IN THE COURT OF APPEAL

IN THE OWERRI JUDICIAL DIVISION

HOLDEN AT ABUJA

ON WEDNESDAY THE 11TH DAY OF MAY 2022.

BEFORE THE LORDSHIPS:

HAMMA AKAWU BARKA----------JUSTICE, COURT OF APPEAL

JOSEPH EYO EKANEM----------JUSTICE, COURT OF APPEAL

MOHAMMED MUSTAPHA----------JUSTICE, COURT OF APPEAL

APPEAL NO: CA/OW/87/2022

BETWEEN:

PEOPLES DEMOCRATIC PARTY========== APPELLANT

AND

1.CHIEF NDUKA EDEDE
2.ATTORNEY GENERAL OF THE FEDERATION RESPONDENTS

JUDGMENT

DELIVERED BY HAMMA AKAWU BARKA, JCA

This appeal arose from the judgment of the Federal High Court, Umuahia Judicial Division, sitting in Umahia, the Abia State capital in suit with no. FHC/UM/CS/26/2022, and delivered on the 18th day of March, 2022 coram Evelyn Anyadike, J. By the said judgment located at pages 53 – 69 of the record, the lower Court after taking arguments from the respective parties, entered judgment for the Plaintiff, in the following terms: -

1. I declare that Section 84 (12) of the Electoral Act, 2022 cannot validly and constitutionally limit, remove, abrogate, disenfranchise, disqualify, and oust the constitutional right or eligibility of any political appointee, political or public

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office holder to vote or to be voted for at any convention or congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election.

2. I declare that the provisions of section 84 (12) of the Electoral Act, 2022 which limits, removes, abrogates, disenfranchises, disqualifies, and oust the constitutional right and eligibility of any political appointee, political or public office holder to vote or be voted for at any convention or congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election, is grossly ultra vires and inconsistent with sections 6 (6) (a) & (b), 66 (1)(f), 107 (1)(f), 137 (1)(g), and 182 (1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, invalid, illegal, null and void and of no effect whatsoever.
3. I hereby nullify and set aside section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null and void to the extent of its inconsistency with sections 66 (1) (f), 107 (1)(f), 137 (1)(g), and 182 (1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. I hereby Order the defendant (The Attorney General of the Federation) to delete the provisions of Section 84 (12) from the Electoral Act, 2022 with immediate effect.

BRIEF FACTS

The Plaintiff Chief Nduka Edede on the 8th day of March, 2022, and by way of Originating Summons prayed for the determination of the following questions: -

i. Whether by the combined effect of sections 1(3), 6(6)(a) and (b) 66(1)(f), 107 (1)(f), 137 (1)(g), and 182 (1)(g) of the Constitution of the Federal Republic of Nigeria 1999 as (amended); the provisions of section 84(12) of the Electoral Act, 2022 can validly limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or to be voted for at any convention or congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election.

ii. Whether by the combined effect of sections 1(3), 6(6)(a) and (b) 66(1)(f), 107 (1)(f), 137 (1)(g), and 182 (1)(g) of the Constitution of the Federal Republic of Nigeria 1999 as (amended); the provisions of section 84(12) of the Electoral Act, 2022 can validly limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or to be voted for at any convention or congress of any political party for the purposes of nomination of such person

or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election, is not unconstitutional, ultra vires and inconsistent with the Constitution, invalid and therefore null and void in its entirety.

And should the questions be favourably answered, grant the following reliefs: -

1. A declaration that section 84(12) of the Electoral Act, 2022 can validly limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or to be voted for at any convention or congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election
2. A declaration that the provisions of section 84 (12) of the Electoral Act,2022 which tends or purports to limit, remove, abrogate, disenfranchise, disqualify and oust the constitutional right and eligibility of any political appointee, political or public office holder to vote or be voted for at any convention or congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election, is grossly ultra vires and inconsistent with sections 6 (6) (a) & (b), 66 (1)(f), 107 (1)(f), 137 (1)(g), and

182 (1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, invalid, illegal, null and void and of no effect whatsoever.

3. An order of Court nullifying and/or setting aside section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null and void to the extent of its inconsistency with sections 66 (1) (f), 107 (1)(f), 137 (1)(g), and 182 (1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. An order of the Court directing and compelling the Defendant to forthwith delete the provisions of section 84 (12) from the Electoral Act, 2022 with immediate effect.

In support of the Originating Summons is a 31 Paragraph affidavit deposed to by one Happiness Nneji, the litigation Secretary in the law firm of Nnodim Njoku & Co., solicitors to the Applicant, and in support of which is a written address filed on the 8/3/2022. Also filed along with the originating process are other sundry processes and documents. Mr Chris Nevo, having obtained the fiat of the Honourable Attorney General of the Federation, filed a counter affidavit, and on the 17th of March, 2022, the originating summons was heard necessitating the judgment being delivered on the 18th day of March, 2022, in favor of the Plaintiff.

Dissatisfied with the judgment of the trial court, the appellant with the leave of court, filed the instant appeal being a party interested on the 12th of April, 2022 predicated on seven grounds of appeal; and on the 26th of April, 2022, the appeal having been duly entered to this court, parties proceeded to file in their respective briefs of argument. The Appellant filed a brief on the 26th of April, 2022

settled by Donald C. DeNigwe SAN, wherein two issues were identified for the resolution oof the Appeal as follows:

1. Whether the trial Court was justified when it assumed jurisdiction to hear and determine the Originating Summons in suit no. FHC/UM/CS/26/2022 filed by the 1st Respondent before it, in all the circumstances of this case?
2. Whether the learned trial Court was justified in its interpretation of section 84 (12) of the Electoral Act, 2022 as inconsistent with the provisions of sections 66 (1) (f), 107 (1)(f), 137 (1)(g), and 182 (1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as to warrant the order directing the Attorney General of the Federation to delete section 84 (12) of the Electoral Act, 2022 with immediate effect?

Having received written briefs from the 1st and 2nd respondents, appellant on the 6th day of May, 2022 filed replies to the 1st and 2nd respondents' briefs.

In opposing the appeal, 1st respondent filed a brief of argument settled by Nneoma Iwu (Mrs) on the 20th day of April, 2022, and in her estimation, the following issues arise for determination:

i. Whether the 1st Respondent does not have the locus standi to challenge the constitutionality of an Act of the National Assembly and thereby making the underlying suit as constituted before the trial Court an abuse of Court process.
ii. Whether the trial Court acted erroneously when it held that section 84 (12) of the Electoral Act, 2022 is unconstitutional

in view of its inconsistency with the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

iii. Whether the trial Court acted wrongly when it assumed jurisdiction to determine the suit before it?

iv. Whether the trial Court lacked the judicial powers to grant a relief specifically claimed by a party before it and thereby directed the 2nd Respondent to delete the unconstitutional provision of section 84 (12) of the Electoral Act, 2022?

The defendant before the lower court, now 2nd respondent, who appears to be contented with the decision reached by the lower court, filed a respondents notice on the 14th day of April, 2022, embedded in the additional record of appeal transmitted on the 28th of April, 2022 with the leave of court. The 2nd respondent also filed a brief on the 29th of April, 2022, settled by Frank Amandi Esq. At page 2 of the brief, the following issues were crafted for resolution.

i. Whether the lower court had the jurisdiction to entertain the suit.

ii. Whether the trial court was not right when it declared section 84 (12) of the Electoral Act, 2022, as unconstitutional, null and void, for being inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria (as amended).

iii. Whether the provisions of section 84 (12) of the Electoral Act, 2022 struck out was not discriminately and contrary to sections 17, 35, 40 and section 42 of the 1999 constitution (as amended), the African Charter on Human and People's Right (ACHPR) and international Covenant on Civil and Political Right (ICCPR).

