**MR. ANTHONY IGWEMMA & ANOR**

**v.**

**CHINEDU BENJAMIN OBIDIGWE & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 21ST DAY OF JUNE, 2019

SC.478/2019

**LEX (2020) - SC.478/2019**

**OTHER CITATIONS**

3PLR/2020/35 (SC)

(2019) LPELR-48112(SC)

**BEFORE THEIR LORDSHIPS**

OLUKAYODE ARIWOOLA, JSC

JOHN INYANG OKORO, JSC

AMIRU SANUSI, JSC

AMINA ADAMU AUGIE, JSC

PAUL ADAMU GALUMJE, JSC-end!

**BETWEEN**

1. MR. ANTHONY IGWEMMA

2. HON. VICTOR JIDEOFOR OKOYE - Appellant(s)

AND

1. CHINEDU BENJAMIN OBIDIGWE

2. ALL PROGRESSIVES GRAND ALLIANCE

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

**ORIGINATING COURT(S)**

1. COURT OF APPEAL, ENUGU DIVISION, ENUGU STATE

2. FEDERAL HIGH COURT AWKA, ANAMBRA STATE-end!

**REPRESENTATION**

Ifeanyi Obiakor, Esq. with him, O. M. Madukonje, Esq., P.I. Chukwudebele, Esq., Nnamdi Anagor, Esq. and D.O. Okoli, Esq. - For Appellant

AND

Roy O.U. Nwaeze, Esq. with him, I. E. Inyang, Esq. and E. J. Effiong, Esq. - for the 1st Respondent.

E. N. Onyibor, Esq. with him, O. P. Okonkwu, Esq. - for the 2nd Respondent.

S. E. Aruwa, Esq. with him, P. T. Soje, Esq., E. E. Mmeru, Esq., M. I. Balogun, Esq. and A. I. Idris, Esq. - for 3rd Respondent.-end!

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

ELECTION LAW - POLITICAL PARTY PRIMARY:- Complaint regarding primary of a political party – Question of Locus standi - Section 87(9) of the Electoral Act 2010 (as amended) – Need for a complainant to positively assert and show that he was an aspirant in the said primary election – Particulars a complainant must show - Effect of failure thereto

ELECTION LAW - POLITICAL PARTY PRIMARY:- Jurisdiction of court to review the conduct of the primary of a political party – Legal basis of – How properly activated

CONSTITUTIONAL LAW – JUDICIARY:- Section 233 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) – Jurisdiction of the Supreme Court – Whether can hear appeal from decision of the Federal High Court-end!

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER - JUDGMENT IN REM:- Meaning, nature, examples and binding effect of - Whether an issue which has been determined by a judgment in rem can be re-litigated as a fresh action

JURISDICTION - JURISDICTION OF THE SUPREME COURT: Whether the Supreme Court has jurisdiction to hear appeals directly from decisions of the High Court

WORDS AND PHRASES:- "Judgment in rem” – Meaning of

WORDS AND PHRASES:- “A judgment in rem is contra mudum” – Meaning of-end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellants filed an Originating Summons as Plaintiffs against 1st-3rd Respondents as Defendants seeking the following reliefs:-

1. A declaration of the Honourable Court that the 1st Defendant is not statutorily qualified to stand election as a candidate for the Anambra East and West Federal Constituency in the 2019 Election.

2. A declaration of the Honourable Court that the purported nomination of the 1st Defendant by the 2nd Defendant as its candidate for the Anambra East and West Federal Constituency in the 2019 General Election is unconstitutional, illegal, null and void and of no effect whatsoever.

3. A declaration of the Honourable Court that the purported nomination and submission of the 1st Defendant's name by the 2nd Defendant to the 3rd Defendant as its candidate for the Anambra East and West Federal Constituency in the 2019 General Election having violated the provisions of Section 31 (5) of the Electoral Act 2010 (as amended) is unconstitutional, illegal, null and void and of no effect whatsoever.

4. An order of the Honourable Court setting aside the illegal and purported nomination and submission of the 1st Defendants name by the 2nd Defendant to the 3rd Defendant as its candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

5. An order of the Honourable Court setting aside the illegal recognition and publication of the 1st Defendant's name by the 3rd Defendant as the 2nd Defendant's candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

6. A declaration of the Honourable Court that the 2nd Plaintiff is the validly nominated candidate of the 2nd Defendant's candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

7. An Order of perpetual injunction restraining the 1st Defendant from campaigning and parading himself as the 2nd Defendant's candidate for candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

8. An Order of perpetual injunction restraining the 3rd Defendant by itself, any of its officials, or people working for and through them from further recognizing the 1st Defendant as the 2nd defendant's candidate for candidate for the Anambra East and West Federal Constituency in the 2019 General Election. (found at pages 1 to 4 of the record of appeal).

