**CHUKWUDI OKASIA**

**V.**

**EJIKE OGUEBEGO AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 6TH DAY OF FEBRUARY, 2015

CA/A/737A/2014

**LEX (2015) - CA/A/737A/2014**

OTHER CITATIONS

2PLR/2015/35 (CA)

(2015) LPELR-24738(SC)

**BEFORE THEIR LORDSHIPS**

ABUBAKAR JEGA ABDUL-KADIR, CON, JSC

JOSEPH E. EKANEM, JSC

MOHAMMED MUSTAPHA, JSC

**BETWEEN**

CHUKWUDI OKASIA - Appellant(s)

AND

1. EJIKE OGUEBEGO

2. HON. CHUKS OKOYE (LEGAL ADVISER, PDP ANAMBRA STATE CHAPTER)  
(SUING FOR THEMSELVES AND OTHER MEMBERS OF THE STATE EXECUTIVE COMMITTEE OF THE PDP ANAMBRA STATE)

3. PEOPLES' DEMOCRATIC PARTY

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

**ORIGINATING COURT**

FEDERAL HIGH COURT, ABUJA DIVISION

**REPRESENTATION**

ARTHUR OBI OKAFOR (SAN) and M. A. MAGAJI (SAN) with F. I. ANIKWU and V. C. OTTAOKPUKPU - For Appellant

AND

SOLOMON UMOH (SAN)with TAIWO ABE, U. L. ABONYI, M. N. UMOH, Z. ABDULLAHI and CHIDINMA TIOJI - for 1st and 2nd Respondents

OLUSOLA OKE with O. K. AKUYIBO, Esq) - for 3rd Respondent.

A. AWOMOLO (SAN) with E. FATOGUN, Esq, and TINUKE OSOBA - for 4th Respondent - For Respondents

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

ELECTORAL MATTERS - PRIMARIES OF A POLITICAL PARTY: Power to conduct primaries for a political party – on whom lies – whether courts can stop the holding of primaries or general elections - Whether Courts can reverse the result of primaries of a political party properly merely because it was held during the pendency of a suit relating thereto – whether courts have jurisdiction to dabble into internal affairs of political parties

CONSTITUTIONAL LAW:- Federal High Court - Section 251(1) of the Constitution of Nigeria – jurisdiction of the Federal High Court

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ABUSE OF JUDICIAL PROCESS: Imprecise nature of the concept of abuse of judicial process – Common features – How established

ACTION - LOCUS STANDI: Meaning - interest based on the challenge of a decision of a competent Court which has not been appealed against - whether can be valid interests to ground locus standi

COURT - JURISDICTION: Meaning and nature thereof - Whether Court can hear and determine ancillary claims where it has no jurisdiction to entertain the main claims – duty of court to examine the originating summons and the facts in the supporting affidavit relating to the issue of jurisdiction

JUDGMENT AND ORDER - JUDGMENT IN REM: Meaning and consequences – whether binding on non-parties to the suit in which it was made

JURISDICTION - FEDERAL HIGH COURT: When the Federal High Court can assume jurisdiction on a matter - Section 251(1) of the Constitution of Nigeria - A party in the case must be the Federal Government or its agency, or agent - The suit must be for a declaration or an injunction affecting the validity of an executive or administrative action or decision by such a body - implications thereof

**MAIN JUDGMENT**

JOSEPH E. EKANEM, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This appeal is against the judgment of the Federal High Court, Abuja Division ("the Lower Court" for short) delivered on 5th December, 2014 in suit No. FHC/ABJ/CS/854/2014 in which the Lower Court granted all the reliefs sought by the 1st and 2nd respondents (qua plaintiffs).

The suit was commenced by an originating summons in which the 1st and 2nd respondents raised five questions for the court's determination and sought the following reliefs:

"1. A declaration that the 1st defendant cannot legally and validly set up a caretaker committee or any other body whatsoever when the order of interlocutory injunction made by this Honourable court in suit No.FHC/PH/CS/213/2013 Now suit No.FHC/AWK/CS/247/2013 - EJIKE OGUEBEGO and 2 OTHERS V. PEOPLES DEMOCRATIC PARTY and 1 other (which order and suit is also subject of pending appeal before the Port Harcourt Judicial Division of the Court of Appeal in suit No.CA/PH/764/2013 PEOPLES DEMOCRATIC PARTY V. EJIKE OGUEBEGO and 3 OTHERS) is still subsisting and subject of an appeal.

