**CHIEF SIR VICTOR UMEH**

**V.**

**ICHIE OKULI JUDE EJIKE**

IN THE COURT OF APPEAL OF NIGERIA

THE 15TH DAY OF JULY, 2013

CA/E/84/2013

**LEX (2013) - CA/E/84/2013**

OTHER CITATIONS

2PLR/2013/37

(2013) LPELR-23506(CA)

**BEFORE THEIR LORDSHIPS**

PAUL ADAMU GALINJE, JCA

MODUPE FASANMI, JCA

TOM SHAIBU YAKUBU, JCA

**BETWEEN**

CHIEF SIR VICTOR UMEH - Appellant(s)

AND

ICHIE OKULI JUDE EJIKE - Respondent(s)

**REPRESENTATION**

WOLE OLANIPEKUN, SAN., P. I. N. IKWUETO, SAN; with E. I. OBINKA, Esq., KELECHI UDEOYIBO, Esq., NNAMDI ANYACHEBELU, Esq., ADEMOLA ADESINA, Esq.,) - For Appellant

AND

ONYECHI IKPEAZU, SAN; with CHUDI OBIEZE, Esq.) - For Respondent

**ORIGINATING STATE**

ENUGU STATE HIGH COURT

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

CONSTITUTIONAL LAW – ELECTION MATTERS:- Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 – Rule that court has no jurisdiction over internal affairs of political parties and constitutional powers of court to determine matters as to interpretation of documents, constitutions, statutes and law apropos the rights of the individuals governed by those documents, constitution or statutes – Whether court has power over such interpretative exercises pertaining to political party – Whether a function which a political party cannot appropriate under the guise of domestic affair of the party or by giving it a label of political question

ELECTORAL MATTERS - INTERNAL AFFAIRS OF A POLITICAL PARTY: Jurisdiction of court over internal affairs of a political party – Whether political questions as to how a political party should be run or who should be its candidate at an election is strictly a matter within the exclusive jurisdiction of the political parties – Proper order when court is asked to interfere– Whether to strike out the case

ELECTORAL MATTERS – JURISDICTION OF COURT:- Limited jurisdiction of the courts under Section 87(9) of the Electoral Act, 2010 – Whether court is precluded from interfering in the internal affairs of the political party which is not justiciable in a court of law, so long as the political party complies with its own constitution and guidelines with respect to nomination and sponsorship of its candidates to represent it in an election

ELECTORAL MATTERS – RIGHTS OF MEMBERS OF POLITICAL PARTIES:- Powers of the courts donated to them vide Section 6 of the 1999 Constitution of the Federal Republic of Nigeria – Rule that courts cannot "interfere in matters pertaining to political parties in all circumstances" – Resolution of seeming contradiction – Duty of political parties to obey its own constitution – Power of court to interpret and enforce same - Where a candidate at a political party primary election emerged as the winner thereof and he was subsequently replaced or substituted with another candidate who also participated in the same primary election and lost - Whether the winner of the primary election can approach the courts which have been donated the jurisdiction under Section 87(9) of the Electoral Act, 2010, as amended, to ventilate his grievance against his substitution by his political party – Duty of to intervene and ensure that the political party obeys its own constitution and guidelines

ELECTORAL MATTER - LOCUS STANDI:- Conditions to be met before a party is deemed clothed with requisite locus standi or sufficient interest to bring an action in an electoral matter – Competency of a member of a party to bring suit challenging validity of the continued occupation of an office of the party by a named party official

**PRACTICE AND PROCEDURE ISSUES**

ACTION **–** LOCUS STANDI:- Meaning - Legal capacity of the suitor or claimant to institute or bring an action in court against a defendant - Where the plaintiff has nothing to show prima facie that the action of the defendant has adversely affected his own interest = Whether he would have no legal capacity or locus standi to sue such a defendant

ACTION **-** MATTER IN ISSUE:Meaning – Matter properly raised as an issue which has becomes relevant for deciding a disputed question -Duty of a court not to deal with and determine any issue or question which has not been properly raised or prayed for by a party

ACTION - NECESSARY PARTY:- Meaning - Necessary party to an action in court as that person, without whom such an action, "cannot be effectively and completely" determined and disposed of – Judgment made against a person not party to the suit – Whether amounts to breach of fair hearing tights and thus cannot be allowed to stand

APPEAL - GROUND OF APPEAL:- Nature and purport of a ground of appeal – Need to look closely at the main ground with the particulars thereof

APPEAL - ISSUES FOR DETERMINATION:-Whether the parties and the Court are bound and confined to the issues presented to the court for determination - jurisdiction to entertain an academic question or matter

APPEAL - PRELIMINARY OBJECTION:- Nature of – Need for it to deal strictly with the law - Where the preliminary objection leaves the exclusive domain of the law and flirts with the facts of the case – Whether then the burden rests with the objector to justify the objection by adducing facts in an affidavit – How treated

APPEAL - TWO APPEALS:- Two separate appeals which were not consolidated and therefore not heard at the same time – Whether ny Order 10 rule 1 of the Court of Appeal Rules, one notice of preliminary objection can apply to more than one appeal

APPEAL:- Whether court is bound and must confine itself to issues submitted to it by the parties- when a matter is said to be in issue

COURT - POWER OF COURT:- Rule that a trial Court has no right to grant a remedy which has not been claimed by the Plaintiff, because it has no power to do so – Whether a Court of law may award less, but not more than what the parties have claimed - Duty of court in civil cases to render unto everyone according to his proven claims – Justification

EVIDENCE - ADMITTED FACTS**:-** Rule that fact admitted need no further proof – Effect

EVIDENCE - AFFIDAVIT:-Any affidavits before the court – Whether must be read in whole – Whether court has no discretion to choose and pick which paragraphs of the affidavit it wishes to deploy in resolution of issues

EVIDENCE - DUTY OF COURT:- Whether it is not the duty of the court to fish out, scuttle around and scrounge for evidence in order to aid the case of a party who cannot produce such evidence by himself

EVIDENCE:- Locus standi – Evidence that will sustain same

JURISDICTION - ISSUE OF JURISDICTION:- How determined – Whether in order to determine whether or not a court is imbued with the jurisdiction to entertain a cause or matter filed before it, the only process of court to be examined at that stage is the plaintiff's statement of claim only

JURISDICTION - ISSUE OF JURISDICTION: Nature of and implications for the competence of the Court - When the issue of jurisdiction is raised by the parties or by the court suo motu – Duty of court to determine same as a matter of priority

INTERPRETATION OF SECTIONS:- Section 87(9) of the Electoral Act, 2010, as amended

WORDS AND PHRASES - LOCUS STANDI: Meaning of

WORDS AND PHRASES – MATTER IN ISSUE:- Meaning of

WORD AND PHRASES:- “Necessary party” – Meaning of

**MAIN JUDGMENT**

TOM SHAIBU YAKUBU, J.C.A. (DELIVERING THE LEADING JUDGMENT):

The respondent being the plaintiff at the Enugu State High Court of Justice in Suit No. E/270/2012 had instituted the action by way of originating summons whereby he sought the determination of the questions, namely:

"a. Whether by a true and proper construction of Article 18(2), (3), (4) and (5) of the Constitution of All Progressives Grand Alliance (APGA), the Defendant, upon completion of a term of four (4) years as National Chairman of APGA and desiring a second tenure was not bound to vacate the office of Chairman for at least two (2) months to the date of election fixed by the National Executive Committee of APGA.

b. Whether by a true and proper construction of Article 18(3) of the Constitution of APGA, the National Executive of APGA was not bound to meet and fix a date of election for the office of Chairman of the party upon the effluxion of the four year tenure of the Defendant in 2010.

c. Whether by a true and proper construction of Article 18(4) of the Constitution of APGA, the Defendant can be re-elected as the Chairman of APGA other than by secret ballot in an election scheduled by the National Executive of APGA.

d. Whether the Defendant who took over office as the National Chairman of All Progressives Grand Alliance (APGA) in 2006 for a four year term in line with the constitution of All Progressives Grand Alliance (APGA) can legitimately stay in office as the National Chairman of the APGA beyond 2010.

e. Whether the Defendant can legitimately remain in office as the National Chairman of All Progressives Grand Alliance (APGA) after the expiration of his four year term in 2010 without any valid National Convention to re-elect him, in line with the Constitution of APGA.

f. Whether the Defendant's occupation of the office of the National Chairman of All Progressives Grand Alliance (APGA) after the expiration of his tenure in 2010 and without compliance with Article 18(2), (3) and (4) and (5) of the constitution of All Progressives Grand Alliance (APGA), is not illegal and ultra vires the Constitution of APGA.

g. Whether the Defendant can validly summon the National Executive Council Meeting of the Party/National Convention as the National Chairman when his tenure expired since 2010."

