 4 NWLR (Pt.1023) 64 at 105; B. O. N. v. Abiola (2007) 1 NWLR (pt.1014) 23 at 42, paras. A - B.; Bill Const. Co. Ltd v. Imani & Son Ltd. (2005) 19 NWLR (Pt.1013) 1 at 12, Offodire v. Egwuatu (2006) 1 NWLR (pt.961) 421 at 434 para. H; Dide & Ors V. Sele Itumib & Ors. (2003) 4 LRECN 57; INEC & Anor V. Musa & Ors (2005) 1 LRECN 573; Jang V. INEC & Ors (2003) LRECN 294 and Osayomi V. The State (2007) 1 NWLR (pt.1015) 352 at 372 para. H; and the principles enunciated in those cases are definitely applicable to their peculiar facts and circumstances but in respect of this case are rather in favour of the 1st Respondent.

It is indubitable that the principle of fair hearing is a double- edged sword and seeks to give equal protection to parties in any dispute and where a party was given ample opportunity to be heard, he cannot complain thereafter if he refused failed and/or neglected to exploit the opportunity so given him. See Per Niki Tobi, JSC, in the celebrated cases of Inakoju V. Adeleke (Ladoja's case) (2007) 1 CCLR (S.C.) 240 at 361 -362; Magaji V. Nigerian Army (2008) 8 NWLR (Pt.1089) 338 at 371 paras. E- H and Newswatch Communications Ltd. V. Atta (2006) 11 ALL NLR (pt.1) 211 at 224. Furthermore, there is considerable sense as has been decided in the cases cited above, that it is the totality of the facts and circumstances of the case that determines whether a trial or proceeding had been fair as fair hearing is not a technical doctrine but one of substance and the determining factor is not whether injustice had been done because of lack of fair hearing but whether a party entitled to be heard before a decision is made that affects his right negatively; was afforded an opportunity to be so heard. In the instant case, shorn of all the elaborate submissions on the quality of the affidavit evidence elicited by Appellant and 2nd Respondent, I am bound to agree with the submissions of the Senior Counsel for the 1st Respondent that on the authorities of Prof. Ogunsola M. A. Usman (2002) 14 NWLR (pt.788) 636 at 657; Abana V. Obi (2004) 9 NWLR (pt 877) supra 1 at 19 per Dongban-Mensem, JCA; and Balonwu & Ors V. Peter Obi & Anor (2007) 5 NWLR (pt.1028) 488 at 537 para. F Per Bada, JCA; depositions in an affidavit which leave yawning gaps as to 'how', 'why', 'who' and 'when' an event took place as is characteristic of the averments by Paul Itodo Esq. and Ifegwu, M. J. Esq on behalf of the Appellant and 2nd Respondent as to whether the 1st Respondent was given a hearing before the annulment of his election, ought not to be relied upon by the Court below.

In any case, the learned trial Judge resolved the crucial question of whether the 1st Respondent was heard, by taking a cursory look at Exhibits C and D which spoke/speak for themselves and as rightly posited by him, no amount of averments in those affidavits or Counter-Affidavits of the parties can take the place or alter, moderate or change the concrete evidence in those documents which he used as a hangar to resolve the conflicting averments by the parties. See the celebrated cases of Kimde V. Military Governor of Gongola State (1988) 5 S. C. 47 at 95 and Essien V. Etukudoh (2009) ALL FWLR (pt.496) 1886 at 1904 - 1905; First Bank of Nigeria V. May Clinic (2001) 4 SCNJ 1 at 12, Nduaguba V. Nwosu; Nana Impex Ltd. V. Awukam (supra); Shipcare Ltd. V Owners of M. V. Fortunato (2003) FWLR (pt.179) 1238 at 1256 and particular F.A.T.B. Ltd. V. Partnership Inv. Co. Ltd. (2003) 18 NWLR (pt.851) 35 at 74 per Iguh, JSC and Bon Ltd. V. Saleh (1999) 9 NWLR (pt.618) 331.

What remains herein to be commented upon albeit briefly, is the assertion by the learned Counsel for the 2nd Respondent that the trial Court raised the issue of fair hearing suo motu as it did not arise from the questions for determination thereby rendering the Judgment of the lower Court perverse. He has cited Oguntayo V. Adelaja (supra); Ojo V. Anibire (supra) and Ogunleye V. Oni (supra); to submit that the evidence upon which the Court predicated its decision was at variance with his claim and ought to go to no issue. Agbaje V. Ajibola (supra), Ige V. Ayoka and Nsirim V. Onuma Const. Co. Ltd. (supra); were the authorities relied upon in so submitting. I will hasten to dismiss this spurious contention as question Number S(iii) of the Originating Summons is clear that the 1st Respondent questioned the cancellation, annulment, ignoring and disregarding of the result of the election he won on 6th January, 2011 with the highest votes, without being given any hearing. All the submissions on this aspect of the Issue are non sequitur. See pages 584, 670, 677 of the Records where the parties joined and formulated the crucial issue for determination and addressed copiously thereon the question of fair hearing.

