COURT OF APPEAL
SIGN
DATE 06/11/2026
ABUJA DIVISION

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

APPEAL NO: CA/ABJ/CV/1254/2026
SUIT NO: FCT/ABJ/CS/1819/2025

BETWEEN:

AFRICAN DEMOCRATIC CONGRESS .....**APPELLANT**

AND

1. HON. NAFIU BALA GOMBE
2. SENATOR DAVID MARK
3. OGBENI RAUF AREGBESOLA
4. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
5. CHIEF RALPH NWOSU

.....**RESPONDENTS**

APPELLANT'S BRIEF OF ARGUMENT

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COURT OF APPEAL
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Date: 16/11/2026
NIGERIA

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IN THE ABUJA JUDICIAL DIVISION
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INTRODUCTION:

1.0. This is an appeal against the whole ruling of the Federal High Court, Abuja Judicial Division, in **Suit No: FCT/ABJ/CS/1819/2025, Hon. Nafiu Bala Gombe vs. African Democratic Congress & 4 Ors,** delivered on the 24th day of July 2026, wherein, the trial Court heard the 1st Respondent's motion seeking leave to amend his originating summons, together with the Appellant's notice of preliminary objection which challenged the jurisdiction of the Court to entertain the suit, and the Court granted the 1st Respondent leave to amend his originating summons.

2.0. The motion for leave to amend the originating summons as well as the supporting processes can be seen on PP. 704-759 of the record of appeal vol.2, had already altered parties without the leave of court. The court below heard the notice of preliminary objection together with the motion to amend the originating summons but wrongly deferred the ruling on the Appellant's notice of preliminary objection, until the judgment stage, as **seen on PP. 1012 - 1018 of volume 2** of the record of

appeal. The said motion for leave to amend the originating summons was filed by the 1st Respondent after the apex Court had in an interlocutory appeal that emanated from the suit, made an order directing the parties to return to the trial Court for the determination of all pending processes including the 1st Respondent's originating summons filed on the 2nd September 2026.

3.0. Dissatisfied with the decision of the trial Court, in which the court below entertained an incompetent motion to grant an amendment to the 1st Respondent, the appellant filed a notice of appeal before this Hon. Court on the 5th day of August 2026, upon four grounds of appeal. The said notice of appeal can be found at **PP.1019 - 1026 of volume 2** of the record of appeal. The record of appeal was duly compiled and transmitted to this Hon. Court on 26th day of August 2026, and the appeal has been entered as **Appeal No. CA/ABJ/CS/1254/2026.** However, the Appellant filed an application on the 11th day November 2026, praying for leave of this Court to amend its notice of appeal and to deem the said amended notice of appeal filed on 11th day of November 2026 as properly filed and served.

4.0. Appellant most respectfully prays this Hon Court to permit the Appellant to rely on the amended notice of appeal filed on the 11th day of November 2026, in urging your lordships to allow this appeal, set aside the orders granting amendment to the 1st Respondent and to declare the entire ruling granting the amendment as being null and void same having been made and predicated upon an incompetent motion that has the parties altered without leave of the trial court.

5.0. This Brief of Argument is filed pursuant to the Rules of this Hon. Court, and we urge this Hon. Court to allow the appeal, set aside the decision of the Court below, invoke its powers under Section 15 of the Court of Appeal Act to hear the 1st Respondent's notice of preliminary objection pending, and accordingly dismiss the suit.

STATEMENT OF MATERIAL FACTS:

6.0. The 1st Respondent herein as Plaintiff, commenced the suit that gave rise to this appeal at the Federal High Court, Abuja Judicial Division, vide an originating summons, filed on 2nd September 2025, seeking declaratory and ancillary reliefs as endorsed thereon. The originating summons is contained at **PP. 3-74 of volume 1** of the record. The gravamen of the 1st Respondent's case at the trial Court as disclosed by the originating summons is based on the issue of leadership and membership of the Appellant herein. The 1st Respondent alleged that, the 2nd and 3rd Respondents emerged and/or imposed themselves as interim national Chairman and interim national Secretary respectively of the Appellant on 2nd July 2025. The 1st Respondent alleged that, consequent upon the resignations of the erstwhile National Chairman and the other Deputies, National Chairmen of the Appellant, he, the 1st Respondent ought to or was supposed to take over the affairs and leadership of the Appellant, pending when a proper meeting of the Appellant would be convened to appoint/choose another National Chairman and National Chairmen.

7.0. Upon being served the originating summons, the Appellant and other defendants filed notices of preliminary objection challenging, among other things, the competence of the originating summons and the jurisdiction of the trial court. The objections, as summarized in the notice of appeal, included: (a) that the dispute concerned the internal leadership affairs of a political party; (b) that the claims did not fall within section 251(1)(a)–(s) of the Constitution; (c) failure to exhaust the Appellant's internal dispute resolution mechanism before filing the suit; (d) the suit disclosed no reasonable cause of action; (e) that the questions were vague, academic, hypothetical or moot; (f) the 1st Respondent relied on an invalid or non-Constitution of the Appellant; and (g) locus standi and issue estoppel. See **PP. 297 - 447 of volume 1** of the record.

