The Powers of Judicial Intervention in the Nomination of Candidates for Elections under the Nigerian Electoral Act, 2010 (as amended): A Critique

Abstract

From the evolutionary days of Nigeria's democratic experience till date the issues of nomination and sponsorship of candidates in elections into public offices by political parties have always been contentious. This stems from the fact that our Constitutions have leaned against independent candidacy in elections conducted under them. The process of nomination and sponsorship of candidates by political parties in Nigeria have witnessed much abuse because of the obviously weak statutory regulatory framework that existed for the exercise. It was the Electoral Act, 2010 (as amended) that created for aggrieved aspirants the right to seek redress in court and vested jurisdiction in the courts for the first time to inquire into the process of nomination of candidates by political parties with a view to ascertaining whether the exercise was done in compliance with the provisions of the relevant laws. Recent decisions of the courts on these issues, however, leaves one in doubt as to whether the implications of the present provisions of the Electoral Act, 2010 (as amended) on those issues have been fully appreciated in the judicial circles. It is the intendment of this work to analyse the existing statutes and case law on this subject with a view to securing a better appreciation of the purport of the provisions of the present statutes.

Introduction

It is an issue of common knowledge that the 1999 Constitution (as amended) does not make provisions for independent candidates in elections conducted under the Constitution and the Electoral Act, 2010 (as amended). Therefore, any person who would contest election into any elective office in Nigeria must be sponsored by a political party[1]. The powers vested on political parties in Nigeria to sponsor candidates in elections have witnessed changes in their scope and content with the enactment of successive Electoral Acts. From the days of zero control by means of legislation in respect of the powers of political parties to nominate and substitute their candidates for elections[2] to the days limited control that was witnessed under the Electoral Act, 2002 in respect of substitution of candidates nominated by the political parties.[3] The Electoral Act, 2006 posed a major hurdle on the way of political parties seeking to substitute their candidates already nominated for election. Under the 2006 Electoral Act, a political party seeking to substitute its nominated candidate was required to apply to the Electoral Commission in writing not later than sixty days before the date of the election, offering a cogent and verifiable reason why it was making the substitution. This requirement of the Electoral Act became the albatross of unscrupulous political party leaderships who, before then, enjoyed the habit of substituting nominated candidates even on the eve of an election. It is worthy of note that in all the attempts at placing a check on the activities of political parties, what is being restrained deviation from the process of nomination laid down by law and illegal substitution of nominated candidates.[4] The courts have never attempted nor pretended to interfere in the process of nomination of candidates for election by their political parties save as is allowed for the purpose of checking arbitrariness. It has always been concluded that the issue of who should be nominated for election by political parties is an internal affair of a political party and is therefore a political issue which the court should leave for the political parties to determine, being that a court of law lacks the competence to determine such questions or to run the affairs of the

***Unachukwu Stephen Chuka, LL.M, B.L Department of Public/ Private Law, Anambra State University. Igbariam Campus, phone: 08035550743, email : stevenachukwu@yahooco.uk**

[1] See section 221of the 1999 Constitution (as amended)

[2]Onuoha v. Okafor (1983)2 NCLR 244

[3]Dalhatuv.Turaki&Ors (2003) 4 NWLR (pt 843)310.

[4] See the case of Amaechi v. INEC (2008)5 NWLR (pt.1080) 224; Odedo v. INEC 2008) 17 NWLR (pt.1117) 554; Ugwu v. Ararume (2007) 12 NWLR (pt 1048) 367.

political parties.[5] The Electoral Act, 2010 (as amended) does not in any manner provide for substitution of candidates already nominated and forwarded to the Electoral Commission. In fact section 33 of the Electoral Act, 2010 (as amended) provides that:

> *A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to Section 31 of this Act, except in the case of death or withdrawal by the candidate.*

It was not envisaged that under the Electoral Act, 2010 (as amended), problems would arise as to who were the duly nominated candidates of political parties since the identifiable source of such problems in the past which is usually the attempt to substitute candidates have been removed. However, the problem assumed a new dimension when some political parties and some organs of such political parties presented candidates that emerged from two different primary elections. Even as at three years after the elections, there are constituencies in which there are still disputes as to who was the duly nominated candidates of some political parties in the 2011 general elections. It is therefore important to examine the whole process of nomination and substitution of candidates at elections under the Electoral Act, 2010 (as amended) so as to see whether the gains recorded since the Electoral Act, 2002 is still there or whether such has been lost without knowing it.

The Provisions of the Electoral Act, 2010 (as amended)

Section 31 of the Electoral Act, 2010 (as amended) 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 election. Provided that the Commission shall not reject or disqualify candidate(s) for any reason whatever.*

One of the significances of the amended Electoral Act, 2010 is that under that Act, the decision of a political party whether to sponsor a candidate at an election or not is no longer one which was left without fetters. Though that subject was still left within the discretion of the sponsoring political party yet the Electoral Act, 2010 (as amended) has circumscribed the mode of exercising such discretion. In section 87, the Electoral Act, 2010 (as amended) provides that:

> 1. *A political party seeking to nominate candidates for election under this Act shall hold primaries for aspirants to all elective positions.*
> 2. *The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct or indirect primaries.*
> 3. *A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.*
> 4. *A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below –*
>
> *a. In case of nominations to the position of Presidential candidate, a political party shall –*
>
> *i. Hold a special convention in each of the 36 states of the federation and Federal Capital Territory, or any other place within the federation that is agreed by the National Executive Committee of the Party where delegates shall vote for each of the aspirants at designated centres.*
>
> *ii. The aspirant with the highest number of votes at the end of voting, shall be declared the winner of the primaries of the party and the aspirants name shall*