2. A declaration that the purported caretaker committee set up by the 1st defendant is an illegal and unconstitutional body when the tenure of the EJIKE OGUEBEGO led State Executive Committee of the People's Democratic Party Anambra State Chapter which will only lapse on the 16th day of March, 2016 is still subsisting, functioning and duly recognized by the court and the 2nd defendant.

3. A declaration that the acts, decisions and any delegates list or nominated candidates that may emanate from the congress and primaries conducted by the caretaker committee set up by the 1st defendant is illegal, invalid, unconstitutional and therefore null and void and of no effect whatsoever nor can the said list be used for any purpose for the conduct of the 2015 general election with regards to Peoples' Democratic Party, Anambra State Chapter."

4. An order of this Honourable Court that the defendants in this case are bound to recognize, deal with and accept the list of delegates and nominated candidates that may emanate from the congress and primaries conducted by the plaintiff in this case.

5. An order of perpetual injunction restraining the 1st defendant, its agents, servants, privies, assigns, officials whatsoever name they may be called from forwarding, sending, or submitting to the 2nd defendant any delegates list or nominated candidates that may emanate from the congresses and primaries conducted by the plaintiff in this case.

6. An order of perpetual injunction restraining the 2nd Defendant, its agents, servants, privies, assigns, officials whatsoever name they may be called from accepting or receiving any delegate list or nominated candidates that may emerge from the congress or primaries conducted by the purported caretaker committee set up by the 1st defendant for the Peoples' Democratic Party, Anambra State Chapter except those that emanate from the plaintiffs.

7. An order of this Honourable Court that the defendant - Peoples' Democratic Party by the purported appointment of a caretaker committee to oversee, run the affairs and conduct election for the Peoples' Democratic Party, Anambra State Chapter is in flagrant disobedience and contempt of the order of this Honourable Court made by Hon. Justice S. E. Chukwu on the 19th day of October, 2014 and 14th day of November, 2014 in KEN EMEAKAYI V. PEOPLE'S DEMOCRATIC PARTY and 6 OTHERS.

8. An order of this Honourable Court disbanding, nullifying and setting aside the illegal caretaker committee set up by the 1st defendant to oversee, run the affairs and conduct the elections for the People's Democratic Party, Anambra State Chapter.

9. An order of this Honourable Court re-affirming the orders of interlocutory injunction given in Suit No. FHC/PH/CS/213/2013 (Now Suit No.FHC/AWK/CS/247/2013). - EJIKE OGUEBEGO and 2 OTHERS V. PEOPLE'S DEMOCRATIC PARTY AND 3 OTHERS pending the hearing and determination of the appeal before the Port Harcourt Judicial Division of the Court of Appeal in suit No.CA/PH/764/2013 - PEOPLES' DEMOCRATIC PARTY V. EJIKE OGUEBEGO and 3 others and

10. For such further order(s) as this Honourable Court may deem fit to make in the circumstances"

Dissatisfied with the judgment of the Lower Court, the appellant filed two notices of appeal, one on 9/12/2014 and the second on the 12/12/2014. At the hearing of the appeal, the appellant abandoned the first notice of appeal leaving the second notice of appeal as the extant notice of appeal.

In his brief of argument filed on 15/12/2014, Arthur Obi Okafor, (SAN), of counsel for the appellant, formulated four issues for the determination of the appeal. The issues are:

"(i) Whether the learned trial judge was right when it assumed jurisdiction over 1st and 2nd respondents originating summons.

(ii) Was the court below right in its judgment whenever having held that it was not deciding the question of leadership of Anambra State Chapter of PDP it proceeded to hold that it is the list of nominated candidates of PDP, Anambra State emanating from the primaries conducted by the 1st and 2nd respondents and no other that should be used in the general election.

(iii) Whether the 1st and 2nd respondents' action was not an abuse of court Process.

(iv) Whether the court below was right in impugning the appointment of the 3rd respondent's ad-hoc committee that conducted the primaries of the 3rd respondent and in ordering the 4th respondent not to accept the result of the said primaries but to accept the list of nominated candidates of PDP emanating from the congresses and/or primaries conducted by the 1st and 2nd respondents (who claim to be State Executive of the Anambra State Chapter of the People's Democratic Party).

On his part, Solomon Umoh (SAN) of counsel for the 1st and 2nd respondents, adopted the issues formulated by appellant's counsel.

It must be mentioned that the notice of preliminary objection filed by Senior Counsel for the 1st and 2nd respondents was withdrawn by him and was struck out while the preliminary objection contained in his brief was not argued by him during the hearing of the appeal. I accordingly discountenance the arguments of senior counsel regarding the preliminary objection.

