

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

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**MOTION NO: FCT/HC/CV/1052/2021**

**BETWEEN:**

**HON. SULEIMAN ALHASSAN GWAGWA.....PLAINTIFF/APPLICANT**

**AND**

- 1. HON. MURTALA USMAN KARSHI**
- 2. ALL PROGRESSIVE CONGRESS (APC)**
- 3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
- 4. THE INSPECTOR GENERAL OF POLICE**
- 5. THE STATE SECURITY SERVICES**
- 6. GOVERNOR MAIL MALA BUNI**
- 7. GBENGA ISIAKA OYEBOLA**
- 8. ALH. ABUBAKAR SANI BELLO**
- 9. SEN. ABUBAKAR YUSUF**
- 10. SEN. KEN NNAMANI**
- 11. HON. AKINYEMI OLAIDE**
- 12. MRS. STELLA OKOTERE**
- 13. DR. JAMES LALU**
- 14. CHIEF DAVID LYON**
- 15. SEN. ABBA ALI**
- 16. PROF. TAHIR MAMMAN**
- 17. BARR. ISMAIL AHMED**
- 18. SEN. JOHN JAMES AKPANUDOEDEHE**

**DEFENDANTS**

## **JUDGMENT**

The plaintiff filed this originating summons with No. CV/1057/2021 and raised these questions for determination:

1. Whether by virtue of section 87 of the Electoral Act 2010 (as amended) and having regard to provisions of Articles 19, 20 and 21 of the Constitution of the All Progressives Congress and the APC Guidelines for nomination of candidates for FCT Area Council and Wards Elections it is lawful for the 18th defendant acting for and on behalf of

the 6<sup>th</sup> – 17<sup>th</sup> defendants and the 2<sup>nd</sup> defendant to recognize and forward the name of any person other than the plaintiff as its candidate for the forth coming Abuja Municipal Area Council Elections?

2. Whether by virtue of the provisions of section 87 of the Electoral Act, 2010 (as amended) and having regard to the provisions of Article 20 of the Constitution of the All Progressive Congress and the Guidelines for nomination of candidates for FCT Area Council and Wards Elections it is lawful for the 18<sup>th</sup> defendant acting for and on behalf of the 6<sup>th</sup> – 17<sup>th</sup> defendants and the 2<sup>nd</sup> defendant to change the result of the Primary Election conducted by the FCT Chapter of the 2<sup>nd</sup> defendant for the Local Government Council Chairmanship Primary Elections in Abuja Area Council on the 23<sup>rd</sup> of April, 2021 in which the plaintiff emerged as the winner and was so declared by the FCT Chapter of the 2<sup>nd</sup> defendant and forward the name of the 1<sup>st</sup> defendant who lost the primary election?
3. Whether in view of the provisions of section 87 of the Electoral Act, 2010 (as amended), the 18<sup>th</sup> defendant acting for and on behalf of the 6<sup>th</sup> – 17<sup>th</sup> defendants and the 2<sup>nd</sup> defendant are not under the obligation to forward the name of the plaintiff as its candidate to the 3<sup>rd</sup> defendant for the forth coming Abuja Municipal Area Council General Election and to be so recognized by the 3<sup>rd</sup> defendant?
4. Whether having duely participated and won the Primary Election of All Progressives Congress (APC) for the Abuja Municipal Council (AMAC) in accordance with the constitution and the Guidelines for the nomination of candidate for the forth coming FCT Area Council and Ward Elections of the 6<sup>th</sup> – 18<sup>th</sup> defendants and the 2<sup>nd</sup>

defendant are not under the obligation to forward the name of the plaintiff to the 3<sup>rd</sup> defendant?

5. Whether by virtue of the 2<sup>nd</sup> defendant's Summary Result Sheet of the FCT Chapter of the 2<sup>nd</sup> defendant for the Local Government Council Chairmanship Primary Election, Abuja Municipal Council dated the 23<sup>rd</sup> of April, 2021, the 4<sup>th</sup> defendant's report on the Abuja Municipal Area Council (AMAC) Chairmanship Primary Elections dated the 27<sup>th</sup> of April, 2021, the 5<sup>th</sup> defendant's report as the candidate of All Progressives Congress Chairmanship Primary Election in AMAC dated the 28<sup>th</sup> of April, 2021 and the 23<sup>rd</sup> defendant's report arising from the All Progressives Congress Primary Election/Appeals on FCT Area Council Elections dated the 27<sup>th</sup> of May, 2021 the name of the 1<sup>st</sup> defendant or any other person apart from the plaintiff can be forwarded to the 3<sup>rd</sup> defendant as the winner of the 2<sup>nd</sup> defendant's primary elections held on the 23<sup>rd</sup> April, 2021?
6. Whether by virtue of the provisions of the 1999 constitution, the Electoral Act, the constitution of the APC and the Guidelines for the Nomination of Candidate for the FCT Area Council and Ward Elections and the 3<sup>rd</sup> defendant's letter dated the 27<sup>th</sup> of April, 2021 written to the 2<sup>nd</sup> defendant on the need to uphold internal democracy and due diligence in processing list of candidates for elections, the 6<sup>th</sup> – 18<sup>th</sup> defendants and the 2<sup>nd</sup> defendant are not duty bound and obliged to exercise due diligence in processing the lists of candidate, for election?

Whereof the plaintiff seeks the following reliefs:

1. A declaration that by virtue of section 87 of the Electoral Act, 2010 (as amended) and having regard to provisions

- of Articles 19, 20 and 21 of the constitution of the All Progressives Congress and the APC Guidelines for nomination of candidates for FCT Area Council and Wards Elections it is unlawful for the 18<sup>th</sup> defendant acting for and on behalf of the 6<sup>th</sup> – 17<sup>th</sup> defendants and the 2<sup>nd</sup> defendant to recognize and forward the name of any person other than the plaintiff as its candidate for the forth coming Abuja Municipal Area Council Elections.
2. A declaration that it is unlawful for the 2<sup>nd</sup> defendant and the 6<sup>th</sup> – 17<sup>th</sup> defendants to recognize and forward the name of the 1<sup>st</sup> defendant or any candidate other than the plaintiff to the 3<sup>rd</sup> defendant as its candidate for the Abuja Municipal Area Council General Elections.
  3. A declaration that it is unlawful for the 2<sup>nd</sup> defendant and 6<sup>th</sup> – 18<sup>th</sup> defendants to change the result of the Primary Election conducted for Abuja Municipal Area Council by submitting the name of the 1<sup>st</sup> defendant to the 3<sup>rd</sup> defendant in which the plaintiff emerged the winner and was so declared by the 3<sup>rd</sup> defendant.
  4. A declaration that the name of the 1<sup>st</sup> defendant submitted to the 3<sup>rd</sup> defendant by the 2<sup>nd</sup> defendant as the 6<sup>th</sup> -18<sup>th</sup> defendants or any other person not being the name of the plaintiff for the Abuja Municipal Area Council General Elections is unlawful, null and void.
  5. A declaration that by virtue of the All Progressives Congress summary result sheet for the Local Government Chairmanship Primary election, Abuja Municipal Council dated the 23<sup>rd</sup> of April, 2021, the 4<sup>th</sup> defendant's report on the Abuja Municipal Area Council (AMAC) Chairmanship Primary Election dated the 27<sup>th</sup> of April, 2021, the 3<sup>rd</sup> defendant's report on the conduct of All Progressives Congress Chairmanship Primary Election in

AMAC dated the 28<sup>th</sup> of April, 2021 and the 2<sup>nd</sup> defendant's report arising from the All Progressives Congress Primaries Election/Appeals in FCT Area Councils Elections dated the 27<sup>th</sup> of May, 2021 only the plaintiff's name can be forwarded to the 3<sup>rd</sup> defendant as the winner of the 2<sup>nd</sup> defendant's primary elections held on the 23<sup>rd</sup> of April, 2021.

6. A declaration that by virtue of the provisions of the 1999 constitution, the Electoral Act, the constitution of the APC and the Guidelines for the nomination of candidate for the FCT Area Council and Ward Elections and the 3<sup>rd</sup> defendant's letter dated the 27<sup>th</sup> of April, 2021 written to the 2<sup>nd</sup> defendant on the need to uphold internal democracy and due diligence on processing lists of candidates for elections, the defendant is duly bound and obligated to exercise due diligence in processing its list of candidate for Abuja Municipal Area Council Elections.
7. An order setting aside the 2<sup>nd</sup> and 6<sup>th</sup> – 18<sup>th</sup> defendants (Caretaker/Extraordinary Convention Planning Committee) letter dated 25<sup>th</sup> May, 2021 reference no. APC/NH00/INEC/19/021/014, signed by the 6<sup>th</sup> and 18<sup>th</sup> defendants addressed to the 3<sup>rd</sup> defendant's chairman forwarding the name of the 1<sup>st</sup> defendant as the candidate for the General Election to be conducted by the 3<sup>rd</sup> defendant in January, 2023 or any other date fixed by the 3<sup>rd</sup> defendant for the office of the Chairman AMAC, Abuja.
8. A mandatory order directing the 3<sup>rd</sup> defendant, its Chairman, officers or staff to recognise and accept the name of the plaintiff as the rightful and lawful candidate of the 2<sup>nd</sup> defendant for the General Election to be

conducted in January, 2023 or any other date fixed by the 3<sup>rd</sup> defendant for the office of the Chairman of the Abuja Municipal Area Council, Abuja.

9. An order of mandatory injunction directing the 2<sup>nd</sup> defendant to submit the name of the plaintiff to the 3<sup>rd</sup> defendant as its candidate to the Abuja Municipal Area Council Elections.
10. An order of mandatory injunction directing the 3<sup>rd</sup> defendant to accept and treat the plaintiff as the candidate of the 2<sup>nd</sup> defendant for the following Abuja Municipal Area Council Elections.
11. An order of mandatory injunction directing and mandating the 3<sup>rd</sup> defendant to recognise and treat the plaintiff as the candidate of the 2<sup>nd</sup> defendant for the forth coming Abuja Municipal Area Council Elections.
12. An order of perpetual injunction restraining the 1<sup>st</sup> defendant from parading himself as the candidate of the 2<sup>nd</sup> defendant for the forth coming Abuja Municipal Area Council Elections.
13. And for such further order (s) as this court may deem appropriate to make in the circumstances of this case.

