

IN THE SUPREME COURT OF NIGERIA

Suit No: SC63/2007

Petitioner: Engineer Charles Ugwu Peoples Democratic Party

And

Respondent: Senator Ifeanyi Ararume Independent National Electoral Commission

Date Delivered: 2007-06-08

Judge(s): Niki Tobi ,George Adesola Oguntade ,Aloma Mariam Mukhtar, Mahmud Mohammed ,Walter Samuel Nkanu Onno

Judgment Delivered

On 5th of April, 2007, I dismissed this appeal. I indicated that day that I will give my reasons for the dismissal today. I do so now. The facts of this case as presented by the Court of Appeal are in some material difference from those presented by Dr. Alex Izinyon, SAN, for the 1st appellant in his brief. The material difference is that Dr. Izinyon has introduced the element of the 1st respondent not winning the primaries. He said that the 1st respondent scored 2,061 votes which were less than the 50% of the total votes of 7,504 cast. Dr. Izinyon would appear not to have remembered this important aspect when he settled the pleadings at pages 345 to 348 of the Record. There is yet another aspect. Dr. Izinyon, in Part 2 of his brief, contended that the name of the 1st respondent was submitted to the 2nd respondent in error, which error was later corrected. That, to Learned Senior Advocate, was responsible for the substitution of the 1st respondent for the 1st appellant. What qualified the 1st appellant to benefit from the exercise of substitution, counsel did not include in his narration of facts. All he narrated was that the 1st respondent's score was 37.5% which was short of the minimum score of 50%. Although Dr. Izinyon, in the course of narrating the facts; said that the name of the 1st respondent was sent to the 2nd respondent in error, paragraph 4 of the 2nd and 3rd Joint Defendants' Statement of Defence averred to the contrary: "In further answer to paragraphs 11, 13, 14, 16, 17, 18, 19 of the Statement of Claim, the 2nd and 3rd Defendants deny that the plaintiff's name was submitted to the 1st Defendant and he is put to the strictest proof thereto." The above narration conveys some contradictions. I will not say a bundle because the aggregate of the contradictions will not sum to a bundle. The duty of counsel is to present the case of his client and they, at times, do so with some sentiments and emotions. This court cannot hold such human feelings and idiosyncrasies against counsel. That a counsel should love his client's case to the level of presenting same with some slant favourable to the client is not a condemnable conduct in so far as there is sincerity in the presentation and not an ambition to overreach the case of the adverse party. Such is the fiduciary professional duty of care counsel owes his client. I have no cause or reason to doubt the sincerity of Dr. Izinyon in this area of narration of the facts. One may be sincere in the position he takes but he could be mistaken in his sincerity at the same time. I have taken up this for only one reason and it is to know the exact factual position. I must say that the 1st respondent took time and pains to narrate the facts of the case from pages 6 to 9 of the brief. I think he did a good job of the facts. Apart from the tradition of appellate courts taking the narration of facts by the lower courts more seriously than those of counsel in the event of conflict, I am inclined to do just that in the light of the situation in this matter. I should take the narration of facts by the two courts below. The trial Judge narration was brief. I can easily quote the facts here from page 567 of the Record: "Certain facts are not in dispute in this suit. These are that the Plaintiff's name was submitted to the 1st Defendant vide exhibit F as the 3rd Defendant's candidate for the Imo State Gubernatorial election 2007. This is dated 14th December, 2006. That on the 18th January, 2007, vide exhibit K the 3rd Defendant sent to the 1st Defendant the name of the 2nd Defendant as its gubernatorial candidate for the same office. This submission of a second name is the root cause of this action." The above is the version of the facts by the trial Judge. Let me take the version of the Court of Appeal. It is a bit more comprehensive. Again, I persuade myself to quote the facts from page 670 of the Record: "The facts are that the appellant emerged winner at the Governorship primaries conducted by the Peoples Democratic Party for Imo State on the 14th of December 2006. The appellant at the contest scored 2,061 votes as against the 36 votes scored by the 2nd Respondent Engineer Charles Ugwu. The name of the appellant was forwarded to INEC by the 3rd Respondent as the Governorship candidate sponsored by PDP in compliance with the provisions of section 32(1) and (2) of the 2006 Electoral Act, on the 14th of December 2006 as shown in Exhs F and G. The 3rd Respondent on the 19th of January 2007 forwarded the name of the 2nd Respondent to the 3rd Respondent under a letter dated 18th January 2007 Exh K as the candidate it was sponsoring for Imo State

Governorship in April 2007. "The learned trial Judge, after taking the interlocutory matter of jurisdiction, threw out the 1st respondent's case. I did not see the trial Judge dismissing the suit and so I cannot say that; although the result at the end is the same thing. I should quote the two last paragraphs of the judgment at pages 573 and 574 of the Record: "By the provision of Section 34 of the Electoral Act 2006, I find that a political party has the power to change its nominated candidate for another any time before 60 days to election. In its exercise of the power to change, it needs to inform the INEC in writing not in any prescribed form of the change. It will also give INEC cogent reason for the change which INEC should be able to verify. In the instant case, the 3rd Defendant submitted the name of the Plaintiff as its Governorship candidate, informed INEC of its change of candidate and gave INEC a reason for the change. It is left for INEC to verify the reason or not. But pursuant to all the above, I will say that the political party is within its powers to so change its candidate and have so done as far as the parties on record are concerned. "The Court of Appeal did not agree with the learned trial Judge. That court overturned the judgment of the learned trial Judge and allowed the appeal. At page 687 of the Record, Adekeye, JCA, said: "Moreover that pronouncement is not a judicial or judicious exercise of the discretion of the lower court in the circumstances of the case. I shall not hesitate to conclude that the learned trial Judge failed to consider all the aspects of section 34(1) and (2) of the Electoral Act and same has not met the justice of this case. I hereby allow the appeal. Judgment of the lower court is hereby set aside. No order as to costs. "The court dismissed the cross appeal. Dissatisfied, the appellants have come to this court. Briefs were filed and exchanged. The 1st appellant formulated four issues for determination:

- "1. Whether the decisions of this Honourable Court in Onuoha v. Okafor (1983) 14 NSCC 494 and Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310 on issues of nomination and sponsorship of candidate by a political party have been overtaken by the provisions of Section 34(1) (2) of the Electoral Act, 2006.
2. Whether the learned Justices of the Court of Appeal were right in holding that Section 34 of the Electoral Act, 2006 is justiciable.
3. Whether the learned Justices of the Court of Appeal were right in the interpretation of Section 34(1) (2) of the Electoral Act, 2006.
4. Whether the learned Justices of the Court below were right in holding that Exhibits K, L, and L1 had no probative value having regard to the admission by consent of the said Exhibits by parties at the stage of the proceeding."

The 2nd appellant formulated the following issues for determination:

- "(a) Whether the Court of Appeal was right when it held that the action before the trial Court being one of sponsorship and nomination of a candidate by a political party was justiciable, i.e. has section 34(1) (2) however interpreted taken the issue of nomination and sponsorship of a candidate outside the Supreme Court decision in:
 - (a) P. C. Onuoha v. R. B. K. Okafor, 1983, SNLR pg 244.
 - (b) Dalhatu v. Turaki, 2003 15 NWLR, pt 843 pg 300.
- (b) Whether the Court below was right or not in holding that exhibits, L, L1 & K had no probative value, when the pieces of evidence above were admitted by consent of parties.
- (c) Whether the Court of Appeal as constituted by a three man panel instead of 5 Justices, had jurisdiction to hear and determine the matter before it having regard to fundamental, constitutional and salient legal issues raised in the Appeal."

The 1st respondent formulated the following issues for determination:

- "(1) Whether, having regard to all relevant laws, documentary evidence before the Court and the complaint in the grounds of appeal, it can be said that, the Court below was wrong in reaching a conclusion that, there was non compliance with section 34(2) of the Electoral Act 2006 in the purported substitution of the name of the Plaintiff with that of the Respondent'
- (2) Whether steps taken in breach of a Court order and in purporting to substitute the name of the Plaintiff are not null and void'
- (3) Whether the Plaintiffs case is justiciable. "Learned counsel for the 1st appellant, Dr. Izinyon, SAN, submitted on Issue No. 1 that the Court of Appeal was wrong to have held that it was not a domestic affair of the 3rd respondent having scaled a purported nomination and sponsorship and that section 34(1) and (2) of the Electoral Act, 2006 has now become the modern *deus ex machina*. He cited Onuoha v. Okafor (1983) 14 NSCC 494 and Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310. He dealt with the decisions in the cases at pages 11 to 13 of the brief. He also applied the principles of the two cases at pages 13 to 14 thereof. He argued that section 34(1) can only become applicable and not a domestic affair of the party when the time allowed has elapsed. On Issue No. 2, learned Senior Advocate submitted that the Court of Appeal was wrong in holding that section 34 is justiciable. He contended that the section does not

confer any right of action on any person and therefore not justiciable. The only legal right of a candidate is to sue his political party for breach of its Constitution and nothing else. On Issue No. 3, learned Senior Advocate submitted that the Court of Appeal was wrong in the interpretation of section 34. He contended that the Court of Appeal introduced many extraneous considerations into the statute. Counsel itemized them at pages 26 to 27 of the brief. In construing section 34, learned Senior Advocate invoked the Mischief Rule and submitted that recourse to the rule can only be applicable where the mischief sought to be removed has actually been removed. The Legislature rather than remedying the antecedents left section 34(1) and (2) as a banana peel that is slippery and slimy, counsel contended. On the rules of interpretation, learned Senior Advocate cited *Ogbonna v. Attorney-General of Imo State* (1992) 1 NWLR (Pt. 220) 647 at 24, *IBWA Ltd. v. Imano Ltd.* (1988) 7 SCNJ 326 at 335; *Ugu v. Tabi* (1997) 7 NWLR (Pt. 531) 268, *Ibrahim v. Mohammed* (2003) FWLR (Pt. 156) 902 at 923; *NBN Ltd. v. Weide Co. (Nig) Ltd.* (1996) 8 NWLR (Pt. 465) 150 at 165; *Egbe v. Yusuf* (1992) 6 NWLR (Pt. 245) 1; *Kraus Thompson Org. v. NIPSS* (2004) 17 NWLR (Pt. 901) 44 at 60-61; *Udo v. OHMB* (1993) 7 NWLR (Pt. 304) 139. Relying on Exhibits E, F, K, L and L1, learned counsel submitted that the exhibits satisfied the requirements of section 34(2) of the Electoral Act. He said that it is not the duty of the court to audit the reason for the change and whether it has been verified or not as the party who has made the substitution within the time provided by law is exercising its lawful right unfettered. He cited *Onuoha v. Okafor* (Supra); *Dalhatu v. Turaki* (Supra); *Agwuna v. Attorney-General of Federation* (1995) 5 NWLR (Pt. 396) 441 at 435; *Araka v. Egbue* (2003) 17 NWLR (Pt. 844) 1 at 2; *Ikpenowor v. Ikojunga* (2001) FLWR (Pt. 62) 960 at 1966-1967; *LSDPC v. Adeyemi-Bero* (2005) 8 NWLR (Pt. 927) 330 at 357 to 358. Citing *Green v. Green* (1987) 2 NSCC 1115 at 1143; *INEC v. Musa* (2002) 17 NWLR (Pt. 786) 417; *Sodipo v. Lemmikainen* (1986) 1 NWLR (Pt. 15) 220 At 238; *Udengwu v. Uzuegbu* (2003) 13 NWLR (Pt. 386) 136 at 152; *Adeniji v. Adeniji* (1972) 7 NSCC 187; *Hauma v. Akpe-Ime* (2000) 12 NWLR (Pt. 680) 156; *Obomhense v. Erhahon* (1993) 7 NWLR (Pt. 303) 22. Still on section 34(1) and (2), learned Senior Advocate submitted that the section is not mandatory, as there is no procedure for compliance, and sanction for non-compliance. By way of analogy, learned Senior Advocate called the attention of the court to section 21(8) of the repealed Electoral Act, 2002. He cited *Craies on Legislation* at page 463; *Amokeodo v. IGP* (1999) 6 NWLR (Pt. 607) 467 at 480-481 *Ogigie v. Obiyan* (1997) 10 NWLR (Pt 524) 179 at 190; *Pan Bisbilder Ltd v. First Bank* (2000) FWLR (Pt. 2) 177 at 188; *Rimi v. INEC* (2005) 6 NWLR (Pt. 920) 56 at 80 on the directory nature of section 34. On Issue No. 4, learned Senior Advocate submitted that the Court of Appeal was wrong in holding that Exhibits K, L and L1 had no probative value. He specifically submitted that Exhibit K made on 8th January, 2007 in a suit instituted on 17th January 2007 only against INEC was not made during the pendency of the suit nor made in disobedience of an interim order. He also argued that Exhibits L and L1 did not contravene section 91(3) of the Evidence Act and therefore admissible. As the documents were admitted by consent, they are admissible, counsel contended. He cited *Shittu v. Fashawe* (2005) 14 NWLR (Pt. 946) 671 at 690; *Olukade v. Alade* (1976) 1 All NLR 67; *Ibori v. Agbi* (2004) 6 NWLR (Pt. 868) 78; *Anyebosi v. R. T. Briscoe Nig. Ltd.* (1987) 6 SCNJ 9. Taking the issue of ex parte order of interim injunction, learned Senior Advocate pointed out that at the time the court granted the interim order on 19th January 2007, the 1st appellant and the 3rd respondent were not parties as they only became parties on 6th February, 2007. He relied on *Kotoye v. CBN* (1989) 2 SCNJ 31, *Up Bottling Co. Ltd v. Abiola and Sons Ltd.* (1995) 3 NWLR (Pt. 383) 257 and 276; *Okeke v. Okoji* (2000) 1 NWLR (Pt. 642) 641 at 655. Assuming without conceding that the 1st appellant and 3rd respondent were aware of the interim order, they applied timeously for a discharge of the ex parte order of 19th January, 2007. To learned Senior Advocate, there was therefore no longer alive an interim order to be disobeyed. He cited *Chief Land Officer v. Alor* (1991) 4 NWLR (Pt. 187) 617; *SAP (Nig) v. CBN* (2004) 15 NWLR (Pt. 897) 665 at 688-689; *Ariori v. Eleme* (1983) NSCC 1 at 8; *Oguniayi v. Attorney-General of Rivers State* (1997) 6 NWLR (Pt. 508) 201. Counsel urged the court to examine the content of Exhibits L and L1 and come to the conclusion that the exhibits satisfied the requirement of section 34(1) and (2) of the Act. He urged the court to hold that the name of the 1st respondent was submitted, by error in Exhibit F. He invited the court to do the arithmetical calculation as the documents are before it, documents which were tendered by the 1st respondent and therefore qualify as admission against interest. Learned Senior Advocate urged the court to allow the appeal. Learned Senior Advocate for the 2nd appellant/3rd respondent, Chief Joe-Kyari Gadzama on Issue No. 1, referred to section 34(1) and (2) of the Electoral Act, 2006 and section 23 of the repealed Electoral Act, 2002 and submitted that the bottom line of the matter is that political parties have the freedom to substitute any candidate who has been nominated 60 days before the election while giving reasons for same. He said that the basis for the inclusion of the phrase "cogent and verifiable" perhaps may have been to curb the arbitrariness of political parties in the act of substitution. While so conceding, he contended that the reason for the insertion of the phrase is not to remove the freedom and rights of political parties to substitute candidates and vest same in the courts or the Independent National Electoral Commission, but rather to entrust in the INEC the duty of ensuring that what the party substituting considers as

