

DETERMINATION OF INTERNAL AFFAIRS OF A POLITICAL PARTY: PRE-ELECTION AND JURISDICTIONAL MATTERS*

Abstract

One of the condition precedence to the holding of any general election in Nigeria is the conduct of Party Primaries by the various political parties in line with the Electoral Act, Parties' Constitutions and Electoral Guidelines. Curiously, the conducts of primary elections in Nigeria are characterized by disputes and controversies caused by internal party wrangling which tends to undermine the internal democratic structure of political parties. This paper seeks to examine what constitutes "internal affairs" of a political party and current positions of law on the various jurisdictional issues arising from pre-election disputes in Nigeria. The paper recommended that parties in pre-election matters should always act timeously once they discover that their rights have been infringed upon immediately after their party primary election and to approach any of the three courts with the requisite jurisdiction to hear and determine pre-election matters.

1.0. Introduction

As a prelude to any general election in Nigeria, every political party is bound to conduct its primary election to nominate their candidates or their flag bearers for the general elections. This process is not always easy as the political actors engage in horse-trading and gimmicks activities in order to outsmart their opponents. Often times the party primaries are factionalized and each faction holds separate party primaries which ends up in litigation.

These actions negate the principle of internal democracy which gives equal opportunity to every member of the party to take active participation in the activities of the party, especially in deciding who becomes the flag bearers of the party in the general elections. Although, the courts in past have viewed these actions by the politicians as a political question which the courts cannot meddle into. Unarguably, the nomination and sponsorship of candidates are under the exclusive powers and authority of the political parties¹, but that does not mean that certain activities of the political parties are not subject to political review.

The courts in a bid to resolve these issues have been faced with jurisdictional issues, resulting to arguments on what constitutes "internal affairs" of the party which are not amenable to judicial review and "pre-election" matters.

1.1. Internal Affairs of a Political Party

The phrase internal affairs of the political party refers to the affairs that involved the internal administration or the internal matters of a particular political party.² Generally courts are very reluctant to meddle into the affairs of the political parties and divergent views have been expressed on what constitute the "internal affairs or domestic affairs of a party and whether such affairs are justiciable or can be subject of judicial interpretations. Though, these issues have been resolved by virtue of judicial pronouncements and legislations but the ghost of the matter has been a reoccurring decimal.

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¹ Section 87 of Electoral Act , 2010 (as amended)

² Shanrahayu, A.A and A.O Sambo, Journal of Applied Sciences Research 7(13) :2

The view that a political party is superior over their affairs and should therefore not be tampered with was adopted in *Onuora v Okafor*³. In this case, the Plaintiff together with other members of NPP contested the Primary election into the Senatorial seat of Owerri Senatorial District of Imo State. The 3rd Defendant who also participated in the election alleged irregularities in the conduct of the election. In response to the petition to this effect by the 3rd Defendant, the Party set up a panel to investigate the allegation. At the panel, both the plaintiff and the 3rd Defendant were given equal opportunities to present their cases. The Panel finally came to the election that the primary election was won by the 3rd Defendant. Dissatisfied with the report of the panel, the Plaintiff filed a suit, praying the court to nullify the Panel's decision. The Supreme Court in dismissing the appeal held that decision of the party is not justiciable.

Similarly, in *Dalhatu v Turaki*⁴, two primary elections were conducted by different factions of the party. The appellant was declared the winner in one while the 1st Defendant was also declared winner in another. The All Nigerian Peoples Party recognized the primary which the 1st Defendant participated. The Supreme Court in resolving the matter held thus:

By the authority of *Onuora v Okafor*, the trial court has no jurisdiction to entertain the matter. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. In other words, it is a domestic issue and not such as would be justiciable in a court and the right to nominate and sponsor a candidate to an election are vested in a political party and the exercise of this right is the domestic affairs of the party.

In *Ogara v Asadu*⁵, the Court of Appeal held that where two parallel primaries conducted, one by the National Executive Committee of the party and the other by the State Executive Committee, only the primary conducted by the National Executive Committee which had the right by the constitution of the party to so do, could produce the authentic candidate.

By virtue of the above judicial authorities, an aspirant to primary election of his party cannot validly challenge the outcome of the primary election of his political party. The implication of the above law, is that the party has the exclusive right to decide who becomes its candidate. That is to say, the party can choose and send to INEC, the names of any member of the party whom they like as the party's candidate.