8.0. The 1st Respondent had filed an Ex parte application praying for injunctive orders restraining the 2nd and 3rd Respondents from parading as the National Chairman and

Secretary of the Appellant, pending the hearing of the motion on notice. The trial Court heard the Motion Ex-Parte for interim injunction on 4th September 2025 and delivered its ruling on the same day, refusing the application and, at the same time, directed the Defendants (the Appellant and the 2nd to 5th Respondents herein) to show cause why the application should not be granted. The 2nd Respondent's appeal against the ruling made on the 4th September 2025 to this Hon. Court was dismissed, and he further appealed to the apex Court, which delivered its judgment on 30th day of April 2026 in **Appeal No. SC/CV/180/2026, Senator David Mark vs. Hon. Nafiu Bala Gombe & 4 Ors.**

9.0. The Supreme Court allowed the appeal and further directed the parties to return to the trial court for accelerated hearing and determination of all pending processes, including the 1st Respondent's originating summons. On the 11th day of May 2026, the 1st Respondent herein in total disrespect and disregard of the order made by this Hon Court, which was affirmed by the Supreme Court in the above judgment in which the Supreme Court affirmed the orders of this Hon Court ordering parties to return to the trial court for determination of all pending processes in the 1st Respondent's suit before it, the 1st Respondent contemptuously filed an incompetent motion on notice seeking leave to amend the originating summons and accompanying processes as seen on PP.**704 - 759 of volume 2** of the record.

0.0. The motion together with the affidavit in support as well as the written address were presented in a manner which changed and altered the parties and the capacity in which the 3rd Defendant had originally been sued, without prior leave of Court. In particular, the description of the parties referred to Ogbeni Rauf Aregbesola (**2nd and 3rd Defendants as suing for themselves and on behalf of persons who purportedly became members of the National Working Committee of the ADC at the July 2025 99th NEC meeting**).

1.0. Despite oppositions and the incompetence of the motion initiating the amendment, and which motion was brought in defiance of the orders of this Hon Court and affirmed by the Supreme Court as demonstrated hereinbefore, the trial court heard the motion for amendment together with the pending preliminary objections, and by its ruling of 24th day of July 2026, it granted leave to the 1st Respondent to amend the originating summons. His lordship, with respect wrongfully deferred ruling on the preliminary objections to the judgment stage. The Appellant is dissatisfied with that decision and has appealed on five grounds. The decision of the trial Court has indeed occasioned grave miscarriage of justice on the Appellant and the Appellant humbly beseech your lordships to allow this appeal, set aside the ruling and judgment of the Court below, grant the reliefs sought in the amended notice and grounds of appeal.

ISSUES FOR DETERMINATION:

2.0. The Appellant most respectfully submit the following issues for determination, to wit:

1. Was the motion for leave to amend the originating summons with the supporting processes filed by the 1st Respondent on the 11th of May 2026, competent to vest jurisdiction in the trial court to grant it, having regard to the alterations of the parties and the change in the capacity in which the 3rd Defendant was sued without the prior leave of trial Court first had and obtained, the orders of the Supreme Court in Appeal No. SC/CV/180/2026., Senator David Mark vs Hon. Nafiu Bala Gombe & 4 Ors and whether the trial court was wrong to have deferred ruling on the preliminary objection and then ruled on the motion to amend the originating summons. (**This is distilled from grounds 1,2,3 and 4 of the amended notice and grounds of appeal)**
2. Was the learned trial judge right in granting leave to the 1st Respondent for amendment of his originating summons and its accompanying processes, having regard to the fundamental issues of jurisdiction and defective nature of the action

challenged by the Appellant and whether the amendments were overreaching the Appellant **(Distilled from ground 5 of the amended notice and grounds of appeal)**

LEGAL ARGUMENTS

ISSUES ONE AND TWO TO BE ARGUED TOGETHER

13.0. It is our submission under these two issues to be argued together that the motion for leave to amend the originating summons with the supporting processes filed by the 1st Respondent on the 11th of May 2026, before the court below as located on PP.704-759 of the record of appeal vol.2, was altogether incompetent and it robs the learned trial judge of jurisdiction to entertain and to grant it, having regard to the alterations of the parties and the change in the capacity in which the 3rd Defendant was sued without the prior leave of trial Court first had and obtained and the orders of the Supreme Court in Appeal No. SC/CV/180/2026, Senator David Mark vs Hon. Nafiu Bala Gombe & 4 Ors.

14.0. It is also our contention under this issue that the trial court was wrong to have deferred ruling on the preliminary objection filed by the Appellant challenging the competence of the originating summons which was argued along with the motion to amend and then ruled on the motion to amend the originating summons first instead of the ruling on the preliminary objection first which challenged the competence of the suit.

15.0. We submit that the motion for leave to amend the originating summons together with the accompanied processes were incompetent, having regard to the change in the capacity in which the 3rd Defendant was sued, without the prior leave of Court sought and obtained. The amendment granted by the trial Court changed the character of the Plaintiff's claim which is founded on the internal affairs of the Appellant hence, it is not justiciable and cannot confer jurisdiction on trial Court as shall be demonstrated under issue two below. As your lordships will find from the initiating

originating summons, seen at P.3 of volume. 1 of the record of appeal, the Defendants to the case before the trial court are as follows: 1. African Democratic Congress (ADC), 2. Senator David Mark, 3. Ogbeni Rauf Aregbesola, 4. Independent National Electoral Commission (INEC) and 5. Chief Ralph Nwosu and the Plaintiff therein, is the 1st Respondent herein. Every other process filed in the case including the appeal to this court and subsequent appeal to the Supreme Court maintained these parties and the character of the parties

16.0. However the 1st Respondent herein who was the plaintiff in the court below and in gross violation of the orders of this Hon Court wherein it was ordered that**: parties to return to the trial court for determination of all pending processes in the 1st Respondent's suit before it** and which order was affirmed by the Supreme Court in **the case of Sen David Mark vs Hon Nafiu Bala Gombe and 4 Ors, in an unreported judgment delivered on the said 30th of April 2026,** decided to alter the parties and change the character of the position in which the 3rd Defendant was sued without leave of the trial court.