I am satisfied with the holding of the learned trial Judge at page 741 that the 1st Respondent was entitled to be heard since he had a right vested on him by Exhibit E to his originating Summons and the provisions of section 87(4)(c)(ii) and other sections earlier highlighted of the Electoral Act, 2010 to have his name submitted by the 2nd Respondent to the 3rd Respondent as the candidate of the 2nd Respondent to Gashaka/Kurmi/Sardauna Federal Constituency. I further agree completely with him that what the Electoral Appeal panel did was to take a decision which effectively divested the ptaintiff/1st Respondent of a right granted him by statute without giving him the opportunity to be heard contrary to section 36 of the constitution of the Federal Republic of Nigeria. In his words (which I adopt completely as mine:

"It is to be noted that the provisions of section 87(4)(c)(ii) of the Electoral Act are couched in mandatory terms thus it is mandatory for the 1st Defendant to declare the plaintiff as the winner of primaries having scored the highest number of votes. It is also mandatory for the 1st Defendant to forward the name of the plaintiff as candidate for the seat of Gashaka, Kurmi and Sardauna Federal Constituency in the House of Representatives." See page 742 lines 1- 6 of the Records.

The learned trial Judge upon a dispassionate consideration of the entire facts of the case rightly in my view, also came to the inevitable conclusion that 1st Respondents right to Fair Hearing as guaranteed him by section 36 of the 1999 constitution was violated by the procedure adopted by the 2nd Respondents Electoral Appeal Panel which was duly bound by the above provision to furnish the 1st Respondent with a copy of the petition of the Appellant as well as reasonable time and opportunity to respond to the allegations in the Petition. Therefore, in line with the English case of Broadbent V. Rotherham Corporation (1917) 2 Ch. 31 and the submissions of the learned Senior Counsel for the 1st Respondent who relied on the authority of Kanda V. The Governor of the Federation of Malaysia (1962) A.C. 322 at 33; per Lord Denning, on the attributes of fair hearing which is most appropriate to the facts of this case and buttresses the stand of the Court below that the rerun conducted on the 29th of June, by the 2nd Respondent was a nullity; I am bound to agree with the reasoning of the learned trial Judge.

Back home in Nigeria, our emeriti judicial sages have made notable and far reaching pronouncements on the purport of fair hearing and the breach there of in judicial or quasi-judicial proceedings. For instance Oputa, J.S.C in Ejike V. Nwankwoala & ors (1984) 12 S.C. 301 at 341-342; in answering the question as to what the right implies, stated thus:-

"First and foremost, it implies (at least in Civil cases) that both sides be given an opportunity to present their respective cases. It implies that each side is entitled to know what case is being made against it and be given the opportunity to reply thereto...

Fair hearing also imposes some obligations on the tribunal itself that the Judge should not have any personal interest in the case before him. He should be impartial and act without bias. "He should not hear evidence or receive representation from one side behind the back of the other." See also Eso, JSC in Paul Unongo V. Aper Aku & Ors (1983) 11 S.C. 129 at 179; Adigun V. A.G. Oyo State (1987) 1 NWLR (pt.53) 678 at 721 and Garba V. University of Maiduguri (1986) 1 NWLR (pt.18) 550 at 577-598 Per Eso, JSC (now of blessed memory). In consequence, the further holding of the learned trial Judge at page 743 lines 5 to 11 that the proceeding of the Electoral Appeal Panel leading to the annulment of the result of the primaries conducted on the 6th January, 2011 is/was a nullity, is unassailable. Also as was rightly held by His Lordship, the order by the Panel directing the conduct of the re-run election including the result of such re-run was also a complete nullity. I align myself with the Order so nullifying the Order and conduct of the rerun as well.

On the same wicket, I endorse the decision of the learned trial Judge that the Primary election held on the 6th day of January, 2011, the Result thereof Exhibit E annexed to the Affidavit in support of the Originating Summons, the list of flag bearers of the Peoples Democratic Party Taraba State for the Senate and House of Representatives wherein the 1st Respondent is mentioned as Number 1 (one) (Exhibit F), Exhibit 1 (the Report of primaries held on the 6th day of January, 2011 wherein the 1st Respondent was reported as winner) and Exhibit J which also forwarded the Report of the Election of 6th January, 2011 to the Commissioner of Police which conclusively proved that the 1st Respondent won the Primary Election conducted in line with section 87 of the Electoral Act, 2010.  
The learned trial Judge was also on sound ground when he ordered the 2nd Respondent to forward the name of the 1st Respondent to the 3rd Respondent as its candidate for the House of Representatives seat of the Gashaka/Kurmi/Sardauna Federal Constituency of Taraba State, as the 2nd Respondent has/had no discretion in this regard. In the final analysis the learned trial Judge did a marvellous Job in his approach to the case and deserves commendation when he granted all the Reliefs sought by the 1st Respondent in his Originating Summons and I fully endorse same. This issue is also resolved against the Appellant.