However, the position of law in *Lado v CPC* brought a radical change on the legal principle that the internal affairs of the party is not subject to judicial interpretation. In that case, the Supreme Court held as follows:

The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the purview of section 87(4) (b), ii, (c) (ii) and 9 of the Electoral Act 2010 (as amended). It is only if he can come within the provisions of those subsections that his complaints can be justiciable as the courts cannot still decide which of them is nominated candidate of a political party, that it still resides in the political parties to exercise.

³ (1983) 2 SCNLR 244

⁴ (2003) 15 NWLR (pt.843)310

⁵ (2014) LPELR-22862 (CA)

It is trite law that section 87 (9) of the Electoral Act 2010 (as amended) create the ambience for courts to step into the affairs of a political party where its action violates the provisions of the Electoral Act as stated hereunder⁶:

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

The Supreme Court in *Shuaibu v PDP & Ors*⁷ held that a political Party is obligated not only to comply with the Electoral Act, but also to comply with its own constitution and its guidelines for the nomination of candidate. The court further held that the court is empowered by section 87(9) of the Electoral Act, 2010 (as amended) to intervene where a Party has acted arbitrary and with impunity. See *Uzodinma v Izunaso*⁸

Apart from non compliance with the provisions of the Electoral Act, the issue as to the qualification of the candidate is not a matter within the domestic domain of the political party. It is expected in this regard that political parties shall nominate and sponsor candidates who are eligible and qualified to contest the election. In the event where the qualification of the candidate is in doubt, the party cannot invoke or rely on “internal affairs” of the party as a defence. The Supreme Court confirmed this position in *Fayemi v Oni & 2 Ors*⁹ when it held thus:

I do not agree with the learned counsel that qualification to contest primary election is an internal affair of the party. On the contrary, qualification of a candidate is both pre and post – election matter that can be challenged either in the Federal High Court or State High Court or the Tribunal..... The successful conduct of Primary Election as in this case, is not a bar to question the qualification of a candidate who was declared as the winner, since qualification is both a pre and post-election matter.

Therefore, issue as to the qualification of a candidate does not fall within the ambits of the matters that are not justiciable in the light of the internal affairs of the political party.

1.2. Pre-election matters

It is not every matter that is related to election that must be entertained in an election tribunal. A number of matters, especially matters bordering on non compliance with the provisions of the Electoral Act and party’s constitution in the selection or nomination of party’s candidate for the general election are referred to as pre-election matters and come within the jurisdiction of courts.

Furthermore, the Supreme Court in *Peter obi vs. INEC*¹⁰ defines pre-election matter to mean any suit by:

- a. an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the

⁶ Section 87(9) Electoral Act 2010 (as amended)

⁷ (2017) 6-7 S.C (PT.II) 18

⁸ (2011) 17 NWLR (pt.1275)

⁹ (2019) 4-5 SC PT.1

¹⁰ (2007) 11 NWLR (pt. 1046) 565

provisions of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;

- b. an aspirant challenging the actions, decisions or activities of Independent National Election Commission or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by INEC in respect of the selection or nomination of candidates and participation in an election; and
- c. a political party challenging the actions, decisions and activities of the INEC disqualifying its candidate from participating in an election or complaining that the provisions of the Electoral Act or any other applicable law has not been complied with by the INEC in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election.

Nonetheless, the Supreme Court in *APC & Anor v Engr Suleman Aliyu Lere*¹¹ defines pre-election matters as follows:

Pre-election matters as the name implies are matters that occurred before the Election proper. They are live issues that must be heard and a judgment delivered. Litigation arising from party primaries e.g substitution of candidates. Complainants about the conduct of primaries are pre-election matters

1.3. Jurisdictional issues in pre-election Matters

Jurisdiction is the legal right or authority which a court must have to decide a matter litigated before it or to take cognizance of matters prescribed in a formal way for its decision and the limit of this legal power or authority are circumscribed by the statute.¹² Jurisdiction is also described as the cornerstone of all litigation.¹³ It is trite law that if the court is bereft of jurisdiction to hear and determine a case before it, any steps taken in the matter is a nullity and void.¹⁴ The re-occurring jurisdictional issues in pre- election disputes are discussed below.

i. Proper Parties

The parties to pre-election matters is very germane to the success and failure of the suit, since the law is settled that the plaintiff can only sue the parties he has cause of action against otherwise the action will fail. This position of law was reaffirmed by Niki Tobi of blessed memory in *Abubakar vs. Yar Adua*¹⁵ as follows:

The plaintiff who sues a wrong person in law cannot be heard to say that the court should give judgment in his favour against the wrong person, after all a court of law cannot give judgment against a person not known to law.