In consequence of the determination of the aforementioned questions, the respondent prayed the trial court, to grant him six declaratory reliefs; a restraining injunctive order and also a directory order, to wit:

"i. A DECLARATION that by a true and proper construction of Article 18(2) (3), (4) and (5) of the Constitution of All Progressives Grand Alliance (APGA), the Defendant, upon completion of a term of four (4) years as National Chairman of APGA and desiring a second tenure, was bound to vacate the office of Chairman for at least two (2) months to the date of election fixed by the National Executive Committee of APGA.

ii. A DECLARATION that by a true and proper construction of Article 18(3) of the Constitution of APGA, the National Executive of APGA was bound to meet and fix a date of election for the office of Chairman of the Party upon the effluxion of the four year tenure of the Defendant in 2010.

iii. A DECLARATION that the Defendant who took over as the National Chairman of All Progressives Grand Alliance (APGA) in 2006 for a four year term in line with the Constitution of All Progressives Grand Alliance (APGA) cannot legitimately stay in office as the National Chairman of APGA beyond 2010.

iv. A DECLARATION that the Defendant cannot legitimately remain in office as the National Chairman of All Progressives Grand Alliance (APGA) after the expiration of his four year term in 2010 without any valid National Convention held to re-elect him in line with the Constitution of the APGA.

v. A DECLARATION that the Defendant's occupation of the office of the National Chairman of All Progressives Grand Alliance (APGA) after the expiration of his tenure in 2010 is illegal and ultra vires the Constitution of APGA.

vi. A DECLARATION that the Defendant cannot validly summon the meeting of the National Executive Council/National Convention of the Party as the National Chairman when his tenure expired since 2010.

vii. AN ORDER of injunction restraining the Defendant, his agents, privies, associates or howsoever from parading himself as the National Chairman of All Progressives Grand Alliance.

viii. AN ORDER of this Honourable Court directing the conduct of congresses across the State for the purpose of convening a National Convention for the election of members of the National Executive Committee of All Progressives Grand Alliance (APGA)."

An affidavit of 17 paragraphs with four (4) documentary exhibits annexed thereto, was filed in support of the originating summons. A written address in support of the originating summons was also filed by the respondent.

Furthermore, the respondent filed a motion Ex parte for an interim injunction and also a motion on notice for an interlocutory injunction against the appellant/defendant, which both sought to restrain the latter from "convoking any convention of APGA". The Ex parte application was granted by the trial court on 25th July, 2012.

The appellant, upon being served with the originating summons including the Ex parte order dated 25th July, 2012, filed;

(i) A Notice of Preliminary objection challenging the jurisdiction of the trial court, to entertain the suit.

(ii) A motion on Notice seeking to vacate/discharge the Ex parte order made on 25th July, 2012.

(iii) And subsequently, a counter-Affidavit and a Written Address in opposition to the originating summons.

The respondent filed a counter-affidavit each against the motion on notice to discharge/vacate the Ex parte order and the Preliminary objection which was argued on 31st July, 2012.

The trial court on 17th September, 2012 when it was to deliver its ruling on the preliminary objection, said that all the issues canvassed in the preliminary objection would be determined along with the substantive originating summons, which was fixed for hearing on 24th September, 2012.

The record does not show that the trial court sat on 24th September, 2012, but it did on 8th October, 2012 when the motion on notice for interlocutory injunction and the originating summons were argued. The application for interlocutory injunction was granted and the ex parte order of 25th July, 2012 was vacated, whilst the judgment on the substantive suit was adjourned *sine die*.

On the 8th February, 2013, judgment was delivered on the substantive suit whereby the questions posed for determination in the originating summons were all answered in the affirmative for the respondent. In consequence, the reliefs sought for by the respondent, were largely granted in his favour.

This appeal is against the judgment of the learned trial Chief Judge, dated 8th February, 2013. The appeal is anchored on eleven grounds of appeal. It was filed on 11th February, 2013.

The appellant, in compliance with the rules of this court, filed his brief of argument settled by Chief Wole Olanipekun, SAN and P.I.N. Ikwueto, SAN., of learned senior counsel, dated 8th April, 2013, on 10th April, 2013. In it, four issues were distilled and formulated for determination, namely:

"a. Whether the learned trial court has the jurisdiction to entertain and adjudicate over the subject matter of this suit. (Grounds 1, 2, 3, 4 and 10 in the Notice and Grounds of Appeal).

b. Considering the jurisdiction of the lower court arising from the questions for determination, and the express reliefs sought in the originating summons filed by the Plaintiff at the lower court, whether the lower court could competently invalidate APGA's convention of 10th February, 2011 without any such claim before it. (Ground 7 in the Notice and Grounds of Appeal).

c. Whether the learned trial court was competent to interpret the Constitution of a political party (APGA) and make binding decisions affecting the political party in the absence of and without hearing the political party. (Grounds 5, 6, 8 and 11 in the Notice and Grounds of Appeal).

d. Whether the learned trial court can by its judgment overreach and render nugatory a pending appeal and thereby destroy the res in the appeal before the Court of Appeal (Grounds 9 and 10)."

On his part, the respondent's brief of argument settled by Dr. Onyechi Ikpeazu, SAN and Chudi Obieze, Esq., was dated and filed on 10th May, 2013. The respondent also filed a notice of preliminary objection on the same 10th May, 2013 and which was argued at paragraphs 4.01 - 4.11 of the respondent's brief of argument. The respondent adopted the issues as formulated for determination, by the appellant.

A reply brief of argument dated 20th May, 2013 was filed by the appellant on 22nd May, 2013.

At the hearing of the appeal on 4th July, 2013; the respective senior counsel for the parties, adopted and relied on each of their briefs of argument.

It is noteworthy that on 4th July, 2013, the sister appeal No. CA/E/14/2013 which was in respect of the interlocutory decision of the trial court of 25th July, 2012, was withdrawn and dismissed, pursuant to Order 11 r. 5 of the Court of Appeal Rules, 2011.

Furthermore, it is noteworthy that the appellant/applicant's application for a stay of execution of the declaratory reliefs contained in the judgment of the trial court in question, was refused whilst the injunctive relief against the appellant contained in the said judgment, was stayed by this court on 8th April, 2013.

It is expedient to first consider and determine the respondent's preliminary objection against some grounds of the appeal herein. The contention of the respondent in the preliminary objection is that:

"1. Ground 10 of the Notice and Grounds of Appeal is an abuse of the court's process.

2. Under Ground seven and issue no. two, the Appellant is appealing against a subsequent finding of fact, flowing from a main finding, when there is no appeal against the main finding.

3. No leave was granted to the Appellant to appeal on Ground six of the Notice and Grounds, which was argued under issue no. three, on fresh issues, same not having been taken up at the trial."

It is the contention of the respondent's learned senior counsel that the complaint of the appellant in ground 4 of the notice of appeal filed on 9th October, 2012 with respect to the appeal No. CA/E/14/2013 is the same with ground 10 of the notice of appeal filed on 11th February, 2013 with respect to the appeal No. CA/E/84/2013, both of them, to the effect that there was a miscarriage of justice by the failure of the learned trial Chief Judge to determine the issue of jurisdiction before he went into determining the merits of the originating summons.

According to him, the existence of the two grounds of appeal, being the same is tantamount to an abuse of the process of court. He relied on Kolawole V. A.G Oyo State (2006) 3 NWLR (pt. 966) 50 at 74; Nyah V. Noah (2007) 4 NWLR (Pt. 1024) 320 at 337.

Furthermore, it is the contention of learned senior counsel that since ground 10 of the notice of appeal with respect to appeal No. CA/E/84/2013 is a complaint against the interlocutory decision of the learned trial Chief Judge taken on 17/09/2012, there ought to have been an extension of time sought for and obtained by the appellant from this court, for the said ground 10 to be a valid ground of appeal, in the main appeal No. CA/E/84/2013. He relied on Abiola V. Olawole (2006) 13 NWLR (Pt. 996) 1 at 18 -19. He urged that the said ground 10 be struck out.

With respect to ground 7 of the notice of appeal, learned senior counsel to the respondent contended that since the learned trial Chief Judge's findings regarding the convention of the APGA held on 10th February, 2011 to elect her National Chairman and other officers was in contravention of Article 18 of the APGA's constitution, were not appealed against, the appellant cannot validly appeal against the subsequent findings of fact flowing naturally from the earlier findings which were not appealed against. He referred to Njoku V. Reg. T (2006) 19 NWLR (Pt. 1011) 239 at 253; Ojo V. Adeleke (2002) 8 NWLR (Pt. 768) 223 at 232. He urged that ground 7 be struck out.

With respect to ground 6 of the notice of appeal, it is learned senior counsel to the respondent's contention that since the issue of conflict in affidavit evidence was not canvassed at the court below and a decision taken on it by the learned trial Chief Judge, that issue cannot be raised, on appeal for the first time, without leave of this court having been sought and obtained by the appellant, to enable him, raise a fresh issue. He therefore urged that ground 6 be struck out.

Learned senior counsel to the appellant at paragraph 1.2 of the appellant's reply brief of argument submitted that by the Notice of Withdrawal dated 20th May, 2013 and filed on 22nd May, 2013, grounds 2 and 4 of the Notice of appeal filed on 9th October, 2012 as well as issue C in the appellant's brief of argument dated and filed on 4th March, 2013 were withdrawn by the appellant.

Undisputedly, ground 4 of the notice of appeal filed by the appellant on 9th October, 2012 was with respect to the interlocutory appeal No. CA/E/14/2013. At the proceedings of this court on 4th July, 2013; learned senior counsel to the appellant called our attention to and moved the appellant's application withdrawing the appeal No. CA/E/14/2013. The application was not opposed by learned senior counsel to the respondent. The said appeal No. CA/E/14/2013 was dismissed by virtue of Order 11 r. 5 of the Rules of this Court, 2011.

