

(DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC)

The general election of Governor of Ondo State held on 10-10-2020. The 1st appellant contested the election as candidate of the 2nd appellant for the office of Governor. The 3rd and 4th respondents contested the election as candidates of the 2nd respondent for the offices of Governor and Deputy Governor respectively. The 2nd, 3rd and 4th respondents scored the majority of the lawful votes cast at the election and having been duly elected as prescribed in S.179(2) of the Constitution of the Federal Republic of Nigeria 1999(1999 Constitution) was declared and returned as winner of the election by the 1st respondent. The results of the election show that the appellants won the election in 3 of the 18 Local Government areas of Ondo State. The 2nd, 3rd and 4th won the election in the remaining 15 Local Government Areas.

The appellants herein did not agree with the result of the election declared by the 1st respondent.

On 30-10-2020, they filed election petition No. EPT/AK/GOV/1/2020 in the Ondo State Governorship Election Tribunal on the grounds that:

- "i. The 2nd, 3rd and 4th respondents were not duly elected by majority of the lawful votes cast at the election.**

- ii. The 3rd and 4th respondents were at the time of the election, not qualified to contest the Ondo State Governorship election held on 10th October, 2020.
- iii. The election of the 2nd, 3rd and 4th respondents is invalid by reason of corrupt practices.
- iv. The election of the 2nd, 3rd and 4th respondents is invalid by reason of non-compliance with the provisions of the Electoral Act 2010 (As amended)."

The appellants at the trial, withdrew grounds I, iii and iv of their petition and did not elicit any evidence in proof of them. They prosecuted the petition on ground 2 only and on the sole contention that sponsorship of the 3rd and 4th respondents by the 2nd respondent as its candidates for the said election of Governor of Ondo State was invalid because the letter of 27-7-2020 (exhibit P21) written by the 2nd respondent submitting the names of the 3rd and 4th respondents to the 1st respondent as its candidates for the election was signed by persons who were not national officers of the 2nd respondent and that one of the signatories, Mai Mala Buni, who signed as its acting National Chairman, is also the Governor of Yobe State. This was the sole substantive issue tried by the Tribunal. It also tried and determined the preliminary issues of whether it had the jurisdiction to entertain

and determine the issue of how the 3rd and 4th respondents' names were submitted by the 2nd respondent to the 1st respondent as its candidates for the impending election of 10-10-2020 election of Governor of Ondo State. The Election Tribunal upheld the objection to its jurisdiction on the grounds that submission of names of sponsored candidates being a pre-election event is not within the jurisdiction of an election tribunal, that the issue of whether Governor Mai Mala Buni did not violate the S.183 of the 1999 Constitution cannot be tried since he was not joined as a party to the petition and that the appellants had no locus standi to question the lawfulness of Governor Mai Mala Buni holding the office of Acting National Chairman of the 2nd respondent while holding the office of Governor of Yobe State. After holding that it had no jurisdiction to try the sole ground of the petition, it struck out the petition, and commendably, proceeded to determine the merit of the sole substantive issue, deciding thusly- **"As can be seen above, section 177(a) of the 1999 Constitution which prescribes a candidate's qualification to contest the election, has not required that a particular officer or member of the political party shall sponsor the candidate of the political party. Likewise, there is no requirement in section 31(1) of the Electoral Act (which deal with the submission of names of candidate to be sponsored by a political party) that the**

submission must be done by a particular officer or member of the political party.

We are of the view that Dr. Ikpeazu's reliance on Item 17a of the First Supplementary to Regulations and Guidelines for the Conduct of Elections (i.e., Exhibit P24) is misplaced. Exhibit P24 is a piece of subsidiary legislation made pursuant to section 153 of the Electoral Act. This section provides that "the Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration therefor."

It is commonplace that a piece of subsidiary legislation cannot expand the provisions of its enabling statute, unless expressly authorized to do so by the enabling statute. Again, no piece of subsidiary legislation can expand the provisions of the Constitution, which is the Basic Law of the land.

We have earlier held that as a matter of qualification of a candidate for election under section 177(c) of the 1999 Constitution, all that the candidate needs to show is that he was sponsored by his political party to contest the election. To interpret item 17a of the First Supplementary to Regulations and Guidelines for the Conduct of Elections (i.e., Exhibit P24) as an additional qualifying factor to be met by candidates for an election is to raise the Regulations and Guidelines to a status over

and above its enabling Act (i.e., the Electoral Act 2010) and the 1999 Constitution.

Were the lawmakers keen on making the National Chairman of a political party a statutory signatory to the documents by which the names of candidates are sent to INEC, they would have expressly included that in the Electoral Act. We say so because when the lawmakers deemed it necessary to stipulate a specific, statutory signatory, they did so expressly. This can be found in section 84 (3) of the Electoral Act, which deals with a request for merger of political parties.

"The Written request for merger shall be sent the Chairman of the Commission and shall be signed jointly by the National Chairman, Secretary and Treasurer for the time being of the different Political Parties proposing the merger...." (bold type and underlining supplied for emphasis).

Section 31(1) of the Electoral Act, which deals with the submission of names of candidates, has no similar provision making the National Chairman of Political Party a statutory signatory. Against this background, Item 17a of Exhibit P24 can only be seen as a Guidelines made to facilitate administrative convenience. It cannot be raised to a status over and above its enabling statute.

