

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT NYANYA ON THE 11<sup>TH</sup> DAY OF FEBRUARY, 2019.**

**BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE**

**SUIT NO: FCT/HC/CV/17/2018**

**COURT CLERKS: JOSEPH BALAMI ISHAKU & ORS.**

**BETWEEN:**

**AIR VICE MARSHAL TERRY  
OMATSOLA OKORODUDU .....CLAIMANT**

**AND**

**1. ALL PROGRESSIVE CONGRESS  
2. INDEPENDENT NATIONAL ELECTORAL } ..DEFENDANTS  
COMMISSION**

**JUDGMENT**

The Claimant's Originating Summons dated 25/10/18 and filed on the 30<sup>th</sup> is for the determination of the following questions:

1. Whether the process that produced the Delta South Senatorial candidate of the 1<sup>st</sup> Defendant for the 2019 General Election conformed to the mandatory provisions of Section 87(1), (2) (3) and (4) of the Electoral Act 2010.

If the answer to Question 1 above is not in the affirmative,

2. Whether the 1<sup>st</sup> Defendant can validly submit the name of candidate to the 2<sup>nd</sup> Defendant for the purpose of the 2019 General Election with respect to the Delta South Senatorial District in the light of the failure of the 1<sup>st</sup> Defendant to comply with Section 87 (1), (2), (3) (4) and (9) of the Electoral Act 2010 as Amended.

The Claimant seeks the following reliefs hereunder upon the determination of the above questions.

1. A declaration that the process (as at the time of this suit) that produced the Delta South Senatorial candidate of the 1<sup>st</sup> Defendant for the 2019 General Election did not conform to the mandatory provisions of Section 87(1), (2), (3) and (4) of the Electoral Act 2010.
2. A declaration that the 1<sup>st</sup> Defendant cannot validly submit the name of candidate to the 2<sup>nd</sup>

Defendant for the purposes of the 2019 General Election with respect to the Delta South Senatorial District without complying with the mandatory provisions of Section 87(1) (2), (3), (4) and (9) of the Electoral Act 2010 as amended.

3. An Order of Court compelling the 2<sup>nd</sup> Defendant to forthwith reject the name of the candidate submitted to it by the 1<sup>st</sup> Defendant as at the time of this suit for the purpose of the 2019 General Election with respect to the Delta South Senatorial District.
4. An Order of Court compelling the 1<sup>st</sup> Defendant to conduct another primary election in conformity with the mandatory provisions of Section 87 of the Electoral Act 2010 as amended for all its aspirants for the 2019 General Election with respect to the Delta South Senatorial District and for the 2<sup>nd</sup> Defendant to monitor the said primaries and work with the result thereof for the purpose of the said General Election.

5. An Order of Court nullifying any election primary or general regarding the 2019 General Election with respect to the Delta South Senatorial District unless and until the Defendants (jointly and severally) ensures that all aspirants are given equal opportunity of being voted for in the said election as per the provisions of Section 87 of the Electoral Act as amended.
6. And for such Order or Further Orders as the Court may deem fit to make in the circumstances.

The Originating Summons and all other accompanying processes were served on the Respondents. The 1<sup>st</sup> Respondent filed a Counter Affidavit with Written Address and a Preliminary Objection dated 24/01/19 and 22/01/19 respectively. The 2<sup>nd</sup> Defendant filed a Counter Affidavit and a Written Address.

The Claimant's Originating Summons is supported by a 22 paragraph Affidavit. The evidence is as follows:

1. That Claimant is a member of the 1<sup>st</sup> Defendant.  
That 1<sup>st</sup> Defendant is one of the registered

political parties in Nigeria while the 2<sup>nd</sup> Defendant is a creation of the Constitution of the Federal Republic of Nigeria 1999 as Amended. That he purchased his party's expression of interest and nomination forms in order to vie for the office of the Delta South Senatorial District and participated in the screening exercise conducted at the Sheraton Hotels Abuja on Friday 21 September 2018 where he was duly cleared. A copy of the expression of interest and nomination forms as well as the receipts for payments are Exhibits 1 A and B.

2. That in pursuant of his desire, his campaign team went round all the local government areas in the Delta South Senatorial District consisting of Bomadi, Burutu, Isoko South, North, Patani, Warri South West, Warri North and all the 87 Wards that make up the Delta South Senatorial District more than twice campaigning.

That despite the fact that all his contact details are with the 1<sup>st</sup> Defendant as per his forms, the 1<sup>st</sup>

Defendant kept him in the dark after selling the above forms to him at such an egregious sum of N7 Million.

That he was not communicated the venue, time and modalities for conduct of the primaries and all his efforts to establish communication with the 1<sup>st</sup> Defendant for the above purpose has so far met with a brick wall, and all the information he received as per the activities of the 1<sup>st</sup> Defendant as shown hereunder were through the social media and rumour mills. He got wind of information that 1<sup>st</sup> Defendant screening exercise was to be conducted at Sheraton hotels Abuja on 20 and 21 September 2018 by the team appointed by the 1<sup>st</sup> Defendant's National Working Committee and chaired by former Senate President Ken Nnamani at the Ladi Kwali Hall, Sheraton Hotel, Abuja. Based on the oral discussion during the screening process, he was informed that his clearance certificate for confirmation to contest the election will be forwarded to him before the conduct of the primaries.

On the basis of the above communication, he continued with the campaign around the Senatorial District and printed bill boards and posters which were shared around. That after the screening exercise, he did not hear from them again. That through the social media and rumour mills he heard that the 1<sup>st</sup> Defendant's primaries for the Delta South Senatorial District for the 2019 General Election has been fixed for 2<sup>nd</sup> October 2018 at APC Headquarters in Oleh Town. Consequently he mobilized all his supporters and party members/delegates to the venue. While at the venue, from 8 a.m to 7 p.m. at the venue, he got wind of information that APC had postponed all Senatorial primaries to the 3<sup>rd</sup> October 2018 at 9.am. The party once again did not communicate same to him as an aspirant through any of his several phone numbers that he submitted. Notwithstanding the above snubs from the 1<sup>st</sup> Defendant as a loyal party member he and his supporters travelled back from Oleh to his base in Warri that night of 2<sup>nd</sup> October 2018, came back to Oleh Town with his supporters the next day for the purpose of the primaries.