The originating summons is supported by twenty five paragraphed affidavits, and exhibits Gwagwa 1 – 15, and it is also accompanied by a written address of counsel to the plaintiff.

The 1<sup>st</sup> defendant filed a counter affidavit (on behalf of the 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants) of thirty-one paragraphs in opposition to the originating summons, and this is attached with a bundle of documents, and is accompanied by a written address of counsel.

The 3<sup>rd</sup> defendant filed its counter affidavit of nine paragraphs dated the 1<sup>st</sup> day of July, 2021 with some

documents attached, and is accompanied by a written address of counsel.

The counsel to the 11<sup>th</sup> defendant only filed a written address in opposition to the plaintiff's originating summons.

The 12<sup>th</sup> – 18<sup>th</sup> defendants filed a notice of preliminary objection dated the 7<sup>th</sup> day of July, 2021. This is accompanied by an affidavit and a written address of counsel. Also the 12<sup>th</sup> – 18<sup>th</sup> defendants have filed their counter affidavit of six paragraphs in opposition to the plaintiff's originating summons and attached are some documents and a written address of counsel.

Initially, the 1<sup>st</sup> defendant filed a motion on notice with no. M/4239/2021 and was later withdrawn, and was struck out and so the motion with no. M/4423/2021 was also struck out.

It will be appropriate if the preliminary objection filed by the 12<sup>th</sup> – 18<sup>th</sup> defendants will be determined and given priority See the case of **Azubuogu V. Oraneli (2018) All FWLR (pt 927) p. 123 at pp. 129 – 130 paras. H–B** where the Supreme Court held that a preliminary objection is determined first in order to ensure that the court has necessary jurisdiction to proceed to hear and determine the appeal (case) on its merit. To do otherwise, by proceeding without necessarily determining whether the court indeed has the jurisdiction to, is for the court to embark on a time – wasting and fruitless venture.

The 12<sup>th</sup> – 18<sup>th</sup> defendants filed this notice of preliminary objection dated the 7<sup>th</sup> day of July, 2021 and seek for the following reliefs:

1. An order of this Honourable court striking out the suit in its entirety for want of jurisdiction to entertain same as the suit is statute barred by the operation of section 285 (9) of the 1999 constitution (as amended).

2. An order of the Honourable court that the plaintiff lacks the locus standi to continue to prosecute this suit as he has ceased to become a member of the 2<sup>nd</sup> defendant by the operation of law, particularly Article 21 (d) (v) of the All Progressives Congress Constitution (EXH. Gwagwa 2).

3. And for such further orders this Honourable court may grant in the circumstances.

The grounds upon which the notice of preliminary objection is brought are as follows:

1. Section 285 (9) of the 1999 constitution of the Federal Republic of Nigeria (as amended by the Forth Alteration, Act) provides:

**“Notwithstanding anything to the contrary in this constitution, every Pre-Election matter shall be filed not later than 14<sup>th</sup> days from the date of the occurrence of the event, decision or action complained of in the suit.”**

2. By virtue of section 285 (9) of the constitution, the action has become statute barred because of the failure of the plaintiff to challenge, within 14 days, the decision of the Appeal Panel for Chairmanship Primary Election of Abuja Municipal Area Council which sat on the 24<sup>th</sup> of April, 2021 which effectively declared the 1<sup>st</sup> defendant as the aspirant with the highest number of valid votes and the winner of the Primary Election for the Chairmanship of Abuja Municipal Area Council.

3. Even if the cause of action is extended further, the action event, decision or action complained of by the plaintiff on the 25<sup>th</sup> May, 2021 vide EXHIBIT “Gwagwa 12” of the plaintiff's affidavit in support of the originating summons.

4. The plaintiff filed this suit on the 9<sup>th</sup> June, 2021, sixteen days from the date of the occurrence of the action complained of.
5. Articles 21 (d) (v) of the All Progressives Congress Constitution (EXHIBIT Gwagwa 2) expressly provides for condition precedents before approaching a court of law and filing an action and the automatic consequences of refusal to so do. The relevant provision is reproduced below:

**“Any member who files an action in court of law against the party or any of its officers on any matter or matters relating to the discharge of the duties of the party without first exhausting the avenues for redress provided for in this constitution shall automatically stand expelled from the party on filing such an action and no appeal against expulsion as stipulated on this clause shall be entertained until the withdrawal of the action from court by the member.”**

The notice of the preliminary objection is supported by six paragraphed affidavit deposed to by one Josudamilola Oludare, the Litigation Secretary in the law firm of the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants. Attached to the affidavit are the following:

1. Adopted schedule of Activities for FCT Area Councils Election marked as EXH. “A”; and
2. Report of the Appeal Panel for chairmanship Primary Election of Abuja Municipal Area Council which sat on Saturday 24<sup>th</sup> April, 2021 at the NEC Hall APC National Secretariat marked as EXH. “B”

The counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants proffered and filed a written address which he adopts as his argument in support of the notice of preliminary objection.

The plaintiff filed a counter affidavit of thirteen paragraphs in opposition to the notice of preliminary objection which is accompanied by a written address of counsel.

The 17<sup>th</sup> – 18<sup>th</sup> defendants filed further affidavit in support of the notice of preliminary objection dated the 12<sup>th</sup> day of July, 2021, and attached to the further affidavit are the following documents:

1. All Progressive Congress Extract of meeting of the Caretaker/Extraordinary Convention Planning Committee (CECPC) held on the 24<sup>th</sup> May, 2021 at the Party National Secretariat which is marked as EXH. “NP0 2”.

The further affidavit is supported by a written address of a counsel dated the 12<sup>th</sup> July, 2021.

Thus, it is in the affidavit in support of the notice of preliminary objection that the 2<sup>nd</sup> defendant had issued and adopted a schedule of Activities for the FCT Area Counsel Election, which schedule provided for Election Appeals to be heard on the 24<sup>th</sup> of April, 2021 and which schedule was followed to the latter in the build up to the instant suit, and that after the Primary Election for the Chairmanship of Abuja Municipal Area Council conducted by the 2<sup>nd</sup> defendant on the 23<sup>rd</sup> of April, 2021, the 1<sup>st</sup> defendant submitted a petition to the Appeals Panel set up by the 2<sup>nd</sup> defendant to listen to from aggrieved candidates of the Primary Election, and the Appeal Panel sat on the 24<sup>th</sup> April, 2021 to listen to the petition filed by the 1<sup>st</sup> defendant, complaining that seven (7) votes

cast in his favour were declared invalid without any justification.

It is deposed to the fact that the Appeal Panel invited the plaintiff and the 1<sup>st</sup> defendant to make oral statement in respect of the petition and they so did, and the finding of the Appeal Panel was that the seven (7) disputed votes be computed in favour of the 1<sup>st</sup> defendant which brings the totality of his votes to 113 and therefore declared the 1<sup>st</sup> defendant as the winner of the Primary Election.

It is stated that the plaintiff having participated in the Appeal Panel Proceedings was aware of the decision of the Panel but failed, refused and or neglected to file his suit within 14<sup>th</sup> days to the High Court to challenge the decision of the Appeal Committee which returned the 1<sup>st</sup> defendant as the winner of the Primary Election, and did not further appeal to the state working committee which is the arbiter of all further appeals arising from the Area Council Primaries as provided for by the Guidelines for the nomination of candidates for the FCT Area Council and Ward Elections, and by that the plaintiff stands expelled from the 2<sup>nd</sup> defendant having not exhausted all internal avenues for redress provided for in the constitution of the 2<sup>nd</sup> defendant.

It is also stated that the cause of action arose on the 24<sup>th</sup> of April, 2021 when the Appeal Panel gave its decision and declared the 1<sup>st</sup> defendant as the winner of the Primary Election, and that the suit of the plaintiff was filed beyond the 14 days required by section 285 (9) of the 1999 constitution (as amended)

In his written address, the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants raised the following issues for determination:

1. **Whether this suit is not statute barred by virtue of the provision of section 285 (9) of the 1999 constitution (as amended).**
2. **Whether the plaintiff does not lack the locus standi to continue to prosecute this suit having ceased to become a member of the 3<sup>rd</sup> defendant by the operation of Article 21 (D) (v) of the All Progressives Congress Constitution (EXH. Gwagwa 2)?**

On the issue no. 1, the counsel submitted that it is clear that by virtue of section 285 (14) (h) of the 1999 constitution, this instant suit is a pre-election matter and that being a pre-election matter, the plaintiff's right to seek the reliefs endorsed on the originating summons has become unenforceable and barred by the operation of section 285 (9) of the 1999 constitution (as amended) to the effect that 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.

The counsel submitted that objection arising from action being barred by statute, is usually determined by the plaintiff's originating process, and he cited the case of **Tukur V. Govt. of Gongola State (1989) 4 NWLR (pt 117) 517** to the effect that the jurisdiction of the court is determined by the plaintiff's claim.

The counsel submitted that this suit is statute barred, and that section 87 (9) of the Electoral Act can only be invoked where all the condition precedent for commencing an action has been complied with.

The counsel submitted that it is the decision of the Appeal Panel that on the 24<sup>th</sup> April, 2021 which upturned the result by adding seven (7) out of the nine (9) invalid votes duly cast for the 1<sup>st</sup> defendant and which brought his vote to 113

votes while the claimant had 106 votes, and it was the Appeal Panel decision that Murtala Usman, the 1<sup>st</sup> defendant was declared and subsequently returned him elected as the candidate, and that the claimant's cause of action arose on this 24<sup>th</sup> April, 2021, when his return was vacated by the Appeal Panel, and the plaintiff failed to further appeal to the 2<sup>nd</sup> defendant's State Working Committee of the FCT, and that being so, the plaintiff ought to have filed suit to challenge the decision of the Appeal Panel within 14 days, and that lapsed on the 7<sup>th</sup> day of May, 2021, and the action is therefore stale and incapable of challenging the letter forwarding the 1<sup>st</sup> defendant's name to 3<sup>rd</sup> defendant which was dated the 25<sup>th</sup> of May, 2021.