[5] See. Onuoha v. Okafor (Supra).

be forwarded to the Independent National Electoral Commission as the candidate of the party for the particular state.

b. In the case of nomination to the position of a Senate, House of Representatives and State House of Assembly a political party shall, where they intend to sponsor candidates –

i. Hold special congresses, 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.

ii. The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party, for the particular state.

c. In the case of nomination to the position of a candidate to the Senate, House of Representatives and State House of Assembly a political party shall, where they intend to sponsor candidates:

i. Hold special congresses in the Senatorial District, Federal Constituency and the State Assembly constituency respectively, with delegates voting for each of the aspirants in designated centre or centres on specified dates.

ii. The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party.

d. In the case of the position of a Chairman candidate of an area Council a political party shall, where they intend to sponsor candidates –

i. Hold special congresses in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date.

ii. The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party.

5. In the case of a Councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidates with the highest number of votes shall be submitted to the Independent National Electoral Commission as the candidates of the party.

6. Where there is only one aspirant in a political party for any of the elective positions mentioned in sub section (4) (a), (b), (c) and (d), the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the Independent National Electoral Commission as the candidate of the party.

7. A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the constitution of the party.

8. A political appointee at any level shall not be an automatic voting delegate at the convention or congress of any political party for the purpose of

nomination of candidates for any election, except where such a political appointee is also an officer of a political party.

9. *Notwithstanding, the provisions of the 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 has not been complied with in the selection or nomination of candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.*
10. *Nothing in this section shall empower the courts to stop the holding or primaries or general election or the processes thereof under this Act pending the determination of a suit.*

It is the requirement of the Electoral Act, 2010 (as amended) that all political parties should comply with its provisions in dealing with the aspirants. As to the question who is a aspirant?, in the case of PDP v. Sylva[6] the Supreme Court defined an aspirant in these words:

> *The word "aspirant" has been defined by section 156 of the Electoral Act, 2010 (as amended) to mean a person who aspires or seeks or strives to contest an election to a political office. An aspirant is a person with a strong desire to achieve a position of importance or to win a competition. From section 187 (1) of the Electoral Act, 2010 (as amended), an aspirant is a person who contested the primaries of a political party, thus an aspirant is a candidate in the primaries.*

The requirement of section 87 of the Electoral Act, 2010 (as amended) that a political party wishing to sponsor candidates at election shall hold primaries to nominate such candidates seems to be mandatory since the use of the word shall in statues connotes imperativeness[7]. It is the requirement of the Act that such primaries shall be held among all the aspirants to the various elective offices. The Electoral Act went further to state that the candidate that scores the highest number of votes shall be declared the winner of such primary election and have his name submitted to the Commission as the candidate of the party for that election.

In view of the developments that have been witnessed in respect of nomination and sponsorship of candidates for election in Nigeria under the 1999 Constitution (as amended) some issues arise for consideration and they include:

1. Is the powers of the political parties as to nomination of candidates absolute? If not, what is the exact latitude of the powers given to the political parties to nominate candidates to be sponsored in elections.
2. What is the exact latitude of the jurisdiction vested in the courts to interfere in the process of nomination and sponsorship of candidates in elections in Nigeria under the Electoral Act, 2010 (as amended).

As to these issues, in the days of Onuoha v Okafor, the proper and dominant view was that the powers conferred on political parties to nominate the candidates they will sponsor at elections was absolute and unassailable from a judicial platform. In the said case of Onuoha v Okafor[8]Irikefe, JSC (as he then was) in his concurring judgment held that:

> *The matter in controversy in the appeal is whether a court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference to another candidate of the self-same political party. If a court could do this, it would in effect be managing the political party for the members thereof. The issue of who should be a candidate of a political party at*

[6](2012) 13 NWLR (pt. 1316) 85 at page 126 Paras. A-B
[7] See Ilobi v. Uzoegwu (2005) All FWLR (pt 288)595
[8]*Op.cit*

> *any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a court of law.*

Any doubt as to whether the discretion of political parties as to the candidates to nominate/sponsor in an election is fettered in any way was cleared in the case of Dalhatu v. Turaki[9]. Where it was held that:

> *From the decision of this court in Onuoha v Okafor, it is clear that the right to sponsor a candidate by a political party is not a legal right but a domestic right of the party which cannot be questioned in a court of law. The political party qua political organization has discretion in the matter, a discretion which is unfettered; in the sense that a court of law has no jurisdiction to question its exercise, one way or the other.*

It must be pointed out that the Electoral Act, 1982 under which the case of Onuoha v. Okafor[10] arose and even the Electoral Act, 2002 under which Dalhatu v. Turaki[11] arose are all different from the provisions of the Electoral Act, 2010 (as amended) under which cases like the case of P.D.P v Sylva[12]and Emeka v. Okadigbo[13] arose. In section 87 (9), the Electoral Act 2010 (as amended) provides:

> *Notwithstanding the provisions of the 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 has 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 or the High Court of a State, for redress.*

It is clear that the intendment of section 87, particularly, section 87(9) of the Electoral Act, 2010 (as amended) is to place a restriction on the unfettered discretion hitherto enjoyed by the political parties as to the nomination and sponsorship of candidates for elections. It is submitted that in addition to the jurisdiction of the courts created by section 87(9) of the Electoral Act, 2010 (as amended) for the purpose of review of conduct of political party primaries, there is a corresponding duty imposed on the political parties to conduct their primaries in accordance with the provisions of section 87 of the Electoral Act, 2010 (as amended) and their constitutions and guidelines for the conduct of primary elections. The law has taken such an exercise beyond unfettered discretion and arbitrariness on the part of the political parties for obvious reasons.
The provisions of the Electoral Act, 2010 which its breach will give a candidate of a political party the right to seek redress in court includes the provisions of section 87 (4) of the Electoral Act, 2010 (as amended) which made provisions to the effect that "a political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

It is submitted that the purport of section 87 (4) of the Electoral Act, 2010 (as amended) is that where a person is a member of a political party up till the time of a party primary election and he becomes one of the aspirants by seeking the nomination of the party to contest an election, the political party does not reserve the right to do any act which would preclude him from the primary election or such as will deprive him of an equal opportunity of being voted for in the primary election by members of the political party in comparison with the other aspirants of the same political party.