Therefore, neither the appeal No. CA/E/14/2013 nor its ground 4 is any longer in existence. Hence, I am of the view that the contention of the learned senior counsel to the respondent that both ground 4 with respect to appeal No. CA/E/14/2013 and ground 10 of the notice of appeal with respect to appeal No. CA/E/84/2013 constitute an abuse of the process of court, has no merits and it is so dismissed.

The next grouse of the respondent's senior counsel is against ground 7 of the notice of appeal.

I have myself perused ground 7 of the notice of appeal and the particulars thereunder. It is very clear to me that the target of the said ground 7 is the decision of the learned trial Chief Judge with respect to the convention of APGA held on 10th February, 2011 to elect its National Chairman and other officers. The respondent cannot complain that he does not know what the appellant is complaining about in the said judgment of the court below regarding the APGA convention of 10th February, 2011. See: Orakposim v. Menkiti (2001) 5 SC (Pt. 1) 72 at 81; Iwuoha & Anor. V. Nipost Ltd & Anor. (2003) 4 SC (pt. 11) 37 at 54; Ugboaja V. Sowemimo & Ors. (2008) 7 SCNJ 105; (2008) 7 SC. 1 at 81 to the effect that in determining the nature of a ground of appeal, "one must look closely at the main ground with the particulars thereof."

I am satisfied that the objection to ground 7 of the notice of appeal is tenuous and unmeritorious. I, over-rule it accordingly.

With respect to ground 6 of the notice of appeal, I have considered the submission of both learned senior counsel for the respective parties.

Unquestionably, the affidavit evidence proferred by the parties in the originating summons were conflicting. The learned trial Chief Judge himself so found when he opined that "the parties part ways and seem to exchange blows over whether or not the party's convention of 10th February, 2011 re-elected the defendant as the National Chairman."

It is crystal and clear to me that before the learned Chief Judge came to the decision that "the convention of APGA which took place on the 10th day of February, 2011 was unconstitutional, null and void," he duly perused the documentary affidavit evidence of the parties which he held were indeed conflicting. And the complaint of the appellant against the judgment of the learned trial Chief Judge in ground 6 with its particulars, is that he determined the conflicting affidavit evidence before him, erroneously. Frankly speaking, I am unable to appreciate the contention of the respondent with respect to ground 6 as raising a fresh issue. I cannot separate the wood from the trees in that contention.

I am certain in my opinion that ground 6 does not raise a fresh issue, so it needed no leave of this court, for it to have been filed.

The objection against ground 6 is lacking in merits and it is accordingly over-ruled.

In all, the preliminary objection is unmeritorious and is hereby dismissed.

I shall now proceed to consider the real meat in this appeal on the issues formulated by the appellant.

ISSUE ONE

Whether the learned trial Court has the jurisdiction to entertain and adjudicate over the subject matter of this suit. Grounds 1, 2, 3, 4, and 10 of the notice of appeal.

Learned senior counsel to the appellant submitted that it is the law that in determining the jurisdiction of a court to adjudicate on a matter filed before it, that is done by a perusal of the plaintiff's claim. He referred to Adeyemi V. Opeyori (1976) 9 - 10 S.C. 31 and the questions submitted for determination and the reliefs sought for by the respondent in his originating summons. Furthermore, that the claim of the respondent borders on the internal management of the affairs of a political party, that is, APGA.

Appellant's learned senior counsel contended that the respondent had no locus standi to have brought or filed the action at the court below. He submitted that since the respondent did not predicate his case on any declared interest in the office of the National Chairman of APGA and the trial court found that the "Respondent is not asking the court to declare him duly nominated to contest an election", the respondent has not shown how he was invested with the locus standi to file his action. He relied on Thomas V. Olufosoye (1986) 1 NWLR (Pt. 18) 669 at 690; Owoduni V. Registered Trustees of the Celestial Church of Christ (2000) 10 NWLR (Pt. 675) 315 at 365.

Appellant's learned senior counsel also submitted that since locus standi and jurisdiction are interwoven, a lack of locus standi invariably affects the jurisdiction of the court, therefore where there is a lack of locus standi to bring an action in court, the court too cannot properly assume jurisdiction to entertain such an action. He referred to Ajayi v. Adebiyi (2012) 11 NWLR (Pt. 1310) 137 at 176; Owners M/V Baco Liners 3 V. Adeniyi (1993) 2 NWLR (Pt. 274) 195 at 202.

Chief Olanipekun SAN, for the appellant furthermore submitted that since "the Respondent woefully failed to show what benefit that would be conferred on him in the determination of the issue of the alleged expiration of the tenure of office of the Appellant as the National Chairman including whether APGA National convention validly re-elected the Appellant and the National officers at the National convention held on 10th February, 2011," he has no locus in the matter. He insisted that "The Respondent neither claim nor makes any pretence of having an interest whatsoever in the office of National Chairman of APGA". He had put reliance on Oduneye V. Effunuga (1990) 7 NWLR (Pt. 164) 618 at 639; Momodu V. Olotu (1970) 1 All NLR 121; Oloriode V. Oyebi (1984) 14 NSCC 286 at 292 all to the effect that a plaintiff/claimant would have locus standi in an action "where the reliefs claimed would confer some benefits on such a party."

The next premise for the contention that the court below had no jurisdiction to entertain the respondent's claim is that the action concerns the internal affairs of a political party, hence the courts do not interfere in the affairs of political parties, as to how they should be run or who should be appointed to hold party offices. He referred to Ehinlawo V. Oke (2008) 16 NWLR (Pt. 1113) 357 at 402; Abdulkadir V. Mamman (2003) 14 NWLR (Pt. 839) 1 at 30; Pam V. ANPP (2008) 4 NWLR (Pt. 1077) 219 at 242; Ossom v. Akpata (1993) 8 NWLR (Pt. 314) 678 at 693; Onuoha V. Okafor (1983) SCNLR 244 at 268.

Appellant's learned senior counsel referred to Articles 11 paragraph 1(i) and 21 paragraph (1) (c) of the constitution of APGA to the effect that the relevant authorities and agencies within the party shall resolve all matters affecting the members of the party; and no member shall take the party or its members to court over any dispute without making any effort at resolving it internally. He relied on Owoseni v. Faloye (2005) 14 NWLR (Pt. 946) 719 at 740; Aribisala V. Ogunyemi (2005) 6 NWLR (Pt. 921) 212. He also referred to paragraph 1 of the respondent's affidavit in support of the originating summons vis-a-vis Article 10 paragraph 1(1) and (2) of the APGA Constitution to show that the respondent being neither a member of the National Convention nor a member of the National Executive Committee of APGA, hence an outsider in terms of the decision making process of the party, particularly the process and procedure leading to the emergence of the party Chairman or members of the National Executive Committee, has a non-existent locus standi to have laid the claim at the court below.

This issue was responded to by respondent's learned senior counsel at paragraphs 6.03 - 6.05; 6.18 - 6.22 of his brief of argument. He submitted that it was the duty of the respondent to show his standing to sue in the action at the court below through his averments in the statement of claim which is the only process to be perused by the court in order to ascertain the respondent's locus standi to bring the action. He referred to All Nigeria People's Party (ANPP) V. Returning Officer, Abia South Senatorial District (2005) 6 NWLR (Pt. 920) 140 at 181; Ojukwu V. Ojukwu (2010) 11 NWLR (Pt. 677) 65 at 85 - 86 vis-a-vis paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the respondent's affidavit in support of the originating summons, which according to him, show the respondent's locus standi. He also submitted that the respondent being a card carrying member of the party and that "this case involves members of a political party, with questions raised and reliefs sought, with respect to the interpretation of the constitution of the party". It is the contention of the respondent's learned senior counsel that the respondent's guaranteed right of freedom of association and to belong to any political party under Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 as amended "is being threatened by the appellant's refusal to vacate his office, upon the determination thereof, by effluxion of time, in 2010."

Furthermore, it is the contention of respondent's learned senior counsel that where a political party such as APGA which has a constitution, goes against the provisions of its constitution and puts in place, principal officers of the party arbitrarily, a court of law in the exercise of its inherent powers, under Section 6(6) of the 1999 Constitution, as amended, certainly has the jurisdiction to interpret the relevant provisions of the political party's constitution and to pronounce on any act done in contravention of the party's constitution, as being illegal and unconstitutional. And that, that was what the court below did in view of the provisions of Article 18(2), (3), (4) and (5) of the APGA Constitution. He insisted that the claim of the respondent vide the originating summons, clearly discloses the justiciability of the suit, therefore the suit does not relate to the domestic affairs of the political party.

Dr Ikpeazu, SAN., was emphatic that the cases of Onuoha V. Okafor (1983) 2 SCNLR 244; Abdulkadir V. Mamman (2003) 14 NWLR (Pt. 836) 1; PDP V. Abubakar (2007) 3 NWLR (Pt. 1022) 515 and other authorities relied upon by the appellant are not apposite to the facts in this case.