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On this issue the grouse of the Appellant and 2nd Respondent is that the 1st Respondent and Appellant are members of the same political Party/2nd Respondent and that the 2nd Respondent having concluded its primary Election and submitted the name of the Appellant to the 3rd Respondent, the 1st Respondent was bound by the decision of the NWC (National Working Committee) which decision was/is by virtue of the doctrine of party supremacy final on all aspirants in respect of primary elections to the National Assembly.  
This issue, learned Senior Counsel maintained, was isolated or identified at the lower Court as Issue Number 2 of the 2nd Respondent/Appellant at page 636 of the Record of Appeal, but the Court ignored same. Learned Senior Counsel as well as learned Counsel for the 2nd Respondent have argued citing Nwokedi v. Egbe (2005) 9 NWLR (pt.930) 293 at 307 paras. A - B per Galadima JCA (as he then was); Okonji V. Njokanma (1991) 7 NWLR (pt.202) 131, Uzida v. Ebijah (2009) 15 NWLR (pt.163) 1 at 21 - 22 and Ojugbue v. Nnubia (1973) 1 ALL NLR (pt.2) 226; per Coker, JSC of blessed memory, that the failure/refusal of the Court below to pronounce on all the issues raised before it, is fatal and a breach of the fundamental principle of administration of justice. He has however called on this Court on the authority of Ogbeide V. Osula (2003) 1 LRECN 453; to determine the issue of party supremacy on the nomination and sponsorship of a candidate for election and the lack of jurisdiction by Courts to inquire into such issues.

Relying further on Article 27(xii) of the Electoral Guidelines for Primary Election 2010 of the Peoples Democratic Party, the cases of Action Congress V. INEC (2001) LRECN 224 at 282 S.C. and Ehinlawo V. Oke (2003) 4 LRECN 769 at 808; the learned Senior Counsel reiterated the fact that by the memo as contained in pages 302 and 304 the Records (Exhibit PDP 4) dated 31st January, 2011; the National Working Committee of the PDP/2nd Respondent had forwarded the name of the Appellant to 3rd Respondent as the candidate of the Party of the Gashaka/Kurmi/Sardauna Federal Constituency at the National Assembly Election, and that by section 33 of the Electoral Act (as amended); it is only in the event of death or wilful withdrawal that the Appellant's name will be substituted and not otherwise.

Reacting to the above submissions of the learned Senior Counsel for the Appellant and 2nd Respondent, the learned Senior Counsel for the 1st Respondent has expressed the view that the learned trial Judge was not obliged to pronounce on the Issue of Party Supremacy having declared the decision of the 2nd Respondent a nullity on account of breach of the 1st Respondent's right to fair hearing submitting further while placing reliance on the dicta of Adekeye, JSC; in Rear Admiral Francis E. Agbiti v. The Nigerian Navy (2011) 4 NWLR (Pt.1236) 175 at 216 Para, B; Senator I. G. Abana V. Chief Ben Obi & Ors (2005) 6 NWLR (pt.920) 183 at 205 paras, A - B and Ovunwo & Anor. V. Iheaniyi Chukwu Woko (2011) 17 NWLR (pt.1277) 522 at 556 paras. D - F; on the effect of a nullity. He took the view that the Court below having pronounced on the nullity of the 2nd Respondent's act, a further pronouncement on the supremacy of Party decision over the 1st Respondent would not have affected the ultimate decision of the lower Court.

Further reliance was placed on Abiola & Sons Bottling Co. Ltd V. Seven-up Bottling Co. Ltd. (2012) LPELR suit No.SC/87/2005, per Rhodes-Vivour and Ngwuta JJSC; where a similar issue fell for determination in the apex Court; to submit that the position taken by the Learned Justices of the Supreme Court although referred to the Court of Appeal, equally applies to Courts of trial and that a Court need not pronounce on issues raised by parties unless such as issue is material vital and capable of affecting the ultimate decision of the Court. References were made to the decision of the Court below at page 13 lines 17-30 of the Judgment to buttress his contention. Placing reliance also on Ovunwo v. Woko (supra) at page 549 paras. B - D; learned Senior Counsel to the 1st Respondent conceded that the failure of the Court below to pronounce on the issue of Supremacy and bindingness of the party's decision on the 1st Respondent leaves open to the Superior Court the choice to either pronounce on it or send it back to the lower Court for determination.

Alluding to the case at hand, it is the stand of the learned Senior Counsel that since it does not require credibility of witnesses, this Court should adopt the option of pronouncing upon it. In this connection, he has relied on the dicta of Rhodes-Vivour, JSC in PDP V. Sylva (supra) at 125 and Rt Hon. Chibuike Amaechi V. INEC & 2 Ors (2008) 5 NWLR (pt.1080) 227 at 311 paras. B-D per Oguntade, JSC; to submit that neither the Appellant nor the 2nd Respondent in this Appeal seems to have learnt their lessons on the limits of party supremacy as laid down by the Supreme Court in the cases above cited. We were then urged to resolve the issue against the Appellant.

