

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 9TH DAY OF JUNE, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 12, MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/774/2021

BETWEEN

SAMUEL ANYAKORAH

(For himself and on behalf of all Local Government Chairmen and ward Executives, who emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017, under the supervision of Sir Chukwudi Umeaba, as Acting Chairman, State Caretaker Committee)

CLAIMANT

AND

1. PEOPLES DEMOCRATIC PARTY (PDP)

2. CHIEF NDUBISI NWOBU

3. BARR. UCHENNA OBIORA

*(For himself and on behalf of the 21
LGA Chairmen of PDP in Anambra State)*

JUDGMENT

From facts deposed in support of the Originating Summons filed to commence the instant action on 12/03/2021 and amended upon joinder of the 2nd

and 3rd Defendants, by Court order of 22/03/2021 and filed on 23/03/2021, the Claimant claimed to be a card-carrying member of the 1st Defendant, Peoples Democratic Party (PDP) and at the material time the Chairman of the Ihiala Local Government Area of the party Executive Committee, as inaugurated by the Vice-Chairman of the South East of the party, **Chief Austin Umahi**. He also claims to commence the instant action on behalf of all Local Government Chairmen and Ward Executives, who emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017, under the supervision of **Sir Chukwudi Umeaba**, as Acting Chairman, State Caretaker Committee).

The Claimant's case is that on 06/03/2021, the 1st Defendant conducted its South-East Zonal Congress at Michael Okpara Square, Enugu, Enugu State, under the supervision of **Dr. Ibrahim Umar**, the Chief of Staff

to the National Chairman, who doubled as the Chairmen of the Electoral Panel; that the Delegates List from Anambra State as captured in the Brochure issued for the purpose of the Congress wrongly contained the name of the 2nd Defendant – **Sir Ndubuisi Nwobu, KSP** – as the Chairman of PDP, Anambra State Chapter; and that other persons were also wrongly listed as Exco members, Local Government Chairmen and National Delegates of the PDP, Anambra State Chapter, in the said Brochure.

The Claimant contended that there has not been any lawfully authorized or conducted State Congress of the 1st Defendant in Anambra State since 2017 when **Prof. A. B. C. Nwosu**, the then *Chairman, Caretaker Committee* of the 1st Defendant in Anambra State resigned his position and **Sir Chukwudi Umeaba** was appointed to replace him by letter dated 21/11/2017, written by **High Chief Senator Ben Ndi**

Obi, *Secretary, National Caretaker Committee of the 1st Defendant.*

The Claimant's case is further that in pursuance of **Sir Chukwudi Umeaba's** assumption of office as the party's Caretaker Committee Chairman in Anambra State, Ward and Local Government Congresses were organized and held on 28/11/2017 and 01/12/2017, under the approval of the National Working Committee of the party; that at the end, after undergoing appeal processes, new Ward and Local Government Executives of the PDP in Anambra State emerged and that by letter of 05/09/2018, the then National Secretary of the PDP, **Senator Umar Ibrahim Tauri, CON**, mandated the then National Vice-Chairman (South East) of PDP, **Chief Austin Umahi**, to inaugurate the Ward and Local Government elected officers of the party.

The Claimant's case is further that pursuant to his mandate as the Chairman, Caretaker Committee of the PDP in Anambra State, **Sir Umeaba** scheduled State Congress of the party for 04/12/2017, which Congress he had to suspend in view of an attempt by some persons to use fake Delegates List by the State Congress Electoral Committee led by **Prof. Osita Ogbu**; that owing to the said botched State Congress, that only Statutory Delegates from Anambra State attended that National Convention of the party on 10/12/2017, because as at then there were no existing State delegates; that, pending the conduct of a proper State Congress, the then National Vice Chairman (South East) of the party, **Chief Austin Umahi**, on 03/09/2018, inaugurated the Anambra State Caretaker Committee, at which **Chief Ndubisi Nwobu** (2nd Defendant), was appointed as the Acting State Chairman of the party.

The Claimant's case is further that apart from the Notice sent by the Caretaker Committee Chairman to the 1st Defendant that the intended State Congress was suspended, no other letter has been sent to the 1st Defendant, whether to suggest that a State Congress was later held or that a List of State Delegates has emerged; that with the list of Delegates for Anambra State paraded in the Brochure issued for the conduct of the South-East Congress of the party which was held on 06/03/2021, it was apparent that the 1st Defendant has refused to accept, regard, recognize, cooperate and work with the party officers and delegates that emerged from the respective Congresses conducted on 28/11/2017 and 01/12/2017 and validated by the respective Appeal Panels; that despite being notified of the botched State Congress originally slated for 04/12/2017, the 1st Defendant still proceeded to recognize and deal

with another group of persons parading themselves to be the State officers of the party.

The Claimant contends that in the absence of any lawfully authorized State Congress, that the persons listed in the aforementioned Brochure used at the said South East Congress of the party held on 06/03/2021, as State Chairman, Exco members, Local Government Chairmen and National delegates of the PDP in Anambra State, could not be said to have validly occupied those positions.

It was on the basis of these articulated facts that the Claimant has commenced the instant action, as aforementioned, by which he sought the determination of the sole question set out as follows:

Considering Article 8(x), (xi), (xiii), (xv), (xvi), (xvii), (xviii), (xix) of the PDP Electoral Guidelines for Primary Election; Sections 12, 13, 14 & 15 of the Constitution of the Peoples' Democratic Party

(amended in 2017), whether it was right for the 1st Defendant, during its South East Zonal Congress of 6th March, 2021, to arbitrarily publish in its brochure, the name of a State Chairman, Exco members, Local Government Chairmen and National Delegates, without recourse to the use of and adoption of the extant List of already inaugurated Party Officers and Delegates that emerged from Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017 (validated by the Senator Grace Bent Ward Congress Appeal Panel Report and Barrister Ukpai Ukairo Local Government Appeal Panel Report), under the supervision of Sir Chukwudi Umeaba, as Acting Chairman, State Caretaker Committee.

Upon the determination of this sole question, the Claimant seeks against the Defendants, the reliefs set out as follows:

- 1. A declaration that by virtue of Article 2 of the Constitution of the Peoples' Democratic Party***

(amended in 2017), the said Constitution is supreme and it has a binding force on all members and organs of the Peoples' Democratic Party, and any action or step taken contrary to the relevant provisions of the Constitution is unlawful, illegal, null, void and of no effect whatsoever.

- 2. A declaration that it is unlawful for the 1st Defendant, whether during its South-East Zonal Congress of 6th March, 2021, or at any time to adopt or publish the name of a State Chairman, alongside persons purporting to be his Exco members, Local Government Chairmen and National Delegates, without recourse to the extant List of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017 validated by the***

Senator Grace Bent Ward Congress Appeal Panel Report and barrister Ukpai Ukairo Local Government Appeal Panel Report, under the supervision of Sir Chukwudi Umeaba, as Acting Chairman, State Caretaker Committee.

- 3. A declaration that the arbitrary imposition by the 1st defendant on its members, of a State Chairman, Exco members, Local Government Chairmen and National Delegates, as contained at Pages 14, 15 & 16 of the Defendant's Brochure for the South-East Zonal Congress of 6th March, 2021, is ultra vires its powers, unlawful, invalid, void and of no effect whatsoever.**
- 4. An Order nullifying and setting aside all congresses, designations or appointments made by the 1st Defendant with respect to the State Chairman for PDP Anambra State Chapter, Exco**

Members, Local Government Chairmen, National Delegates, as contained at Pages 14, 15 & 16 of the South-East Zonal Congress Brochure of 6th March, 20121, for being invalid, unlawful and ultra vires the powers of the Defendant, the same not being in alignment with the List of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017, validated by the Senator Grace Bent Ward Congress Appeal Panel Report and Barrister Ukpai Ukairo Local Government Appeal Panel Report, under the supervision of Sir Chukwudi Umeaba, as Acting Chairman, State caretaker Committee.

- 5. An Order compelling the 1st Defendant, during the conduct of all elections in Anambra State, to henceforth adopt, employ recognize and use**

only the list of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP conducted on 28th November, 2017 and 1st December, 2017 [validated by the Senator Grace Bent Ward Congress Appeal Pane Report and Barrister Ukpai Ukairo Local Government Appeal panel Report], under the supervision of Sir Chukwudi Umeaba, who shall continue to act, for all intents and purposes, as PDP Chairman, Anambra State Caretaker Committee.

- 6. An Order of perpetual injunction restraining the 1st Defendant, whether by itself, cronies, allies or representatives, from further recognizing, dealing with or parading any person or group of persons listed at pages 14, 15 & 16 of the Brochure for the South-East Zonal Congress of 6th March 2021, either as State Chairman, Exco***

member, Local Government Area Chairman or National Delegate of the Peoples Democratic Party, Anambra State Chapter, except the list of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP conducted on 28th November, 2017 and 1st December, 2017 [validated by the Senator Grace Bent Ward Congress Appeal Panel Report and Barrister Ukpai Ukairo Local Government Appeal Panel Report], under the supervision of Sir Chukwudi Umeaba, who shall continue to act, for all intents and purposes, as PDP Chairman, Anambra State Caretaker Committee.

The Amended Originating Summons is supported by a main Affidavit of 21 paragraphs deposed to by the Claimant and to which a gamut of documents were annexed as exhibits. In further support of his Amended Originating Summons and in response to the Counter

Affidavits filed by the respective Defendants, the Claimant further filed the following processes:

- Claimant's Further Affidavit filed on 30/03/2021 in reply to the 1st Defendant's Counter Affidavit of 25/03/2021;
- Claimant's Further Affidavit filed on 30/03/2021, in reply to the 2nd Defendant's Counter-Affidavit of 26/03/2021;
- Claimant's Further and Better Affidavit filed on 30/03/2021, in reply to the 3rd Defendant's Counter Affidavit of 25/03/2021.

The respective Defendants in turn, contested the Claimant's claim. The 1st Defendant filed, on 25/03/2021, a Counter Affidavit of 28 paragraphs to which a host of documents were attached, in opposition to the Claimant's Amended Originating Summons.