And that a decision is authority for what it actually decided. He referred to Dangote V. Civil Services Plateau (2001) 1 NWLR (Pt. 717) 132; Babatunde V. P.A.S. & T.A. Ltd. (2007) 13 NWLR (Pt. 1050) 157; Adegoke Motors Ltd V. Adesanya (1989) 3 NWLR (Pt. 109) 250 at 265 266; Albion Construction Ltd V. R.A.O. Inv. & Prod. Ltd (1992) 1 NWLR (pt. 219) 583 at 599. He however submitted that it is the authority of Prince John Okechukwu Emeka V. Lady Margery Okadigbo & Ors. (2012) 18 NWLR (Pt. 1331) 55 at 88 - 89 that is relevant to this case, to the effect "where a political party conducts its primaries and a dissatisfied contestant at the said primaries, complains about the conduct of the primaries, the courts have jurisdiction, by virtue of the provisions of Section 87(9) of the Electoral Act, to examine if the primaries were conducted in accordance with the Electoral Act, the Constitution and guidelines of the party." And that the courts will never allow a political party to act arbitrarily or as it likes. Hence, a political party must obey its own constitution. He relied on Hope Uzodinma V. Senator Izunaso (2011) 5 M.J.S.C (Pt. 1) 27.

He submitted that the courts have the jurisdiction to determine the arbitrary and constitutional acts of a political party, so it will not tantamount to dabbling in the internal affairs of the party.

Undisputably, jurisdiction is the soul and lifeline of an action in court. It is the green light which authorises the court to proceed and assume its power/vires over the action and determine it. Therefore, where the crucial and fundamental question of jurisdiction is not resolved by the court and it proceeds to determine an action before it, that may be tantamount to an exercise in futility and counterproductive, if at the end, an appellate court found that the trial court lacked the jurisdiction to have heard and determined the said action.

Hence, it is the firm opinion of this court and the apex court, that as soon as the issue of jurisdiction is raised by the parties or by the court suo motu, that issue must be the first duty of the court to be determined, as a matter of priority. Ajayi V. Adebiyi (2012) 11 NWLR (Pt. 1310) 137 at 181 & 202 (SC); Goldmark V. Ibafon (2012) 3 SCNJ (pt. II) 565 at 597; Utih & Ors. V. Onoyivwe & Ors (1991) 1 SCNJ 25 at 49; Fed. Airport Authority of Nig. Ltd. V. Sylvester Nwoye (2012) 16 WRN 154 at 184 (CA); Adeyemi V. Opeyori (1976) 9 - 10 SC 31 or (1976) 1 NMLR 149.

Now, the term locus standi simply denotes the legal capacity of the suitor or claimant to institute or bring an action in court against a defendant. That is, the claimant/plaintiff must have a complaint against the action or inaction of a defendant which the former alleges is against his interest and for which he seeks a judicial relief from a court of law. Therefore, the plaintiff must have an axe to grind with the action of the defendant and the said action must be justiciable, for which he - the plaintiff can be relieved of by a court of law or tribunal.

On the other hand, where the plaintiff has nothing to show prima facie that the action of the defendant has adversely affected his own interest, he would have no legal capacity or locus standi to sue such a defendant. See Senator Abraham Adesanya V. The President (1981)2 NCLR 338 at 385 - 386; 390 - 391 & 398; Irene Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669; Attorney General of Kaduna State v. Hassan (1985) 2 NWLR (Pt. 8) 483.

There is to my mind, a symbiotic relationship between locus standi and the jurisdiction of the court to entertain and determine a matter presented to it by a plaintiff for adjudication.

For, whilst locus standi denotes the legal capacity of a plaintiff to institute or commence an action in court against a defendant, jurisdiction is the vires or authority a court has to entertain and determine an action. Hence, if a plaintiff has no locus standi to institute an action, then the court cannot entertain such an action, talk less of determining or adjudicating it. I am well fortified in my considered opinion by the recent decision of the apex court in Dr. Tosin Ajayi V. Princess (Mrs) Olajumoke Adebiyi & 3 Ors. (2012) 11 NWLR (Pt. 1310) 137 at 176 where my Lord, Adekeye, JSC., succinctly opined that:

"Locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought. Thus where there is no locus standi to file an action, the court cannot properly assume jurisdiction to entertain the action. Locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of court or by the court itself suo motu. The issue can be raised after the plaintiff has duly filed his pleadings by a motion and or in a statement of defence. Locus Standi to institute proceedings in a court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits. Owodunni v. Registered Trustees of C.C.C. (2000) 6 SC (Pt. III) pg. 60; (2000) 10 NWLR (Pt. 675) 315; Madukolu v. Nkemdilim (1962) 2 SCNLR Pg. 341; Klifco Ltd. v. Philips Holzmann A.G. (1996) 3 NWLR (Pt. 435) pg. 276".

I have no difficulty at all in agreeing with both learned senior counsel in this appeal, that in order to determine whether or not a court is imbued with the jurisdiction to entertain a cause or matter filed before it, the only process of court to be examined at that stage is the plaintiff's statement of claim only. Adeyemi V. Opeyori (1976) 9 10 SC 31; Owoduni V. Registered Trustees of C.C.C. (2000) 6 SCNJ 399; (2000) 6 SC (Pt.3) 60; (2000) 10 NWLR (Pt. 675) 315; (2000) FWLR (Pt. 9) 1455; Okonkwo V. N.U.C (2013) 13 WRN 131 (CA); Govt. of Kwara State & Ors. v. Irepodun Block Manufacturing Co. & Ors. (2013) 12 WRN 102 (CA).

I have perused the questions posed for determination and the reliefs sought for by the respondent in the originating summons, which were reproduced at the onset of this judgment. For ease of reference and appreciation, it is pertinent to reproduce the supporting affidavit, to wit:

AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS:

"I, ICHIE OKULI JUDE EJIKE, Male, Christian, Citizen of the Federal Republic of Nigeria doth hereby make Oath and state as follows:-

1. I am the Plaintiff as well as the former Chairman of Udi Local Government Chapter of All Progressives Grand Alliance (APGA) by virtue of which I am conversant with the facts and circumstances of this suit.

2. The Defendant was a National Treasurer of our party but later on upon the removal of the founder of the party Chief Chekwas Okorie, assumed the office of the National Chairman of the party sometime in 2006 for a four year term.

3. By virtue of the Constitution of our party, the four year term expired in 2010.

4. By virtue of the Constitution of our great party, the National Executive Committee was mandated to convene a National Convention for the purpose of electing new officers for the party in the National Executive Committee, State Executive Committee, and Local Government Executive Committee.

5. That despite the expiration of the tenure of the Defendant in 2010, the Defendant continued in office without any valid National Convention since the 2010 when his tenure expired, till date.

6. The Defendant's entire actions since the 2010 till date are illegal and ultra vires the constitution of the party and have the tendency of escalating into serious political quagmire unless restrained by this Court.

7. The Defendant obviously is interested in perpetuating himself in office and has refused to listen to other prominent leaders of the party who have on several occasions requested the Defendant to convene a National Convention to elect new officers for the party.

8. The Defendant is also receiving grants from the Independent National Electoral Commission (INEC) and has consistently refused to render account to the members of the party despite repeated demands.

9. Sometime ago, some prominent members of the party in the person of Hon. Nwobu-Alor, Dr. Godson Emebo a Commissioner in Anambra State and Mr. Simon Osita Okoli, were suspended from the Anambra Sate Chapter of APGA, because they requested the Defendant to organize a National Convention for the election of new officers across board for the party.

10. Just recently, the party is experiencing a parallel leadership with one group claiming to be the new leadership as against the leadership of the Defendant. This development is attributed to the refusal of the Defendant to organize a National Convention for the purpose of electing new officers for the party.

11. There is now chaos, anarchy, cold war within the ranks of the party.

12. The Enugu State Chapter of the party on the 20th of May, 2012 issued a communique denouncing the leadership of the Defendant which is already causing disaffection among members.

13. The Defendant has concluded plans to call a kangaroo National Executive Committee Meeting sometime this August, 2012 in order toexpel some prominent members of the party.

14. The Defendant will not relent in his bid to stay in power in perpetuity unless restrained by this Court.

15. Hereto delivered and marked as Exhibits are the following documents:-

i. MY PARTY CARD    EXHIBIT A

ii. CONSTITUTION OF THE PARTY EXHIBIT B

iii. COMMUNIQUE BY ENUGU STATE CHAPTER OF APGA EXHIBIT C

iv. THE DAILY SUN NEWSPAPER OF 16TH MAY, 2012 SHOWING THE SUSPENSION OF CERTAIN PARTY MEMBERS EXHIBIT D.

16. It is in the interest of justice to grant the reliefs in this originating summons.

17. That I make this oath most conscientiously believing the contents to be true and correct and in accordance with the Oaths Act."

Essentially, the action of the respondent was premised on the interpretation of Article 18(2), (3), (4) and (5) of the constitution of All Progressives Grand Alliance, APGA, for short and by which it shall be simply referred to henceforward; vis-a-vis the stay in office by the defendant as the National Chairman thereof beyond 2010.

The ipse-dixit of the respondent at paragraph 1 of the affidavit reproduced above manifestly indicated that he was a former chairman of Udi Local Government Chapter of APGA.