On the 9th day of May, 2022, when the appeal eventually arose for hearing, the learned counsel representing the various parties in the appeal, identified the processes filed, and urged the court to grant their respective prayers. Whereas the learned senior counsel for the appellant urged upon the court to allow the appeal and to set aside the decision of the lower court, it was the prayers of the 1st and also the 2nd senior counsels, that the appeal be dismissed for lack of merit.

I have therefore accorded a deep but sober consideration to the issues suggested by the parties having read the record of proceedings, the grounds of appeal and the submission of the learned parties. My humble view is that even though most a times, the issues fronted by the appellant, being the complainant gives guidance to the way and manner the appeal should be handled, where the respondent formulates issues which addresses the points in consideration or in controversy much more squarely, same must be preferred. See **Neka BBB Manufacturing Company Ltd vs. African Continental Bank Ltd. (2004) 2NWLR (pt. 858) 521.** In the event, I find and adopt the three issues proposed by the 2nd respondent in the resolution of the appeal for its precision, brevity and clarity. See **Management Ent. Ltd vs. ABC Merchant Bank (1996) 6NWLR (pt. 453) 249.**

ISSUE ONE.

Whether the lower court had the jurisdiction to entertain the suit.

This issue correlates with the appellants issue one, as well as the first issue identified by the 1st respondent.

It is the submission of learned counsel that the issue of the challenge of the jurisdiction of a court of law is fundamental and can be raised at any time even at the stage of appeal for the first time, and the cases of **National Electoral Commission vs. Uboh (2001) FWLR (pt. 55) 501, Bakoshi vs. Chief of Naval Staff (2005) ALL FWLR (pt. 148) 1719** and ors were cited and relied upon. Learned counsel submitted that a court of law can only have and properly exercise jurisdiction to hear and to determine a including **Madukolu vs. Nkendilim (1962) ALL NLR 587,** and **Salati vs. Shehu (1986) 1NWLR (pt. 15) 198 @ 218** are satisfied. He contended that in the case at hand, the proper parties for the invocation of the jurisdiction of the lower court were not before the court, and that there were features which robbed the court of the requisite jurisdiction entertaining the claim. Learned counsel proceeded to enumerate and to present arguments with respect to certain perceived fundamental defects and incompetence, firstly positing that the plaintiff lacked the competence and the locus standi to institute and maintain the claim in respect of the subject matter of the originating summons.

Alluding to the originating summons filed, counsel argued that it is only a person who can show that his civil rights and obligations are called into question that can be said to have the capacity to institute legal proceedings in a court of law for the ventilation of his grievance and the determination of such rights, and the cases of **Omega Bank Plc vs. Government of Ekiti State (2007) ALL FWLR (pt. 386) 658, Owodunni vs. Reg. Trustees of the Celestial Church of Christ (2000) 10NWLR (pt. 675) 315, centre for Oil Pollution Watch vs. NNPC (2019) 5NWLR (pt.**

1666) 518 @ 591 and **Ajuwon vs. Governor of Oyo State (2021) 16NWLR (pt. 1803) 485 @ 531,** amongst many others were all cited in aid of the established legal position.

Legal counsel referred the court to paragraphs of the affidavit in support of the originating summons, contending that all the allegations contained therein are at large and failed to disclose any special legal interest or constitutional right of the 1st respondent over and above that of the general public, maintaining that the alleged interest of the 1st respondent is hypothetical or remote as he had no nexus with the provisions of section 84 (12) of the Electoral Act 2022. He insisted that 1st respondent had no locus standi as pronounced in the case of **UBN Plc vs. Ntuk (2003) 16NWLR (pt. 845) 183 @ 191**, and on that score urged the court to intervene, and to resolve the issue in favor of the appellant.

Also submitting on the ground that the originating summons failed to disclose any reasonable cause of action to warrant the invocation of the jurisdiction of the learned trial court, it was submitted by the learned appellant's counsel that aside the issue of locus, the 1st respondent failed to disclose any cognizable cause of action in the originating summons against the 2nd respondent. Making reference to the cases of **Cookey vs. Fombo (2005) 15NWLR (pt. 947) 182 @ 202 and Rebold Ind. Ltd vs. Magreola (2015) 8NWLR (pt. 1461) 210 @ 225,** it was argued that in the determination of whether the action before the court discloses a course of action, it is the writ of summons and statement of claim that is usually examined, or in the present case the facts disclosed in the affidavit. He argued also that where the

body of the 1st respondents 31 paragraph affidavit is examined, it would be found that the 1st respondent did not complain about any wrong done to him by the 2nd respondent or any injury occasioned by the 2nd respondent. He argued that the act of the National Assembly in enacting laws pursuant to its duties granted by the constitution cannot amount to a wrong by the 2nd respondent committed against the 1st respondent. He referred to the case of **Ibrahim vs. Osim (1988) 3NWLR (pt. 82) 257 @ 267, and SPDCN vs. Nwawka (2003) 6NWLR (pt. 815) 184 @ 209,** on the facts that must exist to ground a reasonable cause of action, contending that a community reading of the entire paragraphs of the affidavit fail to disclose any wrong done to the 1st respondent by the 2nd respondent, and thereby urged the court to resolve the issue in its favor.

On the proper parties necessary for the invocation of the jurisdiction of the trial court in respect of the subject matter of the claim who were not sued or made parties to the case and therefore not before the court, it was argued that a critical look at the originating summons of the 1st respondent would indicate that the proper or necessary parties were not before the court. He states that the National Assembly that enacted the law ought to have been made parties to the suit, and that not having been done, the lower court lacked the jurisdiction to hear the suit. The case of **Alamieyeseigha vs. Teiwa (2002) FWLR (pt. 96) 552 @ 557** was relied on. Further relying on the case of **Okwu vs. Umeh & sons (2016) 1SCNJ 129 @ 150**, learned counsel submits that even though it is the law that misjoinder or non-joinder cannot defeat any action, however of the view that where the outcome of

the suit will affect that party one way or the other, it will be an exercise in futility not to join that party. He also urged the court to resolve the issue in favor of the appellant.

Also submitting on the issue of the originating summons filed being an attempt at forum shopping and thereby an abuse of court process, learned counsel, in demonstration, made reference to instances described in **Ugo vs. Ugo (2017) 18NWLR (pt. 1597) 218 @ 238** as amounting to an abuse of court process to include, the fact that 1st respondent as plaintiff before the lower court did not depose to his supporting affidavit in person and never put up appearance in court during the proceedings, that even though the 2nd respondent has his address for service in the FCT, and the provisions of section 84(12) of the Electoral Act 2022 was enacted by the National Assembly sitting in Abuja, yet, the 1st respondent chose to sue at the Umuahia Judicial Division of the Federal High Court, and referred to the decision of the Apex Court in the case of **Mailantarki vs. Tongo & ors (2017) LPELR – 42467 (SC),** that the suit was heard and finally decided at the speed of light, that there was palpable collusion between the 1st and 2nd respondents, and that the parties misled the court amongst others. He submits that the facts and circumstances of the suit smacks of mala fide and thereby constituted an abuse of the process of the court. On whether the originating summons was speculative and the 1st respondents suit hypothetical and non-justifiable, learned counsel drew the court's attention to the paragraphs in support of the originating summons, contending that the subject matter of the suit was speculative, hypothetical and non-justiciable. He drew the court's attention to the case of AG Anambra State vs. AG of the

Federation (2005) 9NWLR (pt. 931) 572, which held that it is not the function or indeed the duty of a court to embark on advisory opinion or abstract or academic exercise or speculation, further positing that 1st respondent had not shown that the provisions of section 84 (12) of the Electoral Act were applied against him or that the 2nd respondent activated the same to his detriment. on whether the questions submitted for determination by the 1st respondent in the originating summons were abandoned and not argued by the 1st respondent, it was the contention of learned counsel that the jurisdiction of a court is tied to and limited to the dispute which the parties submit for determination, and cited **Nkuma vs. Odili (2006) 6NWLR (pt. 977) 587** in that regard. He argued that even though the 1st respondent has submitted two questions for determination in the originating summons, he subsequently abandoned them in preference to the sole issue formulated. The questions thus left unargued are deemed abandoned, and the cases of **Achu vs. CSC Cross River State (2009) 3NWLR (pt. 1129) 475 @ 507, University of Jos & anor vs. Aro (2019) LPELR – 46926 (CA), Olley vs. Tunji (2013) 10NWLR (pt. 1362) 275 @ 322** were cited and relied upon. In conclusion, learned counsel faulted the lower court assuming jurisdiction on the respondents originating summons, and therefore urged the court to resolve the issue and the appeal in favor of the appellant.