cogent is satisfactory. He pointed out that section 34(2) of the Act did not specify any criterion for ascertaining whether reason(s) adduced by political parties are cogent or not; and that there is no yardstick for the implementation of the said section because there is no sanction for non-compliance. He also pointed out that there is no specification for redress for a candidate who has been substituted and who claims that his right has been violated. Counsel relied on the mischief rule of interpretation. He cited *Abioye v. Yakubu* (1991) 5 NWLR (Pt. 190) 130; *SPDC v. Isaiah* (1997) 6 NWLR (Pt. 505) 236 and *Omoijahe v. Umoru* (1999) 8 NWLR (Pt. 614) 178 at 188. Learned Senior Advocate submitted that the intention of the law-makers is to ensure that the business of substitution of candidates should be left in the hands of political parties and that it is not the business of the court to hold that a reason given by a political party is not cogent. To Learned Senior Advocate, if the courts do so, it will amount to judicial law making. He cited *Attorney-General of Anambra State v. Attorney-General of the Federation* (2005) 18 NWLR (Pt. 958) 601. Citing *Onuoha v. Okafor* (supra), learned Senior Advocate submitted that section 34 has not taken away the issue of sponsorship and nomination of candidates from political parties. Taking Issue No. 2 learned Senior Advocate submitted that parties are bound by their admissions. He therefore contended that as Exhibits K, L and L1 were admitted by consent of the parties, they are bound by them. Learned Senior Advocate argued that at the time Exhibits L and L1 were made, there was no evidence before the court that they were made in contemplation of a suit. Consequently, section 91 of the Evidence Act does not apply, counsel submitted. He said that the exhibits were not caught by the doctrine of *lis pendens* and there was no disobedience of court order.

On Issue No. 3, learned Senior Advocate argued that five justices instead of three ought to have sat on the appeal before the Court of Appeal. Although he did not give the reason why the panel should have been so constituted, he cited *Sken Consult v. Ukey* (1981) 1 SC 1 at 17 and *Attorney-General of Lagos State v. Hon. Justice Dosunmun* (1989) 2 NWLR (Pt. 111) 552 at 556 and 557. He urged the court to allow the appeal. Learned Senior Advocate for the 1st respondent, Prince L. O. Fagbemi raised a preliminary objection in respect of grounds 4, 8, 9, 10, 11, 13 and 14 on the ground that being grounds of fact or mixed law and fact, leave of court was necessary. As that leave was not sought, the grounds are incompetent and should be struck out. He cited *Erisi v. Idika* (1987) 4 NWLR (Pt. 66) 503. Taking Issues Nos. 1 and 2 together, learned Senior Advocate examined the tenor of section 34 of the Act and submitted that under the canon of interpretation of statute, words of a statute are to be given their natural or ordinary meaning; hence where a word of a statute admits of no ambiguity, literal or natural meaning should be given and preferred. He cited *Adah v. NYSC* (2001) 1 NWLR (Pt. 693) 65 at 79-80. While conceding that in a literal construction of section 34 of the Act, it is beyond doubt that a political party has the right to change any of its candidates at least 60 days to the election, he argued that where the time to substitute has lapsed, a political party cannot as a matter of course or for the fun of it substitute or replace a candidate whose name had earlier on been submitted and who has by virtue acquired a vested right/interest except in case of death. He examined in admirable detail the provision of section 34 from pages 17-24 of his brief. He cited *Ezekwesili v. Onwuagbu* (1998) 3 NWLR (Pt. 541) 217 at 237; *Ojukwu v. Obasanjo* (2004) 12 NWLR (Pt. 886) 169; *Adigun v. Attorney-General of Oyo State* (1987) 1 NWLR (Pt. 53) 678 at 702; *Lipede v. Sonekan* (1995) 1 NWLR (Pt. 374) 668 at 691; *Co-operative and Commerce Bank Nigeria Ltd, v. Attorney-General of Anambra State* 1992) 8 NWLR (Pt. 261) at 556; *Kamba v. Bawa* (2005) 4 NWLR (Pt. 914) 43-at 74-75; *UNTHBM v. Nnoye* (1994) 8 NWLR (Pt. 363) 406; *Nigerian Ports Plc v. Osinuga* (2001) 7 NWLR (Pt. 712) 412 at 430 and *Ejileme v. Okpara* (1998) 9 NWLR (Pt. 567) 587 at 619. He dealt with the importance of history of legislation, particularly section 34(2) of the Act from pages 23 to 33 of the brief. He cited in support of his arguments, *Halsbury's Law of England*, 4th edition, Re Issue Vol. 44(1); *Maxwell on the Interpretation of Statutes*, page 19; *Ugu v. Tabi* (1997) 7 NWLR (Pt. 518) 368 at 380; *CCB (Nig) Plc v. Attorney-General of Anambra State* (1992) 8 NWLR. (Pt. 261) 528 at 556; *Pan Bisbilder (Nig) Ltd, v. FBN Ltd.* {2000} 1 NWLR (Pt. 642) 684 at 693; *Ifezu v. Mbadugha* (1.984) NSCC 314 and *Adefulu v. Okuleja* (1996) 9 NWLR (Pt. 475) 668 at 693. Examining the effect of Exhibits F, K, L, and M, learned Senior Advocate submitted that the Court of Appeal was correct in not giving probative value to them for two reasons, viz: (1) They were made in disobedience of a court order and (2) they were made in anticipation of the litigation thus violating section 91 (3) of the Evidence Act. He dealt with Exhibit L in greater detail and made this submission at page 38 of the brief: "Since all concerned know the consequences of writing or taking action to prejudice a pending case, the consequences of writing Exhibit L and L1 should be visited on the 2nd and 3rd Defendants. The consequences of Exhibits F, K, L and M can be upheld and that Exhibit F remains the only document by which Exhibit K will be judged. Since Exhibit K has been unhelpful, Exhibit L cannot be put to any beneficial use in favour of the 2nd and 3rd Defendants in view of the foregoing submission. Thus Exhibit L, having been made to overreach the case before the court should be declared void." He cited *Kankia v. Maigemu* (2003) 6 NWLR (Pt. 817) 469 at 517 to 518. On whether the name of the 1st respondent has been lawfully

removed or substituted, learned Senior Advocate submitted that the name was wrongly substituted in violation of section 34(2) of the Electoral Act; a provision which is mandatory and must be complied with. He contended that with the acceptance and publication of the name of the 1st respondent as the sponsored candidate of the 3rd respondent, he became vested with a right under the Electoral Act and that right or interest can only be taken away in accordance with the provision of section 34(2) of the Act, as it relates to change of name of a candidate. He cited *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 187 at 216 and *Afolabi v. Governor of Oyo State* (1985) 2 NWLR (Pt. 9) 734. Learned Senior Advocate urged the court to ignore Exhibits K, L and L1 because they did not meet the requirements of section 34(2). He submitted in particular that as Exhibit K did not say that it was changing, substituting or replacing the earlier candidates submitted vide Exhibit F, it is a worthless document. On Exhibit L, learned Senior Advocate submitted that although it said that the 1st respondent's name was submitted in error, the nature of the error was not stated. He referred to the finding of the learned trial Judge to the effect that Exhibit K was silent as "to what it is" and argued that the finding, not being challenged, is deemed admitted. He cited *Okonkwo v. INEC* (2004) 1 NWLR (Pt. 854) 242 at 282; *Oshodi v. Evifunmi* (2000) 13 NWLR (Pt. 684) 298. He also urged the court not to give probative value to Exhibits L and L1 because they were made during the pendency of the proceedings in which the 3rd respondent was involved. On the disobedience of the interim order, learned Senior Advocate submitted that as Exhibits E1 and L7 were made and forwarded to INEC during the pendency of the life span of the order, at least before 15th February 2007, any steps taken before effluxion of time as to the life span of the court order remains incompetent. Counsel urged the court to hold that Exhibits L and L1 have no probative value, having been made during the subsistence of a court order. On Issue No.3, learned Senior Advocate submitted, that the case is justiciable as the court has jurisdiction to hear it. He argued that as the decision of *Onuoha v. Okafor* (supra) was predicated on the repealed Electoral Act, the decision is no longer apposite in the present dispensation and it will be wrong to continue to rely on such a case. Judicial authorities must only be cited if the facts are similar, learned Senior Advocate contended. But counsel in the early parts of his brief invited us to overrule *Onuoha*. I do not know how he can reconcile the two submissions, particularly in the light of his reference to *Adegoke Motors Nig. Ltd, v. Adesanya* (1989) 3 NWLR (Pt. 109) 250 at 265 and 266. Learned Senior Advocate submitted that the 3rd respondent is bound by its Constitution and guidelines in particular Exhibits A and B. He cited sections 221 and 222 of the Constitution which provide for political parties to make their Constitutions and Regulations. Citing paragraph 5 of the Amended Statement of Claim and paragraph 1(i), (ii) and (iii) of the appellant's reply to the Statement of Defence of the 2nd defendant, he submitted that none of the parties denied the fact that primaries which saw the emergence of 1st respondent were conducted under and in compliance with the Constitution and Electoral Guidelines of the party, Exhibits A and B. While conceding that the 3rd respondent can substitute or change a candidate it is sponsoring by virtue of Article 51 of the Electoral Guidelines, such a substitution or change should now comply with section 34(2) of the Electoral Act. On the submission of learned counsel for the 1st appellant that the 1st respondent did not win 50% of the votes at the primaries as provided for under the 3rd respondent's Constitution and Guidelines, learned Senior Advocate urged the court to discountenance that submission on the ground that it is incompetent. He argued that the issue of winning primaries or not is an issue coming up for the first time in this court and 1st appellant ought to have obtained the leave of this court to raise the fresh issue. He cited *Adjo v. State* (1986) 2 NWLR (-Ptr24) 581; *Orogan v. State* (1988) 5 NWLR (Pt 44) 688. He urged the court to dismiss the appeal. Learned Senior Advocate for the 1st respondent in his brief to the 2nd appellant/3rd respondent (Peoples Democratic Party) adopted the brief to of in respect of the 1st appellant, Engineer Charles Ugwu. He submitted in addition that the argument of the 2nd appellant/3rd respondent on the composition of the panel of justices does not arise as no interpretation of any part of the Constitution of the Federal Republic of Nigeria, 1999 was in issue in the Court of Appeal and none was decided. I do not intend to take his arguments on this issue further as learned Senior Advocate for the 2nd appellant/3rd respondent rightly withdrew the issue. Dr. Izinyon, SAN, for 1st appellant, in his reply brief submitted that the hullabaloo in the case by the 1st respondent to overrule the decision in *Onuoha v. Okafor* (supra) is grossly misconceived in law and a non sequitur. He gave ten reasons in the reply brief why the decision should not be overruled. Although it is elementary law that a reply brief only replies to law, the 1st appellant in paragraph 2.0, 2.1 and 2:2 replied to facts, contending that there is nowhere in all the facts where 1st respondent claimed he won the primaries by scoring 50% of the total votes cast in Exhibit E. He cited Exhibit B. On whether the claim of the 1st respondent was essentially declaratory, learned Senior Advocate submitted that the claim was not only declaratory but consists of a positive relief of injunction in paragraph 8. He contended that the argument of learned Senior Advocate for the 1st respondent that where a statute provided for a particular mode of doing a thing no other method must be adopted is not applicable to the case on appeal. If the lawmaker intended a sanction to be imposed for non-compliance it would so say expressly. On the purpose and essence of section 34 of the Act, learned Senior Advocate referred to Issues Nos. 2 and