The counsel submitted that even if the cause of action is extended to the 25<sup>th</sup> May, 2021 when the letter of the 2<sup>nd</sup> defendant was sent to 3<sup>rd</sup> defendant by the admission of the plaintiff himself in paragraph 20, however, from the originating summons, the suit was filed on the 9<sup>th</sup> June, 2021, certainly more than 14 days from the day cause of action arose on the 25<sup>th</sup> May, 2021, and to him, the action or suit is statute barred, and this robs this court of the jurisdiction to entertain this suit. To the counsel, any defect in compliance is factual, for the proceedings are a nullity no matter how beautifully conducted, and he cited the case of **Madukolu V. Nkemdilim (1962) SCNLR 341 (p. 591) paras. A –E** and the case of **Asogwa V. Chukwu (2003) 4 NWLR (pt 811) at 559**, and also the case of **Tuggar V. Bulkachuwa & Ors (2019) LPELR – 47883 (CA)** to the effect that a pre-election matter filed outside the prescribed 14 days limited period is caught by the statute bar.

To the counsel, it is clear that the event or action forms the basis of the plaintiffs complaint which is the Appeal Panel

Report of 24<sup>th</sup> April, 2021, or the 2<sup>nd</sup> defendant's letter of 25<sup>th</sup> May, 2021, and therefore, to him, the computation of the days for the purpose of ascertaining statute bar will begin from the 25<sup>th</sup> May, 2021 till when the action was filed by the plaintiff which is 16 days from the date the cause of action arose.

The counsel submitted that the plaintiff's assertion that he became aware on the 6<sup>th</sup> day of June, 2021 is immaterial in the computation of when the cause of action arose, and he cited the case of **Musa V. Umar (2002) 11 NWLR (pt 1735) 213** to the effect that where a plaintiff asserts that he won the primaries of his political party but the name of a candidate that lost was sent to the electoral body, the cause of action, for the purpose of calculating 14 days stimulated in section 285 of the constitution will accrue from the date of submission of the name. The counsel also cited the case of **Bello V. Yusuf & Ors (2019) LPELR – 47918 SC**, and further submitted that the plaintiff's claim was filed outside and contrary to the provisions of the constitution (as amended) and urge the court to so hold.

On the issue no. 2, the counsel submitted that the plaintiff in this suit lacks the locus stadi to continue to prosecute this suit as he has now ceased to become a member of the 2<sup>nd</sup> defendant by operation of law and the constitution of the 2<sup>nd</sup> defendant particularly combined reading of section 40 of the 1999 constitution (as amended) and Articles 21 (D) (v) of the defendant's constitution. He submitted that members of voluntary organization who have freely opted to join a political party are under an obligation to abide and obey the rules and code of conduct of the political party particularly the dispute resolution mechanism set up by the political party

or association, and he cited the case of **Offodile V. Onejeme (2012) All FWLR (pt 608) p. 946 at 974 – 975.**

The counsel submitted that when certain conditions precedent that ought to be fulfilled are not fulfilled, the court naturally lacks jurisdiction to entertain such suit, and he cited the case of **Ugwuanyi V. NICON (2013) LPELR – 20092 (SC) and Madukolu V. Nkemdilim (supra).** To him, the plaintiff is a member of the 2nd defendant and agreed to uphold the constitution of the party and the constitution of the 2nd defendant more particularly Article 2 which provides that subject to the provisions of the constitution and any other laws for the time being enforce in Nigeria, the provision of the constitution of the party shall be supreme. To him, the plaintiff has admitted in paragraph 3 of the affidavit in support of the originating summons that he is a member to the 2nd defendant, and section 9 (2) of the constitution of the 2nd defendant provides that members shall observe the rules and regulations embedded in the constitution of the party. The counsel relied on Article 21 (A) (x) and 21 (D) (v) of the 2nd defendant's constitution which provides for condition precedent before approaching a court of law and filing of an action which is for the members to exhaust all avenue for redress provided for in the constitution, and non of which the plaintiff followed, and that by the operation of the law, the plaintiff having initiated this suit in blatant disregard of the constitution of the 2nd defendant, stands expelled from the party, and having automatically expelled, the plaintiff automatically losses locus standi to continue this suit.

The counsel submitted that the locus standi of a plaintiff to institute and continue a suit is fundamental as it touches on the competence of the action and the jurisdiction of the court, and where the plaintiff lacks competence to institute

an action, the court will not have jurisdiction to hear the suit, and for the plaintiff to maintain an action, he must show that he has sustained or is in danger of sustaining some direct injury or loss arising from the conduct of the defendant, and he cited the case of **Amedi V. Essien (1994) 7 NWLR (pt 354) 9**. He also cited the case of **Senator Ayogu Eze V. P.D.P. & Ors (2018) LPELR – 44907 SC** to the effect that since the plaintiff loses the capacity to institute this action, the court is robbed of the jurisdiction to entertain the action, and urged the court to so hold.

The counsel submitted that the plaintiff can only aspire to a party office if he is a member of the party, and he relied on Article 21 of the constitution of the 2nd defendant, and the case of **ACN & Ors V. Labour Party & Anor (2012) LPELR – 8003 (CA)** to the effect that a person who is not a member of a party cannot be heard to be meddling with the internal affairs of the party and at best he is meddlesome interloper and should not be assisted by a court. He also cited the case of **LP V. INEC & Anor (2003) LPELR – 21960 CA** to the effect that a person can only acquire the locus standi to question the internal affairs of a party if he himself is a member of that party, and therefore submitted that the plaintiff no longer possess the requisite locus standi and cannot therefore sustain this suit and urged the court to so hold.

It is in the counter affidavit of the plaintiff that he is not aware of the existence of any Appeal Panel and he was never a privy to same in any way, and the only authentic Appeal Committee was the Committee clearly stated in EXH. Gwagwa 10 annexed to the originating summons which was duly constituted by the National Chairman/Caretaker Committee (Extraordinary Convention Planning Committee of the APC in the appointment of the committee to conduct

primary election appeal for chairmanship/Counsellorship election of Abuja Municipal Area Council under the leadership of Hon. Sadiq Tijjani Kida, and that the appeal committee chaired by Hon. Sadiq Tijjani Kida duly constituted by the 2<sup>nd</sup> defendant sat on the 24<sup>th</sup> April, 2021 in respect of AMAC election and as there was no issue before it, he was never invited and neither did he appear before any purported panel and nor was he notified of the existence of such panel.

It is stated that an appeal committee of a political party is not a competent court of law saddled with the responsibility of validating or invalidating a vote or votes cast at such primary elections that EXH. Gwagwa 10 contains the true position and report of the Appeal Committee ably chaired by Hon. Sadiq Tijjani Kida same having corroborated by the content of EXH 4 attached to the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants counter affidavit and there was never any need to appeal to state working committee.

It is stated that M. S. Katu SAN informed the deponent of the fact that the candidate's claim against a political party of its primaries vests jurisdiction on the court by virtue of section 87 (9) of the Electoral Act 2010 (as amended), and that the court then examines if the primaries were conducted in accordance with the provision of Electoral Act, the constitution and the Guidelines of the Political Party, and that the nomination, sponsorship and substitution of candidates ceases to be domestic affairs of political parties once compliance, unlawful substitution is in issue, and a genuine claim filed in court by a candidate in primaries does not rob the candidate of his membership of that political party, and that the constitution of the Federal Republic of Nigeria soars above political party constitution and guidelines.

It is stated that the cause of action in this matter arose on the 6<sup>th</sup> day of June, 2021, the day of the publication, and that paragraph 20 of the plaintiff's affidavit in support of the originating summons where the plaintiff clearly averred in the said paragraph that he was taken aback when on the 6<sup>th</sup> June, 2021, he discovered that the 2<sup>nd</sup> defendant vide a letter dated the 25<sup>th</sup> May, 2021 with ref: **APC/NHDQ/INEC/19/014** had written a letter to the 2<sup>nd</sup> defendant and to his chagrin and utmost dismay his name was completely missing from the entire list of names and unlawfully replaced by the name of Murtala Usman who contested with him but lost elections, and that the said letter dated the 25<sup>th</sup> of May, 2021 was duly received by the 3<sup>rd</sup> defendant on the 28<sup>th</sup> May, 2021 and published by the 3<sup>rd</sup> defendant on the 6<sup>th</sup> June, 2021 showing that the defendant become aware of the wrongful substitution of his name on the 6<sup>th</sup> June, 2021 and he attached EXH. "A" and "B".

The counsel to the plaintiff raises two issues for determination for the purposes of this application, thus:

- 1. Whether the originating summons filed by the plaintiff is statutes barred by virtue of section 285 (9) of the 1999 constitution (as amended) having regards to when the cause of action arose as deposed to in paragraph 20 of the affidavit in support of the plaintiff's originating summons?**
- 2. Whether a mere filing of a suit by a political party primaries constitute a ground of expulsion capable of dispossessing him of locus standi to maintain an action against the party?**

The counsel submitted that the originating summons filed by the plaintiff in this suit is not statute barred and therefore should be seen to have been duly filed within time before this

Honourable court. The counsel cited the cases of **CIL Risk & Asset Management Ltd V. Ekiti State Government & Ors (2020 LPELR – 49565 (SC); Gumau V. Zailani & Ors (2019) LPELR – 47665; and P.D.P. V. Nwoko & Ors (2019) LFELR -47900** on the definition of cause of action to the effect that an act on the part of the defendant that gives to the plaintiff his cause of complaints is a cause of action.

The counsel submitted that in the determination of when the cause of action arose, the court look at the pleadings of the plaintiff, and he went ahead to reproduce paragraph 20 of the plaintiff's affidavit in support of the originating summons to the effect that the 3<sup>rd</sup> defendant received the said letter on the 28<sup>th</sup> May, 2021 as indicated on the face of the received copy and made its publication on the 6<sup>th</sup> of June, 2021 which was reasonably when the plaintiff became aware of the change of his name thereby necessitating the filing of this suit, and he cited the case of **Obika V. Obika (2018) LPELR – 43965** on the definition of reasonable cause of action as a bundle or aggregate of facts which the law recognizes as giving the plaintiff a substantive and recognized right to make the claim against the relief or remedy being sought.