Upon being served the Originating Summons, all the respondents filed memoranda of conditional appearances as they felt the appellants who did not take part in the primaries had no locus standi to institute the action. They however followed it up with the filing of their respective counter affidavits.

The 1st and 2nd Respondents also filed preliminary objection whereunder the judgment in suit No. OT/194/2018 delivered by Amaechina, J. of the Otuocha Judicial Division, Anambra State High Court of Justice was referenced and exhibited. It was contended for the 1st and 2nd Respondents that the aforesaid judgment of the Otuocha High Court had found that the alleged false information on age declaration was not proved and that the 1st Respondent was qualified to contest the subject election.

The 1st Respondent contended in his defence that the judgment in suit No. OT/194/2018 was a judgment in rem which binds the Appellants even though they were not parties to the action leading to the judgment. The 2nd Respondent on its part raised the point in its Notice of Preliminary Objection that suit No. FHC/AWK/CS/148/2018 was an abuse of Court process. The 2nd Respondent further contended that the originating summons filed by the Appellants was not endorsed as mandatorily required by the Sheriffs and Civil Process Act and that the said originating summons was therefore incompetent.

The trial Court heard all the objections together with the main matter and on 6th February, 2019, delivered Ruling on the Defendant's (now Respondents) preliminary objections on pages 630 - 631 of the Record of Appeal, the learned Trial Judge held as follows:-

"No matter how one chooses to compare the two suits, their basic similarities are unmistakable. The arrow head in both suits is the 2nd defendant in this suit. The reliefs sought herein are the same in thrust with those in the earlier suit. In my considered view, this suit constitutes a clear abuse of Court processes. It is liable to be dismissed. Having thus held, it becomes unnecessary to proceed into any other or further determination herein. This suit is accordingly hereby dismissed."

Dissatisfied with the above decision by the learned trial Judge, the Appellants filed Notice of Appeal against the said judgment at the Court of Appeal.-end!

DECISION(S) APPEALED AGAINST

The Court of Appeal heard the appeal and on 12th April, 2019 delivered its judgment holding inter alia:-

1. That the issue of qualification of the 1st Respondent had been settled with finality by the judgment of Amaechina, J., of the Otuocha Judicial Division of the Anambra State High Court of Justice and that that same issue cannot be relitigated before a Court of coordinate jurisdiction as sought by the Appellants in suit No. FHC/AWK/CS/148/2018.

2. That suit No. FHC/AWK/CS/148/2018 was therefore an abuse of Court process.

3. That the Originating Summons filed by the Appellants was not properly endorsed as mandatorily required by the Sheriffs and Civil Process Act thereby rendering the originating summons incompetent.-end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the Court below was not in error when it affirmed the decision of the trial Court that suit No. FHC/AWK/CS/148/2018 constituted an abuse of Court process in view of the judgment in suit No. OT/194/2018.

2. Whether the trial Court was justified when it failed to consider the second issue submitted to it for consideration and determination.

3. Whether the non-service of the 2nd Respondent's Notice of Contention on the Appellants did not constitute a breach of their fundamental right of fair hearing.-end!

*BY RESPONDENTS*

*1ST RESPONDENT*

1. Whether the Court below was not in error when it affirmed the decision of the trial Court that suit No. FHC/AWK/CS/148/2018 constituted an abuse of Court in view of the judgment in suit No. 0T/194/2018.

2. Whether the non-service of the 2nd Respondent's Notice of Contention on the Appellants did not constitute a breach of their fundamental right of fair hearing.

3. Whether the trial Court was justified when it failed to consider the second issue submitted to it for consideration and determination.-end!

*2ND RESPONDENT*

1. Whether the Court of Appeal was right in dismissing the appellants' appeal and affirming the decision of the trial Federal High Court.

2. Whether the 2nd Respondent's Notice of Contention and the argument thereof was not served on the appellants so as to raise issue off air hearing.

3RD RESPONDENT

1. Whether the Court below was not in error when it affirmed the decision of the trial Court that suit No. FHC/AWK/148/2018 constituted an abuse of Court in view of the judgment in suit No. OT/194/2018 and whether the Court below was justified in failing to consider the other issues submitted for determination.-end!

*AS ADOPTED BY COURT*

1. Issue 2 distilled by the appellants declared incompetent being an invitation to this Court to hear an appeal directly from the High Court and is accordingly discountenanced and struck out.

