

AT ABUJA, ON WEDNESDAY, 12TH JULY, 2017

ACTION-Suit-When said to be an abuse of judicial process.

APPEAL- Appeal is a rehearing and continuation of a suit.

APPEAL- Constitutional right of appeal by an aggrieved party-Consideration of.

APPEAL- Grounds of appeal and the particulars must be read together for proper understanding of the appellant's complaint.

APPEAL- Grounds of appeal-When said to be concise.

APPEAL- Party aggrieved files a notice and grounds of appeal from which issues are framed.

APPEAL- Right of a respondent to defend the judgment being appealed against and not to withdraw the appeal.

APPEAL-Withdrawal of appeal-Only the appellant has the constitutional right to withdraw an appeal not the respondent.

CARETAKER COMMITTEE- When a party can be right to dissolve its NEC and appoint a caretaker committee-Whether PDP National Conventions acted constitutionally in this matter.

CONSTITUTIONAL LAW-Appeal-Constitutional right of appeal by an aggrieved party-Consideration of.

CONSTITUTIONAL LAW-Appeal-Withdrawal of appeal-Only the appellant has the constitutional right to withdraw an appeal not the respondent.

CONSTITUTIONAL LAW-Interpretation of the constitution-Entire provisions must be read as a whole.

COURTS-Multiplicity of proceedings must be avoided where same parties with same claims are in two or more courts.

PEOPLES DEMOCRATIC PARTY

APPELLANT

AND

1. SENATOR ALI MODU SHERRIF

2. PROFESSOR ADEWALE OLADIPO

(Sued as themselves and as representing the National Officers, the members of both the National Executive Committee and the National Working Committee of the Peoples Democratic Party removed by the National Convention of the Party held at Port Harcourt on 21st May, 2016)

RESPONDENT

3. THE INDEPENDENT NATIONAL ELECTORAL COMMISSION

4. THE INSPECTOR-GENERAL OF POLICE

5. STATE SECURITY SERVICE

(Also known as the Department of State Security)

SC.133/2017

SUPREME COURT OF NIGERIA

|                              |   |
|------------------------------|---|
| WALTER SAMUEL NKANU ONNOGHEN | JUSTICE, SUPREME COURT                          |
| OLABODE RHODES-VIVOUR        | JUSTICE, SUPREME COURT(Delivered Lead Judgment) |
| OLUKAYODE ARIWOOLA           | JUSTICE, SUPREME COURT                          |
| IBRAHIM TANKO MUHAMMAD       | JUSTICE, SUPREME COURT                          |
| MUSA DATTIJO MUHAMMAD        | JUSTICE, SUPREME COURT                          |

AT ABUJA, ON WEDNESDAY, 12TH JULY, 2017

LEAD JUDGEMENT  
As Delivered By OLABODE RHODES-VIVOUR JSC

This is an appeal from the majority decision of the Court of Appeal, Port Harcourt Division coram: Gumel, JCA, Sanga, JCA. Orji-Abadua, JCA (dissenting) in which the decision of a Port Harcourt, Federal High Court, was upset on appeal.

The appellant, who was the plaintiff in the trial Court, filed an Originating Summons on 24th May, 2016 against the respondents, seeking the determination of the following questions.

1. Whether the National Convention of the plaintiff is the Supreme and controlling authority of the plaintiff and its principal representative, policy making and administrative body.
2. Whether decisions of the National Convention of the plaintiff made pursuant to its authority expressly provided for in the Constitution of the plaintiff is binding on all members of the plaintiff.

3. Whether decisions of the National Convention of the plaintiff can be countermanded by member/members or a National Officer/National Officers or organ/organs of the plaintiff.

4. Whether the 1st and 2nd Defendants or any and/or all of the National Officers, the members of the National Officers, the members of the National Executive Committee and member of the National Working Committee of the plaintiff who were removed from office by the National Convention of the plaintiff held on 21st March, 2016 in Port Harcourt Rivers State can hold or continue to hold himself/themselves out as the Chairman, Secretary or National Officer or Members of the National Executive Committee or National Working Committee of the plaintiff.

5. Whether the 3rd defendant can, in its role as a monitoring agency of the activities of the plaintiff, interfere with or negate a decision of the plaintiff's National Convention reached in accordance with the plaintiff's Constitution.

6. Whether it is lawful for the 4th and 5th defendants to deploy personnel to the 1st and 2nd defendants for the purpose of preventing the 1st and 2nd defendants from vacating the respective office from which they were removed by the National Convention of the plaintiff in accordance with the plaintiff's Constitution.

The appellant sought the following reliefs:

1. A declaration that the National Convention of the plaintiff is the Supreme and controlling authority of the plaintiff and its principal representative policy making and administering body.

2. A declaration that decisions of the National Convention of the plaintiff made pursuant to its authority expressly provided for in the Constitution of the plaintiff is binding on all members of the plaintiff, the 1st and 2nd defendants inclusive.

3. A declaration that decisions of the National Convention of the plaintiff CANNOT be countermanded by a member/members or a National Officer/National Officers or an organ/organs of the plaintiff.

4. A declaration that the 1st and 2nd defendants or any and/or all of the National Officers, the members of the National Executive Committee and members of the National Working Committee of the plaintiff who were removed from office by the National Convention of the plaintiff held on 21st May, 2016 in Port Harcourt, Rivers State cannot hold or continue to hold themselves out either individually or collectively as the Chairman, Secretary or National Officer or Member of the National Executive Committee or National Working Committee of the plaintiff.

5. An Order or perpetual injunction restraining 1st and 2nd defendants or any and/or all of the National Officer, the Members of both the National Executive Committee and Members of the National Working Committee of the plaintiff who were removed from office by the National Convention of the plaintiff held on 21st May, 2015 in Port Harcourt Rivers State from holding or continuing to hold themselves out either individually or collectively as the Chairman, Secretary or National Officer or member of the National Executive Committee or National Working Committee of the plaintiff.

6. A declaration that the 3rd defendant CANNOT, in its role as a monitoring agency of the activities of the plaintiff, interfere with or negate a decision of the plaintiff's National Convention reached, in accordance with the plaintiff's Constitution.

7. An Order restraining the 3rd defendant from according or continuing to accord any recognition to the 1st and 2nd defendants or any and/or all of the National Officers, the members of both the National Executive Committee and members of the National Working Committee of the plaintiff who were removed from office by the National Convention of the plaintiff held on 21st May, 2016 in Port Harcourt, Rivers State as officers or organs of the plaintiff.

8. An Order directing the 3rd defendant to recognize the National Caretaker Committee appointed by the National Convention of the plaintiff held in Port Harcourt on 21st May, 2016 as the Executive authority of the plaintiff ALL matters pertaining to the plaintiff including (a) the conduct of Primary Elections for Political Offices, and (b) the submission of the plaintiff's list of candidates for any Elections to be conducted by the 3rd defendant.

9. A mandatory injunction restraining the 1st and 2nd defendants, their allies, representatives and persons acting for and in their behalves from any action and or conduct whatsoever and howsoever, which is contrary to the decisions reached at the National Conventing of the plaintiff held at Port Harcourt on 21st May, 2016.

10. A declaration that it is unlawful for the 4th and 5th defendants to deploy security personnel to the 1st and 2nd defendants for the purpose of preventing the 1st and 2nd defendants or any and/or all of the National Officers, the members of the National Working Committee of the plaintiff from vacating the respective office from which they were removed by the National Convention of the plaintiff in accordance with the plaintiff's Constitution.

11. An Order restraining the 4th and 5th defendants from deploying security personnel to the 1st and 2nd defendants for the purpose of preventing the 1st and 2nd defendants or any and/or all of the NATIONAL officers, the members of both the National Executive Committee and Members of the National Working Committee of the plaintiff from vacating the respective offices from which they were removed by the National

Convention of the plaintiff in accordance with the plaintiff's Constitution.

The Originating Summons was supported by a 38 paragraph affidavit and several annexures. There was also a 7 paragraph further affidavit with annexures. For the 1st and 2nd respondents a preliminary objection was filed on 26th May, 2016. It was for an order to dismiss the Originating Summons for being an abuse of process.

In opposition to the Originating Summons a 15 paragraph counter-affidavit with annexures was filed on behalf of the 1st and 2nd respondents. No processes were filed on behalf of the 3rd, 4th, and 5th respondents.

In a well considered judgment delivered on 4th July 2016, Liman J, had this to say on whether the suit (i.e. FHC/PH/CS/524/2016) from which this appeal emanates is an abuse of process.

"In the final analysis, I am of the firm view that the defendants/applicants have failed to establish the plaintiff is guilty of abuse of process of the Court, and in the circumstances the Preliminary Objection is accordingly overruled."

On whether the National Convention which was held on 21st May, 2016 was valid. His lordship said:

"In view of the above analysis I hereby found as a fact that the convention was properly convened and the National Deputy Chairman had validly presided over the convention."

On whether the Caretaker Committee was properly appointed. His lordship had this to say:

"Applying the relevant provisions of the P.D.P. Constitution to the events that took place and the resolutions adopted at the National Convention on 21st May, 2016, it is obvious that the dissolution of both National Executive Committee and the National Working Committee was within the powers of the National Convention under Article 5(b) and the Appointment of the Caretakers Committee was also within the ambit of Article 5 (e)."

Concluding his lordship, Liman J said:

"In the light of the above analysis I shall come to the final conclusion resolving all the questions for determination set out in the Originating Summons in the affirmative, and consequently, to grant the reliefs sought, and I so grant."

The respondents, particularly the 1st and 2nd respondents were not satisfied with the judgment. They lodged an appeal. It was heard by the Court of Appeal, Port Harcourt, Division, Gumel, JCA presided. On the panel were Orji-Abadua, JCA and Sanga, JCA. There was a split decision, Gumel JCA and Sanga, JCA were the majority, Orji-Abadua, JCA wrote the dissenting judgment.

