

**IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY**  
**ELECTION PETITION TRIBUNAL**  
**HOLDEN AT ASABA, DELTA STATE**

**PETITION NO: EPT/DL/SEN/07/2023**

**TODAY WEDNESDAY, 6<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**BEFORE THEIR LORDSHIPS:**

**HON. JUSTICE CATHERINE OGUNSANYA - (CHAIRMAN)**  
**HON. JUSTICE MAS'UD ADEBAYO ONIYE - MEMBER I**  
**HON. JUSTICE BABANGIDA HASSAN - MEMBER II**

**BETWEEN:**

**1. TIMINIMI GEORGE UGULASUOWEI ..... PETITIONERS**  
**2. ALL PROGRESSIVE GRAND ALLIANCE**

**AND**

**1. JOEL-ONOWAKPO THOMAS EWOMAZINO**  
**2. ALL PROGRESSIVES CONGRESS (APC) ..... RESPONDENTS**  
**3. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION (INEC)**

**JUDGMENT**

The 1<sup>st</sup> Petitioner, Timinimi George Ugulasuwei, on 25/2/2023 contested for the Delta South Senatorial Election having been sponsored by the 2<sup>nd</sup> Respondent, All Progressives Grand Alliance (APGA). The election was conducted by the 3<sup>rd</sup> Respondent (INEC). At the conclusion of the election, the 1<sup>st</sup> Respondent, Joel Onowakpo Thomas Ewomazino, the candidate of the 2<sup>nd</sup> Respondent (APC) was declared elected and returned as the winner.

Being dissatisfied with the outcome of the said election, the Petitioners presented this Petition on 20/03/2023 challenging the conduct and outcome of the election and the subsequent return of the

1<sup>st</sup> Respondent as the winner of the said election. It is the position of the Petitioners in the Petition that the 3<sup>rd</sup> Respondent wrongfully and unlawfully returned the 1<sup>st</sup> Respondent who contested on the platform of the 2<sup>nd</sup> Respondent, the winner of the Delta South Senatorial District with 49,959 votes on 28/2/2023 vide the Form EC8E, i.e declaration of result with the 1<sup>st</sup> Petitioner credited 1,889 votes amongst the scores of other candidates of other political parties.

The grounds upon which the Petition is founded are as follows:

- (a) GROUND (1): That the 1<sup>st</sup> Respondent, JOEL-ONOWAKPO THOMAS EWOMAZINO at the time of the election to the Senate of the National Assembly in the Delta South Senatorial District, was not qualified to contest the Election.
- (b) GROUND (2): That the election to the Senate of the National Assembly in the Delta South Senatorial District conducted on 25<sup>th</sup> of February 2023 is invalid by reason of non-compliance with the provisions of the Electoral Acts, 2022.

Whereof the Petitioners prays as follows:

- That it may be determined and declared that the 1<sup>st</sup> Respondent, JOEL ONOWAKPO THOMAS EWOMAZINO was not qualified to contest the Delta South Senatorial District Election having not been sponsored by a registered Political Party pursuant to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022.
- That it may be determined and declared that the 1<sup>st</sup> Respondent, JOEL-ONOWAKPO THOMAS EWOMAZINO, having not been validly sponsored by the 2<sup>nd</sup> Respondent for election into the office of the Senate in the Delta South Senatorial District, ought to have been excluded or disqualified from contesting the said election for non-compliance with the Electoral Act 2022.
- That it may be determined and declared that the elections to the Senate of National Assembly in the Delta South Senatorial District conducted by the 3<sup>rd</sup> Respondent on the 25<sup>th</sup> of February, 2023 and the return of the 1<sup>st</sup> Respondent JOEL-ONOWAKPO THOMAS

EWOMAZINO, as the winner of the election is invalid and voided by substantial non-compliance with the provisions of the Electoral Act, 2022.

- That it may be determined and declared that the Election in the Delta South Senatorial District, by the 3<sup>rd</sup> Respondent on 25<sup>th</sup> of February 2023 in default of the judgment of the Supreme Court compelling the 3<sup>rd</sup> Respondent to conduct a fresh delineation of all the Electoral Wards/Polling Units for the Warri South West, Warri North and Warri South Local Government Areas of Warri Federal Constituency, which is an integral part of Delta South Senatorial District is invalid, null and void.
- AN ORDER, voiding or annulling the Certificate of Return issued to the 1<sup>st</sup> Respondent, JOE-ONOWAKPO THOMAS EWOMAZINO of the ALL PROGRESSIVES CONGRESS (APC), the 2<sup>nd</sup> Respondent, as the Senator Elect of the Delta South Senatorial District.
- AN ORDER directing the 3<sup>rd</sup> Respondent to comply with the judgment of the Supreme Court in the conduct of fresh election to the Senate of the National Assembly in the Delta South Senatorial District.

The issues of facts pleaded in support of the Petition can be summarized as follows:

The 3<sup>rd</sup> Respondent (INEC) is saddled with the responsibility of regulating and conducting Senatorial Election in Nigeria. The Petitioners contested the Delta South Senatorial District Election on 25/02/2023 together with the 3<sup>rd</sup> Respondent who was not duly sponsored by a political party within the context of Sections 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act, 2022 by reason of the facts that at the time of the said election, the 2<sup>nd</sup> Respondent (APC) hitherto a registered political party had lost or breached the pre-conditions for its registration and had ceased to be a political party who can validly sponsor a candidate for election into any elective office/position as prescribed under the said 1999 Constitution (as amended), the APC

(2<sup>nd</sup> Respondent) having stood deregistered for breaching the said earlier provisions of the 1999 Constitution.