I have carefully considered submissions of the respective learned Senior Counsel on this vexed issue. Without wasting any judicial time, I am in complete agreement with the submissions of the learned Senior Counsel for the Appellant that a Court of law particularly a Court of first instance is duty bound to pronounce on all issues raised by parties and put forward for determination before the Court. The decisions in Nwokedi V. Egbe (2005) 9 NWLR (pt.930) at 307 per Galadima JCA; Uzuda V. Ebijah (2009) 15 NWLR (pt.163) 1, at 21-23; Okonji V. Njokanma (1991) 7 NWLR (pt.202) 131; are quite instructive. The need for Courts to consider all the issues joined by parties, was emphasizes long ago in the case of Ojogbue v. Nnubia (1972) 1 All NLR (pt.2) 226 (see also (1972) 6 S.C. 227 per Coker, JSC, where the learned judicial legend opined:-'A Judgment of a Court must demonstrate in full a dispassionate consideration of issues properly raised and hard and must reflect the result of such an exercise, but in the present case it cannot be said that the judgment as it stands does this, for throughout the judgment the trial Judge made no clear findings in which he had unequivocally upheld, as against the claims of the plaintiffs, the contentions of the defendants on any major issues, with the result that the basis on which the plaintiff's case was dismissed cannot be seen nor, what is worse the ground on which the trial Judge had proceeded to enter judgment for the defendants. The case is remitted to the High Court for rehearing de novo"   
From the dictum of Coker, J.S.C, above cited it is clear that the emphasis is on proper, material and relevant issues, that go to the foundation of the case and not peripheral, frivolous, academic and irrelevant issues which must be resolved in the determination of a case. Thus, where at the conclusion of hearing of a case the material issue(s) the determination of which is/are likely to affect the outcome of the dispute between the parties, is/are left unattended to or unresolved, the issues between the parties would be deemed not to have been determined. This explains why it has been held by the apex Court that where several issues have been raised by parties which would go a long way in resolving the dispute between the parties all such issues must be resolved. On the other hand, however, where the issue or issues not relevant in the determination of the case is/are disregarded, the Court owes it a duty to specify the reason(s) why such issue(s) is/are considered irrelevant. This is because in all cases where issues have been joined, the Court is duty bound to state how the issue has been disposed off. See Welle & Anor. v. Okechukwu (1985) 6 S.C 132 at 145 - 146; per Karibi- Whyte, JSC.It is in the light of the foregoing decisions that the dicta of Rhodes-Vivour and Ngwuta, JJSC in Abiola & Sons Bottling Co. Ltd V. Seven-up Bottling Co. Ltd; shall be called in aid in the resolution of this Issue, for where in that case, the Court of Appeal upon resolving all the salient issues that had been joined, reasoned that the consideration of the those other issues (2, 3, 7, 8, 9, 10 and 11 of the Appellants/Respondents - Cross Appellants' Brief of Argument) in the Supreme Court would not change the ultimate decision and that those unresolved issues were academic, the Supreme had the discretion to consider upon a perusal of the totality of the Records whether the reasons were tenable or whether the issues disregarded were material, not academic or substantially relevant and/or would have changed the ultimate decision of the Court of Appeal. In which case, on the authorities cited by the respective Learned Senior Counsel and in particular Ovonwo V. Woko (supra); if the Supreme Court discovered that the issues did not border on credibility of the evidence of witnesses, it could proceed to pronounce on them or otherwise send back the case to the Court of trial.   
The above decisions notwithstanding, it is always necessary for a Court of first instance to pronounce on all issues raised before it so as to give the Appellate "Court the benefit of its opinion. See Osondu & Co. Ltd. v. sole Boneh (Nig.) Ltd (2005) 5 NWLR (pt.656) 322 at 3s5; fortunately for us, this case now on Appeal was fought in the lower Court purely by way of Originating Summons procedure where the learned trial Judge at page 13 lines 17 - 20 of his judgment remarked that the resolution of the issue or question as to whether the plaintiff was heard was crucial as this would determine the validity of the re-run election which was the crux of the Appellants case in the lower Court that under section 87(4)(c)(ii) of the Electoral Act, 2010; his name ought to have been submitted to INEC having won the 2nd Respondents Part/s Primary conducted on the 6th of January 2011 but that without giving him a hearing as enshrined in paragraph 50(e) of the Part's Guidelines for such election and section 36 of the Constitution of the Federal Republic of Nigeria, 1999; his election was cancelled and a purported rerun election conducted without giving him a hearing on the purported Petition of the Appellant.

