

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON 17th DAY OF DECEMBER, 2021

SUIT NO: FCT/HC/CV/2532/2021

BETWEEN:

MUSAMUHAMMAD CHOLA & 1,319 ORS.....CLAIMANTS

AND

- 1. ALL PROGRESSIVES CONGRESS**
- 2. H. E. MAI MALA BUNI**
- 3. SENATOR JOHN JAMES AKPANUDOEDEHE**
- 4. HON. OLAYIDE ADEWALE AKINREMI**
- 5. SENATOR ABBA ALI**

(The 2nd – 5th Defendants for themselves And on Behalf of the
APC Caretaker/Extraordinary Convention Planning Committee)

- 6. DR. TONY MACFOY**
- 7. BARR. AUWALU ABDULLAHI**
- 8. USMAN MUSA KAITA**
- 9. ADEDAYO IYANIWURA**

(6th – 9th Defendants for themselves & members of the APC
Local Government Congress Committee (LGCC) for Kano State)

- 10. INDEPENDENT NATIONAL ELECTORAL COMMISSION**

..DEFENDANTS

JUDGMENT

By Originating Summons, the Plaintiffs numbering 1,320 approached this Honourable Court and sought for the following reliefs.

1. A Declaration that the 1st - 5th Defendants' decision and or action or proposal of 17th September, 2021 at the APC Headquarters in Abuja not to recognize the Claimants as the duly, validly, properly, authentically and democratically elected Local Government Area Executive Committee for the 44 Local Government/Area Council of Kano State comprising of;-
 - a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of:-
 - i. 23 Members
 - ii. 4 Ex-officio members elected by the congress and

- b. 3 delegates to the National Convention of the 1st Defendant party at the Local Government Congress Election conducted by the 1st to 9th Defendants and supervised by the 10th Defendant on the 4th September, 2021 is not valid, proper and in-line with the governing laws.
- 2. Declaration that the 1st Defendant's summary result sheets showing the Plaintiffs as:-
 - a. 27 elected Local government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of:-
 - i. 23 Members
 - ii. 4 Ex-officio members elected by the congress and
 - b. 3 delegates to the National Convention is the valid, subsisting, authentic and democratic result of the various Local Government areas Congress

Election in Kano State to be adopted, recognize and relied upon by the 1st Defendant in Abuja.

3. Directing the Defendants to adopt, recognize and rely on the summary result sheet consisting of the Claimants as the only valid, authentic and duly elected Local Government Executive Committee Members and Delegates for the 44 Local Government Areas of Kano State contained in the report submitted at the 1st Defendant National Headquarters in FCT, Abuja.
4. Nullifying, voiding and or setting aside any other list(s) of any other report/directives given by the Defendants on 17th September, 2021 or any other date, other than the valid, proper and authentic summary result sheets for Local Government Area Congress submitted to the 1st – 5th Defendants by the 6th – 9th Defendants on the 13th September, 2021.
5. Declaration that consequentially only the authentic list of the 17908 winners of the ward congresses elections (being the authentic ward congress executives and

Delegates) as contained in the Report dated 2nd August, 2021 but submitted to the 1st & 10th Defendant on the 6th and 26th August, 2021 respectively and the authentic list of 44 local government executive committees covered by a report dated 6th September, 2021 but submitted to the 1st & 10th Defendants on the 13th & 9th September, 2021 respectively, are authentic party officials to vote at forthcoming 16th October, 2021 State Party Congress elections in the State and cannot be disenfranchised from voting at the forthcoming 1st Defendant's State Congress elections.

6. An Order of perpetual injunction restraining the Defendants from receiving, accepting and or acting or purporting to act on, rely on or approving any other list or purported list of Local Government Area Executive Committee Members emanating from any other Committee, persons or group of person other than the duly and validly elected Local Government area Executive Committee and Delegates to the National

Convention for each and all the 44 Local Government Areas of Kano State which comprises:-

- i. 23 Members
- ii. 4 Ex-officio Members elected by the Congress
- iii. 3 delegates to the National Convention

Plaintiffs raised the following questions for determination to wit;

1. Whether by the combined provisions of Article II(A) (i-xiv) and 13(10) and 13(11) of the All Progressives Congress (APC) Constitution; the All Progressive Congress (APC) guidelines for Local Government Congresses 2021 and Section 85(1) & (2); 87 (7, 8 and 9) of the Electoral Act, 2010 (as amended), the result of the Kano State Local Government Executive and delegates to the National Conference submitted by the duly constituted Local Government Congress Committee for the 44 Local Government Areas in Kano State can rightly and validly be ignored,

jettisoned or abandoned by the 1st to 5th Defendants in its decision held on 17th September, 2021 at the APC National Secretariat Situate at 40 Blantyre Street, FCT, Abuja.

2. Whether by the combined provisions of Article II(A) (i-xiii) and 13(12) of the All Progressive Congress (APC) Constitution, the All Progressive Congress (APC) guidelines for Local Government Congresses 2021 and Section 85(1) and (2) 87 (7,8 and 9) of the Electoral Act 2010 (as amended) the decision of the 1st to 5th Defendants arrived at in APC National Secretariat on 17th September, 2021 not to recognize the Claimants as the duly, validly, properly, authentically and democratically elected Local Government Area Executive Committee for the 44 Local Government/Area Council of Kano State comprising of;-

a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of:-

- i. 23 Members*
 - ii. 4 Ex-officio members elected by the congress and*
- b. 3 delegates to the National Convention*

is valid, proper and in compliance with the governing laws?

3. Whether by the combined provision of Article II(A) (i-xiii) and 13(10) & 13(11) of the APC Constitution; the All Progressive Congress (APC) guidelines for Local Government Congresses 2021 and Section 85(1) and (2); 87 (7,8 and 9) of the Electoral Act 2010 (as amended) the summary of the results sheets showing the Claimants as the:

a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of:-

- i. 23 Members*
- ii. 4 Ex-officio members elected by the congress and*

b. 3 delegates to the National Convention

are not the valid, authentic and democratic results of the 44 Local Government areas congress elections in Kano state conducted on the 4th September, 2021 (covered by the report submitted by 6th - 9th Defendants to the 1st - 5th Defendants on the 13th September, 2021) to be adopted, recognized and relied upon by the Defendants in FCT Abuja?

4. Whether by the combined provisions of Article II(A)(i-xiv) and 13(10) & 13(11) of the APC Constitution, the All Progressive Congress (APC) guidelines for Local Government Areas Congresses 2021 and Section 85(1)&(2); 87(7,8 and 9) of the Electoral Act 2010 (as amended), the 1st - 5th Defendants can decided on 17th September, 2021 to arbitrarily or undemocratically ignore the outcome(s) of the various democratically elected Local Government Executive Committee Congresses for the 44 Local Government Areas in Kano State and select or utilize any other person or group of persons other than the

Claimants as the various Local Government Executive Committee of the 44 Local Government in Kano State.

5. *Whether by the combined provisions of Article II(A)(i-xiv) and 12(07) & 13(11) of the APC Constitution, the All Progressive Congress (APC) Guidelines for Local Government Areas Congresses 2021 and Section 85(1)&(2); 87(7,8 and 9) of the Electoral Act 2010 (as amended), the authentic list of the 17,908 winners of the Ward Congress Election being the authentic Ward Congress Executive and delegates as contained in the report of 2nd August, but submitted to the 1st and 10th Defendants on the 6th and 26th August, 2021 respectively and the authentic list of the 44 Local Government Executive Committees covered by a report dated 6th September, 2021 but submitted to the 1st and 10th Defendants on the 13th and 9th September, 2021 respectively, are not the authentic party officials to vote at the forthcoming State Party Congress Elections in the State?*

In support of the originating summons is an affidavit of 29 paragraphs duly deposed to, by Mujtabha Dana'I Kabara, the 597th Claimant in this suit.