2. The Supreme Court resolved the Appeal based on appellants' issues one and three. -end!

DECISION OF SUPREME COURT

1. The trial Federal High Court had no jurisdiction to try this case as Section 87 (9) of the Electoral Act (supra) was not properly and validly invoked. The appellants were not aspirants at the primary election.

2. The suit giving birth to this appeal, apart from being a clear abuse of Court process, the appellants had no locus standi to institute same. The appeal by the appellants is unmeritorious and is hereby dismissed.

3. There is no need to consider the last issue in this circumstance.-end!

**MAIN JUDGMENT**

JOHN INYANG OKORO, J.S.C. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Court of Appeal, Enugu Division delivered on 12th April, 2019 which affirmed the judgment of the Federal High Court Awka, dismissing the suit of the Appellants, relying only on one ground out of the various grounds raised by the 1st and 2nd Respondents in their various Notices of Preliminary Objection. The facts of the case giving birth to this appeal are as hereunder stated:-

The Appellants filed an Originating Summons as Plaintiffs against 1st -3rd Respondents as Defendants in suit No. FHC/AWK/CS/148/ 2018. In the said Originating Summons, the following questions were formulated:-

1. Whether having regards to the provisions of Section 31 (5) and 31(6) of the Electoral Act 2010 (as amended), the 1st defendant was qualified to be nominated as the All Progressive Grand Alliance (APGA) candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

2. Whether having regard to the provisions of Section 87(1), 87(2) 87(4) (c)(ii) of the Electoral Act 2010 (as amended), Rule 10(1) and (2) of the APGA Electoral Guidelines for Primary Election 2018, the 2nd Plaintiff is the validly nominated candidate of the 2nd defendant to represent Anambra East and West Federal Constituency in 2019 General Election.

3. Whether having regard to the provisions of Section 87(1), 87(2) 87(4)(c)(ii) of the Electoral Act 2010 (as amended) Rule 10(1) and (2) of the APGA Electoral Guidelines for Primary Election 2018, the 2nd defendant ought not to have submitted the name of the 2nd Plaintiff to the 3rd defendant as its validly nominated candidate of the 2nd defendant to represent Anambra East and West Federal Constituency in 2019 General Election.

The Appellants also sought the following reliefs:-

1. A declaration of the Honourable Court that the 1st Defendant is not statutorily qualified to stand election as a candidate for the Anambra East and West Federal Constituency in the 2019 Election.

2. A declaration of the Honourable Court that the purported nomination of the 1st Defendant by the 2nd Defendant as its candidate for the Anambra East and West Federal Constituency in the 2019 General Election is unconstitutional, illegal, null and void and of no effect whatsoever.

3. A declaration of the Honourable Court that the purported nomination and submission of the 1st Defendant's name by the 2nd Defendant to the 3rd Defendant as its candidate for the Anambra East and West Federal Constituency in the 2019 General Election having violated the provisions of Section 31 (5) of the Electoral Act 2010 (as amended) is unconstitutional, illegal, null and void and of no effect whatsoever.

4. An order of the Honourable Court setting aside the illegal and purported nomination and submission of the 1st Defendants name by the 2nd Defendant to the 3rd Defendant as its candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

5. An order of the Honourable Court setting aside the illegal recognition and publication of the 1st Defendant's name by the 3rd Defendant as the 2nd Defendant's candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

6. A declaration of the Honourable Court that the 2nd Plaintiff is the validly nominated candidate of the 2nd Defendant's candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

7. An Order of perpetual injunction restraining the 1st Defendant from campaigning and parading himself as the 2nd Defendant's candidate for candidate for the Anambra East and West Federal Constituency in the 2019 General Election.

8. An Order of perpetual injunction restraining the 3rd Defendant by itself, any of its officials, or people working for and through them from further recognizing the 1st Defendant as the 2nd defendant's candidate for candidate for the Anambra East and West Federal Constituency in the 2019 General Election. (found at pages 1 to 4 of the record of appeal).

Upon being served the Originating Summons, all the respondents filed memoranda of conditional appearances as they felt the appellants who did not take part in the primaries had no locus standi to institute the action. They however followed it up with the filing of their respective counter affidavits. The 1st and 2nd Respondents also filed preliminary objection.

In the counter affidavits relied upon by the 1st and 2nd Respondents, the judgment in suit No. OT/194/2018 delivered by Amaechina, J. of the Otuocha Judicial Division, Anambra State High Court of Justice was referenced and exhibited. It was contended for the 1st and 2nd Respondents that the aforesaid judgment of the Otuocha High Court had found that the alleged false information on age declaration was not proved and that the 1st Respondent was qualified to contest the subject election.