The counsel then asked this question: at what time/date will the cause of action accrue to the plaintiff? He referred to the case of **APC V. Lere (2020) 1 NWLR (pt 1705) p. 254** to the effect that a right of action can only accrue when the person who sues becomes aware of the wrong, that a party can only sue when he became aware that his right has been tempered with.

The counsel submitted that assuming it is considered that the cause of action ought to accrue by the day the 2<sup>nd</sup> defendant forwarded the letter to the 3<sup>rd</sup> defendant (which is on the 28<sup>th</sup> May, 2021) he submitted that plaintiff is still within

time to file his processes, and he referred to the case **APC V. Lere (supra)** to the effect that it is only when action is filed not within 14 days that the court could not have jurisdiction, but where 14 days have not elapsed, it is not in contravention of section 285 (9) of the 1999 constitution, and therefore, submitted that the plaintiff having filed this suit on the 9<sup>th</sup> of June, 2021 after becoming aware of the change of his name on the 6<sup>th</sup> June, 2021 which is three days from the day the cause of action arose was within time when the suit was instituted, and the instant suit is competent and not statute barred.

On the issue No. 2, the counsel submitted that the mere filing of a suit by a candidate in a political party's primaries does not constitute a ground of expulsion capable of tampering his locus to maintain an action against the party, as it is the law by virtue of section 87 (9) of the Electoral Act 2010 that a candidate's claim against a political party's conduct of its primaries naturally vest jurisdiction on the court, and he referred to the case of **Akpamgbo – Okadigbo & Ors V. Chidi & Ors (2015) 3 SCM 158**.

It is submitted that the plaintiff's participation in the primary invariably cloth him with the locus to maintain this action, and he relied on the case of **Maihaja V. Gaidam (2018) 4 NWLR (pt 1610) pp. 454** to the effect that before a candidate of a political party to have participated in the primaries, must have been screened, cleared by his political party and participated in the primaries, and declared winner after the said primary, has unfettered locus standi to maintain this action after the purported substitution by the 2<sup>nd</sup> defendant.

The counsel submitted that the plaintiff was a member of the 2<sup>nd</sup> defendant at the day of the primaries, was still a

member as at the time of purported substitution of his name with that of the 1<sup>st</sup> defendant and was still a member at the time of filing this action, and he cited the case of **Boko V. Nungwa & Ors (2018) LPELR 45890** where the Supreme Court held that the National Assembly Appeal Panel set up by the P.D.P. to consider complaints arising from its primary election was a clog to access to court as per section 87 (9) of the Electoral Act, and he cited the case of **Gassol V. Tutare (2013) LPELR – 20232 (SC)** that the court, listed in section 87 (9) of the Electoral Act possesses the judicial powers to address such grievances not Appeal Panel of the PDP which was neither established by law, not vested with the judicial powers under section 87 (4) (c) (ii) and 87 (9) of the Electoral Act, 2010 and the counsel urged the court to so hold.

It is in the further affidavit of the 12<sup>th</sup> – 18<sup>th</sup> defendants that there was no such Appeal Committee for Primary Election Appeal for Chairmanship Election of Abuja Municipal Area Council (AMAC) and Bwari Area Council (BAC) under the Chairmanship of Hon. Sadiq Tijjani Kida, and this is in opposition to paragraphs 4, 5, 6 and 9 of the counter affidavit, and it is also stated that the valid Appeal Panel for chairmanship Primary Election Abuja Municipal Area Council is the one headed by Jibrin Samuel Eneja which was properly set up and its report is evidenced by EXH. “B” of the affidavit in support of the 12<sup>th</sup> – 18<sup>th</sup> defendant’s notice of preliminary objection, which is duly certified by Prof. A. U. Medaner, the Director Organization of the 2<sup>nd</sup> defendant, and therefore EXH. “Gwagwa” 10 is not known to the 12<sup>th</sup> – 18<sup>th</sup> defendants.

It is stated that EXH. Gwagwa 14 and 15, which contain the letter by which the Director Organization of the 2<sup>nd</sup> defendant forward all the reports of the committees constituted to conduct the Primary Elections and Appeal in

respect of the FCT Area Council, and evidently “EXH. Gwagwa 10” was not part of the said reports.

It is stated that the plaintiff never challenged the decision of the 2<sup>nd</sup> defendant’s Appeal Panel, either before the Panel itself or any court of competent jurisdiction, and that all the documents submitted by the plaintiff in this matter are uncertified and did not emanate from proper custody.

The counsel further submitted that the entire paragraph 10 of the plaintiff counter affidavit is full of legal arguments and conclusions. That the entirety of the plaintiff’s cause of action crystallized on the 24<sup>th</sup> April, 2021, and that paragraph 8 is challenging the decision of the Appeal Committee and the only way to properly challenge such is by filing a suit in the court of law.

In reply on point of law, the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants submitted that the plaintiff cited the case of **Boko V. Nungwa & Ors; and Gasol V. Tutare** in arguing that section 87 (9) of the Electoral Act confers on the plaintiff, the right to challenge any action of a political party over pre-election matters and he submitted that nobody had denied the plaintiff his right to challenge the actions of political party, but what the 12<sup>th</sup> -18<sup>th</sup> defendants are saying is that where the internal affairs of the party are concerned, and the plaintiff must obey the rules of the political party which has so freely agreed to join before his locus standi and by extension the jurisdiction of the courts are activated.

It is submitted that it is clear that the 2<sup>nd</sup> defendant has not sought to oust the jurisdiction of the court, but has merely provided a condition precedent to bring an action as a member of the 2<sup>nd</sup> defendant, and he referred to the case of **Ugwuanyi V. NICON (supra)**.

The counsel submitted that the case of **Gassol V. Tutare (supra)** can be distinguished from this instant case, because what was being challenged on that case was the direct outcome of the Primary Election of the Political Party, and in the instant case the grounds of the plaintiff is the decision of the Appeal Panel for Chairmanship Primary Election of Abuja Municipal Area Council which referred the 1<sup>st</sup> defendant as the winner of the Primary Election itself, and he then urged the court to strike out this suit for want of jurisdiction against the party as it is the law by virtue of section 87 (9) of the Election Act 2010 that a candidate's claim against a political party's conduct of its primaries naturally vest jurisdiction on the court, and he referred to the case of **Akpamgbo – Okadigbo & Ors V. Chidi & Ors (2015) 3 SCM 158**.

It is submitted that the plaintiff's participation in the primary invariably cloth him with locus to maintain this action, and he relied on the case of **Maihaja V. Gaidam (2018) 4 NWLR (pt 1610) pp. 454** to the effect that before a candidate of a political party can have locus standi to sue on conduct of the primaries, he must have been screened, cleared by his political party and participated in the primaries, and to the counsel, the plaintiff having participated in the primaries and declared winner after the said primary has unfettered locus standi to maintain this action after the purported substitution by the 2<sup>nd</sup> defendant.

The counsel submitted that the plaintiff was a member of the 2<sup>nd</sup> defendant at the day of the primaries, was still a member as at the time of purported substitution of his name with that of the 1<sup>st</sup> defendant and was still a member at the time of filing this action, and he cited the cases of **Boko V. Nungwa & Ors (2018) LPELR – 45890** where the Supreme Court held that the National Assembly Appeal Panel set up by the

P.D.P. to consider complaints arising from its primary election was a clog to access to court as per section 87 (9) of the Electoral Act, and he cited the case of **Gassol V. Tutare (2013) LPELR – 20232 (SC)** that the court listed in section 87 (9) of the Electoral Act possesses the judicial powers to address such grievances not Appeal Panel of the PDP which was neither established by law nor vested with the judicial powers under section 87 (4) (c) (ii) and 87 (9) of the Electoral Act, 2010 and the counsel urged the court to so hold.

It is in the further affidavit of the 12<sup>th</sup> – 18<sup>th</sup> defendants that there was no such Appeal Committee for Primary Election Appeal for Chairmanship Election of Abuja Municipal Area Council (AMAC) and Bwari Area Council (BAC) under the Chairmanship of Hon. Sadiq Tijjani Kida, and this is in opposition to paragraphs 4, 5, 6 and 9 of the counter affidavit, and it is also stated that the valid Appeal Panel for Chairmanship Primary Election of Abuja Municipal Area Council is the one chaired by Jibrin Samuel Eneje which was properly set up and its report is evidenced by EXH- “B” of the affidavit in support of the 12<sup>th</sup> – 18<sup>th</sup> defendant’s notice of preliminary objection, which is duly certified by Prof. A. U. Medaner, the Director Organisation of the 2<sup>nd</sup> defendant, and therefore EXH- “GWAGWA 10” is not known to the 12<sup>th</sup> – 18<sup>th</sup> defendants.

It is stated that EXH – GWAGWA 14 and 15, which contain the letter by which the Director Organisation of the 2<sup>nd</sup> defendant forwarded all the reports of the committees constituted to conduct the primary Elections and Appeals in respect of the FCT Area Council, and evidently EXH – GWAGWA 10 was not part of the said reports.

It is stated that the plaintiff never challenged the decision of the 2<sup>nd</sup> defendant’s Appeal Panel, either before

the panel itself or any court of competent jurisdiction, and that all the documents submitted by the plaintiff in this matter are uncertified and did not emanate from proper custody.

The counsel further submitted that the entire paragraph 10 of the plaintiff counter affidavit is full of legal argument and conclusions. That the entirety of the plaintiff's cause of action crystallised on the 24<sup>th</sup> April, 2021, and that paragraph 8 is challenging the decision of the Appeal Committee and the only way to properly challenge such is by filing a suit in the court of law.

In reply on point of law, the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants submitted that the plaintiff cited the case of **Boko V. Nungwa & Ors**; and **Gassol V. Tutare** in arguing that section 87 (9) of the Electoral Act confers on the plaintiff, the right to challenge any action of a political party under pre-election matters and he submitted that nobody had denied the plaintiff his right to challenge the actions of political party but what the 12<sup>th</sup> – 18<sup>th</sup> defendant are saying is that where the internal affairs of the party are concerned, and the plaintiff must obey the rules of the political party which he so freely agreed to join before his locus standi and by extension the jurisdiction of the courts are activated.

