

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

FRIDAY, JANUARY 25, 2019

SUIT NO. FCT/HC/CV/052/2018
MOTION NOs. M/1867/2019 & M/1861/2019

BETWEEN:

NYERERE CHINENYE ANYIM	CLAIMANT
AND				
1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)	}	DEFENDANTS
2. ALL PROGRESSIVE CONGRESS				
3. MARC WABARA				

J U D G M E N T

BY AN ORIGINATING SUMMONS issued out of the Registry of this Court on 1/11/18, the Claimant herein, *Nyerere Chinenye Anyim* has posed two (2) queries for determination as follows:

- “(1) Whether having scored the highest number of valid votes cast at the primaries of the All Progressives Congress (APC) held on the 6th day of October, 2018 for the Election of Candidate to fly its flag as its Candidate for the Abia South Senatorial District during the 2019 General Elections, the 2nd Defendant is not bound to submit his name to the 1st Defendant as its Candidate for the Abia South Senatorial Elections to be held in 2019.

- (2) Whether the 1st Defendant can accept the name of any other person apart from the Claimant as the Candidate of the All Progressives Congress for the Abia South Senatorial District when it was the Claimant that won the primaries of the 2nd Defendant held on the 6th day of October, 2018 to elect the Party's Candidate for Abia South Senatorial District.”

Upon determination of these queries, he prays the court for the following reliefs:

- “(1) A Declaration that the Claimant, having scored the highest number of valid votes cast at the said primaries of the 2nd Defendant held on the 6th day of October 2018 for the Election of the Party's Candidate for Abia South Senatorial [District], the 2nd Defendant is bound to submit the Claimant's [name] to the 1st Defendant as its Candidate for Abia South Senatorial District.
- (2) A Declaration that the Claimant having scored the highest number of valid votes cast at the primaries of the 2nd Defendant held on the 6th day of October 2018 to Elect the Party's Candidate for Abia South Senatorial District, the 2nd Defendant cannot submit, and if it does submit the 1st Defendant cannot accept any other apart from the name of the Claimant as the Candidate of the 2nd Defendant for the Abia South Senatorial District.
- (3) An Order directing the 2nd Defendant to submit the name of the Claimant to the 1st Defendant as its Candidate for Abia South Senatorial District.
- (4) An Order directing the 1st Defendant to remove any other name apart from the Claimant's name including but not limited to the name of the 3rd Defendant as the Candidate of the 2nd Defendant for the Abia South Senatorial District and if any other name has been accepted then an order removing any such name and entering therefore the name of the Claimant as the Candidate for the said Abia South Senatorial District.”

The originating summons is supported by a 20-paragraphed affidavit with Exhibits NCA 1-15 annexed thereto, as well as a 5-paragraphed further affidavit to which is annexed a certified copy of INEC “*Report on All Progressive Congress (APC) Abia State Senatorial Primary on the 5th October*” – both of which are deposed by the Claimant [*Nyerere Chinenye Anyim*]. The 3rd Defendant [*Marc Wabara*] deposed to a 25-paragraphed joint counter

affidavit dated 4/1/19 for himself and on behalf the 2nd Defendant [APC], whilst the 1st Defendant [INEC] filed a written address dated 7/1/19 but did not file any counter affidavit. The two sets of Defendants equally raised a preliminary point of objection by filing separate motions on notice praying the court to strike out the present originating summons for being incompetent and thereby denuding the court of jurisdiction to hear and determine the matter.

The 1st Defendant's motion on notice [dated 7/1/19 and supported by a 4-paragraphed affidavit deposed by one *Hassan Adamu Idris*, a Principal Executive Officer in the Legal Department of the 1st Defendant (INEC)] is predicated on the following nine (9) grounds:

- “(1) That the 2nd Defendant conducted its primaries for the nomination of its candidate for the Abia South Senatorial District Abia State, for the 2019 general election on 6th day of October, 2018 at Abia State.
- (2) That all aspects of the primaries, namely accreditation, voting, the election took place in Abia State.
- (3) That no aspect of the primaries took place at or within the Federal Capital Territory.
- (4) That by the provisions of Sections 255(1) and 257(1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended), the High Court of the Federal Capital Territory has no extra territory [sic] jurisdiction or even jurisdiction to hear and determine the subject matter of this suit which arose in Abia State Nigeria.
- (5) That by Section 2(2) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) each State of the Federation and Federal Capital Territory Abuja is independent of the other and the jurisdiction of each State is limited to matters arising within the territory of the State or the Federal Capital Territory.

- (6) That by Section 299 of Constitution of Federal Republic of Nigeria, 1999 (as amended), the Federal Capital Territory Abuja is regarded as one of the States in the Federation.
- (7) That the High Court of the Federal Capital Territory has no jurisdiction to hear and determine the subject matter of this action that arose in Abia State. That reliance is placed on the Supreme Court cases of **DALHATU v TURAKI [2003] 15 NWLR (Pt. 843) Pg. 310, MAILANTARKI v TONGO [2018] 6 NWLR (Pt. 1614) Pg. 69**, which facts are on all fours with the facts of this case.
- (8) That this suit commenced in the High Court of Federal Capital Territory, Abuja amounts to forum shopping which constitutes an abuse of court process.
- (9) That it will amount to a waste of precious judicial time for the Court to hear and determine this matter, and it will be in the interest of justice to strike out the suit for want of jurisdiction.”

The 2nd and 3rd Defendants’ motion on notice [which is dated 4/1/19 and supported by an 8-paragraphed affidavit deposed by the 3rd Defendant, *Marc Wabara*] is predicated on three (3) grounds:

- “1. That this suit was improperly commenced in the High Court of Federal Capital Territory to challenge the nomination of the 3rd Defendant/Respondent for Abia South Senatorial District election.
2. The High Court of Federal Capital Territory has no jurisdiction to hear this suit.
3. That the suit constitutes an attack on the internal affairs of the 2nd Defendant.”

In opposition to the objections, the Claimant [*Nyerere Chinenye Anyim*] deposed to a 7-paragraphed counter affidavit dated 8/1/19 with Exhibit NC1 annexed thereto.

At the consolidated hearing of both preliminary objections and the substantive originating summons on 14/1/19, *Alhassan A. Umar, Esq.* of counsel for the 1st Defendant relied on the 4-paragraphed affidavit deposed by one *Hassan Adamu Idris* and adopted the written address in support thereof in urging the court to strike out the suit. In the same vein, *Ibrahim K. Bawa, SAN* of counsel for the 2nd and 3rd Defendants relied on the 8-paragraphed affidavit deposed by the 3rd Defendant and adopted the written address in support of the 2nd and 3rd Defendants' objection. He contended that page 1 of the Report of the APC Primary in Abia State [annexed as Exhibit NC1 to Claimant's counter affidavit] supports the 2nd and 3rd Defendants' contention that the events complained of occurred not in the FCT Abuja but in Abia State, and urged the court to decline jurisdiction.