On whether suit No.FHC/PH/CS/524/2016 is an abuse of process, the majority view was that it was an abuse of process. Their lordships said:

"In consequence of the foregoing, that Preliminary Objection against the Originating Summons in this appeal is hereby upheld. Suit No.FHC/PH/CS/524/2016 is an abuse of Court process and is accordingly struck out"

On whether the National Convention which was held on 21st May, 2016 was valid, the majority decision per Sanga, JCA said:

"It is my holding on this issue that the purported National Convention held on 21st May, 2016 was in contravention of a lawful Court order and its own Constitution, therefore all the decisions taken thereof are hereby set aside by me"

And, on whether the Caretaker Committee was properly appointed the Majority judgment per Sanga, JCA said:

"Because of the failure of the 1st respondent to obey a legitimate Court Order and its own Constitution, it follows naturally that the action it took on 21st May, 2016 during its alleged National Convention of dissolving all its National Officers and appointing in their place a Caretaker Committee is a nullity ab initio and I so hold"

This appeal is against that judgment. Learned counsel for the appellant, Chief Wole Olanipekun, SAN filed the appellant's brief on 6th March, 2017 deemed duly filed and served on 22nd May, 2017.

Learned counsel for the 1st and 2nd respondents, Chief Akinlolu Olujinmi SAN filed the 1st and 2nd respondents' brief on 21st April, 2017, deemed duly filed and served on 4th May, 2017. No briefs were filed for the 3rd, 4th and 5th respondents.

Learned counsel for the appellant, filed an appellant's reply brief on 8th April, 2017 deemed duly filed and served on 22nd May, 2017.

Some other processes were filed. I shall refer to them when I consider the Preliminary objection.

Learned counsel for the appellant formulated seven issues for determination from his twenty-four grounds of appeal. They are:

1. Having regard to the subject matter before the trial Court which culminated in the appeal before the lower Court, whether the lower Court did not act without jurisdiction and in breach of the appellant's right to fair hearing by setting aside all the decisions taken at the appellant's convention of 21st May, 2016 and also decreeing an order for the maintenance of status quo ante bellum.
2. Whether the lower Court did not fall into serious error when it relied on non-existent orders in reaching its decisions to set aside the judgment of the trial Court.
3. Having regards to the fact that the lower Court rightly found that the appellant before it (now 1st and

2nd respondents) are guilty of serial abuse, and that the 1st appellant (now 1st respondent) not only displayed infantile desperation to cling to office at all cost, but also embarked on foolhardy and reckless misadventure of going round Courts to obtain all sorts of orders which were deprecated, whether the lower Court did not fall into serious error by still giving judgment in favour of the said appellants.

4. Considering the claim and parties in suit No.FHC/PH/CS/524/2016, whether the lower Court was not wrong in its decision that the said suit was an abuse of Court process.

5. Having regard to the settled position of the law relating to the principles and effect of waiver and estoppel, whether the lower Court did not fall into serious error by giving judgment in favour of the 1st and 2nd respondents.

6. Considering the clear and unambiguous provisions of the appellant's Constitution, whether the lower Court rightly interpreted and applied the various provisions of the said Constitution in arriving at its decision to set aside the trial Court's judgment.

7. Was the lower Court justified in finding that the trial Court resolved substantive issues at the interlocutory stage.

On the other side of the fence, learned counsel for the 1st and 2nd respondents also formulated seven issues for determination. They are:

1. Whether the lower Court was not right in striking out suit No. FHC/PH/CS/524/2016 in this appeal, as an abuse of Court process, having regard to the materials in the records.

2. Whether the adverse comments on or rebuke of the 1st and 2nd respondents by the lower Court would have provided a valid ground for the lower Court to deny the 1st and 2nd respondents favourable judgment on their appeal which was found meritorious.

3. Whether the lower Court failed to give proper consideration to the provisions of the Constitution of the appellant relied upon by the 1st and 2nd respondents in their appeal to the lower Court.

4. Having regard to the materials in the records, whether the lower Court was not right in setting aside all the decisions taken at the so-called National Convention of the appellant held on 21st May, 2016 and in granting the relief granted.

5. Whether there were sufficient materials before the lower Court to justify the setting aside of the judgment of the trial Court.

6. Whether the doctrine of waiver and estoppel can be pleaded against a party to a suit in justification of breach of Court order by the other party.

7. Whether the views expressed by the lower Court concerning how the trial Court dealt with the preliminary objection of the 1st and 2nd respondents, which views did not form part of the ratio decidendi, can attract the setting aside of the judgment of the lower Court.

After a diligent examination of the issues formulated by both sides in an appeal, it is the duty of an Appeal Court, and especially the top Court to adopt or frame issue that would be decisive in determining the real grievance in the appeal and not waste time on peripheral issues.

The following two issues address the real grievance in this appeal, more-so as the material issues formulated by both sides are subsumed in them.

The following issues shall determine this appeal.

1. Whether suit No FHC/PH/CS/524/2016 is an abuse of process.

2. Whether the National Convention of the PDP which was held on 21st May 2016 in Port Harcourt, River State was illegal.

Before the above issues are examined, the Preliminary objection filed by learned counsel for the 1st and 2nd respondents, Chief A. Olujinmi, SAN must be addressed. If it succeeds the hearing of the appeal comes to an end. Indeed in *Adunola & 2 Ors v. Olawiye (2014) 12 NWLR (Pt. 1421) p.252*.

I explained when a Preliminary Objection should be filed and how decisive it could be if sustained. I said:

"A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal which are not capable of disturbing the hearing of the appeal. The purpose of a preliminary objection is to convince the Court that the appeal is fundamentally defective in which case the hearing of the appeal comes to an end if found to be correct. Where a preliminary objection would not be the appropriate process to object or show to the Court defects in processes before it, a motion on notice filed complaining about a few grounds, or defects would suffice if sustained, a preliminary objection terminates the hearing of an appeal."

Learned counsel for the 1st and 2nd respondents, Chief A. Olujinmi SAN argued a Preliminary Objection in his brief.

At the hearing of this appeal on 22nd May, 2017 Mr. Lateef Fagbemi SAN informed this Court that he was appearing for the appellant in respect of his motion filed on 21st March, 2017.

I must explain. The grounds of the 1st and 2nd respondents' preliminary objection are:

1. The filing of the appeal was not authorized by the appropriate authorities of the Peoples Democratic Party.

2. The appeal has been withdrawn by a notice filed on 15th March, 2017 and signed by the National Chairman, National Secretary and Ag. National Legal Adviser of the Peoples Democratic Party.
3. All the grounds of appeal raise issues of fact or mixed fact and law and as required by the provisions of Sections 233 (3) of the Constitution, the appellant ought to have obtained the leave of either the Court of Appeal or the Supreme Court before filing its appeal. Therefore, not having obtained such leave, the appeal is incompetent and the same should be struck out.
4. The incompetent grounds vitiate the issues under which they are argued.
5. Appellant's issue (iii) is unrelated to ground 3 of the appeal.
6. Contrary to Order 8 Rule 1(3), grounds 5, 10, 11, 17, 18 and 19 are not concise and ought to be struck out.

According to Mr. Lateef Fagbemi, SAN he appears for the appellant, for the Motion filed on 21st March, 2017. In that Motion on Notice he seeks an order of this Court striking out this appeal for the same reason as in ground 1 of the 1st and 2nd respondents' preliminary objection. That Senator Ali Modu Sheriff and Prof. Wale Oladipo never briefed Chief Wole Olanipekun, SAN to file this appeal on behalf of the P.D.P.

I earlier on alluded to the fact that a Preliminary Objection, if properly filed, its success terminates the hearing of the appeal. If ground 1 of the Preliminary Objection succeeds the appeal would no longer be heard.

On 22nd May, 2017 at the hearing of this appeal, this Court granted the appellant leave to appeal on grounds of mixed law and fact. Grounds 3 and 4 of the Preliminary objection are in the circumstances no longer tenable. Grounds 1, 2, 5 and 6 would now be addressed.

#### GROUND 1

Learned counsel for the 1st and 2nd respondents observed that the appeal was never authorized by the alter ego of the appellant, vide the National Working Committee/National Executive Committee consisting of the 1st and 2nd Respondents. Relying on *Quo vadis Hotels & Restaurants Ltd. v. Commissioner of Lands Midwestern State & Ors (1973) 6 SC p.50*.

He submitted that the appeal has not come properly before the Court and the same should be struck out.

Mr. Lateef Fabgemi, SAN moving his Motion filed on 21st March, 2017 to which is a 14 paragraph affidavit and a further reply affidavit of 18 paragraphs. He submitted that the P.D.P. is a Corporate Body, contending that since the judgment of the Court of Appeal is still in force, no one can question the Party's alter ego who no longer wants to appeal.

Mr. Wole Olanipekun, SAN filed a written address and a counter-affidavit. He also responded in his reply brief. Learned counsel observed that the principle of alter ego is inapplicable to political parties.

He further observed that there is no law that provides that it is the National Chairman and National Secretary of a Political party that can authorize the filing of an action, more so as the Political Party's Supreme body is its National Convention. Relying on *Enterprises v. A-G, Kaduna (1987) 2 NWLR (Pt. 57) p.389*.

He submitted that the right to appeal is an offshoot of a party's right to fair hearing. He urged the Court to refuse ground 1.

Section 233 (1) of the Constitution provides that the Supreme Court shall, to the exclusion of any other Court hear and determine appeals from the Court of Appeal.

Indeed in *Enterprises v. A-G Kaduna (supra)* this Court, per Oputa, JSC, on the right of appeal said:

"It is the glory, happiness and pride of our various Constitutions, that to prevent any injustice no man is to be concluded by the first judgment, but that if he apprehends himself to be aggrieved he has another Court to which he can resort for relief. For this purpose the law furnishes him the right of appeal as of right."

*A party dissatisfied with a judgment given against him has a right of appeal to the Court of Appeal, and if still not satisfied with the judgment of the Court of Appeal, a final appeal to the top Court. Any attempt to stop or deprive an aggrieved party his right of appeal would be unconstitutional in that he would be denied his right of appeal and fair hearing contrary to Sections 36 and 233 (1) of the Constitution.*

The National Working Committee/National Executive Committee of the P.D.P. are the highest decision making bodies of the Party.