It is submitted that it is clear that the 2<sup>nd</sup> defendant has not sought to oust the jurisdiction of the court, but has merely provided a condition precedent to bring an action as by a member of the 2<sup>nd</sup> defendant, and he referred the case of **Ugwuanyi V. NICON (supra)**.

The counsel submitted that the case of **Gassol V. Tutare (supra)** can be distinguished from the instant case, because what was being challenged in that case was the direct outcome of the primary election of the political party, and in the instant case the grouse of the plaintiff is the decision of

the Appeal Panel for Chairmanship Primary Election of Abuja Municipal Area Council which referred the 1<sup>st</sup> defendant as the winner of the Primary Election itself, and he then urged the court to strike out this suit for want of jurisdiction.

Thus, having summarised the affidavit evidence of both parties, and the submissions of their counsel, let me quickly adopt the issues formulated by the counsel to the 12<sup>th</sup> -18<sup>th</sup> defendants in the following order as I have found them so apt, that is to say:

1. Whether the plaintiff does not lack the Locus standi to continue to prosecute this suit having ceased to become a member of the 2<sup>nd</sup> defendant by operation of Article 21 (D) (V) of the All Progressives Congress Constitution EXH – ‘GWAGWA 2’ ?
2. Whether this suit is not statute barred by virtue the provision of section 285 (9) of the 1999 constitution (as amended)?

On the issue no. 1, the 12<sup>th</sup> – 18<sup>th</sup> defendants averred that in their affidavit in support of the notice of preliminary objection that the plaintiff stands expelled from the 2<sup>nd</sup> defendant have not exhausted all internal avenues for redress provided for in the constitution of the 2<sup>nd</sup> defendant. According to them, the 2<sup>nd</sup> defendant had issued and adopted a schedule of activities for the FCT Area Council Election, which schedule provided for election appeals to be heard on the 24<sup>th</sup> April, 2021 and which schedule was followed to the later in the build up to this case, and after the primary election for the Chairmanship of Abuja Municipal Area Council conducted by the 2<sup>nd</sup> defendant on the 23<sup>th</sup> April, 2021, the 1<sup>st</sup> defendant submitted a petition to the Appeal Panel set up by the 2<sup>nd</sup> defendant to listen to appeals from aggrieved candidates. That the Appeal Panel sat on the

24<sup>th</sup> April, 2021 to listen to the petition filed by the 1<sup>st</sup> defendant complaining that seven (7) votes cast in his favour were declared invalid without any justification, that the finding of the Appeal Panel was that the disputed votes be computed in favour of the 1<sup>st</sup> defendant which brings the totality of his votes to 113 and therefore declared the 1<sup>st</sup> defendant as the winner of the primary election. That the plaintiff having participated in the Appeal Panel proceedings was aware of the decision of the Panel but failed to file his suit within 14 days at the High Court to challenge the decision of the Appeal Panel which returned the 1<sup>st</sup> defendant as the winner of the primary election, and that the plaintiff did not further appeal to the State Working Committee which is the arbiter of all further appeals arising from the Area Council Primaries as provided by the Guidelines for the Nomination of Candidates for the FCT Abuja Council and Ward Election, and therefore, the plaintiff stands expelled.

The counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants, with the aid of judicial and statutory authorities contends that by the provisions of Articles 21 (A) (x) and 21 (D) (V) of the constitution of the 2<sup>nd</sup> defendant provide for conditions precedent before approaching a court of law and filing an action which is for the members to exhaust the avenues for redress and the plaintiff having initiated his suit in a blatant disregard of the constitution of the 2<sup>nd</sup> defendant, the plaintiff stands expelled, and the expulsion is automatic, and the plaintiff having being expelled from the party loses the locus standi to continue this suit. It contends that locus standi to institute an action is fundamental as it touches as on the competence of the action and the jurisdiction of the court. To him, by virtue of the constitution of the 2<sup>nd</sup> defendant, the plaintiff has ceased to become a member of the 2<sup>nd</sup>

defendant, and therefore, lacks the capacity to continue to maintain this suit, and urged the court to so hold.

It is in the counter affidavit of the plaintiff that a candidate's claim against a political party of its primaries vest jurisdiction on the court by virtue of section 87 (9) of the Election Act, and that the nomination, sponsorship and substitution of candidate ceases to be domestic affairs of political parties once noncompliance, unlawful substitution is in issue, and that a genuine claim filed in court by a candidate in primary does not rob the candidate of his membership of that political party, and that the Constitution of the Federal Republic of Nigeria soars far above a political party's constitution and guidelines.

The counsel to the plaintiff with the aid of statutory and judicial authorities contends that it is undisputable that the plaintiff was a member of the 2<sup>nd</sup> defendant at the day of the primaries, was still a member as at the time of purported substitution of his name with that of the 1<sup>st</sup> defendant and was still a member at the time of filing this action. That by virtue of section 87 (9) of the Electoral Act the plaintiff has the right to challenge any action of a political party over pre-election matters if not conducted in accordance with constitution of the Federal Republic of Nigeria, 1999 (as amended). Electoral Act and Party Guidelines, and he relied on the case of **Gassol V. Tutare (supra)** to the effect that the complaint which the Appeal Panel purported to have decided upon, are entrusted to the Federal High Court, and this court, and these courts, by virtue of section 87 (9) of the Electoral Act possess the judicial powers to address such grievances and not Appeal Panel.

It is in the further and better affidavit of the 12<sup>th</sup> – 18<sup>th</sup> defendants that the plaintiff never challenged the decision of

the 2<sup>nd</sup> defendant's Appeal Panel, either before the Panel itself or any court of competent jurisdiction, and that paragraph 10 of the counter affidavit of the plaintiff is full of legal arguments and conclusions.

In his reply on points of law, the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants contends that it is not in dispute that the plaintiff has the right to challenge the actions of political party, but that where the internal affairs of the party are concerned, the plaintiff must obey the rules of the political party which has so freely agreed to join before his locus standi and by extension the jurisdiction of the courts are activated. He argued that the 2<sup>nd</sup> defendant's constitution has not sought to oust the jurisdiction of the court but has merely provided a condition precedent to bring an action as a member of the 2<sup>nd</sup> defendant, and he urged the court to distinguish the case of **Gassol V. Tutare (supra)** with the instant case as what was being challenged on Gassol's case was the direct outcome of the primary election of the political party, but in this case, the grouse of the plaintiff is the decision of the Appeal Panel for Chairmanship Primary Election of Abuja Municipal Area Council which returned the 1<sup>st</sup> defendant as the winner, and not the conduct of the primary election itself, and he then urged the court to strike out this suit for want of jurisdiction.

Thus, Article 2 of the constitution of the 2<sup>nd</sup> defendant provides:

**“Subject to the provisions of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and any other laws for the time being in force on the Federal Republic of Nigeria, the provisions of this constitution shall be supreme.....”**

It is the duty of a political party to obey its own constitution and guidelines, apart from obeying the

Constitution and Electoral Act. See the cases of **Adjoto V. Akpateson (2019) All FWLR (pt 1004) p. 191 at 210 para. G**; and **APC V. Karfi (2018) All FWLR (pt 942) p. 340 at pp. 371 – 372 paras H – A**. However, going by the above quoted provisions of Article 2 of the APC's constitution, it can be gleaned clearly that it is subjected to the provisions of the constitution of the Federal Republic of Nigeria, 1999 (as amended), and as other laws. In essence the constitution of the APC is subject to the provisions of the 1999 constitution and the Electoral Act. See the case of **Lanlehin V. Akanbi (2016) All FWLR (pt 865) p. 189 at 204 paras. D – E** where the Court of Appeal, Ibadan Division held that the phrase "subject to" has been judicially defined as "usual provision used to subject or subsume the provision of a subject statute, be it substantive or adjectival, to the provisions of a master enactment. In this circumstances, the Article 21 (D) (V) and 21 (A) (x) of the APC's constitution is subject to the provisions of the constitution and the Electoral Act.

By the combined reading of the provisions of Articles 21 (D) ( V) and 21 (A) (x) of the APC's constitution, it can be inferred that one of the offences against the party filing an action against the party or any of its officers on any matter, matters relating to the discharge of the duties of the party without first exhausting all avenues for redress, and that any member who file an action without exhausting such avenue for redress shall automatically stand expelled from the party. These provisions are the conditions precedent to filing any action against the party which need to be satisfied. However, these provisions are subject to the provisions of the constitution and the Electoral Act, 2010 (as amended).

It is on the above premise, I have to consider the provisions of the constitution and the Electoral Act.

Section 40 of the Constitution of the Federal Republic of Nigeria which gives right to every person to join and associate with other persons and to form or to belong to any political party provides:

**“Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.....?”**

By the above quoted provisions, it could be inferred that every person has the right to belong to any political party, and the constitution did not provide for such penalty thereby dismembering any member of the party. This is section was relied upon by the counsel to the 12<sup>th</sup> -18<sup>th</sup> defendants.

Section 87 (9) of the Electoral Act provides:

**“Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complain that any of the provisions of this Act and the guidelines of a political party has not been complied with on 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 FCT, for redress”**

By the above quoted provisions, it can be construed to mean that the condition precedent for a member of a party to file a suit before any of the courts mentioned in that section is that he must have participated in the selection or nomination of a candidate of a political party for election. In the instant case, the plaintiff has by originating processes alleged that he has fully participated in the process of the selection or nomination of a candidate for the Chairmanship of Abuja Municipal Area Council and won, only for the 2<sup>nd</sup>, 6<sup>th</sup> – 18<sup>th</sup> defendants to have forwarded the name or the 1<sup>st</sup> defendant. Section 87 (9) of the Electoral Act envisages the

selection process, and the act complained of by the plaintiff in the suit is the submission of the name of the 1<sup>st</sup> defendant as the candidate of the 2<sup>nd</sup> defendant for the election of the Chairmanship of Abuja Municipal Area Council. The condition precedent envisaged in section 87 (9) of the Electoral Act prevails over the condition precedent envisaged by the constitution of the APC, and to this, I so hold. To add to the above, the condition precedent envisaged in Articles 21 (D) (V) and 21 (A) (x) of the constitution of the APC is a clog to access to court, and therefore, should be discountenanced. In the case of **APC V. Karfi (supra)** where the Supreme Court held that by the provision of section 87 (9) of the Electoral Act, it is an aggrieved aspirant who physically participated in a primary election conducted by the National Executives of his party that imbued with locus standi to approach either of the courts mentioned in the Act for redress. This can take place where the provisions of the Electoral Act and the constitution or Guidelines of a political party is breached and/or not complied with. In the instant case and having regard to the claims of the plaintiff who alleges that the provisions of the Electoral Act, the constitution and Guidelines of his political party have not been complied with in the selection of the candidate for the Chairmanship of Abuja Municipal Area Council, and to this, I therefore, so hold that the plaintiff has the locus standi to have filed this suit before this court and the issue No. 1 is resolved in favour of the plaintiff. See also the case of **Maihaja V. Gaidam (supra)**.

The counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants alleged that the entire paragraph 10 of the plaintiff's counter affidavit is full of legal arguments and conclusions. Looking at the averments in paragraph 10 of the counter affidavit, it can be seen that the information was derived from the counsel representing the

plaintiff which the plaintiff believes to be true, and this satisfies the requirement of the provisions of section 115 (1) of the Evidence Act, 2011. In addition to the above, I refer to section 113 of the Evidence Act which provides:

**“The court may permit an affidavit to be used notwithstanding that it is defective in form according to this Act, if the court is satisfied that it has been sworn before a person duly authorised.”**

Looking at the counter affidavit of the plaintiff in opposition to the notice of preliminary objection, it can be seen that it was sworn before the Commissioner for Oath, and the argument of the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants on this is hereby discountenanced.

On the issue No. 2, the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants contends that this suit, having commenced not within fourteen days from the date of the occurrences of the event, is incompetent and becomes unenforceable and barred by the operation of section 285 (9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). To him, the cause of action arose from the 24<sup>th</sup> April, 2021 when the Appeal Panel took the decision which upturned the result by adding seven (7) out of the nine (9) invalid votes duly cast for the 1<sup>st</sup> defendant and which brought his vote to 113 votes while the plaintiff had 106 votes, and it was the Appeal Panel’s decision that the 1<sup>st</sup> defendant was declared and subsequently returned him elected as the candidate and that the plaintiff’s cause of action arose on the 24<sup>th</sup> April, 2021, when his return was vacated by the Appeal Panel, and the plaintiff failed to further appeal to the 2<sup>nd</sup> defendant’s state working committee of the FCT, and that being so, the plaintiff ought to have filed suit to challenge the decision of the Appeal Panel within 14 days, and has lapsed on the 7<sup>th</sup> day of

May, 2021, and the action is therefore stale and incapable of challenging the letter forwarding the 1<sup>st</sup> defendant's name to the 2<sup>nd</sup> defendant which was dated the 25<sup>th</sup> of May, 2021.

The counsel submitted that even if the cause of action is extended to the 25<sup>th</sup> May, 2021, when the letter of the 2<sup>nd</sup> defendant was sent to the 3<sup>rd</sup> defendant by the admission of the plaintiff himself in paragraph 20, however, from the originating summons, the suit was filed on the 9<sup>th</sup> June, 2012, certainly it is more than 14 days from the day cause of action arose on the 25<sup>th</sup> May, 2021, and to him the action or suit is statute barred, and this robs this court of the jurisdiction to entertain this suit. To the counsel, any defects in competence is factual, for the proceedings are a nullity no matter how beautifully conducted, and he cited the cases of **Madukolu V. Nkemdilim (1962) 1 SCNLR 341 (p. 591) paras. A – E**; and **Asogwa V. Chukwu (2003) 4 NWLR (pt 811) at 559**; and **Tuggar V. Bulkachuwa & Ors (2019) LPELR – 47883 (CA)** to the effect that pre-election matter filed outside the prescribed 14 days limited period is caught by the statute bar.

The counsel submitted further that it is clear that the event or action forms the basis of the plaintiff's complaint which is the Appeal Panel Report of 24<sup>th</sup> April, 2021 or the 2<sup>nd</sup> defendant's letter of 25<sup>th</sup> May, 2021, and therefore, to him, the computation of the days for the purpose of ascertaining statute bar will begin from the 25<sup>th</sup> May, 2021 till when the action was filed by the plaintiff which is 16 days from the date the cause of action arose. The counsel argued that the plaintiff's assertion that he became aware on the 6<sup>th</sup> day of June, 2021 is immaterial in the computation of time as to when the cause of action arose, and he cited the case of **Musa V. Umar (2020) 11 NWLR (pt 1735) 213** to the effect that where a plaintiff asserts that he won the primaries of his

political party but the name of a candidate that lost was sent to the electoral body, the cause of action, for the purpose of calculating 14 days stipulated in section 285 of the constitution will accrue from the date of submission of the name, and he also relied on the case of **Bello V. Yusuf & Ors (2019) LPELR – 47918** and further submitted that the plaintiff's claim was filed outside and contrary to the provisions of the constitution (as amended).

On the other hand, it is the contention of the plaintiff that he is not aware of the existence of any Appeal Panel and he was never a privy to same in any way, and the only authentic Appeal Committee was the Committee clearly stated in EXH – “GWAGWA 10” annexed to the originating summons which was duly constituted by the National Chairman/Caretaker Committee/Extraordinary Convention Planning Committee of the APC on the appointment of the Committee to conduct primary election appeal for Chairmanship/Councillorship election of Abuja Municipal Area Council and Bwari Area Council under the leadership of Hon. Tijjani Kida duly constituted by the 2<sup>nd</sup> defendant sat on the 24<sup>th</sup> April, 2021 in respect of AMAC election and as there was no issue before it, he was neither invited nor did he appear before any purported panel and nor was he notified of the existence of such Panel.

It is also stated that an appeal committee of a political party is not competent court of law saddled with the responsibility of validating a vote or votes cast at such primary election. That EXH. “GWAGWA 10” contains the true position and report of the Appeal Committee ably chaired by Hon. Sadiq Tijjani Kida same having collaborated by the content of “EXH. 4” attached to the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>

defendants' counter affidavit, and there was never any need to appeal to State Working Committee.

The counsel to the plaintiff in written address submitted that in the determination of when the cause of action arose, the court is to look at the pleadings of the plaintiff, and he went ahead to reproduce paragraph 20 of the plaintiff's affidavit in support of the originating summons to the effect that the 3<sup>rd</sup> defendant received the said letter on the 28<sup>th</sup> May, 2021 as indicated on the face of the received copy and made its publication on the 6<sup>th</sup> of June, 2021 which was reasonable when the plaintiff becomes aware of the change of his name thereby necessitating the filing of this suit and he cited the case of **Obika O. Obika (2018) LPELR – 43965** on the definition of the cause of action, as a bundle or aggregate of facts which the law recognises as giving the plaintiff a substantive and recognized right to make the claim against the relief or remedy being sought.

The counsel to the plaintiff raised this question: at what time/date will the cause of action accrue to the plaintiff? the counsel referred to the case of **APC V. Lere (2020) 1 NWLR (pt 1705) 8254** to the effect that a right of action can only accrue when the person who sues becomes aware of the wrong, that a party can only sue when he becomes aware that his right has been tempered with.

The counsel further submitted that assuming it is considered that the cause of action ought to accrue on the day the 2<sup>nd</sup> defendant forwarded the letter to the 3<sup>rd</sup> defendant (which is on the 25<sup>th</sup> May, 2021), he submitted that the plaintiff is still within time to have filed his processes, and he refer to **APC V. Lere (supra)** to the effect that it is only when action is filed not within 14 days, that the court would not have jurisdiction, but where 14 days have not elapsed, it is

not in contravention of section 285 (9) of the 1999 constitution, and therefore, submitted that the plaintiff having filed this suit on the 9<sup>th</sup> June, 2021 after becoming aware of the change of his name on the 6<sup>th</sup> June, 2021 which is three days from the date the cause of action arose was within time when the suit was instituted, and the instant suit is competent and not statute barred.

Looking at the issues or questions for determination from paragraphs 1 – 6 and the reliefs sought by the plaintiff and coupled with the submission of the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants, it can be seen that this suit falls within the meaning of section 285 (14) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) 4<sup>th</sup> Alteration which provides:

**“(14) for the purpose of this section, “pre-election matters” means any suit by:**

**(a) An aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for the conduct of party primaries has not been complied by a political party in respect of the selection or nomination of candidates for an election.”**

By the above quoted provisions, it can be inferred that both parties, are in agreement that this matter falls within the meaning of the selection 285 (14) (a) of the Constitution, Forth Alteration and to this, I therefore so hold.

The 12<sup>th</sup> – 18<sup>th</sup> defendants contend that the cause of action, if extended further covers the action event, decision complained of by the plaintiff's affidavit in support of the originating summons, and this it occurred on the 25<sup>th</sup> May,

2021 vide EXH. "GWAGWA 12", and the plaintiff filed this suit on the 9<sup>th</sup> June, 2021, that is Sixteen (16) days from the date of the occurrence of the event complained of, and therefore, relies upon the provision of section 285 (9) of the Constitution of the Federal Republic of Nigeria, and that this suit become statute barred and robs this court of the jurisdiction to entertain it.

It is the contention of the plaintiff in paragraphs 11 – 12 of the counter affidavit where he made reference to paragraph 20 of his affidavit in support of the originating summons that he was taken aback when on the 6<sup>th</sup> June, 2021, he discovered that the 2<sup>nd</sup> defendant vide letter dated the 25<sup>th</sup> May, 2021 with **Ref: APC/NHDQ/INEC/19/021/014** had written a letter to the 3<sup>rd</sup> defendant titled: Forwarding Names of Candidates and submission of INEC Forms FCT Area Council (Chairmanship) Election and to his chagrin and utmost dismay his name was completely missing from the entire list of names and unlawfully replaced by the name of Murtala Usman who contested with him but lost the elections, and that the said letter dated the 25<sup>th</sup> of May, 2021 was duly received by the 3<sup>rd</sup> defendant on the 28<sup>th</sup> May, 2021 and published by the 3<sup>rd</sup> defendant on the 6<sup>th</sup> of June, 2021 clearly showing that the plaintiff legally became aware of the wrongful substitution of the name on the 6<sup>th</sup> June, 2021. The certified true copy of the letter dated the 25<sup>th</sup> May, 2021 and the publication were attached to the counter affidavit and marked as EXH. "A" and "B". The counsel to the plaintiff contends in his argument, that in determining whether a suit is statute barred, recourse has to be had to the date when the cause of action arose, on doing that recourse has to be had to the statement of claim, and in this case, the affidavit. He also contends that the plaintiff was within time taking into

consideration the date the plaintiff became aware of the change of his name or the date the 2<sup>nd</sup> defendant forwarded the letter to the 3<sup>rd</sup> defendant, and that was on the 28<sup>th</sup> May, 2021.