It must be stated that the 3rd and 4th respondents did not file briefs of arguments.

Senior counsel for the appellant proffered the following arguments on the issues formulated in his brief.

**ISSUES I, II, and III**

Counsel argued the three issues together. He drew the court's attention to the fact that none of the 1st and 2nd respondents is an aspirant in any primary election or congress, but that they claim to have been elected as Executive members of the Anambra state chapter of the Peoples' Democratic Party. Their claim, he stated, was hoisted on the assertion that their tenure was yet to expire and that they ought to conduct the congresses and primaries, and submit the list of nominated candidates to the INEC. He was of the view that the Lower Court indirectly agreed with them on their assertion and on that premise held that it is they who should submit the list of nominated candidates from their congress to the INEC. It was his further view that the Lower Court approbated and reprobated in that it had earlier held that it was not deciding the issue of leadership of PDP in Anambra State.

Continuing, senior counsel submitted that the Lower Court ought to have first resolved issues such as locus standi and abuse of court process. He noted that the High Court of the Federal Capital Territory in suit No. FCT/HC/CV/2631/2012 had nullified the congress under which the 1st and 2nd respondents were allegedly elected as executive members of the PDP, Anambra State Chapter and their application for leave to appeal was dismissed. Thus, he posited, the court below ought to have held that the 1st and 2nd respondents did not have the locus standi to institute and maintain the proceedings. The case of NATIONAL HOSPITAL ABUJA V. NAT. COMM C.O.E (2014) 11 NWLR (1418) 309, 334 was cited by him to support his submission. He argued, in the alternative, that the institution of the case was an abuse of the court process.

He went on to submit that even though the Lower Court had nullified the caretaker committee set up by the 3rd respondent in suit No.FHC/ABJ/CS/689/2014, it went beyond that to also nullify the ad-hoc committee set up by the 3rd respondent for the conduct of the primaries even though no mention was made of the ad-hoc committee in the said suit nor was there any complaint against it in the affidavit in support of the originating summons.

It was his further submission that the issue of who should conduct party primaries and submit list of nominated candidates to INEC was a pre-primary issue over which the Lower Court had no jurisdiction as courts do not resolve political questions. He stated that the matter did not fall within the limited jurisdiction provided in Section 87 (9) of the Electoral Act 2010 (as Amended). He cited and relied on UKACHUKWU v. PDP (2014) 17 NWLR (1435) 134, EMEKA V. OKADIGBO (2012) 18 NWLR (1331) 55 and EMENIKE v. PDP (2012) 12 NWLR (1315) 556 to support his submission.

Continuing learned senior counsel submitted that the Lower Court had no subject matter jurisdiction to decide the originating summons. He stated that the principal reliefs are against the PDP which is not an agency of the Federal Government and that there is no genuine dispute calling for determination between the 1st and 2nd respondents, and INEC (the 4th respondent). On this account, he posited that the Lower Court had no jurisdiction based on Section 251 (1) (r) of the Constitution of Nigeria, 1999 (as amended) and the case of PDP V. SYLVA (2012) 13 NWLR (1316) 85. He thereafter argued (in the alternative) that even if there was a real dispute between the 1st and 2nd respondents and INEC, the relief relating to the INEC could only be ancillary which does not confer jurisdiction on the Lower Court.

**ISSUE IV**

Learned Senior Counsel stated that there was no iota of facts in the 1st and 2nd respondents' affidavit in support of the originating summons complaining about the 3rd respondent's electoral panel. He submitted that it was therefore wrong for the Lower Court to have nullified the appointment of the ad-hoc committee for the reason that it was set up during the pendency of the case. He referred to Section 87 (11) of the Electoral Acts 2010 (as amended), Clause 25 (vi) of the Electoral Guidelines for the Primary Election 2014 of the People's Democratic Party and the case of EMEKA V. OKADIGBO (2012) 18 NWLR (1331) 55 to buttress his argument.

It was his further argument that it was imperative for the Lower Court to have made specific finding as to whether it was the caretaker committee or ad-hoc committee that conducted the party primaries and that it was wrong for the Lower Court to have restrained the 4th respondent from accepting the list of nominated candidates from the 3rd respondent. He finally urged the court to allow the appeal and set aside the judgment of the Lower Court.