3 arising from grounds 1,2,3,5,6,7,8,10 and 12.Learned Senior Advocate submitted that the 1st respondent did not properly invoke the mischief rule. He gave four reasons for his submission at page 5 of the reply brief. He examined the cases of Pan Bisbilder Ltd v. First Bank (2000) FWLR {Pt. 2} 177 at 188 and Ifezue v. Mbadugha (1984) NSCC 14. He urged the court once again to allow the appeal.Let me quickly deal with the preliminary issues raised by Prince Fagbemi and Chief Gadzama, learned Senior Advocates. They are two. The one raised by Prince Fagbemi was on grounds of appeal involving mixed law and facts which needed leave of court and that leave was not obtained. The second one by Chief Gadzama was that the panel of the Court of Appeal was not properly constituted. Both counsel applied to withdraw their objections. That is good judgment for which commend them. The objections are therefore struck out.The fulcrum or crux of this appeal is the interpretation of section 34 of the Electoral Act 2006, specifically section 34(2). Let me read the whole section for completeness.

\"(1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection (1) of this Section shall give cogent and verifiable reasons

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this Section.\"

The underlying principle in the interpretation of a statute is that the meaning of the statute or legislation must be collected from the plain and unambiguous expressions or words used therein rather than from any notions which may be entertained as to what is just and expedient. See Ahmed v. Kassim (1958) 3 FSC 51; Lawal v. GB Ollivant (1972) 3 SC 124. The literal construction must be followed unless this would lead to absurdity and inconsistency with the provisions of the statute as a whole. See Onasile v. Idowu (1961) 1 All NLR 313. This is because it is the duty of the Judge, to construe the words of a statute and give those words their appropriate meaning and effect. See Adejumo v. The Military Governor of Lagos State (1972) 3 SC 124. It is certainly not the duty of a Judge to interpret a statute to avoid its consequences. See Anya v. Henshaw (1972) 5 SC 87. The consequences of a statute are those of the Legislature; not the Judge. A Judge who regiments himself to the consequences of a statute is moving outside his domain of statutory interpretation. He has by that conduct engaged himself in morality which may be against the tenor of the statute and therefore not within his judicial power.It is only when the literal meaning result in ambiguity or injustice that a Judge may seek internal aid within the body of the statute itself or external aid from statutes in pari materia in order to resolve the ambiguity or avoid doing injustice. See Mobil v. FBIR (1977) 3 SC 53. The above is an exception to the rule rather than the rule. In the construction of a statute, the primary concern of a Judge is the attainment of the intention of the Legislature. If the language used by the Legislature is clear and explicit, the Judge must give effect to it because in such a situation, the words of the statute speak the intention of the Legislature.See Ojokolobo v. Alamu (1987) 3 NWLR (Pt 61) 377.The words in a statute are primarily used in their ordinary grammatical meaning or common or popular sense and generally as used as they would have been ordinarily understood. See Garba v. FCSC (1988) 1 NWLR (Pt 71)449. In construing a statute, the Judge must pay particular attention to the grammar or syntax in or underlying the construction. This does not make the Judge or turn him as a grammarian. By his professional training and his regular application of that training to the construction of statutes, he becomes an expert. His expertise coupled with the fact that as a Judge, words are his tools, his professional ability to construe the grammar or syntax in a statute cannot be in doubt.I now take the Mischief Rule. This is important because the Court of Appeal examined part of the rule at page 680 of the Record:\\"Interpretation of statute is an indispensable aspect of adjudication. It is not unusual to be guided or persuaded by historical facts culminating into promulgation of certain laws in their interpretation for the comprehension of their subject matter. This has followed the footsteps of the legislators who in their role as law makers have been guided by history of past events in promulgating laws to correct the mischief meant to be cured by such legislation.\"\\Reacting to the invocation of the\place of history in the Mischief Rule, Dr. Izinyon, SAN, said on page 28 of his brief:\\"It is submitted that recourse to the historical Rule can only be applicable where the mischief sought to be removed has actually been removed. The Legislature rather than remedying the antecedents left section 34(1) (2) of the Act as a banana peel that is slippery and slimy.\"While I do not want to go into the statement whether section 34(1) (2) was left as a banana peel that is slippery and slimy, I should take for ease of understanding the Mischief Rule, the history of the rule and its content. The Rule was formulated by the Barons of the Exchequer in 1584 in Heydon\'s case, 3 Co. Rep. 7 at 76 as follows:\\"... that for the sure and true interpretation of all statutes in general (be they penal or beneficial restrictive or enlarging of the common law) four things are to be discerned and considered: (1st) What was the common law before the making of the Act. (2nd) What was the mischief and defect for which the common law did not provide. (3rd) What remedy the Parliament had resolved and appointed to cure the disease of the commonwealth. (4th) The true reason of the remedy, and then the office of all the Judges is always to make such construction as shall

suppress the mischief and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief and prop private commodo, and to add force and life to the cure and remedy, according to the true intention of the makers of the Act, pro bono publico." It is clear from the above that to properly ascertain the mischief aimed at by a statute it is sometimes helpful to look into the history of the statute. Therefore in construing a statutory provision which is ambiguous, preference should be given to the view which would not lead to public mischief. See *Ifezuo vs Madugha* (1984) 1 SCNLR 427. One of the most useful guidelines to interpretation is the mischief rule which considers the state of the law before the enactment, the defect which the statute sets out to remedy and/or prevent, the remedy adopted by the Legislature to cure the mischief and the true reason of or behind the remedy. The duty of a Judge therefore is to adopt such interpretation that will enable the suppression of the mischief and to promote the remedy within the intent or intention of the statute. See *Savanah Bank vs Ajilo* (1989) 1 NWLR (Pt. 97) 305. To arrive at a reasonable construction of a statute, the Judge is entitled, following the Rule in *Heydon's case*, to consider how the law stood when the statute was passed, what the mischief was for which the old law did not provide, and the remedy which the new law has provided to cure that mischief. See *Wilson v. Attorney -General of Bendel State* (1985) 1 NWLR (Pt. 17) 572. With the above background of the law, I shall take the submissions of counsel and construe section 34(2) of the Electoral Act, 2006. The submissions are three: non-justiciability of the subsection, construction of the word "shall" in the subsection as "may" and whether section 34 of the Act is a replay of section 23 of the Electoral Act of 2002. I will take the above seriatim. Dr. Izinyon submitted that by the phraseology of section 34 of the Act, it does not confer any right of action on any person. He contended that in order to hold a piece of section of a statute justiciable, this court has had cause to examine the statement and the reliefs. By the claim and reliefs, the issues are not justiciable, learned Senior Advocate submitted. Chief Gadzama submitted that the intention of the law makers is to ensure that the business of substitution of candidates should be left in the hands of political parties and that the courts have no business to hold that a reason given by a political party is not cogent. Although Chief Gadzama did not use the expression "not justiciable" as Dr. Izinyon, he says the same thing. Are they right? I think not. Draftsmen are not miserly with their language of ousting the jurisdiction of the courts when they so wish or intend. They state their mind or intention clearly in order to avoid any speculation or conjecture about their intention. Let me give some examples from the 1999 Constitution. Section 6(6)(C) and (d), 143(10), 188(10) and 308 clearly provide for ouster clauses. Because ouster clauses are antithetical to the rule of law, courts of law can only surrender to them if they are provided in a statute. And because of their posture of enmity, draftsmen clearly provide for them in a statute and therefore never subject to subtle or clever interpretation. If the National Assembly intended that jurisdiction of the courts should be ousted, in respect of section 34(2) of the Electoral Act, 2006 there should have been a clear ouster clause. In view of the fact that the subsection does not contain ouster clause this court cannot read into the provision such a clause. That will be interfering with the function of the Legislature. While I agree, entirely with learned Senior Advocates that the duty is on the Independent National Electoral Commission to interpret what is cogent and verifiable, I do not agree with them that the tennis ball ends at the court of the INEC. In my humble view, the tennis ball moves from the court of INEC to the court of law at the instance of an aggrieved party, who is not satisfied with the interpretation of what is cogent and verifiable. And that takes me to the two expressions. What do they mean? First, the word cogent. Counsel for the 1st respondent lifted the definition of cogent from Chambers Dictionary, New Edition (1990) as "powerful; convincing". He also lifted the definition of the word from Oxford Advanced Learners Dictionary of Current English 6th edition, as "strongly and clearly expressed in a way that influences what people believe". I agree with the above definitions. Cogent, usually used in the context of reasons or arguments, tends, to persuade or to produce belief. It must convince the person it is addressed. The reason or argument must be satisfactory to the person it is addressed. Where INEC is convinced or satisfied with the cogency of the reason, section 6 of the Constitution vests in the Judiciary the power to interpret the subsection at the instance of a party aggrieved with the interpretation of INEC. That, in my view, is the basis or essence of the introductory stuff in paragraphs 1.1, 1.2; 1.3 and 1.4 of the 1st respondent's brief. The role of the Judiciary, very aptly stated in the brief, cannot be taken away in the absence of an ouster clause. The second word is "verifiable". Again, counsel for the 1st respondent lifted the meaning of the word from The Oxford Advanced Learner's Dictionary as "To check that something is true or accurate... To show or confirm". I accept the definition. The verb "verify", a variant of the adjective "verifiable" means to make certain that a fact or statement or a state of things as stated is correct or true. It also conveys an element of "confirm". This therefore means that the noun "verification" has good company with the noun confirmation. If an aggrieved party is not satisfied with the exercise of verification by the 2nd respondent, he can seek redress in a court of law. It is the argument of Dr. Izinyon that section 34(2) is directory and not mandatory. He specifically submitted that the use of the word "shall" in the absence of any sanction cannot be said to be mandatory, especially as to how it should be enforced. Learned Senior Advocate did not call the attention of the court to any