The 2nd Defendant filed his Counter Affidavit, to which a number of documents were annexed, against the Claimant's Summons on 26/03/2021.

The 3rd Defendant in turn deposed to a Counter Affidavit on 25/03/2021, to which he equally attached a host of documents in opposition to the Claimant's Summons.

All the Affidavits were subjoined with written submissions of learned counsel for the respective parties.

In the meantime, the three respective Defendants filed Notices of Preliminary Objection to challenge the competence of this suit and the Court's jurisdiction to entertain the same.

In its Notice of Objection filed on 25/03/2021, the 1st Defendant raised the grounds of objection set out as follows:

1. *The High Court of the Federal Capital Territory lacks the territorial jurisdiction to adjudicate on the subject matter of this suit which touches on and concerns the Defendant's congresses which took place in Anambra State.*
2. *The claims in this matter border (sic-bother) on the internal affairs of a political party and do not fall within the special jurisdiction of this Court conferred by Section 87(9) of the Electoral Act, 2010 (as amended) and therefore this Honourable Court does not have the jurisdiction to entertain the same.*

The grounds upon which the 2nd Defendant brought his Notice of Preliminary Objection, filed on 26/03/2021, are set out as follows:

1. *That this suit as it concerns the 2nd Defendant is incompetent as the issues canvassed by the Claimant herein as it deals with Chairmanship*

position of the 1st Defendant have been decided by the High Court of the FCT presided over by Hon. Justice O. A. Musa in suit No: FCT/HC/CV/0497/2017 and the 2nd Defendant will rely on the principle of Res Judicata in stating that it rubs this Honourable Court of the requisite jurisdiction to hear and entertain this matter.

- 2. That this suit is an abuse of court process as there is a similar suit pending at the Federal High Court over and in respect of similar issues.*
- 3. That there is an existing appeal over and in respect of similar issues before this Court currently in the Supreme Court and by Order 18 Rule 11 of the Supreme Court Rules, this suit is incompetent.*
- 4. That based on the Practice Direction issued by the Hon. Chief Judge of the FCT made pursuant*

to section 259 of the Constitution, all political cases originating from component States of the Federation, and were filed before the FCT High Court should be transferred back to the respective States where such cases originated, and therefore this Court lacks the vires to adjudicate on this suit.

The 3rd Defendant in turn predicated his preliminary objection, filed on 25/03/2021, on six (6) grounds, set out as follows:

- 1. That the High Court of the Federal Capital Territory lacks territorial jurisdiction to adjudicate over the subject matter of this suit which touches on the Congresses and functions of the Claimant in Anambra State and the South East Zonal Congress conducted in Enugu, Enugu State.*

2. *The matter borders (sic-bothers) on the internal affairs of PDP as a political party and does not fall within the special jurisdiction conferred by section 87(9) of the Electoral Act, 2010 as amended.*
3. *The suit amounts to forum shopping and a violation of the new Practice Direction that operates in all High Courts within the jurisdiction of FCT to avoid conflicting judgments across the country.*
4. *The subject matter borders (sic-bothers) on a completed action.*
5. *The suit is a contravention of section 285(9) and 14 of the 1999 Constitution as amended having not been filed within 14 days when the cause of action arose in 2017 and 2018 respectively.*

6. *The Claimant failed to exhaust all internal mechanism processes as enshrined in section 60(1) & (2) and 61(1) & (2) of the PDP Constitution 2017 as amended.*

Learned counsel for the respective Objectors filed written submissions to support their respective contentions. I note that the respective 2nd and 3rd Defendants/Objectors filed Affidavits in support of their respective objections.

The Claimant in turn also filed Counter Affidavits and written address to oppose the respective objections as the case may be.

The objections were consolidated with the substantive Amended Originating Summons and heard altogether on 31/03/2021.

I had proceeded to consider the totality of the respective objections and the grounds upon which they have been raised. I had also carefully considered,

reviewed and taken due benefit of the totality of the written and oral submissions canvassed in support of the issues raised by learned counsel for the respective Objectors on the one hand; and that of the Claimant's learned counsel, in opposition. I shall however permit myself to pinpoint learned counsel's specific submissions as I consider needful in the course of this ruling.

IS THE HIGH COURT OF THE FCT VESTED WITH TERRITORIAL JURISDICTION TO ENTERTAIN THIS SUIT?

The issue as to whether or not the High Court of the FCT is vested with jurisdiction to entertain the instant action is covered by Ground (1) of the 1st Defendant's objection; and Ground (1) of the 2nd Defendant's objection. Closely related to this issue and to be considered alongside thereto is Ground (4) of the 2nd Defendant's Objection and Ground (3) of the 3rd

Defendant's Objection as to whether the instant action is not a violation of the Practice Direction issued by the Chief Judge of the High Court of the FCT enjoining that all political matters originating from other components States of the Federation be transferred to such States where such cases originated from.

Now, the pre-eminent status of jurisdiction in the scheme of legal proceedings is well ingrained in our jurisprudence. One would therefore be restating the obvious that jurisdiction is the first test in the legal authority of a Court or tribunal and its absence disqualifies the Court or tribunal from determining the substantive issues submitted to it for adjudication. This is so because jurisdiction is the very lifeline of judicial power without which any proceedings would constitute a nullity however well conducted. Indeed, jurisdiction is everything: without it a Court has no power to take one step in the proceedings beyond merely declaring

that it lacks jurisdiction. See Madukolu Vs. Nkemdilim [1962] 1 All NLR 587; Rossek Vs. A.C.B. Limited [1993] 8 NWLR (Pt. 312) 382.

In Oloba Vs. Akereja [1988] 3 NWLR (Pt. 84) 508 @ 527, **Oputa, JSC** highlighted the steps a Court should take when confronted with a jurisdictional challenge as follows:

“The first step is to look at the jurisdiction conferred by statute on the...court. The second step is to look at the claims before that court. The third and final step is to examine the claims against the jurisdiction to find out whether those claims fall within or without the jurisdiction of the...court.”

Now, the respective 1st and 3rd Defendants have argued, on the narrow compass that the High Court of the FCT lacked territorial jurisdiction to entertain the Claimant’ action instant. In the authority of Tukur Vs. Government of Gongola State [1989] 4 NWLR (Pt.

117) 517, cited by the 1st Defendant's learned counsel, the Supreme Court underscored the importance of the aspect of the territorial jurisdiction of a Court to entertain a matter, when it held as follows:

“... the first is the legal capacity, the power and authority of a Court to hear and determine a judicial proceeding - in the sense that it has the right and power to adjudicate concerning the particular subject-matter in controversy. The second is the geographical area in which and over which the legal jurisdiction of the Court can be exercised. This area of authority is called the area of geographical jurisdiction or venue. Both are important when one is considering the concept of jurisdiction. And both must co-exist in any particular case to complete the circuit of jurisdiction.”

See also the authority of Onyeama Vs. Oputa [1987] 3 NWLR (Pt. 60) 259; Diaplong Vs. Turaki [2003] 15 NWLR (Pt. 843) 310.

It does not seem to me that anyone is left in doubt that the territorial jurisdiction of the FCT High Court is severely confined within the geographical boundaries of the Federal Capital Territory as outlined and delineated in **Part II** of the **1st Schedule** to the **Constitution** of the Federal Republic of Nigeria, **1999 (as amended)**, pursuant to the provision of **s. 299** of the **Constitution (as amended)**. This position of the law was also captured beyond conjecture by the Supreme Court in Mailantarki Vs. Tongo [2018] 6 NWLR (Pt. 1614) 69, cited by the 1st Defendant's learned counsel, which followed its earlier decision in Dalhatu Vs. Turaki [1988] 1 NWLR (Pt. 117) 39, and where, in his illuminating leading judgment, **Eko, JSC**, held as follows:

“The law is settled that the jurisdiction of a Court of record, in its broad and substantive sense, cannot be conferred by the Rules of Court. The Rules of Court are only made, pursuant to the powers conferred on the heads of Courts by the Constitution to make Rules, to regulate practice and procedure in their respective Courts. The Rules they make are only to regulate the practice and procedure in their respective Courts. The Rules do not confer jurisdiction on the Court to entertain causes or matters. Rather, the jurisdiction of Courts in Nigeria is either conferred or vested by the Constitution or the enabling statute establishing the Court. This is my understanding of the dictum of Obaseki, JSC in Clement Vs. Iwuanyanwu [1989] 4 SC (Pt. II) 89; [1989] NWLR (Pt. 107) 39, on the question whether Rules of Court confer substantive jurisdiction on the Court they relate to....

It is my considered view that the jurisdiction vested in the FCT High Court by Section 257(1) of the 1999 Constitution to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue is only to the extent of the disputes that arise within the territory of the Federal Capital Territory, Abuja. ...

No Court in any State, including the FCT High Court, has extra territorial jurisdiction. This Court had earlier categorically re-stated the law on this in Dalhatu Vs. Turaki (supra), where it was stated, with all clarity, that because the 1999 Constitution, particularly Section 2(2) thereof, declares that Nigeria is a Federation consisting of States and the Federal Capital Territory, Abuja, each State of the Federation is independent of the other and the jurisdiction of each State is limited to matters arising in the State. The Judges of the FCT High Court were more than ever before or more than the Judges of

other State High Courts, admonished to heed the words of wisdom put across to them by Ogundare, JSC, pages 339 - 340 in Dalhatu Vs. Turaki (supra), to wit:

“I have taken pains to discuss (in) this judgment on territorial jurisdiction of a Court in view of recent developments whereby litigants rather than suing in the proper Courts come to the High Court of the Federal Capital Territory, Abuja. I think their Lordships of the High Court of the Federal Capital Territory ought to be circumspect before deciding whether or not it is wise and correct to exercise jurisdiction in the Capital Territory. Their Court, unlike the Federal High Court, has jurisdiction only in matters arising out of the Federal Capital Territory. Abuja.”

The case of Rivers State Government Vs. Specialist Konsult [2005] 7 NWLR (Pt. 923) 145, further reaffirms the proposition that a Court in one State of

the Nigerian federation (including the FCT) is destitute of jurisdiction to hear and determine a matter which falls within the exclusive jurisdiction of another State. See also All Progressives Congress Vs. Chief Ikechi Emenike [2019] LPELR (CA).