The Electoral Act stipulates the appropriate persons who can commence pre-election matters as follows:

Notwithstanding the provision of the 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

¹¹ (2019) 5-6 (pt.II)

¹² *Salim v CPC* (2015) 8 EJSC 163 @ 181 Paras E-F

¹³ *Dapialong v Dariye* (2007) 27 WRN

¹⁴ *Kotoye v Saraki* (2001) 48 WRN 1,(1994) 7 NWLR (pt.357) 414

¹⁵ (2009) 5 WRN 1 @ 140

has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.

By virtue of the above law, the parties that can apply to court regarding the violation of any of the provisions of the Electoral Act and the guidelines of the political party is the aspirant who contested the primary election. However, section 31(4), (5) & (6) seems to have created a window for anybody or any member of the public to file an action against a candidate who submits false document or information in affidavit. Section 31(4) (5) and (6) read thus:

a person may apply to the commission for a copy of nomination form affidavit and any other document submitted by a candidate at an election and the commission shall , upon payment of a prescribed fee, issue person with a certified copy of the documents within 14 days.¹⁶

Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or FCT against such person seeking a declaration that the information contained in the affidavit is false.¹⁷

If the court determines that any of the information contained in the affidavit of any document submitted by that candidate is false, the court shall issue an order disqualifying the candidate from contesting the election¹⁸

The purport of section 87(9) of the Electoral Act 2010 (as amended) is that an aspirant is a person who participated in the party primary; a person who has been screened and cleared by his political party to participate in the primaries. Until a prospective plaintiff is screened, cleared or nominated by his party to contest his party's primaries, he cannot bring himself within the purview of section 87(9) and thereby lacks the locus standi to commence an action in court.

In view of the above law, any body be it an aggrieved aspirant to a primary election or not can commence a pre-election matter in court with respect to allegation of submission of false information and documents to the INEC. An aggrieved aspirant to a primary election of a political party can predicate his pre-election matter on any of the following grounds:

- a. Non compliance with the provisions Electoral Act
- b. Lack of qualification of the aspirant

ii. Time for Accrual of cause of Action

The Supreme Court in *APC & Anor v Engr Suleman Aliyu Lere supra* defines Cause of Action as the entire set of circumstances giving rise to an enforceable claim and consists of two elements namely;

- a. The wrongful act of the Defendant which gives rise to the cause of complaint, and
- b. The consequential damage

Cause of action is the factual situation which entitles one person to obtain a remedy from another person in the court. Any act on the part of the Defendant which gives the Plaintiff his cause of complaint is a cause of action see *Adimora v Ajufor (1988) 6 S.C, 113*

¹⁶ Section 31(4) of Electoral Act 2010 (as amended)

¹⁷ Section 31(5) of Electoral Act 2010 (as amended)

¹⁸ Section 31(6) of Electoral Act 2010 (as amended)

The time for the filing of pre-election matter in a court of law is governed by the constitution of the Federal Republic of Nigeria 1999 (as amended) which states thus:

Notwithstanding anything to the contrary in this constitution, every pre-election matter shall be filed not later than 14 day from the date of the occurrence of event, decision or action complained of in the suit.¹⁹

From the face of the above provision, election filed after 14 days from the occurrence of the event, decision or action complained of is statute barred. The issue that surrounds the above law is the determination of when the time begins to run i.e does time begin to run after the date of the primary or after the aggrieved party must have exhausted the domestic remedies prescribed by the party's guidelines and constitution.

There is no doubt that most constitutions of the political parties contain for arbitration clause in their constitutions. For example, the constitution of APC provides thus:

Offences against the party shall include the following:

Filing an action in a court of law against the party or any of its officers on any matters relating to the discharge of the duties of the party without first exhausting all avenue for redress provided for in this constitution²⁰

The said APC constitution also provides for the procedure for appeal by any member of the party who is aggrieved by the decision of the party as follows

C (i) where a member is not satisfied with the decision of the adjudicatory organs of the party, he or she shall have the right to appeal within 7 days of the decision to the immediate appellate body in the party as prescribed in this constitution.

(ii) An appeal shall be determined by the appropriate appellate body within 14 days from the date of reception of the appeal by the appellant body concerned.

(iii) Where a decision or action taken by an organ of the party is appealed against, the decision shall remain in force and binding until the appeal or appeals had been determined. The decision or action shall cease to be binding if the appellate body upholds the appeal.