authority to the effect that in the absence of a specific sanction in a section, the word "shall" must be interpreted as directory. I know of no authority too. And when I say this, I do not take what counsel quoted in paragraph 6.30 as authority for his proposal because it is not apt. In the interpretation of statute, the word "shall" has various meanings. It may be used as implying futurity or implying a mandate or as contended by Dr. Izinyon, direction or giving permission. The word "shall" when used in a statutory provision imports that a thing must be done and that when the negative phrase "shall not" is used, it implies that something must not be done. It is a form of a command or mandate. See *Nigeria LNG Limited v. African Development Insurance Co. Ltd.* (1995) 8 NWLR (Pt. 416) 677. Generally, when the word "shall" is used in a statute, it is not permissive. It is mandatory. See *Col. Kalie Rtd. V. Alhaji Aliero* (1999) 4 NWLR (Pt. 597) 139. The word "shall" in its ordinary meaning is a word of command which is normally given a compulsory meaning because it is intended to denote obligation. As contended by Dr. Izinyon, it is sometimes intended to be directory only and in that case it is equivalent to "may" and will be construed as being merely permissive. See *Amokeodo v. Inspector-General of Police* (1999) 6 NWLR (Pt. 607) 467. It is my firm view that the word "shall" in section 34(2) is clearly mandatory and peremptory and not directory or permissive. In other words, by the subsection the 3rd respondent, must in its application to the 2nd respondent, give cogent and verifiable reasons for the change of candidate. Where the 3rd respondent fails to give any reasons or gives reasons which are not cogent and verifiable, an aggrieved party has the legal right to seek redress in a competent court of law by virtue or in virtue of section 6 of the Constitution. This is what the 1st respondent did and I cannot fault him for doing so. Learned Senior Advocate for the 2nd appellant/3rd respondent called this "judicial law making". According to counsel, "this is so because section 34 of the Act did not expressly provide for the duty of the court to adjudicate on whether a reason advanced by a political party is cogent or not. He cited *Attorney-General Adamawa State v. Attorney-General of the Federation* (2005) 18 NWLR (Pt. 958) 601. What is the meaning of the expression, the Judge making the law or what learned Senior Advocate called judicial law making? A Judge is accused of making the law where there is no statute or statutory provision on the issue and this includes for all purposes the Constitution. This is because the only constitutional function of the Judge is, put in the conservative latinism, *judicium est quasi juris dictum*, meaning judgment, as it were, is a declaration of law. In other words, a law must be in existence before a Judge interprets it. If there is no law on an issue, a Judge has nothing to interpret and if he goes to interpret where there is no law, he will be deemed to have made effort to hold the air in his hands, which is physically impossible. It is in such a situation that a Judge is accused of making the law. In the instant appeal, section 34 is there in the 2006 statute for a Judge to interpret and that is the primary constitutional function of a Judge, a function that cannot be denied him. That will make nonsense of section 6 of the Constitution. The above apart, I do not think, the case learned Senior Advocate cited is an authority for the legal proposition he made. The case in my humble view, dealt with what this court called judicial legislation or legislative judgment; which is diametrical to the theory of judicial law making. The difference is that in *Attorney-General Adamawa State* this court was concerned with the Legislature interfering with the functions of the Judiciary. I think the court was concerned with the construction of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act, 2004. I should now resort to the mischief rule in the construction of section 34(2) of the Electoral Act, 2006. Following the mischief rule takes me back to history of about four years. The bus stop of the four years is the repealed Electoral Act of 2002. I think counsel referred to section 23 of the repealed Act. The section reads: "Any political party which wishes to change any of its candidates for any election under this Act may signify its intention in writing to the Commission not later than 30 days to the date of Election." Learned Senior Advocate for the 2nd appellant/ 3rd respondent submitted at paragraph 4.02 of his brief that "section 23 of the 2002 Electoral Act is in pari materia with section 34 of the 2006 Act and that the only difference is that the phrase cogent and verifiable reason" was not contained in the 2002 Act". With respect, I do not agree with him. There are other differences apart from the phrase "cogent and verifiable reason". The first major difference is that section 23 is one single section without subsections. Section 34 is one section consisting of three subsections, Second, while section 23 provided for thirty days for political party to change a candidate, section 34(1) provides for sixty days. The third difference is that section 23 did not provide for the situation or position in section 34(2). Fourth, so too the situation or position in section 34(3) which provides for substitution or replacement in the event of death outside the sixty days required in section 34(1). Learned Senior Advocate is with me in the third difference. As a matter of fact, he brought it out clearly in his brief. I know as a matter of fact that both the 2002 and the 2006 Acts were enacted by the National Assembly; one by the National Assembly that existed between 1999 and 2002 and the other by the current National Assembly. Why did the current National Assembly change the permissive "may" in the 2002 Act to the mandatory "shall" in the 2006 Act if the legislative body did not intend any difference? This question is relevant in the light of the submission of Dr. Izinyon. I think this is the application of the mischief rule. Chief Gadzama, SAN, submitted that whether such non-inclusion was intended or not, the bottom line is that political parties have the freedom

to substitute any candidate who has been nominated not later than sixty days to the election while giving reasons for same. I entirely agree with him, subject however to the rider that the reasons given must be cogent and verifiable by a court of law at the instance of an aggrieved party. I think I have flogged this point over and over. Chief Gadzama, SAN, correctly, in my view, opined that the basis for the inclusion of the phrase "cogent and verifiable" perhaps may have been to curb the arbitrariness of political parties in the act of substitution. Prince Fagbemi, put it more strongly when he said in paragraph 1.6 of his brief that "by introducing section 34 of the Electoral Act 2006, the Legislature intends to curtail the rascality of the past which led to the decisions of superior courts in cases". Counsel cited six cases including Onuoha v. Okafor (supra) and Dalhatu v. Turaki (supra). If the intention of section 34(2), to use the correct language of Chief Gadzama, is "to curb the arbitrariness of political parties in the act of substitution", could the intention of the National Assembly in providing for section 34(2) merely to enable the "political parties have the freedom to substitute any candidate who has been nominated not later than 60 days before the election" and for 2nd respondent to be the alpha and omega of deciding on the subsection without the court playing its constitutional role of an arbiter in the event grievance? That is in essence the argument of Chief Gadzama. That is also materially the argument of Dr. Izinyon, although he is not as dogmatic as Chief Gadzama in respect of the freedom of the 3rd respondent to substitute a candidate. Considering the fact that the word freedom in the context means, not being under control of any person or thing, and power or right to do, say or do whatever one wants to, there is every justification to disagree with Chief Gadzama. By the expression, a political party and indeed the 3rd respondent has the freedom of the air to change a candidate and in so far as it does so within the 60 days limit, the party cannot be questioned. But is that the freedom learned Senior Advocate has in mind when he added the words "giving reasons for same" in paragraph 4.03. I do not think so. Of course, it can so mean if Chief Gadzama is of the view that the reasons the political party will give must be accepted by the 2nd respondent come rain, come sunshine. In such a situation, the reasons could be merely cosmetic. Is that the intention of section 34(2)? No. The subsection is much more than that. It is not only an affair between a political party and INEC, if a person is aggrieved by the decision of INEC. And that is where the courts come in and that was why this matter was commenced by the 1st respondent in a court of law. Were any reasons given by the 3rd respondent for substituting the name of the 1st respondent for the 1st appellant as required by section 34(2) of the Act? I do not think both Dr. Izinyon and Chief Gadzama gave a correct answer to this question. But Prince Fagbemi did. Dr. Izinyon submitted that the name of the 1st respondent was submitted in error. Chief Gadzama, if I remember rightly, in his oral address, gave a few reasons for the substitution. I think he tried the court on the generic reason of "error" too, like Dr. Izinyon. These are facts which ought to have been set out in the case of the defendants in the trial court. As facts they belong to the defendants and counsel qua advocates cannot supply them even at the trial court not to talk of the Supreme Court. The reasons given by Chief Gadzama in his oral submission should have made so much difference, if not all the difference in this appeal, if they emanated from the head and mouth of the defendants. Assuming that the 3rd respondent committed an error in submitting the name of the 1st respondent, what was the error? An error is a mistake. It is the state or quality of being wrong or mistaken. Although error is a more formal word in usage than mistake, they are synonyms. And so, I ask what was the error or mistake of the 3rd respondent? And here, I go to the submission of Dr. Izinyon that the 1st respondent scored 2,061 votes which is 37.5%. In his words: "Little wonder the 3rd respondent reiterated its stand that his name was substituted in error." He submitted as follows in paragraph 2.3 of page 5 of his brief: "He only scored the highest votes of 2,061 which was short of 50% of the total votes of 7,504 required to win the primaries, as provided for in paragraph 21(n) of Exhibit B at page 243 of the record." And so the error for the substitution, according to Dr. Izinyon, was the failure of the 1st respondent to score 50%? Did the 1st appellant score 50% to deserve the substitution? Dr. Izinyon did not extend his argument to the 1st appellant. I expected him to do so. It is possible he forgot to do so. In order to fully appreciate the score at the primaries, I shall reproduce verbatim ad literatim the scores of the candidates in Exhibit E.

Peoples Democratic Party Nominated Gubernatorial Aspirants

S/No

Name

Total No. of votes scored

1.

Sen. Ifeanyi Araraume

2,061

2.

Chief. Hope Uzodinma

1,649

3.

Chief Tony Ezenna

1,388

4.

Steve Ahaneku

31

5.

Sarn Nwandu

6

6.

Humphrey Anumudu

51

7.

Dr. Mrs. Kema Chikwe

572

8.

Jerry Chukwueke

201

9.

Festus Odimegwu

282

10.

B. C. Nwosu

0

11.

J. O. Nzeakor

21

12.

N. N. Obasi

12

13.

E. U. Ojinere

50

14.

Stanford Onyirinba

19

15.

E. Udeoqu

36

16.
Charles Ugwu
36
17.
Tony Anyanwu
2
18.
Eze Enwereji
0
19.
Alex Mbakwe
10
20.
Ike C. Ibe
973
21.
K. K. Nwaagwu
40
22.
E. Nwajimba
64

It is clear from Exhibit E that the 1st appellant in serial No.16 who scored 36 votes along with E. Udeogu was substituted for 1st respondent who scored highest and total votes of 2,061. As it is, the "error" punctured serial Nos. 2, 3, 6, 7, 8, 9, 13, 15, 20, 21 and 22 and inflated serial No. 16. It is this type of thing that makes the Hausaman exclaim, Haba! For the purpose of section 34(2) of the Act, it does not matter who is substituted for whom, in so far as the reasons for the substitution are cogent and verifiable. If a political party says that they believe a candidate cannot win an election even if he claims to win a primary, what kind of verification can INEC make, Dr. Izinyon asked rhetorically' Citing *Onuoha y. Okafor* (supra) and *Daihatu v. Turaki* (supra), learned counsel submitted that it is the political party that best knows which candidate can win its election and not the court. Chief Gadzama made similar submission that the intention of the law makers is to ensure that the business of substitution of candidates should be left in the hands of political parties (and) thus would ensure that credible candidates who could fly the flags of their respective parties to victory, are presented for election. This logic, with respect, clearly faults the underlying factor or need for primaries, particularly in the context of section 34(2) of the Act. It makes nonsense of Exhibit B, the Electoral Guidelines for Primary Elections 2006 for the PDP, the 3rd respondent. Why should the 3rd respondent produce a document of 32 pages in the name of the National Chairman and National Secretary of the Party and not follow it' Why should Article 17 of the Constitution of the Peoples Democratic Party (Exhibit A) provide for primaries, if the party will not follow it' This beats me hollow and hands down. Learned Senior Advocate for the 1st appellant quoted profusely from Craies on Legislation on mandatory and directory statutes. I should examine some of the extracts here. He quoted from page 469 of the book: "The nature of the distinction was discussed by Millett L.J. In *Fetch v. Guv Inspector of Taxes*. The difficulty arises from the common practice of the legislature of stating that something 'shall' be done (which means it 'must' be done) without stating what are to be consequences it is not done. The court has dealt with the problem by devising a distinction between those requirements which are said to be 'mandatory' (or imperative or obligatory) and those which are said to be merely directory (a curious use of the word which in this context is taken as equivalent to permissive). Where a requirement is mandatory, it must be strictly complied with; failure to comply invalidates everything that follows. Where it is merely directory, it should still be complied with, and there may be sanctions for disobedience, but failure to

comply does not invalidate what follows. I do not think the above supports the case of the 1st appellant. It is clear from the above that whether it is mandatory or directory, the person must comply with the requirement, and sanctions for disobedience will follow. The only difference is that in the case of a directory requirement, failure to comply does not invalidate what follows, as opposed to mandatory requirement where failure to comply invalidates everything that follows. I have held that in the light of the word "shall" in section 34(2) of the Act, the subsection is mandatory and the 3rd respondent was under a legal duty to give cogent and verifiable reasons. Both Dr. Izinyon and Chief Gadzama submitted that as section 34(2) did not contain sanction of penalty for non-compliance, it is unenforceable. Dr. Izinyon said that the subsection is at best a moral admonition. In the case of *Fetch v. Guvnor* cited at page 41 of the 1st appellant's brief, Millett, LJ, seems to have made a contrary statement. It is that the Legislature may state that something shall be done which means it must be done, without stating what are to be the consequences if it is not done, Millett, LJ, did not say that if the Legislature does not provide for the consequences if the thing is not done, then it is unenforceable. Dr. Izinyon quoted the following from the book at page 42 of the 1st appellant's brief: "The principle upon which this question should be decided are well established. The court must attempt to discern the legislative intention. In *Liverpool Borough Bank vs Turner*, Lord Campbell L.C. said: "No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed." That is what I have done. I have considered section 23 of the 2002 repealed Act which gave birth to section 34(2) of the 2006 Act. I have carefully examined the intention of the National Assembly by providing for section 34(2) and it is my view that the intention is to make the provision mandatory. It is an attempt on the part, of the National Assembly to tighten the provision of section 23 of the repealed Act.