The 1st Respondent contended in his defence that the judgment in suit No. OT/194/2018 was a judgment in rem which binds the Appellants even though they were not parties to the action leading to the judgment. The 2nd Respondent on its part raised the point in its Notice of Preliminary Objection that suit No. FHC/AWK/CS/148/2018 was an abuse of Court process. The 2nd Respondent further contended that the originating summons filed by the Appellants was not endorsed as mandatorily required by the Sheriffs and Civil Process Act and that the said originating summons was therefore incompetent.

The trial Court heard all the objections together with the main matter and on 6th February, 2019, delivered Ruling on the Defendant's (now Respondents) preliminary objections on pages 630 - 631 of the Record of Appeal, the learned Trial Judge held as follows:-

"No matter how one chooses to compare the two suits, their basic similarities are unmistakable. The arrow head in both suits is the 2nd defendant in this suit. The reliefs sought herein are the same in thrust with those in the earlier suit. In my considered view, this suit constitutes a clear abuse of Court processes. It is liable to be dismissed. Having thus held, it becomes unnecessary to proceed into any other or further determination herein. This suit is accordingly hereby dismissed."

Dissatisfied with the above decision by the learned trial Judge, the Appellants filed Notice of Appeal against the said judgment.

The 1st Respondent on his part filed the 1st Respondent's Notice of Contention as can be found on pages 730 - 731 of the record of appeal where he contended in the main that the judgment or Ruling of the trial Court be affirmed on ground other than the grounds relied upon by the trial Court, to wit: that the judgment of Otuocha High Court is a judgment in rem which also binds the Appellants.

The 2nd Respondent on its own part filed the 2nd Respondent's Notice of Contention appearing on pages 636 -636A of the record of appeal. In this Notice, the 2nd Respondent contended inter alia that the originating summons by which this action was commenced was not properly endorsed as mandatorily required.

The Court below heard the appeal and on 12th April, 2019 delivered its judgment and held inter alia:-

1. That the issue of qualification of the 1st Respondent had been settled with finality by the judgment of Amaechina, J., of the Otuocha Judicial Division of the Anambra State High Court of Justice and that that same issue cannot be relitigated before a Court of coordinate jurisdiction as sought by the Appellants in suit No. FHC/AWK/CS/148/2018.

2. That suit No. FHC/AWK/CS/148/2018 was therefore an abuse of Court process.

3. That the Originating Summons filed by the Appellants was not properly endorsed as mandatorily required by the Sheriffs and Civil Process Act thereby rendering the originating summons incompetent.

Again, the appellants, not being satisfied with the said judgment has appealed to this Court vide Notice of Appeal filed on 23rd April, 2019.

From the three grounds of appeal as contained in the Notice of appeal, the learned counsel for the appellants, Ifeanyi Obiakor Esq., has distilled three issues for the determination of this appeal. They are contained in the Appellants' brief filed on 16/5/19 and adopted on 13/6/19 at the hearing of this appeal. The issues are:-

1. Whether the Court below was not in error when it affirmed the decision of the trial Court that suit No. FHC/AWK/CS/148/2018 constituted an abuse of Court process in view of the judgment in suit No. OT/194/2018.

2. Whether the trial Court was justified when it failed to consider the second issue submitted to it for consideration and determination.

3. Whether the non-service of the 2nd Respondent's Notice of Contention on the Appellants did not constitute a breach of their fundamental right of fair hearing.

The 1st Respondent's brief was settled by Roy O. U. Nwaeze and filed on 7/6/19. In it, three issues are also formulated for the determination of this appeal. They are similar to those of the Appellants but couched differently as follows:-

1. Whether the Court below was not in error when it affirmed the decision of the trial Court that suit No. FHC/AWK/CS/148/2018 constituted an abuse of Court in view of the judgment in suit No. 0T/194/2018.

2. Whether the non-service of the 2nd Respondent's Notice of Contention on the Appellants did not constitute a breach of their fundamental right of fair hearing.

3. Whether the trial Court was justified when it failed to consider the second issue submitted to it for consideration and determination.

For the 2nd Respondent, E. N. Onyibor, Esq., of counsel, distilled two issues as follows:-

1. Whether the Court of Appeal was right in dismissing the appellants' appeal and affirming the decision of the trial Federal High Court.

2. Whether the 2nd Respondent's Notice of Contention and the argument thereof was not served on the appellants so as to raise issue off air hearing.