By virtue of the above provisions of the constitution of All Progressive Congress which is in *pari materia* with the constitution of other political parties in Nigeria, a member of the party cannot commence an action against the party without first exhausting the available domestic remedies. The exhaustion of domestic remedy is the condition precedent to the commencement of action in court and failure to adhere to this strict rules will attract severe sanction from the party.

Apart from the risk of being expelled from the party, action commenced in a court of law by such member may be struck out for failing to comply with the condition precedent of the party. And being that the above rules of the party is binding on the aggrieved member, such member must comply with it.

It is trite that arbitration clause is only procedural in that a provision whereby the parties agree that any disputes should be submitted to arbitration does not exclude or limit rights or remedies but simply provides a procedure under which parties are free, such a clause notwithstanding, to pursue their claims

¹⁹ Section 285(9) of the CFRN 1999 (as amended)

²⁰ Article 21 A(x) of Constitution of All Progressives Congress (APC)

in the courts subject to the rights of court to grant stay of proceedings. See *Obembe vs Wemabod Estate Ltd*²¹.

Considering the delays and politics involved in dealing with complaints and/or appeal brought by member of a political party who is aggrieved with the conduct of the primary election, it is possible that such appeal will not be determined within 14 days prescribed for the filing of the pre-election matters in court. In this situation, the time the, 14 days period begins to run becomes an issue.

This issue, however was laid to rest in *Zailani v Gumau*²². In this case, the Appellant contested the Senatorial seat of Bauchi South Senatorial District held on 3rd October, 2018. The Appellant claimed he won the said primary election but the 1st Respondent was returned as the winner of the election. Aggrieved, the Appellant in a petition dated 4th October, 2018 urged the 2nd Respondent's appeal committee to declare him the winner of the election. However, in spite of the Committee's report to return the Appellant as the winner of the election, the 2nd Respondent failed to forward the Appellant's name to the 3rd Respondent. At the trial court, none of the Respondents put in appearance and so judgment was entered in favour of the Appellant. On appeal, the Court of Appeal set aside the judgment of trial court on account of want of jurisdiction i.e statute bar. The Appeal Court in allowing the Appeal held thus:

No matter how brilliantly coined the claim and reliefs sought by the 1st Respondent , the cause of action in this matter arose on the 3rd October, 2018, the day the primary election was held. This suit was filed on 31st October, 2018, As at the institution of the this appeal, the 14 days within which to file the action had elapsed. This appeal (sic) is statute barred and this court lacks jurisdiction to entertain it, having not been filed within the 14 days prescribed period. It is accordingly struck out.

The Appellant (plaintiff at the trial court) filed an appeal at the Supreme Court. Three issues were formulated for determination. The issue relevant to our enquiry is:

whether the Appellant's suit at the trial court was filed outside the 14 days from the date his cause of action arose to have been declared statute barred by the lower court within the meaning of the provisions of section 285 (9) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

The Supreme Court no doubt was saddled with the interpretation of section 87(9) of the Electoral Act , Article 21 (c) and (d) of the APC Constitution together with section 285(9) of the 1999 Constitution as altered. In determining this issue, the court agreed with the Appellants contention that the plaintiff's claim as contained in the Originating Summons and supporting affidavit determines the jurisdiction of the court where same is challenged on the ground that the claim is statute barred. See *Elelu-Habeeb & Anor v A.G Federation & ors*²³.

The Supreme Court in resolving this appeal held as follows:

My Lords, from the questions he raises, the reliefs he seeks of the trial court further to the answers to these questions and the facts in the supporting affidavit to his originating summons, appellant's grouse is not against the primary election of the 2nd respondent that took place on the 3rd October, 2018. By paragraphs and D (v) of Article 21 of the

²¹ (1977) 55 S.C 115

²² (2019) 5-6 SC pt 1

²³ (2012) LPELR-15515

Constitution of the 2nd Respondent the appellant could only commence any action for redress against the party after exhausting the avenues provided by the party's constitution. The appeal against his wrongful substitution by the party with the 1st Respondent was upheld by the appeal committee of the party on the 17th of October, 2018. Contrary to the erroneous findings of the lower court that appellant's grouse is against the conduct of respondent's primary election conducted on the 3rd October, 2018, is the refusal of the party to submit his name as its flag bearer in the impending senatorial election on the 3rd Respondent in spite of the appeal committee's decision of the 17th October, 2018 in his favour. Appellant's cause of action, his platform to seek judicial relief, otherwise referred to as the "event" decision" or "action" on the part of the respondent in section 285(9) of the 1999 constitution (as amended), unmistakably, arose on the 17th October, 2018. He could not have gone to court earlier than that date to seek relief against the respondent. He commenced the instant suit to enforce his right to judicial relief on the 31st October, 2018. Having commenced the suit more than 14 days after the party's refusal to submit his name as its flag bearer in the forthcoming Senatorial election. In spite of the decision of the party's appeal committee of 17th October, 2018 in his favour, appellant's recourse to judicial remedy, by virtue of section 285(9) of the 1999 Constitution (as amended) has become voided. This suit cannot be prosecuted any more. The suit is indeed statute barred.