The case of the Plaintiffs as distilled from the affidavit of Mujtabha Dana'I Kabara, a card-carrying member of the 1st Defendant Party from Kano Municipal Local Government Council, is that by a letter dated 11th July, 2021, the 1st Defendant duly notified the 10th Defendant of the party's congress taking place on 4th September, 2021 vide Exhibit "C". And in line with the 1st Defendant's constitution and guidelines for Local Government Congresses 2021, the 1st – 5th Defendants adopted the 7 members of the Ward Congress Committee to proceed and carry out the duties and activities of/as the Local Government Congress Committee (LGCC) vide Exhibit "B". That election was duly conducted by the 6th – 9th Defendants.

That the 6th – 9th Defendants received the result sheets from the 44 Local Local Government Congress Committees (LLGACC), collated same and on 13th September, 2021 submitted the results at the Party Secretariat, National

Headquarters at Abuja, FCT. The report was annexed as Exhibits “F1” and “F2”.

That the deponent was at the 1st Defendant’s Party secretariat on 17th September, 2021 when the 2nd – 5th Defendants decided not to consider and approve the authentic report (exhibits F1) but resolved to rely on a report containing no list of names in line with dictates of Kano state Stakeholders.

Plaintiffs aver further that there is no provision for stakeholders in the 1st Defendant’s Party Constitution, guidelines for election and that there is nowhere the party members at the ward, local government or State level converged and agreed via ballot or voice vote to subjugate their right to vote at the congress election and agreed on any purported consensus candidate. As stated by the press release by the Chief Press Secretary to the Governor of Kano State vide Exhibit “G1” and “G2”.

That the Local Government Congress Elections were conducted by the 6th to 9th Defendants in each of the 44 Local

Government in line with the 1st Defendant's guidelines and Constitution. That the genuine results of the Local Government area congress election containing the names of the Plaintiffs are the attached exhibits J1 – J44

In line with law, a written address was filed wherein the question earlier formulated for determination were argued. Learned counsel argued the five issues together as thus:

PRE-ELECTION

Counsel contended that by virtue of Section 285(9) CFRN 1999 (as amended) 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.

Counsel argued that any preparation or process embarked upon by a political party in preparation for an election can as well be regarded as pre-election or prior to the election as opposed to post election which would obviously relate to

any exercise or process done after the election. ***APC VS. UMAR & ORS (2019) LPELR-47296.***

ON LOCUS STANDI

learned counsel argued that by affidavit evidence before the Court, it is clear that the Plaintiffs are aspirants/candidates/winners of all the available contested position at the 44 Local Government Areas of Kano State of the 1st Defendant and that by virtue of Section 87(9) of Electoral Act and Section 285(14) CFRN are entitled to be accorded right of standing before this Court. ***CPC VS. LADO (2012) ALL FWLR (Pt. 607) 598 (SC).***

ON VIOLATION OF ELECTORAL ACT, PARTY CONSTITUTION & GUIDELINES

Learned counsel argued that Section 89(7) of the Electoral Act made it clear that any political party that adopt the system of indirect primaries for the choice of its candidates shall clearly outline same in its constitution. And that where same is not stated any act done is null and void.

Secondly that the Article II of the APC Constitution clearly stated the organs of the 1st Defendant and that there is no room for any committee or body known as Stakeholders in the APC constitution. And therefore the so called Stakeholders contained in the press release by the press Secretary to the Governor of Kano State, as well as the false report of the Congress elections are void. As same does not comply with the letters and spirit of the APC Constitution and guidelines.

It is the contention of learned counsel that the only elections held was the one where the Plaintiffs emerged and same took place at the various party Local Government offices and Secretariats of the party at the different Local Government Areas. And therefore any other result is null and void.

Counsel contended further that the congress wherein they emerged was those conducted by the body/committee set up and inaugurated by the 1st Defendant

OGARA VS. ASADU (2014) ALL FWLR (Pt. 754) 54.

Counsel submits that where the law or an instrument prescribes a mode of doing an act, no other mode is allow.

COOPERATIVE & COMMERCE BANK PLC. VS. A.G ANAMBRA STATE (1992) LPELR 875 (SC).

Court was finally urged to grant the reliefs sought by the Plaintiffs.

Upon service, 1st, 2nd and 3rd Defendants filed their counter affidavit in opposition to the originating summons.

The said counter affidavit of 5 paragraphs was duly deposed to by one Sunday Bula Tukura (Mr.), a litigation assistant in the law firm of counsel for the 1st – 3rd Defendants.

It is the deposition of the 1st – 3rd Defendants that in preparation for the forthcoming Party primary election and the 2023 General election, the 1st Defendant constituted the Ward Congress Committee (WCC) to conducts Ward Congresses across the 44 Local Government Areas of Kano State vide Exhibit “APC1”.

That the Committee conducted the local Government Congress in Kano State on the scheduled date and submitted Exhibit 'APC2' (Report of the Local Government Congresses election held in Kano state).

The Deponent averred further that the APC Kano Stakeholders requested the Party (APC) to discard the report of the Committee or any other and to substitute same with another report submitted to the Party without list attached, stating that the report is a product of consensus arrangement between the State Caretaker Committee as well as the Party Stakeholders who had agreed & resolved that candidates would be selected on consensus basis without need to conduct any congress and that the list would be submitted later.

That this suit seeks to interfere with the internal affairs of the party and this Honourable Court lacks jurisdiction to delve into this matter.

In compliance with law, a written address was filed wherein learned counsel raised a preliminary objection to the effect

that the 2nd Defendant, being the current Executive Governor of Yobe State, cannot be sued by virtue of Section 308(1) (a), (b) and (c); (2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

On the substantive application, learned counsel argued that, a political party has a discretion as to how to conduct its internal affairs with regards to its primaries, congresses: and that the law and indeed, the constitution of the 1st Defendant allows the Defendants to choose of the at least two means of selecting its Officers or flag bearers for congresses or primaries.

Counsel argued further that no court or tribunal is allowed to question, delve into or challenge the internal affairs of a Party or in exercise of its discretion. ***IBRAHIM VS. ABDULLAH (2020) 17 NWLR (Pt. 1701) SC.***

Learned counsel submits that a party is legally permitted to hold a consensus election subject to the fulfillment of the conditions stated therein. Finally, counsel urged the court to dismiss this suit.

In response to the Originating summons, the 4th and 5th Defendants filed an affidavit of 17 paragraphs duly deposed to by Usman Musa Kaita (8th Defendant), a card carrying member of the 1st Defendant.

It is the averment of the Deponent that in-line with the APC Constitution and Guidelines, the 1st – 5th Defendants constituted their Committee known as Local Government Congress Committee (LGCC) in Abuja. The Committee was assigned to conduct the Party's Local Government Congresses in Kano State. Prior to this, the Committee had conducted the Ward Congress Election in the 484 Wards of Kano State. The party was happy with the successful execution of that assignment, hence this new assignment.

That shortly before commencement of the exercise, they were approached by the State Caretaker Committee as well as the Party Stakeholders that the job is enormous which cannot be completed within the time frame given by the 1st Defendant since Kano State has 44 Local Government Areas. That some of them disagreed and proceeded and conducted the Congresses in the 44 Local Government Areas of Kano

State on the scheduled date as mandated with the assistance of the 3-man committee known as Local LGA Congress Committee (LLGACC) for each of the 44 Local Government areas of the state. They conducted the election and result was duly issued.

In compliance with law and procedure, a written address was filed wherein counsel for the 4th and 5th Defendants adopted issues formulated by the Claimants.

Learned counsel submitted that, a party who is seeking for a declaratory relief must succeed on the strength of his case and not on the weakness or admission of the Defendants.

NGIGE VS. INEC (2015) 1 NWLR (Pt. 1440) SC.

Learned counsel argued that for Plaintiffs to established their case, which is clearly an intra-party issue, they must establish the following: -

1. The authorization from the 1st Defendant appointing the 8th and 9th Defendants as the Chairman and Secretary of the Ward Congress in Kano State.

2. Alternatively, to proof of 1 above, the letter of delegation from the 6th and 7th Defendants delegating their powers to the 8th and 9th Defendants to make the purported report they did.
3. The letter from the 1st Defendant's NWC and NEC empowering the 6th and 7th Defendants to delegate their powers to the 8th and 9th Defendants.
4. The assumed illegality of consensus with recourse to the provision to the 1st Defendant's constitution and the guidelines for Congresses, 2021.