Learned counsel for the 3rd Respondent, Shaibu Enejoh Aruwa, Esq., distilled one double barrel issue for determination thus:-

1. Whether the Court below was not in error when it affirmed the decision of the trial Court that suit No. FHC/AWK/148/2018 constituted an abuse of Court in view of the judgment in suit No. OT/194/2018 and whether the Court below was justified in failing to consider the other issues submitted for determination.

The Appellants have filed reply briefs to the Respondents' respective briefs. I shall consider them where need arises.

By Section 233 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Supreme Court shall have jurisdiction, to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Court of Appeal. And by Section 240 of the said Constitution, appeals from the decisions of Federal High Courts lie to the Court of Appeal. There is no section of the Constitution or any other law whatsoever which allows an appeal to lie directly from the Federal High Court to the Supreme Court of Nigeria.

On a calm reading of appellants' issue No. 2, it is clear that the appellants are praying this Court to consider the conduct of the learned trial Judge who failed to consider their second issue submitted to the Federal High Court. It states:-

"Whether the trial Court was justified when it failed to consider the second issue submitted to it for consideration and determination."

Clearly, the above issue wants this Court to assume the jurisdiction of the Court of Appeal to hear an appeal directly from the High Court. The Supreme Court cannot do that. This Court only hears appeals from the Court of Appeal and not from the High Court. See Oduntan & Ors v Akibu & Ors (2000) 7 SC (pt. 11) page 106, (2000) FWLR (pt. 12) 1982, Nweze v The State (2017) LPELR - 42344 (SC), Attorney General of Oyo State & Anor v Fairlakes Hotel Ltd (1988) LPELR - 24926 (SC), Jimoh & Ors v Akande & Anor (2009) 5 NWLR (pt 1135) 549, Umana v NDIC (2016) LPELR - 42556 (SC).

All I have said above is that issue 2 by the appellants is incompetent being an invitation to this Court to hear an appeal directly from the High Court. This is not possible. Appellants' second issue is accordingly discountenanced and struck out.

Having struck out appellants' issue No. 2, I am left with issues one and three. I shall therefore determine this appeal based on appellants' issues one and three.

ISSUE 1

On the 1st issue, the learned counsel for the appellants submitted that an abuse of Court can only arise where the action is between the same parties with respect to the same subject matter, relying on Ogoejeofo vs Ogoejeofo (2006) 3 NWLR (pt 966) 205, Okafor v Attorney General of Anambra State, (1991) 6 NWLR (PT 200) 659. He contended that assuming but not conceding that the subject matter of the first declaration sought by the Appellants in suit No. FHC/AWK/CS/148/2018 may be the same with that in OT/194/2018, that alone will not constitute suit No. FHC/AWK/CS/148/2018 an abuse of Court Process, relying on Oguebego v PDP (2016) EJSC 140 at 173.

Furthermore, learned counsel submitted that apart from not being parties in suit No. OT/194/2018, the parties in the two suits do not have a common interest such that the Appellants should be bound by the outcome of the said suit. That the Appellants' interest which is that the 2nd appellant contested the Primary Election of the 2nd Respondent and was nominated to fly the flag of the 2nd Respondent in the 2019 General Election while that of the plaintiff in suit No. OT/194/2018 is only that the 1st Respondent is not qualified to be nominated as candidate of the 2nd Respondent for the Anambra East and West Federal Constituency. He urged this Court to resolve this issue in favour of the Appellants.

In response, the 1st Respondent submitted that the Court below held that the issue of qualification of the 1st Respondent was settled by Amaechina, J., of Otuocha Division of Anambra State High Court and that it will not be justified for a Court of coordinate jurisdiction to reopen the said issue. That the appellants, in his notice of appeal did not challenge the findings of the Court below that the issue of qualification of the 1st Respondent had been settled with finality by the High Court of Anambra State.

Learned counsel stated that assuming but not conceding that there was a wrong expression on the part of the Court below by holding that the Federal High Court action was an abuse of Court process in the face of judgment of the High Court of Anambra State in suit No. OT/194/2018, that holding did not lead to any miscarriage of justice. Learned counsel contended that their notice of contention which they filed sought the order of the lower Court affirming the judgment on the ground that it was a judgment in rem which binds not only the parties in that case but also on all parties including the appellants herein. That the Court below in acceding to the 1st Respondent's Notice of Contention, came to the conclusion that the issue of qualification of the 1st Respondent had been settled and cannot justifiably be reopened for adjudication by a Court of coordinate jurisdiction, relying onMaihaja v Gaidam & ors (2017) LPELR - 42474 (SC). He urged this Court to resolve this issue against the appellants.

