

IN THE FEDERAL HIGH COURT OF NIGERIA  
 IN THE UYO JUDICIAL DIVISION  
 HOLDEN AT UYO  
 ON TUESDAY THE 30<sup>TH</sup> DAY OF JUNE, 2015  
 BEFORE THE HONOURABLE JUDGE I. L. OJUKWU  
 BETWEEN SUIT NO: FHC/UY/CS/13/2015

Uduakobong Peter Udoh

Plaintiff

AND

- 1. Independent National Electoral Commission (INEC)
- 2. All Progressive Congress
- 3. Ubonglme Udoukpong

} Defendants

Plaintiff present. Others absent.

E. L. Iremeka for the Plaintiff.

Arit Uye (Mrs.) for the 2<sup>nd</sup> Defendant.

E. Udosen for the 3<sup>rd</sup> Defendant.

**RULING**

By an Originating Summons filed on the 5/2/2015, the Plaintiff commenced this suit against the Defendants seeking the determination of the following questions;

- 1. Considering the clear provisions of the Electoral Act 2010 and the fact that the 2<sup>nd</sup> Defendant conducted its Primary Election in Uyo, Akwa-Ibom state on the 3<sup>rd</sup> day of December, 2014 for the purpose of nominating its House of Assembly Uyo State Constituency candidate slated for February, 2015 and announced its result, whether is not mandatory for the 2<sup>nd</sup> Defendant to nominate its House of Assembly Uyo State Constituency candidate for the February, 2015 on the basis of the said primary election?

2. Having regard to the provision of section 153 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and paragraphs 14 and 15 of part 1 of the third schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended) and all other provisions of the same Constitution setting out powers and functions of the 1<sup>st</sup> Defendant and Section 87 of the Electoral Act 2010 (as amended) mandating all political parties to conduct primary elections and the recent circular of the 1<sup>st</sup> Defendant directing all political parties to comply with Section 87 of the Electoral Act 2010, whether it is not mandatory for the 2<sup>nd</sup> Defendant to nominate the Plaintiff as its House of Assembly candidate for Uyo State Constituency of Akwa-Ibom State to be held in February, 2015 in line with the result of the said primary election held on the 3<sup>rd</sup> day of December, 2014 wherein the Plaintiff polled the highest number of votes cast at the said election?
3. Considering the express provision of **Section 87**, particularly **Section 87(4) (C) of the Electoral Act 2010** and the time-table of activities for the 2015 general election whether the 2<sup>nd</sup> Defendant can lawfully submit the name of the 3<sup>rd</sup> Defendant as its candidate for the House of assembly general election of Uyo State Constituency, the 3<sup>rd</sup> Defendant not being the winner of the House of Assembly Primary Election of Uyo State Constituency of Akwa-Ibom State held on the 3<sup>rd</sup> of December, 2014 which election was monitored and supervised by the officials of the 1<sup>st</sup> Defendant?
4. Having regards to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2010, whether the 2<sup>nd</sup> Defendant having screened and cleared the Plaintiff to participate in the 2<sup>nd</sup> Defendant's

House of Assembly primary election to Uyo State Constituency of the Akwa-Ibom State held on the 3<sup>rd</sup> day of December, 2014 and having contested and won the said primary election, whether the 2<sup>nd</sup> Defendant can lawfully refuse to submit the name of the Plaintiff to the 1<sup>st</sup> Defendant as the House of Assembly candidate of the 2<sup>nd</sup> Defendant for the February, 2015 general election into the Uyo State Constituency of Akwa-Ibom State?

5. Having regard to **Section 87 of the electoral Act 2010** and the primary election conducted in the Akwa-Ibom State by the 2<sup>nd</sup> Defendant, whether it is within the powers of anyone including the 2<sup>nd</sup> Defendant to submit the name of the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant as the 2<sup>nd</sup> Defendants House of Assembly candidate of Uyo State Constituency of Akwa-Ibom State for the general election slated for February, 2015, the Plaintiff having won the 3<sup>rd</sup> December, 2014 primary election of the Uyo State Constituency of Akwa-Ibom State monitored and supervised by the officials of the 1<sup>st</sup> Defendants'?

Thereafter, the Plaintiff sought the following reliefs:

- a. **A DECLARATION** that having conducted a primary election in the Uyo State Constituency of Akwa-Ibom State on the 3<sup>rd</sup> day of December, 2014, for the purpose of nominating the 2<sup>nd</sup> Defendant's candidate for the general election slated for February, 2015, it is mandatory for the 2<sup>nd</sup> Defendant to nominate the winner of the said primary election, as the party's flag bearer for the purpose of participating and contesting in the Uyo State Constituency Election of Akwa-Ibom State for February, 2015 in accordance with the Electoral Act 2010 and the 2<sup>nd</sup> Defendant's Constitution for the nomination of candidates.