17.0. The motion for leave to amend the originating summons filed on the 11th day of May 2026, was filed in the name of the 1st-2nd Defendants and the 4th and 5th Defendants, but changed the capacity and character in which the 3rd Defendant was sued to read **Ogbeni Rauf Aregbesola (2nd and 3rd Defendants sued for themselves and on behalf of persons who purportedly became members of the National Working Committee of the ADC at the July 2025 99th NEC meeting).** It is our contention that the 1st Respondent changed and/or amended the capacity of the parties without prior leave of the trial Court. The 1st Respondent cannot do so. Order 9 Rules 6 and 15 of the Federal High Court Civil Procedure Rules 2019 prohibits the 1st Respondent from changing the names, alter, vary or add parties without leave of court. Judicial decisions of our superior courts forbid it.

18.0. See the case of **Apeh vs. PDP (2016) 7 NWLR (Pt. 1510) 153**. Where the applicants unilaterally changed the parties appearing in the proceedings and then sought substitution and regularization. The Supreme Court struck out their application. It held that the application should have been founded on the subsisting proceedings, retaining the parties on record pending the appropriate order. We submit that the failure of the 1st Respondent to first seek and obtain leave of the Court before changing the status and capacity in which the 3rd Defendant was initially sued rendered the application incompetent.

19.0. In the case of **Ayebakuro vs. tariah & Ors (2014) LPELR-22675(CA) (Pp. 5-6 paras. C-A)** this Hon. Court held that: **"I need not belabour the issue: that a party cannot unilaterally amend the process before the Court without leave of Court. As stated by Ogundare, JSC in ENIGBOKAN v. AMERICAN INT'L INSURANCE CO (NIG) LTD (1994) 6 NWLR [pt.348] 1, an amendment speaks from the original date the process was filed. And because the law, on the principle of audi alteram partem, emphasizes that parties must always know a forehand the case they are to meet, there must be certainty of every process before the Court. No party, for purposes of certainty, is therefore allowed to unilaterally amend his process without leave of Court. In granting amendment upon application, the Court must satisfy itself why the indulgence should be granted: See B.O. TAIWO OSINUPEBI v. QUADRI SAKA SAIBU (1982) 7 SC (Reprint) 49. The Court insists on the certainty and orderliness in the processes before it hence it does not grant leave to amend process as a matter of course. The litigant proposing the amendment is enjoined to show why the amendment must be granted. He cannot therefore amend a process before the Court without the participation of the Court and his adversary."**

20.0. It is therefore our submission the learned trial Judge erred in law when his lordship relied on, entertained and determined the 1st Respondent's motion on notice filed on

11th May 2026, notwithstanding that the 1st Respondent's herein unilaterally and fundamentally altered, added and changed the character of the 2nd and the 3rd Defendants by changing the capacities in which the 2nd and 3rd Defendants were originally sued and purporting, without any application seeking such alteration or an order of Court granting same, to extend the proceedings to persons alleged to have become members of the National Working Committee of the Appellant at the 99th NEC meeting of July 2025, contrary to the decisions of the Supreme Court in **In Re: Apeh vs. PDP (2017) 11 NWLR (Pt. 1576) 252 at 293** and **Nteile vs. Irawaji (2021) 16 NWLR (Pt. 1803) 411 at 446–448**, Even the motion for amendment did not seek leave of court to change the character and capacities of the 2nd and 3rd Defendants. See the motion and the prayers and the affidavit in support at PP.704-710 of the record, vol.2.

.0. The point has been made that the 1st Respondent's application upon which the trial Court granted him leave to amend his originating summons was incompetent. We submit that an incompetent process cannot confer jurisdiction on the Court, neither can it be amended. The apex Court stated the law on this point in the case of **Alaro vs. Jimba & Ors (2026) LPELR-83495(SC)(Pp. 27-28 paras. C-C)** "...**The original notice of appeal, which is infested with an indelible incompetence for want of leave of Court, is not amenable to an amendment as to competently birth the amended notice of appeal. This Court is not showered with the requisite jurisdiction to entertain an appeal, nay, the Appellant's appeal, which is propagated on an incompetent notice ab initio. Hence, there is merit in the first Respondent's preliminary objection.**"

0. We urge your lordships to hold that the motion of the 1st Respondent filed on the 11th of May 2026 and granted by his lordship as shown hereof, was incompetent and completely robbed the court below of jurisdiction to have heard and grant it as it did. We urge your lordship to allow the appeal on this score. It is our further submission

that the grant of the amendment was inconsistent with, and not within the scope of the Supreme Court's judgment and consequential order of 30th April 2026 in Appeal **No. SC/CV/180/2026., Senator Senator David Mark vs Hon. Nafiu Bala Gombe & 4 Ors.**