On his part, *Oba Maduabuchi SAN* of counsel for the Claimant relied on the 7-paragraphed counter affidavit deposed by the Claimant [*Nyerere Chinenye Anyim*] and adopted the written address filed in opposition to the objections. He conceded that this court is bound by the decisions of the Supreme Court on any issue but cautioned that before this can be, the facts and issues in contention must be the same or at least similar; that the *litis contestatio* can only be found in the Claimant's originating summons; and that whereas ***DALHATU v TURAKI supra*** and ***MAILANTARKI v TONGO supra*** dealt with primary elections held in Jigawa and Gombe States respectively, the present action does not challenge the primary election held in Abia State *per se*, but condescends on what happened in the FCT over which this court has jurisdiction. *Maduabuchi SAN* maintained that the Claimant is challenging the attempt by APC to change the submission of his name at INEC Headquarters situate in Abuja; that the Claimant could not possibly be challenging the primary election held in Abia State since his case is that he won the primaries and was given a form which he completed in Abuja but efforts are now being made to change his name in Abuja, citing ***MAILANTARKI v TONGO supra at p.***

88; that the claim is brought pursuant to s. 87 (4)(c)(i) and (ii) of the Electoral Act 2010 (as amended), and not s. 87(9) thereof which allows an aspirant who has a complaint about the conduct of a primary election to approach the court; and that the **DALHATU** and **MAILANTARKI** cases which dealt with the conduct of primaries under s. 87(9) are inapplicable in the present case where there is no challenge to the conduct of primaries. The court was urged to dismiss the preliminary objections and assume jurisdiction.

Replicando, *Alhassan A. Umar, Esq.* of counsel for the 1st Defendant submitted that this court cannot determine whether or not the Claimant's name was submitted to INEC without first determining who won the primary election held in Abia State. Not dissimilarly, *Ibrahim K. Bawa SAN* of counsel for the 2nd and 3rd Defendants submitted that an examination of both the claim and the depositions in the supporting affidavit would reveal that the Claimant prays the court to submit his name to INEC because he polled the highest number of votes at the primary election, just as the plaintiff in **DALHATU v TURAKI supra** claimed to have won the primary election in Jigawa State and prayed the FCT High Court to order the party to submit his name to INEC; that the similarity in the two cases stems from the fact that both plaintiffs claim to have won the primary election held in one State but proceeded to seek an order in the FCT High Court for implementation of that victory; and that the Supreme Court rejected counsel's submission in **MAILANTARKI's case** [at pp. 84-85 of the Report] that the complaint was based on an aspect of the process that took place in the FCT, insisting that what happened at the State cannot be divorced from what happened in the FCT.

Shifting attention to the substantive originating summons, *Oba Maduabuchi, SAN* of counsel for the Claimant placed reliance on the 20-paragraphed supporting affidavit dated 1/11/18 and Exhibits NCA 1-15 annexed thereto, as well as the 5-paragraphed further affidavit dated 8/1/19 and the

certified copy of INEC 'Report on All Progressive Congress (APC) Abia State Senatorial Primary held on 5th October' annexed thereto. He adopted the written address filed in support of the originating summons and contended that the INEC Report constitutes conclusive proof that the question of primary election is not in issue anywhere. *Maduabuchi SAN* referred to paragraphs 14, 15 and 16 of the supporting affidavit and maintained that since INEC has not said the Claimant's name was not submitted to it or that it did not issue Forms CF001 and EC 4B(iv) to the Claimant, these averments are deemed admitted; that the 3rd Defendant made the counter affidavit on behalf of himself alone as there is nothing to suggest that it was made on behalf of the 2nd Defendant (APC); and that only APC [2nd Defendant] against whom allegations are made that can counter same. The further contention of *Oba Maduabuchi SAN* is that the mere fact that there is a counter affidavit does not [necessarily] mean that the case is controversial and cannot be determined by originating summons, citing ***OSSAI v WAKWAH [2006] 4 NWLR (PT. 969) 208 at 229*** and ***SCS & CO. v COUNCIL OF O.A.U., IFE [2011] 14 NWLR (PT. 1269) 193 at 215-216***; that the court is enjoined to look at the documents exhibited to resolve the dispute; that Exhibit 2 annexed to the 2nd and 3rd Defendant's counter affidavit should be discountenanced as it is a worthless piece of paper without any origin; and that the only credible documents are those exhibited by the Claimant which veritably establish his case.

On his part, *Alhassan A. Umar, Esq.* of counsel for the 1st Defendant adopted the 1st Defendant's written address dated 7/1/19 and urged the court to dispense justice; whilst *Ibrahim K. Bawa SAN* of counsel for the 2nd and 3rd Defendants relied on the 25-paragraphed counter affidavit deposed by the 3rd Defendant as well as Exhibits 1 and 2 annexed thereto and adopted the written address filed in opposition to the originating summons in urging the court to dismiss the Claimant's suit. He maintained that the contention of the 2nd and 3rd Defendants is that the Claimant did not win the primary election

held in Abia State; and that the existence and validity of the purported Primary Election Result Sheet [annexed to the supporting affidavit as Exhibit NCA 6] which was not signed by the 2nd Defendant's Returning Officer but by someone else has been denied in the counter affidavit; that the Claimant has a bounden duty to prove that he won the primary election and was returned as duly elected by the Returning Officer appointed by the 2nd Defendant; that there is no deposition in the further affidavit controverting the denial that the results challenged in the counter affidavit are genuine; that whereas declaration of result remains the best evidence, the INEC Report annexed to the further affidavit is not a declaration of result, and is, worse still, a bundle of documentary hearsay. *Bawa SAN* referred to the introductory paragraph of the INEC Report as well as the last page containing observations made on the basis of "reports reaching us" and submitted that the Report did not say the Claimant won any primary election, whilst the result sheets annexed to the Report do not form part of the Report as no reference is made to them in the body of the Report; that contrary to paragraph 14 of the supporting affidavit, no document was exhibited to show that the Claimant's name was submitted to INEC; and that since the alleged submission of the Claimant's name to INEC [1st Defendant] is denied in paragraph 18 of the counter affidavit, the burden of proving that the Claimant won the primary election and/or that his name was in fact submitted to INEC in the prescribed form rests squarely on the Claimant who asserts the affirmative, citing ss. 131-133 of the Evidence Act 2011. He argued that the Claimant deposed in paragraph 15 of the supporting affidavit that he was issued with INEC Form CF001 and Form EC 4B(iv) but made no statement as to who issued the forms to him; that when the said deposition is read *vis-à-vis* s. 31(2) of the Electoral Act, 2010 (as amended), it will become obvious that the Form that was allegedly still being completed by the Claimant ought to accompany the list of candidates submitted by the party to INEC; and that contrary to the Claimant's assertion, the fact that he was still completing the form only means

that his name was never submitted to INEC. The court was urged to dismiss the originating summons.