On 3/10/18, there was no event as there were no officials of the party on ground and no single official communication from the party as to what was going on up till late in the night. He later heard a rumour that a publication was released that only one person had been cleared to contest the primary election and that the remaining four contestants had been technically disqualified by the 1<sup>st</sup> Defendant.

He wrote a Petition to the Appeals Committee set up by the 1<sup>st</sup> Defendant to look into and resolve all grievances arising from the conduct of the primaries. That he took the Petition to the Office of the 1<sup>st</sup> Defendant at 40 Blantyre Street, Wuse II, Abuja but the staff on ground refused to acknowledge receipt stating he has instructions not to accept Petitions. He therefore sent a copy to 1<sup>st</sup> Defendant's Secretary and an extra copy via DHL to the 1<sup>st</sup> Defendant. The copy of the Petition and the DHL Courier Receipt is Exhibit 2 A and B. That till now, there has been no official communication from the 1<sup>st</sup> Defendant to him as to his



status with regard to his aspiration to vie for the Delta South Senatorial election via the platform of the 1<sup>st</sup> Defendant. That the 1<sup>st</sup> Defendant failed to adhere to its own Guidelines. The 1<sup>st</sup> Defendant's Guideline is Exhibit 3. That 2<sup>nd</sup> Defendant condoned all infractions of the 1<sup>st</sup> Defendant when it abdicated its statutory duties to control and supervise the affairs of the 2<sup>nd</sup> Defendant with respect to the issues raised in the Suit. That this Court should intervene with a view of correcting the wrong, absurdity, illegality and the unconstitutional and improper practice of the Defendants as shown above.

The 1<sup>st</sup> Defendant moved his Notice of Preliminary Objection. Learned Senior Counsel brought the Objection pursuant to Section 6(6) (a) and Section 285(9) of the 1999 Constitution of the Federal Republic of Nigeria as Amended and Order 2 Rules 2 4-6 and 6, Rule 2(1) of the High Court of the FCT (Civil Procedure) Rules 2018.

1. He contends that this Court has no jurisdiction to hear and determine this matter as it is statute barred by virtue of Section 285 (9) of the 1999 Constitution having regard to the date of the occurrence of the event, decision or action complained of in this Suit.
2. That the Claimant has no cause of action and locus standi to file this suit having not participated in the primary of the 1<sup>st</sup> Defendant by his own showing in the Originating Summons.
3. The candidate who won the primary election was not joined as a party, the Court lacks jurisdiction to grant the reliefs sought.
4. That the Originating Summons was not issued as required by law.

Learned Senior Counsel argued the grounds summarized above. He contends that the issues raised by him go to the root of adjudication being the threshold of issues of jurisdiction. That jurisdiction is a crucial question of competence. That any defect in competence of the case affects the jurisdiction of the

Court. He relies on **MADUKOLU VS. NKEMDILIM (1962) 2 NSCC 374 at 379**. He submits that the claim before the Court is not a competent claim and this Court lacks jurisdiction to hear and determine it. That the claim of the Claimant is not justiciable in that it is speculative and constitutes gross abuse of Court process. That this action is statute barred. That reliefs 1 and 2 of the Originating Process are declaratory in nature. That the Plaintiff has no competent claim as the action is not justiciable in that it is statute bared by virtue of Section 285 (9) of the 1999 Constitution as Amended therefore the matter is speculative and an abuse of Court process. That the action of the Claimant is the Pre-election matter under Section 285(14) of the 1999 Constitution as amended.

That the decision challenged in this matter is the alleged primary held on either 3<sup>rd</sup> or 5<sup>th</sup> October 2018. Refers to Exhibit 2A dated 5<sup>th</sup> October 2018. That the cause of action occurred on the 5<sup>th</sup> October 2018 if at all Claimant has any cause of action. That the Originating Summons was filed on 30/10/18 a period of

25 days. Relies on **WILLIAMS VS. WILLIAM (2008) 10 NWLR (PT. 1095) 364.** That once an action is statute barred, the Plaintiff's right is totally extinguished.

Learned Senior Counsel urges the Court to uphold this ground of objection and dismiss the Suit on the ground of absence of locus standi and cause of action. He canvasses that the Originating Summons was not issued as required by law. That the Claim does not disclose any cause of action. That Claimant did not participate in the primary of the 1<sup>st</sup> Defendant held on the 5<sup>th</sup> of October 2018. Refers to Exhibit 2 A. That since the Claimant has not joined the Senatorial candidate of the 1<sup>st</sup> Defendant in this Suit, this Court lacks jurisdiction. The Court has no jurisdiction to make orders against persons who were not made parties to the proceeding. That the failure to join the candidate of the 1<sup>st</sup> Defendant is fatal to the Claim and the jurisdiction of the Court.

Aside the above, Counsel submits that the Originating Summons was not issued and sealed in accordance

with Order 2 Rule 4 of the High Court of the FCT (Civil Procedure) Rules 2018. That failure to commence an action with a valid Writ renders the action invalid. Learned Counsel orally submits that this Court lacks territorial jurisdiction to adjudicate on this matter. The Claimant's Counsel also adopted his reply on point of law in opposition to the 1<sup>st</sup> Defendant's Notice of Objection. It is dated and filed on the 5/02/19. In the course of his reply he canvassed that he shall be referring to the Constitution of the APC marked as APC 1 in the Affidavit frontloading subsidiary legislation pursuant to Section 122(4) of the Evidence Act.