- b. **A DECLARATION** that the Plaintiff having scored the highest number of votes and declared winner by the electoral officer in the 3<sup>rd</sup> day of December, 2014 primary election of the 2<sup>nd</sup> Defendant, he is entitled to be the 2<sup>nd</sup> Defendant's House of assembly flag bearer for Uyo State Constituency for the February, 2015 general election in Akwa-Ibom State in accordance with Section 87 of the Electoral Act, 2010.
- c. **A DECLARATION** that the refusal of the 2<sup>nd</sup> Defendant to submit the name of the Plaintiff to the 1<sup>st</sup> Defendant as the 2<sup>nd</sup> Defendant's flag bearer for the general election into the Uyo State Constituency House of Assembly in Akwa-Ibom state slated for February, 2015 after winning the primary election is contrary to the provision of the Electoral Act, 2010 and the 2<sup>nd</sup> Defendant's Constitution for nomination of Candidates.
- d. **A DECLARATION** that it is illegal, unlawful and contrary to both the Electoral Act 2010 and the 2<sup>nd</sup> Defendant's Constitution for the 2<sup>nd</sup> Defendant to submit the name of the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant as the House of Assembly candidate for Uyo state Constituency of Akwa-Ibom State in the General election slated for February, 2015 after the Plaintiff emerged as the winner of the House of Assembly candidate for Uyo state Constituency of Akwa-Ibom State conducted by the 2<sup>nd</sup> Defendant to pick its House of Assembly candidate for the said election.
- e. **AN ORDER** of injunction restraining the 1<sup>st</sup> Defendant either by itself, officers or agents, privies, staff or through any person or persons howsoever from recognizing, accepting or dealing with the 3<sup>rd</sup> Defendant as the flag bearer of the 2<sup>nd</sup> Defendant in the February, 2015 Uyo State Constituency general election having not emerged the winner of the Primary Election conducted on

the 3<sup>rd</sup> day of December, 2014 by the 2<sup>nd</sup> Defendant in accordance with the Electoral Act, 2010.

- f. **AN ORDER** directing the Defendants particularly the 1<sup>st</sup> Defendant to recognize, accept, and deal with the Plaintiff as the flag bearer of the 2<sup>nd</sup> Defendant in the Uyo State Constituency House of Assembly candidate of Akwa-Ibom Stateslated for February, 2015 having emerged as the winner of the 2<sup>nd</sup> Defendant's primary election on the 3<sup>rd</sup> day of December, 2014 wherein his scored the highest majority votes cast in accordance with the Electoral Act, 2010.
- g. **AN ORDER** directing the 2<sup>nd</sup> Defendant to submit the name of the Plaintiff who scored the highest number of votes at the 2<sup>nd</sup> Defendant's House of Assembly primary election for Uyo state Constituency of Akwa-Ibom State to the 1<sup>st</sup> Defendant as the validly nominated candidate to represent the 2<sup>nd</sup> Defendant at the February, 2015 general election.

On receipt of the Originating processes, the 2<sup>nd</sup> Defendant filed an affidavit in opposition to the Originating summons. In addition, the 2<sup>nd</sup> Defendant also filed a Notice of Preliminary objection pursuant to section 251(r) of the 1999 Constitution of the Federal Republic of Nigeria, Order 3 Rules 6,7, Order 26, Rules1,2,3 and 4. And also Order 29 Rule 1 of the Rules of this court. It was supported by an affidavit of 12 paragraphs.

The grounds upon which the preliminary objection is being sought are;

1. The federal High Court lacks the jurisdiction to entertain this suit under section 251(1) (r) of the 1999 constitution as amended.
2. None of the substantive reliefs of the Plaintiffs' relates to actions and decisions of the 1<sup>st</sup> Defendant the Independent

National Electoral Commission, INEC an agency of the Federal Government Nigeria.

3. The Plaintiff's action is likely to be contentious for which an Originating Summons is inappropriate.
4. The Plaintiff did not exhaust the internal mechanism of the 2<sup>nd</sup> Defendant party provided in Article 21 A (v) and D (v) of the 2<sup>nd</sup> Defendant, APC's Constitution.