23.0. It is to be noted that the apex Court had delivered judgment on the 30th day of April 2026, in an interlocutory appeal in **Appeal No; SC/CV/180/2026, Senator David Mark vs. Hon. Nafiu Bala Gombe & 4 Ors,** that emanated from this suit, and in its judgment as seen on **PP.761 - 818 of volume 2** of the record of appeal, the apex Court directed the parties to return to the trial Court for the determination of all pending processes including the 1st Respondent's originating summons filed on the 2nd September 2026. It is instructive to note that in blatant disregard for the order made by the apex Court directing parties to return to the trial Court for the determination of the pending processes, the 1st Respondent filed Motion on Notice dated 11th May 2026 seeking leave to amend his originating summons with the affidavit in support including the written address which was earlier filed before the lower court on the 2nd September 2025, and the trial Court heard and granted the said motion.

24.0. It is elementary law that a lower court must give effect to the decisions or orders of superior Courts, and cannot vary, enlarge, contradict or circumvent it. We submit with respect that the hearing and determination of the motion, amounted to the trial Court sitting on appeal, contradicting and reviewing the decision of the apex Court directing parties to return to the trial Court for the determination of all pending processes including the 1st Respondent's originating summons filed on the 2nd September 2026. We submit further that a lower Court cannot sit on appeal or review the decision of the apex Court. See the case of **Okonkwo vs. A.g of the federation and minister of justice & anor (2017) LPELR-51365(CA) (Pp. 45-48 paras. B-A)**.

25.0. The order of the Supreme Court on P.803 of the record of appeal vol.2, affirmed the orders of this Hon Court and it was specific. It ordered: **Parties to return to the trial court for determination of all pending processes in the 1st Respondent's suit before it.** Both the court below and the parties have copy of this judgment. It was a clear directive written in simple language and did not admit of any insubordination. Both parties were under constitutional obligation to obey the order and enforce it inclusive of the court below. See section 287(1) of the 1999 constitution as amended. That order did not admit of the motion filed on 11th May 2026 11 days after the orders of the Supreme Court.

26.0. We contend that having regard to the decision of the apex Court hereinbefore referenced, the 1st Respondent's Motion on notice for leave to amend his originating summons with the affidavit in support including the written Address, not being a pending process as at 30th of April 2026, was filed in abuse of the process of Court, and that robbed the lower court of the jurisdiction to entertain same. We submit that the motion amounted to misuse or improper use of the process of Court to obtain a result that is either unlawful or beyond the process's scope. See **Ogboru & Anor vs. Uduaghan & ors (2013) LPELR-20805(SC) (Pp. 9 paras. B-D).**

27.0. From the foregoing, the filing and determination of the motion for leave to amend the originating summons was at variance and contradicted the decision and directive of the apex Court made on the 30th April 2026, and same constitute abuse of process of Court.

28.0. We further submit that the learned trial judge was not right in law when his lordship heard the Appellant's notice of preliminary objection together with the motion for leave to amend the originating summons on 30th June 2026, granted leave to the 1st Respondent to amend the originating summons but deferred delivery of ruling on the Appellant's notice of preliminary objection until the judgment in the substantive suit,

having regards to the fact that the preliminary objection challenged the jurisdiction of the Court to hear and determine the suit.

29.0. Once his lordship decided to take the objection with the motion for amendment, his lordship was wrong in law and missed the position of law when he decided to first rule on the motion to amend and then wrongly deferred ruling on the fundamental question of jurisdiction. That was wrong, it is submitted that the question of jurisdiction is fundamental to the determination of the suit on the merit. The question of jurisdiction once raised, the court must first satisfy itself that it is competent to adjudicate before proceeding to take steps to exercise that adjudicatory authority. See the case of **Madukolu & Ors vs. Nkemdilim (1962) LPELR-24023(SC) (Pp. 9-10 paras. F-D)** Jurisdiction is the bedrock upon which an action rests for its determination. It is said to be a threshold issue because it is both intrinsic and extrinsic to adjudication. This Hon Court held in the case of **Macaulev & Ors vs. Ata & Ors (2013) LPELR-20883(CA) (Pp. 15-16 paras. A-A)** as follows: **"Jurisdiction is the bedrock upon which an action rests for its determination. It is said to be a threshold issue because it is both intrinsic and extrinsic to adjudication. It is like the propeller in a motor vehicle which carries the automotive power from the engine to the tyres before the motor vehicle can move. The authorities of the Apex Court and this Court on the importance of jurisdiction to the process of adjudication are a basketful. The Apex Court, most recently in Alims Nig Ltd v. United Bank for Africa Plc (2013) 6 NWLR (pt.1351) 613 at 626; (2013) 1 SCNJ 1 at 12 per my Lord Fabiyi, JSC reiterated its importance again, inter alia: "Jurisdiction is very fundamental. It should be determined at the earliest opportunity when raised. If a Court had no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication. See: Madukolu**

v. Nkemdilim (1962) 2 SCNLR 341 and Olobs v. Akereja (19881 3 NWLR (pt.84) 508." Also See: **Goldmark v. Ibafon (2012) 3 SCNJ (pt.II) 565 at 597; Fed. Airports Authority of Nig. Ltd v. Sylvester Nwoye (2012) 16 WRN 154 at 184; Bronik Motors Ltd & Anor. v. Wema Bank Ltd. (1983) 1 SCNLR 296; Utih & Ors v. Onoyivwe & Ors. (1991) 1 SCNJ 25 at 49**