During his cross-examination by Prince Fagbemi for the 2nd Respondent, RW2 stated that the "Forwarding of the names of the

3rd and 4th Respondents was on the directives of the National Executive Committee (NEC) of the Patta...." This piece of evidence was never challenged by the Petitioners. What is more? The evidence before the Tribunal shows that Mai Mala Buni who co-signed the documents by which the names of the 3rd and 4th respondents were submitted to INEC was at all times material to the Petition, a member of the APC. Further, apart from the submission contained in Exhibit P21, there was no other submission purporting to emanate from the APC which could have raised doubts as to whether the signatories to Exhibit P21 were persons duly authorized by the APC to submit the names of the 3rd and 4th respondents as its candidates for the Election. In view of these pieces of evidence, we cannot but hold that the 2nd respondent substantially complied with the provisions of section 31(1) of the Electoral Act 2010, which provides that: "Every political party shall not later than 60 days before the date appointed for a general election under the provisions of this Act, submit to the Commission, in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections....." (bold type and underlining supplied for emphasis)

Certainly, given the evidence before the Tribunal, it would be outrageous, to say the least, to hold that the APC did not "submit to the Commission... the list of the candidates the Party proposes to sponsor at the elections", or that the APC had no sponsored candidates for the Election.

Again, to the extent that the Petitioners isolate and treat Exhibit P21 as the sole act of sponsorship envisaged by section 177(c) of the 1999 Constitution, their case is flawed. In ordinary English Language usage, political "sponsorship" refers to the backing, support and funding that is given to a candidate by his political party. This includes allowing the candidate to run on the platform of the party, campaigning for the candidate and providing logistical support for the candidate. In this sense, sponsorship of a candidate is preceded by an aspirant's nomination as a candidate for the election. By section 87 of the Electoral Act, a political party is required to forward to INEC the name of the aspirant who won the party's primary election for the particular office as the candidate of the party for that office. Then, section 31(1) of the Electoral Act 2010, stipulates that:

"Every political party shall not later than 60 days before the date appointed for a general election under the provisions of this Act, submit to the Commission, in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections.... (bold type and underlining supplied for emphasis).

Clearly, if the political party is to submit the list of candidates it "proposes to sponsor at the elections", this can only mean that the act of sponsorship comes after the submission of the names.

Therefore, the crucial question to be answered in relation to section 177(c) of the 1999 Constitution is whether there is

evidence that the 2nd Respondent indeed "sponsored" the 3rd and 4th respondents after submission of their names to INEC. We have examined the pleadings and the evidence before the Tribunal. There is ample evidence that the 3rd and 4th respondents ran on the platform of the 2nd Respondent, a political party registered with INEC. Exhibit P1-P20 establish this fact beyond doubt. We have earlier dealt with the purpose of the requirement of sponsorship as provided in section 177(c) of the Constitution. We reiterate that the purpose is merely to make it certain that all candidates for election in Nigeria run on the platform of a political party. In other words, the provision merely disallows independent candidacy in Nigeria. Given the evidence before us, we are satisfied that the 3rd and 4th respondents were sponsored by the 2nd respondent at the Ondo State Governorship Election held on the 10th day of October, 2020.

For all the reasons stated above, we resolve the sole issue set out in paragraph 181 above in favour of the respondents. We hold the Petition to be without merit. Accordingly, we dismiss the petition in its entirety."

Dissatisfied with the judgment of the Ondo State Governorship Election Tribunal delivered on 20-4-2021 in Petition No. EPT/AK/GOV/1/2020 the appellants herein filed notice of appeal on 27-4-2021 commencing appeal No. CA/AK/EPT/GOV/01/2021 in the Court of Appeal.

Following the filing, exchange and adoption of briefs, the Court of Appeal on 16-6-2020 decided the appeal holding that by virtue of S.177(c) of the 1999 Constitution and S.138(1)(a) of the Electoral Act 2010 as amended, the Tribunal erred in its holding that it had no jurisdiction to entertain and determine the issue of sponsorship of the 3rd and 4th respondents as candidates of the 2nd respondent for the election of Governor of Ondo State, that the appellants as contestants in that election had the locus standi to challenge the qualification of the 3rd and 4th respondents as candidates for the election due to invalid sponsorship by the 2nd respondent by virtue of S.177(c) of the 1999 Constitution and S.138(1)(a) of the Electoral Act 2010 as amended, that the contention that the 2nd respondent's sponsorship of the 3rd and 4th respondents as its candidates for the election is invalid because the national chairman of its Caretaker/Extraordinary Convention Committee, Governor Mai Mala Buni, is also holding office as Governor of Yobe State contrary to S.183 of the 1999 Constitution and Article 17(iv) of the 2nd Respondent's constitution cannot be determined without joining Governor Mai Mala Buni as a party to the petition, that the Tribunal correctly dismissed the petition for lack of merit. It then dismissed the appeal for lack of merit.

Dissatisfied with the judgment of the Court of Appeal, the appellants commenced this appeal No. SC/CV/448/2021 by filing a Notice of Appeal against the said judgment on 23-6-2021. It contains 19 grounds of appeal.

The 3rd and 4th respondents cross appealed against some aspects of the judgment of the Court of Appeal that they were not satisfied with by filing a notice of cross appeal on 28-6-2021 with 10 grounds of appeal. The 1st respondent also cross appealed against the parts of the judgment of the Court of Appeal it was not satisfied with by filing a notice of appeal on 29-6-2021. It contains four grounds of appeal.

The parties herein have filed, exchanged and adopted their respective briefs in the appeal and the three cross appeals. I have carefully read and considered the respective briefs, the issues raised for determination in each and their arguments. There is no need to list them here. Let me go straight to the determination of all the issues raised for determination in the respective briefs.

Let me start with the core issue of whether the Court of Appeal rightly affirmed the judgment of the trial court that the 3rd and 4th respondents were validly sponsored by the 2nd respondent

as its candidates for the election of Governor of Ondo State and that therefore the petition by the appellants lacked merit.

It is glaring from the entire tenor of the case of the appellants in their petition and appeals up to this court that they have not challenged any aspect of the process of the primary election and nomination of the 3rd and 4th respondents as the Governor and Deputy Governor candidates respectively of the 2nd respondent for the election of Governor of Ondo State on 10-10-2020, that they admit the 2nd respondent sponsored the 3rd and 4th respondents as its candidate for the election, but contend that the sponsorship is invalid because, the signatories of the 2nd respondent's letter of 27-7-2020 that submitted their names to the 1st respondent had no vires to sign the letter or were disabled by law from doing so, that they admit the 3rd and 4th respondents contested the said election as candidates of the 2nd respondent, and were duly declared winner of the election and returned elected.