The 3<sup>rd</sup> Defendant on his own part filed a Counter affidavit of 46 paragraphs on the 12/3/2015 in answer to the Originating summons. In his written argument, learned counsel for the 3<sup>rd</sup> Defendant, Francis Ekanem, distilled 3 issues for the determination of this court as follows;

- i) Whether or not this Honourable Court has the jurisdiction to hear and determine this suit.
- ii) Whether or not this Honourable Court can hear and determine this suit on the basis of the processes filed by the parties hereto.
- iii) Whether or not this Honourable Court can grant the reliefs claimed by the Plaintiff.

The Plaintiff filed his reply to the Preliminary objection of the 2<sup>nd</sup> Defendant and answers to the issues raised in the counter affidavits of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. On the 21/5/2012, the parties adopted all their processes filed in this.

Notwithstanding that all the arguments of the parties have been taken, in the determination of those issues, the court must first of all determine whether it has the requisite jurisdiction to entertain the substantive matter. That is to say the subject matter of the Originating summons. The claims and reliefs of the Plaintiff have been set out afore, likewise the grounds of the preliminary objection to the jurisdiction of this honourable court.

Now, in his argument on the preliminary objection, learned counsel A.A. Adewale referred the court to the general essence of jurisdiction as a threshold matter and the life-blood of any suit, alluding to the fact that no matter how well this proceeding is conducted, that without requisite jurisdiction, the entire proceedings is a nullity. He called in aid the case of **MADUKOLU V NKEMDILIM** (1962) 2 SCNL 341, **AG KWARA STATE V OLAWALE** (1992) 1 NWLR (PT.272) 645 among others. He submitted that once the question of jurisdiction is raised, either suo motu by the court or by parties, it must first be settled one way or the other. He cited **ISAAC OBIWEUBI V C.B.N.** (2011) 2 SC (PT.1) 46 to buttress this position and contended that the 3 components of jurisdiction requiring the proper constitution of the court, subject matter jurisdiction and the fulfilment of all due process must be present before a court assumes jurisdiction.

He noted that the Plaintiff's had approached the court under Section 87(4) of the Electoral Act to challenge his alleged substitution as a candidate of the Defendant for the Uyo State Constituency of Akwa Ibom State House of Assembly asking for 4 declaratory reliefs and 3 injunctive reliefs. He contended that it is the main reliefs that will determine whether the court has jurisdiction.

Learned counsel submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants against whom the Plaintiff seeks the main reliefs are not agencies of the Federal Government, thus the Federal High Court would have no jurisdiction to entertain the Plaintiff's action not being one contemplated under section 251 (1)(r) of the 1999 Constitution.

He argued that though the 1<sup>st</sup> Defendant is an agency of the Federal Government under section 153 of the Constitution but that the main claims of the Plaintiff are not against the 1<sup>st</sup> Defendant. Therefore, the

Federal High Court cannot entertain this action. He relied on **TUKUR V GOVERNMENT OF TARABA STATE** (1997) 6 NWLR (PT.510) 549.

**SEA TRUCKS LTD V ANIGBORO** (2001) 2 NWLR (PT.696) 182 among others.

It was submitted with passion that the law is now settled that even in matters under Section 87(9) of the Electoral Act, where a party approaches the court for redress in respect of a Party's Primary Election and the main claim does not lie against INEC which is a Federal Government Agency, then such a claim falls outside Section 251(1) of the Constitution and the jurisdiction of the Federal High Court. He placed reliance on **KAKIH V PDP** (2014) 6-7 SC (PT.1) 35.

On the 2<sup>nd</sup> ground, he contended that the Plaintiff did not exhaust the party's internal remedy before bringing this action. He noted that as a member of the 2<sup>nd</sup> Defendant, the Plaintiff is bound by the Party's Constitution which provides in its Article 21 (B) (v) and 21 (D) (V) for internal remedy for resolution of issues or grievances. He submitted that the Plaintiff jumped the gun and did not comply with the conditions precedent before instituting this action. He called in aid the authority of **UGWUANYI V NICON PLC** (2013) 2-3 SC (PT. 5) 56 and posited that the failure to exhaust the internal remedies for dispute resolution before approaching the court for redress is fatal to the case of the Plaintiff.

Learned counsel urged the court to hold that the use of Originating Summons in the commencement of this suit is not suitable, being a hostile proceeding where the facts are in serious dispute. He relied on the very serious allegations of the Plaintiff of electoral malpractices and criminality which were seriously disputed by the 2<sup>nd</sup> Defendant and cannot be resolved by this originating process. He cited **OLLEY V TUNJI** (2013) 4-5 SC (PT.1) and **N.B.N. V ALAKIJA** (1978) 9-10 SC 59,71-73 in



aid of his submissions and urged the court to strike out the suit for being incompetent.