Replicando, *Oba Maduabuchi SAN* of counsel for the Claimant submitted that a community reading of paragraphs 14 and 15 of the supporting affidavit leaves no one in doubt that it was INEC that issued Forms CF001 and EC 4B(iv) [Exhibits NCA 14 and NCA 15] to the Claimant; and that a reply affidavit is not meant to rebut a denial in the counter affidavit, but to answer any new issues not covered in the earlier processes.

The foregoing are the arguments put forward in support of and in opposition to the preliminary point of objection raised by the two sets of Defendants, as well as the substantive originating summons. The pre-eminent status or stature of jurisdiction in the scheme of legal proceedings is well ingrained in our jurisprudence. It is therefore merely restating the obvious that jurisdiction is the first test in the legal authority of a court or tribunal and its absence disqualifies the court or tribunal from determining the substantive issues submitted to it for adjudication. Jurisdiction is a threshold matter and the very lifeline of judicial power and judicialism without which the entire proceedings, trial, findings, orders and pronouncements are futile, invalid, null and void *ab initio* however brilliantly they may have been conducted. Once the jurisdiction of a court in respect of a cause or matter is ousted, the court will lack the competence to entertain and determine that cause or matter. See the cases of **MADUKOLU v NKEMDILIM (1962) 1 ALL NLR 587 at 595** –per Bairamian FJ, **ROSSEK v ACB LIMITED [1993] 8 NWLR (PT. 312) 382 at 437 & 487**; **ATTORNEY-GENERAL, LAGOS v DOSUNMU [1989] 3 NWLR (PT. 111) 552**, **MATARI v DANGALADIMA [1993] 3 NWLR (PT. 281) 266**, **OLOBA v AKEREJA [1988] 3 NWLR (PT. 84) 508** and **OKE v OKE [2006] 17 NWLR (PT. 1008) 224** among a host of other cases. Owing to its fundamental and intrinsic nature and effect in the administration of justice, it is neither too early nor too

late in the day to raise the issue of jurisdiction, nor is the court finicky or fussy about the manner in which it may be raised. It can be raised *viva voce* [see **PETROJESSICA ENTERPRISES LIMITED v LEVENTIS TRADING COMPANY LIMITED [1992] 5 NWLR (PT. 244) 675 at 678**]; or on the basis of the evidence received [see **NDIC v CBN [2002] 7 NWLR (PT. 766) 272**]; or for the first time on appeal without any restraints as to leave or otherwise [see **WESTERN STEEL WORKS LTD & ANOR v IRON STEEL WORKERS LTD [1987] 2 NWLR (PT. 179) 188, MAGARI v MATARI [2000] 8 NWLR (PT 670) 722 at 735, ADERIBIGBE v ABIDOYE [2009] 10 NWLR (PT.1150) 592, 615, AKEGBE v ATAGA [1998] 1 NWLR (PT 534) 459 at 465, STATE v ONAGORUWA (1992) 2 SCNJ 1 and ATTORNEY-GENERAL, LAGOS v DOSUMU *supra***]; or by the court *suo motu* once sufficient facts or materials are available without any charge of bias by any of the parties insofar as the parties are afforded the opportunity to address the court on the issue so raised [see **SAMSON IWIE v SOLOMON IGIWI [2005] 3 MJSC 82 at 112 –per Niki Tobi, JSC, OLORIODE v OYEBI (1984) 1 SCNLR 390, OBIKOYA v THE REGISTRAR OF COMPANIES (1975) 4 SC 31 at 35, NNPC v ORHIOWASELE & ORS (2013) LPELR–20341 (SC), NDAEYO v OGBONNAYA (1977) 1 SC 11 and ELEBANJO v DAWODU [2006] 15 NWLR (PT.1001) 76**]. In civil jurisprudence, where the issue arises as to whether or not a court can entertain a suit, it is usually to the plaintiff's claim that reference must be made in order to find an answer. See **ADEYEMI v OPEYORI (1976) 9-10 SC 31 at 49, NZEKWE v NNADOZIE (1952) 14 WACA 361, TUKUR v GOVERNMENT OF GONGOLA STATE [1989] 4 NWLR (PT. 117) 517 at 549 and METTERADONA v AHU [1995] 8 NWLR (PT. 412) 225**. However, reference can equally be made to available affidavit or other documentary evidence in an appropriate case. See **WESTERN STEEL WORKS LTD v IRON & STEEL WORKERS UNION OF NIGERIA [1987] 1 NWLR (PT. 49) 284 at 305 –per Oputa JSC, NATIONAL BANK v SHOYEYE (1977) 5 SC 181, NICON v NOGA HOTELS SA [2003] 13 WRN 142 at 154 -15 –per Sanusi, JCA (as he then was) and TRADE BANK v UDEGBUNAM [2003] 16 WRN 14 at 29**. In the peculiar

scheme of legal proceedings, a court is invested with jurisdiction to entertain and determine the application by which its jurisdiction is challenged. See **BARCLAYS BANK OF NIG. LTD v CENTRAL BANK OF NIGERIA (1976) 6 SC 175 at 188-189, IWUAGOLU v AZYKA [2007] 5 NWLR (PT. 1028) 613 at 630** and **WILKINSON v BANKING CORPORATION (1948) 1 KB 721 at 724**. It is therefore imperative for this court to be reasonably assured that its jurisdiction to entertain and determine this matter is not impaired in any way before going further in the proceedings, if at all it will go any further.

Now, the grounds of objection raised by the two sets of Defendants are set out hereinbefore. The gist of the objection is that the facts and circumstances disclosed in the Claimant's originating summons revolve around the primary election held in Abia State to elect the APC candidate for Abia South Senatorial District, as such the FCT High Court lacks the requisite territorial jurisdiction to entertain and determine the matter, placing reliance on ss. 2(2), 255(1), 257(1) and 299 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), as well as the decisions of the Supreme Court in **DALHATU v TURAKI supra** and **MAILANTARKI v TONGO supra** which, in their reckoning, are on all fours with the instant case. But the Claimant's reaction is that his case is not founded on the primary election held in Abia State which he won, but on clandestine attempts being made by APC [2nd Defendant] to substitute his name which had already been submitted to INEC [1st Defendant] with that of Marc Wabara [3rd Defendant], and he is complaining of actions taking place in the FCT over which this court is amply invested with jurisdiction. Who is right and who is wrong? Let us find out presently.