The 1st respondent in response, argued from pages 3 to 17 of the brief contending that the 1st respondent had the legal standing to institute the underlying suit challenging the constitutionality or otherwise of the Act of the National Assembly such as section 84

(12) of the Electoral Act, 2022. Relying on **Adesokun vs. Adegorolu (1997) 3NWLR (pt. 493) 261, and Bolaji vs. Bamgbose (1986) 4NWLR (pt. 37) 632**, learned counsel is of the view that in the case at hand it is the affidavit in support of the Originating summons that will be considered in the determination of whether the Plaintiff has locus or not, and points to paragraphs 3 to 7 of the 1st respondent's affidavit in support of the originating summons as disclosing the locus standing of the 1st respondent. He submits that the term locus standi cannot be divorced from the provisions of section 6 (6) (b) of the Constitution, since it is the right of a citizen to institute an action in court exercisable by a person who has a complaint touching on his civil rights and obligations. He contended that there was material evidence to the point that many of the persons or politicians whom the plaintiff desires to vote for in various elective political offices are political office holder, who are desirous of resigning 30 days to the date of the elections. He drew the court's attention to the further affidavit of the 1st respondent to the effect that he is a member of the Abia State Executive of the Action Alliance and a statutory delegate at the party primary elections, convention or congress for the 2023 general elections and therefore has the right to vote for the nomination of the parties candidate for the various offices for the elections, and that most of the candidates whom he would have preferred voting for are presently political office holders who have been adversely been affected by the provision. He urged the court to be guided by the uncontroverted averments in the affidavit. Submitting further, legal counsel submits that the tenor of the import of the term locus standi in constitutional matters is generally different from other instances such as tortious liability, as the

action of the 1st respondent stems from the construction of constitutional provisions. Relying on the case of **Attorney General of Bendel State vs. The Federation (1981) 12 NSCC 314 @ 393**, it was contended that it is the duty of every Nigerian to sue to protect the infraction of the Constitution, and that such a person cannot be denied access to court. Submits that where an action bothers on the construction of the Constitution, the court should adopt a liberal approach, **Bewaji vs. Obasanjo (2008) 9NWLR (pt. 1093) 540**. Learned counsel then cited at length the decision of Aboki JCA, as he then was relying on the case of **Fawehinmi vs. Akilu (1987) 4NWLR (pt. 67) 797**, posited that the setion under consideration having affected the peculiar or personal legal interst of the 1st respondent herein, and being a question predicated on the construction of the Constitution, had the legal interest protecting his own right.

Further still, learned counsel leveraged on section 4(8) of the Constitution of the Federal republic of Nigeria 1999 as amended, and the case of **Akinwolemiwa vs. Ondo State House Of Assembly (1985) 6NCLR 580,** to contend that section 84 (12) of the Electoral Act, created a draconian and despotic piece of legislation the challenge of which cannot qualify the 1st respondent as a busy body nor constitute the case as an abuse of the process of court.

On the issue of failure to disclose a reasonable cause of action, learned counsel sought the help of the cases of **Ojukwu vs. Yar'adua (2009) 12 NWLR (pt. 1154) 50, and Petroleum Training Institute vs. Mathew & 26 ors (2012) ALL FWLR (pt. 623) 1949** to argue that the obvious invalidity or

unconstitutionality of section 84 (12) of the Electoral act 2022, vis a vis the legal rights and interest of the 1st respondent constituted sufficient wrongful fact which occasioned damage to the 1st respondent.

On the contention of non joinder, of the National Assembly and the Independent National Electoral Commission, it was submitted that it was the Federal Attorney General of the Federation that is the proper party, and the case of **Peenok Ltd vs. Hotel Presidential Ltd & ors (1982) NSCC 477** cited in that regard. He urged the court on the totality of the issue to dismiss the appeal.

The 2nd respondent also responded to the issue from pages 2 – 17 of the brief filed. Therein learned counsel submitted that the lower court had the requisite jurisdiction entertaining the 1st respondents' suit, in that the 1st respondent had the locus of instituting the action. He made reference to paragraphs 3 – 7 of the 1st respondents' affidavit in support of the originating summons as well as the further affidavit filed on the 11th day of March, 2022 to submit that 1st respondent demonstrated the sufficiency of his interest in the suit, having captured the irreparable loss he would suffer by the enforcement of section 84 (12) of the Electoral Act 2022. Learned counsel placed premium on the cases of AG Lagos State vs. Eko Hotels Lts & anor (2006) LPELR – 3161 (SC), Fawehinmi vs. President, Federal Republic of Nigeria (2007) 14NWLR (pt. 1054) 275 to submit that 1st respondent showed that his interest in the interpretation of section 84 (12) of the Electoral Act, is directly connected to his constitutional right of participation in the electoral process, in the exercise of his political franchise to vote or being voted for by his preffered candidates. He contends

that the frontiers of locus standi have since been expanded to accommodate a wider/liberal approach citing **Centre for Oil Pollution Watch vs. NNPC (2019) 5NWLR (pt. 1666) 518 @ 566**, and the earlier case of **Fawehinmi vs. President of the Federal Republic of Nigeria (2007) 14NWLR (pt. 1054) 275 @ 334** per Aboki JCA. Learned counsel in summation stated that the 1st respondent is a genuine claimant and by reason of the combined depositions in paragraphs supporting the originating summons established his legal capacity to institute the suit pursuant to his enviable influence in the community as a constitutional lawyer, political party executive, statutory delegate, political party financier/sponsor of candidates eligible to vote, a tax payer and grass root party mobilizer.

On the issue of disclosure of cause of action, it was argued contrary to the assertion by the appellant that the originating summons disclosed a reasonable cause of action inuring the lower court with the requisite jurisdiction. While conceding to the legal position that it is the writ of summons and the statement of claim, and in the instant case the supporting affidavit which ought to be looked at to discover if there is a cause of action, learned counsel is of the view that appellants acknowledgment that the 1st respondents complaint was about the validity or otherwise of an act of the National Assembly, which the 1st respondent being a constitutional lawyer firmly believes to have derogated from or is inconsistent with the Constitution, established a reasonable cause of action as admitted by the appellant, and cited the case of **Akin vs. Oduntan (2000) 13NWLR (pt. 685) 446 @ 463** on what amounts to a cause of action. He alluded to the position of the law to the effect

that for the originating summons to disclose a reasonable cause of action, it must set out the legal right of the plaintiff and the obligation of the defendant, and then set out the facts constituting the infraction of the plaintiff's legal right or failure of the defendant to fulfill that obligation. The case of **Rinco Construction Company Ltd vs. Veepee Industries Ltd & anor (2005) LPELR – 2949 (SC)** was cited in that regard. He then made reference to paragraphs 13, 17 and 27 of the 1st respondents deposition particularizing his grievance, concluding that 1st respondent clearly demonstrated his threatened right infringed upon by the 2nd respondent and the resultant damage thereto.