---

[9] (2003) 15 NWLR (pt. 843) 310 at 347
[10] *Op.cit*
[11] *Op.cit.*
[12] (2012) 13 NWLR (pt. 1316) 85
[13] (2012) 18 NWLR (pt. 1331) 55

Flowing from this, it seems that an aspirant in a primary election of a political party is protected from arbitrary conduct of his political party which will stop him from participating in the primary election of the party or make him to participate from a position of disadvantage thereof. Every conduct of a political party in such regards ought to be weighed against the provisions of the Electoral Act, 2010 (as amended), the Constitution of the political party and its guidelines for such primary election. Where such conduct flies in the face of the provisions of the Act, constitution and/or guidelines, they ought to be liable to be set aside by the courts. It is believed that since the issues of conduct of party primaries have attracted statutory provisions, they should be subject to judicial review. It is accepted as stated by the Supreme Court in Sylva's Case that a political party is a voluntary association which its conducts ought not to attract the *ultra vires* doctrine. However, even the conduct of unions and associations of less importance than political parties have been visited with the powers of judicial review by the courts[14]; provided that such judicial review is confined to inquiry as to whether their conduct was carried out within the context of their own constitution, laws or guidelines.

The place of primary elections conducted by the parties to nominate candidates is one of paramount importance in the country's electoral system. If democratic culture is to take root in the country, we should not only be interested in having free and fair elections but also in having free and fair political party primaries. In Enemuo v Duru & Ors[15].Ogunbiyi, JCA (as she then was) stated that:

> *It is also obvious that the issue of candidature, nomination, screening, clearance and contesting as candidates are very paramount and significant and which must precede the winning of any election. In other words, without such preliminaries having been conducted, it is impossible that any candidate would have been eligible for an election much more to have been a subject of consideration under section 285 of the 1999 Constitution.*

What is the Exact Latitude of the Jurisdiction Vested in the Courts to Interfere in the Process of Nomination and Sponsorship of Candidates in Elections in Nigeria under the Electoral Act, 2010 (as amended)

On the scope of the jurisdiction of courts to intervene in the exercise of the powers of the political parties to nominate candidates and sponsor them for elections, it is accepted as a fact that there is jurisdiction conferred on the courts under section 87 (9) of the Electoral Act, 2010 (as amended) to inquire into the conduct of the primary elections of political parties. In Emeka v. Okadigbo[16] the Supreme Court stated on the jurisdiction of courts to entertain complaints about conduct of a primary election by a dissatisfied contestant at the primary election that:

> *where a contestant at the said primaries complains about the conduct of the primaries, the courts have jurisdiction by virtue of the provisions of section 87 (9) of Electoral Act to examine if the primaries were conducted in accordance with the Electoral Act, the constitution and guidelines of the political party for the conduct of such primary election. The reason is simple, the courts will never allow a political party to act arbitrarily. A political party must obey its own constitution, rules or guidelines in order to operate fairly and equitably between it and its members.*

[14] See Taylor v National Union of Seamen (1967) 1WLR 532 ; see also Gani Fawehinmi v Legal Practitioners Disciplinary Committee (1985) 1 NWLR (pt. 3) 300

[15] (2004) 9NWLR (pt 877) 75 at 112

[16] (2012) 18 NWLR (pt. 133)55

It is submitted that where an organization or institution (particularly, such as political party established by the Constitution of the Federal Republic of Nigeria and the Electoral Act) has stated the manner in which it will conduct its affairs, a right inures in its members to agitate that such organization, including a political party, conducts itself in accordance with such stated manner. On the other hand a court of law is empowered to entertain disputes at the action of members of the organization as far as it is a question as to whether or not the organization has complied with the manner it has laid down for doing such a thing. Not even the constitution of the organization can oust the powers of the court to make such basic inquiry. In the case of Peretu v. Gariga[17] the Supreme Court held that:

> *An ouster clause in the constitution of a political party may exclude the jurisdiction of the court from questioning any action of the party based on its constitution, however, the courts are not precluded from determining any question as to whether the act of the party is in consonance with its own constitution. The court can entertain a question as to whether the party, in taking any action, complied with or violated its own constitution.*

It is against the back drop of the position of the Supreme Court, such as was expressed above, that the decisions of the Supreme Court in a few cases decided recently in respect of party autonomy and conduct of political parties primary elections ought to be re-assessed. Prominent among such cases that ought to attract attention is the case of Peoples Democratic Party (P.D.P) v Timipre Sylva &Ors.[18] The facts of which is summarized as follows:

Sometime in 2010, the 2nd respondent (I.N.E.C), the regulatory body charged with the conduct of elections in Nigeria, announced that a general election for the office of the Governor of Bayelsa State would hold in April, 2011. At that time, the 1st respondent was the Governor of the State. He protested against that decision. He was of the view that his term of office which commenced in 2007 would expire in May, 2012. This, according to him, was because the general election that brought him to office was nullified by the court and he thereafter won the re-run which was ordered by the court, and therefore his term of office started to run from the date when he took a second oath of office after the re-run election. The 2nd respondent did not agree with the position taken by the 1st respondent and insisted that election for the office of Governor of Bayelsa State would hold in April, 2011.