The 3<sup>rd</sup> Respondent (INEC) is also the body empowered to register and deregister political parties, conduct elections, monitor political party activities, including their conventions, congress, primaries, verification of compliance status of political parties and to exclude a political party that fails to comply with mandatory provisions of the Electoral Act 2022 from contesting in an election and also to reject any political association from sponsoring candidates and canvassing for votes in any constitutional elective office at an election.

It is the position of the Petitioners that the 2<sup>nd</sup> Respondent is not a registered political party by operation of law, it is deemed de-registered as a political party since June 2020 when it breached the requirements for registration thereby becoming incapable of sponsoring the 1<sup>st</sup> Respondent as a candidate and to canvass for votes in respect of elections the 1<sup>st</sup> Respondent conducted on 25/2/2023. 2<sup>nd</sup> Respondent having in June 2020 dissolved its 37 member National Executive Committee (NEC) replacing it with an 11 man governing body known as Caretaker and Extra-Ordinary Convention Planning Committee (CECPC) who led the 2<sup>nd</sup> Respondent (APC) for a period of 21 months from June 2020 to March 2022 and is yet to reapply to be registered as a Political party hence it stands dissolved and 2<sup>nd</sup> Respondent has ceased to be a political party within the context of what constitute a political party, now a political association and not permitted to use the name, symbol, logo or acronym of the deregistered political party within 5 years of deregistration.

The 1<sup>st</sup> Respondent is thus not a member of any registered political party and not sponsored by a registered political party, the 2<sup>nd</sup> Respondent having lost such qualification to be kept in existence by the 3<sup>rd</sup> Respondent (INEC) as a political party when it failed to maintain a list of 37 members of its National Executive Committee across the 36 States of the Federation including the FCT, which ought

to reflect the Federal Character of Nigeria between the months of 2020 to March 2022.

The names of the members of the said Caretaker and Extra Ordinary Convention Planning Committee (CECPC) set up in breach of the law were set out in paragraph 12.11 of the Petition.

The 3<sup>rd</sup> Respondent (INEC) have been derelict in their duties by failing to exclude/disqualify the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from participating in the 25/02/2023 election into the Senate of the National Assembly in the Delta South Senatorial District but in 2020 excluded the Advanced Nigeria Democratic Party (ANDP) from participating in the Governorship Election in Bayelsa on the ground that its Deputy Governorship candidate did not meet the requirement of Section 177(b) of the 1999 Constitution as amended.

It was contended that the inclusion of the 1<sup>st</sup> Respondent in the said Senatorial Election for Delta South Senatorial District amounts to non compliance with the mandatory provisions of Section 82(1) and 84(8) of the Electoral Act 2022 and paragraph 7.2 of INEC Regulations and Guidelines for the Conduct of Political Party Primaries 2018 and the conduct and process leading to the sponsorship of the 1<sup>st</sup> Respondent by 2<sup>nd</sup> Respondent in the said election of 25/2/2023 was not in compliance with the provisions of the Electoral Act, 2022.

The 2<sup>nd</sup> Respondent which adopted the indirect primary system for the sponsorship of candidates ought to have given INEC a mandatory 21 days notice before convening its congress or meeting in respect of the purported sponsorship and nomination of 1<sup>st</sup> Respondent for elective office which it failed to do, further failing to give 7 days notice for its purported rescheduled primary for sponsorship of 1<sup>st</sup> Respondent as the purported formal notice of 6/4/2022 issued by the 2<sup>nd</sup> Respondent to the 3<sup>rd</sup> Respondent was not in compliance with the law, thus the name of the 1<sup>st</sup> Respondent was included by the 3<sup>rd</sup> Respondent in the said election; he 1<sup>st</sup> Respondent having been a product nominated from an invalid nomination/primary for election process into the said Senatorial seat despite the fact that

3<sup>rd</sup> Respondent had been informed in writing by Jeckins Ejiro Wisike, a member of the 2<sup>nd</sup> Petitioner by a letter dated 31/5/2022 of the violation of the provisions of the Electoral Act 2022 by the 2<sup>nd</sup> Respondent in respect of the sponsorship of 1<sup>st</sup> Respondent. Hence, the 3<sup>rd</sup> Respondent has been derelict in performing her function by not rejecting the nomination of 1<sup>st</sup> Respondent for the said 25/2/2023 election.

The conduct of the 25/2/2023 election into the eight Local Government Areas, 87 wards, 1,920 polling units of Delta South Senatorial District was marred by substantial irregularities and non compliance with the provisions of the Electoral Act 2022 and the Manual for Election Officials 2023 and the Regulations and Guidelines for the Conduct of Election 2022, despite the several safeguards to ensure integrity, sanctity and credibility by the introduction of the BVAS and the INEC IReV and the provisions in the Electoral Act, 2022 as to collation officers' right to compare and confirm results.