Finally, Counsel submits that, the Plaintiffs having failed to established the above, the Court should dismiss the Plaintiffs' case.

In their response to the Originating summons of the Plaintiffs, the 6th – 9th Defendants filed a 7 paragraph counter affidavit deposed to by Alhaji Abdullahi Abbas (Caretaker Chairman of the 1st Defendants Kano state chapter). The deponent averred that exhibits F1, F2, H, H1 and J1 – J44 attached to the plaintiffs' Originating summons purporting

to be reports and results of congresses elections held in Kano state were false and incorrect. That in preparation of the forthcoming party primary election and the 2023 General election, the 1st Defendant approved the appointment of a seven man Local Government congress committee to superintend the Local Government congress. That by the letter of appointment, the 6th Defendant, Dr Tony Macfoy, was appointed Chairman as in Exhibit 'B' attached to the Originating Summons. That to the best of his knowledge the 6th Defendant and the 7th Defendant did not delegate their powers to the 8th and 9th Defendants to act as Chairman and Secretary respectively.

Te deponent averred further that the LGCC carried out their responsibilities in compliance with the APC constitution and Guidelines for Local Government congresses, 2021 and submitted a report to the 1st Defendant's CECPC. Report is now exhibit APC '2'.

That during the conduct of the Local Government congresses, a proposal was made line with the provisions of the Party constitution and Guidelines for Local Government

congresses, 2021 that the Party should adopt consensus candidates for the executive positions at the local Government level and the proposal was duly accepted by voice vote. That the result of the congresses held 4th September is represented in exhibits APC '3' – APC '46'. That the Plaintiffs are not members of the 1st Defendant.

Finally, the Deponent averred that the 6th – 9th Defendants intend to raise preliminary objection to the competence of the Plaintiffs' suit.

In line with law, a written address was filed wherein, the issues for determination by the Plaintiff was adopted.

In arguing the issues learned counsel submitted that there is no cause of action shown or relief sought against the 6th -9th Defendants committee.

Counsel argued further that, no Court or tribunal is allowed to question, delve into or challenge internal affairs of the party or exercise of its discretion.

IBRAHIM VS. ABDULLAHI (2020) 17 NWLR (Pt. 1701) SC.

Learned counsel argued further that in the conduct of the Ward Congress, Local Government Area/Council congress and State Party Congress, the party is permitted by the Guidelines for Wards, LGA & State Congresses 2021 to hold a consensus election.

Learned counsel urged court to refuse all the reliefs sought and dismiss same.

Upon service, the Plaintiffs filed a reply on point of law against 1st – 3rd Defendants’ written address wherein Plaintiffs submits that the case of ***AGBAREH VS. MIMRAH (2008) LPELR – 43211***, where the Court described nominal party as those joined as parties or Defendants merely because the technical rules of pleadings require their presence in the record. And that Court should discountenance the submission of the learned counsel on the immunity of the 2nd Defendant.

The Claimants also filed a further and better affidavit to the 6th and 9th Defendants, wherein the Claimants stated that Exhibit “APC2” is not a report genuine outcome of APC

election held in Kano State on the 4th September, 2021 as the election conducted by the 6th – 9th Defendants were properly conducted.

COURT

I have gone through the affidavit evidence of the Plaintiffs as clearly annexed to the originating summons cum exhibits attached thereto on one hand, I have also gone through the counter affidavit filed by the 1st, 2nd and 3rd Defendants and the exhibit attached thereto, equally I have gone through the affidavit of the 4th and 5th Defendants and that of the 6th – 9th Defendants with their various exhibits attached thereto and the written addresses. I have perused the further and better affidavit filed by the Plaintiffs and the exhibits attached thereto.

Before I proceed to the merit of this case; I shall attempt to determine the jurisdictional competence of this Court same

having been challenged by all defendants in their respective written addresses and in the joint notice of Preliminary Objection of the 6th – 9th Defendants. This is only in obedience to laid down procedure and law. I rely on the authority of ***A.G OF DELTA STATE VS. ASIN & ORS (2010) LPELR-0973 (CA).***

It is the law that a challenge to the competence of an action is a challenge to the jurisdiction of a Court. ***MOSOBA VS. ABUBAKAR (2005) 6 NWLR (Pt. 922) 460 at 470.***

Jurisdiction or competence of a Court to entertain or deal with a matter before it is very fundamental and it is the threshold issue because absence of jurisdiction deprives a court of its power to determine the substantive issues in a suit. ***B.A S.F.F (NIG) LTD VS. FAITH ENT. LTD. (2010) 4 NWLR (Pt. 1183) 104.*** In the case of ***SOKOTO STATE GOVERNMENT VS. KAMDEX (NIG) LTD. (2007) 7 NWLR (Pt. 1034 at 497).***

It was decided that a Court will lack jurisdiction where: -

- a. It is improperly constituted as to the number or qualification of the members or when one or more of the members is disqualified for one reason or the other.
- b. Where the subject matter is not within its jurisdiction.
- c. Where there are features in the case which prevent the Court from exercising jurisdiction or
- d. When the case was not initiated by due process of the law or upon the non-fulfillment of condition precedent.

Indeed, the law is equally settled that the condition precedent to the exercise of jurisdiction must be fulfilled before a court can assume jurisdiction to entertain a matter.

That is;

- a. The subject matter must be within the jurisdiction of Court.
- b. There must not be a feature in the case which may render it incompetent to exercise its jurisdiction.
- c. Proper parties must be in Court.

- d. The claim before the Court must be competent in the sense that it came within the limit of the power of the Court.
- e. The suit was initiated by due process of law. ***MADUKOLU NKEM DILIM (1962) 1 ALL NWLR 587 at 595.***

The grounds of the Notice of Preliminary Objection of the 6th – 9th Defendants is that;

1. ***This Honourable Court lacks the requisite Territorial Jurisdiction to try the Plaintiffs suit which is centered in the conduct and outcome of 1st Defendant's ward congresses organized and held in Kano State, outside the jurisdiction of this Honourable Court.***
2. ***The subject matter of the Plaintiffs suit is an intra - party issue or internal affair which this Honourable Court cannot adjudicate upon.***
3. ***The Plaintiff suit does not disclose a valid cause of action against the 6th, 7th, 8th and 9th Defendants.***

4. *The Plaintiffs have no locus standi to maintain this action against the 6th, 7th, 8th and 9th Defendants.*
5. *That the Plaintiffs suit commenced vial an originating summons and the entire proceeding of this Honourable Court premised thereon, is null and void abinitio same is academic hypothetical and an abuse of court process.*
6. *The Plaintiffs originating summon is not the proper mode of commencing an action in respect of the complaints in the Plaintiffs suit.*
7. *A Plaintiffs' suit as constituted is an abuse of court by virtue of multiplicity of action in view of the pendency of the matter in Suit No. CV/2030/2021, MUTTAKA BALA SULAIMAN & 17, 907 OTHERS VS. ALL PROGRESSIVE CONGRESS & 9 OTHERS, before this Honourable Court (Coram: Hon. Justice H. Mu'azu) already reserved for Judgment on 19th November, 2021 for being academic, hypothetical and speculative.*

A written address was filed wherein the above issues were formulated for determination.

On issue one:

Whether this Honourable Court lacks the requisite Territorial Jurisdiction to try the Plaintiff suit which is centered in the conduct and outcome of 1st Defendant's Local Government Congresses organized and held in Kano State, outside the jurisdiction of this Honourable Court?

Learned counsel submits that the court lacks the territorial jurisdiction to try the Plaintiffs' suit which is centered in the conduct and outcome of 1st Defendant's Local Government Congresses organized and held in Kano State, outside the jurisdiction of this Honourable Court and the action amounts to forum shopping. Counsel cited and relied in the case of ***CHIEF JOHN OYEGUN VS CHIEF FRANCIS A.A NZERIBE (2010) ALL FWLR (Pt. 516) SC.***

Counsel submitted that from the question raised and the relief sought on the face of the Plaintiffs' originating summons, it is not in doubt the subject matter of the Plaintiffs' suit is the outcome of the 1st Defendant's Local Government Congresses held in Kano State which was superintended by the 1st Defendant's committee under the headship of the 6th Defendant.

