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IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

*SC/936/2023*

APPEAL NO. SC/CV/936/2023

PETITION NO. CA/PEPC/04/2023

BETWEEN

ALLIED PEOPLES' MOVEMENT

APPELLANT

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. ALL PROGRESSIVE CONGRESS (APC)
3. BOLA AHMED TINUBU
4. SENATOR KASHIM SHETTIMA
5. KABIR MASARI

RESPONDENTS



*6:30 PM*

**APPELLANT'S BRIEF OF ARGUMENT**

Dated this 2<sup>nd</sup> day of October, 2023

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## A. INTRODUCTION

This is an appeal against the decision of the Court of Appeal sitting at Abuja delivered on the 6th Day of September, 2023, (see Pages **1799 – 1959** of Records of Appeal (RoA). In fact, the court below granted the Motions filed by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and not only struck out “Appellant’s Petition but also truck out the name of the 5<sup>th</sup> Respondent from the Petition, (see Pages **1825, 1826, 1852, 1881 and 1959 of the Record of Appeal, RoA**).

The Appellant being dissatisfied with the entire judgement which erroneously affirmed the declaration and returned of 3rd and 4th Respondents as the President and Vice President of the Federal Republic of Nigeria, on 19/9/23 filed a Notice of Appeal with Ten (10) Grounds, (see pages **2267 to 2292** of the **RoA**.

The Records of Appeal (*RoA*) transmitted on the 22/9/23.

## B. BRIEF STATEMENT OF FACT

**B1.** On the 25th February, 2023, the 1st Respondent conducted an election to the office of President and Vice President of the Federal Republic of Nigeria. The Appellant, a registered political party participated and contested through its sponsored candidate, (see Page **1800 of RoA**). 2<sup>nd</sup> Respondent purportedly sponsored 3<sup>rd</sup> & 4<sup>th</sup> Respondents. At the end of the Election, the 3rd and 4th Respondents was declared and returned as the President and Vice-President elected by 1<sup>st</sup> Respondent.

Earlier, 3<sup>rd</sup> Respondent had nominated 5<sup>th</sup> Respondent as his Vice-Presidential candidate. 5<sup>th</sup> Respondent on 24/6/23 withdrew as candidate while on 15/7/23 4<sup>th</sup> Respondent was purportedly forwarded to 1<sup>st</sup> Respondent as replacement of 5<sup>th</sup> Respondent.

**B2.** Miffed by the actions of the 1st Respondent, the Appellant proceeded to file a Petition on 20/3/23 praying the court below to determine the validity or otherwise of the return of 3rd and 4th Respondents by the 1st Respondent and to hold amongst other reliefs that:

*“The 3rd Respondent was not qualified to contest as the Presidential candidate of the 2nd Respondent as at 25th February, 2023, when the Presidential Election was conducted by the 1st Respondent .... having violated the provisions of Section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended” ( see 1 to 42 of the RoA).*

B3. However, the court below misconceived the material facts and case of the Appellant and wrongly progressed to determined issues not contemplated by the Appellant’s Petition thereby, erroneously dismissed the Appellant’s Petition:

*‘As a fall out to my findings above, I hold the firm view that the issue of nomination or sponsorship of the 4th Respondent being a pre-election matter ought to have been ventilated by the Petitioner before the Federal High Court as this court has no original jurisdiction to delve into the matter. Even If, this court has such jurisdiction, the cause of action being on a pre-election matter is statute barred by virtue of Section 285(9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).’* The entire judgment is at pages 1471 to 2266 of the (RoA)

C. **NOTABLE FACTS IN SUPORT OF THIS APPEAL**

- a. The Grounds upon which the Appellant’s Petition was predicated is that the *3rd Respondent was at the time of the Election not qualified to contest the Election, in line with Section 134(1(a) of the Electoral Act 2022.*
- b. For emphasis, the Appellant in **paragraph 16 and 17** of the Petition, stated that its Petition against the 3rd and 4th Respondents was grounded on the provisions of *Section 131 and 142 of the Constitution of the FRN, 1999, (as amended), and Section 35 of the Electoral Act, 2022,* etc (see page 5 of the RoA)
- c. In proving the Petition, the Appellant on the 21st June, 2023 fielded its sole witness, Aisha Abubakar, as PW1. The Appellant, prior to the testimony of PW1, tendered certified true copies of 7 separate documents obtained from the 1st Respondent which included exhibits marked as **Exh P. A 1 to Exh P. A 8;**

- i. **Exhibit P. A 2 & Exhibit P.A 3**-Notice of withdrawal as the Vice-Presidential candidate filed by the 5th Respondent and 4th Respondent's notice of replacement dated 24/6/23 and 6/7/23 respectively.
  - ii. **Exhibit P. A 6** — copy of the 4th Respondent Nomination Form EC9 dated 15th July, 2022 ( para. 25 of the Appellant's WSOA at page 26 **RoA**).
- d. Aside from **Exhibit R1** tendered by the 1st Respondent, all the other Respondents never tendered any document or called witness.

**D. ISSUES FOR DETERMINATION**

From the Ten (10) Grounds of Appeal, the Appellant hereby distilled the following Issues for your noble Lordship's Determination:

1. Whether in the light of the Nigerian electoral corpus juris (the relevant provisions of the Electoral Act, 2022 and the Constitution of the FRN, 1999 (as amended) etc., the court below was not in error when it relied on the Motions filed by Respondents to strike out 5th Respondent as a party and dismiss Appellant's Petition etc on the erroneous ground that Appellant lacked the *locus standi* to present the Petition? (**Grounds 1, 2, 3 & 4,**)
2. Considering the provisions of Section 239 (1) (a) read together with Section 139 (a) (i) of the Constitution of the FRN, 1999 (as amended), and 1st Respondent having declared & returned 3rd & 4th Respondents as elected President & Vice President, did the Court of Appeal not abdicate its crucial constitutional duty to determine the Appellant's Petition on the misconceived allegations that the Appellant's Petition was not within its jurisdiction? (**Grounds 5,6, 7 & 10**)
3. Whether the court below did not misunderstand and misinterpret the material provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), read in conjunction with the necessary sections of the Electoral Act, 2022 relating to the comprehensive contents of the qualifications and

disqualifications mandatorily required of 3<sup>rd</sup> and 4<sup>th</sup> Respondents as to be *validly declared elected* as President and Vice President of the FRN? (*Ground 8 & 9*)

## E. LEGAL SUBMISSION ON THE ISSUES

### ISSUE ONE

Whether in the light of the Nigerian electoral corpus juris (the relevant provisions of the Electoral Act, 2022 and the Constitution of the FRN, 1999 (as amended) etc. the court below was not in error when it relied on the Motions filed by Respondents to strike out 5th Respondent as a party and dismiss Appellant's Petition etc on the erroneous ground that Appellant lacked the *locus standi* to present the Petition? (*Grounds 1, 2, 3 & 4,*)

E1. With respect to the issue posed above, the Appellant answer same in the affirmation and submits that the court below erred when it peremptorily struck out the Appellant's Petition for lack of *Locus Standi* etc (see **pages 1852 to 1873 and 1881 of the RoA**). Section 134 of the Electoral Act 2022

Section 134.—(1) *An election may be questioned on any of the following grounds—*

**(a) a person whose election is questioned was, at the time of the election, not qualified to contest the election ;**

.....