Still at page 42 of the brief, Dr. Izinyon quoted as follows:

I believe, as far as any rule is concerned, you cannot safely go further than in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory, I have also done that. Taking section 34(2) in the context of primaries in particular, I have no doubt in my mind that the subsection is not only important but has an imperative content; considering the general object intended to be secured by the 2006 Act. It is certainly not the intention of the Act to gamble with an important aspect of the electoral process, such as primaries in the hands of a political party to dictate the pace in anyway it likes, without any corresponding exercise of due process on the part of an aggrieved person. I have taken the pains to deal with the quotations relied upon by Dr. Izinyon in *Craies on Legislation* to make the point that they are not really in favour of his client's case. So much of the extracts are against the case of his client. Dr. Izinyon and Chief Gadzama submitted several times that lack of sanction in section 34(2) of the Electoral Act makes the subsection non-justiciable. With respect, it is not my understanding that it is the draftsman's trade to provide for sanction in every section or subsection of a statute. The draftsman can adopt a number of ways. He could provide a sanction in a section. He could do so in a combination or agglomeration of sections (and in most cases, he adopts this method in the concluding section of a part where the statute is arranged in parts). He could also do so in the penultimate section of the statute, leaving the last section to short title and extent of application of the statute. I should not sound "final or dogmatic here. So much depends upon the nature of the statute and the draftsman's style. And considering the fact that style is personal to the owner, there cannot be a dogmatic method. The most important point here is that absence of a particular sanction in a particular section, with the greatest respect, cannot be legal basis for contending that the section is declaratory and not justiciable. If a section of a statute contains the mandatory "shall" and it is so construed by the court, then the consequence of not complying with the provision follows automatically. I do not think I sound clear. Perhaps I will be clearer by taking section 34(2). The subsection provides that there must be cogent and verifiable reasons for the substitution on the part of the 3rd respondent. This places a burden on the 3rd respondent, not only to provide reasons but such reasons must be cogent and verifiable. If no reasons are given, as in this case; not to talk of the cogency, and verifiability of the reasons, then the sanction that follows or better that flows automatically is that the subsection was not complied with and therefore interpreted against the 3rd respondent in the way I have done in this judgment. It is as simple as that. It does not need all the jurisprudence of construction of statute. I know of no canon of statutory interpretation which foists on a draftsman a drafting duty to provide for sanction in every section of a statute. That is quite a new one to me and I am not prepared to learn it. If that is what *Craies on Legislation* is saying, I will never agree with him. No, not even Maxwell, the greatest world authority on Interpretation of statutes. I am not however sure

that Craies is as superlative as Dr. Izinyon on the issue. I do not think so. It is the submission of Dr. Izinyon and Chief Gatzama that the substitution of candidates is an internal affair of the 3rd respondent and therefore not justiciable under section 34(2) of the Act. Let me read. Article 2 of the Constitution of the Peoples Democratic Party, the 3rd respondent, to make a point that has occurred to me: "Subject to the provisions of the Constitution of the Federal Republic of Nigeria, this Constitution shall be supreme and its provisions shall have binding force on all members and organs of the party." By Article 2, the supremacy of the 3rd respondent is subject to the supremacy of the Constitution. This is consistent with the provisions of section 1 of the Constitution of the Federal Republic of Nigeria, 1999. Right of access to court is a constitutional right which is guaranteed in the Constitution and no law, including that of a political party, can subtract from or derogate from it or deny any person of it. Such a law will be declared a nullity by virtue of section 1 (3) of the Constitution. Fortunately, Article 2 of the Constitution of 3rd respondent is not one of such laws. On the contrary, it vindicates and fortifies section 1(3) of the Constitution and that is good, very good indeed. The 3rd respondent knows clearly the constitutional position. That takes me to the two cases cited by counsel. They are Onuoha vs. Okafor (supra) and Dalhatu v. Turaki (supra). While Dr. Izinyon and Chief Gatzama urged this court to follow the decisions in the two cases, Prince Fagbemi urged the court to overrule the decisions. With the greatest respect, none of the submissions is correct. I will neither uphold the decisions of this court nor overrule them in this appeal. It is elementary law that a case is decided on its facts. No case is decided outside its factual milieu. The situation in the two cases is not similar to the situation in this case. While Onuoha was decided on an earlier Electoral Act, Dalhatu was decided on the Electoral Act of 2002. What is involved in this appeal is the Electoral Act, 2006. The provision of section 34(2) of the 2006 Act was not in any of the previous Acts and that makes the whole big difference. Apart from the provision of section 34(2) of the Electoral Act, Article 2 of the Constitution of the 3rd respondent is yet another reason why this court cannot follow its earlier decisions in Onuoha vs Okafor (supra) and Dalhatu vs. Turaki (supra). Onuoha involved the political party of the NPP. Dalhatu involved the political party of ANPP. Both cases did not involve the construction of the equivalent of Article 2 or its prototype of the 3rd respondent, Peoples Democratic Party. In both Onuoha and Dalhatu, this court held that the exercise of the right of a political party to nominate or sponsor a candidate for an election is the domestic affair of the party guided by its constitution. In tune with Onuoha and Dalhatu, I am guided by Article 2 of the Constitution of the 3rd respondent and the guidance has fortified my position on the justiciability of section 34(2) of the Electoral Act. If there was a similar provision in Onuoha and Dalhatu, this court might have come to a different decision. Cases are decided on their peculiar facts in the light of the enabling law. In both Onuoha and Dalhatu, there was no section 34(2) of the Electoral Act, 2006. There was also no Article 2 of the Constitution of the 3rd respondent. It appears that I am repeating myself. Such a repetition is good for emphasis, and I like it. At the time the two cases were decided, they were correctly decided on the appropriate Electoral Acts. Accordingly, I do not see my way clear in overruling them because there is nothing to overrule. This court could overrule its previous decision which was given wrongly or per incuriam. I will not therefore obey Prince Fagbemi. Similarly, I cannot follow the two cases because they are clearly different from the situation in this appeal. And that is my reason for disobeying Dr. Izinyon and Chief Gatzama. This court can only follow its previous decision which is decided on generally similar facts. I want to say very loud and clear and without equivocation that this case is completely different from the two cases and there is no legal basis for the submissions of the three Senior Advocates. They will be kept in the law reports for application in appropriate cases. The Court of Appeal was correct when it said at page 680 of the Record; "Is section 34 of the Electoral Act 2006 justiciable or non-justiciable? My answer is that it is justiciable. There must be a check on whether the laid down procedure is followed in the process of substitution of a candidate, at the instance of the person adversely affected. INEC and the party who both have roles to play under that section cannot continue to be a judge in their own case. Section 34(2) must be under judicial surveillance." Both Dr. Izinyon and Chief Gatzama by their submissions have downgraded section 34(2) to the level of a toothless dog which can only bark but cannot bite because of lack of teeth. With respect, I am not with them. Contrary to their interpretation, the word "shall" in section 34(2) is mandatory and therefore peremptory in content. Mr. Bala, counsel for the 1st respondent in the Court of Appeal, captured the real essence of section 34(2) when he submitted in that court that the subsection injects a new provision fundamentally different, legally and politically. It asks for cogent and verifiable reasons before any substitution can be effected so as to curb the lawlessness that marked the substitution of candidate in the 2003 elections. Let me take Exhibits K, L and L1 in the light of section 91(3) of the Evidence Act. The subsection provides: "Nothing in this section shall render admissible by a person interested at a time when proceedings were ending or anticipated involving a dispute as to any fact which the statement might tend to establish." Learned Senior Advocate for the 1st appellant said that Exhibit K was made on 18/1/07 and the suit was filed on 17/1/2007 when the 1st appellant and the 3rd respondent were not parties. Exhibit K forwarded to the 2nd respondent the names of 1st appellant and Col. Lambert O. Iheanacho (Rtd) as governorship candidate and Deputy respectively, for Imo State. The

defence presented by the 1st appellant, in my view, is neither here nor there. The fact that the 1st appellant and the 3rd respondent were not parties at the material time does not make section 91(3) of the Evidence Act inapplicable. What the subsection provides is that the person must be interested in the suit at the time proceedings were pending or anticipated. It is clear from the reliefs sought by the 1st respondent that the 3rd respondent was interested or had an interest in the proceedings. Considering the fact that Exhibit K was made a day after the filing of the suit, the exhibit is caught by the provision of section 91 (3) of the Evidence Act as it was made by the National Chairman and National Secretary of the 3rd respondent. I cannot see any interest more than this. See *Apena v. Aiyetobi* (1989) 1 NWLR (Pt. 95) 85; *Gbadamosi vs. Kabo Travels Ltd*(2000) 8 NWLR (Pt. 668) 243; *Kankia v. Maigemu* (2003) 6 NWLR (Pt. 817) 496, Exhibit L was made on 2/2/07 by the 3rd respondent under the signature of National Chairman and the National Secretary. It reaffirmed the position in Exhibit K, that, is the names of the 1st appellant and Col. Lambert O. Iheanacho as the Governorship and Deputy Governorship candidates of 3rd respondent. Exhibit L moved further than Exhibit K by indicating that the 1st appellant was substituted for the 1st respondent. Exhibit L1 is another reconfirmation of the candidature of 1st appellant and Col. Lambert O. Iheanacho. Exhibit L1 moved a bit further than both Exhibits K and L by indicating that the 1st respondent's name was substituted in error. The nature of the error was not indicated in the exhibit. While Exhibit L referred to a letter dated 18/1/07. It should be noted that Exhibit L1 cancelled February and wrote 'Jan' in long hand . I seem to see confusion in the 18/1/07 and 18/2/07 dates. I will not take the issue because it is not important.

What is important is that both Exhibits L and L1 were made on the same date of 2/2/07. By the admission of the 1st appellant that the suit was filed on 17/1/07 the two exhibits are clearly caught by section 91(3) of the Evidence Act, and I so hold. Let me look at the other side of the coin. 1st appellant said at page 56 of his brief that the 3rd respondent and himself became parties on 6/2/07. That is only four days after Exhibits L and L1 were made. In either way, section 91 (3) is violated. The Court of Appeal, considering the exhibits in the context of section 91 (3) of the Evidence Act, said at page 685 of the Record: "By virtue of section 91(3) of the Evidence Act any document made in anticipation of a suit is inadmissible particularly Exhs. L and L1 in this appeal." I cannot fault the above statement of the Court of Appeal. The Court is correct. Learned Senior Advocate cited the case of *Ibori v. Agbi* (2004) 6 NWLR (Pt. 868) 78 to the effect that once a document is admitted by consent, none of the parties will be allowed to recile from it as they are estopped from doing so. I am not quite comfortable with that conclusion because it does not fall in line with previous decisions of this court. Uwais, JSC (as he then was) made a distinction between a class of evidence which is absolutely inadmissible by virtue of some statutory provisions and another class which is made admissible under certain conditions. That was in the case of *Anyebosi v. R. T. Briscoe Nig. Ltd.* (1987) 6 SCNJ.9. Uwais, JSC rightly, in my view, held that in the former class the evidence cannot be acted upon whether it was admitted by counsel of the parties. In my view, this case clearly comes within the first class and the statutory provision is section 91(3). After all, section 91(3) is in absolute terms with the mandatory 'shall' and therefore agrees with what Uwais, JSC(as he then was) said in *Anyebosi*. I should thank Dr. Izinyon for citing the authority. That is good advocacy. Parties, by sheer collusion and for their mutually anticipated benefit, cannot give consent to the admission of a document which the Evidence Act clearly provides is inadmissible. As admission of such evidence will clearly run counter or against the provision of the Evidence Act, the court will ignore the so called consent and rule that the evidence is inadmissible. A general statement as in *Ibori* cannot, with respect, be correct. The doctrine of estoppel cannot work in favour of parties who mutually give their consent or agree to an illegality. Estoppel, an equitable principle, cannot condone illegality. It rather aids justice and fair play. I think I can stop here. I need not go into the aspect of obedience or disobedience of the order of interim injunction. It was not raised as an issue in any of the briefs and I do not know why Dr. Izinyon took it up in his brief. In sum, this appeal has no merit. It therefore fails and is dismissed. I make the following orders:

(1) I declare that there are no cogent and verifiable reasons for the 2nd and 3rd respondents to change or entertain the change of the name of the 1st respondent as candidate of the 3rd respondent for the April 14, 2007 State Governorship Election in Imo State.

(2) I hereby grant an order of injunction restraining the 2nd and 3rd respondents from changing or substituting the name of the 1st respondent with that of the 1st appellant or any other person as 3rd respondent's candidate for the April 14, 2007 Imo State Governorship Election.

I award N10,000.00 costs to the 1st respondent payable by the 1st appellant.

Reasons for Judgement delivered by

George Adesola Oguntade, J.S.C

The respondent, who was the plaintiff at the Federal High Court (and he is hereinafter referred to as the plaintiff) filed a

suit against the 2nd respondent (i.e.) INEC, as the defendant claiming the following reliefs in his amended Statement of Claim

1. A declaration that the option of changing or substituting a candidate whose name is already submitted to INEC by a political Party is only available to political party and/or the Independent National Electoral Commission (INEC) under the Electoral Act 2006, only (when) the candidate is disqualified by a court order (sic).