It is further contended by the 12<sup>th</sup> – 18<sup>th</sup> defendants in their further affidavit that contrary to paragraphs 4, 5, 6, and 9 of the plaintiff's counter affidavit in opposition to the preliminary objection, there is no such Appeal Committee for Primary Election Appeal for Chairmanship Election of Abuja Municipal Area Council (AMAC) and Bwari Area Council (BAC) under the Chairmanship of Am. Sadiq Tijjanni Kida, instead there was an Appeal Panel for the Councillorship Primary Election of Abuja Municipal Area Council under the Chairmanship of Hon. Sadiq Tijjani Kida. That the valid Appeal Panel for Chairmanship Primary Election of Abuja Municipal Area Council is the one chaired by Jibrin Samuel Enejo which was properly set up and which is attached as EXH. "B" to the affidavit in support of the Notice of Preliminary Objection. That the EXH. "B" was attached to the counter affidavit of the 3<sup>rd</sup> defendant on opposition to the originating summons marked as "EXH. INEC 1" and these are in addition to EXH. "GWAGWA 14 and 15" in the supporting affidavit of the originating summons of the plaintiff. That EXH. "14 and 15" contain the letter by which the Director Organisation of the 2<sup>nd</sup> defendant forwarded all the reports of the committee constituted to conduct the Primary Elections and Appeals in respect of the FCT Area Council Election.

The 12<sup>th</sup> – 18<sup>th</sup> defendants also attached to their further affidavit the extract of the meeting of the Caretaker/Extraordinary Convention Planning Committee (CECPC) and marked as "EXH. NPO 2" to the effect that the entire plaintiff's cause of action crystallised on the 24<sup>th</sup> April,

2021. In his argument, the counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants contends that the plaintiff, having failed to take any step to set aside or vacate the decision of the 2<sup>nd</sup> defendant's Appeal Panel issues on the candidacy of the 1<sup>st</sup> defendant for the AMAC Chairmanship Election within 14 days, the plaintiff's cause of action in this suit is statute barred.

Thus, cause of action is judicially defined as denoting every fact, though not every piece of evidence, which it would be necessary for the plaintiff to prove, it traversed, to support his right to the judgment of the court. It is any act on the part of the defendant which gives the plaintiff a cause of complain. It is different from the evidence necessary to sustain the claim, it is the entire set of circumstances giving right to enforceable claim. See the case of **Society Bic S.A. V. C.I. Ltd (2014) All FWLR (pt 739) p. 1217 at 1233, paras. A – V.** See also the case of **Nweke V. Nnamdi Azikiwe University, Awila (2018) All FWLR (pt 941) p. 175 at pp. 190 – 191. Paras. F-A.** In the instant case the cause of action is what the plaintiff deposed in his affidavit in support of the originating summons more especially an act of the defendant which gives the plaintiff a cause of a complain.

It is also pertinent to define the meaning of the accrual of cause of action, and to this, I refer to the case of **Obueke V. Nnamechi (2006) All FWLR (pt 313) p. 199 at 209, paras. G –H** where the Court of Appeal, Enugu Division held that accrual of cause of action is the event where by a cause of action becomes complete so that the aggrieved party can begin to maintain his action.

For the fact that it is not in dispute that this matter is a pre-election one, and in the determination of the limitation period, recourse has to be had to the provisions of section 285 (9) of the Constitution 1999, 4<sup>th</sup> Alteration which provides:

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

In construing the above quoted provision, it is my duty, as a court, to interpret the words contained in the constitution in their ordinary and liberal meanings. It is not the duty of the court to go outside the words used in law and import an interpretation that may be or is convenient to it or to the parties or one of the parties. See the case of **Musa V. Umar 2020 11 NWLR (pt ) p. 221 at pp. 256 – 257 paras. E – E** where the Supreme Court held that it is not the duty of the court to go outside the words used in the law and import an interpretation that may be or is convenient to it or to the parties or one of the parties. The duty of the court is simply to interpret the clear provision by giving the plain wordings their ordinary interpretation without more, it is not the function of a court to bend backwards to sympathize with a party in a case in the interpretation of a statute merely for the reason that the language of the law seems harsh or is likely to cause hardship. In the instant case and for the purpose of interpreting the above quoted provisions, the date to reckon with is the date of the occurrence of the event, decision or action complained of. This is the answer to the poser raised by the counsel to the plaintiff that at what time/date the case of action arose to the plaintiff, and to this, I therefore, so hold.

In deciding whether an action is caught up by a statute of limitation, regard must be had to the time when the right or cause of action accrued to a party. See the case of **Agboola V. Agbodemu (2010) All FWLR (pt 529) p. 1116 at pp. 1156 paras. A – E** where the Court of Appeal, Ilorin Division held that the cause of action would accrue when it becomes

complete such that the aggrieved party can begin and maintain the action. In determination of whether or not an action is statute barred, the court looks at the writ of summons and the statement of claim alleging when the wrong, which gave the plaintiff a cause of action was committed. It then compares that date with the date in which the writ of summons was filed. If the date on the writ is beyond the period allowed by the limitation law, then the suit is statute – barred and the court is without jurisdiction to entertain it. See the case of **Ansa V. Etim (2010) All FWLR (pt 541) p. 1556 at p. 1560, paras. E – G**. In the instant case, the plaintiff referred to the paragraph 20 of the affidavit in support of the originating summons (which is equivalent to statement of claim) and I have to re-produce it for ease of reference:

**“That I was taken – aback when the 6<sup>th</sup> of June, 2021, I discovered that the 2<sup>nd</sup> defendant vide a letter dated the 25<sup>th</sup> May, 2021 with Ref: APC/NHDQ/INEC/19/021/014 had written a letter to the 3<sup>rd</sup> defendant titled: Forwarding Names of candidates and submission of INEC FORMS FCT Area Councils (Chairmanship) Election and to my chagrin and utmost dismay my name was completely missing from the entire list of names and unlawfully replaced by the name of Murtala Usman who contested with me but lost the Elections. A copy of the said letter is hereby annexed as “EXHIBIT GWAGWA 12”.**

In addition to the above, paragraph 22 reads:

**“That on becoming aware of this grave injustice and unlawful act of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, an act which also become ubiquitous and caused serious grieve to many of my party members and supporters and noticing that the authors of “EXHIBIT GWAGWA 12” acted against the party’s interests and in breach of the party’s**

**constitution necessitated the Director of Organisation of the 2<sup>nd</sup> defendant, Prof. Al-Mustapha, Ussiju Medanar to write a letter dated the 27<sup>th</sup> of May, 2021 with ref: APC/NHDQ/INEC/019/21/18, titled: Submission of Report Arising from the All Progressives Congress (APC) Primaries Election/Appeals in FCT Area Council Councils Election where the true and correct Position/Report of the election reaffirming my victory as is also known to the 3<sup>rd</sup> defendant. A copy of the said letter dated the 27<sup>th</sup> May, 2021 and the Reports forwarded to the 3<sup>rd</sup> defendant are hereby annexed as EXHIBIT GWAGWA 14 & 15 respectively.”**

By the above quoted averments of the affidavit in support of the originating summons, it can be inferred that the two paragraphs contain the factual situation upon which gives right to the plaintiff to institute this action, and to this, I therefore so hold.

The 12<sup>th</sup> – 18<sup>th</sup> defendants contend that the date when the decision was taken for the return of the 1<sup>st</sup> defendant as the winner of the primary election conducted on the 23<sup>rd</sup> of April, 2021, instead of the plaintiff was on the 24<sup>th</sup> April, 2021 and to him, if the date is to be extended to the 12<sup>th</sup> May, 2021 when the letter was written to the 3<sup>rd</sup> defendant forwarding the name of the plaintiff as the candidate of the 2<sup>nd</sup> defendant for the election into the office of the Chairman of the Municipal Area Council, Abuja, still the plaintiff filed his suit not within the period of 14 days as prescribed by section 285 (9) of the constitution 4<sup>th</sup> Alteration, and therefore, the suit is statute – barred, and the suit is incompetent and this robs this court of its jurisdiction to entertain the action. The counsel to the 12<sup>th</sup> – 18<sup>th</sup> defendants relied on the case of **Musa V. Umar (2020) 11 NWLR (pt ) p. 217 at 258, paras. F – G** where the

Supreme Court held that where a plaintiff asserts that he won the primaries of his political party but the name of a candidate that lost was sent to the electoral body, the cause of action, for purpose of calculating 14 days stipulated in section 285(9) of the Constitution will accrue from the date of submission of the name, and not the date of the primary election. The counsel also relied on the case of **Bello V. Yusuf & Ors (2019) LPELR-47918 (SC) per Musa Dattijo Muhammad, JSC** (Delivering the Leading Judgment):

**“I am unable to agree with learned counsel that appellant’s cause of Action begins to run, by virtue of the limitation prescribed under section 285(9) of the 1999 Constitution as altered, from the time he becomes aware of 1<sup>st</sup> respondent’s non-compliance which, on the latter’s participation in the primary election, creates appellant’s right to sue. The clear and unambiguous section neither makes knowledge on the part of the appellant a pre-condition to the filing of his action nor excludes the date his cause of action accrues in the determination of when time begins to run against him. By the section, appellant’s knowledge of 1<sup>st</sup> defendant’s non-compliance with 2<sup>nd</sup> Respondent’ constitution and Electoral guidelines is immaterial. To hold that time begins to run against the appellant only on his becoming aware of 1<sup>st</sup> respondent’s non-compliance and further exclude the date appellant cause of action accrues in determining when limitation begins to run against him, is to read into the section what it does not contain. No court has the jurisdiction of doing so.”**

In the instant case, the plaintiff contends that time begins to run for him to file this suit for the purpose of section 285(9) of the constitution, 1999 (as amended), 4<sup>th</sup> Alteration, when he

becomes aware of the act of the 1<sup>st</sup> and 2<sup>nd</sup> defendant, and relied on the publication indicating that the letter dated the 25<sup>th</sup> May, 2021 and published on the 6<sup>th</sup> of June, 2021, and which was marked as “EXH. B.”