In the same vein, the Appellant is a statutory party entitled to bring a Petition under the provision of **Section 133 of the Electoral Act 2022:**

**Section 133(1). An election petition May be presented by one or more of the following persons:**

.....

**(b) a political party which participated in the election.....**

The Appellant at Paragraph 1 of the Petition stated:

*1. Your Petitioner, Allied Peoples Movement (APM), as a Political Party, sponsored a candidate for the Presidential Election held on the 25th day of February, 2023 and the said candidate had the right to contest the said election and be returned as duly elected. (page 1 of the RoA).*

The Ground, the facts of the Petition, the Particulars of non qualification of 3<sup>rd</sup> & 4<sup>th</sup> Respondents and the Reliefs sought by the Appellantnare graphic, see pages 1 – 56 of the *RoA*

E2. Thus the Appellant's Petition was predicated on 134(1(a) of the Electoral Act 2022 i.e at the time of the said election, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were not qualified to contest the election, following the failure of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to comply with the constitutional requirement placed on them as candidates for the office of the President and Vice-Presidential candidates under **Section 142(1) of the Constitution of the FRN, 1999 as amended** which provide thus:

*142.(1) In any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice-President and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid. (underling ours)*

See also *Section 131 (c)*;

*A person shall be qualified for election to the office of president if –  
c) he is a member of a political party and is sponsored by that political party*

E3. Furthermore, **Section 33 of the Electoral Act 2022**, provides;

*33. A political party shall not be allow to change or substitute candidate whose name has been submitted under section 29 of this Act, except in the*

*case of death or withdrawal by the candidate : Provided that in the case of such withdrawal or death of a candidate, the political party affected shall, within 14 days of the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned.*

Appellant's Petition probed whether 3<sup>rd</sup> & 4<sup>th</sup> Respondents were "validly nominated", and at what stage was 3<sup>rd</sup> Respondent nominated and where the status conferred by compliance with S. 29 by 5<sup>th</sup> Respondent is disrupted, is any of 4<sup>th</sup> and 5<sup>th</sup> Respondents still a candidate. In fact, the Petition was founded on the joint reading of **S. 142 of the Constitution of FRN, Section 29 & 152 of Electoral Act, 2022.**

**E4.** it is a trite principle of law that where the law clearly stipulated the provisions for the doing of an act, such act cannot be done in any other ways, this see **NWANKWO & ORS v. YAR'ADUA & ORS (2010) LPELR-2109(SC):**

*"is now firmly established that where a statute lays down a procedure for doing a thing, there should be no other method of doing it...."*

This Hon. Court held on the effect of Non-compliance to the provisions of the Constitution in **NIGERCARE DEVELOPMENT CO. LTD v. ADAMAWA STATE WATER BOARD & ORS (2008) LPELR1997(SC):**

*".....Where there is fundamental failure to comply with the requirement of a statute the issue is not of irregularity, but a nullity." Per IKECHI FRANCIS OGBUAGU, JSC (Pp 20 - 20 Paras B - C) E5.*

The 3<sup>rd</sup> Respondent nominated the 5<sup>th</sup> Respondent as his running mate in absolute compliance to the Section 142 of the Constitution. However , the subsequent nomination of the 4<sup>th</sup> Respondent without regards to the procedures stipulated in Section 33 of the Electoral Act 2022 allowed the Appellant's Petition. The Appellant Petition is for the determination of whether the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were validly elected to the office of the President and Vice- President of Nigerian



within the provisions and conditions of the Constitution of the FRN, 1999 ( as amended) and the provisions of the Electoral Act, 2022.

E5. Consequently, in the light of the above, the Appellant possessed the *locus standi* to bring this Petition, see in **BACK LADO & ANOR v. MASARI & ORS** (2019) LPELR-55596(SC) the Supreme Court of Nigeria held:

*"The law is now trite that the qualification to contest election is a constitutional issue which has been sufficiently provided for by the Constitution of the Federal Republic of Nigeria, 1999 (as amended). ... It necessarily follows that any claim of qualification or non qualification must derive its root from the Constitution.*

The Court below therefore misinterpreted the provisions of **section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** when it held that the said section did not by itself provide an additional qualification and condition for a person contesting for the office of the President of Nigeria. With respect and humility that decision is against the spirits and provisions of the relevant Constitution and the other electoral laws

E6. Again My Lords, the operative words in the said **Section 142(1) of the Constitution of the FRN 1999 (as amended)** obligates the President to do an act for which failure of same affected negatively his nomination.

In the instant case, the 5<sup>th</sup> Respondent having withdrawn for there to be a validly nominated running candidate to 3<sup>rd</sup> Respondent, the 4<sup>th</sup> Respondent must be nominated within a window period of 14 days from the time of withdrawal contemplated under **Section 33 of the Electoral Act, 2022**. We humbly refer My Lords to see the clear provisions sections 33 of the Electoral Act 2022. Failure of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to comply to the mandatory requirements of Chapter 6 of the **Constitution of the Federal Republic of Nigeria, 1999 (as amended)** renders the declaration of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents by the 1<sup>st</sup> Respondent invalid and liable to be held void by this Hon. Court.

The Appellant proved that the 3rd and 4th Respondent failed to comply with the required provisions of the the Constitution and Electoral Act, 2022 at the time of the Election of the 25th February, 2023. The 4th Respondent was not validly nominated by the 3rd Respondent to effectively cover the mandatory provision of section 142 of the **Constitution of the Federal Republic of Nigeria, 1999 (as amended)**.

E7. Certainly, at this point, is important my noble Lords we restate that the complaint of the Appellant is not predicated on **Section 285(9) or 285(14) of the Constitution of the FRN, 1999 (as amended)** as held by the court below.

E8. The court below denied the Appellant *locus standi* and decline jurisdiction Considering the provisions of **Section 239(1)a) and Section 139(a(i) of the Constitution** Appellant has *Locus*

**239.(1) Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-**

**(a) any person had been validly elected to the office of President or Vice-President under this constitution; or ....**

**139(a(i) The National Assembly shall by an Act makes provisions as respects-**

**(a) persons who may apply to the Court of Appeal for the determination of any question as to whether-**

**(i) any person has been validly elected to the office of President or Vice-President, ....**

Thus, aforementioned, it is evident from the provisions of the Constitution herein above reproduced that the lower court was clothed with the requisite jurisdiction to entertain and determine the complaint of the Appellant as was then constituted, filed and prosecuted.