Pressing home his arguments on this objection, learned counsel submitted that though the Electoral Act has whittled down the powers of a Political Party to an extent, despite that, the principle that the question as to who is the candidate of a political party for an election still remains within the domestic jurisdiction of political parties and consequently not justiciable. He placed reliance on **ONUOHA V OKAFOR** (1983) 10 S.C. 75 and **P.D.P V SYLVA** (2012) 4-5 SC 36, 109.

Learned counsel further submitted that the allegation that Defendants colluded with unknown State Officials of the APC to substitute the 3<sup>rd</sup> Defendant's name in place of the Plaintiff's is a serious allegation of criminality which requires proof beyond reasonable doubt. He referred the court to the case of **NWOBODO V ONOH** (1984) 1 SC 1, **OMOBORIOWO V AJASIN** (1984) 1 SC 156, **BUHARI V OBASANJO** (2005) 13 NWLR (PT. 941) 1, 295.

He also urged the court to hold that the Plaintiff has no reasonable cause of action for the reason that the 3<sup>rd</sup> Defendant indeed won the said election where the Plaintiff took part and lost. The honourable court was moved to uphold this preliminary objection.

Reacting to the preliminary objection, the Plaintiff filed an 11 paragraph counter affidavit and denied the facts averred by the deponent in the affidavit in support to the preliminary objection. The crux of his denials was that he never shunned the entreaties of the 2<sup>nd</sup> Defendant to resolve the issues amicably before proceeding to court. He further averred that the 2<sup>nd</sup> Defendant's leadership failed to resolve his complaints about the wrongful substitution in violation of the Electoral Act and the Constitution of the party.

In the written argument of learned Senior Counsel K.C. NWUFO, (SAN) a sole issue was distilled for the determination of this court thus;

“Whether this Honourable court has the jurisdiction to entertain this suit”

He submitted that the court has the requisite jurisdiction to entertain this suit in the light of the fact that it is a dispute arising from the Primaries conducted by the 2<sup>nd</sup> Defendant and monitored by the 1<sup>st</sup> Defendant by an aggrieved Plaintiff who was an aspirant in the said election. He relied on section 87(9) of the Electoral Act, 2010 which gives the Plaintiff in this suit the impetus to seek redress where the Rules and Guidelines of a political party or the Electoral Act have not been complied with in the selection or nomination of a candidate. He relied on the averments of the Plaintiff in support of his complaints to the party.

He posited that by Sections 85 and 86 of the Electoral Act, 2010, the 1<sup>st</sup> Defendant is entitled to monitor the electoral processes et al and keep records, that having been unjustly disentitled by the 2<sup>nd</sup> Defendant in submission of his name to the 1<sup>st</sup> the Plaintiff has a right to institute this action against the Defendants. He called in aid the authority of **UWAZURIKE V NWACHUKWU** (2013) 3 NWLR (PT.1342) 503,533 where the apex court, per Ogunbiyi JSC gave legal teeth to the Plaintiff status and right to institute this matter in the Federal High court or State High court. Learned Senior counsel urged the court to discountenance the cases cited by the 2<sup>nd</sup> Defendant as inapposite. He posited that the 1<sup>st</sup> Defendant is a necessary and desirable party in this case which is predicated on its constitutional and electoral role to monitor all congresses and conventions. He further noted that reliefs E and f in The Originating Summons are principally directed at the 1<sup>st</sup> Defendant and

none of those reliefs can be granted against the 1<sup>st</sup> Defendant if it is not a party in this case.

Further in this argument, it was contended that the provisions for internal remedy of a party cannot supersede the provisions of section 87 (9) of the Electoral Act which gives the court the competence to hear and determine the complaints of the Plaintiff. He relied on the case of **GASSOL V TUTARE** (2013) 14 NWLR (PT. 1374) 221,246.

He contended that in the gamut of the grouses of the Plaintiff, membership of a political party and specifically that of the 2<sup>nd</sup> Defendant was not made an issue or the basis of instituting this suit, therefore the whole submissions of the 2<sup>nd</sup> Defendant on membership of the party should be discountenanced. It was noted that 2<sup>nd</sup> Defendant brought in the issue of membership in his own process and the law is settled that matters of membership of a political party is not justiciable.