This case is all about who in the party controls them. There are two distinct factions fighting for control. They are the 1st and 2nd respondents on one side, and the Caretaker Committee on the other side. The High Court held that the Caretaker Committee was in full control of the Party, while the majority judgment of the Court of Appeal reversed that finding and held to the contrary, that the 1st and 2nd respondents were in full control of the Party. *Now, an appeal is a rehearing that comes to an end in the Supreme Court. It is the duty of this Court to decide which of the two factions controls the Party. Since the appellant as plaintiff's brought this action in the name of the P.D.P., they, as the Caretaker Committee are perfectly in order to file this appeal in the name of the P.D.P. When different groups in a party claim to be in control of the party, anyone of them can sue in the name of the Party.*

*A party's right to appeal can be refused if it is brought contrary to extant provisions of the Constitution. This appeal was filed in accordance with clear provisions of the Constitution in the name of P.D.P.*

Ground 1 of the Preliminary objection is accordingly refused.

## GROUND 2

Learned counsel for the 1st and 2nd respondents observed that the appeal was withdrawn by the alter ego of the appellant to wit: the National Chairman, the National Secretary, and Ag. National Legal Adviser of the Party. Reliance was placed on paragraph 17 of the affidavit in support of the Motion of the 1st and 2nd respondents filed on 16th March, 2017 seeking to strike out this appeal on the ground of incompetence. He submitted that since the appeal has been withdrawn under Order 8 Rule 6 (1) of the Supreme Court Rules it is deemed dismissed. Reference was made to *Edozien v. Edozien* (1993) 1 NWLR (Pt. 272) p.678.

Concluding, he further submitted that the appeal has not come before the Court by due process of law. Reliance was placed on *Madukolu v. Nkemdilim* (1962) NLR p.581. Replicando, learned counsel for the appellant observed that the 1st and 2nd respondents cannot withdraw what they have not filed. Reliance was placed on Order 1 Rule 2, and Order 8 Rule 6(1) of the Supreme Court Rules. He urged the Court to dismiss the 1st and 2nd respondents said objection which has been exposed to be frivolous.

Order 1 Rule 2 of the Supreme Court Rules defines appellant as:

"A Party appealing from a decision or applying for leave in behalf thereof and includes the legal practitioner retained or assigned to represent him in the proceedings before the Court."

While Order 8 Rule 6(1) of the Supreme Court Rules state that:

"An appellant may at any time before appeal is called on for hearing serve on the parties to the appeal and file with the Registrar a notice to the effect that he does not intend further to prosecute the appeal."

*The clear interpretation of the above is that an appellant is the party that can appeal from a decision, and appellant also includes the legal practitioners representing the appellant. It is only an appellant that can withdraw an appeal, and he does this before the hearing of the appeal by filing a notice of Motion, served on the respondent seeking order of withdrawal of appeal on the ground that he, the appellant no longer desires to prosecute the appeal. Such an application is served on the adverse party and filed with the Registrar of Court.*

*On 17th February, 2017 the 1st and 2nd respondents obtained a favourable judgment from the Court of Appeal. That judgment reversed the judgment of the High Court and put them in control of the P.D.P. The appellant was not satisfied with the judgment of the Court of Appeal, and so decided to appeal. The appellant has a Constitutional right to appeal. The 1st and 2nd respondents are to defend the judgment of the Court of Appeal and not withdraw the appeal that was not filed by them.*

*Order 8 Rule 6(1) of the Supreme Court Rules enables an appellant to withdraw his appeal, and since the respondents are not appellants they cannot withdraw this appeal. This is without doubt a vexation and worthless ground of objection. It is refused.*

Grounds 5 and 6 would be taken together.

They contend that:

(a) Appellant's issue 3 is unrelated to ground 3.

(b) That contrary to Order 8 Rule 1(3), grounds 5, 10, 11, 17, 18 and 19 are not concise and ought to be struck out.

Learned counsel for the 1st and 2nd respondents observed that issue 3 is not related to ground 3. He further observed that grounds 5, 10, 11, 17, 18 and 19 of the appeal are not concise contrary to Order 8 Rule 2 (3) of the Supreme Court Rules. He urged the Court to strike them out.

Responding learned counsel for the appellant observed that the test of conciseness of grounds of appeal is whether same is comprehensible and not necessarily the length of the ground of appeal.

Reliance was placed on *Aderounmu v. Olowu* (2002) 2 SCNJ p.180. He urged the Court to reject the 1st and 2nd respondents' preliminary objection and affirm the validity and competence of this appeal.

Order 8 Rule 2(3) of the Supreme Court Rules state that:

"The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively."

*When a party is not satisfied with a decision he files a Notice of Appeal. The Notice of Appeal contains grounds of appeal. The grounds of appeal represent the appellant's complaint against the decision which he wants the Court to correct or remedy. A ground of appeal is against the decision and it must challenge the ratio decidendi and not the obiter dicta.*

*On no account must there be a disconnect between the grounds of appeal and the controversy between the parties. This also applies to the issues which must arise from the ground since appeals are decided on issues for determination which are formulated from the grounds of appeal. See: *Abubakar v. B.O. & A.P. Ltd* (2007) 18 NWLR (Pt. 1066) p.319 *Adesanya v. President of Nigeria* (1981) 12 NSCC p.247*

*On whether issue 3 is related to ground 3, it is long settled that a ground and the particulars should be read together for a proper understanding of the appellant's complaint before it can be said whether or not the issue formulated from it is related to it or not. See *N.N.P.C. v. Famfa Oil Ltd* (2012) ALL FWLR (Pt. 635) p.204.*

GROUND 3 reads:

The lower Court erred in law and acted without jurisdiction when it struck out Suit No. FHC/PH/CS/524/16.

#### PARTICULARS OF ERROR

(i) The lower Court had rightly found in respect of the appellant's before it this: "The appellants are also guilty of this serial abuse I also noted the narration by learned counsel on the conduct of the 1st appellant who I agree displayed an infantile desperation to cling to office at all cost"

(ii) The lower Court has also rightly found in respect of the 1st appellant before it thus:

"As for the 1st appellant it is obvious that it seems to have been seized by a passionate bizarre and outlandish desire to hold on to office no matter the cost thus he embarked on this foolhardy and reckless misadventure of going round Courts to obtain all sorts of orders. This action by the 1st appellant is deprecated by me."

(iii) From (i) and (ii) supra, the lower Court rightly found that all pre-existing suits initiated by the appellants and obtained by them were abusive.

(iv) Arising from (i)-(iii) supra, the abusive actions of the 1st and 2nd respondents deprecated by the lower Court could not have conferred any benefit on them or be a defence to the case at the trial Court.

(v) Having rightly found that the pre-existing suits initiated by the appellants before it were 'foolhardy', 'reckless', 'abusive' and liable to be deprecated, the lower Court was wrong to have used the said illegal/reckless actions as a basis of dismissing suit No. FHC/PH/CS/524/16.

(vi) Ex dolo malo non oritur action, No Court will lend its aid to a man who grounds his cause of action on an immoral or illegal act.

(vii) Ex turpi causa non oritur action, from a dishonourable cause, an action does not arise.

The complaint of the appellant in ground 3 is that the majority decision of the Court of Appeal found that the 1st and 2nd respondents were guilty of serial abuse and rebuked them for these pre-existing suits but turned round to use these same suits as a basis for dismissing suit No. FHC/PH/CS/524/16.

Issue 3 questions whether the Court of Appeal was right to give judgment to the 1st and 2nd respondents who are guilty of serial abuse and were severally reprimanded. Issue 3 is clearly related to ground 3. Whether grounds 5, 10, 11, 17, 18 and 19 are concise.

*Once grounds of appeal can be understood, they are said to be concise and such grounds are safe as they comfortably meet the requirements of the law.*

*In his brief, (pages 9 -13) learned counsel, Chief A. Olujinmi displayed a thorough understanding of the grounds complained of, in his argument as to whether the said grounds were of mixed law and fact, for which leave was needed. This shows that the said grounds are easily understood. In the circumstances the said grounds are indeed concise.*

In view of all that I have been saying, the Preliminary Objection is hereby overruled. The appeal is valid and it shall now be considered.

#### MAIN APPEAL

The facts are these. General elections were held in Nigeria in 2015. The P.D.P. lost the Presidential elections, while the A.P.C. won. Thereafter the Chairman of the P.D.P., Alhaji Adamu Muazu left the Office of Chairman of the Party abruptly. So the Party appointed Senator Ali Modu Sherrif, the 1st respondent, as the acting National Chairman while Professor Adewale Oladipo, the 2nd respondent, remained the party's National Secretary.

In the year 2016 the 1st respondent, a member of the National Executive Committee and other members issued a Notice for the National Convention of the P.D.P. to be held in Port Harcourt on 21st, May 2016.

The 1st respondent signified his intention to contest for the office of National Chairman of the P.D.P. by submitting himself for screening. The screening exercise for aspirants into elective offices was held a day before the National Convention. That was on 20th May, 2016. The 1st respondent failed the screening exercise. The Screening Committee issued a report dated 20th May, 2016 on the 1st respondent. It reads:

"SENATOR ALI MODU SHERIFF

The candidate is contesting for the office of the National Chairman. He submitted a half-filled nomination form without supporting documents. He had no tax clearance certificates for three years. He also had neither the P.D.P. membership card nor voter's card. We found nothing in the nomination form he submitted without other relevant documents as to find him qualified to contest for the office of the National Chairman of the P.D.P. He is accordingly disqualified from contesting for the election."

On being aware of this development, the 1st respondent purported to cancel the National Convention, relying on existing Court orders. This he did on 21st May, 2016. The day slated for the National Convention. The acts of the 1st respondent were ignored. The Convention went on and far reaching resolutions made. The 1st respondent was removed as Acting Chairman of the P.D.P., and a Caretaker Committee appointed to look after the affairs of the P.D.P. The P.D.P. was torn into two factions with the 1st respondent still claiming to be the Chairman of P.D.P. and the Caretaker Committee led by Senator Ahmed Makarfi.