We commend to your noble Lordships the case of **FAYEMI v. ONI & ORS (2019)**

**LPELR-49291(SC)** wherein this Hon. Court Per BALE ADAMU CALLEGE, JSC

*"I do not agree with the learned counsel that qualification to contest primary election is an internal affair of the party. On the contrary qualification of a candidate is both pre and post-election matter that can be challenged either in the Federal or State High Court or the Tribunal. ..."*

Again, **WAMBAI v. DONATUS & ORS (2014) LPELR-23303(SC)** this Hon Court while interpreting Section 138(1)(a) of the Electoral Act 2010 (now section 134(1)(a) ) of the Electoral Act, 2022 held:

*" I am of the considered view that the case of 1st respondent which challenges his substitution comes within the provision of Section 138(1)(a) (supra), because it challenges the qualification of appellant to contest the election in issue particularly as he is alleged not to be the duly nominated candidate of the political party in question. A person cannot be qualified to be a candidate of a political party for an election except and unless he is nominated and sponsored by a political party for which he is a member!!"*

*It follows therefore that after the conduct of an election if a person wishes to challenge the result of the election on ground of nomination .... he can legally do so before an election tribunal under Section 138(1)(a) of the Electoral Act, 2010, as amended and it is wrong to hold that an election tribunal does not have jurisdiction to hear and determine such a matter." Per WALTER SAMUEL NKANU ONNOGHEN, JSC (Pp 26 - 28 Paras F - B) (underling ours)*

In view of the above, we therefore submit that the holding of the lower court at paras. 2, pages 1872 Vol. 3 of the Records, to the effect that:

*"It is clear therefore, that a political party, such as the petitioner herein, only has the locus standi to file a pre-election matter when the situation affects its or its own candidate by virtue of section 285(14)(c ) of the 1999 Constitution. .... For that reason, it is my view the cause of action in this petition being on the nomination and sponsorship of the 3rd and 4th Respondents by the 2nd*

*Respondent/Applicant, the petition is incompetent for lack of locus standi on the petition (sic) to institute same. It is also liable to be struck out for being incompetent”*

was perverse and liable to be set aside. The law is trite that an appellate court will interfere with the findings/conclusions of a lower court if same are found to be perverse and not based on available evidence or backed by extant law, see **KURE v. COP (2020) LPELR-49378(SC)**.

E9. It is well settled that the duty of this Hon. Court and indeed any other court, is to interpret the words contained in the Constitution, and any statute in their ordinary and literal meaning. Certainly, it is not the duty of the court to go outside words used in a statute and import an interpretation which may be or is convenient to it or to the parties or to one of the parties, see **AG KANO STATE v. AG FEDERATION (2007) LPELR-618(SC)**

E10. It is our submission, that the Appellant’s Petition does not fall within the ambits of pre- electoral matters under Section 285(9) & (14) of the Constitution having being filed to question *the validity of the declaration of the 3rd and 4th Respondents* by 1st Respondent on the Election conducted on the 25th February, 2023.

The Appellant’s Petition was consequently filed within the ambit of the provisions of section 131(c) and 142 of the Constitution of the FRN, 1999 (as amended) as well as Sections 31, 33 and 134(1) (a) of the Electoral Act, 2022. Section 131 and 142 (1) of the 1999 Constitution are inextricably linked and neither can be confined as a pre-election matter, as these qualifications are conditions precedent for being elected to the office of President. The Appellant’s Petition was not one founded solely on nomination, but primarily that the 3<sup>rd</sup> Respondent contested the Presidential election without a lawful Associate running as his Vice-President.

It is further respectfully submitted, that in granting the motion of the 5<sup>th</sup> Respondent to strike out his name from the Petition, the lower court unwittingly divested itself its

jurisdiction. The 5<sup>th</sup> Respondent is both a proper and necessary party to the Petition, such that his absence would have rendered the Petition of the Appellant void ab-initio.

**In the case of *Ehidimhen v. Ahmadu Musa & Anor.* (2000) LPELR-1051 (SC) P. 46, paragraph A. his lordship Achike, JSC stressing on the need for proper parties to be before the court held thus:-**

**“It is imperative that for an action to succeed the parties to it must shown to be the proper parties to whom rights and obligation arising from the cause of action attach.”**

In this appeal, the Appellant’s Petition paragraphs 8, 9, 12, 22, 23, 28 (i) – (k) of the Petition vis-a-vis paragraph 15 of the RoA highlighted copious allegations of actions by 5<sup>th</sup> Respondent material to the election in question. The lower court on its own referred to the 5<sup>th</sup> Respondent’s withdrawal as **“relevant to the petition”**. The withdrawal of the 5<sup>th</sup> respondent is a relevant fact as he was the last know running mate to the 3<sup>rd</sup> Respondent and therefore a proper and necessary party. The 5<sup>th</sup> Respondent’s withdrawal is the basis on which the Appellant challenged the qualification of the 3<sup>rd</sup> Respondent.

In the absence of the 5<sup>th</sup> Respondent, the averments in paragraphs of the Petition referenced above would have been rendered absurd and deprived Appellant of a cause of action. The lower court too, could not have assumed jurisdiction or effectively determined the motions on which it peremptorily struck out the Petition. The presence of 5<sup>th</sup> Respondent is therefore crucial and fundamental to the resolution of the questions raised by the Appellant in its Petition, See *Jegede v. INEC* (2021) LPELR-55481 SC.

The lower court was also in error to have struck out the name of the 5<sup>th</sup> Respondent from the Petition, and we respectfully urge your lordships to so hold. We therefore pray your noble Lordships to set aside all the rulings of the court below granting the

relief of the Respondents made in their said Motions and consequently resolve this Issue 1 in favour of the Appellant.

**F. ISSUE TWO**

*Considering the provisions of Section 239 (1) (a) read together with Section 139 (a) (i) of the Constitution of the FRN, 1999 (as amended), and 1st Respondent having declared & returned 3rd & 4th Respondents as elected President & Vice President, did the Court of Appeal not abdicate its crucial constitutional duty to determine the Appellant's Petition on the misconceived allegations that the Appellant's Petition was not within its jurisdiction? (Grounds 5,6, 7 & 10)*

F1 The court below with respect lost grip of the petition presented by the Appellant and termed the secondary issue of double nomination as Appellant's "lone grouse". What more the court below did not appreciate the real imports of S. 139 and S. 239 of the Constitution of the FRN, 1999 (as amended) as regards the Appellant's Petition

In Para. 1 of page 1943 of the *RoA*, the court below wrongly found:

*"The complaint of the petitioner rooted on nomination and sponsorship of 3<sup>rd</sup> and 4<sup>th</sup> Respondent will find accommodation in a pre-election dispute, which the petitioner cannot even pursue, not being a member of the 2<sup>nd</sup> Respondent, see sections 84(14) of the Electoral Act, 2022 and 285(14) of the Constitution"*

The learned justices of the lower court went further to demonstrate their misconception of the Appellant's case (at paras. 1 page 1956, Vol. 3 of the Records) when they further held:

*"one other aspect alleged by the petitioner on its claim of nomination of the 3<sup>rd</sup> and 4<sup>th</sup> Respondent is that, the 2<sup>nd</sup> Respondent did not comply with section 33 of the Electoral Act in the nomination of the 4<sup>th</sup> Respondent as Vice-Presidential candidate. That after the withdrawal of the 5<sup>th</sup> Respondent,*

*the 2<sup>nd</sup> Respondent should have conducted a fresh primary election within 14 days for the purpose of nominating a new Vice-Presidential candidate.*

The court went further:

*"On that note, I hereby hold that the Petitioner failed to prove the lone ground of its petition, to the effect that the 3<sup>rd</sup> and 4th Respondents were not qualified I to contest the Presidential Election held on 25th February, 2023 for the reason of double nomination of the 4th Respondent. Having resolved the sole issue of the petition against the Petitioner, this petition is also devoid of any merit."*

All the above are contradictory to one another and none represent the State of the law as regards being a Pre-election matter.