The court was urged to hold that the Plaintiff has a reasonable cause of action as presented in the originating summons. Further, that it is a known principle of law that in some contentious matters, originating summons could be used. He noted that the 2<sup>nd</sup> Defendant has not shown the contention in the case presented before this court. He called in aid the authority of **NWOSU V IMO STATE ENVIRONMENTAL SANITATION BOARD** (1990) 2 NWLR (PT.135) 688,718.

The honourable court was urged to overrule this preliminary objection.

In his reply on points of law, A.A. Adewale of counsel to the 2<sup>nd</sup> Defendant reiterated his earlier reliance on the case of **KAKIH V P.PD** (SUPRA) and further expounded the extent of this decision per the holding of the Supreme Court. He reproduced the very germane part of that decision and urged the court to note that that case was the latest

decision of the Supreme Court on the jurisdiction of the Federal High Court even in Election matters. Learned counsel contended, that the reliefs sought by the Plaintiff must come within section 251(1)(r) of the 1999 Constitution before this court can assume jurisdiction. That is to say, the main reliefs must be directed against an agency of the Federal Government, in this case, the 1<sup>st</sup> Defendant before this court can have jurisdiction. He relied on the case of **OSAKUE V F.C.E. (TECH) ASABA** (2011) 7 NWLR (PT 1247) 465.

He referred to all the reliefs claimed against the Defendants and urged the court to hold that the main claims of the Plaintiff are directed against the 2<sup>nd</sup> Defendant and not the 1<sup>st</sup> Defendant, thus the Federal High court has no jurisdiction to entertain this matter. He urged the court to so hold.

I have earlier noted that all the processes filed in this suit were adopted by the parties inclusive of the substantive matter. But before I delve into the substantive matter, I must first determine whether this court has the jurisdiction to entertain the claims of the Plaintiff in the Originating process. I have also taken into account, the oral adumbration of both parties on the 21/5/2015 in consideration of these matters.

Now, the first aspect of jurisdiction and fundamental ground in this preliminary objection is the competence of this court to hear this case. The jurisdiction of the Federal High Court is found under the enumerated subject matters and general jurisdiction under sections 251(1) and 252 of the Constitution of the Federal Republic of Nigeria 1999. In Electoral matters, it is encapsulated under section 87(9) of the Electoral Act 2010 (as amended) which provides that an aspirant who complains that any of the provisions of the Electoral Act and the guidelines of a political party has not been complied with in the

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

It was not contested that the Plaintiff was an aspirant in the said primaries. The crux of this case is whether the grouse of the Plaintiff can be ventilated at the Federal high Court. In **PEOPLES DEMOCRATIC PARTY V TIMIPRE SYLVA & 2ORS** as reported in (2012) 13 NWLR (1316) 85,138, the Supreme Court held that when the jurisdiction of the Federal High Court is in issue, the following must co-exist:

- a. The parties or a party must be the Federal Government or its agency;
- b. The subject matter of the litigation. (The subject matter must be one within the itemized jurisdiction under section 251 (1) of the Constitution).

The apex court went on to say that, satisfying the above is not the end of the matter. The pleadings of the Plaintiff must be carefully examined so as to understand the facts and circumstances of the case in order to determine if the claims are within the jurisdiction of the court, for it is not enough only to have an agency of the Federal Government as a party, for the court to have jurisdiction.

The reliefs of the Plaintiff have been reproduced earlier. In sum, the four declaratory reliefs sought by the Plaintiff relate to the conduct of the primary election by the 2<sup>nd</sup> Defendant in Uyo State Constituency House of Assembly in Akwa Ibom State, the wrongful submission of the name of the 3<sup>rd</sup> Defendant to 1<sup>st</sup> Defendant and the refusal of the 2<sup>nd</sup> Defendant to submit the name of the Plaintiff to the 1<sup>st</sup> Defendant as the winner of the election. The Orders sought from the court are to restrain the 1<sup>st</sup> Defendant from accepting the name of the 3<sup>rd</sup> Defendant, to accept the Plaintiff in his stead and directing the 2<sup>nd</sup>

Defendant to submit the name of the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant. In other words, what the Plaintiff seeks from the 1<sup>st</sup> Defendant is to be accepted as the rightful candidate. But then all the procedural inactions, allegations of breaches, alleged illegality, non-compliance with the Electoral Act, party's Constitution and guidelines which led to the grouse of the Plaintiff were levelled against the 2<sup>nd</sup> Defendant. Indeed, it is not in dispute that the complaint of the Plaintiff is against the manner in which the 2<sup>nd</sup> Defendant conducted its primaries. The principal reliefs were directed against the 2<sup>nd</sup> Defendant who is not an agency of the Federal Government. This can also be seen clearly by the affidavit of facts in support of the Originating Summons. The Plaintiff's relief to be accepted by the 1<sup>st</sup> Defendant as the rightful candidate is ancillary to the main claims.