It was contended that the election conducted on 25/2/2023 in respect of the Senatorial Election are invalid by reason of non compliance with the provisions of the Electoral Act and Manual for Election Officials 2023 as the votes cast were not in compliance with the said Act and Guidelines hence any election erected on them are invalid, null and void as BVAS machines were not used properly or at all for accreditation at the polling units or for collation of the polling unit results in wards and Local Government Areas despite the promise of 3<sup>rd</sup> Respondent (INEC) of its commitment to the use of BVAS.

The contents of Form EC8D(I), i.e Summary of Results at Local Government Area level, showed total valid votes as 116,777 and 4,434 rejected votes while total votes cast is 121,211 and are not the true results as recorded at Polling Units Results Forms EC8As and Ward Level Result Forms EC8B and Local Government Area Results Forms EC8Cs as the accredited voters recorded at ward level Forms EC8Bs is inconsistent with and exceeds the accredited voters recorded in BVAS in all the polling units, same with Forms EC8C where

accredited voters in the said Forms exceed the number of accredited voters recorded by the BVAS in all the polling units of the 8 Local Government Areas of Delta South Senatorial District.

The Petitioners listed a catalogue of irregularities at the said election which include that the accredited voters recorded on Forms EC8C exceeds the number of the accredited voters on the BVAS in the polling units and the same with the total votes cast as recorded in Forms EC8As for polling units which exceed that of accredited voters in the BVAS, the votes on the ballot papers and scores in the Forms EC8A(I) do not tally and there was no accreditation with the BVAS in several polling units across the 8 Local Government areas of Delta South Senatorial District and there was no collation at the Registration areas at all levels with BVAS to reconcile inconsistencies before declaration of results. At the polling units across the 8 Local Government Areas, Presiding Officers failed to record in the prescribed forms the quantity, serial numbers of result sheets, ballot papers and other sensitive materials, resulting in massive non compliance with the Electoral Act and Manual which affected the results announced and declared by the 3<sup>rd</sup> Respondent.

It was averred that the 3<sup>rd</sup> Respondent (INEC) did not conduct a proper delineation of the wards and units of Warri South West, Warri South and Warri North Local Government Areas in line with statutory provisions, as the total wards in the Local Government Areas are 32 and total polling units are 875, which has resulted in the existence of fictitious wards and units used as an instrument of electoral manipulation and subversion of the popular wish of people, despite representation made to INEC to pay attention to the complaints of the Ijaws of Warri Federal Constituency of the said ward which culminated in litigation up to Supreme Court in Suit No. SC/413/2016 delivered on 2/12/2022 in which Supreme Court ordered INEC to conduct fresh delineation which INEC has still and did not comply with.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents each filed applications/preliminary objections challenging the jurisdiction of the Honourable Tribunal to entertain this Petition seeking a striking out of same amongst other reliefs sought.

The 1<sup>st</sup> Respondent's said application in the above regard was filed on the 12/5/2023. The 2<sup>nd</sup> Respondent's own application also in the above regard is dated and filed on 12/5/2023. Similarly, in the 2<sup>nd</sup> Respondent's Reply to the Petition dated 6/4/2023 is embedded a preliminary objection also praying for a striking out/dismissal of the Petition. The 3<sup>rd</sup> Respondent's application also in the above regard is dated 13/5/2023 seeking a striking out of the Petition and again the 3<sup>rd</sup> Respondent filed on 13/5/2023 an application seeking a striking out of some paragraphs of the Petition which relate to the internal affairs of the Respondents as to the nomination and sponsorship of the 1<sup>st</sup> Respondent and seeking a striking out of the ground of the Petition which relates to sponsorship of the 1<sup>st</sup> Respondent.

The combined reading of the facts that can be extracted from the grounds and affidavits in support of these applications/objections are in no particular order as follows.

1. The facts in paragraphs 12 – 12.16 and 13.1 – 13.9 deal with internal affairs of 2<sup>nd</sup> Respondent (APC) as to nomination and sponsorship of the 1<sup>st</sup> Respondent as the candidate of 2<sup>nd</sup> Defendant for the Election is focus in this Petition and facts in the Petition which is predicated on the above ought to be struck out.
2. Many persons against whom allegations are made in the Petition were not joined as parties, hence the Tribunal cannot adjudicate and make adverse findings against them and the Tribunal ought to strike out such paragraphs.
3. The Petition ought to be struck out for being incompetent and vesting no jurisdiction on the Tribunal or that paragraphs 12.11, 12.7, 12.9, 12.10, 12.12, 12.16, 13.8, 13.9, 13.12, 13.13, 13.14, 13.18, 13.20, 13.21, 13.23, 13.24, 13.25 be struck out for being generic, vague, imprecise, inexact, etc.



The legal arguments made in support of the said applications/objections are hereunder.

A community reading of Addresses of Counsels reveal the following; Citing ***Madukolu Vs. Nkemdilim (1962) NSCC 374 at 379 – 380*** amongst other authorities, it was submitted that the subject matter of the Petition challenges issues of the election of delegates, nomination and sponsorship of candidates and internal affairs of the leadership of a political party which are not justiciable and are well captured in paragraphs 12.6, 22.7, 13.5, 13.6 of the Petition which reveal facts as to breach of requirements for registration of a political party and deregistration of same and notice to be given to INEC before convening congress to elect delegates etc.