RIVERS STATE GOVERNMENT & ANOR VS SPECIALIST KONSHIT (SWELISH GROUP) (2005) 7 NWLR (Pt. 9230) 145. DALHATU VS TURAKI (2003) 15 NWLR (Pt. 843) 310.

On Issue two:

Whether the subject matter of the Plaintiffs suit is an intra-party issue or internal affair which this Honourable Court cannot adjudicate upon.

Learned counsel submits that no court of law can adjudicate on the issue of the leadership of a political party which is a voluntary association just like a club. That the dispute for leadership tussle or election of executive members of a political party do not come within the subject matter of the

jurisdiction of the courts under the provision of section 87 (9) of the Electoral Act, 2010.

On Issue three:

Whether the Plaintiffs' suit does not disclose a valid cause of action against the 6th, 7th, 8th and 9th Defendants?

Learned counsel submits that Plaintiffs suits does not discloses a cause of action against its opponent and that the consequence thereof is inevitable dismissal. ***IORJI VS UGOCHUKWU (2009) 14 NWLR (Pt. 1161) 207.***

On Issue four:

Whether the Plaintiffs have no locus standi to maintain this action against the Defendants?

Counsel submits that it is trite that a party can only have the locus standi to institute a suit if he is able to sufficiently show his legal interest in the subject matter of the suit and

establish that his legal right has been infringed upon or is in danger of being infringed.

ATTORNEY GENERAL OF LAGOS STATE VS EKO HOTELS LTD (2006) 9 SCNJ 104.

Counsel submits that from the affidavit before the court, the Plaintiffs have not established their locus standi to have instituted this action and therefore same should be dismissed.

On Issue six:

Whether the Plaintiffs originating summons is not the proper mode of commencing an action in respect of the complaints in the Plaintiffs suit?

Counsel submits that a civil action can only be commenced where there is no dispute in support of same. That a perusal of the present action will reveal that there are contested issues to be thrashed and therefore the action is incompetent before this court. ***CONOIL PLC. VS I.T.F***

GOVERNONG COUNCIL (2015) 9 NWLR (Pt. 1464) 399 at 427 - 428.

Finally, the Court was urged to dismiss this action.

Upon service, the Plaintiffs filed their reply wherein issues formulated by the Defendants/objectors were adopted.

On Issue one, ***whether this Honourable Court lacks the requisite Territorial Jurisdiction to try the Plaintiffs suit which is centered in the conduct and outcome of 1st Defendant's Local Government congresses organized and held in Kano State, outside the jurisdiction of this Honourable Court.***

Learned counsel submitted that the cases cited by the learned counsel is relating to dispute as to the conduct of the election in the state as opposed to the right of the Defendant to choose the results. That the determinant venue is the cause of action and where, as in the instant case, the cause of action relates to APC decision to choose one result over another and that the venue is APC National Headquarters in

Abuja, therefore the case of ***DALHATU VS TURAKI and MAILANTARKI VS TONGO & PALI*** do not apply.

Counsel submitted further that cases are decided on their peculiar facts, and a case is only an authority for what it decides. ***NIGERIA AGIP OIL COMPANY LTD VS NKWEKE (2016) 7 NWLR (Pt. 1512) 588.***

On issue two, ***Whether the subject matter of the Plaintiff's suit is an intra-party issue or internal affair which this Honourable Court cannot adjudicate upon.***

Learned counsel submitted that the construction to be given to Section 87(9) of the Electoral Act cannot and will not be in isolation of Section 285(14) of the Constitution in determining a pre-election matter and that the suit having complained about undemocratic decision of the APC National Headquarters because it failed to follow the party Constitution and guidelines thereby takes the case outside the internal affairs of the party. ***GANA VS. S.D.P (2019) LPELR 47153.***

Counsel submits further that, both parties agreed that Exhibit 'B' is the list of the 7-man committee therefore arguing otherwise will amount to speaking from both sides of their mouth.

On issue three, ***whether the Plaintiff suit does not disclose a valid cause of action against the 6th, 7th, 8th and 9th Defendants?***

Learned counsel submits that any party whose interest will be directly affected if a relief claimed in this action were granted is a proper party to a suit.

Once the allegations in the pleadings show a real controversy that was capable of leading to the grant of a relief, the pleading cannot be rightly said to disclose no reasonable cause of action. ***MOBIL PRODUCING (NIG) UNLIMITED VS. LASSEPA (2002) 18 NWLR (Pt. 789)1.***

On issue four, ***whether the Plaintiffs have no locus standi to maintain this action against the 6th, 7th, 8th and 9th Defendants?***

Learned counsel submits that the objectors narrated the law on locus standi without tying it to the facts that the Claimants alleged that they contested and won the Local Government Congress Election and their names were forwarded to the 5th Defendant as well the 10th Defendant. And that the membership cards of the Claimants were also annexed to establish their locus standi. ***ODIMEGWU & ORS VS. IBEZOM & ORS (2019) LPELR 46939 SC.***

On issue five, ***whether the Plaintiffs' suit commenced vide an originating summons and the entire proceeding of this Honourable Court premised thereon, is null and void abinitio same is academic, hypothetical and an abuse of court process.***

Counsel submits that court can only order for pleadings in a suit commenced by originating summons where the proceeding is hostile and consist of material conflict in the affidavits and the counter affidavits and such conflict must be materials conflict. ***PAM VS. MOHAMMED (2008) 16 NWLR (Pt. 1112) 1 SC.***

Court was finally urged to dismiss the application in the interest of justice.

Upon service, the Defendant/Objector filed a reply on point of law.

On issues 1 and 2 learned counsel submitted that the reply by the Plaintiffs that their case relates to the right of the Defendants to choose result is misconceived as the case bothers on Local Government Congresses in Kano State counsel cited ***IBRAHIM VS. APC (No. 1) 2019 16 NWLR (Pt. 1699) 44.***

Counsel submits that all the aspect of the primary election took place in Kano State no aspect of the election took place in the FCT, Abuja.

On issue 3, counsel submits that a party is like a club, a voluntary association; members join of their own free will. The party's decision is final over its own affairs. ***ONUOHA VS. OKAFOR (1983) 14 NSCC 494.***

On Issue four, counsel submitted that since the Plaintiffs concede that the subject matter of their suit is the issue of the choice of report, then the joinder of the 4th and 5th Defendants is of no moment and it will be safe for this Honourable Court to strike out their names.

On Issue six, learned counsel submit that the proceeding before the court is hostile and therefore originating process is not the proper way of commencing the action.

I have read with interest the arguments of counsel for the 6 – 9th Defendants/Applicants and the Responses of learned counsel for the Plaintiffs.

The efficacy of jurisdiction cannot be over emphasized. Jurisdiction is the key to any court without which access is usually impossible. Therefore, once the issue of jurisdiction is raised, it is most critical for same to be determined before embarking on the determination of the substantive matter. The present matter being originating summon, I shall first determine the issue of jurisdiction.

I shall therefore, adopt the issues formulated by the 6th – 9th Defendants to unravel the contentions before the court.

On Issue one, *whether this Honourable Court lacks the requisite territorial jurisdiction to try the Plaintiff suit which is centered in the conduct and outcome of 1st Defendants Local Government congresses organized and held in Kano state?*

I must observe that the relief sought by the Plaintiffs as contained in the Originating summons determines the jurisdiction of court and not the defence proffered. The enabling statute has to be considered in the light of the reliefs sought.

Once the Claims fall within the jurisdiction of Court as donated by the enabling statute as determined by the facts, the Court is vested with jurisdiction. On the other hand, once the reverse is the case, the Court cannot assume jurisdiction as it is not vested with it ***ODEYEMI VS. OPAYORI (1976) 9 – 11 SC. 31; EMEKA VS. OKADIGBO (2012) 18 NWLR (1331) 55 at 89.***

It is instructive to state here that, it is not the rules of Court that vest jurisdiction in the court but rather the statute creating the court. It therefore presupposes the fact that it is Section 255(1) of Constitution of the Federal Republic of Nigeria 1999 (as amended) that recourse shall be made to when the jurisdiction of the FCT High Court is called to question.