Going further, in determining whether or not a Court is vested with territorial jurisdiction to entertain a suit, I reckon that it is equally apposite to situate the cause of action in the suit. Indeed it is an understanding of the cause of action that gives an insight as to whether or not a suit is within a Court's territorial jurisdictional boundaries.

The concept of cause of action is perhaps well too known for anyone to be confused as to its purport. Cause of action has been severally defined as the fact or facts which establishes or gives rise to a right of action; or the factual situation which gives a person a right to judicial relief. See Thomas Vs. Olufosoye

[1986] 1 NWLR (Pt. 18) 669; Egbe Vs. Adefarasin
[1987] 1 NWLR (Pt. 47) 1 @ 20.

In other words, cause of action basically relates to questions as to the civil rights and obligations of a claimant as raised in his claim for determination as against the defendant. In Bello Vs. A.G. Oyo State [1986] 5 NWLR (Pt. 45) 828 @ 876 A - B, the Supreme Court elucidated on the meaning of cause of action when it held, per **Karibi-Whyte, JSC**, as follows:

“I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other words, the factual situation

relied upon must constitute the essential ingredients of an enforceable right or claim.”

Now, having been armed with a proper understanding of the dynamics of territorial jurisdiction in the scheme of the exercise of Court’s powers to entertain an action; and the confines of the concept of cause of action; the next inquiry is to find the factual situation in the present suit, upon which the Claimant has formulated a sole question for determination and consequently claimed reliefs.

To start with, my understanding of the question posed by the Claimant for resolution in the substantive suit is that he requires the Court’s determination of the point as to whether or not the 1st Defendant has not violated certain provisions of its Electoral Guidelines for Primary Elections and its Constitution as it relates to the conduct of its South East Zonal Congress of 6th March, 2021, when it refused to recognize and make use of

and adopt the purported authentic List of Delegates for Anambra State.

By my further understanding, and going by the reliefs claimed by the Claimant, what the Claimant frowns at is not the outcome of the said South East Congress, held in Enugu, on 6th March, 2021, but the conduct of the 1st Defendant at the said Congress. As such, it is with respect to the conduct of the 1st Defendant, in allegedly violating the Constitution of the party, at the said Congress, that the Claimant has sought declaratory reliefs upon.

I also agree with the submissions of the Claimant's learned counsel in this regard, that the fulcrum of the Claimant's claim, is not necessarily about the said South East Congress of 6th March, 2021, but the actions of the 1st Defendant, which were consummated by the publication of the Brochure used at the said

Congress, containing the purported unauthorized List of Delegates from Anambra State.

The Claimant further seeks the intervention of the Court in compelling the 1st Defendant to uphold the purported authentic List of Delegates from Anambra State as against the List used during the South East Congress in subsequent elections in which the 1st Defendant is involved in Anambra State.

On the basis of the foregoing summation of what this Court considers to be the grievances of the Claimant in the present suit, it is not difficult to arrive at the determination that this Court is invested with jurisdiction to determine this suit. It must be seen that the focus of the Claimant is not so much on what took place physically at the South East Congress of the 1st Defendant in Enugu on 6th March, 2021, but so much on the process orchestrated by the 1st Defendant for the conduct of the Congress.

In my opinion, the issues as to the conduct of or the process adopted by the 1st Defendant, in alleged violation of its Constitution, have no territorial boundaries; in so far as the cause of action itself is such that this Court, by s. **257(1)** of the **Constitution** is invested with jurisdiction to adjudicate upon. I so hold.

What is more, the 1st Defendant, which is the alleged principal culprit of the violations complained of by the Claimant, through its National Officers, is eminently resident in the Federal Capital Territory. It is my further view, in that regard, that the Claimant is not precluded from instituting the instant suit in this Court; just as he is equally at liberty to institute the same in Anambra State if he so wished. I so hold.

On a final note on this point, it is pertinent to reiterate the well known principle that each case is decided on its peculiar facts and circumstances. This Court is no doubt mindful of the gamut of authorities cited and

relied upon by the respective learned counsel of the Defendants/Objectors on the issues of territorial jurisdiction, some of which had been copiously captured in the foregoing. However, it must be appreciated that those cases were decided on their peculiar facts and circumstances, which were apparently not on all fours with the facts and circumstances of the case at hand. For that reason, I must hold, with respect, that apart from the general principles set down in those authorities, the peculiarity of the instant case makes them inapplicable. I so hold. See The Administrators & Executors of the Estate of Abacha Vs. Eke-Spiff [2009] 7 NWLR 97(SC); Emeka Vs. Okadigbo [2012] LPELR-9338(SC).

ON HIGH COURT OF FCT PRACTICE DIRECTIONS

This takes me quickly to the issue of as to whether the filing of the instant action in this Court violates the

Practice Directions issued by the Hon. the Chief Judge of the High Court of FCT with respect to political cases.

The 3rd Defendant/Objector made reference to Practice Direction on Political Cases issued by Hon. **Justice I. U. Bello**, Chief Judge, FCT (as he then was), in pursuance of powers derived from the provision of **s. 259** of the **Constitution** and pursuant to the provision of **Order 41 Rule 6** of the **Rules** of this Court.

The provision of **s. 259** of the **Constitution** empowers the Chief Judge of the FCT to make rules for regulating the practice and procedure of the High Court of the FCT, Abuja. The provision of **Order 41 Rule 6** of the **Rules** of this Court further states that where a Court has no jurisdiction in a cause or matter the judge may by order transfer the cause or matter to a Court with competent jurisdiction.

The relevant provisions of the said Practice Direction states as follows:

“(1) That all political cases originating from other component States of the Federation, and were filed before this Court be transferred back to the respective States where such cases originated.

(2) Such cases may be part-heard notwithstanding and

(a) Whether such cases relate to intra-party disputes or on pre-election matters as well as post-election disputes....”

By my understanding, Practice Directions are tools to enhance compliance with the Rules of Court not only to ensure speedy trial within a reasonable time; but also utilized by the Courts to promote substantial justice. See *Uchechukwu Vs. Bielonwu* [2008] 44 WRN 138 at 156 lines 15-20 (CA).

In Adams Vs. Umar [2008] LPELR-3591 (CA), the Court of Appeal further weighed in as to the meaning and essence of Practice Direction when it held as follows:

“...a Practice Direction may be said to be concerned with the rules indicating the manner in which applications in interlocutory proceedings in Court shall be dealt with or regulated, and the provision of guidelines as to what should be done. In other words, it regulates the manner in which a particular rule of Court should be complied with. More to the point, a Practice Direction is defined as a direction by the appropriate authority stating the way and manner a particular rule of Court should be complied with, observed and obeyed. It needs to be said that as useful as they are, Practice Directions do not have the force of law and cannot fetter a rule of Court. In other words, where there is a conflict between a rule of Court and a practice direction, the rule of Court must prevail. In the case of University of Lagos and Anor. Vs. Aigoro (1984) 11 SC 152 @ 191, the

Supreme Court stated thus: "Practice Directions do not have the authority of rules of Court although they are instructions in aid of the practice in Court. They cannot by themselves overrule Court decisions."

Again, in Abubakar Vs. Yar'Adua [2008] All FWLR (Pt. 404) 1409 @ 1449 - 1450, paras. E - B (SC), the Supreme Court, per **Tobi, JSC** (of blessed memory), cautioned on the slavish adherence to Rules of Court and Practice Directions, when His Lordship held as follows:

"...This court cannot myopically or blindly follow the Practice Directions and fall into a mirage and get physically and mentally absorbed or lost. Let that day not come."

I understand and appreciate the fundamental objective of the Practice Direction issued by the Hon the former Chief Judge of this Court, cited by the 3rd Defendant's learned counsel. The essence is to seek to

eliminate contradictory and divergent decisions of Courts of co-ordinate jurisdiction, especially as relating to political cases. However, by my understanding, Practice Directions are not issued to rob Courts of their constitutionally invested jurisdiction to entertain matters; but merely to aid compliance with Rules of Court. The jurisdiction of this Court is clearly defined by the provision of s. **257** of the **Constitution**. Furthermore, it is upon an examination of the peculiar facts of a case as endorsed on the originating process before the Court, assessed within the limits and confines of the Court's adjudicatory jurisdiction, that a Court can come to a determination as to whether it has jurisdiction to entertain such a matter or not. In other words, a Court has to at first assume jurisdiction in order to determine whether or not it has jurisdiction to entertain a matter. See Danile & Ors. Vs. Amosun & Ors. [2009] LPELR-8030(CA); Lagos State Government & Ors. Vs. Martins [2015] LPELR-24580(CA).

As such, to the extent that the instant Practice Direction directs that Courts of the High Court of the FCT should automatically hands off or decline every political cases filed in the Court, originating from other component States, without the Court first assuming jurisdiction to inquire whether or not it has jurisdiction to entertain any of such cases on their peculiar facts and circumstances; to that extent, the Practice Direction is in conflict with the provision of **s. 6(6)(b)** of the **Constitution** and must on that score be declared void. I so do.

The power to make Practice Directions conferred by the provision of **s. 259** of the **Constitution** on the Chief Judge, does not include power to divest or take away the constitutional powers of the Court to entertain matters within its area of jurisdictional competence.

As I had held earlier on, on the basis of the peculiar facts and circumstances of the instant suit as endorsed

on the Amended Originating Summons filed to commence the same; and the nature of the Claim before the Court, this Court is vested with substantive jurisdiction to entertain the suit and as such the issue of lack of territorial jurisdiction cannot be sustained. As such, I overrule Ground (1) of the 1st Defendant's Preliminary Objection; Ground (4) of the 2nd Defendant's Preliminary Objection; as well as Grounds (1) and (3) of the 3rd Defendant's Preliminary Objection.

DOES THE INSTANT ACTION BORDER ON THE INTERNAL AFFAIRS OF A POLITICAL PARTY SO AS TO ROB THE COURT OF JURISDICTION TO ENTERTAIN THE SAME?