He did not state the position he held in APGA as at 25th July, 2012 when the action was filed.

The learned trial chief judge at pages 264 - 269 of the record of appeal found that the respondent possessed the requisite locus standi in bringing the action to the court for determination. I must point out straight away that there was needless dissipation of judicial energy by the court below in considering the locus standi of the respondent with reference to the allegation by the appellant that the respondent had been expelled from APGA, hence he was no longer a member of APGA. This is because of the principle of law earlier re-stated in this judgment that at the stage of determining the questions of locus standi and jurisdiction of the court, the only process of the court for perusal and examination is the plaintiff's originating process such as a writ of summons and the statement of claim or as it is in the instant case, the originating summons containing the questions posed for determination and the reliefs sought for by the plaintiff therein, with the affidavit in support of the originating summons. Adeyemi V. Opeyori (supra), et al (supra). It is not the duty of the court to fish out, scuttle around and scrounge for evidence in order to aid the case of a party who cannot produce such evidence by himself. Ohwovoriole, SAN V. FRN & Ors. (2003) FWLR (Pt. 141) 2019 at 2036; (2003) 2 NWLR (pt. 803) 176 at 194; Dennis Ivienuagbor V. Henry Osato Bazuaye (1996) 6 SCNJ 235 at 243; (1999) 9 NWLR (Pt. 620) 552; Fubara & Ors. V. Ogolo & Ors. (2003) FWLR (pt. 109) 1285 at 1312; Owners M/V Baco Liners 3 V. Adeniyi (1993) 2 NWLR (Pt. 274) 195 at 202 (CA).

So, it is either the plaintiff has sufficiently shown in his claim that he has locus standi or none and not for the court to "help" him find locus standi and arrogate jurisdiction to itself.

Furthermore, the question of the expulsion or not of the respondent from APGA was not his claim for the determination of the court. And in any event, the respondent never alleged that he was expelled by the appellant because the latter is not the same as APGA nor synonymous with it; he may be the alter-ego of APGA, but he is not APGA. And the claim of the respondent is not against APGA as a party in the action. I shall return here, later in the course of this judgment.

I had earlier in the judgment found that the respondent did not state in his affidavit in support of the originating summons, his current position in APGA as at the filing of his action on 25th July, 2012. Therefore, he could be presumed to be a member of APGA and no more. And that being the status of the respondent, how did he demonstrate or show in the said affidavit in support of the originating summons that the reliefs sought for therein, would confer some benefits on him? Is he a contender to the office of the National Chairman of APGA? Is he a member of the National Executive Committee of APGA?   
What sufficient interest has he shown to aggregate to his capacity in bringing the action against the appellant? How did he possess the toga of "defender" of the APGA Constitution?

And can just any member of APGA, like the respondent take it upon himself and without more, without indicating or stating his interest in the office of the Chairman of APGA, in which the appellant has allegedly over-stayed his welcome, institute an action with respect thereto?

I am afraid, my answers to the above questions are in the negative because the affidavit evidence proffered by the respondent in support of the originating summons, is bereft of the necessary facts to find his interest in the office of the National Chairman of APGA, in order to invest or imbue him with the locus standi to have instituted the action at the court below. I am fortified in my view having been guided by the judicial words on marble by the eminent jurist, Sir Adetokunbo Ademola (of blessed memory) then Chief Justice of Nigeria in Momoh V. Olotu (1970) 1 All NLR 121 where he posed similar questions and answers, in order to determine the locus standi of a plaintiff in an action, thus:

"The plaintiff says that he is a member of the Olukare family. The question may be asked, is it enough for the Plaintiff to state that he is a member of the family? Has he not got to state that he has an interest in the Chieftaincy? Surely not every member of a Chieftaincy family as such has interest in the Chieftaincy title. We are of the view that it is not enough for the Plaintiff to state that he is a member of the family, he has to state further that he has an interest in the chieftaincy title, and furthermore, state in his statement of claim how his interest in the chieftaincy title arose."

Furthermore and much later in Irene Thomas V. Olufosoye (1986) 1 NWLR (Pt. 18) 669 at 490, the apex court re-echoed and expounded the concept of locus standi, inter alia:

"The question will then arise who or what law invested the Plaintiff with a legal right to defend the constitution of the Anglican Church in the Diocese of Lagos or does the mere fact that the Plaintiffs are Communicants of the Anglican Communion within the Diocese of Lagos ipso facto and to quote, mutatis mutandis, the memorable words of my learned brother Bello, J.S.C in SENATOR ADESANYA v. PRESIDENT OF NIGERIA (1981) 2 N.C.L.R. 358 at 384 invest them with the right "to play the role of activists and build a shrine to preserve the sacred provisions of the Constitution of the Anglican Communion? Does it make them sentries to ward off all those they suspect to be potential transgressors of the Constitution of the Anglican Communion? Does it further enlist them in the army to take up arms against all those they consider to be aggressors of the Constitution of the Anglican Communion? Or are the Plaintiffs merely constituting themselves into "a busybody" to perambulate the Diocese of Lagos suing and prosecuting all those they regard as Constitutional offenders?" If the Plaintiffs are a mere busybody, then they will have no legal right to bring this action. A busybody is a meddlesome person, a mischief-maker. Such a one has no legal right to do what he is doing otherwise he will not be "meddling" with other people's business."

In the circumstances of this case, I am clearly of the considered opinion that the respondent lacked the requisite locus standi to have instituted the suit at the court below, hence the said court wrongly and erroneously assumed jurisdiction, which it did not possess, over the respondent's suit.

RESPONDENT'S SUIT VIS-A-VIS THE INTERNAL AFFAIRS OF A POLITICAL PARTY.

Generally the law is that it is not within the province and jurisdiction of the courts to interfere with matters which concern the running of the internal affairs of political parties. The authorities of this court and the apex court are a basketful, so a few will suffice: Onuoha v. Okafor (1983) 2 SCNLR 244; Ossom v. Ossom (1993) 8 NWLR (Pt. 314) 678; Abdulkadir V. Mamman (2003) 14 NWLR (Pt. 836) 1; Dalhatu V. Turaki (2003) 15 NWLR (Pt. 843) 310; Senator Ehinlawo V. Chief Oke (2008) 16 NWLR (Pt. 1113) 357; (2008) 7 SCNJ 316; Lado & Ors. V. CPC & Ors (2012) All FWLR (Pt. 607) 601; (2011) 18 NWLR (Pt. 1279) 689; Uzodinma V. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30; Tukur V. Uba (2013) 4 NWLR (Pt. 1343) 90 at 134.

The learned trial Chief Judge at page 269 of the record, came to the conclusion that;

"It is elementary knowledge that interpretation of documents, constitutions, statutes and law apropos the rights of the individuals governed by those documents, constitution or statutes is the constitutional function of the courts established under Section 6 of the Constitution of the Federal Republic of Nigeria, 1999. I do not see how such interpretative exercise graduates to domestic affairs of a political party. It is a function which a political party cannot appropriate under the guise of domestic affair of the party or by giving it a label of political question."

I am on the same page with the general statement of the law by the learned trial chief judge with respect to the powers of the courts donated to them vide Section 6 of the 1999 Constitution of the Federal Republic of Nigeria, as amended.

However, as stated by his Lordship Nnamani, JSC, (now of blessed memory) in Onuoha V. Okafor supra, the courts cannot "interfere in matters pertaining to political parties in all circumstances." The reason is not farfetched. Each case has its own peculiar facts and circumstances upon which it must be considered and determined. For instance, where a candidate at a political party primary election emerged as the winner thereof and he was subsequently replaced or substituted with another candidate who also participated in the same primary election and lost, the winner of the primary election can approach the courts which have been donated the jurisdiction under Section 87(9) of the Electoral Act, 2010, as amended, to ventilate his grievance against his substitution by his political party.

The court in such a situation will not look the other way and leave the winner of the primary election who was substituted with a loser of the said election, to his fate and in a helpless or hapless situation. The court will intervene and ensure that the political party obeys its own constitution and guidelines.

The effect of the limited and narrowed jurisdiction of the courts under Section 87(9) of the Electoral Act, 2010, as amended, was brought to bear on such cases as Uzodinma V. Izunaso (supra), Tukur V. UBA (supra), Lado V. CPC (supra), Peretu V. Gariga (2013) 5 NWLR (Pt. 1348) 415 and of course, Prince Emeka V. Lady Margery Okadigbo & Ors. (2012) 18 NWLR (Pt. 1331) 55 - which were all aftermaths of the 2011 general elections in Nigeria.

The judicial intervention as I highlighted above, as limited under Section 87(9) of the Electoral Act 2010, as amended, is not an infringement on or an interference so to say, in the internal affairs of the political party which is not justiciable in a court of law, so long as the political party complies with its own constitution and guidelines with respect to nomination and sponsorship of its candidates to represent it in an election.

Therefore, Section 87(9) of the Electoral Act 2010, as amended, is not a talisman and of general application, for the intervention of the courts in the internal affairs of political parties, "in all circumstances." I am of the considered and firm opinion that Section 87(9) of the Electoral Act, 2010 as amended, is inapposite to this case to donate jurisdiction to the court below as submitted by learned senior counsel to the respondent, to determine an action which clearly bordered on the internal or domestic affairs of APGA - a political party.