Learned Counsel submits that paragraphs 14 and 15 of the Claimant's Affidavit in support of the Originating Summons clearly show that the grievance of the Claimant is that the 1<sup>st</sup> Defendant and or his agents were attempting to thwart the process of internal democracy by refusing to comply with the provisions of Section 87(1) which makes the conduct of primaries by a political party mandatory. Leaned Counsel further submits that it would be unreasonable for Claimant to

filed appeal on 3/10/18 and then jump into Court without allowing the time given by Article 21 (1) to elapse. Learned Counsel further submits that the provisions of the 1<sup>st</sup> Defendant's Constitution is a subsidiary legislation made pursuant to Section 222 (c ) and (d) of the 1999 Constitution. That Section 87(10) of the Electoral Act squarely confers locus standi on all aspirants who complains that any of the provisions of the Electoral 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.

That by Article 33 (XIV) of the 1<sup>st</sup> Defendant's Constitution an aspirant means any person who has picked the Party's Nomination forms seeking to participate in either a primary or party election. On this point, Learned Claimant's Counsel submits that having fulfilled the conditions in Article 33 (XIV) of the 1<sup>st</sup> Defendant's Constitution is a bonafide aspirant under the extant laws hence enjoys the rights and *locus standi* conferred on all aspirants. That it is the refusal of the 1<sup>st</sup> Defendant to remedy the injustice

visited on the Claimant by the Steering Committee that constitutes the kernel of the event complained of. That the said kernel of event could only accrue and or arise after the expiration of the time when the 1<sup>st</sup> Defendant was supposed to address the Complaint of the Claimant. That a cause of action accrues when the cause of action becomes complete. That the event complained of is the failure of the 1<sup>st</sup> Defendant to redress the wrong of the Screening Committee which event can only occur 14 days after the date of the receipt of the appeal in Exhibit 2A as envisaged by Section 285 (9) of the 1999 Constitution.

On grounds 3 and 4, Learned Counsel canvasses that by Order 13 Rule 18 (1) and (3) of the High Court of the FCT (Civil Procedure) Rule 2018, no proceedings shall be defeated by reason of misjoinder or nonjoinder of parties and the Courts may deal with the matter in controversy so far as regards the rights/interest of the parties actually before it. That the Claimant does not have and has not made any complaints against the conduct of the said Emmanuel Uduaghan mentioned

in the Preliminary Objection but the main question to be resolved is whether 1<sup>st</sup> Defendant violated ITEM 11(1) (f) of the 1<sup>st</sup> Defendant's Guidelines attached as Exhibit 3 to the Affidavit in Support of the Originating Summons. That the presence of the 1<sup>st</sup> Defendant's flag bearer Emmanuel Uduaghan is not critical to the resolution of the question whether or not the 1<sup>st</sup> Defendant has complied with Item 11(1) (f) of its Constitution. That the said Emmanuel Uduaghan is not a necessary party and ought not to be made a party to the Suit.

On the issue of the Originating Summons not being issued, Learned Counsel submits that the Originating Summons in the Court's file bears the signature and stamp of the Registrar of the Court. It is therefore wrong for Learned Counsel to argue that the copy served on the 1<sup>st</sup> Defendant was not issued. That failure of Court Officials in the discharge of their duties is not to be visited on the litigant. A party is not to be punished for the negligence or tardiness of Officers of the Court in the performance of their duty nor is a



party to be held liable for the failure of the Court Officials. A copy of the said Originating Summons served on the 1<sup>st</sup> Defendant was not availed the Court. That the cause of action is not statute barred because the Claimant cause of action only accrued and became complete on 19th October 2018 whereas the Suit was filed on 30/10/18 well within 14 days envisaged in Section 285 (9) of the Constitution. He urges the Court to dismiss the Preliminary Objection.

I have carefully read and considered the Notice of Objection and Counsel's arguments thereon.

The Learned Counsel to the 1<sup>st</sup> Defendant had objected and strenuously argued that this Court should not look at the Claimant's Affidavit frontloading a subsidiary legislation viz the Constitution of the 1<sup>st</sup> Defendant. Learned Counsel's argument is that the said subsidiary legislation did not accompany the Originating Summons as required by the rules. That no leave was sought and obtained.

I have looked at the said Affidavit. All it contains is frontloading or supplying the Court with the 1<sup>st</sup> Defendant's Constitution which I believe the 1<sup>st</sup> Defendant should be happy about. There is no doubt that the Constitution of the 1<sup>st</sup> Defendant is a subsidiary legislation made pursuant to the Electoral Act 2010 as amended and the 1999 Constitution of the Federal Republic of Nigeria as Amended. By Section 122 (a) of the Evidence Act, this Court can take judicial notice of it. It can also be tendered to the Court by either party or the Court can also suo moto ask parties to oblige it with a copy of same. Bringing in the Constitution of the 1<sup>st</sup> Defendant by the Claimant the way he did without the leave of Court having not filed it along with the Originating process is not prejudicial to the 1<sup>st</sup> Defendant. The document sought to be brought to the Notice of the Court need not be proved. In the circumstance, I shall take judicial notice of it and use it appropriately.

Notwithstanding the above by Order 5 Rule 1 of the High Court of the FCT (Civil Procedure) Rules 2018,

where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings. The Court may give any direction as he thinks fit to regularize such steps.

2. Where at any stage in the course of or in connection with any proceeding there has by reason anything done or left undone been a failure to comply with the requirements as to time, place, manner or form such failure may be treated as an irregularity.

It is my view that availing a Court a law on subsidiary legislation as the Claimant did by filing an Affidavit frontloading the Constitution of the 1<sup>st</sup> Defendant is not such a situation envisaged or captured by the rules of Court. The act of the Claimant is not an irregularity. The Affidavit is therefore proper before the Court.