30.0. The point has been made that the jurisdiction of the Court being a threshold matter, once challenged, the Court must first determine whether it can entertain the action at all before taking any further step in the matter. We most respectfully refer to the decision of this Hon. Court in the case of **Oshiomhole & Ors vs. Fulani & Ors (2019) LPELR-46882(CA) (Pp. 38-39 paras. C-B)**, where it was held as follows: **The issue of jurisdiction vis-a-vis competence of a Court to entertain and adjudicate upon any matter before it is crucial. Indeed, it is most fundamental. As such, whenever the jurisdiction of a Court is vehemently challenged or questioned as in the instant case, the Court has an onerous duty not only to the party but to itself, to first and foremost deal with it before venturing in to the substantive case or issue on the merits. It is trite, that an objection to the jurisdiction or competence of a Court can be raised at any stage of the proceedings, by the parties, the trial or appellate Court. It can even be raised suo motu by the Court itself, albeit with the caveat that the parties must be accorded every opportunity to address the Court before making a decision there upon. See NDIC VS. CBN (2002) 3 SCI UWAIFO JSC @ 9; NIKA FISHING CO. LTD VS. LAVINA CORP (2008) ALL FWLR (Pt. 437) 1 @ 15; UGWU VS. PDP (2023) LPELR - 21356, @ 57 - 88; INAKOJU VS. ADELEKE (2007) ALL FWLR (Pt. 353) 3 @ 8.7.**

31.0. In the instant case, as seen at **PP.297 - 447 of the volume 1** of the record, the Appellant filed a notice of preliminary objection challenging the competence of the

originating summons filed by the 1st Respondent, which raised fundamental jurisdictional questions on the grounds reproduced hereunder, to wit:

a. **That the suit was founded on questions of leadership of ADC, the Appellant herein, which bothers on the internal affairs of a political hence are not justiciable.**
b. **The claim of the plaintiff does not fall under the items in Section 251 (1) to (s) of the 1999 Constitution and thus, the Court lack the jurisdiction to entertain same.**
c. **The plaintiff failed to explore and exhaust internal dispute resolution mechanism of the ADC before instituting the action.**
d. **The suit disclosed no reasonable cause of action.**
e. **The issues raised by the plaintiff are vague, academic, hypothetical and moot, and thus do not disclose any real dispute recognisable in law, and capable of activating the jurisdiction of Court.**
f. **The suit is incompetent and constitute an abuse of Court process, having been founded on a false document; the purported Constitution of the ADC attached to the originating summons, which is not the valid and subsisting Constitution of the party.**
g. **Lack of locus standi of the plaintiff and issue estopel.**

10. It is instructive to note that the learned trial judge at **PP.1001-1003** of volume 2 of the record of appeal, acknowledged these fundamental jurisdictional questions which goes to the competence of the case, but proceeded in grave error to defer the ruling on these issues contrary to binding judicial precedents as in the decision of this Court in **Oshiomhole & Ors vs. Fulani & Ors (*Supra*)**. In **Madukolu vs. Nkemdilim (1962) 2 SCNLR 341 @ 348**, the Supreme Court held that jurisdiction is the foundation of adjudication and any proceedings conducted without jurisdiction are a nullity. See also the cases of **NDIC vs. CBN (2002) 7 NWLR (Pt. 766) 272 @**

296 and **A.G. Federation vs. Abubarkar (2007) 10 NWLR (Pt. 1041) 1 @ 178**. From the above decisions of Court, it is our submission that, the trial Court ought to have determined the issue of jurisdiction properly raised by the Appellant herein before taking further steps in the matter.

2.0. We submit further that the Court below fell into grave error by refusing to determine the issue of the jurisdiction as raised by the Appellant. As can be seen from **PP. 3-74 and PP. 455-703 of volume 1** of the record before this Hon. Court, the entirety of the 1st Respondent's suit before the trial Court is founded on the dispute of leadership of the Appellant herein hence, not justiciable. See also **Inakoju vs. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 588; Adeyemi vs Opeyori (1976) 9 - 10 SC 31; Elabanjo vs Dawodu (2006) 15 NWLR (Pt. 1001) 75; Waziri vs P.D.P. (2022) LPELR - 59174 (SC) @ 38 B - F.** It is trite law that, only political parties can determine who their members are and who can assume leadership in the political parties. It has been held in many cases by the Supreme Court that, Courts have no jurisdiction to determine leadership question.

3.0. In the case of **PDP vs. Ogwulegbo & Ors (2022) LPELR-59168 (SC)at Pp- 26 - 27, B – D**, the Hon. Court per his lordship, Agim, JSC, held that: "**It is not in dispute that the suit sought for redress concerning the failure or refusal of the appellant to sell or give the respondent forms for nomination as aspirants to membership of Local Government and Ward congresses for election to various political party offices. The availability of nomination forms for Local Government and Ward congresses for election of party members to party offices, the alleged hoarding of the said forms or the alleged failure or refusal to give or sell same to some members of the political party are all part of the administration of the party and its internal affairs. The trial Court correctly held that the subject matter of the suit is the internal affair of the appellant. The law is settled by repeated decisions of this Court in Onuoha v. Okafor (1983) 2 SCNLR 244 at**