They averred in paragraph 12 of their petition that the 2nd respondent sponsored the 3rd respondent as its candidate for the election and averred in paragraphs 9, 10, 11, 22 and other paragraphs to 39 of the petition that the said sponsorship is invalid because exhibit P21, the 2nd respondent's letter of 27-7-

2020 submitting their names to the 1st respondent was signed by persons who were not legitimate national officers of the 2nd respondent and that Governor Mai Mala Buni, one of the signatories while holding office of Chairman, National Caretaker/Extra-Ordinary National Convention Planning Committee and thereby acting as the acting National Chairman of the 2nd respondent, is holding the office of Governor of Yobe State.

In this appeal, it is clear from the issues raised for determination in the appellants brief, that the appellant restricted the basis of the challenge to the validity of the letter of 27-7-2020 submitting the names of the 3rd and 4th respondents to the 2nd respondent to the fact that Governor Mai Mala Buni signed exhibit P21 as Chief Executive Officer of the respondent when he was a serving Governor of Yobe State. The said issues read thusly-

- 1. Whether in the circumstance of the appellants' petition, their lordships of the Court of Appeal were not wrong when they held that a violation of Section 183 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) only affects a Governor and does not affect the rights of any other party. GROUNDS 1, X1 and XVII.**

2. Whether their lordships of the Court of Appeal were not wrong when, while considering Section 183 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), they held that in order for a position to be considered an office within the contemplation of the law, the office must have duties that are continuing in nature, rather than temporary or intermittent. GROUNDS II, III and IV.
3. Whether their lordships of the Court of Appeal were not wrong in holding that the only means of ascertaining or challenging violation of Section 183 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is through a civil action in a regular Court of law. GROUNDS V, VII, VIII, XIV, XVI and XVIII
4. Whether having regard to the facts of the Petition, their lordships of the Court of Appeal were not wrong when they held that His Excellency Mai Mala Buni, Governor of Yobe State who signed the 2nd Respondent's purported letter of sponsorship of 3rd and 4th respondents as Chairman of 2nd respondent's Caretaker Committee, was a necessary party. GROUNDS VI, IX, X and XII.
5. Whether the learned Justices of the Court of Appeal were not wrong in holding that the appellants' case

was rightly dismissed for the reason that the appellants failed to prove any of the disqualifying factors enumerated in Section 182 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). GROUND XV.

6. Whether after having held that subject matter of the Petition was within the jurisdiction of the Tribunal and that the appellants had the locus standi to present the petition, the learned Justices of the Court of Appeal were not wrong in not sustaining the petition but rather, dismissed the appeal. GROUND XIX.

It is not in dispute that at all times material to this case Mai Mala Buni was acting as the National Chairman of the 2nd respondent. Concerning the source of his authority as such acting National Chairman, the Court of Appeal held thusly- "It is glaringly clear that Article 13.3(vi) endowed the National Executive Committee with the power to create, elect, and appoint any Committee it may deem necessary, desirable or expedient and assign to them such powers and functions as it may deem proper. In paragraph 33 the Respondent averred that by the foregoing powers, the 2nd respondent's National Working Committee was dissolved and the Caretaker Committee was constituted to act on behalf of the NEC, in accordance with the 2nd respondent's Constitution and the same was duly forwarded

respondent for its necessary information. In *Sheriff vs. PDP* (2017) 14 NWLR Part 1585 page 212, similar provisions of the Peoples Democratic Party Constitution were considered by this court, and it held: "Part of Article 33(3) of the 2012 Constitution of PDP reads that: "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." The National Convention of the 1st respondent was held on the 21st May, 2016 as scheduled and it did arrive at several decisions, one of which was setting up the National Caretaker Committee. It is an undeniable fact that the National Convention has the power under the 1st respondent's Constitution, 2012 as amended to set up any Committee and assign any powers and functions to it. As it can set up any Committee, it can also, describe the Committee any how it deems fit or give it any nomenclature it thinks necessary. It may be named a National Caretaker Committee as was done in the instant matter. All powers to do that reside with the National Convention of the 1st respondent."

The same scenario presented itself in the present case. I must say that the appellants completely shut their eyes to Article 13.3 of Exhibit 22 which enabled the constitution of the Caretaker/Extra-Ordinary National Convention Planning Committee by the National Executive Committee (NEC). They also failed to take cognizance of the facts averred by the 2nd respondent that the Caretaker

Committee was set up to act on behalf of the National Executive Committee to temporarily carry out the functions of the National Working Committee until new members were democratically elected. See paragraph 29 of the 2nd respondent's reply filed on the 22nd November, 2020. It is evident that the said Governor Mai Mala Buni was appointed only in an acting capacity, on a temporary basis to temporarily carry out and fill in the seat of the National Chairman of the Party pending the election of new members."

There is no ground of this appeal or of any of the Cross appeals that complain against this holding of the Court of Appeal that in keeping with Article 13.3 of the respondent's constitution the Caretaker/Extraordinary National Convention Planning Committee was constituted by the National Executive Committee of the 2nd respondent to act as the National Working Committee in the interim until the National Working Committee was reconstituted. By not appealing against this holding, the parties herein accept it as correct, conclusive and binding upon them. It is settled law that a decision not appealed against is correct, conclusive and binding on the parties. See *Iyoho v. Effiong* (2007) 4 SC(Pt.iii) 90, *SPDC Nig Ltd & Anor V X.M Fedr Ltd & Anor* (2006) 7 SC(Pt.iii) 27 and *Dabup V Kr'* 12 SCNJ I

The letter of 27-7-2020, exhibit P21, by which the 2nd respondent submitted the names of its candidates to the 1st respondent for the election of Governor of Ondo State was signed by two of its National Officers, namely, Mai Mala Buni as acting National Chairman and Senator John Akpan Udoechehe, the acting National Secretary and therefore complied with Paragraph 17(a) of the First Supplementary to Regulations and Guidelines for the Conduct of Election (exhibit 24) which requires that such a letter and Form EC9B be signed by the National Chairman and Secretary. It is settled law that the holder of an office includes the holder of that office in an acting capacity. This is so by virtue of S.11(2) of the Interpretation Act Cap.23 Vol. 8 LFN 2004 which provides that "A reference in an enactment to the holder of an office shall be construed as including a reference to a person for the time being appointed to act in his place either as respects the functions of the office generally or the functions in regard to which he is appointed, as the case may be".