On this issue of territorial Jurisdiction of the court, the question to ask is what are the reliefs sought by the plaintiffs. If the plaintiffs are questioning the conduct or outcome of the congresses held in Kano State, then the authority and precedent in **AUDU v APC** (Supra) (relied upon by the objectors) will be the guiding precedent and the court must decline Jurisdiction.

However, where the court finds that the question is on the choice of results or report which occurred at the headquarters of the APC (1st Defendant in the FCT, then this court will have Jurisdiction in line with the authority of **IBRAHIM V APC** (Supra) (relied upon by the Plaintiffs/Respondents)

I wish to reproduce the prayers of the plaintiffs here, to wit:

1. A Declaration that the 1st - 5th Defendants decision and or action or proposal of 17th September, 2021 at the APC Headquarters in Abuja not to recognize the Claimants as the duly, validly, properly, authentically and democratically elected Local Government Area Executive Committee for the 44 Local Government/Area Council of Kano State comprising of;-
 - a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of:-
 - i. 23 Members
 - ii. 4 Ex-officio members elected by the congress and
 - b. 3 delegates to the National Convention of the 1st Defendant party at the Local Government Congress Election conducted by the 1st to 9th Defendants and supervised by the 10th Defendant on the 4th

September, 2021 is not valid, proper and in-line with the governing laws.

2. Declaration that the 1st Defendant's summary result sheets showing the Plaintiffs as: -
 - a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of: -
 - i. 23 Members
 - ii. 4 Ex-officio members elected by the congress and
 - b. 3 delegates to the National Convention is the valid, subsisting, authentic and democratic result of the various Local Government Areas Congress Election in Kano State to be adopted, recognize and relied upon by the 1st Defendant in Abuja.
3. Directing the Defendants to adopt, recognize and rely on the summary result sheet consisting of the Claimants as the only valid, authentic and duly elected Local

Government Executive Committee Members and Delegates for the 44 Local Government Areas of Kano State contained in the report submitted at the 1st Defendant National Headquarters in FCT, Abuja.

4. Nullifying, voiding and or setting aside any other list(s) of any other report/directives given by the Defendants on 17th September, 2021 or any other date, other than the valid, proper and authentic summary result sheets for Local Government Area Congress submitted to the 1st – 5th Defendants by the 6th – 9th Defendants on the 13th September, 2021.

5. Declaration that consequentially only the authentic list of the 17,908 winners of the ward congresses elections (being the authentic ward congress executives and Delegates) as contained in the Report dated 2nd August, 2021 but submitted to the 1st & 10th Defendant on the 6th and 26th August, 2021 respectively and the authentic list of 44 local government executive committees covered by a report dated 6th September, 2021 but submitted to the 1st & 10th Defendants on the 13th & 9th

September, 2021 respectively, are authentic party officials to vote at forthcoming 16th October, 2021 State Party Congress elections in the State and cannot be disenfranchised from voting at the forthcoming 1st Defendant's State Congress elections.

6. An Order of perpetual injunction restraining the Defendants from receiving, accepting and or acting or purporting to act on, rely on or approving any other list or purported list of Local Government Area Executive Committee Members emanating from any other Committee, persons or group of person other than the duly and validly elected Local Government area Executive Committee and Delegates to the National Convention for each and all the 44 Local Government Areas of Kano State which comprises:-

- i. 23 Members
- ii. 4 Ex-officio Members elected by the Congress
- iii. 3 delegates to the National Convention

From the above reliefs and affidavit of the Plaintiffs, it is contended that they had contested and won the Local Government area congress election conducted in Kano State and result duly issued and sent to APC (1st Defendant) in their headquarters in Abuja. And that it was the attempt to substitute the result that gave birth to this case. In other words, the case has to do with the decision of the 1st Defendant (APC) attempting to refuse their result.

This fact were corroborated by the 6th - 9th Defendants in their counter affidavit wherein they admitted the results (Exhibit 'F1' & 'F2') of the outcome of the election conducted. This fact was further corroborated by the affidavit of the 1st - 3rd Defendants in paragraph 4(iv) & (v) here it was averred that “.....*the report and summary of result were submitted to and received by the Party (1st Defendant). A copy of the report is attached as Exhibit APC2” and “later, the APC Kano stakeholders requested the Party to discard the report of the committee or any other and to substitute same with another report submitted by the party without list attached”*

I hold the firm view that the prayers of the plaintiffs and issues raised in the Originating summons can be addressed without interrogating the conduct or outcome of the congresses held in Kano state. In ***IBRAHIM V APC (supra)*** (which is on all fours with the instant suit regarding territorial jurisdiction) the Supreme Court held thus:

“there is no dispute that the corporate officers of the 1st and 3rd Respondents are within the Federal Capital Territory, the alleged substitution corroboration by the Respondents Exhibit C and the Appellant’s Exhibit J2, being the course of action and the active actors of the 1st and 3rd respondent, took place within the FCT”

The Appellant was therefore, very much in order and within the purview of order 9 rule 4 of the High Court of the FCT (Civil Procedure) Rules, 2004 (now order 3 Rule 4 of 2018 Rules) when he commenced the action within the territorial jurisdiction of the FCT High Court.”

I hold the view that order 3 Rule 4 of the Rules of this court 2018 permit the plaintiff here to commence this action in the

FCT High Court, that is, where the Defendants reside or carries on business or where the cause of action arose.

It must be said that cause of action arose when the plaintiffs became aware of the attempt or action of the defendant to disregard Exhibit “F1 & F2” (the report of the congresses) and accompanying Exhibits J1 - J44 (results of Local Government area congresses). This fact distinguishes the suit from ***DALHATU v TURAKI (supra) and MAILANTARKI v TONGO (supra)*** where in both cases the cause of action arose entirely outside the FCT.

How about the case of ***AUDU v APC (supra)***? I hold the view that where the complaint of the plaintiff cannot be determined without recourse to the conduct or outcome of the election held outside the FCT, FCT High Court will lack jurisdiction to entertain this suit. However, in this suit, it is not an issue of who won the congress election. There was a congress election and a consensus mandate. Both outcomes were reported in Exhibit ‘F1’ in the supporting affidavit and Exhibit APC2 in the joint counter affidavit of the 6th – 9th Defendants respectively. That being the case, this court

would not consider events that took place in Kano State, but as the plaintiffs have prayed, to consider whether the only valid report is the one submitted as Exhibit F1. I agree with the Plaintiff/Respondents the case of **AUDU v. APC** is not a precedent to this suit. I so hold.

Indeed, a case is decided on their particular facts and a case is only an authority for what it decides. Judgment of Court shall be read in the light of its peculiar facts upon which they were decided. **DANGOTE VS. C.S.C PLATEAU STATE (2001) 4 S.C (Pt. 11) 43.**

It is clear that the issue of forum convenience is misconceived as the nature of the reliefs sought in the case of **AUDU VS. APC, DALHATU VS. TURAKI**, does not involve decision of APC in Abuja attempting to substitute Report, rather the case applicable here is the case of **IBRAHIM VS. APC (No. 1) (2019) 16 NWLR (Pt. 1699) 44 at 46 - 462.**

Accordingly, I must find and resolve issues one and two in favour of the plaintiffs/Respondents. The court has the

territorial jurisdiction to hear this suit and where the court finds that it has territorial Jurisdiction any arguments on forum shopping or convenience becomes untenable. I so hold

On issue three, ***whether the subject matter of the Plaintiffs' Suit is an intra-party issue or a classical internal affair which this Court cannot adjudicate upon?***

The law is settled that a member of an association is bound by the Constitution Rules and Regulation regulating the association and cannot decide to pick and choose which aspect of the law to comply with and which one to ignore. ***FAWEHIMNIN VS. NBA No. 2 (1989)2 NWLR (Pt. 105) 558.***

It is instructive to note that Sections 6(6)(b) and 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, guarantees access to court to any aggrieved person such a right could not have been curtailed by either APC Constitution or any statute no matter how well couched.

It is also not in dispute that the Plaintiffs are challenging the act of the Defendants that purported to constitute violations of the Constitution of APC.