In his submission, the learned counsel for the 2nd Respondent submitted that this is a concurrent findings of the two lower Courts which the appellants have failed to show are perverse. Secondly, he contended that the parties subject matter and issues in both suits are the same. That a close textual juxtaposition of the principal reliefs in the two suits will show that they are patently the same as each seeks a declaration that the 1st Respondent is not qualified to contest the subject election.

Learned counsel submitted further that the appellants were privies to suit No. OT/194/2018 having instituted the earlier suit using false exterior and therefore caught by the doctrine of estoppel per rem judicata and res judicata, relying on Lawal v Salami (2002) 2 NWLR (pt 752) 687, Gbadamosi v Dairo (2001) 6 NWLR (pt 708) 137. Referring to Exhibit "APGA - M3" on pages 149 -166 of the record of appeal, he submitted that all the conditions for estoppel per rem judicata to operate are established. He urged this Court to resolve this issue against the appellants.

The learned counsel for the 3rd respondent submitted that the question posed for determination by the appellants before the Federal High Court had already been determined by the Anambra State High Court and it will therefore amount to an abuse of Court process to subject the same question for determination before another Court of coordinate jurisdiction. He also urged this Court to resolve this issue against the appellants.

In Appellants' reply brief to the 1st Respondents' brief, the Appellants contended that the decision in suit No. OT/194/ 2018 did not with finality address the issue of qualification of the 1st Respondent to contest the election. According to learned counsel for the Appellants, their own contention is that the 1st Respondent has four different dates of birth.

In reply to 2nd Respondent's brief, learned Appellant's counsel submitted that the 2nd Respondent did not serve the notice of contention on them and as such they were denied fair hearing.

RESOLUTION:

One issue which appears fairly settled in this appeal is that the High Court of Anambra State in suit No. OT/194/2018 had settled the issue of the qualification of the 1st Respondent to contest election into the House of Representatives in Anambra East and West Federal Constituency. The major issue in that case was that the 1st Respondent was not qualified based on issues relating to falsification of age. The High Court of Anambra State decided that the 1st Respondent did not falsify his age and thus cleared him to contest the said primary election. In other words, the issue as to his status when it comes to his age was settled by that Court. The appellants had subsequently filed this instant suit in the Federal High Court Awka seeking the said Court to determine the status of the 1st Respondent in connection with his age and competence to be nominated the candidate of the 2nd Respondent to contest the subject election.

In their concurring judgments, the two Courts below made the following conclusions in respect of the matter. First, the Federal High Court on page 630 of the record of appeal:-

"No matter how one chooses to compare the two suits, their basic similarities are unmistakable. The arrow head in both suits is the 2nd Defendant in this suit. The reliefs sought therein the same in thrust with those in the earlier reliefs. In my considered view, this suit constitutes a clear abuse of Court process."

Then on pages 757 - 758, the Court below made the following findings/decisions:-

"There is no doubt that the main issue and central focus of suit No. OT/194/2018 is the qualification of the 1st Respondent to be nominated as candidate of the 2nd Respondent for the Anambra East and West Federal Constituency, Anambra State in the 2019 General Election. Before the conclusion of that suit No. OT/194/2018 which was commenced at the High Court of Anambra State, this present action was instituted on the 5th November, 2018. Judgment was given in the said suit No. OT/194/2018 by the High Court of Anambra State on the 9th November, 2018 long before this suit became ripe for hearing, thereby settling the issue of the qualification of the 1st Respondent to contest the said election. The Appellants herein had the option of abiding by that decision or as parties interested in the subject matter of dispute by filing - necessary processes that would enable them appeal it pursuant to Section 243 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Submitting the same issue for determination before another Court of coordinate jurisdiction was improper and as rightly held by the learned trial Judge, an abuse of the Court's process. Couching it in fine language the substance of the essential question submitted to the trial Court in this case and having consequential questions and reliefs did not change the character and essence of the main dispute. Ultimately, the main question now posed in this action has been answered by a Court of coordinate jurisdiction and the existence of this suit before the trial Court would no longer be justified."