On proper parties, it was the contention of learned counsel that by order 9 rule 14(1) of the Federal High Court Rules 2019, no court proceedings shall be defeated by non-joinder of parties. He also contended that the National Assembly and INEC are not needed for the effectual determination of the suit before the lower court.

On the issue of forum shopping and abuse of court process, learned counsel is of the view that by the nature of the case, same can be canvassed and determined before any division of the federal High Court. Lastly, on whether the action filed was hypothetical speculative and or the questions abandoned, legal counsel alluded to the holding in the case of **Oloruntoba-Oju vs. Dopamu (2008) ALL FWLR (pt. 411) 810,** having held that when a litigant claims declaratory relief, he does no more than to invite the court to declare what the law is on the issue, stating that the decision of the lower court on the issue is lucid and unambiguous. He contended that the issues before the lower court were live issues that yielded a great utilitarian value to the 1st respondent

and the public at large citing **AG Plateau State vs. AG of the Federation (2006) 3NWLR (pt. 967) 346 @ 419**. He denied the fact that the questions were abandoned as the issues were canvassed before the lower court.

On points of law, the learned senior counsel placed reliance on the case of **Agwarangbo vs. Union Bank of Nigeria (2001) 4NWLR (pt. 702) 1 @ 16**, and asserted the failure of a plaintiff to disclose his locus standi in an action is fatal to the case as failure to disclose any reasonable cause of action and the result is that the action stands to be dismissed by the court. He reiterated that the right to vote for a candidate of one's choice as being relied upon by the 1st respondent, cannot be stretched to the 1st respondent litigating for the qualification or disqualification of the person he proposes to vote for who are not yet candidates at any election. With respect to the 2nd respondent, the learned senior counsel for the appellant, submitted that 2nd respondent is not entitled to argue the case of the 1st respondent for the 1st respondent and cited the case of **Ohakim vs. Agbaso (2010) 19 NWLR (pt. 1226) 172 @ 223**, urging parties to be consistent in stating its case.

A calm but dispassionate understanding of the issue canvassed by the parties, turns on the simple question whether the 1st respondent, being the plaintiff before the lower court, had the locus standing to question the propriety or otherwise of the promulgation of section 84 (12) of the Electoral Act, 2022, by the National Assembly in the circumstance in which he did, and thereby donating jurisdiction to the lower court in the determination of the matter before it.

It s now elementary, having been so established through the cases that jurisdiction is the fulcrum, the centerpiece or the main pillar upon which the validity of any decision of a court of law stands and around which the issues rotate. See **Dangana vs. Usman (2012) LPELR – 7827 (SC), First Deep-Water Discovery Ltd vs. Faick Petroleum Ltd (2020) LPELR – 49783 (CA)**. The life blood of every adjudication, for a court without jurisdiction is likened to an animal without blood. The issue of jurisdiction is so crucial and fundamental that it can be raised at any stage of adjudication, including for the first time on appeal, and that which must first be settled, before venturing to the determination of the issue in dispute. See **Okonkwo vs. Ngige (2007) LPELR – 2485 (SC)**. Indeed, where a court forms the view that it has no jurisdiction in the matter, it has the right to raise and determine it without hearing from the parties. See **Gaba vs. Tsoida (2020) 5NWLR (pt. 1716) 1 @ 30**. The position advanced by the learned counsel for the appellant, supported by the cases of **National Electoral Commission vs. Uboh (2001) FWLR (pt. 55) 501 @ 509, and Bakoshi vs. Chief of Naval Staff (supra)** agrees with state of the law.

I also agree with the learned counsel, that going by the parameters set by Madukolu vs. Nkendilim (1962) SCNLR 341, and followed in Salati vs. Shehu (1986) 1NWLR (pt. 15) 198 @ 218, that a court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that:

i. The proper parties are before the court.
ii. The court's properly constituted as to its membership and qualification.

iii. Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the case from exercising jurisdiction.

iv. Where the case comes before the court initiated by due process of the law, and upon fulfilment of any condition precedent to the assumption of jurisdiction.

The grouse of the appellants herein is that the proper parties necessary for the invocation of the trial court's jurisdiction were not before the court, and more so that certain features in the case, robbed the court the necessary jurisdiction of entertaining the action in the first place. Paramount is the contention that plaintiff lacked the competence and locus standi to institute and to maintain the claim in respect of the subject matter of the originating summons. I have before now rehashed the arguments of the learned counsel on the issue. In the words of the Apex Court, the term locus Standi denotes a legal capacity to institute proceedings in a court of law. It is said to be used interchangeable with such terms as standing or title to sue. It is the right of a party to appear and to be heard on a question before any court of law. See **Pam vs. Mohammed (2008) LPELR – 2895 (SC).** See also **Daniel vs. INEC (2015) LPELR – 24566 (SC)**, where the Supreme Court per Rhodes-Vivour JSC, held that:

> **"Locus standi denotes the legal capacity to institute proceedings in court.it is a threshold issue that goes to the root of the suit. On no account should the merits of the case be considered before locus standi is decided. locus standi affects the jurisdiction of the court,**

consequently if the plaintiff does not have locus standi to institute the suit, the court would have no jurisdiction to entertain the suit. Usually, it is the plaintiff that is questioned as to whether he has locus standi."

It has also been held that the issue of locus standi constitutes a condition precedent to the institution of any action before a court of law. See **Baido vs. INEC (2008) LPELR – 3843 (CA)**, the concept being to protect the court being used as a playground for professional litigants, busybodies and meddlesome interlopers and cranks who have no real stake or interest in the subject matter of the litigation.

It is trite law that a cause of action and standing to sue are linked to the issue of jurisdiction of a court. If the plaintiff has no cause of action or the standing to sue,ie locus standi, to institute an action, the court cannot properly assume jurisdiction to entertain the matter. See **Arowolo vs. Akaiyeyo (2012) 4NWLR 286.** By the 1st respondents originating summons, filed before the Federal High Court Umuahia, 1st respondent sought for the interpretation of the provisions of section 84 (12) of the Electoral Act 2022 which stipulated that:

"No political appointee at any level shall be a voting delegate or be voted for at the convention or congress of any political party for the purpose of the nomination of candidates for any election."

The contention of the 1st respondent before the lower court was that section 84 (12) of the Electoral Act 2022 had

unconstitutionally taken away the constitutional right of every political appointee to vote or be voted for at any convention or congress of any political party for the purposes of nomination of such person or candidate for any election, thereby breaching his personal right to have any of his preferred candidates who are presently political appointees and willing to resign, withdraw or resign from the said political or public office at least 30 days to the date of the election to participate in any election in Nigeria against the express provisions of the Constitutions. The 1st respondent hinged his interest on the combined reading of paragraphs 3 – 7 of the 1st respondents' affidavit in support of the originating summons, as well as the further affidavit filed, which the 1st respondent holds were not challenged. It has been held that a party who seeks a declaratory relief in the constitution must show that he has a constitutional interest to protect and that the interest has been violated or breached to his detriment. The interest must be substantial, tangible and not vague, intangible or caricature. **Charles vs. Gov. Ondo State (2013) 2NWLR (pt. 1338) 294, Inakoju vs. Adeleke (2007) 4NWLR (pt. 1025) 423.** The locus classicus on the subject to date remains the case of **Adesanya vs. The President of Nigeria (1981) 12 NSCC 146,** where the full court of the Apex Court, held per Bello JSC, that:

> **"To enable a person to invoke judicial power to determine the constitutionality of such an action, he must show that either his personal interest will immediately be or has been adversely affected by the action or that he**

sustained or is in immediate danger of sustaining an injury to himself"