The 1<sup>st</sup> Defendant has canvassed that the Plaintiff has no cause of action and locus standi to file this Suit having not participated in the primary of the 1<sup>st</sup>

Defendant. It is now settled that a cause of action is the entire set of circumstances giving rise to an enforceable claim. It is the fact or combination of facts, which gives rise to a right to sue and it consists of two elements, viz the wrongful act of the Defendants which gives the Plaintiff his cause of complaint and the consequent damage.

See **ADESOKAN VS. ADEGOROLU (1997) (PT. 493) 261 SC.**

**AJAYI VS. MIL ADM.ONDO STATE (1997) 5 NWLR (PT.504) 237 SC.**

**EMIATOR VS. NIGERIAN ARMY (1999) 12 NWLR (PT.631) 362 SC.**

**AGBANELO VS. UNION BANK OF NIGERIA LTD 2000) 4 SC (PT.1) 233.**

**ODUNTAN VS. AKIBU (2000) 7 SC (PT.11) 706.**

It is the factual situation which a Claimant relies upon to support his claim, recognized by the law as given rise to a substantive right capable of being claimed or enforced against the Defendants. The factual situation

must however constitute the essential ingredients of an enforceable right as claimed.

See **ASABORO VS. PAN OCEAN OIL (NIG) LTD (2006) 4 NWLR (PT.971) 595.**

**NICON INSURANCE CORP VS. OLOWOFEYEKU (2006) 5 NWLR (PT. 973) 244.**

In order to determine whether or not a Suit discloses a cause of action, the Courts are required to examine the averments in the pleadings and see if they disclose cause of action. Once the Statement of Claim raises some issues of law or fact calling for determination by the Court, the mere fact that the case is weak and not likely to succeed is not a ground for striking it out. Thus a pleading can only be said to disclose no cause of action where it is such that nobody can understand what claim the Defendant is required to meet.

See **ALALADE VS. MOROHUNDIYA (2002) 16 NWLR (PT.792) 81.**

**IDACHABA VS. KONA (2007) 6 NWLR (PT.1030) 277.**

***NICON INSURANCE CORP. VS. OLOWOFEYEKU (SUPRA)***  
***MOBIL OIL PLC VS. D.E.N.R LTD (2004) 1 NWLR (PT.853)***  
***142.***

What the Court should be concerned is to examine the pleadings to see if they disclose some cause of action or raise some questions which are fit to be decided upon.

Locus standi or standing to sue on the other hand is the legal right of a party to an action to be heard in litigation before a Court of Law. It is the legal capacity of instituting or commencing an action in a competent Court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever.

***INAKOJU VS. ADELEKE (2007) 4 NWLR (PT.1025) 423.***  
***AKANNI VS. ODEJIDE (2004) 9 NWLR (PT. 879) 575.***

For a person to bring an action in respect of a subject matter therefore, such a person must show that he has a legal right or special interest in that subject matter.

See **AKINNUBI VS. AKINNUBI (1997) 2 NWLR (PT. 486) 144.**

**ATTAHIRU VS. BAGUDU (1998) 3 NWLR (PT. 543) 656.**

The law is also clearly settled that it is the Statement of Claim or evidence adduced and not the Writ of Summons that must be gleaned to find out whether or not a litigant has locus standi to sue.

I have earlier reproduced the Affidavit in support of the Originating Summons which is the pleading or evidence in this case.

The Claimant is a member of the 1<sup>st</sup> Defendant. He purchased the nomination forms of his party, the 1<sup>st</sup> Defendant in order to vie for the office of Delta South Senatorial District. He participated in the screening exercise conducted at the Sheraton Hotels, Abuja on 21/09/18 where he was cleared.

A copy of the forms are Exhibit 1A and B. He thereafter embarked on campaigns with his supporters. That they kept him in the dark after selling the form to him at the rate of N7 Million. He was not informed of venue, time and or modalities for the conduct of the primaries or the list of delegates that will vote at the said primaries and all his effort to establish communication with the 1<sup>st</sup> Defendant for the above purpose was met with a brick wall. It was through the rumour mill he got wind of the screening exercise which took place on 20/21 September 2018 and he was screened by a team appointed by the 1<sup>st</sup> Defendant in Sheraton Hotel, Abuja. That he was told he would receive a Certificate to confirm his clearance to contest before the conduct of the primaries. He never heard anything again only for him to hear that the 1<sup>st</sup> Defendant's primaries for the Delta South Senatorial District for 2019 General Election has been fixed for 2<sup>nd</sup> October, 2018. He was in Oleh Town for the exercise on the said date between 8 a.m – 7 p.m but it never held. He came again on the 3<sup>rd</sup> October 2018 at 9.a.m but nothing happened. He



wrote a Petition to the 1<sup>st</sup> Defendant to look into and resolve his grievances. It is Exhibit 2A and B. That up till now there is no official communication from the 1<sup>st</sup> Defendant to him as to his status regarding his aspiration to vie for the Delta South Senatorial Election via the platform of the 1<sup>st</sup> Defendant. That 1<sup>st</sup> Defendant failed to adhere to its Guidelines. The Guidelines is Exhibit 3. The 2<sup>nd</sup> Defendant abdicated its supervisory role over the 1<sup>st</sup> Defendant.

The above is the complaint/grievance of the Claimant upon which he is seeking the reliefs in the Summons. Clearly, the complaint is about the breach of Section 87 of the Electoral Act by the 1<sup>st</sup> Defendant in the preparation that should lead to the conduct of the Senatorial Primaries at Oleh Delta South Senatorial District Delta State.

In my humble view, the grievance of the Claimant is clear. It raises some issues of law and facts which calls for determination. The facts as summarized above disclose some facts or questions which are to be

decided upon. In my view therefore, the Claimant has a reasonable cause of action and I so hold.