The respective 1st and 3rd Defendants contended in their objections that the instant action borders on the internal affairs of a political party and as such do not

fall within the special jurisdiction conferred on this Court by the provision of **s. 87(9)** of the **Electoral Act**.

I note that only the 1st Defendant's learned counsel canvassed arguments in respect of this ground of the objection in his written submissions. The summary of learned counsel's arguments is that the entirety of the Claimant's suit borders purely on political issues, relating to conduct of congresses of the 1st Defendant and her capacity to choose or elect its leaders at the Ward, Local Government Areas and State levels; and that the purported delegates of the 1st Defendant in Anambra State were denied voting rights in the South East Zonal Congress of the party that held in Enugu. Learned counsel therefore contended that the Claimant's action relates to or falls within the internal/domestic affairs of the 1st Defendant and as such a purely political matter which is outside the narrow confines of exempted matters which Courts are

permitted to adjudicate on by virtue of s. **87(9)** and **31(5)** and **(6)** of the **Electoral Act**.

Learned counsel further contended that the issues as to who are the elected officers of the 1st Defendant is a political question that cannot transmute to a justiciable cause of action to imbue this Court with jurisdiction to entertain.

I have considered learned counsel's arguments and the authorities he relied on, including Musa Vs. PRP [1981] 2 NELR 763 @ 769; Pam Vs. ANPP [2008] NWLR (Pt. 1077) 219 @ 242(CA); APGA Vs. Anyanwu [2014] 7 NWLR (Pt. 1407) 541; Ardo Vs. Nyako [2014] 10 NWLR (Pt. 1416) 591; Ufomba Vs. INEC [2017] 13 NWLR (Pt. 1582) 175(SC) @ 213-216; Ukut & Ors. Vs. APC & Ors. [2019] LPELR-47203(CA).

I have also noted the authority of Onuoha Vs. Okafor [1983] 2 NCLR 244, cited by the 1st Defendant's learned counsel, which had further set out matters that

have been judicially accepted to constitute internal affairs of a political party to include the following:

1. Membership of the party; their rights and privileges;
2. Relationship between members of the party inter se and between the party and the members;
3. The nomination and sponsorship of candidates at elections;
4. The election of officers of the party; and
5. Party administration generally.

I have also taken account of the totality of the submissions of the Claimant's learned counsel on this point, on the other hand. I am not in doubt as to the Claimant's cause of action. It has been severally recapitulated in the foregoing. His case indeed relates to alleged authorization of imposition, by the 1st Defendant, of officers of the party in Anambra State

as delegates for the conduct of the party's South East Congress that took place in Enugu on 6th March, 2021; in violation of its Constitution and Guidelines. I have equally taken account of the Claimant's learned counsel's forceful arguments that where the cause of action relates to alleged violation of a party's Constitution, the matter is justiciable.

I have further noted the Claimant's learned counsel's arguments that the provision of s. **223(1)(a)** of the Nigerian **Constitution** incorporates Ss. 12, 13, 14 & 15 of the Constitution of the 1st Defendant and Articles 8(x), (xi), (xiii), (xv) (xvi), (xvii), (xviii) & (xix) of the party's Electoral Guidelines for Primary Elections; and that a violation of any of the provision of the PDP Constitution or its Guidelines, is a violation of the **1999 Constitution**.

I have also taken account of the authorities of *Nika Fishing Co. Ltd. Vs. Lavina Corp.* [2008] 16 NWLR (Pt.

1114) 509; LAC Vs. AAN Ltd. [2006] 2 NWLR (Pt. 963) 9 @ 80, cited by the Claimant's learned counsel on the role of the Court with respect to contract freely made by parties thereto.

I must say that I had carefully examined the totality of the authorities cited by learned counsel both for the 1st Defendant/Objector and the Claimant on this point. None of those authorities decided the point as to the connection between the provision of s. **223(1)(a)** of the **Constitution** and the related provisions of the Constitution of a political party.

The question to be resolved here is whether the provision of s. **223(1)(a)** cited by the Claimant's learned counsel can be a basis for the invocation of the jurisdiction of this Court to determine the issues of the alleged violations of the 1st Defendant's Constitution?

In deciding this point, I must quickly state that the 1st Defendant's learned counsel's arguments on the contention that the internal affairs of a party can only be questioned before the law Court, where such a party violates its rules and Guidelines, through the window provided by the provision of s. **87(9)** of the **Electoral Act** remains good and unassailable law. All the authorities cited on the point (*supra*) remain resolutely unequivocal.

I must also add here that even the most recent Supreme Court authority of *Badaiwe Vs. PDP* (*supra*), relied upon by the Claimant's learned counsel, did not depart from the same position.

However, the point of divergence between those cases, including the *Badaiwe* case and the instant case is that whereas in those other cases, the Claimant's right of access to Court to invoke the provision of s. **87(9) of the Electoral Act**, is that he is an aspirant in

the party's internal elections in which violation of the party's Guidelines, etc have been alleged. However, in the instant case, the Claimant did not claim to be a contestant for any party position. He did not claim to be in a tussle with any other member of the party or with the party with respect to any party office. He commenced the action for himself as the Chairman of the 1st Defendant in Ihiala Local Government Area of Anambra State; and in representative capacity for all other Local Government Chairmen and Ward Executives who purportedly emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017 respectively, under the supervision of **Sir Chukwudi Umeaba**, as Acting Chairman, State Caretaker Committee; and as inaugurated by the Vice-Chairman-South East, **Chief Austin Umahi**. In this regard, I make reference to Claimant's description in the title of the

suit and paragraphs 3, 4 and 5 of the Affidavit in support of the Amended Originating Summons.

As far as the Claimant is concerned, his position and that of those he represented in the Anambra State PDP Exco have already been sanctioned by the 1st Defendant, through its National Officers. Their grievance is thus that the 1st Defendant jettisoned its authentic list of party delegates in Anambra State, which included him and the other party officers he represented, by imposing another unknown list for the conduct of the party's South East Congress as revealed in the Brochure published by the 1st Defendant for the said Congress. This conduct, according to the Claimant, constituted a violation of the 1st Defendant's Election Guidelines and party Constitution.

But then the consensus of relevant authorities, already referred to on record, is that where there is an allegation of violation of party Constitution or

Guidelines in relation to the process of selection or nomination of a candidate for election, it is only a candidate or aspirant in any of such processes that has *locus standi* to challenge such alleged violation, by virtue of s. **87(9)** of the **Electoral Act**.

However, in the instant case, the nature of the Claimant's case, *albeit* alleges violation of certain provisions of the 1st Defendant's Constitution and its Guidelines for conduct of Elections, does not focus on nomination or selection of candidates for any party election; but strictly relates to the alleged imposition of a different Delegates List as against the List the Claimant and his cohorts believed to be the authentic Delegates List of party executives in Anambra State; and a prayer that such unlawful List be nullified to pave way for the use of the purported authentic List for subsequent party elections in Anambra State.

The question now is, can the Claimant, having not instituted the instant action as an aspirant in any election; and having not challenged the conduct of any internal election of the 1st Defendant pursuant to the provision of s. **87(9)** of the **Electoral Act**, invoke the jurisdiction of this Court by any other means to entertain this action?

This brings me back to the provision of s. **223(1)(a)** of the **Constitution** of the FRN, **1999**, cited by the Claimant's learned counsel. His contention is that the breach complained of by the Claimant in the instant action exceeds the limited walls of the 1st Defendant's Constitution; that a breach of the provisions of Ss. 12, 13, 14 & 15 of the 1st Defendant's Constitution and Articles 8(x), (xi), (xiii), (xv) (xvi), (xvii), (xviii) & (xix) of the party's Electoral Guidelines for Primary Elections, is a breach of s. **223(1)(a)** of the Nigerian **Constitution**.

Section 223(1)(a) of the **Constitution** of the FRN, **1999**, provides as follows:

“1. The constitution and rules of a political party shall-

(a) provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party;...”

(Underlining supplied for emphasis)

By my understanding, the expectation of the instant provision of the **Constitution** is that a political party shall make provisions in its Constitution and rules for periodical election of the principal officers and members of the executive committee or other governing body of the parties. The punch line of the provision is however, that, such periodical elections shall be conducted democratically. In other words, the **Constitution** makes it imperative for a political party

to observe the tenets of democratic principles in the conduct of its internal elections.

The case of the Claimant, as I understand it, is therefore that the 1st Defendant failed to abide by the democratic norms provided for in its own Constitution and Guidelines by the alleged imposition of Delegates List unknown to the Claimant, at its South East Zonal Congress, held in Enugu, on 6th March, 2021.

By my further understanding, a Claimant who challenges a violation of his party's Constitution and rules with relation to the authenticity of List of Party Delegates at an election; which provisions took root and foundation from the provision of **s. 223(1)(a)** of the **Constitution** of the FRN, **1999**, cannot be said merely to be complaining of a domestic affair of the party. I so hold.

I must further hold that in the peculiar circumstances of the present case, the Claimant need not be an aspirant in any internal election of the party.

The Supreme Court decision of Peretu Vs. Gariga [2013] 5 NWLR (Pt. 1348) 415, seems apposite and applicable to the case at hand. The suit was decided on the point, *inter alia*, as to whether certain actions taken by the Peoples Democratic Party (PDP), with relation to screening of candidates for Primary Elections were not done in violation of certain provisions of the Constitution of the Party. The Supreme Court went on to also consider the issue of ouster clauses (which the 3rd Defendant in the instant case, raised by Ground 6 of his objection); and held, *per Ngwuta, JSC* (of blessed memory), thus:

“An ouster clause, if there is one in the Constitution of the PDP and all the parties in the case are members of the PDP, may exclude the jurisdiction of the Court from questioning any action of the party

based on its Constitution. See Taylor's case (supra). However, the Courts are not precluded from determining any questions 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."

The point to be made here, with respect, is that the provision of **s. 223(1)(a)** of the **1999 Constitution**, read alongside the relevant provisions of the 1st Defendant's Constitution, provides a wider platform for any aggrieved member of a political party to challenge any actions or inactions of a political party to which he belongs, which he considers undemocratic or in violation of the sacred Constitution of the party. I so hold.