Learned Senior Counsel for the 1st and 2nd respondents proffered the following arguments in respect of the issues:

**ISSUE 1, 2 AND 3**

He submitted that the appellant completely missed the point namely; that the 1st and 2nd respondents' grievance was predicated on the orders that issued from the proceedings pending at the Federal High Court, Port Harcourt and the Court of Appeal, Port Harcourt. He further submitted that the 1st and 2nd respondents' action was not an abuse of process since no other suit was pending involving the same parties, subject matter and issue and that the judgment was predicated on the narrow issue as to whether the 3rd and 4th respondents could validly take steps to frustrate or breach the subsisting order of the Lower Court to the effect that both the 3rd and 4th respondents should recognize and deal with only the 1st and 2nd respondents - led state executive committee of the PDP in Anambra in all matters of election. He added that every order of court is binding on all parties until set aside.

It was his arguments that by virtue of Section 251 (1) (r) of the 1999 Constitution of Nigeria (as amended) it is only the Lower Court that is clothed with jurisdiction to hear and determine the case, and that the grant of all the reliefs was in compliance with Section 287 (3) of the Constitution.

Senior Counsel further argued that the Lower Court was right in refusing to accede to the request of the appellant for a dismissal of the 1st and 2nd respondents' case on the basis of the judgment of Kekemeke, J in Suit No.FCT/HC/CV/2631/2012 because the said judgment is subject of a pending appeal and action. It was his view that the Lower Court could not make any pronouncement one way or the other regarding the request of the appellant. He went on to argue that the 1st and 2nd respondents were not bound by the said judgment as they were not parties thereto.

Continuing, senior Counsel submitted that the reference to the provision of Section 87 (9) of the Electoral Act, 2010 (as amended) by appellant was misplaced regard being had to the subject matter of the action. He added that EMEKA V. OKADIGBO supra And EMENIKE V. PDP supraare not relevant to the issues for determination.

**ISSUES 4**

Senior Counsel submitted that all the Lower Court did was to essentially straighten the record as regards the line of authority in the PDP and the need for them to comply with their guidelines by acting in concert with Anambra State Executive while their tenure subsists. He went on to state that it was not true that the Lower Court nullified the 3rd respondent's ad- hoc committee, ie, the electoral panel. It was his further submission that the issues for determination and the reliefs sought by the 1st and 2nd respondents had nothing to do with Section 87 (1) of the Electoral Act, 2010 (as amended).

He finally urged the court to dismiss the appeal.

Issues I and III identified by appellant and 1st, and 2nd respondents touch on the jurisdiction of the Lower Court. I shall treat them together. I shall thereafter treat issues II and IV separately.

**ISSUES I and II**

The jurisdiction of the Lower Court was challenged by way of motion on notice. The Lower Court in its judgment held that it had jurisdiction.

Jurisdiction is the authority that a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. It is circumscribed by the constitution or the statute creating the court or by a condition precedent created by a legislation which must be fulfilled before the court can entertain the Suit. See NDAEYO v. OGUNNAYA (1977) SC 11. The Constitution or the enabling law vesting jurisdiction in the court is to be examined in the light of the claims of plaintiff. If the claims fall within the jurisdiction of the court, the court is to assume jurisdiction. If it does not, the court must decline jurisdiction. In cases commenced by originating summons, as the instant case, the court is to examine the originating summons and the facts in the supporting affidavit relating to the issue of jurisdiction. See NJIKONYE V. MTN NIG. COMM. LTD (2008) 9 NWLR (1092) 332, 365 and 361. AHMED V. AHMED (2013) 15 NWLR (1377) 274, 331- 332.

Section 251(1) of the Constitution of Nigeria, 1999 (as amended) sets out a part of the jurisdiction of the Federal High Court. Sub-section (1) (r) is relevant to this case. It states;

"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters - any action or proceeding for a declaration of injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies."

For the Federal High Court to assume jurisdiction on the basis of the above;

(i) A party in the case must be the Federal Government or its agency, or agent; and

(iv) The suit must be for a declaration or an injunction affecting the validity of an executive or administrative action or decision by such a body. See AHMED V. AHMED, supra. 335 and PEOPLE'S DEMOCRATIC PARTY V. SYLVA (2012) 13 NWLR (13118) 85.

The Federal Government is not a party in this case and none of the parties is an agent or agency of the Federal Government except the 4th respondent (INEC). A careful reading of the affidavit in support of the originating summon shows that there is no dispute between the 1st and 2nd respondents, and the 4th respondent. There is no complaint against the executive or administrative action of the 4th respondent. I also agree with learned senior counsel for the appellant that the reliefs number 4, 5 and 6 which touch on the 4th respondent are ancillary reliefs which cannot clothe the Lower Court with jurisdiction.  
In the case of TUKUR V. GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (117) 517 at was held that,

"... A court cannot hear and determine ancillary claims if it has no jurisdiction to entertain the main claims and if the ancillary claim will clearly involve substantial discussion of the main claims."