The appellant (P.D.P), to which the 1st respondent belonged, decided to hold its primaries in January, 2011 with a view to producing its candidate for the election scheduled for April, 2011. The 1st respondent contested the primary election and won and his name was submitted by the appellant to the 2nd respondent as its candidate for the general election for the office of Governor of Bayelsa State scheduled for April, 2011.

Meanwhile, the 1st respondent filed suit No. FHC/ABJ/CS/651/10 at the Federal High Court. The suit was to determine whether his tenure would end on 28 May, 2011 or 28 May, 2012. He sought an order of court that would prohibit the 2nd respondent from conducting election into that office in April, 2011 and an injunction restraining the appellant (P.D.P) from conducting any primary election in Bayelsa State for the April, 2011 general election. The 1st respondent succeeded in his suit and consequently the 2nd respondent cancelled the election fixed for April, 2011. The 2nd respondent's appeal to the Court of Appeal was dismissed.

In November 2011, the 2nd respondent announced that the general election would hold on 12th February, 2012. On being aware of the new date, the appellant fixed its primaries for 19th

[17](2013) 5 NWLR (pt. 1348) 415 at 435 paras. C-D
[18](2012) 13 NWLR (pt 1316)85

November, 2011. The 1st respondent applied to contest the primary election and was screened, along with other aspirants, by a panel set up by appellant. At the end of the screening exercise, he was not cleared to contest the primary election as his name was not among those released by the party as cleared to contest the election.

Dissatisfied with the turn of events, the 1st respondent filed an Originating Summons at the Federal High Court. A 10-paragraph affidavit was filed in support of the Originating summons. The 1st respondent sought, *inter alia*, a declaration that having submitted his name to the 2nd respondent as the candidate of the appellant for the election, he remained the only candidate of the appellant for the gubernatorial election following his victory at the primary election conducted by the appellant for that purpose on 12th January, 2011 and the appellant was not entitled to change or substitute another candidate for him, having not withdrawn his candidature; a declaration that his right or interest as the appellant's candidate in the governorship election became vested on the submission of his name to the 2nd respondent following his victory at the primary election conducted for the purpose by the appellant on 12th January, 2011.

The 1st respondent also sought an order setting aside all steps, actions and arrangements made for the conduct of another primary election of 2nd appellant for the purpose of choosing a candidate for the gubernatorial election fixed for 12th February, 2012; and an injunction restraining the 2nd respondent from accepting and/ or requesting for any fresh name or submission of new name as the appellant's governorship candidate for Bayelsa State.

The 1st respondent also claimed alternative reliefs in the event that the court found that the appellant and the 2nd and 3rd respondents could conduct a fresh or another primary election to choose a candidate for the election.

The 1st respondent filed a motion on notice along with the Originating Summons. Therein, the 1st respondent sought an order of interlocutory injunction. The 1st respondent also filed an *ex parte* application asking for the same reliefs.

Upon hearing the *ex parte* application, the trial court in its ruling on 15th November, 2011 ordered that the appellant and 2nd and 3rd respondents be put on notice of the application and they should within 72 hours of being served with the motion on notice show cause why the 1st respondent should not be entitled to the reliefs sought. In the unlikely event that the appellant and the 2nd and 3rd respondents, when served with the Originating Summons, the motion on notice and the enrolment of the orders, were unable to show such reasonable and or just cause why the orders should not be made, the court would have no hesitation in granting the orders in the way and manner as couched.

The court further ordered that in the event that the appellant in defiance of the orders took steps which might be prejudicial or subversive of the orders and of the proceedings before the return date, the court would proceed to make such necessary orders to nullify such steps or decisions taken once they were served with the processes and/or orders made, in order to uphold and protect the sanctity of the court's processes and to vindicate the integrity of the court as the established constitutional arbiter between the State and the citizens and between citizens *inter se*.

Dissatisfied with the orders, the appellant appealed to the Court of Appeal. The appellant's complaint was that the trial court has no jurisdiction to entertain the 1st respondent's action and that the trial court made prejudicial statements which disqualified it from hearing the motion on notice and the substantive suit.

In its judgment, the Court of Appeal held that the Federal High Court had jurisdiction to entertain the action and ordered the suit to be remitted back to the court for the hearing of the Originating Summons on the merit. However, the Court of Appeal held that the Presiding Judge of the trial court disqualified himself by statements made in his ruling of 15th November, 2011. Still dissatisfied, the appellant appealed to the Supreme Court. The 1st respondent also cross-appealed.

In determining the appeals, the Supreme Court considered the provisions of section 33, 35, 87(1) and (9) of the Electoral Act, 2010 (as amended) and section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which respectively provide thus:

Section 33, 35, 87 (1) and (9) of the Electoral Act, 2010 (as amended) provides:

33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of the Act except in the case of death or withdrawal by the candidate.

35. A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission not later than 45 days to the election.

87(1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective posts…

(9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and guidelines of a political party has 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 or the High Court of a State or the Federal Capital Territory for redress.

Section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that:

'251 (1) Notwithstanding, anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters…

(r) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies."