I have also stated earlier that locus standi is the capacity to sue. The legal standing of the Claimant. The claimant obtained the 1<sup>st</sup> Defendant's form. He paid N7 Million. He was screened by Officials of the 1<sup>st</sup> Defendant in Abuja. He was not communicated with until he heard from the rumour mill that the primaries was for 2<sup>nd</sup> or 3<sup>rd</sup> of October.

That no primaries took place. He later heard that one Emmanuel Uduaghan was selected/elected. He wrote a Petition to the 1<sup>st</sup> Defendant. His grievances were not looked into. He therefore initiated this process.

In my view, the Claimant has shown sufficient interest, injury or threat of injury he has or will suffer from the infringement complained of.

It is trite that the interest or injury test is the yardstick in determining the question of locus standi of a Claimant and it is to be determined in the light of the facts or special circumstance of each case.

See **A.G. AKWA IBOM STATE VS. ESSIEN (2004) 7 NWLR (PT. 872) 288.**

In the circumstance of this case and for the reasons given above, it is my view that the Claimant has locus standi to initiate this case and I so hold.

By Section 285 (14) of the 1999 constitution as amended:

- (a) Pre election matter means any suit by an Applicant 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 party and the provisions of the guidelines of a Political Party has not been complied with in respect of the selection or nomination of candidates for election.

(b) An aspirant challenging the actions, decisions or activities of INEC and ETC.

By Section 87 (1) of the Electoral Act, the Claimant is an aspirant who is empowered to approach the Court to complain of infraction of the Act or Guidelines.

The 1<sup>st</sup> Defendants Counsel also raised the issue of non joinder of the 1<sup>st</sup> Defendant's flag bearer Emmanuel Uduaghan. The law is that a party to a suit does not have the locus standi to raise the issue of non joinder of other parties since the issue of non joinder of parties can only be raised by the parties themselves who were left out of the action if indeed they have interest in the matter.

See **MILITARY GOVERNOR, ONDO STATE VS. AJAYI (1998) 3 NWLR (PT. 540)27.**

Aside the above, I agree with Learned Counsel to the Claimant, that this issue can be effectually, effectively and completely disposed of, without the 1<sup>st</sup> Defendants flag bearer being joined.

Learned Counsel also stated that the Originating Summons was not issued and sealed in accordance with order 2 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.

The 1<sup>st</sup> Defendant's Counsel has not in his Written Address pointed specifically to the defect contain in the copy of the Summons served on the 1<sup>st</sup> Defendant. I could see a passing reference to the stamp and seal of the Registrar of the Court not having been engrossed. The above requirements are captured in Order 6 Rule 1 – 3 of the Rules of Court.

I agree with Learned Counsel to the Claimant that the copy of the Originating Summons served on the 1<sup>st</sup> Defendant is not before the Court. However, the original copy of the Originating Summons is in the Court's file. What was served on the 1<sup>st</sup> Defendant is a copy of the original which is in the Court's file. I have perused same. It is signed and sealed by the Registrar of Court. It is also dated. Even if the Registrar of Court or any other Court Officials fails in their duty, it still will

not obliterate or void the said process. There are plethora of authorities to the effect that sin of a Registrar or Court Officials cannot be visited on a litigant.

See ***SHUAIBU VS. MUAZU (2007) 7 NWLR (PT. 1033) 271.***  
***BROAD BANK NIG. LTD VS. S. OLAYIWOLA & SONS LTD (2005) 3NWLR (PT. 912) P. 434.***

***CITEC INT. ESTATES LTD VS. YUSUF & ANO (2016) LPELR 40207.***

***S.I.V. LTD VS. AFRO SHELTERS LTD (2010) 1 NWLR (PT. 1175) at 209.***

In the circumstance, the Originating Summons is proper and valid.

The 1<sup>st</sup> Defendant's Counsel further argued that this Court has no jurisdiction to hear and determine this case in that the suit is statute barred by virtue of Section 285 (9) of the 1999 Constitution as Amended having regard to the date of the occurrence of the event, decision or action complained of in the suit. For

purpose of clarity, Section 285 (9) of the 1999 Constitution states:

***“Notwithstanding anything to the contrary in this Constitution, every Pre election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit”.***

I have earlier summarized the arguments of both Counsel on this issue. The operative words in my view in the above provision is:

**“shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of”.**

The summary of the complaint of the Claimant is that he is a member of the 1<sup>st</sup> Defendant. He bought nomination for to vie for the position of Delta South Senatorial District from the 1<sup>st</sup> Defendant. He was screened at Sheraton Hotel Abuja. Subsequently, the 1<sup>st</sup> Defendant kept him in the dark. He was not contacted as to the success or otherwise of the

screening exercise. He had mobilized his supporters and started campaigns round his Senatorial District. He heard from the rumour mills and social media that the said primaries would take place on 2<sup>nd</sup> and on 3<sup>rd</sup> of October 2018 but it never did.

In paragraph 14 he states:

***“On Wednesday 3<sup>rd</sup> October 2018, the event which was supposed to be primary election of the 1<sup>st</sup> Defendant for the Senatorial District turned out to be no event as there were no officials of the party on ground and not a single official communication from the party as to what was going on, up till late in the night. And while we were waiting and wondering what was going on we heard it rumoured that a publication had been released by the 1<sup>st</sup> Defendant that only one person had been cleared to contest the primary election and that the other four contestants had been technically disqualified by the 1<sup>st</sup> Defendant”.***



He thereafter wrote a Petition to the Appeal Committee of the 1<sup>st</sup> Defendant without any of his grievances looked into. His grievance is that the 1<sup>st</sup> Defendant failed to adhere to its own guidelines. The guidelines are Exhibit 3. The 2<sup>nd</sup> Defendant also condoned all the above infractions and abdicated its statutory duty to superintend and supervise the affairs of the 1<sup>st</sup> Defendant.