I must say, with every sense of judicial responsibility, that I had painstakingly assimilated all the authorities cited by the 1st Defendant's learned counsel on this

issue. With respect, in none of the cases did any of the parties canvass the connection between the provision of s. **223(1)(a)** of the Nigerian **Constitution** and the Constitution of the political party. Interestingly most of those cases were filed by members of PDP, as in the instant case. As such, in none of those cases were issues formulated with relation to the relevance of the provision of s. **223(1)(a)** of the Nigerian **Constitution** as it concerns the need for a political party, in the conduct of its internal affairs, to uphold the democratic tenets provided for in its **Constitution**.

My view is therefore that if that provision of the **Constitution** has been canvassed before My Lords of the higher Courts in those authorities, the decisions could have been different; particularly to the extent that a member of a political party; and not necessarily an aspirant, as has been circumscribed by the provision of s. **87(9)** of the **Electoral Act**, could

challenge any alleged undemocratic conduct of a political party he belongs, in the conduct of its domestic or internal affairs.

The point I have thus made is that the authorities of Ufomba Vs. INEC (*supra*); Musa Vs. PRP (*supra*); Ukut Vs. APC (*supra*); Badaiwe Vs. PDP (*supra*), etc., could be distinguished from the facts and circumstances of the instant case and on that score would be inapplicable. I so hold.

Without any further ado, I overrule Ground (2) of the 1st Defendant's Preliminary Objection and Ground (2) of the Preliminary Objection of the 3rd Defendant and hold that the instant suit, even though borders generally on the internal affairs of the 1st Defendant, is such that, on the basis of its peculiar facts and circumstances and the nature of the claim, is competent to be determined by this Court.

On the basis of the foregoing determination, the 1st Defendant's Notice of Preliminary Objection is effectively determined against them. It shall be and it is hereby accordingly dismissed.

IS THE INSTANT SUIT AN ABUSE OF COURT PROCESS AND IS THE PRINCIPLE OF RES JUDICATA APPLICABLE?

I now proceed to determine the issues raised in Grounds (1), (2) and (3) of the 2nd Defendant's Notice of Preliminary Objection. According to the 2nd Defendant, the instant suit is *res judicata* in view of the judgment of this Court in suit No. FCT/HC/CV/0497/2017 – Marcel Jachin Anyim Vs. Peoples Democratic Party (PDP) & Ors., coram O. A. Musa, J, delivered on 24/05/2018.

The 2nd Defendant further contended that the instant suit is similar to suit No. FHC/ABJ/CS/1586/2019 – Samuel Anyakora & 27 Ors. Vs. Independent National

Electoral Commission (INEC) & 1 Anor, filed on 11/12/2019 and purported to be pending at the Federal High Court.

I have considered the totality of the arguments canvassed by learned counsel for the 2nd Defendant in support and those of the Claimant's learned counsel to oppose these grounds of the 2nd Defendant's objection.

On the issues as to whether the principle of *res judicata* is applicable to the case at hand, in view of the judgment of my learned brother, **Musa, J**, attached by the 2nd Defendant's learned counsel to support the plea, I believe no one is left in doubt as to the circumstances under which a suit can constitute *res judicata* to another. The authority of Adedeji Vs. Fatoyinbo [2013] LPELR-20217(CA) relied upon by learned counsel on both sides, clearly and adequately expatiated on the parametres. The Supreme Court, in Madukolu Vs. Nkemdilim (*supra*), relying on the English

authority of Ord Vs. Ord [1923] 2 K.B 432, explained the doctrine of *res judicata* in very simple words as follows:

“If the res - the thing actually and directly in dispute - has been already adjudicated, of course by a competent court, it cannot be litigated again.”

See also A. G of Nasarawa State Vs. A. G of Plateau State [2012] LPELR-9730(SC)

Proceeding on the proper understanding of the doctrine of *res judicata* therefore, the question to consider with regards to the facts and circumstances of the present case is whether the question and cause submitted for adjudication by the Claimant in the present case was the same one litigated upon and definitively determined in the suit *coram Musa, J*, between the same parties?

In resolving this question, it is already taken for granted that parties are *ad idem* that the judgment in

the former suit was rendered on the merit; that no appeal lied against the judgment and that up till date, the said judgment remained valid and subsisting; thus fulfilling some of the fundamental parametres that must be present in order for the judgment to constitute *res judicata* as against the instant action.

I had painstakingly examined and digested the judgment of my learned brother in the case cited. My very first observation is that the Claimant in that action – **Marcel Jachin Anyiam** – who sued as the State Chairman South, PDP, Anambra State; is clearly different from the Claimant in the present action.

Going further, the main question submitted for determination in that action, also commenced by Originating Summons, is as to whether, in view of the provision of Ss. 31(3) and 47(1) of the PDP Constitution, a newly elected National Working Committee (NWC) of the PDP can review the already

reviewed Anambra State Congress held on 4th December, 2017, of which the Claimant was a beneficiary; the same having been ratified by the former National Caretaker Committee (NCC) and the panel that conducted the said Congress?

On the basis of that question, the Claimant, in the former suit, prayed the Court for the following declaratory relief, *inter alia*:

“A declaration of this Honourable Court that the purported Anambra State Caretaker Committee led by Sir. Chukwudi Umeaba as conveyed by the 1st Defendant’s press Statement dated 19th December, 2017 is null, void and of no legal effect being constituted in breach of the extant provisions of the 1st Defendant’s Constitution as amended.”

However, the sole question set down for determination in the instant suit, together with all the reliefs claim therein, are predicated strictly on the quest by the Claimant, for the sanctity of the purported extant List

of already inaugurated Party Officers and Delegates that emerged from the Congresses of the 1st Defendant, that were said to have been conducted on 28th November, 2017 and 1st December, 2017, under the supervision of **Sir Chukwudi Umeaba**, as Acting Chairman, State Caretaker Committee of the party at the material time.

I have carefully scrutinized the judgment of my learned Brother, **Musa, J**, under consideration; which reflected the questions for determination and the reliefs claimed in that action. The Claim of the Claimant in that action devolves solely on the State Congress of the PDP held on 4th December, 2017, which purported to produce him as the State Vice Chairman, South of the PDP. No aspect of the judgment also discussed, made findings on or pronounced on the Congresses purportedly held on 28th November, 2017 and 1st December, 2017.

I have also examined the judgment of the Court in that case. Even though the Court declared the purported Anambra State Caretaker Committee, led by **Sir Chukwudi Umeaba**, as conveyed by the 1st Defendant's Press Statement dated 19th December, 2017, as null, void and of no legal effect, being constituted in breach of extant provisions of the 1st Defendant's Constitution, as amended; and went on to validate the State Executive Committee of the 1st Defendant held on 4th December, 2017; no direct or specific orders whatsoever were made regarding the validity or otherwise of the Congresses of 28th November, 2017 and 1st December, 2017, on which the Claimant in the present case predicated his action. The effect is therefore that the said Congresses of 28th November, 2017 and 1st Defendant, 2017, supervised by the same **Sir Chukwudi Umeaba**, which the Claimant seek to contend in the instant suit remain unaffected by the declaratory judgment of Musa, J. I

so hold. See Brig. General Mohammed Buba Marwa & Ors. Vs. Admiral Murtala Nyako & Ors. [2012] LPELR-7837(SC).

It is perhaps pertinent to state that at this stage of the proceedings, the Court cannot delve into the merits of the Claimant's claim; and it must be remembered that, for purposes of determining the totality of the Preliminary Objections filed by the respective Defendants, the case made out by the Claimant in his Amended Originating Summons must be deemed admitted at this stage of the proceedings. See Woherem Vs. Emereuwa [2004] 13 NWLR (Pt. 890) 398.

Proceeding on the basis of the foregoing therefore, I agree with the Claimant's learned counsel that the issues upon which my learned Brother, Musa, J, decided the earlier decision cited by the 2nd Defendant's learned counsel, are clearly dissimilar

from the question set down for determination in the instant case. More so, the parties in that case are also not the same as the parties in the present action. As such, the judgment cited cannot constitute *res judicata* to the instant action. I so hold.

On this score I here again overrule Ground (1) of the 2nd Defendant's Notice of Preliminary Objection.

Ground (2) of the 2nd Defendant's Preliminary Objection contends that the instant action constitutes an abuse of Court process in that the instant suit is similar to Suit No. FHC/ABJ/CS/1586/2019 – Samuel Anyakora & 27 Ors. Vs. Independent National Electoral Commission (INEC) & 1 Anor, filed on 11/12/2019 and purported to be pending at the Federal High Court.

I have again considered arguments canvassed by learned counsel for the respective 2nd Defendant and the Claimant on this issue.

As it is widely held, abuse of Court process has no precise definition, and its categories are not closed. Essentially, the circumstances under which a process of Court is used or employed and for what purpose, determines whether or not such a process constitutes an abuse of Court process. Abuse of Court process could be said to have occurred in one or more of the following situations:

1. Where the parties, subject matter and the issues in the previous and the later suits are the same. See U.B.N. Plc. Vs. Edamkue [2004] 4 NWLR (Pt. 863) 221.
2. Where different actions based on the same facts between the same parties are filed in different Courts or even in the same Court simultaneously in respect of the same right and subject-matter. See Benaplastic Industries Ltd. Vs.

Vasilyev & Ors. [1999] 10 NWLR (Pt. 624) 620.

3. Where a party litigates again on the same issue which has already been litigated upon between him and the same person on facts on which a decision has already been reached. See Fasakin Foods (Nig.) Co. Ltd. Vs. Shosanya [2003] 17 NWLR (Pt. 849) 232, 247; Arubo Vs. Aiyeleru [1993] 3 NWLR (Pt. 280) 126.
4. Where the proceeding is wanting in *bona fides*, or is frivolous, vexatious, oppressive or amounts to abuse of legal procedure or improper legal process. See Amaefule Vs. The State [1988] 2 NWLR (Pt. 75) 156, where the Supreme Court elaborated further that abuse of Court process also connotes the employment of judicial process by a party in improper use in order to irritate

and annoy his opponent and to circumvent the efficient and effective administration of justice.