The Supreme Court, relying on the above relevant laws, held on the instant case as follows:
On duty on a political party seeking to nominate candidate for election to hold primaries for aspirants:

> *By virtue of section 87 (1) of the Electoral Act, 2010 (as amended) a political party seeking to nominate candidates for election under the Electoral Act shall hold primaries for aspirants to all elective posts.*

On meaning of "aspirant", that:

> *The word "aspirant" has been defined by section 156 of the Electoral Act, 2010 (as amended) to mean a person who aspires or seeks or strives to contest an election to a political office … From section 87 (1) of the Electoral Act, 2010 (as amended), an aspirant is a person who contested the primaries of a political party. Thus an aspirant is a candidate in the primaries*[19].

[19]*Ibid, P. 126, paras. A-B*

> *By virtue of section 87(9) of the Electoral Act, 2010 (as amended) notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and guidelines of a political party has 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 or the High Court of a State or Federal Capital Territory for redress. Section 87(9) of the Act confers jurisdiction on the courts to hear complaints from a candidate who participated at his party's primaries, it has given the court the wide powers to adjudicate on any dispute arising there from with a rider. For any member of a political party to question any result of party primaries conducted under the Act, he must bring himself within the ambit of "an aspirant"; that is a member who has participated in the party primaries. Otherwise, his action is not maintainable for want of locus standi. He must bea candidate duly screened by the party for its primaries and is aggrieved one way or other by the process. In the instant case the 1st respondent did not participate as a candidate in the appellants primaries which held on 19th November, 2011 to chose the party's candidate for the general election… Not being a candidate, the 1st respondent could not be heard to complain about the conduct of the primaries. Section 87(9) of the Act was therefore not applicable*[20]

It was further stated per Chukwuma – Eneh, JSC[21] that:

> *On the facts of this case however, the 1st respondent lacks the locus Standi to challenge the immediate party primaries for the gubernatorial election slated for April 2012 as he has not taken part in the said party primaries as an aspirant as he has been excluded from the said process by the party (*underlining, mine for emphasis*). In the end, the 1st respondent has challenged his exclusion by the appellant to participate in the April 2012 primary election which in my view constitutes a pre-primary election matter and so not cognizable under the provisions of section 87(9) of the Electoral Act, 2010 (as amended).*

The court found as a fact on the right of a political party to exclude its member from contesting its primaries that: *A political party has the right to bar any of its members from contesting its primaries if it so desires.*

With the greatest humility, it is submitted that the decision of the Supreme Court in the instant case raises some pertinent questions to the extent that the apex court held that the action of a political party who autocratically bared its member who was contesting in its primaries from completing same, cannot be challenged in court as such is a pre-primary election matter.

First of all, just like election itself, conduct of political party primaries involves not only the casting of votes by members of a political party or delegates on their behalf for the aspirants of their choice on the day of party primary election but rather a process which starts with the sale of party nomination forms, filing of completed forms by aspirants, screening of the aspirants by the appropriate party organs, the actual voting at the primaries and declaration of the results of the primaries[22].

[20] *Ibid, at P 125, paras.G-H; P126.paras. B-D; P 148, paras B-D.*
[21] *At pages 149, paras A-E; 150-151, paras G-C*
[22] See the cases of INEC &Ors. V Ray &Ors. (2004) 14 NWLR (pt. 892) 92 at 123; Chibok v Bello (1993) 1 NWLR (pt.276) 109; see alsoOjukwu v Obasanjo&Ors.(2004)EPR 626 at 653.

The apex court had declared the meaning of an aspirant in this case as "a person who aspires or seeks or strives to contest an election to a political office"… It is submitted that the pertinent question to be asked in this situation and others like it is "whether the 1st respondent aspired or strived to contest an election to wit the primary election of the appellant". The obvious answer to this question is in the affirmative as the 1st respondent, purchased, completed and filed his nomination form, preparatory to the primary election of the appellant like others. However, when the names of persons cleared to contest the primaries were released, his name was missing. It was certain that it was not the 1st respondent that withdrew his aspiration to contest in the primaries rather he was stopped by other people.

It is important to state that the conduct of political party primaries such as the one in issue in this case is regulated by the provisions of the Electoral Act, the constitution of the political party and the guidelines for the conduct of such primaries. These are documents which their provisions are clear and ascertainable in defining the rights and obligations of members of the party as well as the powers of the political party over its members.

It does not seem as was held in this case that a political party has got the right to bar its members from participating in party primaries arbitrarily at the whims and caprices of the individual leaders of the political parties outside the provisions of the relevant legal framework governing such exercise. This position is buttressed by another statement of the law by the apex court in the instant matter[23] where it stated that:

> *The provisions of section 87 of the Electoral Act, 2010 (as amended) is clear and unambiguous. It has given political parties wide powers in the management of questions of nomination and sponsorship of aspirants to all elective positions. The clear object the provision of section 87 is intended to achieve, beside the inculcation of internal democracy in the affairs of political parties in Nigeria, in the conduct of their party primaries, includes making them transparent and providing level playing ground for their contestants in party primaries.*

If the object of section 87 of the Electoral Act, 2010 (as amended) is to inculcate internal democracy into the affairs of political parties in Nigeria in the conduct of the their party primaries, to ensure that the conduct are made transparent and that level playing ground is provided for contestants in the party primaries, it would seem that the import of section 87 (1) (3) and (9) of the Electoral Act, 2010 (as amended) carries with it a right in the contestants to apply to court to intervene whenever the process is no longer transparent or the playing ground is no longer level. It is submitted that in such a situation, there is jurisdiction in the court to entertain such complaints. It is not jurisdiction to compel the political party to chose and sponsor a particular candidate but to ensure that the exercise of party primaries is transparently done in accordance with the provisions of the law relating to such, so as to remove the process from the realms of arbitrariness and whimsical manipulations.