Indeed the reliefs touching the 4th respondent cannot be looked into without an in-depth look into and decision on reliefs 1, 2, and 3 which are the main or principal reliefs. The Lower Court could therefore not assume jurisdiction under Section 251(1) (r) of the Constitution to entertain the matter.

Again, the dispute the subject matter of the case, involves the domestic affair of the PDP. Courts have no jurisdiction to dabble into the domestic affairs of a political party. This has been the position of Nigeria courts over the years. See ONUOHA v. OKAFOR (1983) 2 SCNLR 244. However, Section 87 (9) of the Electoral Act 2010 (as amended) gives the court a limited and narrow jurisdiction in respect of the selection or nomination of a candidate of a political party for election. It provides as follows:

"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 selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of State or FCT, for redress."

For the narrow jurisdiction to be ignited, the following cumulative factors must be present;

(i) There must first have been a primary for the selection or nomination of a candidate of a political party;

(ii) The exercise must have been in respect of an election;

(iii) The complainant must be an aspirant who participated in the primary

(iv) The political party did not comply with a provision of the Electoral Act or its guidelines for the nomination.

See UKACHUKWU V. PDP (2014) 17 NWLR (1435) 134, 201 - 202, PDP V. SYLVA supra., LADO V. CPC (2011) 18 NWLR (1279) 689, EMEKA V. OKADIGBO (2012) 18 NWLR (1331) 55 and EMENIKE V. PDP (2012) 12 NWLR (1315) 556, 598. The case of the 1st and 2nd respondents did not meet those requirements. The Lower Court therefore had no jurisdiction to entertain the matter.

Senior Counsel for the 1st and 2nd respondents argued that Section 87 (9) of the Electoral Act, 2010 (as amended) did not come into play in the light of the subject matter of the action. A look at the reliefs number 3, 4, 5 and 6 in the originating summons shows that the issue of nomination of candidates as well as congress and primaries relating thereto are central to them. I respectfully do not agree with him. The manner of the couching of those reliefs brought to the scene Section 87 (9) of the Electoral Act.

With regard to abuse of process, it has been stated in the case of SARAKI V. KOTOYE (1992) 9 NWLR (264) 156 that

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It may lie in both a proper and improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice.”

In Exhibit PDP 1 (see pages 398-400 of vol. 1 of the record) the High Court of the Federal Capital Territory nullified the State Congress of the PDP, Anambra State Chapter held on 17/3/2012. In exhibit B attached to the counter - affidavit of the appellant, the application of the 1st respondent and another (suing for and on behalf of the other members of the People's Democratic Party (PDP) Anambra State) for leave to appeal against the judgment in exhibit PDP 1 was dismissed.

The court in that instance stated that:

"I agree ... that the applicants do not exist in the eyes of the law. The election was a nullity. It follows that nothing took place and the applicants did not emerge..."

The case of the 1st and 2nd respondents is hinged on the alleged election conducted in the nullified congress. This is clear from the endorsement as to the capacity of the 1st and 2nd respondents in the originating summons and paragraph 3 (a) (b) and (c) of the affidavit in support of the originating summons. The judgment in exhibit PDP 1 is a judgment in rem as it determined the status of the Anambra PDP State Congress of 17/3/2012 and the purported Executive Committee of the 1st and 2nd respondents which flowed there-from. It is conclusive against the whole world including the 1st and 2nd respondents even-though they were not named parties in the suit. It therefore stops them from asserting, as they have done, a position different from what was decided. See OGBORU V. UDUAGHAN (2011) 17 NWLR (1227) 727, 764, where Adekeye, JSC, stated that;

"The features 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 person or persons or thing, or the right or title to property litigated before a competent court. It is indeed conclusive against the entire world in whatever it settles as to the status of the person or property. All persons whether party to the proceedings or not are stopped from averring that the status of the person is other than the court has by such judgment declared or made it." See also IDRIS V. ANPP (2008) 8 NWLR (1088) 1, 120.

Contrary to the argument of Senior Counsel for the 1st and 2nd respondents, it is immaterial that the judgment has been appealed against or is the subject of an action; it remains binding until it is set aside by a competent court.