This court has been referred to the decision of Aboki JCA, now JSC, in the case of **Gani Fawehinmi vs. President of the Federal Republic of Nigeria & 4 ors (2007) 14NWLR (pt. 1054) 275**, particularly at pages 336 – 337 to the effect that the Apex Court had departed from the narrow approach in the Adesanya case, relying on **Fawehinmi vs. Akilu (1987) 4NWLR (pt. 67) 797**. Luckily these same arguments appeared to have been adequately considered in the latter decision of this court, sitting as a full court in the unreported case of **Njoku vs. Dr Goodluck Jonathan (unreported) in appeal with No. CA/A/374/2013,** delivered on the 3rd day of March, 2015, where Abubakar Datti Yahaya JCA, opined that:

"it has been held that the decision in Adesanya's case remains our law until it is reversed by a contrary decision of a constitutional panel of seven justices. This has not been done. See Thomas vs. Olufosoye (1986) 1NWLR (pt. 18) 669

In the case of Busari vs. Oseni (1992) 4NWLR (pt. 237) 557 @ 586, this court held that the decision in Fawehinmi vs. Akilu (supra) relied upon by appellant's counsel to ground his theory of a liberal or relaxed approach to standing in constitutional matters did not extend the frontiers of locus standi beyond Adesanya's case. This in our view is because Fawehinmi's case laid down the rule for locus standi in criminal cases only"

I am in the circumstance of the same view that even though this court in the Fawehinmi case, held the view that any citizen should be in a position to sue in respect of any public dereliction and that the requirement of locus standi becomes unnecessary in constitutional issues, the superior decision of the Supreme court in the Adesanya case still stands as the position of the law, and that which by the hierarchy of courts stands as the position of the law.

Having been so guided by the above state of the law, I have meticulously examined the 1st respondents affidavit in support of the originating summons, most particularly paragraphs 3 – 7 relied upon by the 1st respondent's counsel, I have also studied the further affidavit also referred to, my humble but firm view is that paragraphs 3 – 7 in no way places the 1st respondent's interest far and above the interest of any other citizen of Nigeria having the same qualification of being a constitutional lawyer, politician and a citizen of the country called Nigeria. In the same way, the further affidavit by its showing of being a member of a registered political party, grass root mobilizer and sponsor with numerous supporters, and having sponsored numerous political aspirants, cannot ground his standing to sue. Neither can the intent to nominate or sponsor any of his preferred candidates who are political office holders, sufficient in establishing his locus standing. He must have proceeded further to show that he is that political office holder who is thus affected by the vexed section. Curiously, none of the numerous office holders, to which the section of the Electoral Act is targeted has shown interest in the matter. I agree with the appellant that from the 1st respondent's affidavit in support of the originating summons, no discernable personal interest ennuring to

the 1st respondent has been shown to exist. To that end I am in full agreement with the learned counsel for the appellant that 1st respondent in the circumstance, lacked the requisite locus standi to initiate the action before the lower court, and the court devoid of jurisdiction in entertaining the suit/action. I so hold. Care must be taken in differentiating the accrual of locus standi under the Fundamental Human Rights procedure Rules, and in environmental pollution cases, where any one has the leverage of suing for the community, within the community.

There is the further argument that the 1st respondent had not shown any cause of action or his right of action to sue.

This court in **Bob vs. Akpan (2009) LPELR – 8519 (CA)** per Lokulo-Sodipe JCA, of the holding that the issues of cause of action, locus standi and proper parties to an action are inextricably knotted and tangled together. I agree with that holding. The question to ask is whether or did the 1st respondent have a cause of action, or put differently, did any cause of accrue to the 1st respondent? My simple answer is that there was no any factual situation that would have warranted the court to inquire into. What was before the court was an imaginary situation, encapsulated in his affidavit in support. I hold therefore that there was no cause of action accruing in favor of the 1st respondent.

Interestingly, appellant's counsel did complain that The National Assembly and the Independent National Electoral Commission (INEC), being necessary parties were not joined as such parties before the trial court. I do not see any substance in that contention. What role do you expect the National Assembly, having done their constitutional duty of passing the said law, and or INEC, whose

duty is the observance of the said law required to do. I see that argument in the realm of sentiments, since the two bodies and all other interest is represented by the chief law officer of the federation, as it is supposed to be. See **Peenok Ltd vs. Hotel Presidential (supra)**. In any case, by the rules governing the lower court, the fact that a party was wrongly joined, or not joined does not affect the merit of the case, excepting where the suit cannot be effectively and effectually decided upon in their absence. I accept the submission of the learned counsel for the 1st and the 2nd respondents that the two bodies are not necessary parties to the suit.

Learned counsel for the appellant also went to town complaining that the originating summons filed before the Federal High Court Umuahia was an act of forum shopping and thereby an abuse of the process of the court. He referred to some infuriating instances most particularly with respect to the manner the case was prosecuted before the lower court.

My lords, of recent there has been this concern of parties identifying particular courts where to institute their matters, not minding the decision of my lord Eko JSC, in the case of **Mailantarki vs. Tongo & ors (supra)**. Let me reiterate the fact that nothing precluded the Federal High Court Umuahia entertaining the action, but quickly add that the admonition in the case of **Mailantarki (supra)** should and needs to guide our courts and must be strictly adhered to.

The aggregate of all I have been saying is that owing to the fact that the 1st respondent lacked the locus standing to sue, and there being no right of action in his favor, the lower court had no

jurisdiction to have entertained the suit, and thereby labored in vain. The resultant effect is that the action before the lower court is liable to be struck out and is accordingly struck out.

Ordinarily, this ought to have settled the instant appeal, but we are very conscious of the fact that the decision of this court may not be the final decision on the issue, being the penultimate court, and even though there are divergent views on what this court should do in the circumstance having arrived at the understanding that the lower court lacked the necessary jurisdiction entertaining the action in the first place, there is that duty placed on this court availing the Apex Court its view on the matter being agitated upon. The reason for so doing is to save precious time and costs. See **Idris vs. Agumagu (2015) 13NWLR (pt. 1477) 441, Adah vs. NYSC (2004) 13NWLR (pt. 89) 639, Tanko vs. UBA Plc (2010) 17NWLR (pt.1221) 80, Elelu-Habeeb vs. AG Federation (2012) 13NWLR (pt. 1318) 423.**

Consequently, we would proceed to examine issues 2 and 3, which forms the fulcrum of the case before the trial court generating the instant appeal, and Issues 2 and 3 being interwoven and related, the issues would be considered at the same time. For the avoidance of doubt, the two issues are:

> Whether the trial court was not right when it declared section 84 (12) of the Electoral Act, 2022, as unconstitutional, null and void, for being inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria (as amended).
> Whether the provisions of section 84 (12) of the Electoral Act, 2022 struck out was not discriminately and contrary to sections 17, 35, 40 and section 42 of the 1999 constitution

(as amended), the African Charter on Human and People's Right (ACHPR) and international Covenant on Civil and Political Right (ICCPR).

The two issues crafted by the 2nd respondent are in sync with the 2nd issue proposed by the learned appellant's learned counsel as well as issues 2 and 4 of the 1st respondents, issues.