It was in this state that the appellant filed suit No: FHC/PH/CS/524/16 to put to rest once and for all the

supreme nature of the National Convention of the P.D.P., and whether the 1st and 2nd respondents can override decisions made at the National Convention of the Party. Prior to and during the pendency of this suit the 1st and 2nd respondents and their allies instituted the following suits:

1. FHC/L/CS/637/2016 - Adeyanju v. I.N.E.C. & Anor.
2. FHC/L/CS/347/2016 - Adebayo Dayo & Anor v. I.N.E.C. & 3 Ors.
3. FHC/L/CS/638/2016 - Olorunoje & Anor v. I.N.E.C. & 3 Ors.
4. FHC/L/CS/605/2016 - Olemolu v. I.N.E.C. & 3 Ors.
5. FHC/L/CS/613/2016 - Ali Modu Sheriff & 2 Ors. v. I.N.E.C. & 5 Ors.
6. FHC/L/CS/636/2016 - Adebayo Dayo v. I.N.E.C. & 5 Ors.
7. FCT/HC/CV/1867/2016 - Chief Joseph Jero v. P.D.P.
8. FCT/CV/1443/2016 - Chief Emeka Dibia v. P.D.P.
9. FCT/CV/M.7017/2016 - Chief Emeka Dibia v. P.D.P. (in Re: Senator Sheriff) & 19 Ors.
10. FCT/CV/1822/2016 - Senator Ali Modu Sheriff & 18 Ors. v. P.D.P. & 7 Ors.
11. FHC/ABJ/CS/439/2016 - Chief B. Akingboye & Anor v. (1) I.N.E.C. (2) P.D.P.
12. FHC/ABJ/CS/464/2016 - Dr. Ali Modu Sheriff & 9 Ors. v. (1) I.N.E.C. (2) P.D.P.

Suit No: FHC/PH/CS/524/2016 is the suit which resulted in this appeal. The appellant's as plaintiff's filed the suit to reaffirm the supremacy of the PDP's Constitution, the sovereignty of the National Convention as the highest decision making body of the party and for the Court to declare the resolutions passed at the National Convention held in Port Harcourt on 21st May 2016 as valid.

The learned trial judge agreed with the plaintiffs. His lordship Liman, J resolved all the questions for determination and reliefs sought in the Originating Summons in favour of the plaintiffs.

The respondents were not satisfied with the judgment. They lodged an appeal. It was heard by the Court of Appeal, Port Harcourt Division. That Court by a majority of two to one, Gumel, JCA, and Sanga, JCA, Orji-Abadua, JCA dissenting.

The concluding part of the majority judgment reads:

"Appeal has merit it is hereby allowed. Judgment of the Federal High Court Port Harcourt Division delivered on 4th July, 2016 is hereby set aside. The 1st respondents suit No: FHC/PH/CS/524/2016 filed before the lower Court is hereby dismissed for being an abuse of Court process"

Dissatisfied with the decision of the Court of Appeal, the appellant appealed to the this Court.

#### ISSUE 1

Whether Suit No. FHC/PH/CS/524/2016 is an abuse of process.

Learned counsel for the appellant observed that the parties, cause of action, reliefs, questions for determination and claims in the appellant's suit at the trial Court were completely different from those in the pre-existing cases and the reliefs sought and obtained in the present suit. Relying on: *Arubo v. Aiyeleru (1993) 3 NWLR (Pt. 280) p.126* *Saraki v. Kotoye (1992) 18 NWLR (Pt. 264) p.146*

He submitted that the present suit is not abusive of the previous suits.

Learned counsel for the 1st and 2nd respondents observed that suit No. FHC/PH/CS/524/2016 which resulted in this appeal was filed to neutralize the orders made in suits No.FHC/L/CS/613/2016, FHC/L/CS/637/2016, and to validate the decisions of the National Convention. He submitted that the suit was an abuse of process having regard to the three cases above which were pending at the time the suit resulting in this appeal was filed.

He observed that all the parties in suit No.FHC/L/CS/613/2016 are parties in suit No.FHC/PH/CS/524/2016 and the claims in both suits are the same or substantially the same, further observing that the parties in suits Nos. FHC/L/637/2016, FCT/HC/CV/1443/2016 and FHC/PH/CS/524/2016 are the same, and the claims are substantially the same. Relying on: *N.I.M.B. Ltd v. U.B.N. Ltd (2004) 12 NWLR (Pt.888) p.599* *Umeh & Anor v. Iwu & Ors (2008) 2-3 SC p.135*.

He submitted that the Court of Appeal was right in finding that suit No. FHC/PH/CS/524/2016 was an abuse of Court process and properly dismissed it.

The issue is whether suit No.FHC/PH/CS/524/2016 amounts to an abuse of process of the Court since at the time it was filed suits Nos. FHC/L/CS/637/2016, FHC/L/CS/613/2016 and FCT/HC/CV/1443/2016 were pending or proceedings had commenced.

*The Rule is that where matters involving the same parties and the same claims are raised contemporaneously in two or more Courts, it is desirable and clearly in the interest of justice that these matters should be heard in only one of these Courts. It is designed to avoid multiplicity of proceedings on the same issues.*

*The basis of the Rule is the real possibility of two conflicting decisions in respect of one and the same subject matter. So it is desirable that the issues common to both matters are heard and determined in only one Court. See: Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) p.156 F.B.N. Plc v. T.S.A. Industries Ltd (2012) 5-7 SC (Pt. ii) p.1 Barigha v. P.D.P. & 2 Ors (2012) 12 SC (Pt. v) p.84 R-Benkav Nig. Ltd v. Cadbury Nig. Plc (2012) 3 SC (Pt. iii) p.169 Dingyadi v. I.N.E.C. (No.2) (2010) 4-7 SC (Pt. i) p.76 Lokpobiri Ogola & 2 Ors (2015) 10-11 SC*

(Pt. ii) p.102

*It would amount to an abuse of process when a party uses the judicial process to the irritation and annoyance of his opponent, thereby tarnishing the administration of justice in the process. This would occur where party institutes a multiplicity of actions on the same subject matter against the same opponent on the same issue. Where two actions are filed one after the other and both actions are asking for a relief common to both of them, the second action is clearly vexatious and calculated to irritate and annoy the adversary.*

*Where a party goes forum shopping hoping to achieve a conceived right. So once the action is between the same parties, their allies, on the same subject matter even if differently worded but with the same result the suit filed later in time is an abuse of process and is liable to be struck out.*

*Once the intention for filing the suit is found to be mala fide, it is an abuse of process.*

The Originating processes in suits Nos.

1. FHC/L/CS/613/2016
2. FHC/L/CS/637/2016
3. FCT/HC/CV/1443/2016,

must be examined to see if suit No. FHC/PH/CS/524/2016 that gave rise to this appeal is an abuse of process. Suit No: FHC/L/CS/613/2016 was commenced on 6/5/2016. Buba J. presided. The suit is between:

1. Alhaji Ali Modu Sheriff
2. Professor Wale Oladipo
3. Alhaji Fatai Adewale Adeyanju - PLAINTIFFS

v.

1. I.N.E.C.
2. P.D.P. - DEFENDANTS

The reliefs sought are:

(a) A Declaration that upon the community interpretation of Section 229 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) along with the provisions of Article 47(1) of the Constitution of the Peoples Democratic Party, the tenure of the 1st, 2nd and 3rd Plaintiffs in the office of the National Chairman, National Secretary and National Auditor respectively of the Peoples Democratic Party to which they were elected (or deemed elected) at the Special National Convention of the P.D.P. held on 10th and 11th December, 2014 is a four year term which expires in December, 2018.

(b) A Declaration that having regard to the provisions of Article 47 (6) of the Constitution of the Peoples Democratic Party (as amended) the 1st plaintiff who was appointed to serve out the tenure of Alhaji Ahmed Adamu Mu-azu as National Chairman of the Peoples Democratic party is entitled to remain in office until 2018 when the tenure of Alhaji Ahmed Adamu Mu'azu expires.

(c) A Declaration that in the circumstances there can be no election to the office of National Chairman, National Secretary and National Auditor of the P.D.P. at the National Convention of the Party slated for May, 2016.

(d) A Declaration that the Independent National Electoral Commission (I.N.E.C.) ought to restrain the Peoples Democratic party from conducting the elections into the offices of the plaintiffs and refuse to recognize any election to those offices which are conducted in breach of the provisions of Section 223 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 47 (1) of the Constitution of the Peoples Democratic Party.

(e) A Declaration that by the provisions of Article 47(1) and (6) of the Constitution of the Peoples Democratic Party, the Notice of Congress dated 15th March, 2016 referenced: PDP/DOM/GFI/VOL.III/590 and issued by the 2nd defendant, in so far as it pertains to the conduct of any election to the offices currently occupied by the plaintiffs, is illegal, null, void and of no effect as the tenure of the plaintiffs in the offices has not expired.

(f) An Order restraining the 2nd defendant from conducting election into the offices of the plaintiffs until December 2018, when their four years term would have been spent.

(g) An Order directing the 1st defendant not to recognize any other persons apart from the plaintiffs as the holders respectively of the offices of the National Chairman, National Secretary and National Auditor of the Peoples Democratic Party until the convening of a National Convention of the 2nd defendant in 2018. Suit No. FHC/L/CS/637/2016 was filed on 12th May, 2016. Idris J presided. The suit between Alhaji Fatai Adewale Adeyanju – PLAINTIFF v.

1. I.N.E.C.
2. P.D.P. - DEFENDANTS

The reliefs sought are:

(1) A Declaration that upon the community reading and interpretation of Section 223 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) along with the provisions of Articles 33(1) (a) and 35 (1) of the Constitution of the Peoples Democratic Party the National Chairman of the 2nd defendant is the only person empowered and authorized to chair and preside over the National Convention of the 2nd defendant

and all its meetings.

(2) A Declaration that only the National Convention chaired and presided over by Senator Ali Modu Sheriff, the National Chairman of the 2nd defendant can conduct elections to fill the seats of the available National Officers of the Party.

(3) A Declaration that there can be no election to the available National Offices of the 2nd defendant by any National Convention conducted in Lagos State or any other state in the Federation not chaired or presided over by the chairman of the 2nd defendant.

(4) A Declaration that the 1st defendant ought to restrain all members of the 2nd defendant from conducting or recognizing any parallel convention other than the chaired and presided over by Senator Ali Modu Sheriff, the National Chairman of the 2nd defendant and ought to refuse or recognize any election to National Offices of the 2nd defendant not carried out in the National Convention chaired or presided over by Senator Ali Modu Sheriff, the National Chairman of the 2nd defendant. Suit No: FCT/HC/CV/1443/2016 was filed on 8th April, 2016. Mohammed J. presided. The suit is between Chief E. Dibia (plaintiff) and P.D.P. (defendant).