It is submitted that in accordance with the judgment of court in the instant case relying on Onuoha v. Okafor,[24] the discretion of a political party in determining which candidate to sponsor in an election is an internal affair of the political party which remains intact provided that such a jurisdiction is exercised within the confines of the legal framework laid down for regulating same. However, by deliberate legislative action, the National Assembly has whittled down the discretion so vested on the political parties, in that Section 87 (1) of the Electoral Act, 2010 (as amended) imposes a duty on the political parties to conduct primary elections for the purpose of

[23] At pages 147-148 paras H-B
[24] *Op.Cit*

selecting the candidates to be sponsored in the election proper. It is submitted that the entire process of political party primaries and not just only the actual voting at same is a statutory matter subject to judicial review. Section 87(9) of the Electoral Act, 2010 merely stated the obvious and is all encompassing. The said section relates to any act done by a political party in the conduct of its primaries which is alleged to contradict the provisions of the Electoral Act, party constitution and the guidelines of the political parties as to the conduct of such primaries. The whole process rather than a part of same is made subject to judicial review under section 87(9) of the Electoral Act, 2010 (as amended).

One of the grounds for presenting an election petition is that a candidate was duly nominated by his party and unlawfully excluded by the Electoral Commission. In this wise, it is glaringly evident that the law is interested in preventing situations where arbitrary actions of the operators of the electoral system would deprive persons interested in contesting elections of the opportunity of doing same. In the same vein, it is believed that the interest of the law in putting a check on the whims and caprices of leaders of political parties who would act arbitrarily in selecting the candidates to be sponsored by the political parties for election should never be construed as unwarranted interference.

Is an Aggrieved Aspirant Limited to an Award of Damages as Remedy?

The Supreme Court, it is submitted, most humbly, held erroneously[25] in the same case and contrary to the provisions of section 87(9) of the Act that:

> *A member of political party does not have the Locus standi to question the party's prerogative right on the issue of its choice of candidates for elective offices, not even in the face of breaching its rules and regulations. The redress available to such a member who is so aggrieved and who has suffered any damage as a result of refusing him nomination and sponsorship lies in damages against the political party, subject to the provisions of the party constitution, rules and regulations.*

Continuing, the court stated that:

> *The Electoral Act, 2010 (as amended) by its section 87 has attempted to mitigate the mischief highlighted by the Electoral Act, 2006 with a view to deepening democratic culture of the political parties. However, none of the provisions of the various Electoral Acts have attempted in any way to interfere with the prerogative powers of political parties as to the choice, sponsorship and substitution of their candidates for elective offices.*

With the deepest humility, it seems that this statement of the law by the Supreme Court in the instant case was not based on the provisions of the Electoral Act, 2010 (as amended) even when the court referred copiously to the provisions of the said law.

There is no doubt whatsoever that the unfettered discretion of political parties as to the candidate to nominate and sponsor in elections as seen in the case Onuoha v Okafor[26] has been whittled down by the provisions of the Electoral Act, 2010 (as amended). Section 87(1) of the Act stipulates that the mode of selecting candidates for sponsorship by political parties shall be by primary election held for aspirants to all elective positions. Section 87(2) states that the mode of selection shall be by direct or indirect primaries. In sections 87(3) and 87(4) the Electoral Act provides the mode of conducting direct and indirect primaries of political parties.

[25]at page 146, paras. C-E
[26]*Op.cit*

Whichever one is chosen, as the mode of conducting the primaries, the Electoral Act, 2010 (as amended) has stated clearly that the candidate with the highest number of votes at the end of voting at the primaries shall be declared as the winner thereof and his name shall be forwarded to the Electoral Commission as the candidate of the political party. Except for nomination of candidates for election to the office of the President of Nigeria where ratification of nomination at a national convention of the party is required for the candidate that polled the highest number of votes at the primary election, there is little or no room for arbitrariness in the conduct of such party primaries.

Monitoring of Political Party Primaries and Conventions by INEC as a Further Check

In any event, the Electoral Act, 2010 (as amended) in its further quest to forestall such arbitrariness has provided in its sections 85 and 86 that the political parties shall give to the Electoral Commission a prior notice of at least 21 days of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any elective offices specified under this Act. On its own, the Commission may attend any such events with or without prior notice to the political party in accordance with the provisions of the Electoral Act, 2010 (as amended). In section 86, the Electoral Act 2010 (as amended) empowers the Commission to monitor and keep records of the activities of all the registered political parties.

The Constitutional Provisions for Fair Hearing and the Electoral Process.

Above all, in section 36(1) of the 1999 Constitution (as amended) provides that:

> *In the determination of his civil right obligation including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.*[27].

One believes that these provisions apply to cases such as the ones under discussion. My view on this issue is strengthened by the belief that apart from the need to make an inquiry as to whether the political party had complied with the rules of natural justice, a political party which has been made by statutory provisions to be the channel through which an individual would contest election in Nigeria[28] is by all intents and purposes considered an authority for the purpose of the application of the demands of fair hearing.