The decision in ***Adegbuyi Vs. APC (2015) 2 NWLR (Pt. 1442)*** on the exclusive power of the political party to run its affairs and conduct its primary elections was cited, hence it was contended that a Court or Tribunal has no jurisdiction to adjudicate in such issues. Several other authorities were commended to the Tribunal in the above regard, including the case of ***APC Vs. Moses (2021) 14 NWLR (Pt. 1796) 278 at 320 – 321*** where the Court held that such matters are non justiciable, including if the present Petitioners were members of 2<sup>nd</sup> Respondents party (APC), citing ***Agume Vs. APC & Ors. (2021) 14 NWLR (Pt. 1796) 351 at 395***. More so, as in this case where it touches on qualification and non qualification of a candidate as to his nomination and sponsorship by a political party. Citing various authorities including ***Alhassan Vs. Ishaku (2016) 10 NWLR (Pt. 1520) 230 at 264*** where the Court held that an Election Petition Tribunal has no jurisdiction to inquire into the primaries of a political party.

It was further contended that the above matters are pre-election matters which under the Constitution ought to have been litigated upon within the mandatory 14 days after the events therein occurred, hence the issue is statute barred in view of the averments in paragraphs 12.6 – 12.16 and paragraphs 13.1 – 13.9 of the Petition,

which reveal that the events the Petitioners refer to occurred since June 2020 till March 2023 relating to deregistration of a party and nomination and sponsorship of a candidate and are events preparatory to an election, hence pre-election matters, citing **APC Vs. Umar (2019) 8 NWLR (Pt. 1675) 564 at 575** and **Watharda Vs. Ularamu (2015) 3 NWLR (Pt. 1446) 369** where the Court held that issues of disqualification, nomination, substitution and sponsorship of candidates for elections precede election and are pre-election matters.

See also **Ibezum Vs. Elebeke (2022) 4 NWLR (Pt. 1819) 1 at 66-67** which set out and embraced the provisions of Section 285(9) of the Constitution and stated the need for the utmost diligence in prosecuting a matter within the time prescribed by law or else the matter will be statute barred.

However, such right of action *vide* Section 285(14)(c) of the Constitution is only open to a candidate of the same party who complains about disqualification not another political party poking his nose into the affairs of the rival Party in the selection of her candidate. Thus, it is only members of a party who possess such standing to sue and also must still be a right which is afforded him in relation to him having sufficient interest in the issue to gain access to the Court. It was contended further, citing Section 285(14)(c) of the Constitution, that a political party cannot meddle in activities of another party.

Several authorities were commended to the Tribunal to establish that the Tribunal have no jurisdiction to adjudicate on pre-election matters as constituted in the relevant paragraphs of the Petition just discussed above, including **Ibrahim Vs. INEC (1999) 8 NWLR (Pt. 614) 334**, **Salami Vs. CPC & Ors. (2013) LPELR 1992 8 (SC)**.

The Petitioners in their Petitioners' Written Address in opposition to each of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' motions on notice of 12/5/2023 filed on 19/5/2023 contended in essence that the Petition is competent as constituted and bears no features which could

deprive the Tribunal of exercising its jurisdiction to adjudicate therein on the merit. It was contended that the grounds upon which the Petition is being questioned is consistency with Section 134 of the Electoral Act 2022 having been founded on Section 134(1) of the same Act and the facts accompanying the grounds are as regulated by Section 14(1) of the Electoral Act.

That the Petition complies with paragraph 4(1)(d) and (2) of the First Schedule to the Electoral Act, 2022 which enjoins that the facts upon which the Petition is premised be divided into paragraphs and be confined to a distinct issue or major facts of the Petition and every paragraph numbered consecutively which have been complied with in this Petition.

That the facts pleaded in paragraphs 12 – 12.16 and 13.1 – 13.9 of the Petition, which are alleged to be pre-election matters, are facts pleaded in support of grounds of disqualification of the 1<sup>st</sup> Respondent from contesting the election and on non-compliance with the Electoral Act 2022 and which are premised on Section 65(2)(b) of the 1999 Constitution, which provides the requirement of membership of a political party and sponsorship of that party for qualification to contest the election under the Senate and National Assembly.

It has thus been pleaded that the 1<sup>st</sup> Respondent was not sponsored by 2<sup>nd</sup> Respondent within the context of Sections 221, 222, 223 and 225 of the Constitution (as amended) and Section 29(6) of the Electoral Act, 2022 in line with the Petitioners' pleadings in paragraphs 12.2, 12.3, 12.4, 12.6, 12.7 and 12.8 of the Petition.

Sections 221, 222, 223 of the Constitution which provide for only political parties to canvass for votes not associations and prescribes that the names and addresses of their national officers be registered with INEC and also provides for a periodical democratic election for Principal Officers and members of the Executive Committee or other governing body of the political party etc which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents flouted, hence it was submitted they stand deregistered as political parties.

The decision of the Supreme Court in **INEC & Anors Vs. Musa & Ors.** was commended to the Tribunal on the need for political parties to comply with Section 221 of the Constitution. See also **Davidson & Ors Vs. INEC** on the fact that a registered political party can lose its registration if it cannot maintain its national headquarters or cannot show its leadership list and NEC members, and having its certificate of Registration is not enough, it can still be assessed for qualification as a political party.

It was submitted that on the strength of the above facts pleaded in the Petition in support of Grounds 1 and 2 of the Petition the grounds are competent, well found and sustainable.