The question therefore is, what is the event, decision or action Claimant is complaining about? It is clear from the Affidavit attached to the Originating Summons as summarized above that it is the infraction of the 1<sup>st</sup> Defendant's Guidelines by the 1<sup>st</sup> Defendant by not communicating with him/putting him in the dark concerning his ambition to fly the 1<sup>st</sup> Defendant's flag all culminating into the No event of 2<sup>nd</sup> & 3<sup>rd</sup> October 2018 for which he wrote a Petition to the Appeal Committee of the 1<sup>st</sup> Defendant.

The action complained of is the failure of the 1<sup>st</sup> Defendant to abide by its Guidelines/Constitution/Electoral Act. The 1<sup>st</sup> Defendant did not file any Affidavit in support of his Preliminary Objection. In his Written Address adopted in support of the Notice of Objection dated 22/01/19 at Page 9 Paragraph 2.9, 1<sup>st</sup> Defendant stated that the action complained of or the decision being challenged in this case is the alleged primary held on either the 3<sup>rd</sup> or 5<sup>th</sup> October 2018. He refers the Court to Exhibit 2A of the Supporting Affidavit. He therefore contends that the cause of action accrued on 5/10/18.

The facts which 1<sup>st</sup> Defendant wants the Court to rely on are not put in an Affidavit before the Court. The Notice of Objection is bare. However, the said Exhibit 2A attached to the Originating Process is the Petition of the Claimant to the 1<sup>st</sup> Defendant's Appeal Committee dated 5/10/18.

I have read same. It never stated that the primary election took place on the 3<sup>rd</sup> or 5<sup>th</sup>. Learned Senior Counsel did not also point to the Court the page or paragraph of the said Exhibit 2A which mentioned that fact. The above fact ought to have been in an Affidavit in support of the objection and not a Written Address. It is clear that 1<sup>st</sup> Defendant is not sure of the date it allegedly conducted its primaries by the use of the word 3 or 5 of October 2018 in 1<sup>st</sup> Defendant's Written Address. There are no materials before me therefore, to suggest that anything or primary election of the 1<sup>st</sup> Defendant took place in Oleh Delta South Senatorial District of Delta State. I therefore have no hesitation in agreeing with the submission of Learned Counsel to the Claimant in paragraphs 1.44 – 1.48 of page 13 of his Written Address filed in reply to 1<sup>st</sup> Defendant's Preliminary Objection.

I have read Article 21 (c ) (11) of the 1<sup>st</sup> Defendant's Constitution. Article 21(c) 11 of the 1<sup>st</sup> Defendant's Constitution states:

***“An appeal shall be determined by the appropriate appellate body within 14 days from the date of the receipt of the appeal by the appellate body concerned.”***

Exhibit 2A attached to the Affidavit in support of the Originating Summons is the Petition/Appeal dated 5/10/18.

Exhibit 2B is the DHL Express Receipt which shows that the Appeal/Petition was received on the 9<sup>th</sup> of October 2018.

I agree with Claimant Counsel's argument that the event complained of which is the failure of the 1<sup>st</sup> Defendant to abide by its constitution accrued 14 days after the receipt of the appeal on the 9<sup>th</sup> October 2018. The failure or omission to act on the Claimant's complaint is an act. See 18(1) of the Interpretation Act. The 1<sup>st</sup> Defendant's appeal which was received on the 9<sup>th</sup> of October 2018 as evidenced by Exhibit 2B lapsed 14 days from the day of receipt which is the 9<sup>th</sup> of October, 2018. The cause of action became

complete on 23/10/18. Times begin to run from 23/10/18.

By Section 285(9) of the 1999 Constitution as amended the right of the Claimant to bring this action lapsed on the 6<sup>th</sup> of November 2018. This action was initiated on the 31/10/18.

It is my view and I so hold that this action is not statute barred by Section 285 (9) of the 1999 Constitution as amended. The 1<sup>st</sup> Defendant has orally contended that this Court has no territorial jurisdiction to entertain this action.

By the authorities of

***DALHATU VS. TURAKI (2003) LPELR – 917 SC.***

***MAILAKANTARIKI VS. TANGO & ORS (2017) 27 LRCN 119.***

The jurisdiction vested on the Federal High Court, High Court of the Federal Capital Territory and State High Court by Section 87 (9) of the Electoral Act 2010 is exercisable only by the High Court within the state or Territory where the cause of action arose. It is also now

the law and I am aware, that Section 87 (9) of the Electoral Act does not avail the aggrieved litigant to undertake forum shopping outside the territorial jurisdiction of the relevant High Court. The question for determination in this instance is where the cause of action arose. The cause of action in this case as earlier noted is the failure of the 1<sup>st</sup> Defendant and its agents to obey its guidelines/Electoral Act.

The cause of action became complete when 1<sup>st</sup> Defendant's agent/appeal committee failed to respond to the grievances of the Claimant. The Claimant bought his form from the 1<sup>st</sup> Defendant. He was screened in Abuja. His appeal Exhibit 2A was lodged in Abuja. The 1<sup>st</sup> Defendant has its National Headquarters in Abuja. The failure/omission to act was in Abuja at the Abuja Headquarters of the 1<sup>st</sup> Defendant.

In my humble view, the cause of action arose in Abuja. Consequently this Court has territorial jurisdiction to entertain this matter and I so hold. The right the

Claimant is asserting is a constitutional right. The right to vote and be voted for. In my respectful view, the 1<sup>st</sup> Defendant's Preliminary Objection lacks merit and it is accordingly dismissed.