There is *ad idem* between the objectors and the Claimant that where the issue arises as to whether or not a court can entertain a suit, it is usually to the plaintiff's claim that reference is made in order to find an answer. See **ADEYEMI v OPEYORI (1976) 9-10 SC 31** and **AHMED v AHMED [2013] 15**

NWLR (PT. 1377) 274 at 331-332 [cited by learned counsel for the 2nd and 3rd Defendants] and **TSKJ NIG LTD v OTOCHEM NIG LTD [2018] 11 NWLR (PT. 1630) 330** and **TRADE BANK PLC v BENILUX NIGERIA LTD [2013] 9 NWLR (PT. 826) 416** [cited by learned counsel for the Claimant]. Our recourse therefore is to the queries posed in the originating summons, the reliefs sought and the depositions in the supporting affidavit to which I have given a careful and insightful consideration. Whilst the first query posed by the Claimant interrogates whether the 2nd Defendant [APC] is not bound to submit his name to the 1st Defendant [INEC] as its candidate for the Abia South Senatorial Elections scheduled for [February] 2019 “having scored the highest number of valid votes cast at the primaries of the All Progressives Congress (APC) held on the 6th day of October, 2018 for the Election of Candidate to fly its flag as its Candidate for the Abia South Senatorial District during the 2019 General Elections”, the second query borders on whether INEC is at liberty to accept the name of any person other than the Claimant as APC candidate for Abia South Senatorial District “when it was the Claimant that won the primaries of the 2nd Defendant held on the 6th day of October, 2018 to elect the Party's Candidate for Abia South Senatorial District”. I will permit myself to observe in passing that although it is averred in paragraphs 14 and 15 of the supporting affidavit that the Claimant’s name was submitted to the 1st Defendant [INEC] as the candidate of the 2nd Defendant [APC] for Abia South Senatorial District, and that sequel to the submission of his name, the Claimant was issued with INEC Form CF001 and EC 4B(iv) [Exhibits NCA14 and NCA15] which are given only to candidates whose names have already been submitted to INEC, what appears in rather bold relief is that neither the questions for determination nor the reliefs sought by the Claimant vindicate the said averments.

The couching or phraseology of the two queries posed by the Claimant assumes or takes for granted that he won the primary election held on

6/10/18. It occurs to me however that the queries cannot be effectively and effectually resolved in a vacuum: this court must necessarily agree or accept that the Claimant actually won the APC primary election for Abia South Senatorial District before it can validly proceed to answer the queries posed one way or another. In different words, the resolution of whether or not APC is bound to submit only the Claimant's name to INEC and/or that INEC ought not to accept any other name submitted to it by APC is entirely dependent on the court's affirmative finding that the Claimant actually won the APC primary election in Abia State to emerge as APC candidate for Abia South Senatorial District in the impending general elections. To my mind, that explains why the Claimant has placed reliance on the copious exhibits annexed to the supporting and further affidavits, including but not limited to: (i) APC Summary Result Sheet for Senate Primary Election [Exhibit P6]; (ii) Result Sheets from the six Local Governments Areas that constitute Abia South Senatorial District [Exhibits NCA 7 – NCA 12]; (iii) 'Abia State Legislative Election Committee Summary of Declared Aspirants' which is undated and unsigned [Exhibit NCA 13]; (iv) INEC Forms CF001 and E.C.4B(iv) [Exhibits NCA 14 and 15]; and (v) 'Report on All Progressive Congress (APC) Abia State Senatorial Primary on the 5th October' [which is undated but signed by *Izuka Bridget O. (Mrs)*, *HOD/EPM Abia State* and certified by one *Rakiya Nauzo*, Assistant Director Legal Services, INEC Headquarters, Abuja on 13/11/18] annexed to the further affidavit in order to persuade the court that he actually won the primary election; and that is the crux of the objection raised by the two sets of Defendants.

It is deposed in the counter affidavit filed in opposition to the objections that the Claimant's complaint is not against any act or thing that happened in Abia State, rather his grouse is directed at non-compliance by APC Headquarters in Abuja with the provisions of the Electoral Act 2010 (as amended) which enjoins political parties to forward the name of anyone who emerges as winner of a

primary election to INEC as candidate for that election. Flowing from the above deposition in the Claimant's counter affidavit, *Oba Maduabuchi SAN* of counsel for the Claimant submitted in the written address filed in opposition to the objection that *"there is nothing that happened in Abia State that is under contest here. The primaries were held and concluded. Even the 1st Defendant wrote its report that Claimant won the primaries. Could the Claimant ever challenge his own victory? The claim here is not a challenge of the primaries held in Abia South. The case here is why Section 87 of the Electoral Act which directs that whoever has the highest number of votes shall be declared winner and his name shall be forwarded to INEC as the Candidate for the party. The Party Primaries is not under challenge here";* and that *"[e]verything that originated this proceedings occurred and [was] concluded here in Abuja. The result of the primaries were (sic) submitted to the 2nd Defendant here in Abuja. It on its own submitted the name of the 3rd Defendant [sic] to the 2nd Defendant [sic] here in Abuja". Maduabuchi SAN queried rhetorically: "What will the Claimant be claiming in Abia State High Court?" and opined that "[a]ny such suit will be met with the same objection that Abia State High Courts are not the proper court to approach". He insisted that the cases of **DALHATU v TURAKI supra** and **MAILANTARKI v TONGO supra** which dealt with a challenge to primary elections held in Jigawa and Gombe States respectively are inapplicable in the peculiar facts of this case where a "simple look at the issues for determination or questions to be answered will show that they do not pertain to anything that happened in Abia State", citing **UDO v STATE [2016] 12 NWLR (Pt. 1525) 1 at 24 - 25** –per Kekere-Ekun, JSC [on the proposition that each case is only an authority for what it decides and nothing more, and the decision of a court must always be considered in the light of its own peculiar facts or circumstances as no case is identical to another though they may be similar].*

Now, the point has already been made that the resolution of the queries posed by the Claimant as to whether APC is not bound to submit the Claimant's name to INEC as its candidate for Abia South Senatorial District in the impending general elections and/or whether INEC can accept any other name submitted to it by APC is entirely dependent on the court's affirmative finding that the Claimant actually won the APC primary election conducted in Abia State. The relevant enquiry therefore is as to whether this court is in any position to make an affirmative finding that the Claimant was the winner of the primary election held in Abia State.