2. A declaration that under section 32(5) of the Electoral Act 2006 it is only a court of law by an order that can disqualify a duly nominated candidate of a political party whose name particulars (sic) have been published in accordance with section 32(3) of the Electoral Act

3. A declaration that under the Electoral Act 2006, Independent National Electoral Commission (INEC) had no power to screen, verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the plaintiff or any candidate to the Independent National Electoral Commission (INEC).

4. A declaration that the only way Independent National Electoral Commission (INEC) disqualify, change or substitute a duly nominated candidate of a political party is by court order.

5. A declaration that under section 32(5) of the Electoral Act, 2006, it is only a court of law, after a law suit, that a candidate can be disqualified and it is only after a candidate is disqualified by a court order that the Independent National Electoral Commission (INEC) can change or substitute a duly nominated candidate;

6. A declaration that there are no cogent and verifiable reasons for the defendant to change or entertain the change of the name of the plaintiff as the candidate of the Peoples Democratic Party (PDP) for the April 14, 2007 Governorship Election in Imo State.

7. A declaration that it is unconstitutional, illegal and unlawful for the defendant to change the name of the plaintiff as the governorship candidate of Peoples Democratic Party (PDF) for Imo State in the forth coming Governorship, election in Imo State after the plaintiff has been duly nominated by the Peoples Democratic Party (PDP) as its candidate and after the Defendant has accepted the nomination and published the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006 until the High Court disqualifies the plaintiff or until cogent and verifiable reasons are given to the Defendant by whosoever desires to make the change.

8. An order of perpetual injunction restraining the Defendant from changing or substituting the name of the Applocant as the Imo State Peoples Democratic Party Governorship candidate for the April 2007 Imo State Governement Election unless or until a court order is made disqualifying the plaintiff and/or until cogent and verifiable reasons are given as required under section 34(2) of the Electoral Act 2006" Several documentary exhibits were annexed to the amended Statement of Claim. Two persons- Engineer Charles Ugwu and the Peoples Democratic Party were at their own request later joined to the suit as 2nd and 3rd defendants respectively. The 1st defendant filed a separate Statement of defence whilst the 2nd and 3rd defendants filed a joint Statement of defence. The suit was tried by Nyako J. at the Federal High Court, Abuja, On 16-02-07, the learned trial judge in her judgment dismissed plaintiffs suit. In the said judgment the trial judge reasoned thus:"In the instant case, the 3rd defendant submitted the name of the plaintiff as its Governorship candidate; Informed INEC of its change of candidate and gave INEC a reason for the change. It is left for INEC to verify the reason or not. But pursuant to all the above, I will say that the political party is within its power to so change its candidate and have (sic.) so done as far as the parties on record are concerned,"Dissatisfied with the judgment by Nyako J. the .plaintiff approached the Court of Appeal, Abuja (hereinafter called the court below) by an appeal. The 2nd defendant filed a cross-appeal contending that the Federal High Court in any case has no jurisdiction to hear the suit. On 20/3/07, the Court below in a unanimous judgement allowed plaintiff's appeal and dismissed the cross-appeal.The 2nd and 3rd defendants at the trial court were dissatisfied with the judgment of the court below. Each of them has filed before this Court an appeal. In the appeal by the 2nd defendant, the issues for determination were identified as the following:

1. Whether the decisions of this Honourable Court in Onuoha v Okafor (1983)14 NSCC 494 and Dalhatu vs Turaki (2003) 15 NWLR (Pt 843) 310 on issues of nomination and sponsorship of candidate by a political party have been overtaken by the provisions of Section 34(1) (2) of the Electoral Act, 2006. (Encompassing grounds 4 and 11 of the Notice of Appeal).

2 Whether the learned Justices of the Court of Appeal were right in holding that Section 34 of the Electoral Act, 2006 is justiciable. (Encompassing grounds 1 and 6 of the Notice of Appeal).

3 Whether the learned Justices of the Court of Appeal were right in the interpretation of Section 34(1)(2) of the Electoral Act, 2006 (Encompassing grounds 2, 3, 5, 6, 7, 8, 10 and 17 of the Notice of Appeal).

4. Whether the learned Justices of the Court below were right in holding that Exhibits K, L, and L1 had no probative value having regard to the admission by consent of the said Exhibits by parties at the stages of the proceeding. (Encompassing grounds 9 and 14 of the Notice of Appeal). "The 3rd defendant in its own brief identified one issue as arising for determination. The solitary issue reads: "Whether the Court of Appeal was right when it held that the action before the trial court being one of sponsorship and nomination of a candidate by a political party was justiciable i.e. has section 34(1)(2) however interpreted taken the issue of nomination and sponsorship of a candidate outside the Supreme Court decision in:

(a) P.C. Onuoha v. R.B.K Okafor(1983) SNLR pg 244.

(b) Dalhatu v.Turaki (2003)15 N.W.L.R. (Pt,843) pg, 300 (Distilled from Grounds 1 & 2 of the Notice of Appeal)'For an appreciation of the issues as discussed in this judgment, it is necessary to examine the facts leading to the dispute out of which this ppeal arose. I gratefully adopt the summary of the said facts as succinctly, set out by Adekeye JCA (who presided at the court below) in her lead judgment.Summary of FactsThe facts are that the appellant emerged winner at the Governorship primaries conducted by the Peoples Democratic Party for Imo State on the 14th of December 2006. The appellant at the contest scored 2,061 votes as against the 36 votes scored by the 2nd Respondent Engineer Charles Ugwu. The name of the appellant was forwarded to INEC by the 3rd Respondent as the Governorship candidate sponsored by PDP in comp'liance with the provisions of section 32(1) and (2) of the 2006 Electoral Act, on the 14th of December 2006 as shown in Exhs, F and G. The 3rd Respondent on the 19th of January 2007 forwarded the name of the 2nd Respondent to the 3rd Respondent under a letter dated 18th of January 2007 Exh. K as the candidate it was sponsoring for Imo State governorship in April 2007. Parties addressed the court on the issues formulated and settled. The learned trial judge granted an order of interim injunction restraining the Respondents from taking any steps towards changing or substituting the name of the applicant as Imo State Peoples Democratic Party Governorship candidate for the April 2007 Election pending the hearing and determination of the suit before the court.On the issues settled before the trial court as to whether it had jurisdiction to entertain the suit, the learned trial judge found in favour of the Federal High Court having jurisdic'tion over the suit as it affected the 1st Respondent a Federal Government Agency. The learned trial judge held that the whole case is hinged on the interpretation of section 34 of the Electoral Act 2006. In the penultimate paragraph of the judgment at pages 573-574 of the record of proceedings the learned trial judge held that:-'By the provision of section 34 of the Electoral Act 2006, I find that a political party has the power to change its nominated candidate for another any time before 60 days to election. In its exercise of the power of change, it needs to inform the INEC in writing not in any pres'cribed form of the change. It will also give INEC cogent reason for the change which INEC should be able to verify. In the instant case the 3rd Respondent submitted the name of the plaintiff as its Governorship candidate informed INEC of its change of candidate and gave INEC a reason for the change. It is left for INEC to verify the reason or not. But pursuance to all the above, I will say that the political party is which its power to so change its candidate and have done so as far as the parties on record are concerned. Consequently I hereby declare as follows:

Relief 1 in the negative

Reliefs 2-9 appear to have been abandoned as they were not addressed.

Relief 6-1 I answer to the effect that a reason was given and the duty of verifica'tion lies with INEC.

Relief 7 I affirm only to the extent that a Court disqualification of a candidate is at a requirement of either section 32(3) or section 34 of the Electoral Act 2006 for a change of candidate.

Relief 8 fails and cannot be granted because the political party has the power to change its candidate in compliance with the laid down procedure."

My learned brother Tobi JSC has in his lead judgment exhaustively dealt with the principal issues for determination in the appeal. He has ably explained why the appeal must fail. I agree with him and adopt his reasoning as mine. I wish however, for the sake of emphasis, to deal first with the issue of jurisdiction raised by the two appellants and secondly whether or not the 3rd defendant in its attempt to substitute the 2nd defendant/appellant for the plaintiff complied with the applicable provisions of the Electoral Act 2006.The appellants have argued with remarkable gusto that the question whether or not a party permitted a particular person to contest the election on its behalf is not justiciable by the court. It was argued that the, court would be dragged into a controversy of a political nature if it engaged in the determination of which of two or more candidates ought to stand an election for the party. This court in P.C. Onuoha v. R. B. K. Okafor (1983) S.C.N.LR.244 took the position that the court should not delve into the issue concerning which of two or more competing candidates should stand for a party at an election. This court said:"The matter in controversy in the appeal is whether the court has the jurisdiction to entertain a claim whereby it can compel a political party to sponsor one 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 given political party at any election is clearly apolitical: 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. There are other cases including *Dalhatu v. Turaki* [2003] 15 NWLR (Pt. 843) 300 inclining to the same view. My humble view on the decision in *Onuoha v. Okafor* (supra) is that the same has ceased to be a useful guiding light in view of the present state of our political life. I have no doubt that the reasoning in the case might have been useful at the time the decision was made. It seems to me, however, that in view of the contemporary occurrences in the political scene, the decision needs to be reviewed or somewhat modified. If the political parties, in their own wisdom had written it into their Constitutions that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from the duty to enforce compliance with the provisions of the parties' Constitution. The court did not draft the Constitutions for these political parties. Indeed, the court, in its ordinary duties, must enforce compliance with the agreements reached by parties in their contracts. Even if the decision in *Onuoha v. Okafor* (supra) might have been acceptable at the time it was made, the contemporary bitterness and acrimony now evident in this country's electoral process dictate that the decision be no longer followed. An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra party democracy and live by the provisions of their constitutions as to the emergence of candidates for elections is one of the major causes of the serious problems hindering the enthronement of a representative government in the country. If a political party was not to be bound by the provisions of its constitution concerning party primaries, why would there be the need to send members of the parties aspiring to be candidates for an electoral offices on a wild goose chase upon which they dissipate their resources and waste of time. Would it not have made better sense in that event for the political parties to just set out the criteria for the emergence of their candidates for electoral offices and then reserve to themselves (i.e. the parties) the ultimate power to decide who should contest and who should not. I am fortified in my view by the provisions of sections 222, 223 and 224 of the 1999 Constitution which provide:-

222. No association by whatever name called shall function as a political party, unless -
- (a) the names and addresses of its national officers are registered with the Independent National Electoral Commission;
 - b) the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping;
 - c) a copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission;
 - (d) any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration;
 - (e) the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and
 - (f) the headquarters of the association is situated in the Federal Capital Territory, Abuja.

223(1) The constitution and rules of a political party shall

- (a) provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party; and
- (b) ensure that the members of the executive committee or other governing body of the political party reflect the Federal character of Nigeria.

(2) For the purposes of this section

- (a) the election of the officers or members of the executive committee of a political party shall be deemed to be periodical only if it is made at regular intervals not exceeding four years; and
- (b) the members of the executive committee or other governing body of the political party shall be deemed to reflect the federal character of Nigeria only if the members thereof belong to different States not being less in number than two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja.

224. The programme as well as the aims and objects of a political party shall conform with the provisions of Chapter II of this Constitution. One observes that section 222(c) above provides in a mandatory language that all political parties shall file a copy of their Constitution with INEC. Section 222(d) also enjoins that any alteration in the constitution of political parties shall be notified to INEC. A most reflective and careful analysis of these provisions of the 1999 Constitution, which is the Grundnorm of Nigeria conveys that these provisions were deliberately stated in the Constitution so that the political parties may strictly observe the provisions. Notwithstanding the above observation, it is my firm view, that on the available facts on this case, I do not need to even consider the relevance of the decision in *Onuoha v. Okafor* (supra). The core question I need to decide is whether or not the 3rd defendant complied with the

provisions of section 34 of the Electoral Act, 2006. This question has nothing to do with the decision in Onuoha vs. Okafor. The undisputed facts of this case, are that a number of candidates, all being members of the 3rd defendant indicated interest in contesting as the Governorship candidate in the 2007 elections in Nigeria. These candidates too part in the party primaries whereat the delegates of the 3rd defendant voted to nominate a candidate for the position of the Governor of Imo State. The undisputed results of the primary election tendered, as Exhibit E show that the plaintiff came first with 2,061 votes whilst the 2nd defendant placed 16th with 36 votes. The third defendant sent the name of the plaintiff to INEC as its candidate, for the Imo State Governorship election. One would think that the action of the third defendant in sending the name of the plaintiff to INEC was in deference to the result of the election. Later however, with a little more than 60 days to the election on 19/1/2007 vide exhibit K, the 3rd defendant sent the 2nd defendant's name to INEC in substitution for the plaintiff's. In reaction, the plaintiff brought his suit. Sections 32 and 34 of the Electoral Act provide:

"32(1) Every political party shall not later than 120 days before the date appointed for a general election under the provisions of this Act, submit to the Commission in the prescribed forms the list of the candidates the party proposes to sponsor at the elections.