The 2nd respondent submitted those names to the 1st respondent in keeping with S. 31(1) of the Electoral Act 2010 (as amended) that provides thusly-

"31. (1) Every political party shall not later than 60 days before the date appointed for a general

election under the provisions of this submitted to the Commission in the prescribed forms, the list of the Candidates the party proposes to sponsor at the elections, provided that the commission shall not reject or disqualify candidates for any reason whatsoever."

It is noteworthy that the 1st respondent, the competent electoral authority that receives submissions of the list of candidates of political parties and that administers the Regulations and Guidelines for the Conduct of Elections OF 9-6-2020, accepted exhibit 21 and the Form EC9B from the 2nd respondent and acted on them, listing them as the 2nd respondent's candidates for the election.

It is not in dispute, as it is admitted by all sides that the 3rd and 4th respondents contested the said election and were duly returned elected on the platform and sponsorship of the 2nd respondent.

The appellants' pleading in paragraph 12 of their petition that the 2nd respondent nominated and sponsored the 3rd respondent as its candidate for the election of Governor of Ondo State defeated the only remaining ground of the petition that the

3rd and 4th respondents were not qualified for the election because there were not sponsored for the election. The other pleadings in the petition that the sponsorship should be voided because the 2nd respondent submitted the names it decided to sponsor by a letter, exhibit P21 signed by its acting national Chairman, a serving Governor of Yobe State and the acting national secretary, further support the fact that the 2nd respondent sponsored them and raised a different issue of the effect of the 2nd respondent's failure to obey or follow the directive or instruction of the 1st respondent contained in Paragraph 17(a) of the First Supplementary to Regulations and Guidelines for the Conduct of Elections of 9-6-2020 on the validity of exhibit P21 and Form EC9B submitted to the 1st respondent. Because of this admission of the fact that the 2nd respondent sponsored the 3rd and 4th respondents as its candidates for the election, the petition of the appellants on the ground that the 3rd and 4th respondents were not qualified for the election because there were not sponsored by the 2nd respondent collapsed completely on the pleadings and should not have gone for trial. Concerning similar pleading in an election petition in **Alahassan & Anor V Ishaku & Ors (2016) 10 NWLR(Pt.1520)230 at 260** this court held as follows-

Per Rhodes-Vivour JSC that " The appellants are bound by their own pleadings. It is so clear after reading the paragraphsreferred to above that the appellants are actually saying that the 1st respondent was sponsored by the 2nd respondent.. Their case that the 1st respondent was not sponsored by the 2nd respondent is inconsistent with the facts pleaded which are that the 1st respondent was in fact sponsored by the 2nd respondent. To support their case that the 1st respondent was not sponsored by the 2nd respondent, their pleadings should have read: "The 1st respondent was purportedly sponsored by the PDP".

Per Peter-Odili JSC that " This is a glaring and fatal admission by the appellant that the 1st and 2nd respondent actually satisfied the provisions of section 177© of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and those paragraphs of the petition constitute admission against interest pursuant to sections 20 and 21 of the Evidence Act."

Per Okoro JSC that " The question may be asked, was the 1st respondent a member of a political party? Was he sponsored by a political party? The answer is not far-fetched. Apart from the 1st and 2nd respondents stating clearly that the 1st respondent was a member of the PDP and was sponsored by it, the appellants' pleadings by their pleadings admitted this fact fully. In paragraphs 3 and 4 of the petition the appellants gave the answers to the questions I posed above.....So by the appellants

showing in the petition, they agreed that the 1st respondent was a member of PDP and that he was sponsored by that party. This satisfies qualification under section 177(c0 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)."

This court is bound by its decision above in keeping with the doctrine of stare decisis. The Court of Appeal decision that paragraph 12 of the petition if read together with other paragraphs of the petition challenging the validity of the sponsorship, does not amount to an admission that the 1st respondent was in fact sponsored by the 2nd respondent is wrong. It therefore wrongly set aside the decision of the Election Tribunal that ^{it} is an admission of the fact that 2nd respondent sponsored 1st respondent. The said decision of the trial court is hereby restored.

The pleading that exhibit P21 and Form EC9B by which the 2nd respondent submitted the 3rd and 4th respondents' was signed by non national officers or members with no competence to sign it contrary to Paragraph 17(a) of the First Supplementary to Regulations and Guidelines for the Conduct of Elections of 9-6-2020 is irrelevant as there is no pleading that it is contrary to any provision of the Electoral Act. Failure to obey the directive or instruction of the 1st respondent in the said

Regulations and Guidelines cannot be relied on as a ground for an election petition to invalidate the election of the 3rd and 4th respondents because such failure is not contrary to any provisions of the Electoral Act 2010 as amended. This is so because S. 138(2) of the Act provides that-

"(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provision of this Act shall not of itself be a ground for questioning the election."