By s. 299 of the 1999 Constitution (as amended), the legal status of the Federal Capital Territory is "*as if it were one of the States of the Federation and all the legislative powers, executive powers and judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja*". The territorial jurisdiction of the FCT High Court is severely confined within the geographical boundaries of the Federal Capital Territory as outlined and delineated in Part II of the 1st Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The tentacles of the territorial jurisdiction of this Court are certainly not long enough to extend as far as Abia State, which is outside the boundaries of the Federal Capital Territory, and it cannot be seriously contended that this Court could make declarations in respect of actions that occurred outside the boundaries of the Federal Capital Territory, including a primary election held in Abia State which the Claimant claims to have won. The cases of **DALHATU v TURAKI** *supra* and **MAILANTARKI v TONGO** *supra* [which are forcefully binding on this court under the inflexible doctrine of *stare decisis*] clearly preclude me from assuming jurisdiction over a matter such as the present which entails the making of a finding that the Claimant won the APC primary election for Abia

South Senatorial District held in Abia State on 6/10/18, without which finding I would be completely incapacitated from holding that the 2nd Defendant [APC] is bound to submit the Claimant's name to the 1st Defendant [INEC] as its candidate, and/or that INEC cannot accept or act upon any name other than that of the Claimant as APC candidate for Abia South Senatorial District.

I am not enthused in the least by the Claimant's contention that the cases of **DALHATU v TURAKI supra** and **MAILANTARKI v TONGO supra** upon which the Defendants/Objectors have relied are inapplicable. There are marked similarities or parallels between the scenario in the two cases and the one we are confronted with in the case at hand. In **DALHATU v TURAKI supra**, the claim was *inter alia* for an order declaring the plaintiff as the only legally recognised ANPP candidate for the 2003 gubernatorial election in Jigawa State, just as the Claimant herein seeks a declaration that APC is bound to submit his name to INEC as its senatorial candidate for Abia South Senatorial District. The case of **MAILANTARKI v TONGO supra** is even more direct and pungent in that the reliefs claimed are markedly similar to, if not identical with, those being sought by the Claimant herein. Relief 1 sought by the appellant [qua plaintiff] in that case was for "A DECLARATION that the 1st Defendant [APC] could not proceed to submit the name of the 2nd Defendant to INEC when it was the plaintiff that scored the highest lawful votes in respect at the primary election conducted on 7th/8th December, 2014 with respect to Gombe-Kwami-Funakaye Federal House of Representative elections in Gombe State"; relief 4 was for "A DECLARATION that the 1st defendant [APC] cannot proceed to submit the name of the 2nd defendant to INEC when in fact ... the plaintiff scored the highest lawful votes in respect of the primary election conducted on 7/12/14 with respect to Gombe-Kwami-Funakaye Federal House of Representative elections in Gombe State"; relief 8 prayed for "AN ORDER compelling the 1st defendant [APC] to submit the name of the plaintiff to INEC as its bonafide candidate to contest for the Federal House of

Representatives with respect to Gombe-Kwami-Funakaye Federal Constituency, having scored the highest lawful votes in the party primaries with respect to Gombe-Kwami-Funakaye Federal House of Representative elections in Gombe State”; relief 9 was “AN ORDER mandating INEC to accept the name of the plaintiff as the bonafide candidate of APC to contest for the Federal House of Representatives with respect to Gombe-Kwami-Funakaye Federal Constituency, having scored the highest lawful votes in the party primaries with respect to Gombe-Kwami-Funakaye Federal House of Representative”; whilst relief 10 was for “AN ORDER directing INEC to take all steps/actions including listing the name of the Plaintiff as the candidate of APC for the Federal House of Representatives, Gombe-Kwami-Funakaye Federal Constituency in the general elections. The marked similarities between the reliefs in **MAILANTARKI v TONGO** *supra* and those sought by the Claimant in the instant case are as clear as crystal, if not uncanny, but the Supreme Court entertained no reluctance whatsoever in holding that the FCT High Court lacked jurisdiction to entertain and determine the suit which arose from a primary election conducted outside of the FCT. The Supreme Court roundly and unreservedly rejected the rather ingenuous argument put forward by the learned senior counsel for the appellant qua plaintiff] to the effect that the suit was filed to enforce the findings/decisions of the APC National Assembly Election Appeal Committee already presented to the headquarters of APC in Abuja for implementation [which entailed forwarding the name of the winner of the primary election held on 8/12/14 in Gombe State to INEC at its headquarters in the FCT], and that although the facts leading to the report of the Appeal Committee relate to the primary election held in Gombe State, the cause of action or the act over which the appellant felt aggrieved took place in Abuja.

It cannot escape notice that the above arguments put forward in **MAILANTARKI's case** are akin to those forcefully pressed on behalf of the Claimant by Oba

Maduabuchi SAN [to the effect that this case is founded not on the primary election held in Abia State but on attempts being made by APC to substitute his name already submitted to INEC with that of Marc Wabara, which are actions taking place in the FCT]. But as it was in the **DALHATU** and **MAILANTARKI cases**, so it is in the instant case. The alleged actions in the FCT cannot be divorced from the primary election that was held in Abia State, which remains the *fons et origo* of the Claimant's cause of action. This being so, I cannot but give heed to the admonition of the Supreme Court in **DALHATU v TURAKI supra at 339 - 340**, which was reiterated in **MAILANTARKI v TONGA supra at 86**, that "*their Lordships of the High Court of the Federal Capital Territory [and I am one of them] ought to be circumspect before deciding whether or not it is wise and correct to exercise jurisdiction in [the] Capital Territory*" over causes of action that occurred elsewhere, as the Constitution never intended this Court to be "*a High Court at large with jurisdiction over matters outside its territory*". The case of **RIVERS STATE GOVT. v SPECIALIST KONSULT [2005] 7 NWLR (PT. 923) 145** reaffirms the proposition that a court in one State of the Nigerian federation [including the FCT] is destitute of jurisdiction to hear and determine a matter which falls within the exclusive jurisdiction of another State.

The obvious want of territorial jurisdiction on the part of the FCT High Court to entertain and determine the complaint in this matter is a fundamental vice that goes to the very roots of the action [see **MADUKOLU v NKEMDILIM supra**], and I ought to record an order striking out the Claimant's originating summons without further assurance. But I am not inclined to do so. At least, not presently. I am not unmindful of the fact that this is merely a court of first instance, and I may well be wrong in the conclusions reached thus far. I make an open confession that I am not infallible. Infallibility is an attribute of God Almighty, not of this court. I will therefore proceed *anon* to consider the substantive

originating summons by merely assuming *arguendo* [but not conceding] that my jurisdiction remains unimpaired.