Further submitted that on the strength of the authority of **Dangana Vs. Usman** a matter can be a pre-election and a post election matter over qualification/disqualification to contest an election is an amphibious incident pertaining to pre and post election and in this case the 1<sup>st</sup> Respondent is not qualified to contest the election.

### **The Resolutions of Issues raised in Applications/Preliminary Objection**

The grounds upon which an election can be questioned is well defined and set out in Section 134(1)(a)(b) and (c) of the Electoral Act 2022 which provides: -

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

- a. a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- b. the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or
- c. the respondent was not duly elected by majority of lawful votes cast at the election.

In the instant Petition the two grounds upon which the Petition is premised are as set out in paragraphs 11(a) and (b) of the Petition filed on 25/03/2023 and are as follows –

**(a) GROUND (1):** That the 1<sup>st</sup> Respondent, JOEL-ONOWAKPO THOMAS EWOMAZINO at the time of the election to the Senate of the National Assembly in the Delta South Senatorial District, was not qualified to contest the Election.

**(b) GROUND (2):** That the election to the Senate of the National Assembly in the Delta South Senatorial District conducted on 25<sup>th</sup> of February 2023 is invalid by reason on non-compliance with the provisions of the Electoral Acts, 2022.

The substance in the main and the essence of the applications/objections raised in the application earlier referred to and under consideration which border on the jurisdiction of this Tribunal, we reiterate, is that the facts pleaded in support of the grounds upon which the Petition is founded are pre-election matters, they not being members of the 2<sup>nd</sup> Respondent party and thus the Petitioners have no *locus standi* to bring the Petition.

Furthermore, it is being contended also that since the matter is a pre-election matter the window provided by Section 285(9) of the Constitution for pre-election matters to be litigated on i.e 14 days has lapsed.

It is a fundamental prescription in election petition matters that a ground upon which an election petition is founded must be supported by pleadings. In the case of **Wada & Ors. Vs. Bello and Ors. (2016) LPELR – 41263 (CA)**, the Court of Appeal stated

*"..... It is trite that every ground of an Election Petition must be supported by the relevant facts or particulars duly pleaded."*

See also the case of **Goyol & Anor. Vs. INEC (2001) LPELR – 9235 (CA)**.

Paragraph 4(1)(d) and (2) of the First Schedule to the Electoral Act, 2022 provides:-

"4(1) An election petition under the Act shall –

.....  
*(d) State clearly the facts of the election petition and the ground or grounds on which the Petition is based and the relief sought by the Petitioner.*

*(2) The election Petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election Petition, and every paragraph shall be numbered consecutively.*

In this Petition the Petitioners averred in paragraphs 12.1 to 12.16 follows;

- 12.1 Your Petitioners aver that the 1<sup>st</sup> Respondent at all time relevant and material to his sponsorship to contest the senatorial election for the Delta South Senatorial District election conducted by the 3<sup>rd</sup> Respondent on the 25<sup>th</sup> of February, 2023 was not duly sponsored by a political party within the context of Sections 221, 222 and 223 of the Constitution of the Federal Republic of Nigeria 1999 as amended and the Electoral Act, 2022.
- 12.2 Your Petitioners aver that it is only a political party duly registered as a political party under the said Constitution and the Electoral Act, 2022 that can validly sponsor and canvass for votes for any candidate at any Election.
- 12.3 Your Petitioners further aver that where a political party hitherto registered as a political party loses or breaches any of the pre-conditions for its registration, it cease to be a political party and cannot validly sponsor a candidate for election into any elective office/position prescribed under the said 1999 Constitution as amended.
- 12.4 Your Petitioners aver that the 2<sup>nd</sup> Respondent, the ALL PROGRESSIVE CONGRESS (APC) hitherto a registered political party stand de-registered when it breached the provisions of Section 222 and 223 of the 1999 Constitution as amended, and therefore not competent to sponsor the 1<sup>st</sup> Respondent to

contest the election into the Senate of the National Assembly in the Delta South Senatorial District.

- 12.5 Your Petitioners aver that the 3<sup>rd</sup> Respondent is empowered by the Constitution to register and deregister political party, conduct election, monitor political party activities, including their conventions, congress, primaries, verification of compliance status of political parties and to exclude a political party that failed to comply with the mandatory provisions of the Electoral act 2022 from contesting in an election and also to reject any Political Association from sponsoring candidates and canvassing for votes in any Constitutional elective office at an Election.
- 12.6 Your Petitioners aver that the 2<sup>nd</sup> Respondent, ALL PROGRESSIVE CONGRESS (APC) is not a registered political party by operation of law, it is deemed de-registered as a political party since June 2020, when it breached the requirements for registration, thereby becoming incapable of sponsoring the 1<sup>st</sup> Respondent as a candidate and to canvass for votes in respect of election of the 1<sup>st</sup> Respondent conducted on 25<sup>th</sup> February, 2023.
- 12.7 The Petitioner aver that the 2<sup>nd</sup> Respondent in June 2020 dissolved its 37 members National Executive Committee (NEC) that reflected the Federal Characters of Nigeria, 36 States of the Federation including the Federal Capital Territory (FCT) and replaced it with another Governing Body of 11 members in breach of the requirement for registration of a Political Party. The said governing body was known as "Caretaker and Extra-Ordinary Convention Planning Committee (CECPC). This committee was the Governing Body of the 2<sup>nd</sup> Respondent for a period of Twenty One 21 Months, that is, a period from June 2020 to March 2022. The 2<sup>nd</sup> Respondent is yet to re-apply to be registered as a Political Party.