Proffering submissions of the issues, the learned Senior counsel for the appellant referred to a portion of the judgment of the lower court and submitted that that court did not note the fundamental distinction between employment in the civil or public service of the State or Federation which is referred to in sections 66(1)(f), 107(1)(f),137(1)(g) and 182(1)(g) of the Constitution of Nigeria, and the status of a political appointment or appointees referred to in section 84(12) of the Electoral Act, 2022. He submitted that the provisions are clear and unambiguous and do not require any sophistry of interpretation. He contended that the two are not the same, relying on section 318(1) of the Constitution and that section 84(12) of the Electoral Act talks about political appointees while the above provisions of the Constitution talk about public office holders. He referred to and relied on **Ituen vs. Ikot-Ekpene Local Government Council (2017) LPELR-43646(CA).**

Learned senior counsel contended that there was no question of inconsistency between the Electoral Act and the Constitution as the former in section 84(3) recognizes the provisions of the above stated sections of the Constitution. It was his further contention that there is nothing in section 84(12) of the Electoral Act which sets out to qualify a person that the Constitution has disqualified and vice-versa. He added that section 84(12) of the Electoral Act

was enacted to ensure a level playing ground for the delegates at the primaries.

Continuing, senior counsel argued that since there is a difference between a public officer and a political appointee, the question raised for determination and the reliefs sought in the originating summons are not only incompetent but inchoate, imprecise and not related to the provisions of section 84(12) of the Electoral Act, 2022.

1st respondent's senior counsel submitted that sections 66(1)(f),107(1)(f), 137(1)(g) and 182(1)(g) are mandatory and that section84(12) of the Electoral Act sets out grounds seeking to impinge on the vested and entrenched constitutional rights of political appointees which are public office holders to be voted for at any convention of their party. He posited that the right to participate in the electoral process is a constitutional right and that it is unconstitutional for section 84(12) of the Electoral Act to surreptitiously curtail such right. He stated that being inferior to the Constitution, the said section was correctly voided. He emphasized that section 84(12) set out to do what has already been covered by the constitution.

Resolution.

Section 1(1) and (3) of the Constitution of the Federal Republic of Nigeria,1999 (as ammended) provides:

> **"1(1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.**
>
> .....

(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void."

The provisions above provide for the supremacy of the Constitution and any law or the provision of any law that is inconsistent with the Constitution is, to the extent of the inconsistency, void. In the case of **Peenok Investments Limited v Hotel Presidential (1982) 12 SC 1 @ 31** it was held by the Supreme Court that there is undoubted power in the court to declare null and void any law that conflicts with the provisions of the Constitution. See also **Attorney-General of Abia State V Attorney-General of The Federation (2002) 6 NWLR) Pt. 763) 265**.

At page 66 of the record, the learned judge of the lower court reasoned as follows:

"By the said section 84 (12) of the Electoral Act 2022, every political appointee both at the local, state and National levels shall not vote for candidates of their choice and shall not be voted for as a candidate for any elections at any political Convention or Congress in Nigeria. The implication is that political appointees who by virtue of their appointments are public office holders are automatically disenfranchised from voting and being voted for at party conventions and congresses where candidates for local, state and National elections shall emerge...

The sections 66(1)(f),107(1)(f), 137(1)(g), and 182(1)(g) of the 1999 constitution has already made provisions that such political appointees can contest for election so long as they resign, withdraw or retire from their employments at least 30 days to the date of elections."

From the foregoing, it is clear that the underlying concept that shaped and influenced the lower court in nullifying section 84 (12) of the Electoral Act, 2022 was its belief that a "political appointee" as provided for in the said section is the same as a "Public servant" or civil servant" or is a "Public office holder" as provided for in the above provisions of the Constitution. With the greatest respect to the learned judge of the lower court, that cannot be correct.

Section 84(12) of the Electoral Act,2022 provides that:

> **"No political appointee at any level shall be a voting delegate or be voted for at the convention or congress of any political party for the purpose of the nomination of candidates for any election."**

The relevant provisions of the constitution are as follows:

Section 66(1)(f):

> **"No person shall be qualified for election to the Senate or the House of Representatives if-**
>
> **(f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired form such employment thirty days before the date of election".**

Section 107(1)(f)

"No person shall be qualified for election to a House of Assembly if-

(f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the date of election."

Section 137(1)(g)

"A person shall not be qualified for election to the office of President if-

(g) being a person employed in the civil or public service of the Federation or of any State, has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election"

Section 182(1)(g)

"No person shall be qualified for election to the office of governor of a State if-

(g) being a person employed in the public service of the Federation or of any State, he has not resigned, withdrawn or retired from employment at least thirty days to the date of the election."

The common denominators in the Constitutional provisions above are "Public service" and "Civil service" while section 84(12) of the Electoral Act 2022 talks of "Political appointee".

Section 318(1) of the Constitution states, inter alia, as follows:

"Civil service of the Federation" means service of the Federation in a civil capacity as staff of the office the

President, the Vice-President, a ministry or department of the government of the Federation assigned with the responsibility for any business of the Government of the Federation;

Civil service of the State" means service of the Government of a State in a civil capacity as staff of the office of the Governor, Deputy Governor or a ministry or department of the Government of the State assigned with the responsibility for any business of the Government of the State

.....

"Public service of the Federation" means the service of the Federation in any capacity in respect of the Government of the Federation, and includes service as-

Clerk or other staff of the National Assembly or of each House of the National Assembly;

Member of staff of the Supreme Court, Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the Federal Capital Territory, Abuja or other courts established for the Federation by this Constitution and by an Act of the National Assembly;

Member of staff of any commission or authority established for the Federation by this Constitution or by an Act of the National Assembly;

(a) Staff of any Area Council;
(b) Staff of any statutory corporation established by an Act of the National Assembly;

(c) Staff of any educational institution established or financed principally by the Government of the Federation;

(d) Staff of any company or enterprise in which the Government of the Federation or its agency owns controlling shares or interest; and

(e) Members or officers of the Armed Forces of the federation or the Nigerian Police Force or other Government security agencies established by law;

"Public service of a state" means the service of the state in any capacity in respect of the Government of the State and includes service as-

(a) Clerk or other staff of the House of Assembly;

(b) Member of staff of the High Court, the Sharia Court of Appeal, the Customary Court of Appeal or other courts established for a State by this Constitution or by a law of a House of Assembly;

(c) Member or staff of any commission or authority established for the State by this Constitution or by a law of a House of Assembly;

(d) Staff of any Local Government council;

(e) Staff of any statutory corporation established by a law of a House of Assembly;

(f) Staff of any educational institution established or financed principally by a Government of a State; and

(g) Staff of any company or enterprise in which the Government of a State or its agency holds controlling shares or interest..."

A political appointee or political office holder does not fall into any of the above categories. Rather, a political appointee or political office holder is a person who is engaged by a politician who has been elected or appointed to serve in a public office. His appointment is at the pleasure of the person who appointed him and does not have any statutory flavour. He has no security of tenure. In **Ituen v Ikot-Ekpene Local Government Council** supra, this court held as follows:

> **"A political office holder is any office holder who is not a public officer or a person employed by the civil service or judicial service of the State but who is appointed by a politician and who holds office at the pleasure of the appointing him.**

This court has in the case of **INEC v Orji (2009) LPELR-4320 (CA)** dealt with section 381(1) of the 1999 Constitution on the issue of whether political office holders can qualify as being in the public service of a State to enjoy statutory flavour. This court per Shoremi JCA held; I cannot but agree with the appellants that from the authorities the following material ingredients of a public officer within the intendment of section 318(1) of the 199 Constitution are as follows;

The term public officer or servant relate only to the holders of offices as reflected only in section 318(1) of the 1999 Constitution.

(a) Refers to those officers whose employments enjoy statutory flavor as reflected in section 318(1) of the Constitution.
(b) The office must be a creation of the Constitution, statute or enabling legislation.
(c) The functions, duties and powers are defined by law and other regulations.
(d) The office must have some permanency.
(e) A person employed by the Public Service Commission of the Federation or State is a Public Officer.
(f) Political Office Holder cannot qualify as being in the public service of the state."