254, Chief Jude Okeke v. APA & Ors (SC/CV/686/2021 & SC/CV/687/2021 delivered on 14-10-2021), Amaechi v. INEC (2007) 9 NWLR (Pt 1040) 504, Igo Aguma v. APC (SC.217) 4 NWLR (Pt. 1555), Dahiru v. APC (2012) 18 AT 243, Ufomba v. INEC (2017) 13 NWLR Pt 1582 175, Sherif v. PDP (2017) 14 NWLR (Pt. 1585) 212 at 318-39, Agi v. PDP (LPELR) 42578 (SC), Dalhatu v. Turaki, Uzodinma v. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30, PDP v. Sylva (2012) 3 NWLR (Pt. 1316) 85, Emenike v. PDP (2012) 12 NWLR (Pt. 1315) 556 and several other cases that disputes as to the leadership, election of persons to party offices or membership of a political party or its administration and control is a dispute concerning the internal affairs or organization of the political party and that the Courts have no jurisdiction to entertain and try such a dispute as it is a political dispute and is not justiciable. The trial Court rightly held that it had no jurisdiction to entertain the suit.

10. Again, the law is that, there is no jurisdiction in the Nigerian Courts to determine the question of who is a member of political party. Put it differently, no court has jurisdiction to determine membership question of the political party. Only the political parties can determine who their members are and who can assume leadership in the political parties. In the case of **Tumbido vs Independent National Electoral Commission (INEC) & Ors (2023) LPELR-60004(SC),** his lordship Jauro JSC, held that: **the question of membership of a political party has always been held to be outside the purview of the Court's jurisdiction. It is a matter which only a political party can decide. To inquire into such matters would amount to a Court poking into the internal or domestic affairs of a political party and dictating to its members how the affairs of the party are to be piloted. Indeed, Section 84(14) of the Electoral Act, 2022 vests a narrow window of jurisdiction in the Federal High Court with respect to matters relating to the nomination of political parties' candidates. The subsection provides thus:**

"Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court for redress." The foregoing notwithstanding, the questions that may be raised in such suit and which may be decided by the Court do not include who is the member the member of a political party. In AGI V. PDP (supra), this Court Per Rhodes-Vivour, JSC enunciated at pages 460 - 461, paras. F - B as follows: "A party is like a club. A voluntary association. It has its rules, regulations, guidelines and constitution. Members join the party on their own free will. By joining they have freely given their consent to be bound by the rules, regulations, guidelines and Constitution of the party. These rules of the party must be obeyed by all members of the party, as the party's decision is final over its own affairs. Members of a party would do well to understand and appreciate the finality of a party's decision over its domestic or internal affairs. The Court would only interfere where the party has violated its own rules. Where the National Working Committee of the 1st respondent regards a person as a member of the party eligible to contest the primaries, no member of the party can complain against such a decision. Both Courts below were correct that the 3rd respondent is a member of the 1st respondent. Such an issue is within the domestic and internal affairs of the 1st respondent over which the Courts have no jurisdiction as such is not justiciable." It therefore follows that the 3rd Respondent's National Working Committee having determined that that the 2nd Respondent was a member of the party and was qualified to contest the primary election, that put paid to the matter. Once the Screening Committee appointed by the party cleared the 2nd Respondent to contest the primary election and he was issued Nomination and Expression of Interest Forms to

contest the primary election, neither the Appellant nor any other member of the 3rd Respondent can challenge his membership of the party. Members of political parties must come to terms with the fact that certain grievances cannot be agitated outside the internal mechanisms laid down by the political party, and stop dragging the Courts into the murky waters of their internal affairs. The Court is not an avenue or instrument to be deployed towards resolving intra-party disputes. Parties cannot by agreement bring before a Court a dispute beyond the purview of its powers, and where that is done, the Court has a bounden duty to refuse to adjudicate over the dispute. In ANYANWU V. OGUNEWE (2014) 8 NWLR (PT. 1410) 437 where a similar matter came up for determination, my noble Lord, K.M.O. Kekere-Ekun, JSC made it clear at page 473, paras. C - E that: "The only way this issue could be resolved at the trial Court would be for the Court to determine whether or not the 1st respondent herein was a member of the appellant. The Court has no jurisdiction to do so. It is the prerogative of every political party to determine who its members are. The Courts have no business delving into the issue..." Political parties are supreme over their own affairs and no Court can inquire into the issue of membership or leadership of political parties. See ONUOHA V. OKAFOR (1983) 2 SCNLR 244; A.P.C. V. MOSES (2021) 14 NWLR (PT. 1796) 278; UFOMBA V. INEC (2017) 13 NWLR (PT. 1582) 175; A.P.G.A. V. ANYANWU (2014) 7 NWLR (PT. 1407) 541. As a result, the issue of whether the 2nd Respondent was qualified to participate in the Appellant's primary election is outside the trial Court's jurisdiction which, by extension, deprives both the lower Court and this Court of jurisdiction to consider same.