As stated hereinbefore, the Claimant's case is that he won the APC primary election for Abia South Senatorial District conducted on the 6/10/18 and is *ipso facto* entitled to have his name forwarded to INEC as the APC candidate for the said Senatorial District in the 2019 General Election. It is deposed in the supporting and further affidavits dated 1/11/18 and 8/1/9 respectively that the Claimant registered as a member of the APC on 6/2/14 as shown in his Party Card [Exhibit NCA 1]; that he is also a registered voter and his voter's card is as shown in Exhibit NCA 2; that he was born on 25/4/60 in Jos as shown in the sworn declaration of age marked Exhibit NCA 3; that upon publication of the timetable for activities leading to the 2019 General Elections, APC requested its members who are interested in contesting for various positions to purchase expression of interest and nomination forms; that being desirous of becoming the APC Candidate for Abia South Senatorial District, the Claimant purchased, completed and returned the Expression of Interest Form [Exhibits NCA 4] and Nomination Form [Exhibits NCA 5] to the Director of Administration at APC National Headquarters in Abuja, and receipt of the forms was duly acknowledged; that the Abia State Chapter of APC adopted the direct primaries option in electing candidates and the primaries were fixed for 6/10/18 all over Abia State; that *Marc Wabara* [3rd Defendant] and *Chinedu Onyeizu* also purchased Expression of Interest and Nomination Forms for Abia South Senatorial District; that the primaries held and the Panel sent from Abuja to conduct the primaries declared the following results: *Nyerere Chinenye Anyim* – 49,245 votes, *Marc Wabara* – 32,745 votes and *Chinedu Onyeizu* – 6,985 votes as shown in the Summary Result Sheet for Senate Primary Election [Exhibit NCA 6]; that Exhibits NCA 7 – NCA 12 are Primary Election Result Sheets showing the results released in respect of Abia North, Abia South, Ugwunagbo, Ukwa West, Obingwa and

Ukwa East local Government Areas of Abia State; that there is no dispute regarding the Primary Elections held in Abia State to determine the APC Candidate for Abia South Senatorial District; that INEC issued a Report on the Primaries held on 5/10/18 whilst Exhibit NCA 13 is a comprehensive list released by the Panel showing all those who contested the primaries for all the constituencies, which list as well as the Claimant's name were submitted to INEC as the APC candidate for Abia South Senatorial District; that sequel to the submission of the Claimant's name, he was issued with INEC Forms CF 001 and EC 4B(iv) [Exhibits NCA 14 and 15] which are given only to candidates whose names have been submitted to INEC; that as the Claimant was completing the said forms for submission, he received information that efforts were being made to remove and substitute his name with that of *Marc Wabara* as the APC candidate for Abia South Senatorial District, which the Claimant found impossible since he polled 49,245 votes as against 32,745 votes scored by *Marc Wabara*; and that the Claimant is the legitimate and authentic APC candidate for Abia South Senatorial District and neither INEC nor APC or anyone else for that matter has the power or right to remove the Claimant's name unless he resigns or passes away.

In the 2nd and 3rd Defendants' counter affidavit filed on 4/1/19 in opposition to the originating summons, the 3rd Defendant [*Marc Wabara*] deposed that the facts contained in the supporting affidavit are false and misleading; that he is a member of APC in Abia South Senatorial District of Abia State with Membership Reg. No. AB 493617; that he purchased and completed the Expression of Interest and Nomination Forms in accordance with the APC Guidelines for Nomination of Candidates for the 2019 General Elections, and was screened and cleared to contest the APC Primary Election for Abia South Senatorial District; that there are six (6) Local Government Areas in Abia South Senatorial District, and the APC adopted direct primary election for all its primary elections in Abia State; that the APC Senatorial Primary Election

for Abia South Senatorial Election held on 5/10/18 in Ukwu East, Ukwu West and Ugwuagbo Local Government Areas of Abia State but did not hold in Aba North, Aba South and Obingwa Local Government Areas of Abia State on the said 5/10/18 or any other day; that the Claimant and his armed thugs hijacked and carted away the materials meant for the primary election in Aba North, Aba South and Obingwa Local Governments Areas of Abia State and allocated votes to contestants; that *Mr. Uba Omenazu, Sir Ferdinand Onyemaechi* and *Comrade Chinemerem* who were his agents at Aba North, Aba South and Obingwa Local Government Areas respectively informed him on 6/10/18 at Grand Slam Royal, Umuhia, Abia State around 1:00 a.m. while receiving reports on the primary election that lawful voters waited at APC Ward Offices in the said Local Government Areas from 10:00 a.m. to 10.00 p.m. on 5/10/18 without party officials and materials to conduct the primary election and had to disperse one after the other in frustration; that the purported result showing the Claimant as the winner of the primary election is false and misleading as the figures were arrived at after the addition of votes allotted by the Claimant and his thugs in Aba North, Aba South and Obingwa Local Government Areas where the primary election did not hold; that the Chairman of the Election Committee neither signed/issued Exhibit NCA 6 nor authorised anyone to sign same; that the purported result of primary election in Aba North, Aba South and Obingwa were allocation of votes as the primary election did not hold in these three Local Government Areas; that the results from Ukwu West, Ukwu East and Ugwuagbo where the primary election held on 5/1/19 showed that he won the primary election having scored 31,396 votes as against the Claimant who scored 4,889 votes whilst *Chinedu Onyeizu* scored 2,519 votes; that Exhibit NCA 13 attached to the Claimant's supporting affidavit did not emanate from the 2nd Defendant [APC]; that the Claimant's name was never submitted to INEC by APC as its candidate for Abia South Senatorial District at any time and could not have been removed as alleged or at all; that the 2nd Defendant [APC] never issued

Forms CF 001 and EC 4B (iv) [Exhibits NCA 14 and NCA 15] to the Claimant; that he [Marc Wabara] scored the highest number of valid votes at the Abia South Senatorial District primary election of APC as the legitimate votes scored by the Claimant was 4,889 as against 31,396 votes scored by him; that the purported Primary Election Result [Exhibit NCA 6] was not issued by the Committee set up by the National Headquarters of APC to conduct the primary election; that the purported results of Aba North, Aba South and Obingwa Local Government Areas [annexed to the supporting affidavit as Exhibits NCA 7, NCA 8 and NCA 11 respectively] are not the result of valid votes cast in the respective Local Government Areas but result of votes [randomly] allocated by the Claimant and his thugs; that the APC is aware that the committee set up to conduct the primary election returned to its National Headquarters without issuing any result because election did not hold in Aba North, Aba South and Obingwa Local Government Areas; that the 3rd Defendant's petition [Exhibit 1] urging the APC to utilize the valid votes from Ukwa West, Ukwa East and Ugwunagbo Local Government Areas to declare him winner of the primary election and forward his name to INEC as its candidate for Abia South Senatorial District was granted by the Appeal Committee of APC as shown in the Extract of Report of Appeal Committee of APC [Exhibit 2] and upheld by the National Working Committee of APC, whereupon his name was submitted to INEC as the APC candidate for Abia South Senatorial District of Abia State.