The reasons for the lower court's finding that the appellant's suit is statute barred may be wrong. Not so the finding though. Our task as an appellant court is to determine if the court's judgment appealed against is correct and not whether the reasons for the judgment. Notwithstanding the error identified in the lower court's finding as to the date time began to run against the appellant for the filing of his suit, the appeal is all the same unmeritorious. Minor errors such as the one in the lower court's decision are never basis for allowing appeals. See *Nwodo v State* (2018) LPELR-46335 (SC). Appellant suit commenced outside the 14 days within which same is, by section 285(9) of the 1999 Constitution (as altered), required to be filed remains statute barred. I so hold.

The interpretation given to section 285(9) does not necessarily mean that the 14 days stipulated period for the filing of the pre-election matter will start running from the date the primary election was held. The facts and circumstance of each case will determine when the 14 days will begin to run. The court will from the affidavit evidence or from the claim determine when the cause of action accrued.

The Supreme Court in *APC & Anor v Engr. Suleman Aliyu Lere*²⁴ further dealt with the issue of statute bar. In this case, the All Progressives Congress (APC) fixed its primaries for 7th October, 2018. The 2nd Appellant and the 1st Respondent were both cleared by the party to contest the primaries. At the conclusion of the primaries, the 1st Respondent was declared the winner but in a strange turn of event, the 2nd Appellant's name was sent to INEC. The 1st Respondent filed originating summons before Kaduna High Court on October 30, 2018. The suit was struck out for want of jurisdiction. However, the ruling was set aside by the Court of Appeal. In further appeal to the Supreme Court, two issues were formulated and adopted as follows:

²⁴ (2019)5-6(pt.II)

Whether the lower court was right in holding that the suit filed by the 1st Respondent is not statute barred in the light of the provisions of section 285(9) of the Constitution (Fourth Schedule Alteration NO. 21) Act, 2017

whether the lower court was right in its interpretation of the provision of section 87(10) of the Electoral Act, 2010 (as amended) regarding the sponsorship of candidate for the 1st Appellant when it held that the 1st Respondent is the nominated candidate of the appellant in the Lere Federal Constituency for the membership of House of Representatives in the 2019 General Elections.

In resolving the first issue, the apex court held *inter alie* as follows:

By the 1st Respondent's affidavit and further affidavit which formed part of the originating processes, the 1st Appellant forwarded the name of the 2nd Appellant to the 2nd Respondent instead of the name of the 1st Respondent who scored the highest number of valid votes, a fact not disputed. The submission of the name was on 18th October, 2018 and suit filed on the 30th October, 2018, a period of 12 days from the date of happening of the event complained of. Clearly the suit was not filed in contravention of section 285(9) CFRN.

1.4. Courts with jurisdiction over pre-election matter

Prior, to the advent of Electoral Act, 2010 (as amended), there has been a lingering controversy as to which High Courts that has the exclusive jurisdiction to entertain pre-election matters in Nigeria.

It is pertinent to consider the two schools of thought claiming the exclusive jurisdiction of a court in pre-election matters; the school of thought in support of the exclusive jurisdiction of the Federal High Court in pre-election matters will be considered first

- a. **Federal High Court:** The proponents/legal practitioners in this school of thought opined that whenever a federal agency is made a party in any suit (in the case of pre-election matters INEC), the Federal High Court shall exercise jurisdiction to the exclusion of all other courts as provided in Section 251 of the 1999 Constitution as amended.²⁵ The advocates in this school of thought further argued that section 87(9) of the Electoral Act 2010 as amended expressly confers jurisdiction on the Federal High Court with respect to complaints arising from pre-election matters, that the above provision is an additional jurisdiction to the original jurisdiction created by the National Assembly pursuant to the introductory part of section 251 of the 1999 Constitution.²⁶ It is their conclusion that once a Federal Government agency is made a party in a pre-election matter, the claim notwithstanding the Federal High Court has exclusive jurisdiction.
- b. **State High Courts:** On the other hand, the proponents of this school of thought argue that in pre-election matters the claim usually litigated upon is between the aspirants in a primary election and their party, it is only the State High Court that has the exclusive jurisdiction to try such matters as it fall outside the exclusive jurisdiction conferred on the Federal High Court in section 251 of the Constitution. Since pre-election matters does not challenge the validity or otherwise of executive and /or administrative actions of the federal government and/or its