S.153 of the Electoral Act 2010 clearly made regulations, guidelines or manuals issued by the Independent National Electoral Commission subject to the provisions of the Electoral Act. The exact text reads thusly – **"The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of the Act and for its administration thereof."**

Applying these provisions in **Nyesom V Peterside & Ors (2016) 1 NWLR (Pt.1492) 71(SC)**, this court held that "In Section 138(2) of the Act as above it is clear that as long as an

act (commission) omission in relation to the Guidelines and or Regulations is not contrary to the provisions of the Act, it shall not of itself be a ground for questioning the election." Per Kekere-Ekun JSC

"the failure to follow the Manual and Guidelines which were made in exercise of the powers conferred by the Electoral Act, cannot in itself render the election void." Per Muhammad JSC

The relevant provisions of the Electoral Act did not state letter and prescribed form submitting or forwarding the names of the members of a political party that the party has decided to sponsor as its candidates for an election to the Independent National Electoral Commission (INEC) must be signed by the National Chairman and National Secretary of the political party submitting the names. The relevant provisions are Ss.31(1) and S.87(4)(b) of the Electoral Act 2010 as amended. I have already reproduced the exact text of S.31(1) of the Act earlier in this judgment. Let me reproduce that of S.87(4)(b) for ease of reference. It reads thusly – "In the case of nomination to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates:

- (i) hold a special congress in the State Capital with delegates voting for each of the aspirants at the

congress to be held on a specified date appointed by the National Executive Committee(NEC) of the party; and

- (ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party, for the particular state;

From the foregoing, I hold that the 3rd and 4th respondents were sponsored by the 2nd respondent, the political party, in which they are members, and therefore were qualified for election to the office of Governor as required by S.177(c) of the 1999 Constitution that provides that "A person shall be qualified for election to the office of Governor of a State if – (c) he is a member of a political party and is sponsored by that political party."

Let me clarify here that exhibit 21, the letter from the 2nd respondent and Form EC9B submitting the names of its candidate for the election is a notice or communication to the 1st respondent of its decision to sponsor those candidates for the election. It is wrong to describe or regard such letter as the act of sponsorship or the decision to sponsor. The decision to sponsor a person as the candidate of a political party for a general election is taken by the relevant congress or convention of the political party at a

primary election of the political party held to nominate or select its candidate for the election. In the case of sponsorship of a person as a candidate of a political party for the election of Governor of a state, the decision is taken by the members of the political party in that state at a state congress held in that state to nominate or select the party's governorship candidate for the election. This expressly stated in S.87(4)(b) of the Electoral Act already reproduced here. The decision is not taken by the national officers of the political party. In this case, the decision was taken by the members of the 2nd respondent in Ondo state at a state congress held in Ondo state for that purpose. The National Executive Committee of the Political party through the National Working Committee submitted to the 1st respondent the names selected by the said state congress of the party as the persons being sponsored as its candidate for the election.

It is preposterous to argue that because one of the two signatories of the letter submitting the selected names had no vires to sign it, the said decision of Ondo State Congress of the 2nd respondent should be nullified. The appellants have repeatedly asserted in this case that they are not challenging the nomination or selection of the 3rd and 4th respondents. Yet they

contend that the letter from the national office communicating to the 1st respondent the names nominated or selected as its candidates for the election is defective for want of vires of one of the signatories and that the defect should nullify the sponsorship of the said candidates. This contention is as contradictory as it is invalid. The contention is not consistent with the repeated assertions of the appellants that they are not complaining about the nomination or selection of the 3rd and 4th respondents as the candidates of the 2nd respondent for the election. A party must be consistent in the case he presents in court. He cannot approbate and reprobate. Having admitted that they are not challenging the nomination or selection of the 3rd and 4th respondents as candidates of the 2nd respondent for the election, they cannot canvass for the nullification of the same nomination on the basis that the letter communicating the nomination or selection to the 1st respondent is defective. The Law is settled that a party must be consistent in his case as the law would not allow him to approbate and reprobate over the same issue. See **Suberu V State(2010)LPELR- 3120(SC)**, **International Bank Ltd V Brifina Ltd(2012) LPELR -9717(SC)** and **Ude V Nwara(1993)2 NWLR(Pt.278) 638 at 662-663**.

Assuming there is such defect in that letter, there is no statutory prescription of such consequence. S.31(1) of the Electoral Act 2010 that provides for the submission of the names of the persons being sponsored as candidates, did not prescribe any consequence for any defect in the process submitting the names or for failure to submit it in a prescribed form. Paragraph 17(a) of the First Supplementary to Regulations and Guidelines for the Conduct of Elections of 9-6-2020 did not prescribe such consequence. What is clear is the fact that the names of the 3rd and 4th respondents were submitted to the 1st respondent by the 2nd respondent's letter of 27-7-2020 and the prescribed Form EC9B.

The essence of the argument of the appellants that Governor Mai Mala Buni who cosigned the letter as acting National Chairman has no vires to sign it is that only one valid signature remained in the letter. Granting that the argument is correct, the submission of the names remains factually made even if only the acting National Secretary signed the said letter. Assuming the acting National Chairman did not sign the letter contrary to the directive or instruction of the 1st respondent in Paragraph 17(a) of the First Supplementary to Regulations and Guidelines for the Conduct of Elections OF 9-6-2020, such failure

cannot be relied on as a ground for an election petition to invalidate the election of the 3rd and 4th respondents because such failure is not contrary to any provisions of the Electoral Act 2010 as amended. As I held herein S.31(1) of the Act did not prescribe that the National Chairman and the National Secretary must sign the f letter and the prescribed form.

The case of **APC v. Marafa (2020) 6 NWLR (Pt. 1721) 383** is not applicable to this case because the facts of that case and the issues determined therein are completely different from this case. That case was a pre-election matter that challenged the primary election and nomination of candidates of the 2nd respondent on the ground that S.87 of the Electoral Act 2010, the Constitution of the party was not followed in the nomination and selection of the said candidates. That is why this court declared the list of candidates signed and forwarded by the Chairman of the Zamfara State Chapter of the 2nd respondent void in that case. The instant case is a post election matter. The validity of the primary election, nomination or selection of the 3rd and 4th respondents as candidates of the 2nd respondent is not disputed or challenged. Even the process of the election and return of the 3rd and 4th respondents by the 1st respondent as the Governor and Deputy

Governor of Ondo State on 10-10-2020 is not disputed or challenged.