The reliefs sought are:

(a) A declaration that the defendant is bound to obey the provisions of the Constitution of the Peoples Democratic Party in the conduct of its affairs.

(b) A declaration that in view of the mandatory provisions of Article 47 (1) of the Constitution of the Peoples Democratic Party, the tenure of Alhaji Adamu Muazu was for a term of four years which tenure expires in 2018.

(c) A declaration that by the combined effect of Article 47 (1) and (6) of the Constitution of Peoples Democratic party, the legal effect of the resignation of Alhaji Adamu Muazu as the Chairman of the Peoples Democratic Party and the consequent appointment of Senator Ali Modu Sheriff is that the latter is entitled to serve out the tenure of the National Chairman of the Peoples Democratic Party till 2018.

(d) A declaration that by the provisions of Article 47 (1) and (6) of the Constitution of the Peoples Democratic Party and its Special National Congress held on 31st August, 2013, the tenure of the 16 (sixteen) National Officers of the Peoples Democratic Party is for four years which tenure subsists till August, 2017.

(e) A declaration that by the provisions of Article 47 (1) and (6) of the Constitution of the Peoples Democratic Party, the Notice of Congress dated 15th March, 2016 referenced: PDP/DDM/CFI/VOL.III/590 and issued by the defendant as it pertains to the election of any of its National Officers is illegal, null, void and of no effect as the tenure of the said National Officers has not expired.

(f) A declaration that by the provisions of Article 47 (1) and (6) of the Constitution of the Peoples Democratic Party, the Notice of Congress dated 15th March, 2016 referenced: PDP/DDM/GFI/VOL.III/590 and issued by the defendant pertaining to the National Convention is null, void and of no effect as the tenure of Alhaji Adamu Mu'azu will expire in 2018 and Senator Ali Modu Sheriff having been appointed as its National Chairman pursuant to Article 47 (1) and (6) of the Constitution of the Peoples Democratic Party is legally entitled to serve out the four years tenure till 2018 in accordance with Article 47 (6) of the Constitution of the Peoples Democratic Party.

(g) An Order of Court setting aside the Notice of Congress dated 15th March, 2016 referenced: PDP/DOM/GFI/VOL.III/590 and issued by the defendant as it pertains to the National Convention for being illegal, unconstitutional, null, void and of no effect whatsoever.

(h) An Order of perpetual injunction restraining the defendant or any of its officers, privies, agents or howsoever described from according or giving effect to the Notice of Congress dated 15th March, 2016, referenced: PDP/DOM/GFI/VOL.III/590 and issued by the defendant pertaining to the National Convention or taking any other steps to hold or convene any National Convention for the purposes of electing any National Officers whose tenures have not expired contrary to the provisions of Article 47 (1) and (6) of the Constitution of the Peoples Democratic Party.

FHC/L/CS/524/2016 is the suit the 1st and 2nd respondents' claim is an abuse of process. It is the suit which led to this appeal.

The trial High Court found that the suit (Supra) was not an abuse of process.

The majority decision of the Court of Appeal decided that the trial High Court was wrong. The Court of Appeal said:

"His failure to find that the Originating Summons in this appeal was an abuse of process against the various Court actions before Courts of co-ordinate jurisdiction in which various orders have been made which were valid and subsisting and which were duly brought to the attention of the Court is erroneous and wrongful and liable to be set aside and is hereby accordingly set aside. In consequence of the foregoing, that Preliminary objection against the Originating Summons in this appeal is hereby upheld. Suit No: FHC/PH/CS/524/2016 is an abuse of Court process and is accordingly struck out."

Can this be correct?

The majority decision of the Court of Appeal would be correct if the claims/reliefs in suit No:

FHC/L/CS/524/2016 are the same or substantially the same as suits Nos:

1. FHC/L/CS/613/2016
2. FHC/L/CS/637/2016
3. FCT/HC/CV/1443/2016

The 1st respondent or his allies appear in all the suits. The parties in the three suits above are not the same as the parties in suit No: FHC/L/CS/524/2016.

Now to the reliefs:

Suit No: FHC/L/CS/613/2016.

Centers on

1. The tenure of office of the 1st, 2nd and 3rd plaintiffs.
2. Declaration that INEC restrains PDP from conducting election into the office of the plaintiffs.
3. Declaration that the Notice of Congress dated 15th March, 2016 referenced: PDP/DOM/GFI/VOL.III/590 issued to PDP to conduct any election to the offices occupied by the plaintiffs is illegal, null and void and of no effect.
4. An Order restraining PDP from conducting election into the Offices of the plaintiffs until December, 2018.

The claims/reliefs are similar to those in FHC/L/CS/637/2016 in that both suits are on elections and tenure of office of the 1st respondent and his allies.

As for suit No: FCT/HC/CV/1443/2016 it is about obedience to the Constitution of the PDP. Once again, to the tenure of office of the 1st respondent, and for an order setting aside the Notice of Congress dated 15th March, 2016.

Suits Nos. FHC/L/CS/613/2016, FHC/L/CS/637/2016 and FCT/HC/CV/1443/2016 and indeed over ten other suits were filed to ensure that, particularly the 1st respondent remains in the office of Chairman of the PDP until the unexpired tenure of the former Chairman expires in December, 2018. These suits were filed before the National Convention of the party held in Port Harcourt on 21st May, 2016.

Suit No FHC/L/CS/524/2016 was filed after the convention (i.e. after 21st May, 2016).

*After examining the claims/reliefs therein it is clear that the suit supra was filed to affirm the supremacy of the PDP Constitution. The sovereignty of the National Convention as the highest decision making body of the PDP, and the validity of the resolutions passed at the National Convention. On the other hand the suits filed by the 1st and 2nd respondents, and their allies centered on tenure and election of certain National Officers of the PDP.*

*I am satisfied that suit No FHC/L/CS/524/2016 is not an abuse of Court process. The trial Court and the dissenting judgment of the Court of Appeal were in the circumstances correct.*

*On the other hand, it is the 1st and 2nd respondents who are themselves guilty of abuse of process. The Court of Appeal was correct when it found that they were guilty of filing and instigating abusive actions in a desperate bid to perpetuate himself in office.*

Once again suit No.FHC/L/CS/524/2016 is not an abuse of process.

ISSUE 2

Whether the National Convention of the P.D.P. which was held on 21st May, 2016 in Port Harcourt, Rivers State was illegal.

Learned counsel for the appellant observed that no Court made any specific order to the effect that the National Convention of the P.D.P. be put on hold. Reliance was placed on Section 128 (1) of the Evidence Act.

He observed that in Suit No FCT/HC/CV/1443/2016 the trial learned judge bluntly refused to stop the holding of the Convention. In suit No.FHC/L/CS/613/2016 the learned trial judge ordered that no election of National Officers shall be conducted. While in suit No.FHC/L/CS/637/2016 the learned trial judge did not order that the PDP Convention should not hold or that it should be put on hold.

He submitted that the Court of Appeal decision that the P.D.P. Convention be put on hold is perverse. Reliance was placed on *Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) P. 360*

Learned counsel for the appellant observed that the Court of Appeal only relied on Article 47 (3) of the PDP Constitution to hold that the removal of the National Executive Committee by the PDP National Convention was wrong. He submitted that Article 47 (3) of the PDP Constitution only relates to a situation where removal of PDP executives is done by vote of confidence. He observed that since 1st respondent is not an elected tenured executive of PDP, Article 47 (3) of the PDP Constitution does not apply to him, contending that the Court of Appeal was wrong to have applied it to him.

He submitted that the Court of Appeal ought to have examined Articles 33 and 35 of the PDP Constitution before deciding if the National Convention was right or wrong to remove the National Executive Committee. Relying on; *Ishola v. Ajiboye (1994) 7-8 SCNJ (Pt. 1) p.1, Marwa v. Nyako (2012) 6 NWLR (Pt. 1296) p.199*

He submitted that if the Constitution of PDP was properly construed, the decision of the Court of Appeal would be found to be wrong, while that of the trial Court is correct.

Learned counsel for the 1st and 2nd respondents observed that the orders made in suits Nos: FHC/L/CS/613/2016 and FHC/L/CS/637/2016 are explicit enough as orders meant to prevent parties from taking actions during the pendency of the cases as this would confront the Courts with a fiat accompli. He submitted that the Court of Appeal was right to set aside the judgment of the trial Court.

On whether the Court of Appeal considered the PDP's Constitution, he submitted that the PDP's Constitution was considered strictly in relation to the holding of the National Convention. Reference was made to pages 1477, 1478 of the Record of Appeal.

He observed that the provisions of Article 47 (3) of the P.D.P. Constitution guarantees security of tenure against arbitrariness, and the Article did not distinguish between an elected and appointed National Officer.

He submitted that the judgment of Mohammed J. in Suit No: FCT/HC/CV/1443/2016 is clear that the 1st respondent shall remain in office until a new election is conducted in the office of Chairman.

Finally he observed that the Deputy National Chairman was not assisting or deputizing for the 1st respondent when he presided over the Convention. He submitted that rather those who conducted the National Convention were acting illegally and in breach of the Constitution of PDP. He urged this Court to discountenance the arguments of the appellant's learned counsel.

I shall answer this issue in two parts.

1. Was the National Convention held in disregard of subsisting orders of the Courts?

2. Was the National Convention held in breach of extant provisions of the Constitution of PDP?

There were three subsisting Court orders before 21st May 2016, when the National Convention of the PDP was held. They are:

(a) Suit No: FCT/HC/CV/1443/2016 is a final judgment, delivered by Mohammed, J on 18th May, 2016.

In that judgment it was decided:

(i) That the defendant (i.e. PDP) is bound to obey the Constitution of the Party in the conduct of its affairs.

(ii) That in view of the mandatory provisions of Article 47 (6) of the Constitution of PDP, the tenure of Alhaji Adamu Muazu was for a term of four years which was to expire in 2018.

(iii) That relief No. (c) which sought for a declaration that the 1st appellant (i.e. Senator Ali Modu Sheriff) is entitled to serve out the tenure of Alhaji Adamu Mu'azu is refused.

(iv) That Senator Ali Modu Sheriff is to serve pending the conduct of election to fill the vacancy.

(v) That the tenure of office of the 16 National Officers of the P.D.P. is for four years which tenure subsists till August, 2017.