.0. The question as to who lead a political party as its chairman or Secretary or who holds position in the political party is also a political question that is not justiciable in the court of law. It is a political question. The apex Court in **Abayomi vs.**

Oyebanji & Ors (2023) LPELR-60699(SC) at PP- 33 - 35, C – F, held that: **Questions about whether the 3rd respondent could act as the National Chairman of the 2nd respondent and whether the Caretaker Extraordinary Convention Committee headed by the 3rd respondent was a legitimate organ of the Party and had the authority to superintend over the affairs of the Party in the absence of the National Working Committee of the Party are equally not within the subject matter jurisdiction given to the Governorship Election Tribunal by S.285(2) of the 1999 Constitution. There are not mentioned therein as the questions it can determine. Therefore, the Court of Appeal correctly affirmed the decision of the trial Tribunal that it has no jurisdiction over such questions. In any case, being internal matters of the 2nd respondent, the settled law is that generally there are non-justiciable subject to express statutory provisions or in cases of breach of contract or tort. Dealing with these same issues on the same facts as in this case, this Court held in Jegede V INEC (supra) thusly - 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 to 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 and whether there was lapse in the observance of the rules of natural justice are issues which the Court will go into after it has decided that the matter is one in 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." In Ufomba V INEC (2017) 13 NWLR (1582) 175 at 215, this Court held that "The law is trite that Court's jurisdiction is ousted in matters dealing with internal affairs or resolution of a political party regarding nomination or leadership of that political party. See also PDP V Sylva & Ors (Supra) and Aguma V APC (2021) 14 NWLR (Pt.1796) 351 at 406.

36.0. From the foregoing, the grounds of objections highlighted hereinbefore, went to the root and/or competence of the suit, such that if upheld, the court would have had no jurisdiction to proceed to determine the substantive suit, or the application for leave to amend the originating summons. We submit that the leave granted to the 1st Respondent to amend his originating summons overreached the Appellant, having regards to the Appellant's notice of preliminary objection which the Court heard but deferred ruling thereon to the judgment stage, and thus runs contrary to the law that the issue of jurisdiction of the court once challenged must be first be resolved before proceeding with any further step in the matter.

37.0. It is our contention further that in the circumstances disclosed by the record, the trial Court was wrong and erred in law in permitting amendment of the originating summons and its accompanying processes, having regard to the defective foundation of the action, the challenge to Exhibit NB1 and the risk of overreaching the Appellant's pending preliminary objection.

10.It is imperative to note, that the Appellant's notice of preliminary objection challenged the competence of the originating summons on the ground *inter alia* that Exhibit NB1, the Constitution of the Appellant which was attached to the originating summons, was invalid, and further contended that no competent action can be found on false or invalid document. We submit that the invalid Exhibit NB1 rendered the originating summons incompetent and could not be saved by amendment. The law is trite that an incompetent originating process cannot be save by amendment, as you cannot place something on nothing and expect it to stand. See **Alaro vs. Jimba & Ors (*Supra*)**

10.It is submitted that amendment of court processes is generally permitted where it is necessary, provided that the amendment is *bona fide* and will not occasion injustice or prejudice to the other party and that the amendment is not meant for a party to substitute an entirely different case to overreach an opponent. See **Yusuf vs. Mobil Oil (Nig) Plc (2019) LPELR-55272(SC)(Pp. 12-15 paras. D-D)** As already demonstrated in this brief, the Appellant challenged to the competence of the originating summons on the ground that the questions for determination and the reliefs sought by the 1st Respondent were founded on false and/or invalid document which was attached to the affidavit in support of the originating Summons. The 1st Respondent had joined issues with the Appellant regarding the authenticity of exhibit NB1. The amendment sought and granted enabled the 1st Respondent to completely change the character of his case and overreach the notice of preliminary objection of the Appellant.

10.We therefore submit that the trial Court's decision to grant the amendment while reserving ruling on the preliminary objection until judgment stage, deprived the Appellant of a determination of its threshold challenge before it was required to meet the case of the 1st Respondent that was already altered. The Appellant submits that

the discretion was exercised on a wrong principle and occasioned a miscarriage of justice.

11.0. We submit finally that the amendment granted to the 1st Respondent by the learned trial judge on the 24th of July 2026 several months after the Electoral Act 2026 had come into force on 18th February 2026, overreached the Appellant and the learned trial judge granted an amendment to retain a case it has lost jurisdiction to hear and determine as from 18th February 2026 when the Electoral Act 2026, came into being. The original action was commenced on 2nd September 2025, when the Electoral Act 2022 was still applicable. The critical question, therefore, is not simply whether a court has the general power to permit amendments, but whether that power could properly be exercised to alter the essential character of an existing dispute in order to escape the jurisdictional restriction subsequently introduced by section 83(5) of the Electoral Act 2026. The distinction is fundamental. An amendment which merely clarifies the original cause of action, supplies further particulars or corrects an error without changing the substance of the claim is one thing. An amendment which materially reconstructs the cause of action, introduces a different factual or legal foundation, or recasts an internal party dispute as something supposedly outside the internal affairs of the political party is an entirely different matter.

12.0. The latter cannot be justified merely by invoking the court's general power to amend pleadings. As at the date the motion for amendment was filed on the 11th of May 2026, and the amendment granted on the 24th of July 2026, the Electoral Act 2026 prohibits the hearing of the claim of the 1st Respondent as couched in the originating summons filed on 2nd September 2025, which was not heard at the date the motion was filed. The dispute pending as seeing at PP.3-75 of vol.1 of the record was purely internal affairs of the Appellant. Section 83(5) of the Electoral Act 2026, prohibits the court from adjudicating on such disputes from 18th February 2026. **See Council**

Federal Polytechnic Mubi vs Dingoli (2014) 16 NWLR (Pt.1433) 371 at 385-386 Paras H-F.