(2) The list shall be accompanied by an affidavit sworn to by each candidate at the High Court of a State indicating that he has fulfilled all the constitutional requirements for election into that office.

34.(1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election

(2) any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons

(3) Except in the case of death, there shall be no substitution or replacement, of any candidate whatsoever after the date referred to in subsection (1) of this section."

(italics and underlining mine)

When sections 32 and 34 above are related one to the other, it is apparent that the procedure for the submission of candidates' list for the 2007 election under the 2006 Electoral Act is schematic and graduated. Under section 32(1) of the Act, a political party has absolute freedom to submit the names of its candidates 120 days to the election. Under Section 34(2) however, that freedom is curtailed where a party is changing its candidates 60 days to the election, the party must give cogent and verifiable reasons for the change and under section 34(3), no change may be made except in the event of death of a candidate earlier chosen. In this case the 3rd defendant wrote to say that it was substituting the plaintiff's name with that of the 2nd defendant because of an 'error'. The 3rd defendant perhaps unmindful of the provisions of section 34(2) of the Electoral Act, 2006, did not explain the nature of the error which necessitated the change of the name of the candidate that came first with that of the one that placed 16th. Does the word 'error' capture the essence of a 'cogent and verifiable reason' as provided by section 34(2) above? In answering this question it is necessary to draw attention to the previous state of the law under the 2002 Electoral Act which dealt with the change of candidates. The section provides: "Any political party which wishes to change any of its candidates for any election under this Act may signify its intention in writing to the Commission not later than 30 days to the date of the Election." It is manifest that the requirement under section 34(2) of the 2006 Act that 'cogent and verifiable reason' be given in order to effect a change of candidates was a deliberate and poignant attempt to reverse the 2002 Act which led to a situation where disputes arose even after elections had been concluded as to which particular candidates had been put up by parties to stand elections. The meaning of the word 'cogent' as given in The Shorter Oxford English Dictionary is stated to be "constraining; powerful, forcible, having power to compel assent, convincing." The same dictionary defines "verifiable" as "that can be verified or proved to be true, authentic, accurate or real; capable of verification." In the light of the above, it seems to me that the expression 'cogent and verifiable reason' can only mean a reason self demonstrating of its truth and which can be checked and found to be true. The truth in the reason given must be self-evident and without any suggestion of untruth. The reason given must be demonstrably true on the face of it so as not to admit of any shred of uncertainty. Given the fact that the 2nd defendant scored 36 votes as against the plaintiff who scored 2,061 votes at the 3rd defendant's primaries, how can the reason given by the 3rd defendant as 'error' qualify to be a 'cogent and verifiable reason'. In my view the reason given for the substitution, by the 3rd defendant is patently and demonstrably false such that it must be dismissed with a wave of the hand. The 2nd defendant's counsel Dr. Izinyon S.A.N. argued that the error lay in the fact that the plaintiff did not score 50% of the votes cast at the primaries and that under 3rd defendant's Constitution a re-run was necessary between the two top candidates. If a re-run was necessary, how would that necessitate substituting a candidate who placed first, scoring 2,061 votes, with another who placed 16th and scored 36 votes? The inevitable conclusion to be arrived at is that the reason given for the substitution was smokescreen intended to deprive the plaintiff of his right to contest as the 3rd defendant's candidate in the Imo State Governorship elections. I have no doubt that the reason given by the 3rd defendant was deficient and lacked the

character required under section 34(2) of the Electoral Act, 2006. It is for this and other reasons given in the lead judgment of my learned brother Tobi JSC that I would also dismiss this appeal. I make the same orders as in the lead judgment. I subscribe to the order on costs made in the said lead judgment.

Reasons for Judgement delivered by
Aloma Mariam Mukhtar, J.S.C

The reliefs sought by 1st the respondent in this appeal, as per the content of the amended statement of claim in the Federal High Court, Abuja are as follows:-

\"(1) A declaration that the option of changing or substituting a candidate whose name is already submitted to INEC by a political party is only available to a political party and/or the Independent National Electoral Commission (INEC) under the Electoral Act, 2006 only when the candidate is disqualified by a court order.

(2) A declaration that under section 32(5) of the Electoral Act, 2006 it is only a court of law, by an order that can disqualify a duly nominated candidate of a political party whose name and particulars have been published in accordance with section 32(3) of the Electoral Act, 2006\".

(3) A declaration that under the Electoral Act, 2006, Independent National Electoral Commission (INEC) has no power to screen, verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the plaintiff or any candidate's to the Independent National Electoral Commission (INEC).

(4) A declaration that the only way Independent National Electoral Commission (INEC) can disqualify, change or substitute a duly nominate candidate of a political party is by court order.

(5) A declaration that under section 32(5) of the Electoral Act, 2006 it is only by a court order after a law suit, that a candidate can be disqualified and it is only after a candidate is disqualified by a court order, that the Independent National Electoral Commission (INEC) can change or substitute a duly nominated candidate

(7) A declaration that it is unconstitutional, illegal and unlawful for the 1st and 3rd Defendants to change the name of the plaintiff with that of the 2nd Defendant as the Governorship candidate Peoples Democratic Party (PDP) for Imo State in the forthcoming Governorship Election in Imo State, after the plaintiff has been duly nominated and sponsored by the Peoples' Democratic Party as its candidate and after the 1st Defendant has accepted the nomination and sponsorship of the Plaintiff and (has) published the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006, the 3rd Defendant having failed to give any cogent and verifiable reasons and there being no High Court order disqualifying the plaintiff.

8. An order of perpetual injunction restraining the defendants jointly and or severally by themselves, their agents, privies or assigns from changing or substituting the name of the Plaintiff as the Imo State People Democratic Party Governorship candidate for the April 2007 Imo State Government Election unless or until a court order is made disqualifying the plaintiff and or until cogent and verifiable reasons are given as required under section 34(2) of the Electoral Act, 2006.\"

The learned Federal High Court judge found as follows:-\"The court does not possess the requisite knowledge of nomination and sponsorship of candidates for political parties. The court can only assist the parties to interpret the provisions of the law. By the provision of Section 34 of the Electoral Act 2006, I find that a political party has the power to change its nominated candidate for another any time before 60 days to election. In its exercise of the power of change, it needs to inform the INEC in writing not in any prescribed form of the change. It will also give INEC cogent reason for the change which INEC should be able to verify. In the instant case, the 3rd Defendant, submitted the name of the plaintiff as Governorship candidate, informed INEC of its change of candidate and gave INEC a reason for the change. It is left for INEC to verify the reason or not. But pursuant to all the above, I will say that, the political party is within its power to so change its candidate and have so done as far as the parties on record are concerned.\"The plaintiff was dissatisfied with the findings of the trial court, and he appealed to the Court of appeal. The 2nd defendant cross appealed to the same court. In the Abuja Division of the Court of appeal, the court as per Adekeye J.C.A. allowed the appeal, after holding that the pronouncement of the trial court was not a judicial or judicious exercise of the discretion of the court in the circumstance of the case, and concluded thus:-\"I shall not hesitate to conclude that the learned trial judge failed to consider all the aspects of Section 34 (1) and (2) of the Electoral Act, and same has not met the justice of this case.\"The defendants were not satisfied, so they appealed to this court. In my view the appeal before this court revolves around the provision of Section 34 of the Electoral Act. The two issues formulated in the appellant's brief of argument read as follows:-

'2. Whether the learned Justices of the Court of Appeal were right in holding that Section 34 of the Electoral Act, 2006 is justiciable.

3. Whether the learned Justices of the Court of Appeal were right in the interpretation of Section 34 (1) (2) of the Electoral Act, 2006."

As regards issue (2) supra, the grouse of the learned Senior Advocate is the justiciability of Section 34 of the Electoral Act 2006, and the action brought thereupon by the 1st respondent, which he submitted is not justiciable, as the said Section 34 of the Electoral Act does not confer any right of action on any person. I will now examine the content of Section 34 of the Electoral Act, the provisions of which read as follows:-

"34 (1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection (1) of this Section shall give cogent and verifiable reasons.

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this Section."In considering the justiciability or otherwise of the above provision, one has to examine the claims of the plaintiff, (already reproduced above) vis a vis the said provisions, and the provisions of Section 32 (5) of the Electoral Act from which the machinery of a choice of candidate begins to roll. This section reads the following:-

"32 (1) Every political party shall not later than 120 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.

(2) The list shall be accompanied by an Affidavit Sworn to by each candidate at the High Court of a State, indicating that he has fulfilled all the constitutional requirements for election into that office.

(3) The commission shall, within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intend to contest the election.

(4) Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit is fake may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the affidavit is false.

(5) If the court determines that any of the information contained in the affidavit is false the court shall issue an order disqualifying the candidate from contesting the election,"Now, as evidenced by the claims in the Federal High Court the suit was predicated on the above provisions. Then in the course of the judgment of the trial court the trial judge found that the case hinged on the interpretation given to Section 34 of the Electoral Act supra. Going back to the Justiciability of Section 34 of the Electoral Act supra, the word justiciable has been defined in the 7th Edition of Blacks Law Dictionary as "properly brought before a court of justice; capable of being disposed of judicially (justiciable controversy)". The provision of Section 32 of the Electoral Act supra is very clear on the Justiciability of it, and no doubt whatsoever exists on the purpose and purport of it, and it is my view that a careful study of the provision of Section 34 of the Electoral Act gleamed against the above definition of the word justiciable, makes the said Section 34 justiciable. I believe subsection (2) of the provision has opened an avenue for any candidate that is aggrieved to have legal interest enure on him, by setting out conditions that must be met for any change to succeed. In this respect, I hold that the said Section 34 of the Electoral Act is justiciable, and I agree with the learned justice f the Court of Appeal when in the lead judgment she asked a question and pronounced thus:-"Is Section 34 of the electoral Act 2006 justiciable or non-justiciable' My answer is that it is justiciable.On the interpretation of Section 34 of the Electoral Act, it is a cardinal principle of law that statutes must be given their ordinary and straight forward interpretation. When interpreting the law a court must not go beyond the ambit of the intendment of the legislator by bringing extraneous matters to it. In Halsburys Statutes of England third Edition volume 32 pages 364 - 365 the authors re-echoed the principles of interpretation thus:-"The golden rule is that the words of an Act are prima facie to be given their ordinary and natural meaning, or, as is sometimes said, their popular meaning; see St. John, Hamstood, Vestry v. Cotton (886), 12 App. Cas. 1 at page 6 per Lord Halsbury, L.C.; Wokes v. Don Castar Amalgamated Collieries, Ltd, (1940) A.C. 1014, (1940) 3 ,A11 E. R. 549, at page 1022 and page 553, respectively, per Viscount Simon, L. G.

The rule has been in existence for many years and the classical statement of it is contained in the judgment of Wensley dale in Grey v, Pearson (1857), where he said: -"In construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would, lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency but no further."The salient words in subsection (2) of Section 34 of the said law are 'cogent' and 'verifiable', which are defined in the said 7th Edition of the Black's

Dictionary as follows: "cogent - 'compelling or convincing' Verify - 'To prove to be true, to confirm or establish the truth or truthfulness of, to authenticate.'" In the instant case when the 3rd respondent sought to change the Gubernatorial candidate from the 1st Respondent to the 1st appellant, the letter it wrote and addressed to the Chairman of the 1st respondent did not state any reason for the change as can be seen from the letter which reads: "Forwarding of PDP Governorship Candidate and Deputy Imo State Names of Imo PDF Governorship candidate and his Deputy in Imo State are presented as follows:

1. Chief Charles Chukwuemeka Ugwu and
2. Col. Lambert Ogbonna Iheanacho (Rt.)

This is for your information and necessary action.

Sen. (DR.) Amadu Ali, GCON

National Chairman

OJO Maduekwe, CFR

National Secretary"

Earlier on, on 14th December 2006, to be precise the same authors of the above letter had written the same Chairman of INEC giving the name of the 1st respondent as their Gubernatorial candidate for Imo State. It is instructive to note that no reason at all was given for the sudden somersault, not to talk of it being cogent or verifiable reason. In fact it was as though that was the first time the 2nd appellant was forwarding the name of its choice of a gubernatorial candidate for Imo State. It completely closed its eyes to the first, letter, so to speak. The 2nd appellant did not offer any reason for changing its Gubernatorial candidate, and this definitely did not meet the provision of subsection (2) of Section 34 supra.