It was also held in N. I. C Vs. F. C. I. Company Limited (2007) 2 NWLR (Pt. 1019) 610, that the rationale of the law behind the concept of abuse of Court process is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour or jeopardy for the same purpose twice.

I have also considered the authorities of Dingyadi Vs. INEC [2010] 44 NSCQR 301 @ 340; Saraki Vs. Kotoye [1992] 3 NWLR (Pt. 264) 155; Kadiri & Anor Vs. Ewuoso [2014] LPELR-22953 all cited by the 2nd Defendant's learned counsel, which also encapsulate the principles set out in the foregoing on the issue of abuse of Court process.

Flowing from the legal parameters set out in the foregoing, the question that arises for determination here is whether the 2nd Defendant placed sufficient

materials before the Court in order to substantiate the contention of abuse?

The 2nd Defendant has annexed to his Counter Affidavit as **Exhibits C** and **D** respectively – Court processes he relied upon in order to contend that there is a case pending at the Federal High Court that is similar to the case at hand. **Exhibit C3** is a copy of the Originating Summons filed at the Federal High Court on 11/12/2019, in Suit No. FHC/ABJ/CS/1586/2019 – between Samuel Anyakorah & 27 Ors. Vs. Independent National Electoral Commission (INEC) & 1 Or. The process merely contained the title of the suit; names of parties; questions for determination and the reliefs claimed. The Affidavit that ought to support the Originating Summons is not attached to the process, thereby making it an incomplete Court process.

Again **Exhibit D** is a purported Notice of Appeal filed to the Supreme Court at the Court of Appeal on 19/03/2021. The process is said to be an appeal against the Judgment of the Court of Appeal in the appeal lodged by the Claimants in the Federal High Court suit, wherein the Court of Appeal had upheld their appeal against the judgment of the Federal High Court in the matter. The 2nd Defendant failed to exhibit the said judgment of the Court of Appeal to his Notice of Objection.

I had carefully read the facts deposed in paragraph 1(e), (f) and (g) of the Affidavit in support of the 2nd Defendant's objection to support the contention that there is a similar action filed by the Claimant in this suit at the Federal High Court, which according him, is still pending.

One of the grounds upon which the Court could hold that a case is an abuse of Court process is where

different actions based on the same facts between the same parties are filed and pending in different Courts or even the same Court simultaneously in respect of the same right and subject-matter; which is basis for the ground of objection under consideration. The 2nd Defendant further contended that there is an existing appeal over and in respect of similar issues as those in issue in the present case.

However, the 2nd Defendant has failed to exhibit the material and relevant processes of Court with respect to the suit at the Federal High Court, at the Court of Appeal and in the Supreme Court, on which this Court can rely to determine one way or the other that a case of abuse exist with relation to the instant action.

By the provision of **s. 128** of the **Evidence Act**, oral evidence cannot be given of judicial proceedings, except by the document itself. See Nwana Vs. Okoyeocha [2016] LPELR-40927(CA).

In the present case, the 2nd Defendant relied mostly on depositions in the Affidavit filed in support of his Notice of Objection, particularly in paragraph 1(e), (f), (g), (h) and (i), not backed by the relevant Court processes or proceedings with respect to the said suit, either at the Federal High Court, Court of Appeal or the Supreme Court. In effect, those depositions, without the relevant Court processes being exhibited before the Court, cannot be sufficient to establish the pendency of the said suits. I so hold.

On the basis of the foregoing therefore, I am unable to make the finding that the instant suit is an abuse of Court process.

On this note, I hereby dismiss the 2nd Defendant's preliminary objection.

Now, returning to the 3rd Defendant's notice of objection, I note that learned counsel did not advance any arguments with respect of Ground 6 thereof, by

which it is contended that the Claimant failed to exhaust all the internal mechanism process as enshrined in s. 60(1) and s. 61(1) & (2) of the PDP Constitution, 2017 as amended. The implication is therefore that that ground of objection has been abandoned.

In the circumstances, I hereby also dismiss the entirety of the 3rd Defendant's notice of preliminary objection as lacking in merit.

DETERMINATION OF THE SUBSTANTIVE SUIT:

Having been satisfied that this Court's jurisdiction to entertain this suit is not in any way impaired as had been demonstrated in the foregoing, I now proceed *eo ipso*, to determine the substantive Amended Originating Summons.

I had summarized the case set up by the Claimant earlier on in this judgment. I need not recapitulate that

again. The question that arises for determination therefore is whether the Claimant has placed sufficient materials before the Court to entitle him to the reliefs he claimed in this action.

The Claimant annexed to his Affidavit in support of the Amended Originating Summons as **Exhibit B1**, copy of Brochure printed by the 1st Defendant, containing list of Delegates used with respect to the party's South East Congress held in Enugu on 6th March, 2021. The Claimant complained that the 2nd Defendant, **Sir Ndubisi Nwobu, KSP**, whose name appeared as item 27 at page 14 of the Brochure, was described as the State Chairman of PDP in Anambra State. The Claimant further complained that at pages 14 and 15 of the Brochure, particularly items 27 to 52, persons listed therein were described as occupiers of different positions and offices, which, according to the Brochure, constituted the PDP Exco members in Anambra State.

The Claimant further contended that at pages 15 and 16 of the Brochure, items 76 to 95, some persons were listed and described therein as Local Government Chairmen of PDP in Anambra State. And that at page 16 of the said Brochure, items 102 to 118, had the names of persons described as National Delegates of PDP for the said Congress. (See paragraph 10 of the Affidavit in support).

It is the contention of the Claimant that the 2nd Defendant is not the Anambra State Chairman of the 1st Defendant for the reason that no State Congress has been conducted for the Anambra State PDP Chapter since 2017, when **Sir Chukwudi Umeaba** suspended the said Congress; and that in the absence of a lawfully authorized State Congress, the purported State Chairman, Exco Members, Local Government Chairmen and National delegates listed in the said

Brochure could not be said to have validly held such offices.

To further support his case, the Claimant had annexed as **Exhibit D**, letter dated November 21, 2017, being letter of Appointment addressed to **Sir Chukwudi Umeaba**, appointing him as Chairman, Caretaker Committee of the PDP in Anambra State. The letter, signed by **High Chief Sen. Ben Obi**, has as part of its terms of reference the following:

“1. To run the affairs of the Peoples Democratic Party (PDP) Anambra State and organize effective Wards, Local Governments and State Congresses in the State.”

The Claimant had attached as **Exhibits FF1** and **FF2** respectively to the Further Affidavit he filed to the 1st Defendant’s Counter Affidavit, motion moved at the National Convention of the PDP held in Abuja on 12th August, 2017, for the ratification of the setting up of a

Caretaker Committee for the party in Anambra State; and motion moved at the National Convention of the PDP held in Port Harcourt on May 21, 2016, appointing a National Working Committee for the party, pending the holding of a National Convention to elect National Officers of the party.

According to the Claimant, it was **Exhibits FF2** and **FF1** respectively that resulted in the appointment of **Sir Chukwudi Umeaba** as the Chairman, Caretaker Committee of the PDP in Anambra State at the relevant period.

According to the Claimant, pursuant to the mandate handed to the said **Sir Chukwudi Umeaba**, he proceeded to organize Ward Congresses to elect Ward Officers for the party on 28th November, 2017; and that thereafter, an Appeal Panel was set up by the National Caretaker Committee of the party, led by Senator Grace Bent, which sat, considered various

petitions that arose from the said Congresses and came up with the Report annexed to the Affidavit in support as **Exhibit E**.

It is the further contention of the Claimant that the Local Government Congresses were held on 1st December, 2017 and that the List of Elected Officers that emerged from the Appeal Panel Report, were attached as a bundle to **Exhibit E**.

The Claimant further attached as **Exhibit F** to the Affidavit in support, instrument dated November 6, 2017, written by **Sen. Abdul Ahmed Ningi, CON**, Member, National Working Committee of the PDP, appointing members of the Electoral Committee for the Local Government Area Congresses, led by **Nze Fidelis Ozichukwu**, as Chairman, with four other members, which Congresses were scheduled to hold on December 1, 2017.

Also attached as **Exhibit G** to the Affidavit in support of the Amended Originating Summons is the letter dated November 28, 2017, authored by the same **Sen. Abdul Ahmed Ningi, CON**, notifying the Chairman of the Caretaker Committee of the constitution of the Local Government Area Electoral Appeal Panel, led by **Barr. Ukpai Ukairo** as Chairman.

The case of the Claimant is further that the Local Government Congresses were held as scheduled on 1st December, 2017 and the results at the elections were attached as a bundle in **Exhibit H** to the Affidavit in support.

The case of the Claimant is further that despite the successes recorded during the Local Government Area Congresses, there were a few complaints which were eventually resolved by the Electoral Appeal Panel and their Report, dated 4th December, 2017, validating

the Congresses is attached as **Exhibit I** to the Affidavit in support.

In order to establish that the State Congress at which State Executives of the party were expected to be elected, initially slated for 4th December, 2017, was suspended by **Sir Chukwudi Umeaba**, who, by virtue of **Exhibit D**, was empowered to organize the Congress, the Claimant attached as **Exhibits J1, J2, J3** and **K** respectively, letters written on 4th December, 2017, by **Sir Chukwudi Umeaba**, respectively to the State Director, Department of Security Service; the Commissioner of Police, Anambra State Command; the Resident Electoral Commissioner of INEC, Anambra State; and the Chairman, National Caretaker Committee of the PDP, by which he notified these personalities of his decision to suspend the State Congress scheduled for the same date for the reasons set out in the documents; and also urging the National

caretaker Committee to recall the **Prof. Osita Ogbu** led State Congress Committee.

The Claimant also attached as **Exhibit C** to the Affidavit in support, **PRESS RELEASE** issued on 4th December, 2017, by **Sir Chukwudi Umeaba**, to suspend the said State Congress of the 1st Defendant in Anambra State, owing to reasons as stated in the Release.