- 12.8. The Petitioners aver that by the said dissolution, the 2<sup>nd</sup> Respondent ceased to be a Political Party within the meaning and context of what constitute a political party under the law.
- 12.9 The Petitioners aver that where a Political Party is de-registered, no political association shall be permitted to use the name, symbol, logo or acronym of the de-registered political party within five (5) years of de-registration.
- 12.10 Your Petitioners aver that the 1<sup>st</sup> Respondent is not a member of any registered political party and not sponsored by a registered political party. The 2<sup>nd</sup> Respondent lost the qualification to be kept in existence by the 3<sup>rd</sup> Respondent as a Political Party when it failed to maintain a list of 37 members of the National Executive Committee across the 36 States of the Federation, including the FCT that ought to reflect the Federal Character of Nigeria between the months of June 2020 to March, 2022.
- 12.11 The Petitioners aver that the said Caretaker and Extra-Ordinary Convention Planning Committee (CECPC) that was set up in breach of the law upon the dissolution of the Adams Oshiomole APC led National Executive Committee, comprised of 11 members namely:
1. Governor Mai Mala Buni
  2. Isiaka Oyebola
  3. Ken Nnamini
  4. Stella Okotete
  5. Governor Sani Bello
  6. Dr. James Lalu
  7. Sen. Abubakar Yusuf
  8. Hon. Akiyemi Olaide
  9. David Leon
  10. Pro. Tahir Mamman and
  11. Ismail Ahmed



- 12.12 The Petitioners aver that the Constitution and Guidelines of the 2<sup>nd</sup> Respondent endorsed by SENATOR JOHN JAMES AKPANWEDEDHE (NATIONAL SECRETARY, CECPC) and H.E. (HON) MAI MALA BUNI (NATIONAL CHAIRMAN, CECPC) relates to the Association, CECPC.
- 12.13 The Petitioners aver that the acronym “CECPC” is not a registered political party under the law. The purported Constitution/Guideline submitted by “CECPC” to the 3<sup>rd</sup> Respondent is not from a registered Political Party, but at best from a Political Association.
- 12.14 Your Petitioners aver that in breach of the Constitution and the Electoral Act 2022, the 3<sup>rd</sup> Respondent in dereliction of its obligation/duty failed to exclude/disqualify the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the Election conducted on 25<sup>th</sup> February, 2023 to the Senate of the National Assembly in the Delta South Senatorial District.
- 12.15 Your Petitioner aver that the 3<sup>rd</sup> Respondent has no discretion to pick and choose which political party to de-register for breach of the Constitutional requirement for registration, when it had de-registered over 74 political parties in the past which were in breach of the requirement for registration. The 3<sup>rd</sup> Respondent was under obligation to de-register the 2<sup>nd</sup> Respondent aforesaid.
- 12.16 Your Petitioners aver that in 2020 the 3<sup>rd</sup> Respondent excluded the ADVANCED NIGERIA DEMOCRATIC PARTY (ANDP) from participation in the Governorship Election in Bayelsa State on ground that its Deputy Governorship Candidate did not meet the requirement of Section 177(b) of the 1999 Constitution as amended.

The above facts clearly are events and occurrences that occurred before the conduct of the election of 25/2/2023. See section 65(1)(a) and Section 66(1)(2) & (3) and section 106 of the Constitution. It is now settled beyond peradventure that the issues of non qualification

to contest an election as provided for in Section 134(1) as a ground to found an election are those which are provided for in Section 65 and 66 of the Constitution. See **Uchieze Vs. Ezenagu & Ors. (2010) LPELR – 5043 (CA)**, **PDP & Anor. Vs. INEC & Ors. (2012) LPELR – 8409 (CA)**.

There is no averment in the earlier reproduced paragraphs of the Petition earlier set forth which hinges on any of the provisions of Section 65(a) and 66 of the Constitution. The issues which have been raised in these pleadings are unequivocally matters which relate to requisite notice to INEC for conventions, registration and de-registration of a political party, nomination and sponsorship of a candidate, delineation of wards and polling units are issues which precede an election and have been held to be pre-election matters being matters which occurred before the conduct of the election. See the cases of **Obe Vs. Abubakar & Ors. (2023) LPELR 60408 (SC)**, **APC Vs. Emuerem (2022) LPELR 57816 (SC)**, **Oladapo Vs. Kalejaye & Ors. (2023) LPELR 6462 (SC)** and **Abdul Vs. Shekwilo & Ors. (2022) LPELR 56682 (CA)**.

One cannot but agree with the Respondents that all of the above issues pertain to pre-election matters which ought to have been fought, lost or won before the election in contention held in view of all the authorities Counsels to Respondents had cited in their respective addresses. The following authorities need to be restated by this Tribunal in the above regard, to wit – **APP Vs. Obaseki & Ors.; Sambo & Anor. Vs. Aliero & Ors. (2009) LPELR – 4921 (CA); Chukwu Vs. INEC (2011) LPELR 141860 CA**.