(vi) Relief (e) which sought for a declaration that the Notice of Congress dated 15th March, 2016 referenced: PDP/DOM/GFI/VOL./III/590 issued by the P.D.P. over the election of any of its National Officers is illegal, null, void and of no effect as the tenure of the said National Officers has not expired was equally refused, while relief (f) was refused, and reliefs (g) and (h) were abandoned.

(b) In suit No FHC/L/CS/613/2016 Buba, J granted interlocutory order of injunction restraining the 2nd defendant (i.e. PDP) from conducting any election into the offices of the National Chairman, National Secretary and National Auditor occupied by the plaintiffs (i.e. the 1st and 2nd appellants in this appeal).

(c) In suit No: FHC/L/CS/637/2016 Idris J. made interlocutory orders directing the parties therein not to take any step that will foist a fiat accompli on the Court.

Suits Nos: FHC/L/CS/613/2016, FHC/L/CS/637/16 and FCT/HC/CV/1443/2016 were on tenure and election into office of the 1st and 2nd respondents and some other members of the P.D.P. The Judgment in FCT/HC/CV/1443/2016 which was a final judgment settled once and for all:

1. The tenure of office of Acting Chairman of P.D.P.

2. The right of P.D.P. to hold National Convention.

3. The status of the Notice of Congress.

4. That Senator Ali Modu Sheriff was to serve out the four years tenure of Alhaji Adamu Mu'azu was refused.

5. Order setting aside notice of Congress was refused.

*With the above, the interlocutory orders ceased to be of any worth, and this final judgment in suit No. FCT/HC/CV/1443/2016 subsists until set aside. It is in the circumstances clear that the judgment in suit No: FCT/HC/CV/1443/2016 did not declare the Notice of Congress reference No: PDP/DOM/GFI/VOL.III/590 dated 15th March, 2016 illegal. Neither did it restrain the PDP from going ahead with its National Convention fixed for 21th May, 2016. Neither this judgment nor any judgment restrained the P.D.P. from holding its National Convention. The National Convention was not held in disregard of any subsisting orders of the Court.*

(2) Was the National Convention held in breach of extant provisions of the Constitution?

*A Constitution and in particular that part of it which is on the same subject matter are to be construed together. The entire provisions are to be read as a whole. It is only then that the subject matter in issue can be properly understood and applied correctly.*

The Court of Appeal came to the conclusion that the National Convention did not act in accordance with the PDP Constitution. The Court said:

"Upon considering the way and manner the National Executive Committee of the party was removed on 21st May, 2016 by the Party during its National Convention it is clear that the provision of Article 47 (3) of the PDP Constitution was not observed and I so hold....

Thus the said National Convention disobeyed a valid Court order issued on 18th May, 2016 and the provisions of Article 47 (3) of its Constitution."

According to the Court of Appeal the National Convention was wrong to remove the National Executive Committee because:

- (a) It did not comply with Article 47 (3) of the P.D.P. Constitution.
- (b) It failed to obey valid Court order issued on 18th May, 2016.

The subject matter on this issue is covered by Articles 33, 47 (3), 58 and 59 of the P.D.P. Constitution.

Article 33 (1)-(5) (e) reads:

"33(1) There shall be a National Convention of the party which shall consist of -

(2) The National Convention shall be the supreme and controlling authority of the party within the limits prescribed in this Constitution and it shall be the principal representative, policy making and administering body of the party.

(3) Except in the exercise of the functions granted only to other bodies as specified in this Constitution or in the regulations made pursuant to the provisions of this Constitution, the National Convention shall have supremacy in all matters pertaining to the party and all officers and organs of the party shall be bound in the exercise of their functions by the decisions of the National Convention.

(4)

(5) The National Convention shall have and exercise authority to -

- (a) formulate policies and programs for the party.
- (b) elect or remove the National officers of the party.
- (e) appoint such Committees, as it may deem necessary, desirable or expedient and assign to them such powers and functions as it may deem fit."

Article 33(2) states clearly that the National Convention is the supreme and controlling authority of the party and it has supremacy in all matters pertaining to the party and all officers.

Article 35(3) (a) (b) and (c) of the P.D.P. Constitution states that:

"35(3). The Deputy National Chairman shall perform the following functions -

- (a) Assist the National Chairman in the discharge of his duties;
- (b) Deputize for the National Chairman in the latter's absence; and
- (c) Perform such other party functions as may be assigned to him."

*In view of the provisions of Article 35 (3) (b) of the P.D.P. Constitution the Deputy National Chairman can preside over the National Convention of the Party in the absence of the Chairman.*

Article 47 (3) of the P.D.P. Constitution provides that:

"A vote of Confidence may be moved on any member of the Executive Committee of the Party at any National Convention or Congress of the Party two years into the tenure of such member of the Executive Committee, and where such a vote fails to be carried the Executive Committee member shall be replaced at that National Convention or Congress, as the case may be. Provided that two months notice of such vote of confidence motion shall be given, circulate it to the relevant chapters one month before the National Convention or Congress as the case may be."

*The law is long settled that "may" is not always "may". It may sometimes be equivalent to "shall", see Ifezue v. Mbadugha (1984) 1 SCNLR p.427.*

*Two months notice of vote of confidence motion shall be given and circulated only when the vote of confidence is intended to be carried. May in the circumstance is directory and not mandatory. A National officer can be removed without a vote of confidence.*

Article 58 (1) of the PDP Constitution reads:

"58(1). Subject to the provisions of this Constitution, the Party shall have power to discipline any member who:

- (a) Commits any breach of the Party's Constitution and/or manifesto;
- (b) Says or does anything likely to bring the Party into disrepute, hatred or contempt;
- (c) Disobeys or neglects to carry out lawful directives of the Party or any organ or officer of the Party;
- (d) Engage in dishonest practice, defrauds the Party, its members or officials;
- (e) Is persistently absent from meetings or other official duties;
- (f) Engages in anti-party activities;
- (g) Engages in disorderly conduct at meeting, or rallies or at any Party functions;
- (h) Engages in any conduct likely to cause disaffection among members of the Party or is likely to disrupt the peaceful, lawful and efficient conduct of the business of the Party;

- (i) Engages in unauthorized publicity of disputes within the Party or creates a parallel Party organ at any level;
- (j) Promotes factions or belongs to any group under the guise of the Party and by whatever name called, not being one provided for in this Constitution;
- (k) Organizes, retains, trains, equips or encourages the organization, retention, training, equipping of any member or group of members for the purpose of employing violence or coercion or any form of intimidation whatsoever;
- (l) Resorts to Court action or litigation on any disputes or on any matter whatsoever concerning rights, obligation and duties of any member of the Party without first availing itself remedies provided by the Party under this Constitution; or
- (m) Fails, refuses or neglects to treat a petition, complaint or appeal timeously."

Article 59 (1) on sanctions for offences states that:

"59(1) Any member of the Party who commits any of the offences listed in Section 58 (1) of this Constitution shall be liable to any combination of the following penalties -

- (a) Reprimand;
- (b) Censure;
- (c) Fine;
- (d) Suspension with fine;
- (e) Debarment from holding any Party Office;
- (f) Removal from Office
- (g) Expulsion."

There can be no doubt after examining the Articles of the P.D.P. Constitution that the National Convention has enormous and sweeping powers over the affairs of the Party. When the 1st respondent abandoned the Convention, the P.D.P. invited its Deputy National Chairman to preside at the Convention in accordance with Article 35 (3) (b) of its Constitution.

At the National Convention, far reaching decisions were taken in accordance with the P.D.P.'s Constitution. Furthermore the Court of Appeal was wrong to restrict its findings and come to a perverse conclusion after examining only Article 47(3). It ought to have examined other Articles on the same subject matter. If it did so it would have come to the conclusion that the National Convention acted according to the P.D.P.'s Constitution. It must also be noted that the motion for the removal of the National Officers was brought under Article 33(5) (b) of the P.D.P. Constitution. The Dissolution of the National Executive Committee was Constitutional.

Was the Caretaker Committee properly appointed?

Article 33 (5) (e) of the P.D.P. Constitution states that:

(5) the National Convention shall have and exercise authority to -

(e). appoint such Committees as it may deem necessary, desirable, or expedient and assign to them such powers and functions as it may deem fit.

*Applying the above to the final conclusions of the National Convention, the National Convention was correct to dissolve the National Executive Committee and the National Working Committee and appoint a Caretaker Committee.*

*Once again all the acts, decisions of the National Convention were not made in breach of any provision of the Constitution of the PDP.*

*The appellant's arguments on waiver and estoppel cannot be considered by this Court since it was not considered by the Court below and no leave was sought to raise it as an issue in this Court.*

*The 1st respondent and his allies filed over ten suits. The Court of Appeal had this to say. The 1st appellant (i.e. 1st respondent) I agree displayed an infantile desperation to cling to office at all costs. I agree with the observation of the Court of Appeal. The 1st respondent was always driven by the implacable desire to remain in office as chairman at all cost. That desire was explored relentlessly by filing over ten suits within one year to perpetuate himself in office. Most of those suits have been abandoned.*

*They shall forever gather dust in judicial archives and remain dusty reminders of how not to seek judicial remedy.*

*The stakes are very high in Political matters. So, if allowed, political office seekers would not hesitate to file multiplicity of suits on the same subject matter, hoping to get a favourable judgment from one Court or the other. Their quest for this includes forum shopping. Heads of Court must by now be aware of this trend and stop this annoying practice of assigning cases on the same subject matter to different JUDGES, who very likely would render conflicting decisions, ending up making the judiciary a laughing stock.*

*Trial judges must also be on the lookout, and refrain from proceeding with any case when aware that his brother judge is handling a similar matter.*

In the end it is clear to this Court that suit No.FHC/PH/CS/524 is not an abuse of process. The National Convention which was held on 21th May, 2016 in Port Harcourt, Rivers State was properly convened.

After examining the provisions of the P.D.P. Constitution and the resolutions passed and adopted at the

National Convention this Court is satisfied that the National Convention acted constitutionally when it dissolved the National Executive Committee and the National Working Committee and appointed Caretaker Committee under Articles 33 (5) (b) and (e) of the P.D.P. Constitution.

There is merit in this appeal. The appeal is allowed. The judgment of the trial Court which was affirmed by the dissenting judgment of the Court of Appeal is affirmed by this Court. Appeal allowed.