²⁵ *NEPA v. Edegero* (2002) 16 NWLR (pt.798)79@95 paras. B-F & 97 paras. E-G; *Inakoju v. Adeleke* (2007) 4 NWLR (pt.1025) 427 @ 588-589; *Obasanjo v. Babafemi* (2000) 23 WRN 30

²⁶ *Gwede v. INEC* (2014) 18 NWLR (pt.1438) 56 @ 66; *PDP v. INEC* (2014) 17 NWLR (1437) 525 @558; *Eligwe v. Okpokiri* (2015) 2 NWLR (pt.1443) 548 @ 373-374

agencies,²⁷ conceding that INEC which is a federal government agency is always made a party in pre-election matters, it is their submission that INEC is only made a necessary party and the law is settled that it is the plaintiff claims that determine the jurisdiction of a court and once a court has the jurisdiction to grant the principal relief it can rightly exercise jurisdiction over a matter even though the ancillary reliefs therein do not fall within its jurisdictional scope.²⁸

In invoking the jurisdiction of the Federal High Court to hear pre-election matters the Supreme Court held in the case of *Kakih v. PDP*²⁹, *S.Galadima* JSC said thus;

“The claim of the party and the reliefs sought must be within the provision of section 251(1) of the Constitution before the Federal High Court can have jurisdiction. Furthermore, where an agency of the federal government is a party, the principal reliefs must be directed against the Federal Government or any of its agencies before a Federal High Court can have jurisdiction... Selection or nomination of a candidate is done at party primaries. So, when a candidate who participated at a party primary complains about the conduct of the primaries, section 87(9) of the Electoral Act allows him to apply to the Federal High Court, or State High Court or a High Court of the Federal Capital Territory for redress. The choice of court depends on the nature of the claims/reliefs and the parties involved. Claims/reliefs sought must be those that the court can entertain. There are five principal reliefs sought, the rest are alternative and ancillary reliefs. There are four respondents. The 1st respondent is the Peoples Democratic Party(PDP), a political party, the 2nd & 3rd respondents are INEC and WAEC, agencies of the Federal Government, while the 4th respondent is an individual, the Governor of Benue State. The principal reliefs (1-5) are against the 1st & 4th respondents who are not agencies of the Federal Government. The reliefs sought are not within the provision of section 251(1) of the Constitution. The 2nd & 3rd respondents are agencies of the Federal Government but none of the principal reliefs are directed against them or the Federal Government. Both courts below came to the correct finding that a Federal High Court had no jurisdiction to hear the principal claims. The case ought to have been heard by a State High Court which has unlimited jurisdiction whittled by section 251 of the Constitution.”

Since all the ancillary claims made against INEC, a Federal Government agency in a pre-election matter will fail or succeed depending on the principal claim.³⁰ That notwithstanding the provisions of sections 31(5) and 87(9) of the Electoral Act 2010 (as amended), the National Assembly cannot rely on sections 251(1)(s) and 252 of the Constitution to vest jurisdiction in pre-election matters on the Federal High Court, that will derogate from the exclusive jurisdiction vested on the Federal High Court by virtue of section 251 of the Constitution and parties cannot pick and choose which court to go in pre-election matters, parties can only approach the court with the jurisdiction to entertain the principal claim and where the principal reliefs is a political party and an individual and not the Federal Government or its agencies, the aggrieved party must approach the State High Court.³¹

²⁷ *PDP v. Slyva* (2012) 13 NWLR (pt.798) 79 @ 95 paras. B-F & 97 paras. E-G; *Tukur v. Govt. of Gongola State* (supra)

²⁸ *Mogaji v. Matari* (supra); *Daniel v. INEC* (2015) 9 NWLR (pt.1463) 113 @120;

²⁹ (2014) **15 NWLR (pt.1430) 374**

³⁰ *Uba v. Etiaba* (2010) 10 NWLR (pt.1202) 343 @ 393 paras. D-E; *Nwaogwugwu v. President,FRN* (2007) 6 NWLR (pt.1030) 237 @275.