It must be noted that the Appellants and the 1st Respondents are members of the same political family - the 2nd Respondent i.e. All Progressives Grand Alliance. Also the party who sued the 1st Respondent in OT/194/ 2018 is also a member of APGA, the same family. It follows that members of the 2nd Respondent who lost out in the nomination process to become candidate of the 2nd Respondent in the election aforesaid are a more united members of the same family. They have the same grievance, interest and goal to stop the 1st Respondent from being nominated the candidate of the 2nd Respondent. That is why the plaintiff in OT/194/2018 went to Court to stop the 1st Respondent from being nominated. The vehicle was issue of his age falsification. Had he succeeded, the present appellants would definitely not file their present suit on the same issue. But because "they" lost in that suit, they decided to take a second bite on the cherry. That is why I totally agree with the two Courts below that judgment in OT/194/2018 was a judgment in rem which binds the parties in the litigation and others having anything to do with the status of the 2nd Respondent so declared and pronounced by the Anambra State High Court.

Of a judgment in rem, I made it so clear in Alh. Isa Noekoer v Executive Governor of Plateau State & Ors (2018) LPELR - 44350 (SC) at pages 44 - 45 paragraphs B- E, as follows:-

"This Court has in quite a number of cases, not only defined the two concepts but also distinguished them. In Ikenye Dike & ors v Obi Nzeka U. & Ors (1986) LPELR - 945 (SC) at pages 12 - 13, paragraphs C - B - this Court held as follows. "A judgment is said to be in rem when it is an adjudication pronounced upon the status of some particular thing or subject matter by a Tribunal having the jurisdiction and the competence to pronounce on that status. Such a judgment is usually and invariably founded on proceedings instituted against or on something or subject matter whose status or condition is to be determined. That is why a judgment in rem is a judgment contra-mundum - binding on the whole world - parties as well as non-parties..."

In fact this Court made the point very clear in Ogboru & Anor v Uduaghan & Ors (2011) LPELR - 8236 (SC) at pages 41 - 42 paragraph D thus:-

"I find it convenient at this stage to define a judgment in Rem for the advantage of the appellant. "A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing as distinct from the particular interest of a party to the litigation. Apart from the application of the term to persons, it must affect the "res" in the way of condemnation, forfeiture, declaration, status or title.

(a) Examples are judgment of a Court over a will creating the status of administration.

(b) Judgment in a divorce by a Court of competence jurisdiction dissolving a marriage declaring the nullity or affirming its existence.

(c) Judgment in an election petition. The feature of a judgment in rem is that it binds all persons whether a party to the proceedings or not. It stops anyone from raising the issue of the status of persons or things, or the rights or title to properly litigated before a competent Court.

It is indeed conclusive against the entire world in whatever it settles as to status of the person or property. All persons whether party to the proceedings or not are stopped from averring that the status of persons is other than the Court has by such judgment declared or made it to be."

Okpalugo vs Adeshoye (1996) 10 NWLR (pt 476) page 77, Fointrades Ltd. vs Universal Association Co. Ltd. (2002) 8 NWLR (pt 770) page 699, Ogbahon vs Reg. Trustees CCCG (2002) 1 NWLR (pt 749) page 675, Olaniyan vs Fatoki (2003) 13 NWLR (pt 837) page 273." See also Yanaty Petrochemical Ltd. v EFCC (2017) LPELR-43473 (SC), Gbemisola v Bolarinwa & Ors (2014) 9 NWLR (pt 1411) page 1, Sosan & ors v Ademuyiwa (1986) 1 NSCC 673 at 680.

A judgment in rem, being contra mudum, binds parties and their privies and non-parties as well. Therefore the argument of the appellants that they were not parties in suit No. OT/194/ 2018 and as such are not bound by that judgment is puerile. Where a Court of competent jurisdiction has finally settled a matter in dispute between parties, neither party nor privy may relitigate that issue as under the guise of bringing a fresh action, since the matter is said to be res judicata. The judgment in suit No. OT/194/ 2018 is a judgment of a competent Court and a judgment in rem which has determined the status of the 1st Respondent. As was rightly held by the two Courts below, a relitigation of the same issue of the falsification of age of the 1st respondent by the appellants cannot be justified as members of his party had earlier done so. See Flow Farm Industries Ltd v University of lbadan (1993) NWLR (pt 290) 719 at 724, Cole v Jibunoh & Ors (2016) LPELR - 40662 (SC) pages 16 - 17 paragraphs D - A. I agree with the two Courts below that suit No. FHC/AWK/CS/ 2018 was an abuse of Court process.