In the circumstances of this case, I have earlier found and held that the respondent lacked the locus standi, the requisite capacity and standing to have instituted the action at the court below, hence the said action was incompetent, such that the court below had no vires, the jurisdiction to entertain it. The only way by which the often quoted and over flogged domestic or internal affairs jurisdiction of political parties and non-interference of courts into such disputes would have been demystified, is where an action is properly initiated by due process of law and there is no feature in the case which prevents the court from exercising its jurisdiction over it. The feature of lack of locus standi of the respondent, dealt a fatal/deadly blow on the jurisdiction of the court below to entertain the said action.

I resolve issue one in favour of the appellant, so grounds 1, 2, 3, 4, and 10 succeeded accordingly.

I shall consider and determine issues two and three together.

Issue two, predicated on ground 7 of the notice of appeal is with respect to the invalidation of APGA's convention of 10th February, 2011 without any such claim before the court below.

Issue three, anchored on grounds 5, 6, 8 and 11 of the notice of appeal is with respect to the interpretation of the constitution of APGA by the learned trial chief judge which affect the former who was not a party to the suit at the court below.

Arguing issue two, learned senior counsel to the appellant contended that in the questions posed for determination and the reliefs sought for by the respondent, in the originating summons and the affidavit supporting it, the respondent made no mention of APGA's convention of 10th February, 2011. He therefore wondered how and why the learned trial chief judge declared the APGA's convention of 10th February, 2011 as unconstitutional, null and void, when it was not prayed for by the respondent. He referred to Ekpeyong V. Effiong (1975) 2 SC 71 at 80 - 81; Ayorinde v. Kuforiji (2007) 4 NWLR (Pt. 1024) 341 at 371, to the effect that the court is not a father Christmas, hence it has no jurisdiction to grant or make an order which was not prayed for by a litigant.

Learned senior counsel, further submitted that what the court below did amounted to creating a new case in order to justify the grant of the reliefs sought by the respondent and that a court has no duty or power to make a case for a plaintiff different from that put forward by such a party. He called in aid: UBA Ltd. & Anor. v. Achora (1990) 10 SCNJ 17 at 24; Ademola v. Williams Odudu (1990) 6 NWLR (Pt. 157) 384; Umoru Yau Enterprises V. Anugwom (1994) 3 NWLR (Pt. 334) 632; Oredeoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172. Learned senior counsel insisted that all the orders made by the court below rest on the invalidation of the 10th February, 2011 convention of APGA. And that since invalidation aforesaid did not arise from the respondent's claim, it was made without jurisdiction, hence it cannot support any order made by the court below because something cannot be placed on nothing. He placed reliance on Skenconsult (Nig) Ltd V. Secondly Ukey (1981) SC 6 at 9; Macfoy v. U.A.C. Ltd. (1962) AC 152.

With respect to issue three, it is the submission of appellant's learned senior counsel that the learned trial chief judge apart from interpreting the APGA constitution also made far reaching determinations against APGA who was not a party to the action and that the far reaching determinations against AGPA affected its rights and obligations as a duly registered political party. Furthermore, he submitted that the learned trial court made some declaratory orders in favour of the respondent which were against the interest of National officers of APGA who were elected at the APGA convention of 10th February, 2011, when none of the affected National officers was joined as a party to the suit. He referred to Olawoye v. Jimoh (2013) LPELR - S.C. 90/2005 delivered on 12th April, 2013- see page 5 of the appellant's brief of argument.

Responding to issue two learned senior counsel to the respondent submitted that the "learned trial chief judge, in resolving the issue placed before him, as to whether or not the tenure of the Appellant had expired, as pleaded or not, was bound to, within his rights, making findings of facts, on INEC reports, Exhibits A5 and A6, vis-a-vis, the provisions of the APGA Constitution, Section 18, and the 1999 Constitution of Nigeria, as amended." He relied on Ojo V. Adeleke (2002) 8 NWLR (Pt. 768) 223 at 232 (CA); Oyekola v. Ajibade (2004) 17 NWLR (Pt. 902) 356 at 378 (CA). Learned senior counsel furthermore submitted that the conclusion by the court below that the APGA's convention of 10th February, 2011 was unconstitutional, null and void, was a product of his findings with respect to Article 18 of the APGA constitution and the conduct of the 10th February , 2011 convention. Hence, according to him, the reliefs granted to the respondent by the court below was not predicated on the invalidation of the 10th February, 2011 APGA convention but that the said reliefs flowed naturally from the findings of fact, made by the learned trial chief judge after he had evaluated the evidence led before him. Therefore, according to him, the learned trial chief judge did not grant any reliefs that were not claimed.

With respect to issue three, respondent's senior counsel submitted that all that the court below did was to interpret the APGA constitution and to rule whether what transpired at the APGA convention of 10th February, 2011 was in compliance with the APGA constitution, as it affects the appellant. He also submitted that the court below was competent to interpret the constitution of a political party and "make binding decisions affecting the parties to the suit."

I have again perused the questions set up for determination and the reliefs sought for by the respondent in his originating summons with the supporting affidavit thereof. I am in agreement with the submission of appellant's senior counsel that in the processes above mentioned, there is no question posed nor any relief sought by the respondent with respect to and touching on the APGA convention of 10th February, 2011.

The learned trial judge, indeed at page 273 of the record of appeal, considered Exhibit A6 and Article 18 of the APGA constitution vis-a-vis the APGA convention of 10th February, 2011 and arrived at the opinion that the said APGA convention was not in compliance with Article 18 of the APGA constitution.

Thereafter at page 274 of the record, he was emphatic when he said:

"What I have been trying to say, perhaps in too many words, is that the convention of 10th February, 2011 of APGA was unconstitutional, null and void."

I, think with due respect to his Lordship, he really said "too many words" and over shot the mark when he declared "that the convention of 10th February, 2011 of APGA was unconstitutional, null and void." He did not stop there. He, at page 275 of the record, said further:

"Evidently, following the above exposition, the court is entitled to answer the seven questions presented before it as follows..."

Whereof, six of the seven questions posed by the respondent in the originating summons, were answered in the affirmative in favour of the respondent and consequently, four (4) declaratory and one (1) injunctive reliefs prayed for by the respondent were granted. In the circumstances, it is not difficult to agree with learned senior counsel to the appellant that the invalidation of the 10th February, 2011 APGA convention by the learned trial chief judge was the basis and fulcrum for the grant of the reliefs in favour of the respondent.

The submission of respondent's learned senior counsel that the invalidation of the 10th February, 2011 APGA convention by the court below, as not being a relief claimed by the respondent, is indeed well taken. And of course, in granting the reliefs prayed for by the respondent, the court below, restricted itself, rightly in my view, to the claim of the respondent.

However, earlier in his judgment at page 264 of the record of appeal, the learned trial chief judge said of the respondent that:

"He is not asking the court to declare him duly nominated to contest an election, he is not asking the court to cancel the party's primaries or convention."

Then, why did his Lordship invalidate the 10th February, 2011 APGA Convention, when the respondent did not ask that the convention be cancelled? Why the summersault? It is clearly a volte de face! This is the puzzle. It appears to me as in-explicable.

I am of the considered opinion that without the invalidation of the APGA 10th February, 2011 convention, the court below could not have granted the respondent's reliefs.

That is, the invalidation of the 10th February, 2011 APGA convention, largely influenced the grant of all the reliefs prayed for by the respondent.

It is the law that just as the parties are bound and confined to the issues presented to the court for determination, so also the court itself is bound and must confine itself to those issues and not to lose focus and veer off the road in the consideration and determination of the issues submitted to it by the parties. Oredoyin V. Arowolo (1989) 4 NWLR (Pt. 114) 172 at 192 (SC); Uzoukwu V. Ezeonu II (1991) 6 NWLR (Pt. 200) 708 at 784 - 785 (CA); Ogida V. Oliha (1980) 1 NWLR (Pt 19) 789 (SC); Olujitan V. Oshatoba (1992) 5 NWLR (Pt. 241) 326 (CA); Emecheta V. Ogueri (1992) 8 NWLR (Pt. 516) 323 (CA).

A matter is said to be in issue when it is properly raised as an issue and becomes relevant for deciding a disputed question. Overseas Construction Ltd. V. Creek Enterprises Ltd (1985) 3 NWLR (Pt. 13) 407; hence a court will not deal with and determine any issue or question which has not been properly raised or prayed for by a party. Ebba v. Ogodo (1984) 1 SCNLR 372 at 385; Adeleke v. Asemota (1990) 3 NWLR (Pt. 136) 94 at 112; not to talk of emphatically pontificating on a subject and declaring it as being "unconstitutional, null and void," which was not prayed for by a plaintiff such as the respondent herein. It smacks of a sympathiser weeping more profusely than the bereaved!

The nullification/invalidation of the 10th February, 2011 APGA convention by the learned trial Chief Judge, with due respects, gratuitously; created a miasma of a damnifying virus, indeed cancerous, which negatively affected the declaratory and injunctive reliefs he ultimately granted to the respondent.