After the election of the 3rd and 4th respondents, the appellants who have accepted the conduct and results of the said election of 10-10-2020 as valid, now challenges the validity of the 2nd respondent's letter of 27-7-2020 submitting their names to the 1st respondent as its candidate for the election on the basis of S.183 of the 1999 Constitution and Article 17(iv) of the 2nd respondent's Constitution that do not regulate any aspect of the process of the nomination, sponsorship and election and return of the 3rd and 4th respondents. No part of the 2nd respondent's constitution, the Electoral Act and 1999 Constitution concerning the nomination, sponsorship and election of the 3rd and 4th respondents was violated by the 2nd, 3rd and 4th respondents who have satisfied the provisions set out in S.177 of the 1999 Constitution and have not suffered any disqualification under S.182(1) of the same constitution.

In the light of the forgoing, I hold that S.183 of the 1999 Constitution and Article 17(iv) of the 2nd respondent's constitution, cannot be relied on to disqualify the 3rd and 4th respondents and nullify their election. As this court held in **Shinkafi & Anor. v. Yari & Ors (2016) LPELR – 26050 (SC)**

"Once a candidate sponsored by his political party has satisfied the provisions set out in Section 177 of the Constitution and is not disqualified under Section 182(1) thereof, he is qualified to stand election to the office of Governor of a State. No other law can disqualify him."

Let me now consider if the Court of Appeal was right in affirming the decision of the trial court that the issue Mai Mala Buni holding the office of acting National Chairman and Governor of Yobe State contrary to S.183 of the 1999 Constitution would affect him and therefore cannot be fairly tried in his absence without joining him as a party to the petition.

The Court of Appeal dwelt at length on this matter. For ease of reference I reproduce here a portion of its judgment on the issue. It reads thusly- "It is clear in the provisions of the 1999 Constitution that a serving Governor of a State is prohibited from holding another executive office or being in a paid employment. Also by the 2nd respondent's Constitution, an officer in any organ of the party is equally restricted from holding an executive position in government simultaneously. So the Chairman, Secretary or treasurer of a party and every member of the management committee of a party have all been described as people holding executive position in a political party. By the literal

interpretation of section 183 of the 1999 Constitution as amended, a current or an existing Governor of a State is disqualified during the period of his office, from holding any other executive office or paid employment in any capacity whatsoever. The same thing applies to officers of the 2nd respondent, they shall not hold executive position in government concurrently. It is clear in the provisions of section 183 of the said Constitution that it is the Governor of a State that is prohibited and not a political party. The question that also calls for consideration is, 'what is the legal implication of a Governor accepting a second executive office? Would it result in an automatic resignation from the Governor's current position as a Governor? Another salient question is, since Governor Mai Mala Buni, the serving Governor of Yobe State, was appointed as the National Chairman of the Caretaker/Extra-Ordinary Convention Committee of the 2nd respondent, a temporary appointment, would he be considered as having taken another executive office where the appointment is merely temporary? It is said that if a person takes a position that is merely temporary, it is usually not considered to be a second office for the purposes of dual office. In order for a position to be considered an office, it must have duties that are continuing in nature rather than temporary or intermittent. In a foreign case of *De Alejandro vs. Hunter* 951 S. W. 2d 102, 107 (Tex App. Corpus Christi 1997, no pet) (Texas Dual Office Holding Laws Made Easy), it was said to have been ruled by a Court that the temporary

performance of the mayor's duties by a mayor pro tem during a period before a special election to fill the mayor's position did not constitute dual office holding. It is clear that no criminal penalties were prescribed by the constitutional provision prohibiting dual executive office holding. Since it is a temporary appointment, could the Governor have been held as having violated the said provisions? The only means for ascertaining or challenging whether such violation ever took place, is through a civil action in a court of law. It is only in the court of law during the challenge that the implications of the violation can be pronounced upon by the court. It is only the court that can pronounce or declare the consequences of such violation. It is imperative to note as rightly held by the Tribunal that such determination cannot be made in the absence of Governor Mai Mala Buni. He ought to have been joined in this case. He is a necessary party because in his absence the issue whether section 183 of the 1999 Constitution has been breached, whether he took another executive office position that adversely affected the validity of the 2nd respondent's Letter of Sponsorship of the 3rd and 4th respondents submitted to the 1st respondent can the proceedings could not be fairly dealt. It is against it operates as an automatic resignation from the first office or would the acceptance of the second office be considered void as a matter of law. It is the law that when an executive office holder accepts a second executive office job he vacates the first office but continues to serve as a de facto officer until the vacancy

is filled. As an officer de facto, any action taken as to the public or third parties would be as valid and effectual as those actions taken by an officer de jure unless or until a court should declare those acts invalid or remove him from office.

By the above provisions, it is clear that only the Governor can breach the constitutional provision and not a political party, and, any breach of the same by a Governor cannot be imputed to some other person nor a political party. So for there to be a successful argument on section 183 of the 1999 Constitution of the Federal Republic of Nigeria, it is the person who flouted the provision or caused such an infringement that will be held responsible and no other person. It is distinct that the intended purpose of the section is to prevent a sitting Governor of a State from holding another executive office or being in paid employment in any capacity, apparently to avoid conflict of interest. This section, obviously, was not inserted for the purpose of checking the activities of any political party but to prohibit dual office holding of a serving Executive Governor of a State. The section refers to Governors who may simultaneously hold more than one statewide office that will be incompatible. This seemed so to avoid the possibility of a significant clash of duties or loyalties between the offices. This section makes it improper for a Governor of a State under the 1999 Constitution to hold two executive offices at the same time or be in another paid employment, it is a ban on dual office holding. It follows therefore, that where as in the instant