Even then, and assuming the contention that the issue of party supremacy was/is material to the determination of the case in the Court below, as rightly submitted by the respective learned Counsel, this court is also in as good a position to consider the issue as this is not an issue bordering on credibility of evidence of witnesses but can be garnered from the Constitution or Guidelines of the 2nd Respondent. In the circumstances, since parities are ad idem that we should consider this issue that was disregarded by the learned trial Judge, I shall proceed to do so forth with.

As was rightly submitted by the learned Senior Counsel for the Appellant, Article 27 (XII) of the PDP (2nd Respondent's) Electoral Guidelines for Primary Election 2010, provides in express terms that:

"Notwithstanding the provisions of these Guidelines and any other rules or regulations set down by the party the decision of the National Working Committee shall be final and binding on all aspirants, Officers and Organs of the Party in respect of the Primary election to the National Assembly on the plat-form of the party".

It is also necessary to reproduce the provisions of Article 26(3) of the Guideline which is to effect that:

"The decision of the National Executive Committee of the Party on all Primary election matters shall be final, subject only to the right of Appeal by any aggrieved aspirant."

Also relevant to the issue of party supremacy are the following provisions of the Party's Guidelines for Primary Elections which are to the effect that:-

1. "Article 31 a. All results polled at the National Assembly Primary election shall immediately be announced publicly and thereafter Recorded on the Official result sheet Form - Code D004/NA

"b. Results recorded in ordinary paper or photocopies shall not be accepted,

"c. The result sheet Form- Code PD004/NA shall be signed by the Returning Officer and the aspirants or their accredited agents present, provided that the failure or neglect or refusal to sign the form by an aspirant or his agent shall not invalidate the results.

e. No aspirant for the primary election to the Senate or the House of Representatives shall be declared nominated or elected, unless he polled the highest votes cast and the winner shall be declared returned by the Chief Returning Officer after the election.

"32. a. No result shall be upheld as valid until it has been entered in the Form designated for it

b. The Retuning Officer shall ensure result sheets are made available to aspirants or their agents.

c. The result sheet form - Code PD/004/NA shall be signed by the Returning Officers and if unsigned, shall be deemed invalid unless otherwise approved for sufficient cause by the National Working Committee of the party.

"33 Where, after the successful nomination a National Assembly Candidate at the Special National Assembly Congress, the candidate nominated dies, withdraws or is otherwise incapacitated, the state Executive Committee of the Party shall, immediately upon becoming aware of the death, withdrawal or incapacitation, summon an emergency National Assembly Special Congress for the purpose of electing or nominating another candidate".

Finally as far as the Guidelines of the 2nd Respondent is concerned, Article 50 which provides for appointment of Electoral Appeal Panels state unequivocally in subparagraphs (d) and (e) thereof as follows:-

"d. Any complaints, disputes or petitions arising from the screening or elections or their conduct shall be submitted to the Electoral Appeal Panels at the appropriate levels in writing within 24 hours of completion of the Primary Elections.

"e. Before deciding on any matter, the Electoral Appeal Panel shall give an opportunity to the parties concerned to present their respective cases and shall communicate their decisions to the aspirants in writing 48 hours of the determination of the disputes or soon thereafter as circumstances may permit."

Subparagraph f. of Article 50 emphasizes the concept of party supremacy by insisting that-

"Notwithstanding the provisions of the Guidelines and any other rules or regulation laid down by the party, the decision of the National Executive Committee as recommended by the National working committee shall be final and binding on all aspirants, officials and Organs of the party would respect to eligibility or otherwise of an aspirant."

The provisions of these Articles are clear and unambiguous and they ought to be given their simple grammatical construction to enable them fulfil the intendment of the party on Primary Elections. See Per Tobi, JSC. In Ugwu v. Ararume (2008) 2 CCLR 215 at 262 paras 20 - 25; (2007) 12 NWLR (pt.1048) 367 at 438 paras. A-C; Abubakar V. Yar'Adua (2008) 19 NWLR (pt 1120) 1 at paras E - F, 135 paras. D - H; Adesanoye V. Adewole (2006) 14 NWLR (pt.1000) 242 at 272 para D; Adejumo v. Military Governor of Lagos State (1972) 3 SC 85, Ojokolobo v. Alamu (1987) 3 NWLR (pt.61) 377 See also Per Eso, JSC (now of blessed memory); in Attorney General, Ogun State v. Alhaja A. Aberuagba & ors (1985) S.C. (pt.1) 288 at 383, who stated the basic position of the law on interpretation of statues or Regulations or legal Instruments as in this case thus:-

"In the interpretation of statutes, the ordinary literal meaning must first be examined. If the words are clear and unambiguous then the ordinary literal meaning must be given to them, for then, the intention of the law maker has not been obscured it is only where there is doubt or ambiguity, that recourse is made to other canons of interpretation. See Awolowo V. Shagari (1979) 6-9 S.C. 51."