And the court below was not supposed to be a father Christmas. A.G Abia state v. A.G Federation (2006) 16 NWLR (Pt.1005) 265 at 387; Ezeakabekwe V. Emenike (1998) 11 NWLR (Pt. 575) 529; Ekpeyong V. Effiong (1975) 2 SC 71 at 80 - 81.

Therefore, I resolve this issue in favour of the appellant.

Ground 7 succeeds, accordingly.

With respect to issue three, there is no dispute that the declaratory reliefs 1, 2 and 3 granted by the court below touch on APGA and for its compliance. APGA was not a party to the suit of the respondent. Can a man's hair be shaved off his head in his absence? The answer is an emphatic No because it is impracticable.

The law is well settled beyond reproach that a necessary party to an action in court is that person, without whom such an action, "cannot be effectively and completely" determined and disposed of. The authorities on this principle of the law are legion. A few will suffice here. Uku v. Okumagba (1974) 1 All NLR 475; (1974) 1 NMLR 318; (1974) 3 SC 35; (2001) WRN 133; Green V. Green (1987) 7 SCNJ 255; (1982) 3 NWLR (Pt. 61 480; (2001) 45 WRN 90; (2001) FWLR (Pt. 76) 795; (1987) 2 NSCC 115; Osurinde V. Ajamogun (1992) 6 NWLR (Pt. 246) 156; Union Beverages Ltd. V. Pepsicola Int. Ltd (1994) 2 SCNJ 157 at 174; Ibrahim V. N.U.B. Ltd (2004) 11 NWLR (Pt. 885) 537; Baido V. INEC (2012) 31 WRN 27 at 77 -78.

APGA was a necessary party to the respondent's suit at the court below. It was not merely that her constitution was being interpreted by the learned trial chief judge, but the reliefs aforementioned touched on her and the grant of which he was supposed to obey, yet he was not a party thereto. So, it cannot be said that APGA was given a fair hearing by virtue of Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended. Hence the decrees issued at her by the court below, at her back, become questionable and impracticable of being obeyed because they are otiose.

The Supreme Court, most recently reiterated her earlier position in some of the decided authorities above mentioned with respect to the necessity and wisdom in joining a necessary party to an action in court, in Olawoye V. Jimoh (2013) LPELR SC 90/2005 delivered on 12th April, 2013 where my Lord, Ariwola, JSC., succinctly restated that:

"It should be stressed that a necessary party should be allowed to have his fate in his own hands.

Judgment made with order against a person who was not joined as a necessary party to a pending suit cannot be allowed to stand as same is to no avail."

That is unquestionable and nothing can be subtracted from it nor added to it. So, in the circumstances of this appeal, the judgment and orders made which touch on APGA who was not a party to the suit of the respondent, at the court below, are "to no avail." Therefore, they consequently, cannot be allowed to stand.

Issue three is resolved in favour of the appellant. Grounds 5, 6, 8 and 11, each succeeded.

Issue four questions the judgment of the court below as having overreached and rendered nugatory a pending appeal and thereby destroying the res in that appeal at this court.

The appeal in question was the interlocutory appeal No. CA/E/14/2013 which was at the instance of the appellant, withdrawn on 4th July, 2013. The same was dismissed pursuant to Order 11 r. 5 of the Court of Appeal Rules, 2011.   
In the circumstances, I am certain in my opinion that a consideration and determination of this issue will be of no practical utilitarian value. Therefore, the issue is tantamount to an academic exercise, such that it cannot enjoy the luxury of a wastage of precious judicial time on it.

In fact, the court has no jurisdiction to entertain an academic question or matter. Odedo V. INEC (2008) NWLR (Pt. 117) 554; (2008) 7 SCNJ 1; Baido V. INEC (supra) at p.90 thereof; Plateau State V. Attor. Gen. Federation (2006) 3 NWLR (Pt. 973) 346 at 419; Gbadamosi V. Aleshinloye (2000) 4 SCNJ 264 at 294; Global Transport Oceanic & Anor. V. Free Enterprises (Nig) Ltd. (2001) 2 SCNJ 224 at 242; (2001) 5 NWLR (Pt. 706) 426; (2001) 112 WRN 136; Dike V. Okorie (1990) 5 NWLR (Pt. 151) 418; Olubode V. Salami (1985) 2 NWLR (pt. 7) 283; Ojiegbe V. Oworanyia (1962) 2 SCNLR 358.

Issue four, being dead and academic and of no practical utilitarian value to the appellant, even if it is resolved in his favour, is therefore discountenanced by me as it is no longer worthy of my consideration and determination.

I, now draw the curtain on this appeal. Having resolved issues one, two and three, all in favour of the appellant, it goes without any shred of doubt, that the appeal is not lacking in merits. It is on a strong wicket. Accordingly, it is allowed.   
Consequently, the judgment and orders made by the learned trial chief judge, I. A. UMEZULIKE, on 8th February, 2013 in re suit No. E/270/2011 are each set aside.

Costs of N50,000.00 is awarded to the appellant against the respondent.

**ADAMU GALINJE, J.C.A.:**

I have read before now the judgment just delivered by my learned brother, **Yakubu JCA** and I entirely agree with the reasoning contained therein and the conclusion arrived thereat.

The preliminary objection issued by the Respondent in the Respondent's brief of argument dated and filed on the 10th May 2013 is against the hearing of appeal No. CA/E/84/2013. So it appears at the first page of the brief. However in arguing the preliminary objection, Mr. Chudiobieze who prepared the brief for Dr. Obieze Onyechi Ikpeazu SAN, OON and Chudi Obieze attacked ground 4 in Appeal No. CA/E/14/2013 and ground 10 in Appeal No. CA/E/84/2013. Learned counsel has clearly issued one preliminary objection against the hearing of two separate appeals which have not been consolidated. At page 4 paragraph 4.04 it is submitted that the law does not allow the Appellant to litigate the same issue in two different appeals in the same court. For avoidance of doubt this is what learned counsel submitted at page 4 paragraph 4.04 as follows:

"It is our respectful submission that the law, does not allow the Appellant to litigate the same issue in two different appeals in the same court.

Where as in this case, such happened, the latter becomes an abuse of the process of the Court.

If not checked, this Court will make two determinations over the same issue."

One would have expected learned counsel for the Respondent having said that the law does not allow the Appellant to litigate the same issue in two different appeals in the same Court, would not fall into the same error by issuing one notice of preliminary objection against two separate appeals. But so he did. The two appeals were not consolidated and therefore could not have been heard at the same time. By Order 10 rule 1, a Respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the Appellant three clear days' notice. The rule does not provide for preliminary objection to the hearing of appeals.

Each appeal has a separate identity and should be dealt with separately.

Be that as it may, since the appeal No. CA/E/14/2013 has been withdrawn, and struck out, objection to its ground 4 and ground 10 of the notice of appeal No. CA/E/84/2013 have become spent.

The Respondent's objection to grounds 6 and 7 of the grounds of appeal is based on facts. A preliminary objection by its very nature, deals strictly with the law. The respondent's grounds of objection are essentially saying that the court process or as in this case, the grounds of appeal have not complied with the enabling law or rule of court and should therefore be struck out. However where the preliminary objection leaves the exclusive domain of the law and flirts with the facts of the case, then the burden rests with the objector to justify the objection by adducing facts in an affidavit.

In that case, the objector stands the risk of his objection being thrown out or rejected if he fails to satisfy the court of the facts he relied on. See U.T.C. vs. Ozomena (2007) 1 All FWLR (Pt. 358) 1014 at 1041.

Learned Counsel for the Respondent neither disclosed in an affidavit the fresh issues which were raised in ground 6 nor did he verify the facts set out at pages 4 - 5 paragraph 4.06 in an affidavit in support of the Notice of preliminary objection.

I am therefore of the firm view that the preliminary objection herein against grounds 6 and 7, of the grounds of appeal, is not commendable.

For these reasons and the more elaborate reasons in the lead judgment of my learned brother, this preliminary objection is without merit and it is accordingly overruled.

On the main appeal, the 1st, 2nd and 3rd issues formulated by the Appellant and adopted by the Respondent deal essentially with whether the lower Court has the requisite jurisdiction to entertain the suit that gave rise to this appeal. The issue of jurisdiction is very fundamental as it goes to the competence of the Court. If a Court is not competent to entertain a mater, it is a waste of time to embark on the hearing and determination of the matter. It is therefore an exhibition of wisdom to have the issue of jurisdiction or competence determined before taking a look at any other issue. In doing so I will like to began with the question of whether the Respondent has locus standi to institute this case.

Locus standi is defined by Black's Law Dictionary, 6th Edition to mean, a place of standing, standing in court. A right of appearance in a court of Justice or before a Legislative body on a given question.

In Adetona v. Zenith Int'l Bank Plc (2011) 18 NWLR (Pt. 1279) 627 at 654 paragraph G - H, the Supreme Court set out clearly the position of the law that will confer locus standi on a person in the following words:-

"The trite position of the law is that a person to have locus standi he must show that his civil rights and obligations have been or are in danger or being infringed and that he has sufficient legal interest in seeking redress in a court of law and whether he will succeed or not has no bearing on his standing to sue."

See Adesanya. V. President, FRN (1981) 5 SC 112, Lawal v. Salami (2002) 2 NWLR (Pt. 752) 687, Odelege V. Adepegba (2001) 5 NWLR (Pt. 706) 330, Imade v. Military Administrator Edo State (2001) 6 NWLR (Pt. 709) 478.