My noble Lords, Sections 139 (a) (i) and 239 (1)(a) of the Constitution provides:

*S. 139 The National Assembly shall by an Act make provisions as respect*

*(a). Persons who may apply to the Court of Appeal for the determination of any question as to whether-*

*(i) any person has been validly elected to the office of president or Vice-president*

*S 239(1): Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-*

*(a). any person has been validly elected to the office of President or Vice-President under this Constitution;*

F2. For the determination of jurisdiction to entertain a matter, the duty of the court to examined a party's claims. In **APP v. OBASEKI & ORS (2021) LPELR-58374(SC)** this Hon. Court held:

*"In determining the jurisdiction of a Court to entertain a cause or matter, the processes to be considered by the Court are the processes filed." Per UWANI MUSA ABBA AJI, JSC (Pp 48 - 48 Paras B - C).*

F3. The Appellant's petition states as follows:

15. Your Petitioner states that the ground upon which this petition is presented is that, the 3rd Respondent was at the time of the Election not qualified to contest the Election."

**FACTS OF THE PETITION:**

16. Your Petitioner questions the declaration/return of the 3rd Respondent (the candidate of the 2nd Respondent) by the 1st Respondent as the duly elected President on the following grounds:

- i. The 3rd Respondent, at the time of the Election held on 25th February, 2023, was not qualified to contest as the Presidential Candidate of the 2nd Respondent by virtue of the provisions of Section 131(c) and 142 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), and Section 35 of the Electoral Act, 2022;
- ii. The declaration and return of the 3rd Respondent by the 1st Respondent as the duly elected President of the Federal Republic of Nigeria, are invalid by reason of noncompliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the Electoral Act, 2022. ( see pages 4 to 5 of the RoA)

Considering the exclusive jurisdiction conferred on the Court of Appeal by S. 139 and S. 239 of the Constitution and the case presented by the Appellant, we are humbling surprised that the court below found the Petition incompetent for allegedly being Pre-election matter.

In *DURU v. FRN (2013) LPELR-19930(SC)* the Supreme Court held:

"In *Sagay v. Sajere (2000) 6 NWLR (part 661) 360 at 364 and 365, this Court has held that for Courts to reach correct and just decisions, it is*



*incumbent on them not only to properly ascertain the facts in contention but to deftly apply the law relevant to the issue in controversy to the ascertained facts. In the instant case, the Court below stands in breach of this very rewarding principle."*

It is clear that the lower court failed to painstakingly consider the provision of S. 130, 137, 139, 142 and 239 of the Constitution of FRN, 1999 as amended as well as S. 29, 31, 33 and 34 of the Electoral Act 2022 as they apply to the quest of the Appellant for the validity or otherwise of the said election of 3<sup>rd</sup> and 4<sup>th</sup> Respondents as President and Vice-President.

So far, the National Assembly has carried out this duty bestowed on them by the aforementioned Section 139, because in the Electoral Act, particularly Sections 130(1) & (2) and 140, the Act provides as follows:

*130.—(1) No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an “election petition”) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.*

*(2) In this Part “tribunal or court” means—*

*(a) in the case of Presidential election, the Court of Appeal*

See also, Section 140(1) of the Act:

*“The rules of procedure to be adopted for election petitions and appeals arising therefrom shall be as set out in the First Schedule to this Act”*

See also the cases of BUHARI v. INEC & ORS (2008) LPELR-814(SC) were the Supreme Court held:

*“...Section 239(1)(a) vests in the Court of Appeal exclusive original jurisdiction to hear and determine any question as to whether any person has been validly elected to the Office of President or Vice-President under the Constitution. While Section 145(1) is a general provision relating to all elective positions*

*under the Electoral Act, Section 239(1)(a) is a specific provision relating to only the election of the President or Vice-President. It would appear that the general provision of Section 145(1)(c) of the Electoral Act can be assimilated into Section 239(1) of the Constitution. In Obasanjo v. Yusuf (2004) 5S.C. (Pt. I) 27; (2004) 9 NWLR (Pt. 877) 144, this Court held that Section 239(1)(a) of the Constitution provides a sole ground for questioning whether a person has been validly elected to the Office of President or Vice-President, Kutigi, JSC.,(as he then was), in his leading judgment, said at page 181:*

*"It appears clear to me from the provisions of the Constitution and the Act set out above that: (a) A Presidential Election petition can be presented based on the sole ground stated under Section 239(1)(a) of the Constitution (see above). (b) A Presidential Election petition can also be presented on any of the four (4) grounds as prescribed under Section 134(a)-(d) of the Act (see above)."*

*.... it will be wrong to ignore the clear provision of Section 239(1)(a) which vests in the Court the original jurisdiction to determine any question as to whether*

*"any person has been validly elected to the Office of President or Vice-President under the Constitution." Per NIKI TOBI, JSC*

F4. It is our submission that the court below erred in holding Appellant's Petition to be a pre- electoral matter. Section 142 of the Constitution of the FRN, 1999 (as amended), it can be rightly said that by the use of the phrase "a candidate for an election" and "**be deemed validly nominated**" in the Section, literally entails that the said section does not apply to pre-election as the candidate referred is one who has being passed the nomination that emanated from a valid primaries for the presidential election and therefore mandated by the said Section 142 of the constitution to validly nominate **another candidate** in order to remain validly nominated for election. The court below erred when it misinterpreted Section 142 of the Constitution FRN 1999 as amended as a pre- electoral provision.

The crux of the jurisdiction of the Court of Appeal in this matter lies with or on the proper and deep emphasis on the words "**validly elected**". Be it as it may, the word "elected" is a word in past tense which according to the English Dictionary (Collins Dictionary) means: "voted to a role in an election" or "chosen by vote, as for an office".

This invariably means that,

1. there was an election, and;
2. the election has been completely concluded and a winner was decided

**F5.** The big question will be whether the 3rd Respondent can be qualified for the Election conducted on the 25th February, 2023 and be said to be validly elected as the President of the Federal Republic of Nigeria without a validly nominated/qualified Vice President (4th Respondent)?

In answer, the important and operative words to be considered under Section 142 of the Constitution of the Federal Republic of Nigeria 1999 as amended to be considered are: **Nomination**, **Qualification**, **Valid**, and **Unless**. The word "**Nomination**", a noun, denotes: "1. The act of proposing a person for election or appointment." **Qualification**, a noun, connotes: "1. The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or perform a public duty or function" **Valid**, an adjective, signifies: "1. Legally sufficient; binding." "**Unless**" has the same meaning as "except in creating a condition precedent or its equivalent to "until" .