Guided by the principle laid down in the above decision, there is no doubt that by the provisions of Articles 26(3), 27(XII), 50(f) of the Guidelines made pursuant to Articles 12.72(i) and 17.1 and 2 of the Constitution of the 2nd Respondent/Peoples Democratic Party Constitution, particularly on Primary Elections, the concept of party Supremacy is entrenched therein and members of the party are bound by the decision of the National Working Committee which is the highest policy making body of the party. The Guidelines, as can be gleaned from its Preamble were drawn up to conform strictly with the party's Constitution 2009 (as amended), the Electoral Act and the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in order to entrench internal democracy within the party and to stabilize party politics.

However, for an aspirant to Primary Election to conform with and be bound by the doctrine of party supremacy, such election must be conducted in strict accord with the provisions of the party's Constitution, the Guidelines and indeed the Constitution of the Federal Republic of Nigeria and regulated by the Electoral Act. Thus, party supremacy as was hitherto dressed in absolutist toga is no longer the vogue. What exists now by the provisions of Sections 228(a) and (b) of the Constitution, Sections 31, 32, 33, 85(1) and (2), 86 and 87(4) (c) (ii), 87(9) and 87(10) of the Electoral Act 2010 (as amended) nay Articles 31, 32, 33 and 50 of the Guidelines of the 2nd Respondent which must be conformed with in order for an aspirant to be bound by the decision of the National Working Committee in respect of any primary election; is regulated Party Supremacy.   
In the instant case the 1st Respondent had by Exhibit A to his Affidavit in support indicated his interest for sponsorship to contest the Gashaka, Kurmi, and Sardauna Federal Constituency of Tararba State. Pursuant the preamble and intendment of Exhibit B to the 1st Respondent's Affidavit (the party Guidelines that candidates of political parties will only emerge through primary Elections duly conducted in accordance with section 87(i)(a) of the Electoral Act, 2010 and duly monitored by (INEC); the 1st Respondent pursuant to Article 26 of Exhibit B (the Party Guidelines), completed his Nomination Form (Exhibit C) accompanied with all requisite documents including his personal data which he submitted to the 2nd Respondent for purposes of the primary Election.

In line with Article 27 of the Guidelines, the 1st Respondent was screened and cleared by the 2nd Respondent and Exhibit D to his Affidavit in Support of the Originating Summons, issued to him as one of the aspirants to contest the primary election for the Federal Constituency in question. Exhibit 1 is the time table issued by the 3rd Respondent in accordance with section 30 of the Electoral Act 2010, to all political parties and their members and for the purpose of the Election 2011, party Primaries were to take place between 26th November, 2010 and 15th January, 2011 in order for the 3d Respondent to be given adequate time and facilities to monitor the Primaries in accordance with section 85(2) and 86(1) of the Electoral Act 2010. Subsequently, the 2nd Respondent scheduled its primary for the constituency which is the subject matter of this Appeal on the 6th of January, 2011 and the 1st Respondent was duly nominated with majority votes of 315 as to the Appellant's 266, Exhibit E (the Result sheet Form No. PD004/NA) was issued and signed in favour of the 1st Respondent in accordance with the provisions of Articles 31 and 32 of the Guidelines (Exhibit B) to the Affidavit in support. This victory was confirmed by Exhibit J at page 87 of the Record (the list of aspirants that contested for the position of the House of Representatives in Gashaka/Kurmi/Sardauna Federal Constituency) where he was recorded as winner.

Meanwhile, upon winning the nomination, the 2nd Respondent was expected to mandatorily send the name of the 1st Respondent in accordance with section 87(4)(c)(ii) to the 3rd Respondent (INEC) but 2nd Respondent failed so to do and purported to have received Exhibit c to the Appellants counter-Affidavit, cancelled the Election of the 1st Respondent without adhering strictly to the mandatory provision of Article 50 (e) of the Guideline which is in pari material with section 36(1) of the constitution of the Federal Republic of Nigeria wherein provision for fair hearing by a court or tribunal or in this case, the Appeal Panel of the 2nd Respondent in the determination of the right of the 1st Respondent in respect of his cancelled nomination; is entrenched. By Exhibit E to the counter-Affidavit of the Appellant, the 2nd Respondent purportedly published in the Nigerian Tribune of 28th January 2011 notice for a rerun election when the 1st Respondent was never furnished with the Appellants petition, neither was he afforded opportunity to be heard nor was he served with the Report of the so called Appeal panel.

Again, the so-called rerun was purportedly held on the 29th of January 2011 without giving INEC/3rd Respondent the Regulatory body for such election the mandatory 21 days notice to enable the said rerun to be monitored. In any case, the 3rd Respondent had given the deadline for completion of Primary Elections as the 15th of January, 2011, but in violation of INEC's orders and time table, the 2nd Respondent basking in the euphoria of party supremacy obliviously proceeded to conduct its phantom rerun and purportedly declared Appellant the winner and submitted his name to INEC as the candidate.