³¹ *Kakih v. PDP* (supra)

1.4.1. The Current Position of the Law

The controversy on the jurisdiction of Federal High Court and the State High Court to adjudicate on pre-election matters has been settled by the Supreme Court. In the case of *Salim v. CPC* (*supra*) the Supreme Court per M U Peter Odili JSC, **Pp. 178-179, paras. H-E** held thus;

“It is therefore to be said in view of this novel provision, that the previous all-embracing interpretation of section 251 of the 1999 Constitution is given once the Federal Government or its agencies are involved; would have to be given broad view in the co-existing situation of the provisions of section 87(9), Electoral Act and the *sui generis* nature of the subject matter. In that whole picture therefore, section 251 would be applied subject to this specific legislation in factors of play. That was the mind of this court as anchored by Mohammed, JSC in *Adetayo v. Ademola* (2010) All FWLR (pt.533) 1806 @ 1823-1828 when he stated thus:

‘On the face of the provisions of the Constitution, it appears that impression have been created that the Federal High Court has exclusive jurisdiction to the exclusion of all other courts in Nigeria in any civil case or proceedings in which the Federal Government or any of its agencies is a party. However, a very close, careful and proper interpretation or construction of the provision would show that this is not necessarily the true position. This is because in my view, it is the facts and circumstances of each case that determines... The need to examine parties in the litigation as well as the subject matter of the litigation was strongly advice for close scrutiny.’

I would also refer to the cases of *Adigun v. Asugbon* (2008) NSCQLR Vol. 36 (pt.1) 171 @ 193; *Dingyadi v. INEC & Ors* (2011) 4 SCNJ @ 38.

The conclusion from the above is that the Court of Appeal was in error in holding that the Federal High Court had the exclusive jurisdiction to adjudicate on this pre-election dispute to the exclusion of the State High Court. This is because the jurisdiction is exercisable by either the Federal High Court or the State High Court or High Court of the Federal Capital Territory”³²

It should be noted that the jurisdiction of a court may be limited or extended by statute and for a suit to be competent the plaintiff’s claims must fall within the jurisdiction conferred on the court by the relevant statute³³.

By virtue of sections 251(1) and 252 of the 1999 Constitution (as amended) the National Assembly enacted the Electoral Act 2010 (as amended), which conferred concurrent jurisdiction in pre-election matters on the Federal High Court, State High Court and the High Court of the Federal Capital Territory. In the case of *Lokpobiri v. Ogola*³⁴ the Supreme Court per Onnoghen JSC, considered the provision of sections 31(5) and 87(9) of the Electoral Act and explained the rationale for the concurrent jurisdiction of the Courts in pre-election matters thus;

It is not in doubt that the intention of the National Assembly in enacting the said Act is clearly to confer concurrent jurisdiction on the Federal High Court and State High Court

³² *Senator Heineken Lokpobiri v. Hon. Foster Ogola & 2Ors* (unreported) in Appeal No. SC, 443/2015 delivered on 2/11/2015 at pages 22-23

³³ *SPDC v. Anaro* (2015) 12 NWLR (pt.1472) 123; *Umanah v. Attah* (2007) 17 NWLR (pt.1009) 503

³⁴ (*supra*) Pp. 18-20

and High Court of the Federal Capital Territory in pre-election matters, so as to enlarge the range of choice of courts available to an aggrieved party to ventilate his grievances”

The court went further to define concurrent jurisdiction thus;

“Whereas the exclusive jurisdiction of a court is peculiar to it, a concurrent jurisdiction is common to two or more courts. The word ‘Concurrent’ is defined by the Webster’s New Twentieth Century Dictionary, unabridged 2nd ed., page 379, inter alia as ‘(1) ... 5 in law, having equal jurisdiction or authority.’