case, there is a serious allegation of a constitutional provision against the Governor, there is need to determine whether the performance of Governor Buni's duties as the Chairman of the 2nd respondent's Caretaker/Extra-Ordinary Convention Committee constitutes "holding an executive office" or whether it is a paid employment. It is trite that whether or not a particular position constitutes an executive office and the incumbent an executive officer is frequently a question of fact. What this means is that in the determination that there is a dual office holding by the Governor, there will be a declaration that accepting the second executive office is unconstitutional. It is the court that has to determine whether the appointment of the said Governor Buni as the 2nd respondent's National Chairman Caretaker/Extra-Ordinary Convention Committee of the 2nd respondent, and his acceptance of the said appointment are valid, whether the prohibition is absolute or not and not by the conjecture of the appellants. It has to be determined by the court whether he could hold the second office or appointment as the Chairman of the 2nd respondent's Caretaker Committee and whether the violation of the constitutional provision invalidated any functions he might have performed in respect of the later appointment. The court has to hold whether the holder of the office of the Chairman Caretaker Committee of a political party, a temporary appointment, is a holder of an executive office within the meaning of section 183 of the 1999 Constitution as amended and the implications of such

breach. All these cannot be decided at the back of the said Governor, he must be heard by the court as there ought to be a determination affecting his rights. For whatever it's worth, Governor Buni ought to have been made a party to enable the issue surrounding the alleged violation of section 183 of the 1999 Constitution (as amended), by the said Governor Buni, and Article 17 (iv) of the 2nd respondent's Constitution be properly determined. He must be given an opportunity to answer for all the breaches leveled against him and none should be heard in his absence. The Tribunal was, therefore, right in its finding that the allegations made by the Petitioners seriously affect the legal rights of Mai Mala Buni and that it would be unfair to hear and determine these crucial issues without giving the Governor an opportunity to be heard. Issue 3 is hereby resolved in favour of the respondents."

I am minded to agree with this decision of the Court of Appeal.

S.183 of the 1999 Constitution provides that "The Governor shall not, during his tenure of office hold any other executive office or paid employment in any capacity whatsoever."

The wordings of this provision are very clear and unambiguous. The section restrains the Governor and not any other person. A person who is not holding the office of Governor

cannot be restrained by that provision from holding any other executive office or paid employment in any capacity whatsoever. Therefore the provisions cannot apply to a person or body that is not holding the office of Governor of a State.

There is no doubt that Mai Mala Buni was elected as Governor of Yobe State and remains in that office on behalf of himself and the 2nd respondent that sponsored him as its candidate for the election and that his right to hold the office is not exclusively his as it belongs to him and the 2nd respondent, the political party on which platform sponsorship he was elected to and is holding that office. This does not make S.183 applicable to the 2nd respondent because it is its member that is holding the office that is executing the functions of the office, presumably in pursuance of the 2nd respondent's manifesto, campaign promises and plan of good governance and development of the state.

It is clear from the provisions of S.183 that if the Governor of a State holds any other executive office or paid employment in any capacity whatsoever during his tenure of office as such Governor, he or she ceases to hold the office of Governor in accordance with the provisions of the Constitution and cannot from that moment continue to hold the office of Governor and

therefore shall vacate same by virtue of S.180(1)(d) of the 1999 Constitution which provides that-

"(1) Subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until-

(d) he otherwise ceases to hold office in accordance with the provisions of this Constitution."

So the contention that Governor Mai Mala Buni as Governor of Yobe State has violated S.183 of the Constitution by holding the office of acting National Chairman of the 2nd respondent is a very serious one with grave consequences for him and no doubt for the 2nd respondent as well. The judicial determination of that issue here would involve the enforcement of the Constitution against him and would certainly affect him personally as I have shown above. It would be unfair to him to try that issue in his absence without joining him as a party to the petition. The fair trial of such issue in his absence without joining him as a party is impossible. There is no need to stress the point that he is a necessary party to the case because the issue upon which the appellants have predicated their case, namely, the invalidity of Mai Mala Buni's signature in exhibit P21 and the invalidity of the

said exhibit itself cannot be fairly, effectually and conclusively determined without joining him as a party to the case. A necessary party is one whose right or interest would be affected by the determination of the dispute and the dispute cannot be fairly, effectually and properly resolved in his absence. This restatement has been made by this court in several cases. See for example, **Green V Green(1987) LPELR _1338(SC)**, **Babayehu & Anor V Ashamu & Anor(1998)7 SC(pt.1) 156**, **Panlapina World Transport Nig Ltd V J.B Olandeen International & Ors(2010) LPELR-2902(SC)** and **A-G of the Federation V A-G of Abia State & Ors(2001) 7SC(Pt.1) 32 .**

The exception to the rule that non joinder of a necessary party to an action may not vitiate the action is where the non joinder makes the fair and effectual trial of the case impossible. See **Okoye & Ors V N.gerian Construction & Furniyure Co. Ltd & Ors (1991) 7 SC(pt.iii) 33**, **Okonta V Phillips(2010)18 NWLR(Pt.1737) 37(SC)** and **NURTW & Anor V RTEAN(2012) LPELR -7840(SC)**

In any case, the propriety, legality and constitutionality of Governor Mai Mala Buni acting as National Chairman of the 2nd respondent during his tenure as Governor of Yobe State is not a

question that is within the jurisdiction of the Election Tribunal to try. The jurisdiction of the Governorship Election Tribunal is restricted to the hearing and determination of petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State by S.285(2) of the 1999 Constitution that created it. The exact text of this provision reads thusly-

"(2) There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State. "

The Governorship Election Tribunal cannot exercise any jurisdiction outside the scope of the jurisdiction vested on it by S.285(2) of the 1999 Constitution. Where a law that gives jurisdiction to court limits that jurisdiction to the determination specific questions, the court lacks the jurisdiction to exceed that limit to determine questions not listed within its jurisdiction to determine. In **Obasanjo & Ors V Yusuf & Ors(2004)** 9