[27]It is submitted, most respectfully, that the fair hearing guaranteed an individual under section 36 (1) of the 1999 Constitution (as amended) extends to a fair hearing in any matter between him and his political party as to his rights as a member of such a political party.In John &Ors v Rees &Ors (1969) 2 All ER 274, J. Megarry held that a club or other body when exercising the powers conferred by its rule must act in accordance with the principles of natural justice unless they were expressly excluded by those rules. … Suspension is merely expulsion *pro tanto*. Each is penal and each deprives the member concerned of the enjoyment of his rights of membership or office… it is true that in the case of Timpire Sylva, he was not suspended by the P.D.P but he was denied a right accruing to him as a member of the party *to wit*, the right to aspire to an elective office through the platform of his political party. This is a right created and entrusted on Nigeria citizens by the 1999 constitution (as amended) and the Electoral Act, 2010 (as amended). It is submitted that any action of a political party depriving its member of such right as was done to Sylva in this case should be subject to the scrutiny of the courts to ensure that the rules of natural justice as well as the provisions of the constitution and the rules of the political party was strictly followed. In Abubakar Rimi&Anor v. Peoples Redemption Party & 2 Ors (1981) 2 NCLR 734 at p.743, Omololu Thomas J. stated that: the question of "determination" referred to in section 33 (1) must "relate to civil rights and obligations in their wider context. My reading of the provision is that a right to be a member of a club, if regulated by the rules of the club can only be exercised within those rules, and a person wrongly expelled, who claim that his club has exceeded its powers can maintain action…

[28] See Section 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Furthermore, it is important to state that failure to comply with the provisions of the Electoral Act, 2010 (as amended) or the rules of a political party in relation to the nomination of candidates to be sponsored for elective offices is a fact which must be alleged and proved for the court to afford redress to the injured member of the party. It pre-supposes that such allegations as will lead to a finding of non compliance with the provisions of the Electoral Act will come from persons who participated in the primaries and know the facts in question first hand. It is not a surprise therefore that section 87(9) of the Electoral Act, 2010 (as amended) has created such powers in the aspirants to elective offices to complain where a breach of the Electoral Act, the constitution of the political party or its guidelines for the conduct of party primaries is alleged without confining such complaints to breaches that occur in respect of actual voting at the primary election.

Furthermore, it is contestable that if the Constitution and the Electoral Act have made elaborate provisions for hearing complaints in respect of breaches of the provisions of the Electoral Act in respect of conduct of elections, there is no justification for denying such fair hearing to persons complaining of wrongs done to them during the conduct of political party primaries. The dichotomy can hardly be justified in law

It is submitted that the days of absolute discretion in the nomination and sponsorship of candidates for election by political parties are over. The decision in Onuoha v Okafor[29] has very minimal relevance on party primaries conducted under the Electoral Act, 2010 (as amended). It is not for fun that the National Assembly has made elaborate provisions in the Electoral Act, 2010 (as amended) for the purpose of regulating political party primaries. That issue is now a statutory matter that is amenable to the powers of judicial review vested in the courts.

It is, therefore, further submitted that where a member of a political party complains that he was participating in the primaries of a political party until he was stopped midway unlawfully as in the case of P.D.P v Sylva[30], the court of law ought to assume jurisdiction to hear the complaint with a view to discovering whether the action of the said political party was done in accordance with the Electoral Act, the Constitution of the political party or its guideline for such primaries. Where the acts were lawfully done, it ought to stand but not so where it was done only pursuant to the omnibus ostensible and arbitrary powers of a political party to decide whom to nominate and sponsor in an election, even if such was written in the constitution or guidelines of the political party. The provisions of the Electoral Act, 2010 (as amended), the constitution and guidelines of the political parties circumscribe the limits of their powers in respect of party primaries and congresses. The days of such slogans as "the party is supreme" has given way to the supremacy of the various laws stated in section 87 (9) of the Electoral Act over the whims of the political party leaders.

It is trite law that a delegate of statutory powers ought to confine its actions within the limits of its powers, as any exercise of such powers outside the limits of the powers of such delegate is null and void.

It is equally submitted that the remedy of a member of a political party denied the opportunity of participating in a party primary for the purpose of nomination and sponsorship by his political party for no justifiable reason ought not to be in an action for damages as stated by the Supreme Court in Sylva's Case since there is no contractual obligation between the member and his political party over such right. Rather, the right of the members of political parties to contest election through their political parties in Nigeria is a statutory right, being one created by the

[29]*Op.cit*
[30]*Op.cit*

Constitution and the Electoral Act. Both laws have ruled out the existence of independent candidates in our electoral system. Such powers were statutorily vested on the political parties to nominate and sponsor candidates in elections.

Section 221 of the 1999 Constitution (as amended) provides that:

> *No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.*

It is certainly erroneous to believe that the political parties that derived their rights to sponsor candidates for elections from statutes would refuse to comply with the provisions of the same statutes regulating the exercise of the powers vested on the parties without consequences.
In P D P v Sylva[31], the Supreme Court stated further that:

> *A political party, like any other corporation, operates within the guidelines, powers and duties set out in its constitution. All its members are bound by its provisions and breach of their rights and obligations created by their constitution can be remedied as provided by the constitution.*

It is submitted, with respect, that the above position of the Supreme Court is correct only to the extent that a right of a member of the political party in question created by the party's constitution is not created by any other statute in force in Nigeria. Where the right in issue such as the right to participate in party primaries is one created by any other law in Nigeria (as is the case with the right to participate in party primary election which is created by the Electoral Act also), the right of the individual, member of a political party, does not derive in such a situation from the constitution of the political party but from the provisions of such statute. Equally, the remedy for the breach of such right is not exhausted by the provisions of the party's constitution as the provisions of the relevant statute in relation to same ought to attend the breach.

In the final analysis, the courts in Nigeria should refrain from shying away from assuming jurisdiction to hear complaints on the conduct of political party primaries simply because of the statement of the law in the case of Onuoha v Okafor which was decided under a law different from the provisions of the Electoral Act, 2010 (as amended).