Costs of Two Hundred and Fifty Thousand Naira (N250, 000. 00) is awarded against the 1st and 2nd Respondents.

WALTER SAMUEL NKANU ONNOGHEN, JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, RHODES-VIVOUR, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

The facts relevant for the determination of the issues raised in the appeal have been stated in detail in the lead judgment thereby making it unnecessary for me to reproduce them herein except as may be needed for the point being made.

On the motion filed by the applicant on 21st March, 2017 for an order striking out the appeal by learned senior counsel, L. O. Fagbemi, Esq, SAN I will describe same as an unfortunate and undesirable development in the practice of the law in the country: a sad commentary on the degeneration of legal practice.

The application is brought by a person who had earlier obtained judgment as appellant before the lower Court against the present appellant who is dissatisfied with same and has consequently appealed against same to this Court. The case and the appeals arising therefrom revolved around the issue of who is the alter ego of P.D.P. Whereas the trial Court entered judgment for the appellant, the lower Court, by a majority decision reversed same and entered judgment in favour of 1st and 2nd respondents. The appellant has a right to appeal against that decision, which it exercised by filing a notice of appeal. The present motion is crafted and/or designed to abort that appeal thereby leaving the judgment of the lower Court the final judgment on the issue even though it is not the final Court of the land. This more, though injurious, is very much in bad taste and designed to perpetrate gross injustice and oppression which ought not to be encouraged by a Court of law, equity and good conscience.

I also have to observe that a similar application/objection has been raised by learned senior counsel for 1st and 2nd respondents and argued in their brief of argument thereby making the repeat application/objection by Fagbemi, SAN not only vexatious but superfluous.

The above observations notwithstanding, it is clear from the facts relevant to the determination of the motion that the "applicant" double as plaintiff and defendant contemporaneously which the law does not permit. *The applicant is clearly an interloper. It is very strange that a party who did not initiate an appeal is trying hard to withdraw same as no respondent in an appeal can legally withdraw the appeal - see Order 8 Rule 6(1) (2) & (4) of the Supreme Court Rules which provide, in summary that:*

(a) *an appeal can only be withdrawn by an appellant;*

(b) *such withdrawal can only be done in the following ways:-*

(i) *with the consent of all parties to the appeal as evidenced by a document signed by all parties or by their legal representatives and filed in the registry of the Court:*

(ii) *without consent of the parties to the appeal; in which case, the appeal shall remain on the list and shall come up for hearing of any issue as to costs and/or matter otherwise remaining or outstanding or pending between the parties in the appeal - see Dingyadi v. I.N.E.C. (2010) 18 NWLR (Pt. 1224) 1.*

*I have to again emphasize that it is only an appellant who initiated an appeal that can legally withdraw same while the role of a respondent in appeal is to defend the judgment on appeal except where he files a cross appeal or a Respondent Notice which is not the case here.*

In the instant case, the appeal was initiated vide a notice of appeal filed on 27th February, 2017 by learned Senior Counsel for the appellant who has not taken any steps on record to withdraw the said appeal. Rather by Exhibit C attached to the application of 21st March, 2017 it is stated, inter alia:

"Take Notice that the appellant herein intends and doth hereby wholly withdraws its appeal against all the respondents in the above-mentioned appeal.

For And On Behalf Of The Peoples Democratic Party (P.D.P.) Appellant

Signed

Alhaji Ali Modu Sheriff

Signed

Prof. Wale Oladipo

Signed

Barr. Bashir Maidugu"

It is therefore clear that by the above, the 1st and 2nd respondents sought to withdraw an appeal not filed by them but on behalf of the appellant against them. This practice is condemnable, to say the least, and ought not to be encouraged.

It is for the above reasons that I hold that the application is grossly without merit and should be dismissed with costs which I assess and fix at N500,000 against the applicants and in favour of appellant/respondent to be paid by L. O. FAGBEMI, SAN personally.

On the merit of the appeal it is not in doubt that the lower Court found as a fact that 1st and 2nd respondents abused the process of the Court by filing series of actions on the same subject matter. At page 1447A of the record, the Court held thus:

"The appellants are also guilty of this serial abuse. I also noted the narration by learned counsel on the conduct of the 1st appellant who I agree displayed an infallible desperation to cling to office at all cost"

Again at pages 1476-1477 the lower Court held, inter alia, as follows:

"As for the 1st appellant it is obvious that it seems to have been seized by a passionate, bizarre and outlandish desire to hold on to office no matter the cost this he embarked on this foolhardy and reckless misadventure of going round Courts to obtain all sorts of orders, this action by the 1st appellant is deprecated by me"

In all there are about twelve actions instituted either directly by 1st and 2nd respondents or through actions initiated with their knowledge and consent - See the lead Judgment where they are listed.

The lower Court, having found or indicted the 1st and 2nd respondents of abuse of process, it means they had dirty hands and the law is that he who comes to equity must come with clean hands.

It is also important to note that the trial Court found as a fact that suit Nos. FHC/L/CS/613/2016, FHC/L/CS/637/2016 and FCT/HC/CV/1443/2016 instituted by appellants are not in abuse of process and the finding/Judgment affirmed by the minority decision of the lower Court.

From the record, suit No.FHC/L/CS/613/2016 targeted elections to the offices of the National Chairman, National Secretary and National Auditor and the interlocutory order made therein prohibited elections to the said offices.

It is clear from the record that that order was not disobeyed by appellant as no election was conducted into those offices.

Suit No.FHC/L/CS/637/2016 was aimed at prohibiting any other National convention other than the one presided over by Alhaji Ali Modu Sheriff (1st respondent). However, there was no other National Convention convened by appellant except the Port Harcourt convention which was convened by the National Executive Committee of appellant. The 1st and 2nd respondents actively participated in the National Executive Committee meeting of appellant from which the decision to convene the National convention of appellant was duly taken. From the record, 1st respondent saw nothing wrong with the convention until he was disqualified on 20th May, 2016 to contest the election. There was no attempt made to prevent 1st respondent to preside at the convention but early on 21st May, 2016, 1st respondent unilaterally announced postponement of the convention which was ignored by appellant.

In FCT/HC/CV/1443/2016, the order sought to prohibit the holding of the National Convention was refused in the final Judgment. The Court had also refused the prayer that 1st respondent should hold office until the tenure of Alhaji Ahmadu Adamu Mu'azu lapsed and specifically ordered 1st respondent to hold office until the next election.

Also from the record, FHC/L/CS/637/2016 made no specific order prohibiting the holding of the convention. It rather admonished that "No fait accompli be foisted on the Court" - which is not a restraining order at all.

I must also point out that suit No.FHC/CS/613/2016 made no prohibiting order that was flouted.

*Having found that there was no order of Court prohibiting the holding of the National Convention which was flouted by appellant, it is clear that the National Convention cannot, in the circumstance be described as illegal. Secondly there was no counter claim nor any relief in the appeal before the lower Court to form the foundation on which to ground an order nullifying the notice of convention PDP/DOM/GJI/VOL.III/590 of 15th March, 2016 and the said National Convention. Annulment of the National Convention was therefore not an issue before the trial Court; the issue No. 4 before that Court being whether the officers removed at the National Convention could still hold themselves as National Officers of appellant (P.D.P.).*

It is for the above reasons and the more detailed reasons contained in the lead Judgment of my learned brother that I too find merit in the appeal and consequently allow same.

I abide by the consequential orders made in the lead Judgment including the order as to costs.

Appeal allowed.

IBRAHIM TANKO MUHAMMAD, JSC

My learned brother, Rhodes-Vivour, JSC afforded me an opportunity to read before now, his judgment in draft, which has just been delivered. I am in agreement with his reasoning process in arriving at the conclusion wherein he allowed the appeal.

Before proper hearing of the main appeal, several processes were filed by respective parties in this case. Some were disposed of on the bench. Other pending Motions/Processes for ruling are:

i. Motion on Notice filed by Chief Olujimi, SAN for an order striking out of the appeal which was already moved.

ii. Motion on Notice by Chief Fagbemi, SAN, for an order of Court striking out the appeal. It was filed on 21/3/17. It has been moved.

iii. There is also a filed Notice of Withdrawal of the appeal. It was signed, dated and filed on the 15/3/2017.

I have considered these processes and the submissions thereon by learned counsel for the respective parties. I find all to be unmeritorious and ungrantable. Accordingly, I refuse the above (3) listed processes.

Perhaps I need to add in particular, that the notice of withdrawal of the appeal before this Court was signed and filed by the 1st, 2nd respondents in this appeal and a 3rd party who signed as the Acting National Legal Adviser. They all signed for and on behalf of the Peoples Democratic Party (PDP) who is the appellant herein. It is perplexing!

How can a respondent, who is only expected to respond to the appeal, apply to withdraw an appeal he did not file? The appeal certainly does not belong to the respondents. Can the respondents take away something that does not belong to them? By our Rules of Court it is only an appellant who has the right to withdraw or abandon his appeal. Order 8 Rule 6 of the Supreme Court Rules (as amended) provides as follows:

"(1) An appellant may at any time before the appeal is called for hearing serve on the parties to the appeal and file with the Registrar a notice to the effect that he does not intend further to prosecute the appeal."

The appellant, herein, is the Peoples Democratic Party. No such process was filed by the Peoples Democratic Party. The 1st and 2nd persons who signed the process were 1st and 2nd respondents in this appeal. I believe the filing of this process - Notice of Withdrawal of the appeal by persons who are respondents to the appeal was either done in a confusion or ill-motivated. For whatever reason it was done, it is a worthless exercise. The Notice of Withdrawal is a non-starter. It is hereby struck out.

On the supremacy of party constitution. After setting out the objective conceived, such that party members will bring together all patriotic and like-minded Nigerians into a single formidable political party capable of organizing and making productive labour and energy of the people; to work together under the umbrella of the party for the speedy restoration of democracy, the achievement of National reconciliation, economic and social reconstruction and respect for human rights and the rule of law, to conform with the principles of power shift and power sharing by rotating key political offices amongst the diverse peoples of the country; to defend the sanctity of democracy through the firm enforcement of strict code of conduct among the members of the party and political office holders; to mobilize like-minded Nigerians under the leadership of the party to build a nation responsive to the aspirations of its people, able to satisfy the just hopes and aspirations of black peoples in the world and to gain the confidence of other nations, among other lofty ideas, members of the party resolved as follows:

"Now Therefore, We Members Of The Peoples Democratic Party, For The Purpose of effective administration and the promotion of the ideals and objectives of our party hereby enact and give to ourselves the following Constitution.