NWLR (Pt.877) 144 @ 183 this court, applying S.239(1) of the 1999 Constitution that give the Court of Appeal exclusive original jurisdiction to try election petitions challenging election of President and Vice President and limited the jurisdiction to the determination of the questions of whether a person has been validly elected to such office, whether the term of such office has ceased or become vacant, held that "The jurisdiction which the court exercises has been specifically listed in that section of the Constitution. Any jurisdiction which is outside sub-paragraphs (a), (b) or (c), is not recognized by the Constitution as original jurisdiction for the determination of the Court of Appeal. The original jurisdiction of the Court of Appeal under S. 239(1) of the 1999 Constitution is very clear. All other grievances outside that provision can only be justiciable in other courts recognized for such jurisdiction in the Constitution. I therefore agree that the Court of Appeal has no jurisdiction to adjudicate on matters relating to alleged breaches of or contravention of the provisions of the Constitution and the Companies and Allied Matters act, Laws of the Federation 1990 in an election petition, based, founded and rooted in the Constitution Thus, I

therefore find paragraphs 10 and 11 of the petition incompetent. They are accordingly struck out."

See also **Adams V Umar(2009) 5 NWLR(Pt. 1133) 41 at 95** in which the Court of Appeal relied on our decision above in *Obasanjo v Yusuf* to further illuminate this point. It held that its jurisdiction under S.246 of the 1999 Constitution to hear election appeals is very clear and that it " **does not possess the jurisdiction to adjudicate on the issue which seeks to declare as unconstitutional the Practice Directions,2007. Such an issue has no place before an election Tribunal or an election petition appeals tribunal**".

Since the issue of the constitutionality of Governor Mai Mala Buni acting as national chairman of the 2nd respondent cannot be competently raised in an election petition in the Election Tribunal and the Election Tribunal lack the jurisdiction to entertain it, then the case of the appellants collapsed as it is predicated on that issue.

It is obvious from the pleadings and evidence of the appellants at the trial, the grounds of this appeal, the issues raised for determination in their brief and arguments of same that the primary issue on which the appellant's case is predicated is

the constitutionality or propriety of Governor Mai Mala Buni acting as Chairman of the 2nd respondent during his tenure of office as Governor of Yobe State. The determination of the validity of his signing exhibit P.21 and the validity of the submission of the 3rd and 4th respondents' name depend on the determination of the Constitutionality and legality of Governor Mai Mala Buni as National Chairman of the 2nd respondent during his tenure as Governor of Yobe State. It is settled law that where the case presented before the court, though within its jurisdiction, is predicated on a primary issue that is not within the jurisdiction of the court, that court would lack the jurisdiction to entertain it. So both the question brought for the courts determination within its competent jurisdiction and the underlying questions on which its determination is predicated must be within the jurisdiction of the court before the case can be within its jurisdiction.

Let me consider the argument that the 2nd respondent should not have appointed Governor Mai Mala Buni as its acting National Chairman contrary to Article 17(iv) of its Constitution that provides that **"No officer in any organ of the party shall hold Executive position/office in government concurrently."**

The limited scope of the jurisdiction vested in the Election Tribunal by S.285(2) of the 1999 Constitution cannot extend to

the determination of this issue. It is clearly out of its jurisdiction. It is therefore incompetent and not valid for consideration. See **Obasanjo V Yusuf(supra)**.

In any case, the 2nd respondent, a registered political party being a voluntary organization, the questions of who should hold offices in it, whether it can appoint its member to hold office in acting capacity or authorize a member to exercise the powers of an office in it and whether it has violated its own constitution by appointing a member to hold a particular office in it or discharge the functions of that office, cannot be entertained by any court. Those questions deal with the internal administration of the internal affairs of the political party. Those are non justiciable questions. Courts have no jurisdiction over the internal affairs of a political party except where a statute expressly gives a court jurisdiction deal with any internal affair of a political party. As this court held in **Onuoha V Okafor (1983) 2 SCNLR 244 at 254 per Obaseki JSC** "the practice of the court is not to run associations (corporations and unincorporated associations) for the members. It leaves the members to run their association". The Court further held per Aniagolu JSC thus "the issues raised on whether the various internal committee proceedings of the party were regularly conducted, whether there was lapse in the observance of the rules of natu which the court will go into after it has decided that

respect of which it will exercise jurisdiction. In my view, this is not a matter which the High Court ought to have assumed jurisdiction. It would have been different if the appellant had sued for a breach of contract between himself and the party, claiming damages for breach of contract." The recent decision See also **PDP V Sylva & Ors(Supra)**.

In the light of the foregoing, all the issues raised for determination in the appellants' brief are hereby resolved in favour of the respondents.

On the whole this appeal fails as it lacks any scintilla of merit. It is a glaring abuse of the judicial process. It is accordingly dismissed

I make no order as to costs.

In the light of the foregoing the cross appeals by the 1st, 3rd and 4th respondents also fail for lack of merit. They are hereby dismissed. I also make no order as to costs

With the consent of all parties herein this court had ordered that the judgment in this appeal shall apply to and abide Appeals Nos. SC/CV/507/2021, SC/CV/508/2021 AND SC/CV/509/2021 filed by the 1st respondent herein, 2nd respondent herein and 3rd and 4th respondents respectively.


EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT

APPEARANCES:

Dr. Onyechi Ikpeazu SAN with D.A. Awosika SAN, for the Appellants

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Chief Lateef O. Fagbemi SAN, Chief Olusola Oke, SAN and Chief Abdulkadir Ajana Esq. Omosanya Popoola Esq. for 2nd respondent/Cross appellant

Chief Akin Olyjimi SAN, Chief Adeniyi Akintola San, Remi Olatubora SAN with Yinka Orokolo Esq. and Olumide Olujimi for 3rd & 4th respondents.