The foregoing are the depositions contained in the supporting and counter affidavits filed and exchanged by the parties in this intriguing litigation. I note that the reliefs sought by the Claimant are essentially declaratory in nature. A declaration is a solemn affirmation of a right or status by a court, which is not granted not on the basis of admission or the weakness of the defence without hearing evidence and being satisfied with such evidence. Rather, a declaration is made on the strength of the case of the party claiming to be entitled. See

BELLO v EWEKA (1981) 1 SC 101 at 102, OBAWOLE v WILLIAMS [1996] 10 NWLR (PT. 477) 146, AKANIWO v NSIRIM [2008] 9 NWLR (PT.1093) 439 and CPC v INEC (2012) 2-3 SC 1. The right or status declared must be clear, precise and leave no one in doubt [see **ATTORNEY GENERAL, LAGOS v ATTORNEY GENERAL, FEDERATION & ORS [2003] 7 MJSC 1 at 64**], even as the making of a declaration is entirely discretionary and in the exercise of the court's equitable jurisdiction. See **TEMILE & ORS v AWANI [2001] 5 MJSC 32 at 52** and **MATANMI v DADA [2013] 7 NWLR (PT. 1353) 319 at 343**. The point has already been made that the queries posed by the Claimant cannot be resolved in a vacuum; and this court must necessarily agree or accept that the Claimant actually won the APC primary election for the Abia South Senatorial District before it can validly proceed to answer the queries one way or another. The resolution of whether or not APC is bound to submit only the Claimant's name to INEC and/or that INEC ought not to accept any other name submitted to it by APC is entirely dependent on the court's affirmative finding that the Claimant actually won the APC primary election conducted on 6/10/18 in Abia State to emerge as APC candidate for Abia South Senatorial District in the impending general elections. In this connexion, it seems to me that the claims and assertions in the Claimant's supporting and further affidavits on the one hand, and the 2nd and 3rd Defendants counter affidavit on the other hand are markedly and steeply in conflict one with the other.

At the hearing, *Oba Maduabuchi SAN* of counsel for the Claimant maintained that there is no dispute regarding the primary elections held in Abia State to determine the APC Candidate for Abia South Senatorial District, and urged the court to look at the documents exhibited to resolve the matter, insisting that the mere fact that there is a counter affidavit does not mean that the case is controversial and cannot be determined by originating summons, placing reliance on **OSSAI v WAKWAH supra** and **SCS & CO. v COUNCIL OF O.A.U., IFE**

supra. The general law is that conflicts in affidavits are resolved by calling oral evidence. See **FALOBİ v FALOBİ (1976) 9 & 10 SC 1** and **OLU-IBUKUN v. OLU-IBUKUN (1974) 2 SC 41 at 48**. But the necessity of calling oral evidence is obviated where the conflict can be resolved by reference to available authentic documentary evidence. See **NWOSU v IMO STATE ENV. SANITATION AUTHORITY [1990] 2 NWLR (PT. 135) 688 at 718**. This is so because even if oral evidence is called, such documentary evidence would serve as a hangar or yardstick for assessing the veracity of oral testimony. See **FASHANU v ADEKOYA (1974) 1 All NLR 35 at 48**, **C.D.C. (NIG) LTD v SCOA (NIG) LTD [2007] 6 NWLR (PT. 1030) 300 at 314** and **NUHU v FUFORÉ L.G.C. [2004] FWLR (PT. 193) 277 at 374 (CA)**. It has equally been held that conflicts in affidavits may be resolved against the backdrop of law without the necessity of resorting to oral evidence. See **IN RE OTUEDON [1995] 4 NWLR (Pt. 392) at 655 at 670**. But conflicts in affidavits must be material, substantial and fundamental to the live issues in the case before they can receive the attention of the Court, for “where conflicts are peripheral, cosmetic, inarticulate or a mere farce orchestrated by the party, a court of law will not order that oral evidence be led to resolve or reconcile the “conflicts” in inverted commas.” See **L.S.D.P.C. v ADOLD STAMM INT’L NIG LIMITED (2005) 1 SC (PT II) 44 at 59** –per Niki Tobi, JSC.

Having carefully and insightfully considered the supporting and counter affidavits in the instant case, I take the considered view that contrary to the submissions of the learned senior counsel for the Claimant, there is a veritable dispute regarding the primary elections held in Abia State to determine the APC Candidate for Abia South Senatorial District. Whereas the Claimant asserts on the one hand that he won the APC primary election conducted on 6/10/18 by the Election Panel appointed by APC in all the six (6) Local Government Areas that make up Abia South Senatorial District and has placed heavy reliance on alleged election results from the six Local

Government Areas and allied documents, the 2nd and 3rd Defendants insist that primary election did not hold in Aba North, Aba South and Obingwa Local Government Areas of Abia State and the purported results for these three Local Government Areas are not valid votes scored by the Claimant but votes randomly allocated by the Claimant and his thugs; and that it was the 3rd Defendant who scored the highest number of valid votes from the Local Government Areas where the primary election took place. They equally maintain that the Election Panel constituted by APC to conduct the primary election in Abia State returned to the National Headquarters without issuing any result because election did not hold in Aba North, Aba South and Obingwa Local Government Areas. There is therefore no gainsaying that a serious conflict or dispute on material facts is disclosed in the supporting and counter affidavits.

The question that arises therefore is whether there is any authentic documentary evidence before the court that can conveniently be utilised to resolve these conflicts. I hasten to answer in the negative. The Claimant has relied *inter alia* on (i) Summary Result Sheet for Senate Primary Election [Exhibit NCA 6] which shows on its face that it is signed not by the Returning Officer for the Primary Election but by an unknown person whose authority so to do has been challenged by the 2nd and 3rd Defendants; (ii) Result Sheets from the six (6) Local Government Areas that constitute Abia South Senatorial District [Exhibits NCA 7 – NCA 12] whereas the 3rd Defendant insist that he was reliably informed by his named agents that primary election did not hold in Aba North, Aba South and Obingwa Local Government Areas of Abia State on 5/10/18 and that the alleged results for those Local Government Areas being paraded were randomly allocated by the Claimant and his hirelings; (iv) INEC Forms CF001 and E.C.4B(iv) [Exhibits NCA 14 and 15] said to have been issued to the Claimant sequel to the submission of his name to INEC and which were still being completed by him, whereas the provisions of