Upon all the surrounding circumstances of this case, the 1st Respondent was not bound by the arbitrary and disorderly conduct of the rerun which was in breach of the Constitution of the Federal Republic, the Electoral Act and the Constitution and Guidelines of the 2nd Respondent/PDP. Even on a careful perusal of the documents annexed to the 2nd Defendant/Appellant's Counter-Affidavit dated 3rd March, 2011, it is very glaring that the entire process leading to the so called rerun election was fraught with irregularities, For instance, Exhibit G(2) the purported Result Sheet which declared the Appellant winner is blank as to the necessary particulars like the names of the Electoral Officer, the Returning Officer, Number of Accredited Delegates, Nominated National Assembly Aspirant; Party Membership Card Numbers; Total Number of Votes Cast, Signature of the Returning Officer and date; Signature of Electoral Officer and Date and even the name of the Appellant.

The irregularities on the face of this documents like Exhibits C and D of the Appellant and 1st Respondent go a long way to further demonstrate that the documents relied upon by them were hurriedly gathered to fulfil their diabolic intent of depriving the 1st Respondent of his vested right to contest the election for the seat of the Constituency in question. In Exhibit G3, the Appellant's name appears in the "INEC 2011 Senatorial Elections Submission of Names Of Candidates By A Political Party", rather than in the House of Representatives Form.

Let it be drummed once again into the ears of the Appellant, the 2nd Respondent and other political parties as was held in Amaechi v. INEC (supra) at 311 parias. B - D per Oguntade J.S.C; that this court is duty bound the enforce the provisions of the parties constitution and Guidelines on party supremacy only to the extent that they do not conflict with statutory provisions like the Electoral Act and the Ground Norm of this Nation which is the Constitution of the Federal Republic of Nigeria. In any case, the constitution and Guidelines of the PDP were made by the political party and they are bound to be obeyed in the conduct of their primaries and other affairs of the party.

Turning to the question of party supremacy as espoused by the learned senior counsel for the Appellant and 2nd Respondent the major flaw in their case is still the erroneous belief that the political party is still a law unto itself and that their right to nominate a candidate to represent them at an election is still absolute and superior to the provisions of the Constitution and the Electoral Act. In the words of Rhodes-Vivour J.S.C; parties shall no longer be allowed to act arbitrarily or as they like in the exercise of its powers to nominate a candidate of their choice. The Courts now have the powers by section 87(10) of the Electoral Act to intervene and question the conduct of such primaries and where it is discovered that the primaries were conducted in breach of the parties' laid down Rules and Regulations, their constitution, the Electoral Act and the constitution of the Federal Republic of Nigeria as in this case, declare such primaries a nullity as the learned trial Judge had done in this case.

In line with Agbiti v. Nigerian Navy (2011) 4 NWLR (pt.1235) 175 at 216 para B; Per Adekeye, JSC; Ovuonwo V. Woko (2011) 17 NWLR (pt.1277) 522 at 556 paras D - F; and Abana v. Obi (supra); the learned trial Judge having found that the conduct of the rerun which threw up the Appellant as the 2nd Respondent's candidate was a nullity, the cancellation and rerun were void ab initio and of no legal consequences what so ever. Thus, it was as if nothing like that ever happened in the eyes of the law. The consequences are that the 1st Respondent's nomination was/is still subsisting whereas the Appellant got a pyrrhic and empty victory. See Iderima V.  Rivers State Civil Service Commission (2005) ALL FWLR (pt.285) 431; which followed Hart V. Military Governor of Rivers State (1976) NSCC (vol.10) 22, Shita-Bey V. The Federal Public Service Commission (1981) 1 S. C. 26 at 35 - 36 and Nnoli V. UNTH Management Board (1994) 13 KLR (pt.25) 1613 paras, 13 - 35 per Onu, JSC; Before rounding up this judgment, it should be noted that Articles 27(XII) and 50(f) of the Guidelines when considered side by side with sections 36(2) (a) and (b) of the constitution and 87(10) of the Electoral Act are void in so far as the make the decisions of the NWC or NEC as final and binding in which case they purportedly oust the jurisdiction of Courts.

As for the 3rd Respondent's Brief settled by Hassan M. Liman Esq. and the three issues formulated as falling for determination by this Honourable court, I have deliberately refused to consider the submissions of the learned Counsel in the Brief in view of the remark of the learned trial Judge at page 744 of the Records that: "let me point out that 3rd Defendant, the Independent National Electoral Commission has maintained a neutral position as an umpire that it is in this proceeding." The 3rd Respondent had also prayed the court to resolve the issues raised expeditiously to enable it know the actual candidate of the 1st Respondent for the Federal constituency election. The 3rd Respondent can therefore not turn summersault to take sides with the 1st Respondent herein on Appeal.