Let me look again for ease of reference and for clarity purpose, the provision of section 285(9) of the constitution of the Federal Republic of Nigeria (as amended), 4<sup>th</sup> Alteration with a view to construe it in line with the case at hand, and it provides:

**“Notwithstanding anything to the contrary on 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.”**

By the above quoted provisions, it can be inferred that in dealing with pre-election matter as defined in section 285 (14) of the same constitution, and in determining the time which within a party may file his suit, shall be filed within 14 days from the date of the occurrence of the event, decision or action complained of. See the case of **Maihaja V. Geidam (2017) All FWLR (Pt. 917) p. 1641 at p. 1669, paras D-F; p. 1670; paras E-D** where the Supreme Court held that when a court is faced with the misinterpretation of a constitutional provision, the entire provision must be read together as a whole so as to determine the object of that provision, where a court is faced with alternatives in the course of interpreting the constitution and absurd consequences are to be avoided. In the instant case, it is on the above decisions that I have to construe the language of the constitution reasonably and to avoid absurd consequences. So looking at the above provisions of section 285(9) of the constitution, 4<sup>th</sup> Alteration, it shows that it is the date of the occurrence of the event, decision or action complained of in the suit that should determine when the

cause of action arose. See the case of **Idiagbon V. APC (2019) All FWLR (Pt. 1021) p. 173 at 186 paras F-H** where the Court of Appeal, Ilorin Division held that a cause of action arises on a date or from the time when a breach of any duty or act occurs, which warrants the person thereby injured or the victim who is adversely affected by such breach to take a court action in protecting of a legal right that has been breached. The duration of a right to cause of action which is conferred on an injured party is necessarily limited and does not last till eternity. It lapses after the date the statute of limitation proclaims that no such legal action may lawfully taken by an injured party. Let me come back to the questions being asked by the counsel to the plaintiff that, at what time/date will the cause of action accrue to the plaintiff? I have already given an answer to this poser that it is from the date of the occurrence of the event, decision or action of the defendants that prompted the plaintiff to file this action.

How do we determine the occurrence of the event, decision or action in this suit, or rather what facts can the court consider to determine when the cause of action begins to run, or what facts that forms the cause of action? In giving an answer to the above question, I refer to the case of **Idiagbon V. APC (supra)** where the Court held that the test to determine when the cause of action begins to run is when there exist, in favour of the person who can sue, all the facts that have happened, which are required to prove that the plaintiff is entitled to judgment. That notwithstanding, a cause of action has to be looked at from the peculiar circumstances of any given case. Thus, when a cause of action can be said to have arisen varies from one case to another. In the instant case, I have to consider the remaining averments on the affidavits in support of the originating summons and to look at

the reliefs sought. It can be inferred from the entire originating processes of the plaintiff, and not from the counter affidavit of the plaintiff in opposition to the notice of preliminary objection, and in a bid to determine the date of the occurrence of the event, decision or section complained of in this suit, the plaintiff averred that he is a member of the 2<sup>nd</sup> defendant, and he was screened to contest election for Chairmanship of the Abuja Municipal Area Council after purchasing form expressing his interest to contest. The 1<sup>st</sup> defendant is also a member of the 2<sup>nd</sup> defendant who contested and lost primary election conducted by the 2<sup>nd</sup> defendant and whose name was unlawfully submitted by the 2<sup>nd</sup>, 6<sup>th</sup>, 18<sup>th</sup> defendants. That the 2<sup>nd</sup> defendant has a constitution and guidelines for the FCT Area Council and Ward Elections which regulate the activities of the 2<sup>nd</sup> defendant, that the primary election was held on the 23<sup>rd</sup> day of April, 2021, and he was declared by the Returning Officer and the outcome of the election was entered in the 2<sup>nd</sup> defendant's Summary Result Sheet for the Local Government Council Chairmanship Primary Election Abuja Municipal Council dated the 23<sup>rd</sup> day of April, 2021. That he is aware that in all the reports issued, his name was listed as winner for the APC primary election for the Abuja Municipal Area Council, and that he has not withdrawn his candidature.

Deducing from the above facts and the facts in paragraph 20 and 22 of the originating summons, the reliefs sought, and the questions for determination formulated by the counsel to the plaintiff, it can be inferred that the act complained of, materially, is the act of writing a letter dated the 25<sup>th</sup> day of May, 2021 thereby forwarding the name of the 1<sup>st</sup> defendant for the 3<sup>rd</sup> defendant by the 2<sup>nd</sup> defendant instead of the plaintiff's name who alleged to have won the

election, and that is the occurrence of the event, and therefore putting the date when the letter was written, that is the occurrence of the event, being the 25<sup>th</sup> day of May, 2021 side by side, with the date when this suit was filed, that is the 9<sup>th</sup> day of June, 2021, it can be inferred that the suit was filed within 16 days, that is to say two days after the prescribed period of the 14 days for the plaintiff to have filed this suit.

The plaintiff in paragraph 12, of the counter affidavit in opposition to the preliminary objection averred that the said letter dated the 25<sup>th</sup> May, 2021 was duly received by the 3<sup>rd</sup> defendant on the 28<sup>th</sup> May, 2021 as published by the 3<sup>rd</sup> defendant on the 6<sup>th</sup> of June, 2021 clearly showing that the plaintiff legally become aware of the wrongful substitution of his name on the 6<sup>th</sup> day of June, 2021, and he referred this court to the publication indicating that the letter was received on the 28<sup>th</sup> May, 2021 and was published on the 6<sup>th</sup> June, 2021. To my mind, this is immaterial because the date of the publication or the date when the letter was received does not erode the fact of the date of the letter written on the 25<sup>th</sup> May, 2021. See the case of **U. M. B. Ltd V. C. B. N. (2017) All FWLR (pt 850) p. 825 at 840, paras. C-D** where the Court of Appeal, Lagos Division held that the date of publishing the gazette is different from the date in which the actual act it intends to gazette is done. If a man is appointed to an office on a certain date, the date of the publication on the gazette does not erode the fact of the date of his appointment. His appointment takes effects as of that date and not as of the date the gazette is published. In the instant case, and based upon the above decision, I hold the firm view that the date of the publication of the letter is immaterial in the circumstances of this case, rather the date to reckon with is the 25<sup>th</sup> day of May, 2021 when the letter was dated.

The counsel to the plaintiff relied heavily in the case of **APC V. Lere (supra)** to the effect that the date the cause of action arose is the date he became aware of the change of his name with that of the 1<sup>st</sup> defendant, while the 12<sup>th</sup> – 18<sup>th</sup> defendants relied on the case of **Bello V. Yusuf (supra)** to the effect that by the provisions of section 285 (9) of the constitution, 4<sup>th</sup> Alteration, the limitation period of 14 days and which did not envisage knowledge as a precondition for the determination of the period, that is to say, it does not envisage that the time starts to run from the time the plaintiff becomes aware.

Both decisions are of the Supreme Court, and therefore, I am faced with the choice between the two conflicting decisions. The decision in the case of **APC V. Lere** was delivered by the Supreme Court on Friday the 10<sup>th</sup> of May, 2019, while the decision in **Bello V. Yusuf** was delivered by the Supreme Court on Friday the 24<sup>th</sup> day of May, 2021, and therefore, when faced with such, the decision delivered later prevails. See the case of **Adejuge v Aduloju (2016) All FWLR (pt 818) p. 866 at p. 876, paras. B – E, P. 877, paras. B – C** where the Court of Appeal, Ekiti Division held that where a court that finds itself faced with two clearly conflicting decisions of a superior court has no discretion in the matter, it has to follow the latter or more recent of the two. In the instant case, I chose to follow not as a matter of discretion, but by the doctrine of stare decisis, the latter decision or more recent in time which is the case of **Bello V. Yusuf** which was decided by the Supreme Court on Friday the 24<sup>th</sup> day of May, 2019, and to this, I therefore so hold that the date to be reckoned with is the 25<sup>th</sup> day of May, 2021, and comparing that date with the date of 9<sup>th</sup> of June, 2021, it can be inferred that the plaintiff was not within time and is caught by the statute bar.

Based upon the above consideration, I therefore, so hold that this suit is statute – barred, having filed two days after the expiration of the 14 days limited period within which to file this action. The suit is incompetent, and therefore, robs this court of the jurisdiction to entertain it. See the cases of **Fumudoh V. Ike (2018) All FWLR (pt 934) p. 1217 at pp. 1231 – 1232, paras. H – C**; and **Nweke V. Nnamdi Azikwe University, Awka (supra)**.

In the circumstances, the issue no. 2 is resolved in favour of the 12<sup>th</sup> – 18<sup>th</sup> defendants, and the suit is hereby struck out accordingly for want of jurisdiction.

Signed  
Hon. Judge  
27/09/2021

Appearances:

The plaintiff is in court.

Abdul-hamid Muhammad Esq appearing with Nura Abdulrahman Esq, Aliyu Alhassan Esq, Aisha Ibrahim Esq and M. M. Umar Esq appeared for the plaintiff.

Mansur Lawal Esq appeared with Tracy O. Ukpeba Esq , and Mukaila Yahaya Musa Esq for the 1<sup>st</sup> 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants.

Nasara H. Auta Esq, Bashir M. Abubakar Esq appeared for the 3<sup>rd</sup> defendant.

Abiola Olawale Esq appeared with Ebuka Williams Obidinma Esq appeared for the 11<sup>th</sup> defendants.

Segun Fiki Esq appeared with Dosu Agbabu – Fishin Esq for the 12<sup>th</sup> – 18<sup>th</sup> defendants.