Clearly, section 84(12) of the Electoral Act) talks of a political appointee and not a Public Servant or Civil Servant within the contemplation of the Constitution of Nigeria and so there can be no conflict between section 84 (12) of the **Electoral Act ,2022** and sections 66(1) (f), 107 (1) (f), 137(1)(g) and 182(1)(g) of the **Constitution of the Federal Republic of Nigeria, 1999(as amended).**

I agree with learned senior counsel for the appellant that the learned judge of the lower court wrongly read the term "political appointee" as being the same as "public office holder."

This takes me to the respondent's notice filed by the 2nd respondent. It was the contention of senior counsel for the 2nd

respondent that section 84(12) of the Electoral Act, 2022 contravenes sections 17,35, 40 and 42 of the Constitution. I do not see the relevance of sections 17, 35 and 40 of the Constitution of Nigeria, 1999 as amended in this inquiry. Section 17 provides for the social objective of the State and is not justiciable. Section 35 provides for the right to personal liberty while section 40 provides for the right to peaceful assembly and association, and these have no relevance to the issue under consideration. It is section 42(1)(a) of the Constitution that seems to be relevant. It provides thus:

> **"(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-**
>
> **(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject..."**

The provision of section 84(12) of the Electoral Act, 2022 specifically targets political appointees and disqualifies them from being voting delegates or from being voted for at the convention or congress any political party for the purpose of the nomination of

candidates for any election. This provision does not disqualify any other group or class of persons.

The term "community" is not defined by the Constitution but it is a canon of constitutional interpretation that where words used in the Constitution are clear and unambiguous, they must be given their natural and ordinary meaning unless doing so would lead to absurdity or inconsistency with the rest of the Constitution. See **State v Nafiu-Rabiu (1980) 8-11 SC 130, Ojokolobo v Alamu (1987) 3 NWLR (Pt. 61) 377, 402** and **Faleke v INEC (2016) 18 NWLR (Pt. 1543) 61**. The term "community" is defined to include:

> **"A unified body of individuals such as:**
>
> **.....**
>
> **A body of persons or nations having a common history or common social, economic, political interests..."** – Merriam Webster on-line dictionary.

In the Oxford Advanced Learner's Dictionary 7th edition at page 292, the term is defined, inter alia, as

> **"A group of people who share the same religion, race, job etc."**

Given the rule of Constitutional interpretation that a Constitutional provision is to be given a liberal and wide interpretation **(see Skye Bank Plc v Iwu (2017) 16 NWLR (Pt. 1590) 24, 88)** it is my view that political appointees fit into the phrase "community ", in section 42(1)(a) of the Constitution since members of that group share the same job and therefore the same political interest. Section 84(12) of the Electoral Act expressly subjects them to

disabilities and restrictions to which citizens of Nigeria of other communities or political interests or political jobs are not made subject. It therefore contravenes the provision of section 42(1)(a) of the Constitution and is null and void.

I therefore enter an affirmative answer to each of issues 2 and 3 and resolve the same against the appellant.

The determinant issue being issue one, this appeal succeeds and it is hereby allowed. The judgment of the Federal High Court Umuahia in suit with No. FHC/UM/CS/26/2022 is hereby set aside for want of jurisdiction.

We make no order as to costs.

HAMMA AKAWU BARKA

JUSTICE, COURT OF APPEAL

REPRESENTATION.

D.C.Denigwe (SAN), With K.C.O.Njemanze (SAN), J.O.Asoluka (SAN) leading Dike Udenna, Precious C. Idems and M.L.Young-Aeney for the Appellants.

Emeka Ozoani (SAN) with Grace U. Agbai for the 1st Respondent.

Oladipo Okpeseyi (SAN), with Abdul A.Ibrahim (SAN), Dr Ehiogie West Idahosa (SAN) leading Otunba Abiodun Olufowobi, Christian

I Nevo, Dr. Charles Ochem, Kelvin Mejulu, Abimbola Akintola (Miss), Olatunbosun Okpeseyi and Caleb Aluya for the 2nd Respondent.

CA/OW/87/2022
(JOSEPH EYO EKANEM, JCA)

I had the privilege of reading in advance the lead judgment of my learned brother, Barka, JCA, which has just been delivered and I agree with the reasoning and conclusion therein. I will only say a word or two to underline my agreement with my learned brother.

2nd respondent's issues 2 and 3 are derived from his respondent's notice and are argued together. It was the contention of the learned senior counsel for the appellant that the respondent's notice is defective and incompetent as such a notice is only available to the party who was successful at the lower court or the party in whose favour the judgment was given and not the party that lost. It was further contended that the 2nd respondent, having lost at the lower court and all the reliefs having been granted against him, was ineligible to engage the respondent's notice procedure.

The position of the law as submitted by appellant's learned counsel is generally correct. In Nabisco Inc. v Allied Biscuit Co. (1998) LPELR-1932(SC) page 14, Belgore, JSC, held that:

> " Respondent's notice under Order 3 Rule 14 of the Court of Appeal Rules is a means of fine-tuning a victory not to destroy it. It is obsolete in many common law jurisdictions and has in fact been abolished in the Supreme Court Rules 1985. The respondent's notice is open to the respondent who having had victory in the court below but dissatisfied with certain aspects of the reasons for that victory now asks that the reasons be varied in whole or in part."

Now, issues 2 and 3 of the 2nd respondent raise fundamental constitutional issues which touch on the fundamental rights of citizens. Issues concerning the fundamental rights of citizens are placed on a higher pedestal than other civil

matters and cannot be compromised by the rules of court just as the issue of jurisdiction. Rules of court cannot be construed in a manner as to place hurdles on the way of pursuit of fundamental rights of citizens or to hinder the enforcement of the Constitution. See Ihim v Maduagwu (2021) 5 NWLR(Pt. 1770) 584, 618.

There is no doubt that the respondent's notice raises a point that was not argued or raised at the lower court but since it raises a point of constitutional importance, the court ought to take it for that reason since the appellant was afforded the opportunity of responding to it in its reply brief. The facts of the case also support the ground relied on in the respondent's notice as they throw up the issue of alleged breach of the constitutional provisions relied upon by the 2nd respondent in his notice.

Locus standi refers to the right of a party to appear and be heard in the question before the court. It denotes the legal capacity to institute legal proceedings in a court of law. See Adesanya v President of Nigeria (1981) 12 NSCC 146. The focus in the issue of locus standi is on the person seeking to approach the court and not on the merit of the case. The locus classicus on locus standi in Nigeria is the case of Adesanya supra. where Bello, JSC, as he then was, stated that:

> " To entitle a person to invoke judicial power to determine the constitutionality of such action, he must show that either his personal interest will be or has been adversely affected by the action or that he has sustained or is in immediate danger of sustaining an injury to himself."

To determine whether or not the 1st respondent had the standing to sue, the court must look at his originating summons and the affidavits in support of it. A close look at those processes shows that the standing of the 1st respondent is founded on the following factors:

1. That he is a constitutional lawyer, politician and citizen of Nigeria ;
2. That he is a registered voter who has been voting since 1999;

3. That he is a law-abiding citizen and meets his civil obligations including prompt payment of tax;
4. That he has a civil obligation of ensuring compliance with and protection of the Constitution;
5. That he has a constitutional interest in ensuring that he is governed by elected political office holders;
6. That many persons who he desires to vote for in various political offices are political or public office holders;
7. That he is a member of a political party, to wit: Action Alliance;
8. That he is a prominent and influential political personality, gross roots mobilizer and sponsor who is widely revered in Abia State and beyond and has numerous supporters and sponsored political aspirants desirous of contesting various party primaries and elective positions across the Federation including in the 2023 general election who are political appointees and public office holders;
9. That he is a statutory delegate at party primary elections, conventions or congress for the 2023 general election and most of the candidates he intends to vote for are political appointees or public office holders who are adversely affected by section 84(12) of the Electoral Act, 2022.