The Supreme Court faced with similar situation in the case of ***PERETU VS. GARIGA (2013) 5 NWLR (Pt. 1348) 413*** held as thus;

“An ouster clause, if there is one in the constitution of the PDP and all the parties in the case are members of PDP, may exclude the jurisdiction of the Court from questioning any action of the party based on its constitution. See Taylors’s case (Supra). However, the Courts are not precluded from determining any question as to whether the act of the party is in consonance with its own constitution. The Court can entertain a question as to whether the party in taking any action, complied with or violated its own constitution”

It is also the contention of the objectors that by section 87 (9) of the electoral Act, a party can only complain of primary elections and not congress election.

However, a Community Reading of Section 87 (9) of the Electoral Act and Section 285 (14) of the constitution FRN 1999 Amended) which was enunciated in the case of APC v UMAR (2019) 8 NWLR (PT1675)564 at 575-576 Paragraph S would mean that any processes or exercises embarked upon by a political party such as congresses, nomination exercises etc are all pre-election matters and exercises and therefore caught up by or is within the purview of S.285(14) of the constitution (4th Alteration Act, 2017). That being said, it is clear that the suit being a complaint about a decision of the APC National Headquarters which purportedly offends its constitution and guidelines takes the suit outside the internal affairs of the party.

I must agree with the Plaintiffs/Respondents that from the above, it is obvious that since the matter has to do with the violation of APC Constitution and guidelines, the Court has jurisdiction to adjudicate on same. I therefore resolve issue 3 in favour of the Plaintiffs. I so hold.

On issue four, ***whether the Plaintiff Suit disclose a valid cause of action against the 6th, 7th, 8th & 9th Defendants.***

It is the law that any party whose interest will be directly affected if a relief claimed in the action were granted is a proper party to a Suit. Once the allegations in the pleadings show a real controversy that was capable of leading to the grant of relief, the pleading cannot be rightly said to disclose no reasonable cause of action.

Indeed, the weakness of the Plaintiffs case is not a relevant consideration when the question is whether or not the statement of claim disclosed a reasonable cause of action.

In the instant case, the Plaintiffs vide its deposition and exhibit, particularly Exhibit 'B' shows clearly that the 6th – 9th Defendants were part of the committee who conducted the election and submitted both reports to the 1st Defendant. And that the congresses at the Local Government areas were conducted and won. Results were issued, and duly served on the 1st Defendant. And it was the action of the 1st Defendant regarding the reports that brought about this case.

From the above, therefore, it is my ruling that the case discloses a cause of action against the Defendants. I so hold.

On issue five, ***whether the Plaintiffs lack the locus standi to maintain this action against the Defendants?***

In ***M.V. BREUGHEL & ORS V. MONDIVEST LTD (2018) LPELR -44728***, Court of Appeal held that ***"Locus standi is not dependent on the claim succeeding at the end of trial but largely on the facts averred in the statement of claim which must disclose an interest which deserves to be protected by the Court determining the claim on the merits.*** It is the law that in determine locus standi, the chances that the action may not succeed are completely irrelevant. ***WILLIAMS VS. DAWODU (1988) 4 NWLR (Pt. 87) 189.***

A perusal of the case before the Court will show that the Plaintiffs alleged that they contested and won the Local Government Congress Election Exhibit 'F1' which contains the report forwarding their names to the 1st – 5th Defendants as well as 10th Defendant written by 6th - 9th Defendants.

It is instructive to state that the 1st – 5th Defendants have not written to state that the winners are not their members, or did not win the election.

Indeed, affidavit in support of the originating summons is the barometer with which to see the locus standi of the Plaintiffs. ***OKON VS. EKPENYONG & ORS (2014) LPELR 23496.***

From the above, I have no difficulty in resolving issue 5 in favour of the Plaintiffs. I therefore resolve same in favour of the Plaintiffs.

On issue six, ***whether the originating summons is the proper mode of commencing an action in respect of the complaints in the Plaintiffs originating summons.***

It is trite law that the court can only Order for pleading in a suit commenced by originating summons where the proceeding is hostile and consist of material conflicts in the affidavit and the counter affidavits. ***HERITAGE BANK PLC. VS. AINA (2018) LPELR 46778 (CA).***

The question of the Plaintiffs been members of the 1st Defendant, composition of the organs of the 1st Defendant and which form of election was conducted, were all answered vide affidavit in the originating summons. There are no material conflicts central to the determination of this suit. Like I have said earlier in this judgment, this suit is not a complaint about the conduct or outcome of the congresses but the action of the Defendants in rejecting a purportedly valid result in the 1st Defendants headquarters in Abuja. In my view affidavit evidence should be sufficient.

It was held in ***HUSSAIN ISA ZAKIRAI V. SALISU DAN AZUMI MUHAMMAD &ORS (2017) LPELR-42349 (SC), that***

“The very nature of an Originating summons is to make things simpler for hearing.....it is a procedure where the evidence in the main is by way of documents and there is no serious dispute as to their existence in the pleadings of the parties to the suit”

I find that Originating summons is a proper mode of commencing this action. I so hold.

On whether this Suit is an abuse of Court process because of the pendency of the matter in Suit No. CV/2030/2021, Muttaka Bala Sulaiman & 17,907 others VS. APC & 9 others.

I find that indeed, an abuse of court process, which has no precise definition, occurs, where there is improper use of judicial process by One of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of justice or to irritate or annoy his opponent taking undue advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action of the same subject matter against the same opponent on the same issues constitute an abuse of court process.

The rationale of the law is that, there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

N.I.C VS. F.C.O CO. LTD. (2007) 2 NWLR (Pt. 1019) 610 at 630,

From the fact before the Court, Suit No, CV/2030/2021 basically touches on conduct of the Defendants regarding the report of Ward Congresses Election of APC in Kano State, whereas the present suit borders on the conduct of the Defendants in relation to the report of the Local Government Congresses Election of the 1st Defendant (APC) in Kano State.

From the above therefore, it is obvious that the cases are different in terms of subject matter, I so hold.

The objection of learned counsel for the 6th, 7th, 8th and 9th Defendants is misconceived and does not have the support of law. On the whole, the preliminary objection of the 6th, 7th, 8th and 9th Defendants fails and is hereby dismissed.

Before I delve into the substantive matter, I shall consider the Objection raised by the 1st – 3rd Defendants in their written address.

The 1st – 3rd Defendants have by a preliminary objection embedded in their written address challenged the joining of the 2nd Defendant in this suit being the current Governor of Yobe state. The 2nd Defendant is also the chairman of the 1st

Defendant's Caretaker/extraordinary convention planning committee.

The ground of the objection is that 2nd Defendant being serving Governor cannot be sued by virtue of the provisions of section 308(1) (a) (b) and (c); (2) and (3) of the 1999 CFRN (as amended). Thus, they argued, the issuance and service of the Originating summons in this suit on the Defendant is unconstitutional and unlawful.

The Plaintiffs have argued, in response, that the provision of section 308(2) provide for an exception to the immunity clause, which is relevant in this case.

Section 308(2) provides thus:

“the provision of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party”

Who then is a nominal party? In the online Legal Information Institute (LII) is defined as *“a plaintiff or defendant who has no real interest in the result of the suit, or no actual interest or control over the subject matter of the litigation, but is solely joined because a technical rule of practice requires their presence in the record.”*

Also in *AGBAREH V. MIMRAH* (2008) LPELR-43211, It was held thus;

“it describes itself as “a nominal party” (i.e. a party in name only not in reality as defined in the oxford Advanced Learner’s Dictionary or existing in name only as defined in the Black’s Law Dictionary).”

As argued by the Plaintiffs, the 2nd Defendant heads the Caretaker committee of the 1st Defendant, who are the hands and minds of the committee, which is not a juristic personality, thus having to sue members including the 2nd Defendants in a nominal capacity.

From reading the reliefs of the plaintiffs in this suit and the argument canvassed by parties, I hold the firm view that the

capacity the 2nd Defendant is sued falls within the purview of the exception under section 308(2) of the Constitution (as amended). Accordingly, I find that the 2nd Defendant in this suit is a nominal party. I so hold.

The objection of the 1st – 3rd Defendants also fails.