Which of these words as used in the sections under review is not a manure for questioning the alleged validity of election of 3<sup>rd</sup> and 4<sup>th</sup> Respondents? None, we submit. In fact, this is what your Lordships' Court held in **DANGANA & ANOR v. USMAN & ORS (2012) LPELR-25012(SC)**:

**"Section 138(1)(a) of the Electoral Act, 2010 (as amended), provides inter alia, that an election may be questioned on the ground that a "person whose election is questioned was at the time of the election, not qualified to contest the election".**

“With the above provision in view, it will be very unsafe to agree with the submission of learned senior counsel for the appellant that the issue involved in this case was strictly a pre-election matter in which an Election Tribunal has no jurisdiction to hear and determine and that only the High Courts have jurisdiction to deal with the matter. I do not agree that the matter envisaged in Section 138(1)(a) of the Electoral Act, 2010 (as amended), is a pre-election matter over which an Election Tribunal has no jurisdiction. ...

“I therefore hold the considered view that an issue of qualification of a candidate to contest an election under the Electoral Act, 2010 (as amended) is both a pre-election and an election matter which both the High Courts and the relevant Election Tribunals have jurisdiction to hear and determine. ....

“The jurisdiction to hear and determine the issue of qualification of a candidate in an election is therefore parallel - one through the High Courts and the other through the Election Tribunals. It is common knowledge that parallel lines never meet”. Per WALTER ONNOGHEN, JSC.

My noble Lords, we humbly submit that the said provisions Section 142 Constitution is not only tied to Section 131 and 137 of the Constitution but also to Sections 33 of the Electoral Act 2022 which specifically provides for the lawful procedure for the proper nomination of 3<sup>rd</sup> and 4<sup>th</sup> Respondent to enable their proper participation at the General Election under the Constitution. With the withdrawal of the 5<sup>th</sup> Respondent, there become a mandated need to comply with the statutory provisions of **Sections 33 of the Electoral Act** for them to be cover under the umbrella of a “*validly elected candidate*” under Section 131, 137 and 142 Constitution of the FRN, 1999 (as amended).

F6. The above position was supported by the Supreme in VIVIAN NDIGWE ANAZODO V. ESTHER JOHN AUDU & ORS (1999) 4 NWLR (PT.600)530:

“there is no doubt that if the 1st respondent was not properly nominated, screened and cleared a ground for petition exists under Section 84(1)(a) of the Decree. If a candidate is not validly nominated as required by law, he cannot be said to have been qualified to contest the election. .... Sponsorship of a

candidate for an election who was banned from participation or who suffers from any disqualification is a proper and valid ground for questioning the election of such a person. (underling ours)

In the case of A. P. C. V. KARFI (2018) 6 NWLR (PT. 1616) 479 this Hon. Court further held :

“For the nomination of a candidate for an election to be valid, it must follow and meet the statutory procedures.

In this case, the nomination and attendant purported election of 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not meet the statutory procedure. The Court of Appeal failed in a careful marriage of these facts with the electoral *corpus juris*.

F7. The court below was attempting a defeat of legal maxim: “Lex non cogitadimpossibila - the law does not command the impossible” by throwing away its constitutional duty of determining if 3<sup>rd</sup> and 4<sup>th</sup> Respondents were “*validly elected*”

On that premises, this Court held in WAMBAL v. DONATUS & ORS (2014) LPELR-23303(SC)

“ .... A person cannot be qualified to be a candidate of a political party for an election except and unless he is nominated and sponsored by a political party for which he is a member!! It follows therefore that after the conduct of an election if a person wishes to challenge the result of the election on ground of nomination/pre-election matter, he can legally do so before an election tribunal under Section 138(1)(a) of the Electoral Act, 2010, as amended and it is wrong to hold that an election tribunal does not have jurisdiction to hear and determine such a matter.”

How the above cerebral admonition of the Supreme Court was discarded by the Court of Appeal is really worrisome.

This Court while dealing with a similar issue in the case **WADA & ORS v. BELLO & ORS (2016) LPELR-47015(SC)** made a fine distinction between valid nomination and qualification when it held:

*“ .... Section 187(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is clearly a nomination section. It has nothing to do with qualification and disqualification under Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

*The said Section 187(1) provides: "In any election to which the foregoing provisions of this part of this chapter relate, a candidate for the office of Governor of a State shall not be deemed to have been validly nominated for such office unless he nominates another candidate as his associate for his running for the office of*

*The above provision clearly relates to issue of nomination and not qualification. Even the margin note to Section 187(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) states - "Nomination and election of Deputy Governor". It did not add "qualification" or "disqualification".*

*The effect of the section is that where a Governorship candidate fails to nominate an associate to run with him, then his own nomination is not valid. If a candidate is not properly nominated, it means that his nomination is vitiated. It is not valid.*

*A person may be qualified under Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and there is nothing under Section 182(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to disqualify him, if his nomination is invalid for not nominating a running mate, it does not mean he is not qualified to be Governor but that he was not validly nominated by his party."*

This is the vital distinction the court below failed to make. S. 187 (1) is in pari material with S. 142 (1) of the Constitution of FRN, 1999 (as amended). Any

nomination outside the time from of S. 33 of the Electoral Act, 2022 as happened in the case of 4<sup>th</sup> Respondent is no valid nomination.

This principle was sealed in *FAYEMI v. ONI & ORS (2019) LPELR-49291(SC)* where the court held that:

*“I do not agree with the learned counsel that qualification to contest primary election is an internal affair of the party. On the contrary qualification of a candidate is both pre and post-election matter that can be challenged either in the Federal or State High Court or the Tribunal”.*

We commend to your Lordships the similar case of *APC & ORS v. KARFI & ORS (2017) LPELR-47024(SC)* wherein his Lordship EJEMBI EKO, JSC in the lead judgment resounded the law as follows:

*“It is no longer in dispute that where a political party fails to comply with the mandatory provisions of the Electoral Act, on nomination of its candidate(s) before the general election, the Court will intervene and declare such purported nomination invalid; and the affected political party, here in the instant case the APC, will be taken or deemed to have fielded no candidate for the general election. See Ehinlanwo v. Oke at page 546... I completely agree. A candidate as the 3rd appellant herein, not validly nominated as required by law, both municipal and the laws of his own party, cannot be said to have qualified to be placed on the ballot in an election, let alone elected.*

In other words, the purported change of the 4th Respondent pursuant to **Section 33 of the Electoral Act, 2022** by the 3rd Respondent as a replacement of the 5th Respondent on the 14th July, 2022 was outside the window period of 14 days stipulated by the said Section. The Appellant has also placed before the court below unchallenged evidence of PW1 and Exhibits PA2 to P. A 6 as proof that the 5th Respondent's name was submitted in-line with Section 29 of the Electoral Act, 2022 and by further extension, the said disqualification and failure of the 3rd Respondent

to comply to Section 142 Constitution of the FRN, 1999 as amended. It was therefore wrong for the court below to hold otherwise after this finding:

*"One other aspect alleged by the Petitioner on its claim of invalid nomination of the 3rd and 4th respondents is that, the and Respondent did not comply with section 33 of the Electoral Act in the nomination of the 4th Respondent as Vice-Presidential candidate."*

and then proceed to hold that the entire appellant's petition was totally pre- election matters under Section 285(9) & (14) of the Constitution of the FRN, 1999 as amended.