The Affidavit evidence in support of the Originating Summons is already summarized. The 1<sup>st</sup> Defendant's Counter Affidavit which Learned Senior Counsel relied on, is deposed to by one Precious Agharase of 40 Blantyre Street, Wuse 2, Abuja FCT. He deposed in the 8 paragraph Affidavit that the Primary Election of the 1<sup>st</sup> Defendant for the Delta South Senatorial District took place on the 3<sup>rd</sup> of October 2018. That the Claimant did not take part in the primary election because after screening he was not cleared to contest. That the 1<sup>st</sup> Defendant has the right to screen candidates who desire to run on its platform and this was done pursuant to Exhibit 3 to the Counter Affidavit. That it was not only the Claimant that was not cleared to contest. That at the end of the primary election exercise, Dr Emmanuel Uduaghan won the Primary. The result of the election is Exhibit JSO. That Exhibit JSO

shows those who were not cleared to contest the primary. The Claimant was duly informed of the fact that he was not cleared to contest the primary. That Claimant failed to Appeal against the decision that he was not cleared to contest but rather disputed the primary election.

That the primary was eventually held on 3/10/18 and a winner emerged. That the last date for the submission of candidate was 3<sup>rd</sup> of December 2018 see Exhibit JSO1. That this matter relates to the primary election of the 1<sup>st</sup> Defendant which was held in Oleh Town, Delta State. The 2<sup>nd</sup> Defendant also relied on its Counter Affidavit sworn to by Jessica Iyoke of Plot 1015 Fria Close, Off Fomella Street, Adetokunbo Ademola Crescent, Wuse II, Abuja. The 2<sup>nd</sup> Defendant's deposition is that the facts deposed to in the Claimant's Affidavit are facts within the personal knowledge of the Claimant which deals with the internal affairs of the political party concerned particularly the 1<sup>st</sup> Defendant in its relationship with the



Claimant. That 2<sup>nd</sup> Defendant is not in position to affirm or deny same.

That duty of 2<sup>nd</sup> Defendant as it relates to party primaries is to ensure that political parties adhere to giving of the requisite Statutory notices for conduct of primaries to the 2<sup>nd</sup> Defendant and not internal communications of the party and its members or aspiring candidates. That 2<sup>nd</sup> Defendant did not fail in its duty to ensure that requisite statutory obligations are performed by the 1<sup>st</sup> Defendant.

In his Written Address, the Claimant canvassed that the Defendants failed to comply with Section 87 of the Electoral Act 2010 as amended which laid down the procedure for nomination of candidates by political parties. He contends that the 2<sup>nd</sup> Defendant failed to curb and indeed condoned all the excesses of the 1<sup>st</sup> Defendant with respect to the issues raised in this suit.

Learned Counsel to Claimant submits that by the incontrovertible facts contained in the Affidavit in

support of the Originating Summons the Defendants having failed to adhere to the mandatory dictates of the law as regards conduct of primaries in accordance with Section 87 (9) of the Electoral Act. He urges the Court to resolve the two issues raised for determination in favour of the Claimant and grant the reliefs sought. The 1<sup>st</sup> Defendant's Counsel also adopted his written address. He canvassed that the time fixed by law and the 1999 Constitution to conduct Primaries has since lapsed. That the constitutionality of the reliefs being sought are impossible of being granted.

That declaratory reliefs are not granted by admission. That there is no law that entitled the 2<sup>nd</sup> Defendant to reject candidate that is submitted to it. That this Court has no jurisdiction to fix time to conduct primary elections of a political parties. That the time is fixed by law and the Constitution. That the case of the Claimant is academic. He relies on Section 31 & 33 of the Electoral Act. That reliefs 4 and 5 of the Originating Summons have not been proved. He finally urges the

Court to dismiss the Claim. The issue raised for determination in the 2<sup>nd</sup> Defendant's address in support of its Counter Affidavit is whether given the totality of facts placed before this Court, the 2<sup>nd</sup> Defendant Applicant can be said to have abdicated its statutory duty to superintend the affairs of the 1<sup>st</sup> Defendant.

The 2<sup>nd</sup> Defendant agreed in its submission that it is statutorily charged among other things, with the power to monitor the organization and operation of political parties, including finances, convention congresses and party primaries. It went further, its duties are to ensure political parties adhere to statutory requirements such as mandatory notices under Section 85 of the Electoral Act, compliance with the Electoral Act. That 1<sup>st</sup> Defendant has been doing the above refers to Paragraph 3 a – d of 2<sup>nd</sup> Defendant's Counter Affidavit. That the issue complained about by Claimant deals with internal affairs of political parties. That Claimant has not proved that 2<sup>nd</sup> Defendant abdicated its responsibilities.

I have read the Originating Summons and Affidavit, Counter Affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. I have also considered the Written Addresses of Counsel and the various replies on point of law. The issues for determination as contained in the Originating Summons are:

- (1) Whether the process that produced the Delta South Senatorial Candidate of the 1<sup>st</sup> Defendant for the 2019 General Election conformed to the mandatory provisions of Section 87 (1), (2), (3) and (4) of the Electoral Act.
- (2) Whether the 1<sup>st</sup> Defendant can validly submit the name a candidate to the 2<sup>nd</sup> Defendant for the purpose of the 2019 General Election with respect to the Delta South Senatorial District in the light of the failure of the 1<sup>st</sup> Defendant to comply with Section 87 (1), (2), (3), (4), and (9) of the Electoral Act as amended.

Section 87 of the Electoral Act states:

1. A political party seeking to nominate candidates for elections under this act shall hold primaries for aspirants to all elective positions.
2. The procedure for the nomination of candidates by political party for the various elective positions shall be by direct or indirect primaries.
3. A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the political party.
4. A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below (a) – (d).

***“(9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High***

***Court, High Court of a State or Federal Capital Territory for redress.”***

I have earlier summarized the evidence. Not minding being accused of tautology, I shall summarize the evidence yet again. The Claimant is a member of the 1<sup>st</sup> Defendant. He bought nomination form for N7 Million to contest the primary election of the 1<sup>st</sup> Defendant in Delta South Senatorial District, Delta State. He went about his campaign with his supporters. He attended the screening exercise in Abuja. He was told his certificate of confirmation of his clearance would be sent to him after he was duly cleared. He did not hear from 1<sup>st</sup> Defendant again. He heard from the social media that the primaries will take place on 2<sup>nd</sup> of October 2018. He was at the venue but nothing happened.