For a person to have an interest in relation to locus standi, it must be shown that he has rights, advantages, duties, liabilities, losses that are connected with the subject matter of litigation whether present or future, ascertained or potential provided that the connection, and in the case of potential rights and duties, the possibility is not too remote. See Adetona v. Zenith Int,I Bank PLC (Supra), Imade v. Military Administrator Edo State (Supra).

The averments in the statement of claim and the writ of summons as well as affidavit in support are mainly, the materials required to ascertain the locus standi of Plaintiff. See Adetona V. Zenith Int'l Bank Plc (supra), Seismosgraph Services (Nig.) LTD v. Oshie (2009) 16 NWLR (Pt. 1168) 158, Adekunle v. Adelugba (2011) 16 NWLR (Pt. 1272)154 at 171 paragraph C, Global Transport, Oceanic SA & Anor v. Free Enterprises Nigeria LTD (2001) 5 NWLR (Pt. 706) 426 AT 443, Elendu V. Ekwoaba (1995) 3 NWLR (Pt. 386) 704.

In the instant case, the Appellant herein issued a notice of preliminary objection to the hearing of the suit at the lower Court on the ground that the Respondent herein has no locus standi to file or commence this suit. At paragraphs 3 and 4 of the supporting affidavit, the Appellant herein deposed as follows:-

"3. I was informed by the Enugu State Chairman of APGA, Hon. Nkoloagu at the National Secretariat of APGA in Abuja during one of our meetings with the State Chairman of the Party of the following facts which I verily believe to be true-

(a) That during the 2011 General Elections, the Plaintiff herein together with others engaged in various acts of gross misconduct, violence and anti-party activities which adversely affected the  performance of APGA in Enugu State.

(b) Consequently thereof, the Enugu State Chapter of APGA set up a Disciplinary Committee which indicted the Plaintiff herein and also recommended his expulsion from APGA.

(c) That at its emergency meeting that took place on 10th August 2011, the Enugu State Executive Committee of APGA unanimously adopted the recommendations of the Disciplinary Committee and expelled the Plaintiff herein together with numerous others from APGA "in line with Disciplinary Committee recommendations."

Herein exhibited and marked Exhibit A1 is a Copy of the Resolution of the Enugu State Executive Committee of APGA expelling the Plaintiff herein from the Party.

4. As at the time the Plaintiff purportedly commenced the instant suit, he has since ceased to be a member of the APGA."

In the counter affidavit of the Respondent herein in opposition to the notice of preliminary objection at pages 172 - 175 of the printed record of this appeal, the Respondent deposed at paragraphs 15, 16 and 17 as follows:-

“15. That further to my paragraph 4 (b) above there was no seven man Disciplinary Committee set up by the appropriate authority to try me or any other member and there was no written offence, place, date and time of trail (sic) as stipulated by Article 21 paragraph 3C.

16. That the action of expelling me and other members was done contrary to our party constitution.

17. That based on the above allegation of fact, I have a right to be protected under the law."

In resolving the issue of expulsion of the Respondent from APGA, the learned trial Chief Judge said:-

"The Plaintiff on the other hand denied that there was any disciplinary committee and castigated Exhibit A1 as specifically contrived for purpose of this litigation.

Obviously many questions do arise here, but I can only ask a few; if the basis of the plaintiff's expulsion under Exhibit A1 is the recommendation of the three-man disciplinary committee, where is the recommendation which was acted upon under Exhibit A1, who were the members of the three-man Disciplinary committee; where is the evidence that Plaintiff appeared before the disciplinary committee?

Where is the record of proceedings at the trial proceedings? All these are not shown or indicated either upon the affidavit evidence lodged or upon the Exhibits annexed thereto. All that suddenly crystallized was Exhibit A1 showing the resolution to expel the plaintiff from APGA. Quite frankly, Exhibit A1 has no foundation. It has no basis.

The recommendation of the three-man disciplinary committee upon which it purports to rest on was non- existent or simply was not there. My inevitable surmise is that Exhibit A1 is suspicious and, or merely contrived for purpose of this suit. It is, therefore, a nullity and cannot in law be taken to have effectively operated" to expel the plaintiff from the party. This is my humble holding."

In resolving this issue, the learned trial chief Judge copiously reproduced paragraphs 8 and 9 of the Appellant's affidavit in support of the preliminary objection, but only made reference to paragraphs 5, 6, 7 and 8 of the Respondent's affidavit in which he said the issues raised in paragraphs 8 and 9 of the Appellant's affidavit were denied. The conduct of the learned trial chief Judge is either deliberate in order to hide the admission by the Respondent that he was expelled from APGA, or he was in a hurry and failed to appreciate the Respondent's deposition at paragraph 16 of the counter affidavit. Any affidavit before the court must be read in whole. It is not for the Court to choose and pick which paragraphs of the affidavit it wishes to deploy in resolution of issues. Had the learned trial Chief Judge read through all the paragraphs of the affidavit, he would have known that the Respondent had admitted that he was expelled from APGA. The law is settled that fact admitted need no further proof.

I have read through the prayers and the questions submitted to the lower Court for determination. I have not come across any prayer in which the Respondent asked the lower Court to determine whether his expulsion from APGA is right or wrong. The learned trial Chief Judge was therefore on a frolic of his own when he issued questions with respect to the expulsion of the Respondent and concluded that the expulsion of the Respondent is a nullity and cannot in law be taken to have effectively operated to expel him from the Party. A trial Court has no right to grant a remedy which has not been claimed by the Plaintiff, because it has no power to do so. See Victor Olurotimi v. Mrs. Felicia M. Ige (2001) 1 Nig. Land Law Case 247 at 249, Ekpenyong & Ors. v. Nyong & Ors (19775) 2 SC 17 at 81 - 82, Kalio & Ors v. Daniel Kalio (1975) 2 SC 15 at 17 - 19, Nigerian Housing Development Society Ltd & Anor V. Mumuni (1977) 2 SC 57 at 81.

In A.G. Federation v. A.I.C. Ltd (2000) 10 NWLR (Pt. 675) 293 at 305 - 306 paragraphs F - C, the Supreme Court forcefully enjoined the Courts not to make an order or grant a relief which has not been asked for in the following words:

"A Court has no power to make an order or grant a relief which has not been asked for by the Plaintiff in his pleadings. A Court of law may award less, but not more than what the parties have claimed. A fortiori the Court should never award that which was never claimed or pleaded by either party. It should always be borne in mind that a Court of law is not a charitable institution; its duty, in civil cases is to render unto everyone according to his proven claims. This is based on the fundamental principle of adjudication that a defendant must be given opportunity to answer the claim against him and if need be to resist it."

The learned trial Chief Judge's order nullifying the expulsion of the Respondent was made without jurisdiction. The said order is a nullity. From the facts available to the lower Court, the Respondent herein ceased to be a member of APGA by virtue of his expulsion from the party. This being so he has no legal interest to protect in the suit he instituted at the lower Court and therefore he is bereft of locus standi to institute this action.

On whether the Courts can exercise jurisdiction on internal affairs of a political party, the law is still extant that political questions as to how a political party should be run or who should be its candidate at an election is strictly a matter within the exclusive jurisdiction of the political parties. The Courts have no jurisdiction to interfere in that regard. See Ehinlawo V. Oke (2008) 16 NWLR (Pt. 1113) 357 at 402. In Abdulkadir v. Mamman (2003) 15 NWLR (Pt. 839) 1 at 33, this court per Muhammed JCA, had this to say:-

"It is trite law that an intra-party governance is entirely within the province of the party.

It is not the role of the Court to make appointments of persons to hold party offices. The question of the candidate a political party will sponsor is more in the nature of a political question which the Courts are not qualified to deliberate upon and answer. See Onuoha V. Okafor & Others (1983) 2 SCNLR 244, (1989) 14 NWLR (Pt. 183) 30, Bakam V. Abubakar (1991) 6 NWLR (Pt. 199) 564.

In the instant case, the subject matter of the complaints and claims of the Respondents are related to the internal affairs of APGA, a political party. In the circumstance, the trial Court had no jurisdiction to determine the case. Since the lower Court was drained of jurisdiction over the matter, the best thing to do in the circumstance was to strike out the case. Article 21(1)(c) of APGA Constitution provides as follows:-

"No member of the party shall take the party to any Court of Justice in the land, no matter the circumstances and under any condition. The relevant authorities and agencies within the party shall resolve all matters affecting the members of the party. A member who takes the party to Court shall lose his/her membership, the date of which shall be determined by the General Convention."

The provision is made to strengthen the internal dispute resolution mechanism within the party and to emphasize the non justiceable nature of internal dispute within the party.

I therefore agree with the learned senior counsel for the Appellant that the lower Court has no jurisdiction to determine the Respondent's case. A political party is a voluntary organization. Members who are dissatisfied with its modus operandi are at liberty to leave.

For these few words and the more elaborate reasons contained in the lead judgment of my learned brother, **Yakubu JCA**, I too allow this appeal and abide by all the consequential orders made in the lead judgment, including order as to cost.

**MODUPE FASANMI, J.C.A.:**

I agree.