F8. My Lords, the court below abandoned its duty and jurisdiction to hear and determine the Appellant's question of if the 3rd and 4<sup>th</sup> Respondents were validly elected to the office of the President and Vice President under the Constitution of the FRN, 1999 as amended as stipulated under Section 239(1) of the Constitution. In order to determine whether the 3rd and 4th Respondents were validly elected to warrant their qualifications as returned candidates, the court below was duty bound to critically considered the provisions of the Constitution that covers the qualification to the office of the President and that is the Vice- President as well as the nomination proceeding that produced them.

F9. Validity of the election therefore encompasses qualification, disqualification and valid nomination which must be complied with by a person seeking to participate in the Presidential Election conducted by the 1st respondent. This court in *MACAULAY v. R.Z.B OSTERREICH AKIENGESELL SCHAFT OF AUSTRIA* (2003) LPELR-1802(SC) held

*"It is elementary law that where a statute is clear, the duty of the Court is to give the clear provisions literal or ordinary interpretation. While Counsel may look out for favourable interpretation, the Court will stick to the plain words of the statute and interpret it to indicate the clear intention of the draftsman."*

*Per NIKI TOBI, JSC*



The approach of the court to ignore the grouse of the Appellant Petition and held same to be pre- election matter was to avoid the weighty issues of determining the question of whether the 3rd and 4th Respondents were *validly elected*' .

**F10.** On the effect of a perverse findings, as in this case, we rely on this court's decision in the case of **GONZEE (NIG) LTD v. NIGERIAN EDUCATIONAL RESEARCH & DEVELOPMENT COUNCIL & ORS (2005) LPELR-1332(SC)** wherein their Lordships held:

*"...I agree with the appellant's submission that the finding of the Court below (as well as all conclusions and orders emanating or flowing therefrom) are in my opinion perverse and deserve only to be set aside. Per SYLVESTER UMARU ONU, JSC (Pp 22 - 22 Paras A - C)*

On the whole, we respectfully submit that the court below misunderstood the case of the Appellant and thereby failed in its primary duty to determine the real questions submitted before it of whether 3<sup>rd</sup> and 4<sup>th</sup> Respondents were validly elected President and Vice-President of the Federal Republic of Nigeria. We humbly urge your noble Lordships to set aside the findings and conclusions arrived at by the lower court as same are perverse and did occasion a miscarriage of justice to the Appellant. We pray your Lordships to so hold and resolve this Issue 2 in favour of the Appellant and against the Respondents.

**G. ISSUE THREE**

*Whether the court below did not misunderstand and misinterpret the material provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), read in conjunction with the necessary sections of the Electoral Act, 2022 relating to the comprehensive contents of the qualifications and disqualifications mandatorily required of 3<sup>rd</sup> and 4<sup>th</sup> Respondents as to be validly declared elected as President and Vice President of the FRN? (Ground 8 & 9)*

G1. My noble Lords, it is our humble submission that the court below misinterpreted the intention of the material provision of the Constitution of the Federal Republic of Nigeria 1999 as amended when it held:

*"I am of the view that the above cited provision of the Constitution does not create additional qualifications or disqualifications for a candidate contesting for the office of President of Nigeria. Furthermore, Section 142 of the 1999 Constitution (sic) read along with Section 141 create the offices of President and Vice-President. Section 142(1) is a specific provision donating power to the President to nominate a person as his associate to occupy the office of the President. That is why Subsection 2 of Section 142 mandates that the requirements of qualification and disqualification attaching to the occupier of seat of President also applies to the holder of the office of Vice-President. It is therefore my view that Section 142(1) of the Constitution does not introduce the issue of nomination or sponsorship of a Vice-President so as to enlarge the scope of qualifications ... ( see Page 1851 of the RoA)*

It seems from the above highlighted judgment, that the court below in its bid to interpret the provisions of Section 142 of the Constitution, failed to appreciate the intendment of the of the drafters of the Constitution by trying to separate the qualifications of the 3<sup>rd</sup> Respondent from that of the 4<sup>th</sup> Respondent when they held that Section 142 of the Constitution does not create an additional qualification on the 3<sup>rd</sup> Respondent. In other words, this interpretation raises the question whether a Candidate can validly be elected the President of the Federal Republic of Nigeria without the mandatory appointment of a running mate as stipulated under the said section and S. 33 of the Electoral Act so as to become a validly nominated candidate as stipulated in S. 152 of the Electoral Act.

The use of the phrase "*a candidate for an election*" and "*be deemed validly nominated*" in the section above , literally entails that the said section does not apply to pre-election itself as the candidate referred to is one who has secured the nomination of his political party. That person is thereby mandated by the said

Section 142 of the Constitution to nominate **another candidate** in order to remain **“validly nominated for election”**. The qualifications of the 3rd and 4th Respondents are intertwined and the court below erred when it misinterpreted Section 142 of the Constitution FRN 1999 as amended as a pre- electoral provision.

**G2.** For further emphasis, Section 152 of Electoral Act, 2022 defined the word “candidate”

a person who has secured the nomination of the a political party to contest an election for any elective office.

Of course, **“who has secured the nomination ...”** means who has secured valid nomination, which under S. 139 and S. 239 it is only Court of Appeal can determine as per Petition presented pursuant to S. 130(1) & (2) (a) read together with S. 140 of the Electoral Act, 2022

The court below erred therein by replacing the carefully crafted word **“candidates”** as used in the said section with the open ended word **“person”**, thereby attempted to stray away from the original meaning of the section and further trivialize the mandatory requirement stipulated by Section 142 of the Constitution.

**G3. Section 33 of the Electoral Act, 2022** referred to a candidate as one whose name has being submitted to the 1st Respondent under Section 29 of the Electoral Act, 2022. The 5th Respondent’s name and particulars were submitted as the running mate of the 3rd Respondent under Section 29 of the Electoral Act, 2022. The failure of the Respondent to replace the 5th Respondent in-line with the provisions of S. 33 of the Electoral Act, 2022 consequently, lead to the question of the validity of the nomination of the 3rd Respondent having failed or refused to have duly nominated an associate under Section 142 of the Constitution.

The Hon. court below was in error, with the due respect when it concluded at **P. 1845 of the RoA:**

**“It should be noted upon a quick and careful perusal of the pleadings in the Petition that, the issue of disqualification of the 2<sup>nd</sup> Respondent rests solely on the issue of alleged invalid nomination of his running mate, to**

wit, the 3<sup>rd</sup> Respondent. The issue of invalid nomination is captured by paragraphs 18, 19, 20 and 21 of the Petition,” and at P. 1847 of RoA, that: “Considering the facts pleaded above, it is clear that, the claim of disqualification or non-qualification of the 3<sup>rd</sup> Respondent is centred solely on the invalid or double nomination of the 4<sup>th</sup> Respondent. However, it is the settled law that, the issue of nomination of a candidate at an election is a pre-election matter. Therefore, the issue of qualification or disqualification can only be ventilated on the grounds enumerated in sections 131 or 137 of the constitution.”