Article 2 of the Constitution provides:

"Subject to the provisions of the Constitution of the Federal Republic of Nigeria and any other law in force, this Constitution shall be supreme and above its members and organs of the party.

Article 6(6) provides that the party shall respect freedom of expression and free exchange of ideas and information without undermining the authority and integrity of the party.

Article 33(1) establishes a National Convention of the party.

Article 33(2) Spells out the supremacy and functions of the National Convention:

The National Convention shall be the supreme and controlling authority of the party within the limits prescribed in this Constitution and it shall be the principal representative, policy making and administering body of the party."

Sub - (3) spells out convention's supremacy in all matters pertaining to the party and all officers and organs of the party shall be bound in the exercise of their functions by the decisions of the National convention.

*My lords, I have to go this length in setting out some provisions of PDP's constitution, only with a view to showing that PDP as a political Party has mechanisms of controlling the party and its members, i.e. the Constitution and the Guiding Rules or Guidelines. Where a member or members of the party feels too powerful to be governed or controlled by the party constitution or Guidelines, and in contravention of such control mechanisms, then certainly, democracy is thrown overboard by anarchy.*

It is to be recalled from facts in the record of appeal that it was the National Executive Committee under the leadership of the 1st respondent, pursuant to powers given to it by the Constitution that convened the National Convention of the party at Port-Harcourt on 21/5/16 vide Notice of Congress Ref: PDP/DOM/GFI/Vol.III/590 dated 15th March, 2016. Article 31(1) of the Constitution establishes the National Executive Committee (NEC) of the party (whose composition is therein provided) to include the National Chairman, who shall be the Chairman of the Committee. Sub-Article (2) plainly provides -

The National Executive Committee shall -

a) Convene the National convention and appoint a Convention Organizing Committee which shall

circulate the convention information in advance and ensure that the concerns of the membership are reflected on the Agenda.

b) Carry out the decisions and instructions of the National Convention.

In pursuance of all these, the National Executive Committee of the party, under the Acting Chairmanship of the 1st respondent, duly appointed a 114 member National Convention Committee chaired by His Excellency Nyesom Ezenwo Wike of Rivers State to organize a National Convention to hold in Port Harcourt, Rivers State on 21/5/16. Preparatory to the election to be conducted at the convention and resolved to contest for the office of chairman of the party, 1st respondent submitted himself for the election. In tandem with the requirements and practice of the party, 1st respondent submitted himself for the screening exercise for aspirants to elective offices of the party. He purchased nomination forms. This exercise was held on 20/5/2016, a day to the convention. 1st respondent was not successful at the screening exercise and the Screening Committee disqualified him, the Committee, among other things held as follows:

"Senator Ali Modu Sheriff, The candidate is contesting for the office of the National Chairman. He submitted a half-filled nomination form without supporting documents. He had no tax clearance certificates for three years. He also had neither the PDP membership card nor voter's card. We found nothing in the nomination form he submitted without other relevant documents as to find him qualified to contest for the office of the National Chairman of the PDP. He is accordingly disqualified from contesting for the election."

Thus, in their capacities as loyal members of the appellant, the 1st and 2nd respondents, in particular ought to act in pursuance of the Constitution of their party, the appellant, regard being had to the provision of Article 35(1)(b) of the Constitution and under the supervision of the National Executive Committee. But, in reaction to the result he got from the Screening Committee, the 1st respondent decided on the 21st day of May, 2016, (the very day slated for the convention) to postpone/cancel the convention on the alleged basis of existing Court orders. However, the Convention went ahead with the 1st respondent absent and the Deputy Chairman Chaired the Convention. Far reaching decisions were taken at the convention including the removal of the 1st respondent as the Acting Chairman of the appellant; sacking of all the National Executive Committee of the appellant; appointment of a National Caretaker Committee to take charge of the affairs of the appellant.

My learned brother, Rhodes-Vivour, JSC, has treated the issue of abuse of process of Court with some amount of lucidity. I need not revisit that issue for the fear of monotony. It is worth re-stating, however, that if there was any abuse of process, the Court below made a finding that the 1st respondent was also guilty of serial abuse. The Court noted the narration by learned counsel for the respondent then, on the conduct of the 1st appellant (then) with whom that Court agreed that the 1st respondent (as 1st appellant) displayed an infantile desperation to cling to office at all cost. The Court again found the 1st respondent absented himself and it held among other things:

"As for the 1st appellant it is obvious that, he seems to have been seized by a passionate bizarre and outlandish desire to hold on to his office no matter the cost thus he embarked on this fool hardy and reckless misadventure of going round Courts to obtain all sorts of orders. He absented himself on the day set for the National Convention carrying with him the Court orders which were issued by several Courts of coordinate jurisdiction. This action by the 1st appellant is deprecated by me."

My lord's one single question which cuts across several minds of party members and even those outside, is: Was the National Convention held by the party on the 21/5/16 at Port Harcourt, a nullity? The Court below found that the postponement of the National convention by the 1st respondent was inevitable in view of the several conflicting orders in respect to the holding of the National Convention. It held that the convention was held in contravention of appellant's constitution.

"It is my holding on this issue that the purported National Convention held on 21/5/16 was in contravention of a lawful Court order and its own Constitution, therefore all the decisions taken thereof are hereby set aside by me."

As I reflected earlier, I am in agreement with my learned brother, Rhodes-Vivour, JSC on his decision that suit No.FHC/CS/524/2016 is not an abuse of Court process. The trial Court and the dissenting judgment of Abadua, JCA, were correct. The trial Court held, among other things:

"It is interesting to note the 1st defendant admitted postponing the Convention on the very day all the delegates from all parts of Nigerian had converged on the venue in Port Harcourt, unilaterally for the ostensible reason that some legal issues needed to be resolved. This decision, apart from being illegal, I believe, it was most unconscionable. The most noble step the 1st defendant should have taken, instead of taking that motley steps of postponement, a cowardly retreat from the convention, was to have participated at the convention and then to propose the motion for postponement. If it was adopted he would have been vindicated, but even if it was rejected, still, he would have been vindicated. The principle and spirit of democracy, even in a party system, vigorously abhors autocracy and arbitrariness. It extols the virtue of inclusive participation of all members, constituents and stake holders, no matter flimsy is their interest in the party. This majoritarian concept engenders the growth and development of civil culture, peaceful co-existence and social participation in the joint project of and social participation in the joint project of building a nation. I

did not see this aspect of democracy in the drama that was enacted in Port Harcourt on the 21st day of May 2016 by the attitude and conduct of the 1st defendant.

The question whether the absence of the 1st defendant as acting chairman had invalidated the convention would depend on three major factors.

- 1) Whether the Chairman's position was forcefully usurped by an impostor who prevented him from presiding over the convention: or
- 2) Whether the convention was not properly summoned by the National Executive Committee of the party; and
- 3) Whether, the convention was not presided over by a person authorized or deemed to be authorized by the constitution of the party.

On the first factor, it is established that the Chairman had from undisputed evidence participated from the very initial stage of summoning the convention at the level of the National Executive Committee; appointed the convention of organizing committee and filed for nomination to contest for the Chairmanship and was screened, though disqualified. He only realized of the need to resolve legal issue when his bid to contest the post of Chairmanship was truncated by disqualification. So from this scenario, it is only logical to assume that the 1st defendant was neither prevented from presiding over the convention nor his authority usurped, but he took flight from the venue, using postponement as an alibi.

Secondly, whether the convention was not properly convened, I think this should not come from the mouth of the 1st defendant, because the steps he had taken from the initial stage to the penultimate denouncement on the 21st May, 2016 when the convention had acquiescence and active collaboration in summoning and organizing the convention.

On the third factor, it is deposed to by the plaintiff which is not disputed by the defendant, that in the absence of the Chairman of the party, the deputy National Chairman presided over the convention. Article 35(2)(a)(b) and (c) provides as follows:

3 - The Deputy National Chairman shall perform the following functions:

- a) Assist the National Chairman in the discharge of his duties
- b) Deputize for the National Chairman in the latter's absence; and
- c) Perform such other party functions as may be assign to him.

It is very obvious that under Article 35(3)(b) the deputy Chairman can effectively preside over the convention in the absence of the Chairman. Circumstances where the Chairman could be legitimately absent within the context of Article 35(3)(b) includes: temporary indisposition or incapability, or willful absence.

In view of the above analysis I hereby found as a fact that the convention was properly convened and the National Deputy Chairman had validly presided over the convention."

What else can anyone say?

I may wind-up my brief comment in support of the lead judgment by saying that *it is time in this country those in politics realised that Nigeria is greater than anybody. The larger interests of the citizen should be first and foremost in the mind of anyone who stands out in the name of fellow countrymen, rather than advancing the glory of personal aggrandizement. It will be a disservice to the society or community who sponsored one for one to fire the embers of hatred, disunity and self-centeredness. The glory of anyone who is out to render service to his community is in the happiness and success of that community or supporters.*

*It is unfortunate, this internal party crisis within the appellant, has staggered a lot of its anticipated progresses. In any event, it is my hope that this imbroglio within the appellant will serve as a big lesson to all and sundry.*

I join my learned brother, Rhodes-Vivour, JSC in allowing this appeal. I abide by consequential orders made in the lead judgment.

OLUKAYODE ARIWOOLA, JSC

My learned brother Rhodes-Vivour, JSC obliged me a draft of the lead judgment just delivered by His Lordship. I am in agreement entirely with the reasoning and the conclusion of the said lead judgment. The appeal has merit. I too will allow the appeal for the same reasons of my learned brother.

Appeal allowed. I abide by the consequential orders in the lead judgment including order on costs.

MUSA DATTIJO MUHAMMAD, JSC

Having read in advance the lead judgment of my learned brother Olabode Rhodes-Vivour, JSC just delivered. I entirely agree that the appeal is not only competent but meritorious. I adopt the said judgment in allowing the appeal. I abide by the consequential orders contained in the judgment including the order on costs.

(APPEAL DISMISSED)

LAW COMPANION