The recent case of **PDP Vs. INEC & Ors. (2023) LPELR – 60457 (SC)** has also put paid to the issue as to whether a political party and/or its members can inquire, as is the case in the instant petition, as to the inner/internal working of another party with the answer being a capital No! Hence, this Tribunal can safely and unequivocally hold that the internal running and workings of the APC as to the nomination and sponsorship of the 1<sup>st</sup> Respondent is not the

business of the Petitioners and this Tribunal pronounce the Petitioners meddlesome interlopers and nose parkers.

The issues the Petitioners brought to the fore in their pleadings earlier set also out have no bearing or nexus with the provisions of Sections 65 and 66 of the Constitution and thus do not constitute facts that can sustain the ground 1 of their Petition.

Therefore, it is the holding of this Tribunal that ground 1 of this petition in view of the facts pleaded in support is incompetent and go to no issue.

Now to Ground 2 of the Petition which is as follows;

(b) **GROUND (2):** That the election to the Senate of the National Assembly in the Delta South Senatorial District conducted on 25<sup>th</sup> of February 2023 is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.

The facts pleaded in respect of ground 2 of the petition on non compliance covered 29 paragraphs. Paragraphs 13.1 – 13.9 are as follows –

13.1 The Petitioners aver that the inclusion of the name of the 1<sup>st</sup> Respondent in the election to the Senate of the National Assembly in the Delta South Senatorial District is not in compliance with the mandatory provisions of Sections 82(1) and 84(8) of the Electoral Acts, 2022 and paragraph 7.2 of INEC Regulations and Guidelines for the Conduct of Political Party Primary 2018.

13.2 Your Petitioners aver that the conduct and/or process leading to the sponsorship of the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent in the election of 25<sup>th</sup> February, 2023 was not in compliance with the mandatory provisions of the Electoral Act 202

13.3. The Petitioners further aver that a political party that adopts the system of indirect primary in the sponsorship of candidate for the General Election of 2023 shall give mandatory notice of 21 days to INEC (3<sup>rd</sup> Respondent) before convening Congress to elect

delegates for the purpose of nomination of candidates for elective office.

- 13.4 The Petitioners further aver that the 2<sup>nd</sup> Respondent which adopted the indirect primary failed to state clearly in its Constitution and Guidelines the procedure for the democratic election of delegates to vote at the convention, congress or meeting where the 1<sup>st</sup> Respondent was purportedly nominated by the 2<sup>nd</sup> Respondent for elective office.
- 13.5 The Petitioners aver that the 2<sup>nd</sup> Respondent failed to give 21 days' notice to the 3<sup>rd</sup> Respondent before convening the congress to elect the delegates that voted at the primary where the purported sponsorship of the 1<sup>st</sup> Respondent was decided. The 2<sup>nd</sup> Respondent also failed to give 7 days' notice for its purported rescheduled Primary for sponsorship of the 1<sup>st</sup> Respondent.
- 13.6 The Petitioners aver that the purported formal notice dated 6<sup>th</sup> April, 2022 issued by the 2<sup>nd</sup> Respondent to the 3<sup>rd</sup> Respondent was not in compliance with the law.
- 13.7 The Petitioner aver that the 3<sup>rd</sup> Respondent ought not to have included the name of the 1<sup>st</sup> Respondent, which nomination was a product of an invalid nomination/primary for election to the Senate of the National Assembly in the Delta South Senatorial District.
- 13.8 The Petitioners aver that the 3<sup>rd</sup> Respondent was informed through a letter written by MR. JECKINS EJIRO WISIKE, a member of the 2<sup>nd</sup> Petitioner, of the violation of the provision of the Electoral Act 2022 by the 2<sup>nd</sup> Respondent, in the sponsorship of the 1<sup>st</sup> Respondent, but the 3<sup>rd</sup> Respondent in dereliction of its duty as a public body failed and/or refused to take action or reject the nomination and not to include the name of the 1<sup>st</sup> Respondent to election conducted on the 25<sup>th</sup> of February 2023.
- 13.9 The Petitioners further aver that the 3<sup>rd</sup> Respondent is HEREBY given NOTICE TO PRODUCE at the trial of this Petition the letter

dated 31<sup>st</sup> of May, 2022 written by MR. JECKINS EJIRO WISIKE to the 3<sup>rd</sup> Respondent as well as the Constitution and Guidelines of the 2<sup>nd</sup> Respondent submitted by CECPC through letter dated 28<sup>th</sup> March, 2022 respectively.

A look at Section 285(14)(a)(b) and (c) of the Constitution is imperative in this regard. It provides thus;

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

*(b) An aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participating in an election; and*

*(c) A political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election.”*

In the case of **Akpangbo-Okadigbo & Ors. Vs. Chidi & Ors. (2015) LPELR – 24564 (SC)** the Supreme Court discussed the nature of pre-election matters thus;

*"Now, a pre-election matter as the phrase connotes is a cause of action which predates and does not constitute any complaint against the actual conduct of an Election. In Amaechi Vs. INEC & Ors. 2007 18 NWLR Pt. 1066 42 this Court has held that issues of nomination and sponsorship of party's candidates for an election precede the election and are therefore pre-election matters."*

See also **Iwok Vs. Nyang & 2 Ors. (2022) LPELR – 57682 (SC)**, **Alhassan & Anor. Vs. Ishaku & Ors (2016) LPELR – 40083 (SC)**.