The above holding is perverse and inflicted miscarriage of justice against the Appellant.

From the foregoing, the lower court did not reckon with the averments in paragraph 28 (i) – (xi) particularly 28(v) of the Petition. In the light of the unapprised pleaded facts in paragraph 28(i) – (xi) of the Appellant’s Petition, we humbly submit, the Respondents were in clear breach of the Provision of section 33 of the Electoral Act, 2022. The failure or refusal of the court below to appraise the facts pleaded by Appellant amounts denial of fair hearing against the Appellant and the judgment ought to be set aside and we so plead.

Had the court below weighed the facts presented by the Appellant, it would have reached the interpretation of this Hon. Court in the case of Dr. Yahaya Abdullahi v. Sami Argwrgu & 2 ors (2023) 11 NWLR (pt.1895) P.289 at 310, paras E-H, allowing the appeal His Lordship, late Hon. Justice Nweze, J.S.C, (may his soul rest in peace) held:-

“It follows then, from a literal interpretation of the above provisions, only the name of the winner of a primary election., can be submitted to the third respondent. Thus, upon the withdrawal of the winner of the primary election held on May 24, 2022, there was no candidate to be sponsored by the second respondent. The first respondent could not, therefore, be nominated by the second respondent. The first respondent

**without a valid primary election, as this was the statutory mode of election. The position of a runner up is not recognized under the Act, there by rendering it impossible for the first respondent's name to have been submitted to the third respondent. In compliance with the dictate of this provision, the second respondent after the winner of its primary election of May 24, 2022, withdrew, conducted another primary election on June 9, 2022, whereof the appellant emerged winner."**

In paragraph 28 (vi) of its Petition, the Appellant averred, that:-

**"The 2<sup>nd</sup> Respondent did not conduct another Primary election for the purpose of producing another Presidential candidate within the time frame stipulated by the 1<sup>st</sup> Respondent for nomination of candidates for the 2023 Presidential Elections."**

The averments in paragraphs 7, 8, 9, 12 and 25-28(i) – (xii) of the Petition properly understood, bother on the validity of the candidature of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, their "nomination" by their party and impacts on their being validly elected as President and Vice President respectively. which are issues within the scope of the lower court jurisdiction, under sections 139(a) and 239 (1) of the Constitution. To understand the cause of action on the Petition, Appellant further respectfully refer to the particulars of non-qualification pleaded at paragraphs 18 – 25 of the Petition and section 33 of the Electoral Act, 2022.

By the provision of section 131 (c) of the Constitution and section 33 of the Electoral Act valid membership of and sponsorship by a political party is a constitutional criterion ab-initio for qualification to run for office of the President of the FRN and a question of constitutional importance that can be raised at post election court such as the Court of Appeal in this case.

**G4.** The Supreme Court further held in OKOCHA SAMUEL OST V. ACCORD PARTY (2016) LPEER-41 388 (SC),

*“It is certain that one Section of the Constitution cannot derogate from or override the provision of another section of the same constitution. The Supremacy of the Constitution in Section I therefore is shared and enjoyed by all the Sections including the amended sections of the constitution. See Nguta, JSC in Opara & ANOR V. AMADI & ANOR (2013) 12 NWLR (PT 1369) 512.*

Unfortunately, the court below decided to treat the provisions of the vital S. 142 of the Constitution as a non issue.

In APC VS. KARFI (2018) 6 NWLR (PT. 1616) PAGE 479 at PAGE 524, Paragraphs C-E, the Supreme Court reemphasized that

*“where the nomination of a candidate by a Political Party is invalid, the Political Party would be deemed to have fielded no candidate for the election, in this case, the appellant has not disputed that the Ist Petitioner was disqualified from participating in the election, and discontinued from the trial of the petition. The law does not permit the appellant as a Political Party to challenge an election in which it did not validly participate in, by not fielding a validly elected candidate”*

The court below ought to have nullified the declaration and return of 3<sup>rd</sup> and 4<sup>th</sup> Respondents wrongly made by the 1st Respondent. See WAMBAI v. DONATUS & ORS (2014) LPELR-23303(SC) where the court held:

*“Where the election tribunal comes to the conclusion that the candidate was wrongly substituted and that the candidate who contested the election consequently was not qualified to so contest, it has the power under section 140(1) of the said Electoral Act, 2010, as amended to nullify the election.”*

G5. It is our submission that on the strength of the principle in the case of LAFIA LOCAL GOVT v. EXECUTIVE GOVT NASARAWA STATE & ORS (2012) LPELR-20602(SC) which warns the court from interpreting constitutional provisions in isolation, the court below attempt to isolated the provision of section

142 of the Constitution from the qualifications and disqualification Section 131 and 137 of the Constitution was erroneous and by replacing the word 'candidate' with "**person**", the court acted without jurisdiction and defeated the purpose of the provisions of the Constitution as well as the relevant sections of the Electoral Act, 2022, see also S. 139 and S. 239 of the Constitution.

Certainly, the lower court did not avert its mind to the above S. 139 and S. 239 of the Constitution which empower it to inquire into the question of whether any person has been validly elected to the office of President and Vice-President of Nigeria. Both sections 139 and 239 of the Constitution are specific provisions donating original jurisdiction of the lower court to entertain and determine questions as to whether a person has been validly elected to the office of President and Vice-President of Nigerian. We commend to your noble Lordships the decision of this Hon court in the case of **BUHARI v. INEC & ORS (2008) LPELR-814(SC)** wherein the law on the point was espoused in unequivocal terms thus:

*"... It would appear that the general provision of Section 145(1)(c) of the Electoral Act can be assimilated into Section 239(1) of the Constitution. ... Although Section 239 of the Constitution mainly provides for the jurisdiction of the Court of Appeal, it will be wrong to ignore the clear provision of Section 239(1)(a) which vests in the Court the original jurisdiction to determine any question as to whether "any person has been validly elected to the Office of President or Vice-President under the Constitution." Per NIKI TOBI, JSC (Pp 50 - 51 Paras B - D) (underlining ours)*

Therefore, we submit that the findings and conclusion of the learned lower court are perverse and the effect of such findings are that same are liable to be set aside. We rely on the decision of this Hon Court in the case of **IBRAHIM v. APC & ORS (2019) LPELR-48995(SC)** wherein the Hon. Court while dealing with a similar issue held:

*"Since this erroneous finding was the fulcrum of the lower Court's decision, it is therefore my firm view that the judgment of the lower Court delivered on 11th April, 2019 deserves to be, and it is hereby, set aside. Consequently, the decision of the trial Court (M. B. Idris, J) including all the orders made therein, delivered on 13th February, 2019 in the suit No. FCT/HC/040/2018 is hereby restored"*

In PDP & Anor v. INEC & Ors (1999) LPELR, 24856 (SC) this Hon. Court held:

*"There was a marriage between the two which remained inseparable until they were both sworn in to their respective offices..... And as there cannot be a valid nomination of a governorship candidate without his nominating an associate to run with him..... The interdependence of the fortunes of a Governor elect and his Deputy Governor elect is highlighted by the case of *Tafawa Balewa v. Muazu & others* (supra) cited to us by Chief Chigbue. There the Deputy-Governor elect was held to be disqualified from standing for election. The factual situation that thereby arose was that the Governor-elect stood for election without a qualified running mate. This affected too the qualification of the Governor elect. The Court of Appeal, rightly in my view, ordered a fresh election. I would think that the reverse situation would lead also to a fresh election, notwithstanding that the act of "disqualification" of the Governor elect took place after and not before, the election." (DISSENTING) Per MICHAEL EKUNDAYO OGUNDARE, JSC.*

What more, we submit that a dispassionate appraisal of the relevant provisions of the Constitution as well as the Electoral vis-a-viz the facts of this case will lead to that one and only irresistible conclusion that, 3<sup>rd</sup> and 4<sup>th</sup> Respondents were not validly elected under the Constitution of the FRN, 1999 (as amended), we respectfully invite the Hon court to so hold and to resolve this Issue 3 in favour of the Appellant and against the Respondents.



## **H. CONCLUSION**

In the Light of the whole circumstance of this appeal and the arguments herein canvassed, we pray your noble Lordships to allow this appeal and set aside the Judgment of the Hon. court below delivered on the 6th September, 2023 for being perverse and having occasioned a miscarriage of justice against the Appellant. We humbly pray your noble Lords to nullify the election under S. 136 (1) of the Electoral Act, 2022.

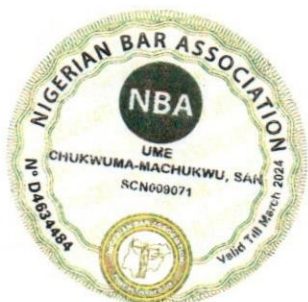
## **I. RELIEFS SOUGHT**


- i. An Order of the Hon. Court allowing this appeal.
- ii. An Order of the Hon. Court setting aside the decisions of the lower court.
- iii. An Order of the Hon. Court granting the reliefs sought in the Appellant's Petition at the court below as modified in the light of the Appellant's Appeal:
  - a) The 3rd Respondent was not qualified to contest as the Presidential Candidate of the and Respondent as 25th February, 2023, when the Presidential Election was conducted by the 1st Respondent ... having violated the provisions of section 142 (1) of the Constitution ....
  - b) A DECLARATION that the return of the 3rd Respondent by the 1<sup>o</sup> Respondent as the President elect of the Federal Republic of Nigeria is null, void and of no legal effect whatsoever, the 3rd Respondent having violated the provisions of section 142 (1) of the Constitution .... and the 4th Respondent having violated the provision of .... Electoral Act, 2022.
  - c) .....
  - d) The declaration and return of the 3rd Respondent by the 1st Respondent on 1st March, 2023, as the President-elect of the Federal Republic of Nigeria is invalid by reason of noncompliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999; and the Electoral Act, 2022.
  - e) A DECLARATION that having regard to the joint-ticket principle enshrined in Section 142 (1) of the Constitution ....., the withdrawal of

the 5th Respondent as the Vice-Presidential candidate of the 2nd Respondent, by operation of law amounted to automatic withdrawal and invalidation of the candidature of the 3rd Respondent as the Presidential Candidate ....

- f) A DECLARATION that arising from the invalidity of the 3rd Respondent's nomination, the 1st Respondent ought not to have included the name, or the abbreviation of the name of the logo of the 2nd Respondent in the ballot papers ....
- g) .....
- h) AN ORDER NULLIFYING and VOIDING all the votes scored by the 3rd Respondent in the Presidential Election conducted by the 1st Respondent on 25th February, 2023, in view of his non-qualification as a candidate of the 2nd Respondent.
- i) UPON the grant of Prayer ....., AN ORDER NULLIFYING AND/OR SETTING ASIDE the- return/declaration of the 3rd Respondent as the winner of the Election conducted by the 1st Respondent for the Office of the President .... on the 25th day of February, 2023, same having been made in violation of the provisions of Section 142 (1) of the Constitution .....
- J) UPON the grant of prayers (V) and (Vi) above, and in the absence of the 3rd Respondent's participation in the Presidential Election held on 25th February, 2023, pursuant to S. 136 (2) of the Electoral Act, .....

Dated this 2<sup>nd</sup> day of October, 2023.



  
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## LIST OF AUTHORIES

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3. BACK LADO & ANOR V. MASARI & ORS (2019) LPELR-55596(SC)
4. FAYEMI V. ONI & ORS (2019) LPELR-49291(SC),
5. WAMBAI V. DONATUS & ORS (2014) LPELR-23303(SC)
6. KURE V. COP (2020) LPELR-49378(SC).
7. AG KANO STATE V. AG FEDERATION (2007) LPELR-618(SC)
8. EHIDIMHEN V. AHMADU MUSA & ANOR. (2000) LPELR-1051 (SC) P. 46, PARAGRAPH A.
9. JEGEDE V. INEC (2021) LPELR-55481 SC.
10. IN APP V. OBASEKI & ORS (2021) LPELR-58374(SC)
11. DURU V. FRN (2013) LPELR-19930(SC)
12. BUHARI V. INEC & ORS (2008) LPELR-814(SC)
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15. A. P. C. V. KARFI (2018) 6 NWLR (PT. 1616) 479
16. WAMBAI V. DONATUS & ORS (2014) LPELR-23303(SC)
17. WADA & ORS V. BELLO & ORS (2016) LPELR-47015(SC)
18. FAYEMI V. ONI & ORS (2019) LPELR-49291(SC)
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21. GONZEE (NIG) LTD V. NIGERIAN EDUCATIONAL RESEARCH & DEVELOPMENT COUNCIL & ORS (2005) LPELR-1332(SC)

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23. NGUTA, JSC IN OPARA & ANOR V. AMADI & ANOR (2013) 12 NWLR (PT 1369) 512.
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25. WAMBAI V. DONATUS & ORS (2014) LPELR-23303(SC)
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27. IBRAHIM V. APC & ORS (2019) LPELR-48995(SC)
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### STATUS

1. SECTION 134 OF THE ELECTORAL ACT 2022
2. SECTION 133 OF THE ELECTORAL ACT 2022:
3. SECTION 142(1) OF THE CONSTITUTION OF THE FRN, 1999 AS AMENDED
4. SECTION 131 (C);
5. SECTION 33 OF THE ELECTORAL ACT 2022,
6. SECTION 285(9) OR 285(14) OF THE CONSTITUTION OF THE FRN, 1999 (AS AMENDED)
8. SECTIONS 139 (A) (I) AND 239 (1)(A) OF THE CONSTITUTION
9. S. 130, 137, 139, 142 AND 239 OF THE CONSTITUTION OF FRN, 1999 AS AMENDED AS WELL AS S. 29, 31, 33 AND 34 OF THE ELECTORAL ACT 2022
10. SECTIONS 130(1) & (2) AND 140, OF THE ELECTORAL ACT 2022