Having held that the Court has jurisdiction to entertain this case; I shall delve into the substantive suit of the Plaintiffs to determine whether they have made out case to warrant being granted the reliefs sought.

The law is well settled that originating summons may be employed to commence an action where the issue involved is one of the construction of a written law, instrument, deed or will or other document or some question of law is involved or where there is unlikely to be any substantial dispute on issues of fact between the parties.

KAYAMO VS. HOUSE OF ASSEMBLY (2002) 12 SC. (Pt. 1) 190.

Let me also note from the onset that where conflicts in the affidavit do not touch on the material substance of the matter before the Court, decision may be based on the evidence in those affidavits without resort to oral evidence to resolve such immaterial facts.

It is however trite that an originating summons is a procedure where the evidence in the main is by way of documents and there is no serious dispute as to the facts therein. It is not a proper procedure where contentious issues or facts are to be resolved.

The Plaintiffs by 29 paragraphs affidavits approached this Honourable Court for the various reliefs as captured in the preceding part of this Judgment.

Indeed, a trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comments or act on it, documents tendered before a trial court are meant for scrutiny or examination and evaluation.

***MOHAMMED VS. ABDULKADIR (2008) 4 NWLR (Pt. 1076)
11 at Page 156 – 157.***

As stated earlier in the preceding part of this Judgment, the actions of the Plaintiffs for the interpretation of the provisions of Article II (A) (i-xiv) and 13(10) and 13.11 of the 1st Defendant (APC) Constitution and the guidelines for Local Government Congresses 2021 and Section 85(1) & (2); 87 (7,8 and 9) of the Electoral Act 2010 (as amended).

Plaintiffs are contending that the Defendant's act, decision and or action or proposal not to recognize the Plaintiffs as the duly validly, properly authentically and democratically elected;

- a. 27 elected Local Government Executive Committee Members 44 Local Government in Kano State.
 - i. 23 Members
 - ii. 4 Ex-officio members elected by the congress
- b. 3 delegates to the National Convention is valid, proper and is compliance with the governing laws

Plaintiffs annexed the following documents: -

1. Exhibit 'A' is the 597th Plaintiff's Membership Registration Form.
2. Exhibit 'B' is the Letter of Appointment of Ward Congress Committee.
3. Exhibit 'C' is the notice for the conduct of congress
4. Exhibit 'D' is the guidelines for the Local Government Congresses, 2021.
5. Exhibit 'E' Constitution of APC
6. Exhibit 'F1' Report of the 44 Local Government Congress Election in Kano State.
7. Exhibit 'F2' submission of APC Local Government Congress Election Report and Result.
8. Exhibit 'G1' Press Statement.
9. Exhibit 'G2' Certificate of Compliance.
10. Exhibit 'H' is the Report of Kano State APC Ward Congress Committee held on 31st July, 2021

11. Exhibit 'H1' is a submission of APC Ward Congress Election Report and Result.

Whereas on their part, 1st, 2nd and 3rd Defendants annexed the following documents: -

1. Letter of appointment: Ward Congress Committee as Exhibit 'APC1'
2. Report of Kano State APC local government areas Congress Committee held on the 4th of September, 2021 as Exhibit 'APC2'

Equally both 4th and 5th Defendants and 6th – 9th Defendants annexed the above documents. The 6th – 9th Defendants also annexed exhibits APC '3' – APC '46' (report of the Local Government Areas Congress held in Kano state)

It is noteworthy to state from the onset that all the Defendants are challenging the jurisdictional competence of this Honourable Court that no Court or Tribunal is allowed to question, delve into or challenge internal affairs of the party on exercise of its discretion.

All the Defendants argued in their respective written addresses that the choice of a candidate for political office is the internal affairs of a political party and the Court cannot interfere in such exercise except within the narrow confines of Section 87(9) of the Electoral Act, 2010 (as amended).

I have considered the totality of arguments in respect of the competency of this action before me; I have resolved these issues in the preceding part of this judgment. I shall not indulge in the issues again.

I shall therefore delve into the affidavit evidence of the parties to ascertain whether indeed there is violation of the 1st Defendant's Constitution and guidelines for the conduct of Local Government Congresses as argued by the Plaintiffs.

It is instructive to state here that, Article II of the APC Constitution (exhibit 'E') boldly enumerates the organs of the 1st Defendant (APC) as follows: -

"The party shall have the following fourteen principal organs;

- 1. National Convention*

2. *Board of Trustees*
3. *National Executive Committee*
4. *National Working Committee*
5. *Zonal Committee*
6. *State Congress*
7. *State Executive Committee*
8. *State Working Committee*
9. *Senatorial District Committee*
10. *Local Government Area/Area Council Congress*
11. *The Local Government Area/Area Council Executive Committee*
12. *The Ward Congresses*
13. *The Ward Executive Committees.*

It is apparent from the above provision of the Article II that there is no room for any committee or body known as or

designated as “Stakeholder” in the 1st Defendant’s constitution.

It is worthy to note that the APC Constitution recognizes and gives enormous roles and responsibilities on the Local Government Area Congress committee which includes: -

- a. Elect Members of the Local government area/council Executive Committee of the Party
- b. Elect Local Government Party delegates to the State Congress and the National convention.
- c. Approve the budgets for the running of the Party at the Local Government area/council levels.
- d. Receive auditors report.

In compliance with the provision of the 1st Defendant constitution, it issued Exhibit ‘D’ (guidelines for LGA Congresses, 2021).

From the guidelines, two modes of elections at the Ward Congress were clearly stipulate as thus;

a. Consensus:

*All Party position prescribed or implied by the Party's Constitution and which are captured in the lists above for the congresses shall be filled by democratically conducted election at the respective congresses subject where possible, by consensus, provided that where a candidate has emerged by consensus for an elective position a vote of **YES** or **NO** by ballot or voice shall be called to ensure that it was not an imposition which could breed discontent and crisis.*

b. Election:

Utmost transparency is required in all elections. Therefore, in all respects, votes must be counted and results announced and recorded on the spot.

The question that comes to mind here is whether Exhibit 'APC2' (Report of Consensus) in the counter affidavit of the 6th – 9th Defendants met the criteria as provided in "A" above and the APC constitution?

Exhibit “APC2” is the purported report of the Local Government area congresses held on the 4th of September, 2021. The report was signed by Dr Tony A. Macfoy, Barrister Auwalu Abdullahi, Rt Hon Shehu Goronyo, Cham Faliya Sharon, Alh. Ibrahim Shehu, Mustapha Audu Saulawa and Barrister Yakubu Kirfi. As against the 7 member ward congress committee in Exhibit “B” of the Plaintiffs affidavit and Exhibit “APC 1” of the 1st – 3rd Defendants counter affidavit. The last three names are alien to the Exhibits. The names of the 8th and 9th Defendants are conspicuously missing. Exhibit “APC1” of the 1st – 3rd Defendants (the Party, chairman and secretary) counter affidavit have a different composition of members assigned to conduct the congress elections. I must conclude here that exhibit APC ‘1’ of the counter affidavit of the 6th – 9th Defendants was not submitted by the committee appointed to carry out the Local Government area congress elections in Kano state.

There is no evidence of any consensus vote of ‘Yes’ or ‘No’ by ballot or voice vote accompanying Exhibit “APC”. Even

though it reported that election/consensus were conducted as stipulated in the guidelines.

I have also looked at Exhibit “H1” which is a Press Statement expressing Governor Ganduje’s Appreciation to Stakeholders for their decision to conduct the congresses under consensus arrangement dated 26th July 2021. This supports the averments of the 1st - 3rd Defendants in paragraphs 4 (iv) and (v) in their counter affidavit that the outcome of the congresses was pre determined.

It is the argument of the 6th, 7th, 8th and 9th Defendants that facts agreed upon need no proof as the composition of the 7-man Committee. I believe the 1st - 3rd Defendant on the composition of the committee.