In **TERVER KAKIH V P.D.P. & 3ORSAs** reported in (2014) 15 NWLR (1430) 375,411-414, the Supreme Court held that section 31(5) and 87 (10) of the Electoral Act, 2010 (as amended) vest jurisdiction on the Federal High Court or High Court of a State as regards pre-election complaints. However, the Act does not envisage that the nature of the complaint may determine jurisdiction of the court. It went further to restate that the jurisdiction of the Federal High Court is guided by section 251 of the Constitution and any matter which does not fall within the purview of any of the itemized subject matters, must find jurisdiction in any other court.

The Court must therefore consider the nature of the Plaintiff's claim before it assumes jurisdiction and this must be governed by the nature of the principal claims and not ancillary claims. **TUKUR V GOVT. OF GONGOGOLA (NO2)** (1989) 4 NWLR (PT.117) 517 was relied on in aid.

This court is not unaware that in the case of **SENATOR DAHIRU BAKO GASSOL V ALHAJI ABUBAKAR UMAR TUTARE** (2013) 14 NWLR (1374)

221, the apex court recognised the jurisdiction of the Federal High Court in pre-election matters. The apex court held that the restrictions contemplated in the exercise of jurisdiction under section 251(1) of the 1999 Constitution by the Federal High Court with regards to Federal Government agency as a prequalification does not extend to the provision of section 87 (9) of the Electoral Act. Consequently, the Federal High Court has additional jurisdiction by that Act of the National Assembly conferring jurisdiction on the court to entertain pre-election matters irrespective of the parties.

Again in the case of **OZONMA (BARR.) CHIDI NOBIS-ELENDU V INEC & 2ORS**, LER(2015) SC.160/2014, (A matter instituted at the Federal High Court Awka) the Supreme Court adopted its decision in **VIVIAN CLEMENT AKPAMGBO OKADIGBO & ors v EGBE THEO CHIDI & ORS** (2015) LPELR 24564 and held that where as in the instant case (that case), 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 section 87(9) of the 2012 Electoral Act to examine if the primaries were conducted in accordance with the Electoral Act, the constitution and Guidelines of the party. That the courts' jurisdiction thereunder impliedly extends to ensuring that INEC, in the performance of its statutory duty in conducting elections, accepts and relies only on the true and lawful list of candidates nominated and sponsored by the party for the election.

A community reading of the above two decisions may appear to give this court the jurisdiction to entertain this suit, irrespective of the parties and the particular claims against INEC, but I must observe that the jurisdiction of the Federal high court per se was not one of the ratio decidendi in the latter case. I also observe that KAKIH's case was not considered or overruled in that case. The fundamental issue still remains, whether this court can entertain the instant suit in view of the


claims of the Plaintiff, especially against the 1<sup>st</sup> Defendant, a Federal Government agency within the purview of Section 251 (1) of the Constitution.

In **OSAKUE V F.C.E.(TECH) ASABA** (SUPRA), the Supreme Court held that where there seems to be a conflict between two decisions of the Supreme Court, the latter decision shall prevail. In this instant, I am not acquainted with any latter decision of the Supreme Court on this same issue after **KAKIH V P.D.P.** (SUPRA). I am bound by that decision I must say.

As an aside, let me state that it is wiser to seek redress before a court whose jurisdiction in a particular matter is not contested, than to insist on a "wobbly" jurisdiction. If at the end of the day, proceedings are concluded and it is upturned on appeal on ground of jurisdiction, that short-cut may become an unending journey through a maze.

Be that as it may, this court is of the humble but firm view that it has no jurisdiction to entertain this matter as constituted. It is within the jurisdiction of the State High Court. For the same reason, I cannot proceed into the other issues of jurisdiction raised in the preliminary objection. It will amount to delving into the substantive matter.

Without further fun fare, by the powers conferred on this honourable court, by virtue of Section 22 (2) of the Federal High Court Act, I hereby transfer this case to the Akwa Ibom State High Court for the attention of the honourable Chief Judge.

  
IJEOMA L. OJUKWU  
JUDGE  
30<sup>TH</sup> JUNE, 2015