The Claimant contended that as a result of the said suspension of the State Congress, the same was not held as originally scheduled. In order to substantiate the contention that no State Congress held on 4th December, 2017, the Claimant contended that the National Convention of the PDP held on 10th December, 2017, was only attended by the statutory delegates from the State. The Claimant attached as **Exhibit FF** to the Further and Better Affidavit filed in support and in reply to the Counter Affidavit of the 3rd

Defendant, a List of Delegates for the said Elective National Convention of the PDP, held in Abuja on the 9th and 10th December, 2017, in which only the names of the Board of Trustees members and other statutory delegates were reflected.

To further substantiate his contention that no State congress held in Anambra State, the Claimant attached as **Exhibit K1** to the Affidavit in support, document dated 15th December, 2017 and captioned **“RE: REPORT OF THE INVESTIGATION ON PDP CONGRESSES 2017.”** In the said Report, signed by **Chief Austin Umahi**, National Vice Chairman, South East and addressed to **Chief Prince Uche Secondus**, National Chairman of PDP, the following salient recommendations were made, inter alia:

“(1) The party respects its own guidelines and institutions by recognizing the outcome of the Ward and Local Government Congresses as decided by

the relevant Appeal Panels at the Ward and Local Governments hereby attached.

(2) Conduct congresses at the three Local Governments of:

(a) Awka North,

(b) Awka South and

(c) Idemili North where results were seized.

(3) Conduct State Congress to elect State Executives strictly in line with the PDP's 2012 Constitution (As amended) and Election Guidelines.

(4) To avoid any vacuum, the Zonal Working Committee duly elected should be put in place by the NWC to take charge and work with the newly elected Ward and Local Government Party executives until a new State Congress is conducted and sworn in, which should be a maximum of 8 weeks effective from 18th December, 2017."

The Claimant further annexed as **Exhibit K2**, letter dated 19th December, 2017, by which the National Secretary of PDP, **Sen. Umar Ibrahim Tsauri, CON**, wrote in response to the Report, **Exhibit K1**, in which it is stated, *inter alia*, as follows:

“The National Working Committee (NWC) critically examined the report of our National Vice Chairman, South East and decided as follows:

- i. To recognize the outcome of the Ward and Local Government Congresses as decided by the relevant Electoral and Appeal Committees.***
- ii. To conduct Local Government Congresses in Awka North, Awka South and Idemili North where the results were seized.***
- iii. Also to conduct State Congress to elect State Executives at a later date and time to be determined and announced by the National Working Committee (NWC).***

In view of this, the National Working Committee at its meeting held on 19th December, 2017 directed that the South-East Zonal Executive should oversee the affairs of Anambra State Chapter until Congresses are held within 90 days.”

According to the Claimant, owing to the document, **Exhibit K2**, it is clear that no State Congress of the PDP held in Anambra State on 4th December, 2017 and that the party recognized the Ward and Local Government Congresses held on the 28th November, 2017 and 1st December, 2017 respectively by the **Sir Chukwudi Umeaba** led Caretaker Committee in Anambra State.

The case of the Claimant is further that as a follow up to **Exhibit K2**, the National Vice Chairman (South East) of the 1st Defendant **Chief Austin Umahi** inaugurated the Anambra State Caretaker Committee on 3rd September, 2018 at which the 2nd Defendant was appointed as the Acting State Chairman of the party.

The Claimant further annexed to the Affidavit in support as **Exhibit L**, letter written by the National Secretary of the 1st Defendant to **Chief Austin Umahi**, National Vice Chairman (South-East), stating that as a follow up to the inauguration of the Anambra State Caretaker Committee on 3rd September, 2018, he should undertake the following:

“1. You should immediately inaugurate the duly elected Ward and Local Government Officers of the Party in the State.

2. You should arrange with the critical stakeholders on how to deal with the remaining (3) Local Governments where elections were not conducted, or, on (sic-in) the alternative advise on how to conduct elections in the LGAs.

3. The National Working Committee (NWC) commends your efforts in repositioning the PDP in Anambra State.

...”

The grievance of the Claimant is therefore that, despite all the steps taken by the 1st Defendant as chronicled in the foregoing, the 1st Defendant has continued to refrain from utilizing the elected, inaugurated and recognized party officers; that apart from the Notice sent by **Sir Chukwudi Umeaba** to the 1st Defendant suspending the State Congress, which the 1st Defendant acted upon, that at no other time was any State Congress held or notice of such Congress was sent to the 1st Defendant and that no other List of delegates emerged, apart from the List of the Wards and Local Government executives.

The Claimant is further aggrieved that as seen in the Brochure afore mentioned (**Exhibit B1**), the 1st Defendant has refused to recognize, cooperate and work with the Party Officers and delegates that emerged from the Congresses of 28th November, 2017 and 1st December, 2017 respectively; and that

despite being aware that the State Congress of the Party scheduled for 4th December, 2017, was suspended, the 1st Defendant still proceeded to recognize and deal with another group of persons parading themselves to be the officers of the party, at the Ward, Local Government and State levels.

It is on the basis of the 1st Defendant's alleged violation of its own Constitution and rules as demonstrated in the List of Delegates for Anambra State published in the Brochure for the South East Congress held on 6th March, 2021, that the Claimant has prayed this Court for the reliefs set out in the Amended Originating Summons.

I have proceeded to examine the Counter Affidavits filed by the respective 1st, 2nd and 3rd Defendants. Essentially, the three Defendants formulated more or less the same defence. The respective 2nd and 3rd Defendants dealt more on the issues that they raised in

their Notices of Preliminary Objection which had been ruled upon earlier on in this judgment.

Let me devote attention to the defence of the 1st Defendant as set up in the Counter Affidavit deposed to on its behalf by one **Nanchang Ndam**, one of its employees (which is more or less the defence of all the Defendants). Essentially, the contention of the 1st Defendant is that State Congress of the 1st Defendant held on 4th December, 2017 at which the 2nd Defendant emerged as the Chairman. It is also contended that the Ward Congress of the 1st Defendant in Anambra State was conducted on 25th November, 2017 and not on 28th November, 2017, as claimed by the Claimant. Documents marked as **Exhibits PDP1, PDP2, PDP3, PDP4 PDP5 and PDP6**, were annexed to the Counter Affidavit, as purported Report and result of the State Congress; purported INEC report of monitoring of the Congress; purported

List of candidates that emerged at the purported Ward Congresses and purported Reports of Congress Committee and Appeal Panels.

The 1st Defendant also attached as **Exhibits PDP7, PDP8 and PDP9** respectively, purported results of the Local Government Congress; purported Report of the Local Government Congress Committee and the purported Report of the Appeal Panel.

The 1st Defendant denied that the State Congress scheduled for 4th December, 2017, was suspended and contended that **Sir Chukwudi Umeaba** had no powers to suspend the Congress.

The Claimant filed, on 30/03/2021, Further Affidavit in support of the Amended Originating Summons and in reply to the 1st Defendant's Counter Affidavit, where it is deposed that all the facts deposed in the 1st Defendant's Counter Affidavit were contrived and manipulated. In order to substantiate this allegation,

the Claimant made reference to a Counter Affidavit deposed to in another suit by the same deponent that deposed to the 1st Defendant's Counter Affidavit in the present suit. According to the Claimant, the deponent deposed in the said earlier Counter Affidavit, to a completely contradictory state of facts from those he deposed to in the instant suit. Certified true copy of the said Counter Affidavit deposed to by **Nanchang Ndam** in Suit No. CV/0497/2017 – Marcel Jachin Anyim Vs. Peoples Democratic Party & 2 Ors., is attached to the Claimant's Further Affidavit as **Exhibit FF4**.

I had taken time to examine **Exhibit FF4**. It is captioned “**1ST AND 2ND DEFENDANTS' COUNTER AFFIDAVIT IN OPPOSITION TO THE PLAINTIFF'S ORIGINATING SUMMONS.**” The deponent of **Exhibit FF4** is the same person that deposed to the 1st Defendant's Counter Affidavit in the present suit. I take

liberty to reproduce some of the depositions in the said Counter Affidavit that I consider germane to the present suit, as follows:

“15. That contrary to the deposition in paragraph 10 of the supporting affidavit, I know as of fact that the 3rd Defendant (Sir Chuwudi Umeaba) is the duly appointed and recognized Anambra State Caretaker Committee Chairman of the 1st Defendant.

16. That I know as a fact that the 3rd Defendant (Sir Chukwudi Umeaba) was appointed as Anambra State Caretaker Committee Chairman of the 1st Defendant (PDP) long before 19th December, 2017 and was duly authorized to continue in office in that capacity following the botched Anambra State Congress of the 1st Defendant.

24. That contrary to the deposition in paragraph 14 of the supporting affidavit, I know as a fact that the Anambra State Congress Electoral Committee led

by Prof. Osita Ogbu did not conduct the Anambra State Congress fixed for 4th December, 2017 as the 3rd Defendant had by the powers conferred on him by Exhibit PDP3 and the party constitution suspended the scheduled state congress arising from noticeable irregularities.

32. That since the Anambra State congress did not hold as scheduled, there cannot be a result of same.

44. That contrary to the depositions in paragraph 28 of the supporting affidavit, I know that the 4th December, 2017 Anambra State congress was not conducted and the Plaintiff and every other persons parading themselves as members of the Anambra State Executive Committee of the 1st Defendant on account of the said purported congress are doing so in gross violation of the 1st Defendant's constitution in order to cause more division in the Anambra State Chapter of the 1st Defendant."

Now, in the instant suit, the same 1st Defendant, represented by the same **Nanchang Ndam**, deposed

to Counter Affidavit in which he stated the exact opposite of the depositions in **Exhibit FF4** as highlighted in the foregoing. Precisely, the said **Nanchang Ndam** deposed in paragraphs 11 and 22 of the Counter Affidavit filed in the present suit, to mention just a few, as follows:

“11. The Defendant (PDP) denies paragraph 11 of the supporting affidavit and states that Sir Ndubisi Nwobu is the Anambra State Chairman of the Defendant. The Defendant further states that the Defendant conducted Anambra State Congress on the 4th of December, 2017 which produced Sir Ndubisi Nwogbu as Chairman with other State Executive Committee members. Copy of the Report and Result of the Anambra State Congress are attached herein as Exhibits PDP1 and PDP2 respectively.