I agree therefore with the submissions of the learned senior counsel for the Appellant as articulated in his Reply Brief without much ado and more particularly, the five Grounds upon which they are predicated and against the back ground of the decisions in Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg. 277, Ngige v. Obi (2006) 14 NWLR (pt.999) 1 at 207; Akuneziri v. Okenwa (2005) 15 NWLR (pt.691) 526 at 551 paras. G - H Per Ayoola, JSC; Ndayako v. Mohammed (2006) 17 NWLR (pt.1009) 655 at 679; Ajide v. Kelani (1985) 3 NWLR (Pt.12) 248; Adore v. Ikebundu (2001) 14 NWLR (Pt.733) 385; per Rhodes-Vivour, JCA (as he then was); I.M.N.L. v. Pegofor Ind. Ltd. (2005) 15 NWLR (pt.947) 1 at 19; Uzodinma V. Izunaso & Ors. (2011) 17 NWLR (1275) 30 at 78 para. D Per Onnoghen, JSC; that the 3rd Respondent's Brief as well as the arguments therein contained go to no issue as it Constitutes an abuse of court Process and shall therefore be struck out.

Finally let me also remark that the learned Counsel for the 2nd Respondent too who was not a joint Appellant in this case and did not file a Respondent's Notice To Contend, had no business filing Respondents Brief wherein he urged the Court to allow the Appeal. The 2nd Respondent's Brief is an abuse of Court process which ought to be dismissed. See Imoniyame Holdings Ltd V. Soneb Ent. Ltd. (2010) All FWLR (pt.517) 627 at 640 - 641 paras. G - F; per Onnoghen, JSC. However, since no objection was raised by the 1st Respondent in this respect, w'80 shall allow the sleeping dog to lie.

On the whole this issue and indeed all the issues formulated in this Appeal are resolved against the Appellant. The Appeal therefore lacks merit and is accordingly dismissed in its entirety. The decision of the Federal High Court in Suit Number FHC/YL/CS/16/2011 is hereby affirmed. Parties shall bear their respective costs.

**SOTONYE DENTON WEST, J.C.A.:**

This Judgment just delivered in Appeal No: CA/YL/30/2011 was by Order of this court consolidated with its sister Appeal in Appeal No: CA/YL/39/2011, for purposes of effective determination and disposal of same.

My learned brother Ignatius Igwe Agube JCA has in its characteristic way expatiated on all the issues raised in this appeal with cogent reasoning's and conclusions.

I hereby adopt his reasoning and conclusions as mine.

Therefore, I also declare the appeal as lacking in merit.

I am obliged to dismiss same. Accordingly the decision of the Federal High Court in Suit No: FHC/YL/CS/16/2011 is hereby affirmed.

**ABUBAKAR ALKALI ABBA, J.C.A.:**

Hon. Justice Abubakar Alkali Abba, I have careful read and digested the Judgment of my learned brother HON. JUSTICE IGNATIUS IGWE AGUBE (JCA) which he just read to you and like him I agree that all the issues formulated in this APPEAL NO: CA/YL/30/2011 are resolved against Appellant.

I also agree that this appeal has no merit at all. I also dismiss this appeal in its entirety and affirm and confirm the decision of Hon. Justice Shuaibu in Suit No.FHC/YL/CS/16/2011.

I agree also that parties shall bear their respective cost.

I entirely agree with the lead Judgment that the 2nd Respondent brief is an abuse of court process which I hereby dismissed, I agree also that 1st Respondent failure or neglect or refusal to object. I also allow sleeping dog to continue to lie.

I agree that the learned Counsel for the 2nd Respondent too was not a joint Appellant and did not file a Respondent Notice to Contend, has no business filing Respondents brief wherein he urged the court to allow this Appeal No:CA/YL/30/2011.

I also agree that 3rd Respondent brief by senior Counsel's submissions and arguments go to no issue as it constitutes an abuse of court process and like my learned brother, I hereby strike out 3rd Respondents Counsel's submission and arguments without any delay.

I also agree with this lead Judgment that: Articles 2(xii) and 50(x) of the Guidelines when considered side by side with Sections 36(2) and Section 36(2) (b) of the 1999 Constitution and Section 87(10) of the Electoral Act are void in so far as they make the decision of the National Working Committee of PDP or INEC as final and binding in which case they purportedly oust the Jurisdiction of courts.

I also agree with Hon. Justice I. I. Agube who wrote and read this lead good Judgment that the learned trial Judge Hon. Justice S. M. Shuaibu having found that the conduct of the RERUN which threw up the Appellant as the 2nd Respondent's candidate was a nullity, the cancellation and RERUN were void and initio and of no legal consequences whatsoever, thus, it was as if nothing like that ever happened in the eyes of the law. I agree the consequences are that 1st Respondents nomination was and is stile subsisting.

I also agree that the Appellant got pyrrhic and empty victory. See the cases listed by Hon. Justice I. I. Agube in page 77 of his lead Judgment, 2nd paragraph line 3 to line 12.

On the whole, I 100% agree, 100% support the findings and conclusions. Appeal Dismissed, lower court decision affirmed and confirmed.