43.0. The Supreme Court addressed the proper limits of amendment in **Jessica Trading Co. Ltd. vs. Bendel Insurance Co. Ltd. (1993) 1 NWLR (Pt. 271) 538**, emphasising that the object of amendment is to enable the court determine the real controversy between the parties, not to permit a party to substitute a fundamentally different claim. In **Akaninwo vs. Nsirim (2008) 9 NWLR (Pt. 1093) 439,** the Supreme Court further identified the nature of the proposed amendment, the controversy before the court and the time at which the amendment was sought as relevant considerations in the exercise of judicial discretion. The Court of Appeal was even more explicit in **Abdullahi Adamu vs. Mumkaila Isa (2014) LCN/7219(CA)**, where it warned against amendments calculated to change the nature of a case or overreach the opposing party.

44.0. These principles assume particular significance in the present proceedings. By 24th July 2026, section 83(5) of the Electoral Act 2026 had already introduced a statutory restriction on judicial intervention in matters pertaining to the internal affairs of political parties, subject to the qualification in subsection (3). If the Respondent's amendment was intended merely to clarify the original allegations, it could be considered on that limited basis. But if its purpose or effect was to recast the original dispute in order to suggest that it had ceased to concern the internal affairs of the ADC, the learned trial Judge was required to confront that issue before granting leave. A party cannot be permitted to achieve by amendment what the law would otherwise prohibit by disguising the true nature of the controversy. The question was therefore whether the amended process remained substantially the same action commenced in September 2025 or whether it introduced a materially different claim after the commencement of the 2026 Act. That inquiry was indispensable. The court could not properly grant leave without examining the original and amended

processes side by side, identifying the changes introduced and determining their legal consequences by simply saying the Appellants had a right of reply.

45.0. This issue must also be considered alongside section 6 of the Interpretation Act and the repeal and saving provisions of the Electoral Act 2026.The central complaint, therefore, is not that the Respondent had no right to seek an amendment. It is that the learned trial Judge failed to determine whether the particular amendment was genuinely clarificatory or was an attempt to alter the essential character of the proceedings to avoid the operation of section 83(5). That failure raises a substantial question about the proper exercise of judicial power and the jurisdictional consequences of the amendment. The Court of Appeal is most urged to resolve all the issues raised and canvassed herein in favour of the Appellant, and to allow this appeal and declare the entire proceedings granting leave a nullity and set aside the orders of amendment granted in the interest of justice.

CONCLUSION:

46.0. In conclusion we urge your Lordships to allow this appeal, set aside the decision of the trial Court granting leave to the 1st Respondent to amend his originating summons and hold that there was no competent motion to amend the originating summons and that the case of the 1st Respondent as at the time of the amendment, was completely outside the jurisdiction of the learned trial judge having regard to section 83(5) of the Electoral Act 2026.

LIST OF AUTHORITIES:

1. Ayebakuro vs. tariah & Ors (2014) LPELR-22675 (CA) (Pp. 5-6 paras. C-A)
2. Alaro vs. Jimba & Ors (2026) LPELR-83495(SC)(Pp. 27-28 paras. C-C)
3. Polaris Bank vs. Clifford (2022) LPELR-57464 (CA) (Pp. 7 paras. B-D)
4. Madukolu & Ors vs. Nkemdilim (1962) LPELR-24023(SC) (Pp. 9-10 paras. F-D)
5. Macauley & Ors vs. Ata & Ors (2013) LPELR-20883(CA) (Pp. 15-16 paras. A-A)

6. Oshiomhole & Ors vs. Fulani & Ors (2019) LPELR-46882(CA) (Pp. 38-39 paras. C-B)
7. NDIC vs. CBN (2002) 7 NWLR (Pt. 766) 272 @ 296 and A.G.
8. A.G. Federation vs. Abubakar (2007) 10 NWLR (PT. 1041) 1 at 75-76
9. Inakoju vs. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 588;
10. Adeyemi vs Opeyori (1976) 9 - 10 SC 31;
11. Elabanjo vs Dawodu (2006) 15 NWLR (Pt. 1001) 75;
12. Waziri vs P.D.P. (2022) LPELR - 59174 (SC) @ 38 B - F.
13. PDP vs. Ogwulegbo & Ors (2022) LPELR-59168 (SC)at Pp- 26 - 27, B – D
14. Tumbido vs Independent National Electoral Commission (INEC) & Ors (2023) LPELR-60004(SC)
15. Abayomi vs. Oyebanji & Ors (2023) LPELR-60699(SC) at PP- 33 - 35, C – F
16. Appeal No. SC/CV/180/2026., Senator Senator David Mark vs Hon. Nafiu Bala Gombe & 4 Ors.
17. Okonkwo vs. A.g of the federation and minister of justice & anor (2017) LPELR-51365(CA) (Pp. 45-48 paras. B-A)
18. Ogboru & Anor vs. Uduaghan & ors (2013) LPELR-20805(SC) (Pp. 9 paras. B-D)
19. Yusuf vs. Mobil Oil (Nig) Plc (2019) LPELR-55272(SC)(Pp. 12-15 paras. D-D)
20. Katsayel & Anor vs. Abdullahi (2026) LPELR-83117(SC) (Pp. 16 paras. A-D

Dated this 16th day of November 2026

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