He gathered information that it would be the 3<sup>rd</sup> of October 2018 but nothing happened on the 3<sup>rd</sup>. That the primary election did not take place. He heard later that he was not cleared to contest and that a

candidate has been selected/elected to represent the 1<sup>st</sup> Defendant.

Exhibit 1A is a copy of the 1<sup>st</sup> Defendant's Expression of interest form obtained by the Claimant.

Exhibit 1B is a copy of the 1<sup>st</sup> Defendant's Nomination Form obtained by the Claimant with names of those who nominated him.

Exhibit 2A is the appeal to the Appeal Committee of the 1<sup>st</sup> Defendant.

Exhibit 2B is the DHL Express Receipt by which the appeal was conveyed.

Exhibit 3 is the 1<sup>st</sup> Defendant's Guidelines for the nomination of candidates for the 2019 General Election.

I have carefully read and studied the 1<sup>st</sup> Defendant's Counter Affidavit. The 1<sup>st</sup> Defendant did not controvert paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of the Claimant's deposition in this Affidavit in support of Originating Summons.

Apparently in reaction to paragraph 14 of the Claimant's Affidavit that there was no primary election, the 1<sup>st</sup> Defendant deposed in paragraph 3(a) that the primary election of the 1<sup>st</sup> Defendant for the Delta South Senatorial District took place on the 3<sup>rd</sup> of October 2018.

In paragraph:

3(b). The Claimant did not take part in the primary election because after screening, he was not cleared to contest.

3(e). That at the end of the primary election Dr. Emmanuel Uduaghan won the primary. The result is Exhibit JSO.

3(g). The Claimant was duly informed that he was not cleared.

The 1<sup>st</sup> Defendant did not avail the Court a copy of the Notice of the Primary Election sent to 2<sup>nd</sup> Defendant and participants. A copy of the letter to the Claimant/others who were invited to participate in the Primary or that he was not cleared and if he was cleared, by what means was not availed the Court. The list of Delegates who



participated in the election was not availed the Court. The name and designation of the Returning Officer was not supplied. Exhibit JSO was relied on by 1<sup>st</sup> Defendant to show that indeed there was a primary election and that one Dr. Emmanuel Uduaghan won the primary.

I have perused the said document titled Summary of Result Sheet for Senate Primary Election. It is not dated. It is not signed by both Chairman and Secretary of the Primary Election Committee. The name of the Chairman of the Primary Election Committee was not stated but left blank. The name of the Secretary was also not stated but blank. The other candidates are said not to be cleared. There is no evidence that a special convention or congress was convened at a designated centre for the confirmation of such aspirant in accordance with Section 87 (6) of the Electoral Act 2010 as amended.

To say the least the said Exhibit is worthless, worse than a tissue paper so to speak. The 2<sup>nd</sup> Defendant on its own admitted its supervisory role but failed to avail the

Court with the copy of the 1<sup>st</sup> Defendant's Notice to conduct primaries into the Delta South Senatorial District neither could they show evidence of the result from the said primary but rather stated that it cannot admit or deny that a primary election took place in the Delta South Senatorial District as enjoined by law. It amounts to sitting on the fence. The above statutory duty is not the internal affairs of political parties. It is the duty of the 2<sup>nd</sup> Defendant to monitor and supervise the activities of political parties in this instance, the 1<sup>st</sup> Defendant. There is nothing before me to show that the 2<sup>nd</sup> Defendant performed that duty. The 2<sup>nd</sup> Defendant in his Affidavit was evasive and non committal.

In totality, the 1<sup>st</sup> Defendant failed to comply/conform with the mandatory provisions of Section 87 (1), (2), 3 and 4 of the Electoral Act 2010 as Amended. The Claimant has by evidence proved its entitlement to relief 1, 2 and 4 of the Claim. Consequently, the 1<sup>st</sup> Defendant cannot validly submit the name of a candidate to the 2<sup>nd</sup> Defendant for the purposes of the

2019 General Election with respect to the Delta South Senatorial District in the light of the failure of the 1<sup>st</sup> Defendant to comply with the mandatory provisions of Section 87 (1), (2), (3) and (4) of the Electoral Act 2010 as amended.

In the 1<sup>st</sup> Defendant's Written Address, the 1<sup>st</sup> Defendant's argument is that the time fixed for primaries has since lapsed. The above argument does not cure an earlier breach of the Electoral Act 2010 as Amended.

Consequently Judgment is entered in favour of the Claimant against the Defendant as follows:

1. It is hereby declared that the process that produced the Delta South Senatorial Candidate of the 1<sup>st</sup> Defendant for the 2019 General Election did not conform to the mandatory provisions of Section 87 (1) (2) (3) and 4 of the Electoral Act.
2. It is further declared that the 1<sup>st</sup> Defendant cannot validly submit the name of a candidate to the 2<sup>nd</sup> Defendant for the purpose of the 2019 General Election with respect to the Delta South Senatorial

District without complying with the mandatory provisions of Section 87 1(2), (3) and (4) of the Electoral Act as amended.

3. The 1<sup>st</sup> Defendant is hereby ordered to conduct a primary election in the Delta South Senatorial District in conformity with the provisions of Section 87 of the Electoral Act while the 2<sup>nd</sup> Defendant is ordered to monitor the said primaries.

Prayer 3 and 5 cannot be granted as the Claimant's case is that there was no primaries in the said Senatorial District and if there was, this Court has no territorial jurisdiction.

The Candidate that supposedly won or selected as a Candidate of the 1<sup>st</sup> Defendant is also not a party to this Suit.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**11/02/19.**