The Court further stated thus;

“It is therefore my considered opinion that when the Federal High Court’s pre-election jurisdiction is invoked, the parties claim(s) and relief(s) must be in conformity with the provisions of the Electoral Act 2010, as amended, not under the provisions of section 251 of the 1999 Constitution as amended, In fact INEC maybe a nominal party or be liable to an ancillary claim in a pre-election or post election jurisdiction of the Federal High Court”.³⁵

In the case of *Gen. Mohammed A. Garba v. Mustapha Sani Mohammed & 2Ors (unreported) Appeal No. SC. 377/2015 delivered on 24/6/2016 @ Pp. 40-41*, where the Plaintiff/Appellant had filed an originating summons at the Federal High Court, Minna seeking amongst other things that he should be declared the winner of the Niger South Senatorial District primary election of the APC, since the 1st Defendant/Respondent who won the APC primary election, was not a registered member of APC at the time the primaries was conducted. Mr. Ihematulam C. Gavers Counsel to the 1st Defendant/Respondent had challenged the jurisdiction of the Federal High Court Minna to hear and determine the matter. The trial court went ahead and decided the matter in favour of the Plaintiff/Appellant. On Appeal to the Supreme, the court dismissed the appeal in part by setting aside the judgment of the trial court on the ground of fair hearing and for her failure to consider the preliminary objection of the 1st Defendant/Respondent. The court went ahead to hold per Kekere-Ekun JSC, who delivered the lead judgment thus;

The decision of this court in *Kakih’s* case as regards the issue of jurisdiction of the Federal High Court in pre-election matters is limited to its peculiar facts and circumstances having regards to the decision in *Jev v. Iyortom* (supra) @ 612-613 paras., E-A per OKORO, JSC,

Therefore by virtue of section 251(1)(s) of the 1999 Constitution and sections 31(5) and 87(9) of the Electoral Act, 2010, made pursuant thereto, the Federal High Court have concurrent jurisdiction with the State High Court and High Court of the Federal Capital Territory to hear pre-election matters, the case is hereby remitted to the FHC Minna to be tried by another Judge”

1.5. Conclusion

The Supreme Court has removed the cobweb of judicial uncertainty that has shrouded political decisions which are non justiciable and the jurisdiction of the Federal High Court, State High Court and High Court of the FCT in pre-election matters in Nigeria.

³⁵ In reaching the above decision reliance was placed on the cases of *Jev v. Iyortom* (2014) 14 NWLR (pt.1428) 575 @ 611-613, 626-627, 630-632; *Gbileve v. Addingi* (2014) 16 NWLR (pt.1433) 394 @ 418-419, 424-425, 427-428 & 431-432

As seen from the above legal discourse, it is now clear that while the choice of candidates is within the internal affairs of the party, which is not justiciable, the party must adhere strictly to the provisions of the Electoral Act, and its own constitution and guidelines in carrying out the exercise, section 87(9) of the Electoral Act empowers the court to intervene where the party has acted arbitrary and with impunity. An aggrieved party in pre-election matters has unlimited choice to decide which court to approach to ventilate his grievances, in as much as the suit is filed before the election is conducted and winners declared, as failure to do so will remove the suit in the realm/domain of pre-election matters and same will be transformed into a post-election matter which can only be adjudicated upon by an Election Tribunal. This transformation is justified by the principle of equity that ‘equity aid the vigilant and not the indolent’ and in the case of *Okorocho v. PDP*³⁶ where His Lordship Ogunbiyi JSC, restated the position of Onnoghen JSC, in *Hassan v. Aliyu (supra)* thus;

“If the situation in this case is encouraged, it will breed uncertainty in the polity when a person may wake up a year or more after an election and swearing in of a president or Governor to challenge his nomination by way of substitution for election that brought him to power. Or he may even do so after the tenure of office of the official concerned which attitude ought not to be encouraged by the law. It should be noted that appellant has the right to waive his right to the nomination by substitution which by his inordinate delay he appears to have projected. Everyone must be watchful of his legal rights and be vigilant”.

Again once a pre-election matter is filed before the election, time sieze to run against it, as the matter would continue even after the election is concluded, winners declared and sworn in. This is the position of the Supreme Court in the case of *Wambai v. Donatus*³⁷ thus;

“There is no doubt at all that a pre-election matter instituted prior to the conduct of an election subsists, and the High Court in which it was so instituted continues to have jurisdiction to hear and determine same, even after the conduct of the election material to the pre-election matter and declaration of result etc..., under the principle of *lis pendens* as held by this court in a number of cases including *Amaechi v. INEC* (2008) All FWLR (pt.407) 1; *Odedo v. INEC* (2007) All FWLR (pt.392) 1907, (2008) 17 NWLR (pt.1117) 534 @ 622-623”

Recommendations

It is in the light of the above that parties in pre-election matters are called upon to always act timeously once they discover that their rights have been infringed upon immediately after their party primary election and to approach any of the three courts with the requisite jurisdiction to hear and determine their case.

³⁶ (2015) 1 EJSC 1 @45 paras., E-G

³⁷ (2015) 12 EJSC 94 @ 118 paras., B-D