22. The Defendant denies paragraph 14 of the supporting affidavit and states that the Anambra

State Congresses was (sic) not suspended but duly conducted on 4th December, 2017 and those that emerged therefrom are still in office as indicated in Exhibit PDP2.”

No one needs any special eyesight to see that the 1st Defendant’s depositions in paragraphs 14 and 22 of its Counter Affidavit are a complete roundabout turn from its depositions in paragraphs 24, 32 and 44 of its Counter Affidavit in another suit, **Exhibit FF4**, reproduced in the foregoing.

No one needs be reminded that depositions in affidavits in Court proceedings amount to evidence in the proceedings to which the affidavits relate. As such, it is apposite to restate the well known position of the law here, that evidence given by a witness or party in previous proceedings, is in law admissible and relevant in a later suit for the purpose of impeaching the credit of the witness or party; and to show that his testimony in the previous proceedings contradicts his

evidence in the later case. This is permitted by the provisions of **Ss. 232** and **233** of the **Evidence Act**. See also Alakija Vs. Abdulai [1998] 6 NWLR (Pt. 552) 210; Bankole Vs. Dada [2003] 11 NWLR (Pt. 830) 174; Kekong Vs. State [2017] LPELR-42343(SC).

In the present case, the 1st Defendant did not depose to a further Counter Affidavit to deny or retract the Counter Affidavit, **Exhibit FF4**, in which it gave evidence that is diametrically opposed to its shameful and irresponsible stance in the present suit. In the circumstances, I must agree with the submissions of the Claimant's learned counsel that the credibility of the Counter Affidavit filed by the 1st Defendant to oppose the Claimant's suit is apparently compromised and cannot be relied upon by the Court and I so hold.

Apparently, it follows that the totality of the documents annexed by the 1st Defendant to its Counter Affidavit to support its contention in the present case that State

Congress of the PDP held on 4th December, 2017, containing the result, reports of Appeal Panel, report of INEC monitoring Committee, etc, were complete fabrications that carry no weight whatsoever and cannot be relied upon by the Court. I so hold.

The effect is therefore that the Court disbelieves and firmly rejects the totality of the defence sought to be canvassed by the 1st Defendant to the Claimant's suit herein. In other words, the Court holds that in the eyes of the law, the 1st Defendant has no defence to the Claimant's action.

I am not unaware that the Claimant claims declaratory reliefs in this action, which by law casts the burden on him to adduce credible evidence to establish the same whether or not the Defendants put up any defence to the action. Keeping that principle of law in view, the finding of the Court is that, after a calm assessment of the totality of the case put forward by the Claimant,

he has satisfactorily established his case and thereby entitling him to the reliefs claimed in this suit.

I further find that none of the Defendants have in any way successfully challenged or discredited the documents exhibited by the Claimant in support of his case, most of which emanated from high ranking National Officers of the 1st Defendant. I therefore hold that the totality documents tendered by the Claimant in this action clearly established the case he made out. I hold that the Claimant has established beyond pervandenture that no State Congress of the 1st Defendant in Anambra State held on 4th December, 2017 or at any time thereafter; as such, the 2nd Defendant could not have emerged as a substantive Chairman of the 1st Defendant in Anambra State without the holding of any such State Congress.

I further hold that List of Delegates that emerged from the Wards and Local Government Area Congresses

held on 28th November, 2017 and 1st December, 2017, as contained in **Exhibit H** and affirmed by the 1st Defendant in documents endorsed by its National Secretary in **Exhibits K2** and **L** respectively, remain the authentic delegates of the 1st Defendant in those respects.

I further hold that names of persons referred to by the 1st Defendant as its Ward, Local Government Area and State Delegates in the Brochure published for the conduct of the party's South East Congress in Enugu, on 6th March, 2021, do not represent the correct and authentic list of the party's delegates, in view of the far reaching and unassailable evidence placed before the Court by the Claimant.

I had again examined the decision of my Learned Brother, **O. A. Musa, J**, in Suit No. FCT/HC/CV/0497/2017, delivered on 24th May, 2017, and cited by all the Defendants for the

contention that the issues in disputed in the instant suit have been dealt with in that suit. The stand of this Court is that apart from the fact that the parties in that suit are not the same as those in the instant suit, the question set down for determination in the present suit extends far beyond the activities that took place between the parties in the earlier case that led to the filing of the same. In the circumstances, the decision of the Court in that case cannot bind this Court, more so that the decision in the earlier suit was reached on the basis of the facts presented before that Court; and more importantly since the two Courts are of coordinate jurisdictions.

Again, I note that the 3rd Defendant, in paragraph 17 of his Counter Affidavit, deposed that he Counter Claims against the Claimant. He also purports to rely on facts deposed in the Counter Affidavit to support the Counter Claim. However, nowhere is any relief

claimed or set out with respect to the said Counter Claim.

It is not in doubt that a Defendant is entitled to file a Counter Claim to an Originating Summons. See Friday Vs. Governor of Ondo State [2012] LPELR - 7886 (CA); Transocean Support Services (Nig.) Ltd. & Ors Vs. NIMASA & Anor. [2019] LPELR-33218(CA).

As it is also well known, a Counter Claim is viewed in law as separate action which is entitled to be considered on its own merits regardless of the outcome of the main action. However, the position is that a suit is anchored on the reliefs claimed therein and an action in which no relief is claimed is at best empty and could be described as dead on arrival. So is the 3rd Defendant's Counter Claim to the present suit in which no reliefs are claimed. Accordingly, the 3rd Defendant's Counter Claim is hereby dismissed.

In drawing the curtains on this judgment, it will not be misplaced to sound a note again, that in order that the Nigerian democracy, now, as it were, on the tenterhooks, must survive, political parties and actors alike, must stem the spate of unbridled impunity that pervades their ranks, particularly as it concerns the manner in which their affairs are handled; which invariably pales into the manner in which the political affairs of the nation are handled. The situation where a political party sets out to scuttle, jettison and override the sanctity of its own lawful processes in a most brazen manner, leaves too much to be desired. One can only hope that the outcome of this suit would gear the 1st Defendant towards embracing internal discipline in the handling of its party issues.

In the final analysis, I hereby resolve the sole question set down before the Court in favour of the Claimant. I find merit in the Claimant's case and the same hereby

succeeds. For avoidance of doubts and abundance of clarity, it is hereby adjudged as follows:

- 1. It is hereby declared that by virtue of Article 2 of the Constitution of the Peoples' Democratic Party (amended in 2017), the said Constitution is supreme and it has a binding force on all members and organs of the Peoples' Democratic Party, and any action or step taken contrary to the relevant provisions of the Constitution is unlawful, illegal, null, void and of no effect whatsoever.***
- 2. It is hereby further declared that it is unlawful for the 1st Defendant, whether during its South-East Zonal Congress of 6th March, 2021, or at any time to adopt or publish the name of a State Chairman, alongside persons purporting to be his Exco***

members, Local Government Chairmen and National Delegates, without recourse to the extant List of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017 validated by the Senator Grace Bent Ward Congress Appeal Panel Report and Barrister Ukpai Ukairo Local Government Appeal Panel Report, under the supervision of Sir Chukwudi Umeaba, as Acting Chairman, State Caretaker Committee.

- 3. It is hereby further declared that the arbitrary imposition by the 1st Defendant on its members, of a State Chairman, Exco members, Local Government Chairmen and National Delegates, as contained at Pages 14, 15 & 16 of the Defendant's Brochure for**

the South-East Zonal Congress of 6th March, 2021, is ultra vires its powers, unlawful, invalid, void and of no effect whatsoever.

- 4. All congresses, designations or appointments made by the 1st Defendant with respect to the positions of the State Chairman for PDP Anambra State Chapter, Exco Members and Local Government Chairmen, as contained at Pages 14, 15 & 16 of the South-East Zonal Congress Brochure of 6th March, 2021, are hereby nullified and set aside; for being invalid, unlawful and ultra vires the powers of the 1st Defendant, the same not being in alignment with the List of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017, validated by***

the Senator Grace Bent Ward Congress Appeal Panel Report and Barrister Ukpai Ukairo Local Government Appeal Panel Report, under the supervision of Sir Chukwudi Umeaba, as Acting Chairman, State Caretaker Committee.

- 5. The 1st Defendant is hereby ordered and compelled, that during the conduct of all elections in Anambra State, to henceforth adopt, employ, recognize and use only the list of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017 validated by the Senator Grace Bent Ward Congress Appeal Panel Report and Barrister Ukpai Ukairo Local Government Appeal Panel Report, under the supervision of Sir***

Chukwudi Umeaba, who shall continue to act in the capacities for which they were duly elected.

- 6. An Order of injunction is hereby issued, restraining the 1st Defendant, whether by itself, cronies, allies or representatives, from further recognizing, dealing with or parading any person or group of persons listed at pages 14, 15 & 16 of the Brochure for the South-East Zonal Congress of 6th March 2021, either as State Chairman, Exco members or Local Government Area Chairmen of the Peoples Democratic Party, Anambra State Chapter, except the list of already inaugurated Party Officers and Delegates that emerged from the Anambra PDP Congresses conducted on 28th November, 2017 and 1st December, 2017***

***validated by the Senator Grace Bent Ward
Congress Appeal Panel Report and Barrister
Ukpai Ukairo Local Government Appeal
Panel Report, under the supervision of Sir
Chukwudi Umeaba.***

- 7. Parties shall bear their respective costs of this
action.***

**OLUKAYODE A. ADENIYI
(Presiding Judge)
09/06/2021**

Legal representation:

**B. E. I. Nwofor, Esq. (with – Adeola Adedipe, Esq & Mojisola
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Ochai J. Otokpa, Esq. – for the 1st Defendant

**Emeka Obegolu, Esq. (with – Davidson Duru, Esq.) – for the 2nd
Defendant**

C. Ezika, Esq. (with – Gloria Ossai (Miss)) – for the 3rd Defendant