It seems that the Supreme Court appreciates this fact but prevaricates, without justification, on the issue of jurisdiction to examine complaints arising from political party primaries. In the case of Emeka v Okadigbo[32] the Supreme Court held that it has jurisdiction to entertain a suit on the conduct of the primary election of the political party in question and stated the law as follows:

> *The issue of nomination or sponsorship of a candidate for an election is within the domestic affairs of political parties and the courts have no jurisdiction to nominate for a political party its candidate for any election. The court is, however, duty-bound to interpret the law as made by the legislature so as to determine whether or not in the exercise of its right of sponsorship or nomination the political party has complied with the relevant provisions of the law laid down for the conduct of primaries. In the present dispensation, under the Electoral Act, 2010 (as amended), by the provisions of section 87 (1) and (9) of the Electoral Act, 2010 (as amended), the courts are competent to determine whether the relevant provisions of the Act, party constitution and electoral guidelines have been followed in the choice of a candidate for any elective post. The courts can declare which party process is right and can produce a proper candidate*

[31] *Ibid*, at page 145, Paras F-G
[32] (2012) 18 NWLR (pt 1331) 55 at p.107

> *particularly where two primaries are held by a party, for example: one by the National Executive Committee and the other by the state chapter of the party.*
>
> *In the instant case, it was stipulated in the party constitution and the relevant party guidelines that any primary would be conducted by the National Executive Committee of the Peoples Democratic Party with the officials of Independent National Electoral Commission in attendance. The foregoing must be strictly adhered to in the nomination of a candidate*.

In Lado v C.P.C[33], the situation was similar to the one in Emeka v Okadigbo[34]. There was a primary election conducted by the National Executive Committee of the party. The State Executive Committee of the same party purported to have conducted another primary election in which some persons claimed to have emerged as the candidates of the party. The party's national executive committee stood by the candidates who emerged from the very primaries it conducted. Just as was the case in Emeka v Okadigbo, the Electoral Commission preferred to stand with the candidates that emerged from the primaries conducted by the state executive committee of the party, the candidates whose names it received and purported to recognize. At the Supreme Court, the court declined jurisdiction to hear appeals arising from such on the grounds that there were two primaries and the court could not dabble into preferring one primaries to the other by pronouncing on one set of candidates as the ones nominated by the party as against the other set of candidates.

That the court apparently took a different view in the case of Emeka v Okadigbo is commendable and justifiable on the grounds that it is the National Executive Committee of a political party and not a state executive Committee of same that conducts party primaries. A political party is recognized by its National Executive Committee and not its State Executive Committee. At all times, the Electoral Commission has got no business in dealing with or accepting an invitation to monitor the conduct of party primary from a state executive committee of a political party.

Conclusion

There is no doubt that the right of nomination and sponsorship of candidates in elections in Nigeria, left exclusively to the political parties has come under unparalled abuse as a result of the greed of political party leaders. The unfortunate decision in the case of Onuoha v Okafor[35]furthered the arbitrariness that has characterized this area of our electoral process. The legislature in demonstrating a good appreciation of the hazard posed to the electoral process by the said untrammeled discretion, whittled down the powers of the political parties by making such nominations to come under statutory provisions.

Unfortunately, the golden opportunity presented to the judiciary to tame the monster was thrown away by the same judiciary, either by reason of its inability to grasp the import of the paradigm shift occasioned to the earlier position of the law on this subject matter by the provisions of section 87of the Electoral Act, 2010 (as amended) or because it succumbed to the ever alluring influence of the society. Whichever view dominates the other between the two, the obvious fact is that the judiciary has deprived the rest of the country the country of the tremendous benefits which an excellent legislation such as section 87 of the Electoral Act, 2010 (as amended) could provide. To continue to hand down decisions such the one in the case of P.D.P v Sylva[36] would

[33] (2011) 18 NWLR (pt 1279) 689
[34]*Op.cit*
[35]*Op.Cit*
[36]*Op.Cit*

defeat the law and serve no useful purpose as it would seem that the judiciary in picking and choosing which legislations to give effect to has taken over the duty of law making exclusively assigned to the legislative arm of government. May we never live in this country to witness the days of such tyranny of the judiciary.

Recommendations

It is recommended that:

1. Whenever it is faced with similar situations in the future, the Supreme Court should prefer and stand by its decision in Emeka v Okadigbo whenever such scenario arises in future rather than to decline jurisdiction as it did in Lado v C.P.C. as well as P.D.P v Sylva.
2. The Supreme Court should intensify its pro-activeness in playing its role as the guardian angel of our nascent democracy. Decisions such as the ones Amaechi v INEC & Ors,[37]Odedo v INEC &Ors.[38]Should be followed in similar situations in the future so as to discourage the culture of impunity presently exhibited by political party leaders in the conduct of party primary elections.
3. to make the system more responsive to the needs of the society, there must be an arrangement to determine pre-election matters with the kind of speed provided for election proceedings in section 85 of the Electoral Act, 2010 (as amended). A situation where the question of who, among two or more candidates was duly nominated and sponsored by a political party is allowed to linger for several years is not in the interest of the Nigerian electorates.
4. As an extreme condition, it may be included by the National Assembly in the Electoral Act that where a political party fails to resolve completely before an election the question of whom it has nominated to sponsor in the election, it should be disqualified from participating in the election.

It is believed that these and other similar measures if employed would free the Nigerian political land scope from the mortal grip of avaricious political leaders and judicial officers.

[37] (2008)5 NWLR (pt.1080) 224

[38] (2008) 17 NWLR (pt.1117) 554