Thus when the 1st and 2nd respondents took out the originating summons based on their assertion that they are members of an extant executive committee of PDP Anambra Chapter, contrary to Exhibit PDP1 which is still in force not having been set aside or reversed on appeal, it was using the judicial process to the irritation and annoyance of their opponent as well as interfering with the due administration of justice. I hold therefore that the suit was an abuse of process.

The further implication of exhibit PDP 1 is that the 1st and 2nd respondents had no locus standi to sue. In the case of NATIONAL HOSPITAL ABUJA V. NAT. COMM. COE (2014) 11 NWLR (1418) 309, 334 it was held that,

"... Any interest based on the challenge (not appeal) of a decision of a competent court which has not been appealed against, cannot be valid interest enough to ground locus standi."

I therefore resolve issues I and III in appellant's favour.

**ISSUE II**

In its judgment at page 850 vol.2 of the record, the Lower Court stated:

"I am not here in this suit to determine who is the executive of PDP in Anambra State ..."

That was good because the issue had been decided in Exhibit PDP1 and so could not be re -opened. However the Lower Court in a surprising volte - face ordered that it is only the list of delegates or nominated candidates from the 1st and 2nd respondents' congress that is to be forwarded and received by the 4th respondent. This order could only be predicated on a finding that the 1st and 2nd respondents' committee was the authentic executive committee of the Anambra chapter of the PDP and that it was in its power to act in that regard. This cannot be so in view of what I have already stated in this judgment. I agree with the learned senior counsel for the appellant that the approach of the Lower Court was wrong and I hold that it occasioned a miscarriage of justice.

I therefore resolve issue II in favour of the appellant.

**ISSUE IV**

At page 852 of vol. II of the record, the Lower Court ordered that any delegates list or nominated candidates that emanated from the congress and primaries conducted by the caretaker committee or ad -hoc committee set up by the 3rd respondent during the pendency of the suit is illegal, invalid etc. and cannot be used for any purpose.

In the counter affidavit of the 3rd respondent at pages 394 - 397 of vol. 1 of the record, it is deposed that pursuant to its power, a five - member electoral panel was set up by the National Executive Committee to organize and conduct the delegates elections in Anambra State and that the ad-hoc committee did so. There was no specific complaint by the 1st and 2nd respondents against the electoral panel. Furthermore by Section 87 (11) of the Electoral Act, 2010 (as amended) courts are forbidden from stopping the holding of primaries or general election under the Act pending the determination of a suit relating to nomination. It follows therefore that a court ought not to reverse the result of primaries properly held under the Act even if that was done during the pendency of a suit relating thereto on that account only. It also follows that the order of the Lower Court stated above could not be right. This is the more so since the power to conduct primaries rests in the National Executives Committee of the appellant. See EMENIKE V. PDP (2012) 12 NWLR (1315) 556 and EMEKA V. OKADIGBO (2012) 18 NWLR (1331) 55.

Since the power to conduct primaries lies in the National Executive Committee which exercised its power in appointing the electoral panel, there was no basis for the Lower Court to impugn the appointment of the panel (by whatever name) and in ordering the 4th respondent not to accept the result of the primaries conducted by it, but to accept the list of candidates from the congress conducted by 1st and 2nd respondents which had no power to do so.

I therefore resolve issue iv in appellant's favour.

On the whole the appeal has merit and is accordingly allowed by me. The Lower Court's judgment delivered on 5/12/2014 in Suit No.FHC/ABJ/CS/854/2014 is hereby set aside. In its stead, I hereby strike out the action. The parties shall bear their costs.

**ABUBAKAR JEGA ABDUL-KADIR, J.C.A, CON.:**

I have had the advantage of a preview of the lead judgment just rendered by my learned brother, **EKANEM, JCA.** I am in complete agreement with his admirable exposition of the law, the entire reasoning therein and the conclusion which I adopt as mine.

The appeal is glaringly meritorious. I too allow the appeal. The Lower Court's judgment delivered on 5/12/2014 in Suit No: FHC/ABJ/CS/854/2014 by E. S. Chukwu, J. is hereby set aside. In its stead, I hereby strike action as filed. I abide by the order as to costs contained in the judgment.

**MOHAMMED MUSTAPHA, J.C.A.:**

I read before now, the judgment just delivered by my learned brother, **Joseph E. Ekanem, JCA.**

For the lucid reasons given in the lead judgment, I am in complete agreement with his reasons and conclusions that the appeal is meritorious and it is hereby allowed.

Parties should bear their costs.