In the realm of public law, an ordinary individual citizen and tax payer will not generally have the standing to sue except he shows that he has suffered or is in danger of suffering special damage over and above that suffered by other members of the public. The 1st respondent did not say that he is a political appointee who is interested in contesting a primary election. The mere fact that he is a law-abiding citizen of Nigeria does not confer on him the standing to sue in this matter nor does the assertion that he intends to vote for or sponsor some candidates who are political appointees. This is because, as rightly argued by appellant's senior counsel, there is no known constitutional or even legal right conferred on a citizen or a voter to have his preferred candidate to participate in an election, primary or general. It is a political appointee who intends to contest that has the standing to sue and not the 1st respondent who seems to be crying more than the bereaved. The 1st

respondent did not even care to mention the name of one political appointee who intends to contest and who he intends to vote for or sponsor.

Where a person institutes an action to claim a relief which, on the facts of the case, inures to the benefit of another, it cannot be said that he has the standing to sue. See Bewari v Obasanjo (2008) 9 NWLR (Pt. 1093) 540,573-574.

There may be millions of other Nigerians who have the same interest as the 1st respondent in voting for or sponsoring candidates who are political office holders since politics now seems to be a booming business in Nigeria (and I am not by this saying that it is a business for the 1st respondent who says he is much revered). What I am trying to say is that if the court accedes to the position of the 1st respondent on the issue of standing, then a flood gate of overwhelming litigations by persons who have no sufficient interest in such matters would have been opened. This would defeat the essence of the doctrine of locus standi which is to protect the court from being used as a playground for professional litigants, busy bodies, meddlesome interlopers and cranks that have no real stake or interest in the subject matter of the litigation they seek to pursue. See Adesanya v President of Nigeria supra and the unreported decision of a full panel of this court in Mr. Cyriacus Njoku v Dr.Goodluck Jonathan and 2 others delivered on 3/3/2015 in appeal No. CA/A/574/2013. See also Thomas v Olufosoye (1986) 1 NWLR (Pt. 18) 669 where the Supreme Court held that membership of a congregation was not sufficient to confer locus standi on such persons to sue in respect of the appointment of a Bishop for the congregation since they did not say that they had interest in that office and how their interest arose.

1st respondent's counsel cited the case of Fawehinmi v Federal Republic of Nigeria(2007) 14 NWLR(Pt. 1054) 275 to support his position. A full panel of this court in Mr. Cyriacus Njoku v Dr. Goodluck Jonathan supra. per Yahaya, JCA, commented on the decision as follows:

> " This was a decision of the Court of Appeal but the decision of the Supreme Court in Adesanya v President

(supra) still stands as the position of the law on locus standi in the realm of public law it being a decision of the highest court of the land by the doctrine of judicial precedent. The decision in Adesanya's case is yet to be overruled by a constitutional panel of the Supreme Court..."

In Thomas v Olufosoye supra. 287 it was held that the decision in Adesanya's case remains our law until it is reversed by a contrary decision of a constitutional panel of seven justices.

The case of Centre for Oil Pollution Watch v NNPC (2019) 5 NWLR (Pt. 1666) 518 cited by 2nd respondent's senior counsel was in respect of environmental pollution and even then the Supreme Court held that a plaintiff must have sufficient interest in a suit and that such interest must be legitimate. The case of Citec Estates Ltd v Francis (2021) 5 NWLR (Pt. 1768) 148 was in respect of the individual rights of the 1st – 4th respondents as shareholders or members of the 1st appellant and so it fell under section 300 of the Companies and Allied Matters Act as well as being an exception to rule in Foss v Harbottle (1843) 2 Hare 461. In the Citec Estates Ltd case, Nweze, JSC, found that in the case of Adesanya supra., the Supreme court did not hold that section 6(6)(b) of the Constitution contains a requirement of standing; rather that it found that the subsection is basically focused on the judicial powers of the court and that the court only takes cognizance of justiciable actions in which the parties have sufficient interest in the controversy or dispute.

Certainly, the 1st respondent showed some interest in the controversy but his interest was not sufficient to ground standing. He was in simple terms a busybody.

Since the 1st respondent did not have the standing to sue, his suit did not disclose a reasonable cause of action. A cause of action is the aggregate of facts which the law recognizes as giving the plaintiff a substantive right to make the claim for the remedy that he seeks. It consists of (a) the wrongful act of the defendant which gives the plaintiff his cause of complaint and (b) the

consequent damage. A reasonable cause of action is disclosed once the statement of claim sets out the plaintiff's legal right vis-à-vis the defendant's obligation towards him and also shows the facts constituting the infraction of that right by the defendant. See Cookey v Fombo(2005) 15 NWLR (Pt. 947) 182 and CIL Risk and Asset Management Ltd V Ekiti State (2020) 12 NWLR (Pt. 1738) 203.

Since the 1st respondent has a remote or distant interest in the controversy, he failed to show his legal right which has been breached by the 2nd respondent and so he had no reasonable cause of action.

Let me say quickly that since the 2nd respondent is the Chief Law Officer of the Federation, it was sufficient to join him as the sole defendant without the need to join the other persons suggested by appellant's senior counsel. See Peenok Investments Ltd v Hotel Presidential Ltd (1982) 12 SC 1.

Again, the idea of forum shopping canvassed by appellant's senior counsel does not arise. Assuming but without so holding that the 1st respondent had a reasonable cause of action, his right to vote as a delegate would have been expressed in Abia State and so the suit would have been properly commenced in the Umuahia Judicial Division of the Federal High Court. See Order 2 rule 3 of the Federal High Court (Civil Procedure) Rules, 2019.

The 1st respondent did not abandon the questions for determination raised in the originating summons as the sole issue raised in the written address of his counsel at the lower court covered the two questions raised in the originating summons.

Nevertheless, in the light of my view on the locus standi of the 1st respondent and the absence of a reasonable cause of action, I hold that the lower court did not have the jurisdiction to entertain the matter.

The National Assembly may have had good intentions in making section 84(12) of the Electoral Act, 2022 but as was stated by Tobi, JSC, in Attorney-General Of Abia State V Attorney-General of The Federation (2006) 16 NWLR(Pt. 1005) 265,371:

" While I see clear good intentions in the subsection, good intentions can only be valid if they tally with the constitution."

At page 385, Tobi, JSC, quoted, with approval, the dictum of Taft, C.J. in Bailey v Drexel Furniture Co.(1921) 259 US 449 on the obligation of courts to reject unconstitutional Acts, as follows:

" We cannot avoid the duty, even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from the breaking down of recognized standards."

This court therefore cannot give a nod of approval to the pernicious idea that the end justifies the means. The end and the means must both be constitutional or lawful. In other words, good intention must be matched by good and constitutional means.

On this account, the respondent's notice of the 2nd respondent succeeds and the decision of the lower ordinarily ought to be affirmed on that account

On the whole and in view of the resolution of issue 1, I join my learned brother in allowing the appeal and also setting aside the judgment of the lower court for want of jurisdiction.

JOSEPH EYO EKANEM
JUSTICE COURT OF APPEAL.

CERTIFIED TRUE COPY
SIGN.....
MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 11-05-2023

CA/OW/87/2022

MOHAMMED MUSTAPHA, JCA

I fully participated in the conference leading up to this decision, and had the privilege of reading in draft the lead Judgment just delivered by my learned brother, HAMMA AKAWU BARKA, JCA.

I am in total agreement with my learned brother, and adopt the well thought out conclusion as mine in setting aside the judgment of the Federal High Court Umuahia, in Suit with No: FHC/UM/CS/26/2022.

MOHAMMED MUSTAPHA
JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
SIGN.....
MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 11-05-2022