I would have ended this judgment here but for the issue raised by the 2nd respondent that the appellants did not take part in the primaries which has given birth to this suit/appeal. I have carefully perused the originating summons and the affidavit in support and I can deduce that the 1st appellant is a member of APGA and a registered voter in Anambra East and West Federal Constituency. That is all. There is nothing on record to show that he was an aspirant in the subject primary election. At best, he has not said so. Now Section 87(9) of the Electoral Act 2010 (as amended) provides:-

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

The law is trite that where a political party conducts its primary and a dissatisfied contestant or aspirant at the primary complains about the conduct of the primaries, the Courts have jurisdiction by virtue of Section 87 (9) of the Electoral Act reproduced above to examine if the conduct of the primary elections was in accordance with the parties constitution and guidelines. This is so because in the conduct of primaries, the Courts will not allow a political party to act arbitrarily or as it likes. A person who did not take part in the primary as a candidate or aspirant cannot invoke Section 87(9) of the Electoral Act, 2010 (as amended) to institute a case in Court. See Hope Uzodinma v Senator Osita Izunaso (2011) 5 MJSC (pt 1) 27, PDP v Sylva & Ors (2012) LPELR - 7814 (SC), Maihaja v Gaidam & ors (2017) LPELR - 42474 (SC), APGA v Anyanwu (2014) 7 NWLR (pt 1407) 541, Ukachukwu v PDP (2014) 17 NWLR (pt 1435) 134, Daniel v INEC (2015) 3-4 MJSC 1 at 45. In other words, a party who did not take part in the primaries as an aspirant has no locus standi to invoke the jurisdiction of the High Court in the circumstance. The 1st appellant had no locus standi to institute this suit giving birth to this appeal.

As regards the 2nd Plaintiff/Appellant, the assertion by the respondents that he did not take part in the primary election of the 2nd Respondent held on 2/10/18 is unassailable. Apart from the fact that the 2nd Appellant failed to show in his originating summons and affidavit in support how many votes he scored to be declared winner, he did not show how the primary election was conducted. This gives vent to Exhibit "APGA CA4" at pages 108 - 111 of the record, particularly page 109 thereof where it is clearly shown that the 2nd Appellant was "NOT CLEARED" to contest the primary election. That Exhibit is the report of screening exercise conducted by the 2nd Respondent. The said report is signed by Ozonpu Dr. Victor Ike Oye, the National Chairman of APGA. As was observed by the learned counsel for the 2nd Respondent, the Appellants have not challenged the 2nd Appellants' disqualification by the 2nd Respondent in any Court. They carefully avoided this aspect. This exhibit supports the Respondents' assertion that the 2nd appellant did not take part in the primary election. Even if the 2nd appellant was an aspirant in the primary election, his case was vitiated by the presence of the 1st appellant who was clearly not an aspirant but who swore to the affidavit in support of the Originating Summons. This was a virus which vitiated the suit.

I hold the view that even the trial Federal High Court had no jurisdiction to try this case as Section 87 (9) of the Electoral Act (supra) was not properly and validly invoked. The appellants were not aspirants at the primary election. I am surprised that the two Courts below did not say anything in this regard.

On the whole, it is crystal clear that the suit giving birth to this appeal, apart from being a clear abuse of Court process, the appellants had no locus standi to institute same. The outcome is that the appeal by the appellants is unmeritorious and is hereby dismissed. There is no need to consider the last issue in the circumstance.

Appeal Dismissed. I assess the costs in favour of the 1st and 2nd Respondents against the appellants in the sum of N500,000.

**OLUKAYODE ARIWOOLA, J.S.C.:**

I had the privilege of reading in draft the lead judgment of my learned brother Okoro, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal is unmeritorious and should be dismissed. I too will dismiss the appeal.

**AMIRU SANUSI, J.S.C.:**

I was obliged with a copy of the Judgment just delivered by my learned brother J. I Okoro JSC. In the said Judgment all the live issues raised and canvassed by the parties' learned counsel were adequately addressed, before His lordship arrived at the conclusion that this appeal is devoid of any merit.

I am in entire agreement with such reasoning and the conclusion arrived at in dismissing the appeal for being lacking in substance. Appeal is also dismissed by me and I endorse the order on costs made in the lead judgment.

**AMINA ADAMU AUGIE, J.S.C.:**

I had a preview of the lead Judgment just delivered by my learned brother, Okoro, JSC, and I agree completely with his reasoning and conclusion. He addressed the Issues raised by Parties, for and against their respective positions in this Appeal meticulously, and decisively, and I see no reason to belabour the points he made.

Suffice it to say that I adopt what he said and it is on that premise that I also dismiss this Appeal and abide by the Order as to costs. The Appeal is dismissed.

**PAUL ADAMU GALUMJE, J.S.C.:**

I have read before now the judgment just delivered by my Learned brother, John Inyang Okoro JSC, and I agree that this appeal lacks merit and should be dismissed. It is accordingly dismissed by me. I endorse all the consequential orders made in the lead judgment including order as to costs.-end!