On the argument that Exhibit ‘F1 & F2’ are not the authentic report and result; having not been signed by the Chairman and Secretary of the Congress Committee. As the authors of the exhibit did not have the delegated power of the Chairman and Secretary to so sign the document. Averments in the affidavit of the plaintiffs and counter affidavits of the

1st – 3rd and 4th & 5th Defendants have established how the process was impeded by the ‘stakeholders’ influence and how the 8th and 9th defendants ended up submitting exhibit F1. The 6th & 7th Defendants being chairman and secretary chose to take the path of the ‘Stakeholders’ as they alluded to in the affidavit of the 6th – 9th Defendants. The report of the 8th and 9th Defendants (exhibit ‘F1’) has the acceptance of the Party (the appointor) I shall not find otherwise.

Indeed, the law requires that where a case is tried upon affidavit evidence, the fact or deposition in such an affidavit has to be proved like averment in pleadings. ***UBN PLC. VS. ASTRA BUILDERS (W.A) LTD. 2010 5 NWLR (Pt. 1186).***

The Claimant who are candidates in the election and the 1st - 5th Defendants who received the report of the election deposed in their affidavits admitting that Exhibit ‘F1’ was actually the product of election held.

I must observe that 4th and 5th Defendants have admitted in paragraph 8 – 11 of their counter affidavit evidence before

this Honourable Court that there was indeed some truth in the plaintiffs' affidavit.

The implication of these postures by the Defendants, on the one hand, those of the 1st – 3rd and 6th – 9th Defendant on the other hand is that they speak from both sides of their mouth which amount to approbating and reprobating at the same time. And Court of law cannot act on speculation.

More revealing is the admission of the 4th & 5th Defendants in their counter affidavit in paragraphs 5 - 7. Where it was averred that

“On arriving Kano State, they were approached by the State Caretaker Committee as well as the party Stakeholder that our job is enormous which cannot be completed within the time frame given by the 1st Defendant since Kano State has 44 Local Government”.

The party Stakeholder further informed us of their prior resolution to have a consensus arrangement wherein the Stakeholder would pick candidate and delegate of their choice without need to conduct any Congress. The

arrangement did not go down with some of the Committee Member while other were at home with it”

“Notwithstanding, some of the Committee members proceeded to conduct the Congresses in the 44 Local Government of Kano State on the schedule date as mandated with the assistance of 3-man Committee known as Local Government Congress Committee (LWCC) drawn from different Local Government. At close of the exercise results were collated and announced. Also, the Committee prepared and submitted a report together with summary of results as per Exhibits ‘F’ & ‘J1 – J44’ in support of the originating summons”.

From the above it is obvious that Exhibit ‘F1’ is a product of election conducted in the Ward Congress venue monitored by some members of the Local Government Congresses Committee.

The said Exhibit ‘F1’ was signed by Hon. Adedayo Iyanimura for Chairman Congress Committee and Usman Musa Kaita for Secretary respectively. Indeed, by Exhibit ‘B’ which is

letter of appointment; Local Government Congress Committee, both Usman Kaita and Adedayo Iyannwura names appeared as number 5 and 6 respectively.

It must be observed that Exhibit 'G1' which is the press statement by Chief Press Secretary to the Kano State Governor; which press statement gave birth to Consensus results clearly stated in paragraph 12 as thus *“warning further that all confirmation of our consensus must be held at party offices at Ward levels. Not in any other person’s residence. Party process and procedure must be respected”*.

Question here is, did the Defendants comply with the above statement and guidelines?

If yes, where is the evidence that the so called consensus were made in line with the guidelines.

Where an affidavit is filed deposing to a certain facts and the other party does not file a counter affidavit, the fact deposed to in the affidavit would be deemed unchallenged and undisputed. ***BADUJO VS. FED. MINISTRY OF EDUCATION (1996) LPELR SC.***

It is now firmly settled beyond gainsaying that political parties and their members are bound by the dictate of not just the Electoral Act (as amended) but their constitution and guidelines and any violation thereof may make whatever actions taken in violation or breach of the constitution or act liable to be impugned in judicial action by the courts. ***IBRAHIM VS. APC No. (1) (2019) 16 NWLR (Pt. 1699) 444 SC.***

It is trite that where the language, terms, intent or Wards of any part or section of a written contract, document or enactment are clear and unambiguous as in the instant case, they must be given their ordinary and actual meaning as such terms or words used best declare the intention of law maker unless this would lead to absurdity or be in conflict with some other provision thereof. It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning. ***OLATUNDE VS. OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

It is my Judgment that the action of the so-called Stakeholders having not been in compliance with the dictates of the party constitution culminating in exhibit APC '2' is an exercise in futility and must be disregarded. And the summary of the result sheet in Exhibit 'J1 - J44' accompanying exhibits F '1' and F '2' is the valid result and must be seen as such.

Consequently, I hereby find and enter judgment in favour of the Plaintiffs as follows: -

1. A Declaration that the 1st - 5th Defendants decision and or action or proposal of 17th September, 2021 at the APC Headquarters in Abuja not to recognize the Claimants as the duly, validly, properly, authentically and democratically elected Local Government Area Executive Committee for the 44 Local Government/Area Council of Kano State comprising of; -
 - a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of: -

- i. 23 Members
 - ii. 4 Ex-officio members elected by the congress
and
 - b. 3 delegates to the National Convention of the 1st Defendant party at the Local Government Congress Election conducted by the 1st to 9th Defendants and supervised by the 10th Defendant on the 4th September, 2021 is not valid, proper and in-line with the governing laws **is hereby granted.**
2. Declaration that the 1st Defendant's summary result sheets showing the Plaintiffs as: -
- a. 27 elected Local Government Executive Committee Members for each of the 44 Local Government Council/Areas in Kano State each comprising of: -
 - i. 23 Members
 - ii. 4 Ex-officio members elected by the congress
and

b. 3 delegates to the National Convention is the valid, subsisting, authentic and democratic result of the various Local Government Areas Congress Election in Kano State to be adopted, recognize and relied upon by the 1st Defendant in Abuja **is hereby granted.**

3. **Order is hereby made** Directing the Defendants to adopt, recognize and rely on the summary result sheet consisting of the Claimants as the only valid, authentic and duly elected Local Government Executive Committee Members and Delegates for the 44 Local Government Areas of Kano State contained in the report submitted at the 1st Defendant National Headquarters in FCT, Abuja.

4. **Order is hereby granted** Nullifying, voiding and or setting aside any other list(s) of any other report/directives given by the Defendants on 17thSeptember, 2021 or any other date, other than the valid, proper and authentic summary result sheets for Local Government Area Congress submitted to the 1st –

5th Defendants by the 6th – 9th Defendants on the 13th September, 2021.

5. Declaration that consequentially only the authentic list of the 17,908 winners of the ward congresses elections (being the authentic ward congress executives and Delegates) as contained in the Report dated 2nd august, 2021 but submitted to the 1st & 10th Defendant on the 6th and 26th August, 2021 respectively and the authentic list of 44 local government executive committees covered by a report dated 6th September, 2021 but submitted to the 1st & 10th Defendants on the 13th & 9th September, 2021 respectively, are authentic party officials to vote at forthcoming 16th October, 2021 State Party Congress elections in the State and cannot be disenfranchised from voting at the forthcoming 1st Defendant's State Congress elections **is hereby granted.**

6. An Order of perpetual injunction restraining the Defendants from receiving, accepting and or acting or purporting to act on, rely on or approving any other list

or purported list of Local Government Area Executive Committee Members emanating from any other Committee, persons or group of person other than the duly and validly elected Local Government area Executive Committee and Delegates to the National Convention for each and all the 44 Local Government Areas of Kano State which comprises:-

- i. 23 Members
- ii. 4 Ex-officio Members elected by the Congress
- iii. 3 delegates to the National Convention

is hereby granted.

SGND.
HON. JUDGE
17/12/2021.

LEGAL REPRESENTATION

- (1) Nuraini Jimoh, SAN, with A. D. Khalid Esq, H. Gbolagade Esq and A. N. Ahmad, Esq. for the Claimants.
- (2) A. O. Usman Esq, for the 4th and 5th Defendants.
- (3) Sir. Steve Adehi, SAN, with A. A. Fagge, Esq, A. T. Falola, Esq, M. F. Ekpeh, Esq and I. X. O. Imbu Esq, for the 6th -9th Defendants
- (4) Counsel for the 1st – 3rd Defendants and 10th Defendant are absent.