No doubt paragraphs 13.1 13.9 of the pleadings, being pre-election matters, do not support the ground of non compliance with the provisions of the Electoral Act which is supposed to be pleaded in respect of the actual conduct of the 25/2/2023 election complained of.

Next, paragraphs 13.12 – 13.13, 13.16, 13.17, 13.22 of the Petition pertain to INEC's (3<sup>rd</sup> Respondent) promise to conduct free and credible election with the use of BVAS for accreditation. They need not be reproduced as we do not find them germane in respect of facts which sustain ground 2 of the petition.

Paragraphs 13.29 thereof refer to facts in respect of 3<sup>rd</sup> Respondent (INEC)'s refusal to delineate properly for purpose of contesting the elections in Warri North, Warri South West and Warri South Local Government Areas' Wards and Units despite the orders of Court in Suit No. SC/4/3/2016 delivered on 2/12/2022 which was brought to INEC's notice.

A few paragraphs of the said pleadings, i.e paragraphs 3.11, 13.12 – 13.15, 13.18, 13.21 – 13.24 pertain to non compliance with the Electoral Act. We must however stressed that from the above the totality of the facts pleaded on the ground of non compliance is a

combination of pre-election issues, irrelevant issues of promises of INEC to employ technology to produce fair election and a few paragraphs on non compliance.

The Tribunal is now faced with the following posers begging for answers, to wit:

- i. Is it the duty of the Tribunal to pick and choose for a party which paragraphs of his pleadings support a ground of his Petition?
- ii. Where the facts pleaded in support of a ground in a Petition is a potpourri, i.e hotch potch, jambalaya, mixed bag, patchwork or rummage of the relevant and irrelevant, with regard to the proof of that ground, can the Tribunal have recourse to a semblance of the doctrine of severance of pleadings in sorting out the wheat from the chaff? In other words, can the Tribunal separate Biblical Peter from Paul?
- iii. In the above wise, will the Tribunal not be seen as helping the Petitioners at the expense of the Respondents, making his case in respect to the Petition?

In taking a position in answering all of the above questions, the Tribunal is not unaware of the doctrine of severance of pleadings and its application. The Petitioners are victims of this conundrum because they have decided in their pleading to compartmentalize the facts they have pleaded in support of the grounds upon which the Petition is founded. Thus, any error in respect of facts pleaded are irreversible.

In the above regard, the Court in the case of **Elohor & Anor. Vs. INEC and Ors. (2019) LPELR – 48806 (CA)** stated that –

*“..... Now, looking and considering paragraphs 9 – 16 and 43 – 54 of the Appellants’ Petition, it is clear to me and I so hold that the Appellants having clearly demarcated and compartmentalized their averments of facts in support of their specific grounds, which do not in it support the grounds rendering the two grounds to be left bare.”*

The doctrine of severance of pleadings, no doubt in law, comes into play where there is a mix up of facts which are criminal in nature with those of civil content. This is not so in this case. Even where the doctrine of severance of pleadings will be invoked, it must be *vide* application of a party.

In the instant petition, we restate that what has been muddled up in the pleadings are facts which are substantially pre-election matters, irrelevant issues and few facts which apply to non compliance. However, all have been pleaded as facts to sustain the ground of non compliance with the provisions of the Electoral Act, 2022. It is not in our view for the Tribunal to pick and choose for the Petitioners which of the facts pleaded they intend to rely upon in proof of the said ground. In the case of **Agya & Anor Vs. Zhekaba & Ors. (2015) LPELR – 46775 (CA)** the Court stated that –

*"...Tribunal is not empowered to dabble into the surgery or separation of interwired and or interwoven civil and criminal allegations without a formal application to that effect coming from the pleader/appellants....."*

In the light of the foregoing, the Tribunal resolves the issues for determination in favour of the Respondents and consequently upholds the objection in question, grants the application under consideration and strikes out the Petition as incompetent.

It is pertinent to state that plethora of legal authorities have held that where a Preliminary Objection is upheld the court needs not go ahead to determine the merit of the matter. See **AGF V. ANPP & Ors. (2003) LPELR – 630 (SC)**; **Galadima V. Tambai & Ors. (2000) LPELR – 1302 (SC)**; **Universal Properties Ltd. V. Pinnacle Commercial Bank & Ors. (2022) LPELR 57 808 (SC)**; **Chief Emmanuel Osita Okereke V. Alhaji Umaru Yar’adua & Ors. (2008) LPELR – 2446 (SC)** among others.



Accordingly, this petition is hereby struck out. Cost assessed at N500,000.00 against the Petitioners and in favour of each of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

***Hon. Justice Catherine Ogunsanya***

(Chairman)

06/09/2023

***Hon. Justice Mas’ud Adebayo Oniye    Hon. Justice Babangida Hassan***

Member I

06/09/2023

Member II

06/09/2023

**APPEARANCES**

*Ediri Diejomaoh Esq. with him U. C. Uduma Esq. for the Petitioners.*

*Robert Emukpoeruo SAN with him Oluwaseun O. Olusiyi Esq. and Ifeoluwa Ojediran Esq. for the 1<sup>st</sup> Respondent.*

*Lukman O. Fagbemi SAN with him Habeeb Lawal Esq., S. K. Ayo Esq. for the 2<sup>nd</sup> Respondent.*

*Abdullahi Yahaya SAN with him Orowo Okelezo Esq. for the 3<sup>rd</sup> Respondent.*