s. 31(2) of the Electoral Act makes it clear beyond peradventure that these forms ought to accompany the list of candidates submitted by a political party to INEC; (iii) Abia State Legislative Election Committee Summary of Declared Aspirants [Exhibit NCA 13] which is undated and unsigned; and (iv) INEC “Report on All Progressive Congress (APC) Abia State Senatorial Primary on the 5th October” which is equally undated but signed by *Izuka Bridget O. (Mrs)*, HOD/EPM Abia State and certified by one *Rakiya Nauzo*, Assistant Director Legal Services, INEC Headquarters, Abuja on 13/11/18] annexed to the further affidavit. Aside from the simple but potentially explosive issue as to whether the primary election [which is the underlying subject matter of these proceedings] was held on 6/10/18 [as deposed by the Plaintiff] or 5/10/18 [as deposed by the 2nd and 3rd Defendant] which gives rise to legitimate concerns as to whether it is the same primary election the parties are talking about, as well as Exhibit NCA 13 and the INEC Report being invalid and destitute of legal efficacy or probative value or forensic utility for being undated or unsigned or both [see **OGBALION v REGISTERED TRUSTEES CCGG [2001] FWLR (PT. 80) 1496** and **OMEGA BANK (NIG) PLC v O. B. C. LTD [2005] 8 NWLR (PT. 928) 547**], I find myself unable to appreciate how the *factum* of whether or not election held in three out of the six Local Government Areas in Abia South Senatorial District can be resolved by merely looking at the purported result sheets exhibited by the Claimant, which, at any rate, are disputed by the 2nd and 3rd Defendants.

I take the considered view that this case thrusts up an intricate web of hostile and conflicting assertions that cannot conveniently be resolved on the basis of available documentary evidence; and this renders grotesque and inappropriate the commencement of the present action by originating summons procedure. It hardly bears mention that originating summons is not designed to deal with the resolution of hotly contested facts, especially where such facts are not amenable to resolution on the basis of the documents placed before

the court. See **OLLEY v TUNJI [2013] 10 NWLR (PT. 1362) 275 at 326** and **PEOPLES DEMOCRATIC PARTY v AKINOLA [2018] LPELR-43968**. By Order 2 Rule 3 (1) and (2) of the 2018 Civil Procedure Rules of this Court, the use of originating summons is severely limited to circumstances involving simple and straightforward questions of construction of deeds, wills, enactments or other written instrument. Crucially, sub-rule 3 provides that the court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit; even as the case of **FALOBI v FALOBI supra at 178** donates the proposition that it is immaterial that the parties did not ask to be allowed to cross examine the deponents or call any witness: such omission by the parties should not be taken to amount to consent that affidavit evidence should be used in such circumstances.

With particular reference to cases revolving around who won a disputed primary election of a political party as in the instant case, the leading cases from the stable of the Supreme Court donate the proposition that the deployment of originating summons procedure would be inappropriate because such proceedings are usually not devoid of hostilities as facts are almost always likely to be in dispute. The Supreme Court held in **ATAGO v NWUCHE [2013] 3 NWLR (PT. 1341) 337 at 334** that since the issue in controversy appertains to the resolution of who was lawfully nominated at a primary election, the trial court lacked jurisdiction to entertain the claim without the exchange of pleadings. See also the case of **OLLEY v TUNJI [2013] 10 NWLR (PT. 1362) 275 at 323**, *Ngwutta, JSC* held that a claimant “cannot resort to originating summons to seek redress pursuant to Section 87(9) of the Electoral Act 2010 (as amended)” and “the lower Court should have converted the process to a writ of summons for the parties to file and exchange pleadings”. In this regard, I recall the contention of Oba Maduabuchi SAN of counsel for the Claimant that the claim is brought pursuant to s. 87(4) (c) (i) &

(ii) of the Electoral Act, and not s. 87(9) thereof. But that seems to me a difference without a distinction. Aside from the fact that the procedure outlined in s. 87(4) (c) (i) & (ii) of the Electoral Act 2010 (as amended) comes into play only where a political party “adopts the system of **indirect primaries** for the choice of its candidates”, both the Claimant and the 3rd Defendant deposed that the Abia State Chapter of APC adopted the **direct primaries** option [governed by s. 87 (3) of the Electoral Act which provides that “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 party”], whilst s. 87(9) is to the effect that “[n]otwithstanding 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 or High Court of a State or FCT for redress”. An aspirant such as the Claimant herein who alleges non-compliance by APC with the dictates of s. 87(4) (c) (i) & (ii) of the Electoral Act [which enjoins a political party to declare the aspirant with the highest number of votes cast as winner of the primaries and forward his name to INEC as candidate of the party] is invariably a complaint under s. 87(9) which talks about “an aspirant who complains that any of the provisions of this Act have not been complied with in the selection or nomination of a candidate of a political party for election”. It cannot, of course, be seriously contended that the alleged non-observance of the emphatic dictates of s. 87(4) (c) (i) & (ii) by APC is not an instance of non-compliance with the provisions of the Electoral Act in the selection or nomination of its candidate within the meaning and intendment of s. 87(9) of the Electoral Act 2010 (as amended).

There is now a formidable *corpus* of binding case law which donate the proposition that where an action is commenced by originating summons instead of writ of summons in respect of hostile proceedings involving an irreconcilable

dispute on questions of fact or the likelihood of such dispute, the trial court, in order to dispense substantial justice, should make an order for pleadings instead of striking out the suit. See **EMEZI v OSUAGWU [2005] 12 NWLR (PT. 939) 340 at 367, NATIONAL BANK OF NIGERIA v ALAKIJA [1978] NSCC 470** and **PEOPLES DEMOCRATIC PARTY v ATIKU ABUBAKAR [2007] 3 NWLR (PT. 1022) 515**. Thus, consistent with the stance I have taken that this matter is not suitable for determination under the originating summons procedure, the course ordinarily open to me would have been the exercise of my unimpeded discretion *ex debito justitiae* to convert the originating summons into a writ of summons and ordering the filing and exchange of pleadings to enable the court conduct a plenary trial. The snag however is that I am severely constrained by the realisation that the High Court of the FCT is bereft of the requisite territorial jurisdiction to hear and determine this suit as presently constituted, which revolves around a primary election held in Abia State outside the geo-territory of the Federal Capital Territory.

The proper thing to do in the circumstance is to record an order striking out this suit for want of territorial jurisdiction. I so order. I make no order as to costs.

PETER O. AFFEN

Honourable Judge

Counsel:

Oba Maduabuchi, SAN (with him: **Chijioko Dike, Esq., Mrs Evelyn Joseph, Robert Shiondo, Esq.,**
and **S. N. Ezeora, Esq.**) for the Claimant.

Alhassan A. Umar, Esq. (with him: **M. S. Daubaba, Esq.**) for the 1st Defendant.

Ibrahim K. Bawa, SAN (with him: **Sarafa Yusuf, Esq., Ahmed M. Jega, Esq., Fadimatu D. Birmah,**
Esq., Farida Ibrahim, Esq., Rabiu A. Bawa, Esq., Mukaila Y. Maro, Esq. and
Mosuru Lawal, Esq.) for the 2nd and 3rd Defendants.