In the absence of these requirements, the decision to change the candidate had no place within the Electoral Act of 2006. In the light of the above reasons and the fuller reasons in the lead judgment of my learned brother Niki Tobi JSC, I also dismiss the appeal, and abide by the consequential orders made therein.

Reasons for Judgement delivered by

Mahmud Mohammed, J.S.C

This appeal was heard by this Court on 5th April, 2007. In a unanimous decision delivered the same day, the appeal was dismissed. On that day, I pronounced my judgment dismissing the appeal and stated that I shall give my reasons for doing so today. I have seen and read the reasons given for the judgment by my learned brother Tobi, JSC, which he has just delivered and I am in complete agreement with him in the way and manner he tackled and resolved the issues arising for determination in the appeal. The circumstances surrounding the dispute that brought the parties to the trial Federal High Court, the Court of Appeal and finally to this Court, are quite clear and may be narrated thus: The 1st Respondent as a member of the 2nd Appellant, P.D.P, took part in the primary election conducted by the 2nd Appellant aimed at producing a candidate for that political party to contest the Governorship election for Imo State scheduled for 14th April, 2007. The primary election was conducted in accordance with the constitution of the party and was held in the State on 14th December, 2006. The outcome of the primary election contained in the document admitted in evidence as Exhibit 'E' at the trial Court shows that the 1st Respondent scored the highest number of 2,061 votes to top the list of 22 candidates who contested that election. The 1st Appellant who was also one of the contestants, scored 36 votes ranking 13th position out of the 22 participants. Based on the result of this primary election, the 2nd Appellant P.D.P. forwarded the name of the 1st Respondent on 14th December, 2006, to the 2nd Respondent as its candidate to contest the Governorship election in Imo State on 14th April, 2007. However, on 19th January, 2007, more than one month after submitting the name of the 1st Respondent to the 2nd Respondent, the 2nd Appellant, P.D.P. again forwarded the name of the 1st Appellant to the 2nd Respondent as the candidate it was sponsoring to contest the Governorship election of 14th April, 2007 in Imo State. The 2nd Appellant in its letter dated 18th January, 2007, to the 2nd Respondent forwarding the 1st Appellant's name, did not say anything on the name of the 1st Respondent earlier sent by it to contest the same election and no reason was given for the action taken by the 2 Appellant. It was at this juncture that the 1st Respondent rushed to the trial Federal High Court for redress. While the action was pending at the trial Court, the 2nd Appellant again by another letter dated 2nd February, 2007 but delivered to the 2nd Respondent on 9th February, 2007, explained to the 2nd Respondent that it was substituting the name of the 1st Respondent with that of the 1st Appellant because the name of the 1st Appellant sent earlier was done in error. At the trial Court, the learned trial judge after hearing the parties, delivered the judgment of the Court on 16th February, 2007, dismissing the Plaintiff/1st Respondent's claim. Aggrieved by that judgment, the Plaintiff/1st Respondent appealed to the Court of Appeal which after hearing the appeal, allowed it. Dissatisfied with the judgment of the Court of Appeal delivered on 20th March, 2007, the 1st and 2nd Appellants have now appealed to this Court. Although in the briefs of arguments filed by the parties, 4 issues were raised from the grounds of appeal filed by the 1st Appellant in his brief of argument, 3

issues were framed from the grounds of appeal filed by the 2nd appellant in its brief of argument, while 3 issues were formulated in the 1st Respondent's brief of argument with the 2nd Respondent not filing any brief of argument, the real issues for determination of these appeals in my view, are issues 2 and 3 in the 1st Appellant's brief of argument which read -

"2. Whether the learned Justices of the Court of Appeal were right in holding that Section 34 of the Electoral Act 2006 is justiciable.

3. Whether the learned Justices of the Court of Appeal were right in the interpretation of Section 34(1), (2) of the Electoral Act, 2006,"The stand of the 1st Appellant on issue 2 is that the learned Justices of the Court below fell into grave error in holding that Section 34 of the Electoral Ad, 2006, is justiciable. Quoting the definition of the word 'Justiciable' from Blacks Law Dictionary 5 Edition at page 777, learned senior Counsel for the 1st Appellant argued that having regard to the decisions in the cases of Shell B.P. Petroleum Development Company vs. Onasanya (1976) 6 S.C. 89 at 99 and Ayabode v. Balogun (1990) 9 S.C.N.J. 23 at 33 OR (1990) 5 N.W.L.R. (PT. 151) 379, the provisions of Section 34 of the Electoral Act does not give that 1st Respondent any right of action to justify his going to the trial Court for redress. This was also the position argued for the 2nd Appellant by its learned senior Counsel. For the 1st Respondent however it was submitted that the provisions of Section 34 of the Electoral Act, 2006 being part of a Statute which provides for a right, where there is a breach of that right, a Court of Law has jurisdiction to enquire into the breach in an action brought before the Court in line with the decision in Odugbo v. Abu (2001) 14 N.W.L.R. (PT. 732) 45. Learned senior Counsel to the 1st Respondent further argued that the 2nd Appellant, P.D.P. being a political party whose existence and operation under its registered constitution is regulated by the provisions of the 1999 constitution of the Federal Republic of Nigeria in Sections 221 and 222 thereof, any dispute between a member of the political party and the party itself, is justiciable. This is because, according to the learned senior Counsel, where any rules or regulations were made pursuant to any constitutional provision, it has a constitutional force as stated in Oyeyipo v. Oyinloye (1987) 1 N.W.L.R. (PT. 50) 356 at 378 and 7 Up Bottling Company Limited v. Abiola (1995) 3 N.W.L.R. (PT. 383) 257 at 281. The provision of Section 34 of the Electoral Act, 2006, deals with the procedure for political parties wishing to effect changes in the list of their candidates for any election already submitted to the Independent National Electoral Commission (INEC). This section reads -

"34(1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection (1) of this Section shall give cogent and verifiable reasons.

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section."

The section clearly imposes a duty on any political party intending to change its candidate for an election to do so by informing the Independent National Electoral Commission (INEC) in writing within a specified period of not later than 60 days to the date of the election. The section plainly outlined the manner of forwarding the information for the change of candidate to the Commission not only to be made in writing but also in the form of an application which shall state cogent and verifiable reasons for the intention to effect the change. Section 34 of the Electoral Act, 2006 contains mandatory provisions which any political party intending to effect any change in the list of its candidates submitted to the Commission to contest any election must comply with. The Electoral Act, 2006, like any other Act of the National Assembly enacted in exercise of its powers under the 1999 Constitution, is a statute whose provisions including Section 34 thereof, are liable to be questioned in any proceeding of Court of competent jurisdiction in the determination of any question as to the civil rights and obligations of any person in Nigeria. See Section 6(6)(a) and (b) of the 1999 Constitution. Therefore in the present case, the 2nd Appellant, P.D.P political party, had exercised its right signifying its intention to change its candidate in accordance with the provisions of Section 34 of the Electoral Act, 2006. The Appellants are now asserting under this issue that the exercise of that right is not justiciable. The plain complaint of the 1st Respondent, a member of the 2nd Appellant, P.D.P. Political party that its application to the 2 Respondent, the Independent National Electoral Commission (INEC) to substitute his name with that of the 1st Appellant did not satisfy the requirement of Section 34 of the Electoral Act, cannot be said to be not justiciable. In other words the 1st Respondent's action seeking a remedy at the trial Court to determine whether or not the provision of the section of the statute was complied with in the application to change his name as a candidate in the Governorship election of 14th April, 2007 in Imo State with the name of the 1st Appellant, may be described as anything but certainly not to be given a name not unjusticiable. The assertion of the Appellants that the provision of the section is not justiciable in the absence of any sanction for failure to comply with the section or that the right of a political party to change the candidate it was sponsoring for an election is an internal affairs of the political party, has no support whatsoever from any law under the

present dispensation. Section 34 of the Electoral Act, 2006, is therefore justiciable and the 1st Respondent's action at the trial Court complaining that the provision of the section of the statute was not complied with in the bid by the 2nd Appellant to change his name with that of the 1st Appellant as the candidate sponsored to contest the Governorship election of 14th April, 2007 in Imo State, was quite in order being justiciable as found by the Court below. I am further of the firm view that the 1st Respondent being a member the P.D.P. political party now 2nd Appellant who was aggrieved by the conduct of his party in the steps taken under Section 34 of the Electoral Act, 2006, to change his name from the list of candidates submitted to the 2nd Respondent to contest the election scheduled for 14th April, 2007, has the right to seek redress in a competent Court of law and such action cannot in law be described as unjusticiable. The jurisdiction of the trial Court was indeed rightly invoked see *Odugbo v. Abu* (2001) 14 N.W.L.R. (PT. 732) 45 at 114 and *Barclays Bank v. Central Bank*(1976) 6 S.C. 175, For the above reasons and fuller reasons given by my learned brother Tobi, JSC in his judgment dismissing this appeal with which I entirely agree, I also dismiss this appeal for lack of merit and abide by the orders given by Tobi, JSC. in his judgment including the order on costs.

Reasons for Judgement delivered by
Walter Samuel Nkanu Onnoghen, J.S.C.

There are two appeals involved in the instant case; one by the main appellant, Engineer Charles Ugwu, and the other by the Peoples Democratic Party; both against the judgement of the Court of Appeal holden at Abuja in appeal No CA/A/49/07 delivered by that court on the 20th day of March, 2007 in which the court allowed the appeal of the 1st respondent, Senator Ifeanyi Araraume, against the decision of the Federal High court in suit No. FHC/ABJ/CS/9/07 dismissing the case of the 1st respondent as plaintiff before that court. The suit at the High court was initially instituted against Independent National Electoral Commission (INEC) though appellant later, upon application, was joined as the 2nd defendant while the 1st defendant (INEC) brought an application before that court as a result of which the Peoples Democratic Party (PDP) was joined as the third defendant. By an amended Statement of Claim, the 1st respondent, as plaintiff, claimed the following reliefs:-

'(1) A declaration that the option of changing or substituting a candidate whose name is already submitted to INEC by Party is only available to political party and/or the independent National Electoral Commission under the Electoral Act 2006, only (when) the candidate is disqualified by a court order (sic).

(2) A declaration that under section 32(5) of the Electoral Act 2006 it is only a court of law by an order that can disqualify a duly nominated candidate of a political party whose name particulars (sic) have been published in accordance with section 32(3) of the Electoral Act 2006.

(3) A declaration that under the Electoral Act 2006, independent National Electoral Commission (INEC) had no power to screen, verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the plaintiff or any candidate to the independent National Electoral Commission (INEC).

(4) A declaration that the only way independent National Electoral Commission (INEC) can disqualify, change or substitute a duly nominated candidate of a political party is by court order.

(5) A declaration that under section 32(5) of the Electoral Act, 2006, it is only a court of law, after a law suit, that a candidate can be disqualified and it is only after a candidate is disqualified by a court order that the Independent National Electoral Commission (INEC) can change or substitute a duly nominated candidate;

(6) A declaration that there are no cogent and verifiable reasons for the defendant to change or entertain the change of the name of the plaintiff as the candidate of the peoples Democratic Party (PDP) for the April 14th 2007 Governorship Election in Imo state.

(7) A declaration that it is unconstitutional, illegal and unlawful for the defendant to change the name of the plaintiff as the Governorship candidate of Peoples Democratic Party (PDP) for Imo state in the forth coming Governorship election in Imo State after the plaintiff has been duly nominated by the Peoples Democratic Party (PDP) as its candidate and after the Defendant has accepted the nomination and published the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006 until the High Court disqualifies the plaintiff or until cogent and verifiable reasons are given to the Defendant by whosoever desires to make the change.

(8) An order of perpetual injunction restraining the Defendant from changing or substituting the name of the Applicant as the Imo State Peoples Democratic Party Governorship candidate for the April 2007 Imo state Government Election unless or until a court order is made disqualifying the plaintiff and/or until cogent and verifiable reasons are given as required under section 34(2) of the Electoral Act 2006. From the above reliefs, it is very clear the respondent appears to think that disqualification of a candidate after nomination of same by the sponsoring political party is the same thing as substitution or change of that nominated candidate by the political party concerned. That must account for the way the

reliefs are couched or crafted. However, the two terms or words as used in the electoral, process mean different things. Substitution of a nominated candidate is not the same thing as disqualification of a nominated candidate and from the clear provisions of the Electoral Act 2006, as would be demonstrated soon, a sponsoring Political Party has the reserved right to substitute or change its nominated candidate for any election but under certain laid down conditions, by the Electoral Act, 2006.

Disqualification is defined as:

"1. Something that makes one ineligible; esp. a bias or conflict of interest that prevents a judge or juror from impartially hearing a case or that prevents a lawyer from representing a party.....

2. The act of making ineligible; that fact or condition of being ineligible"

See Blacks Law Dictionary, 8th Ed. 505 -506

On the other hand, Substitution is defined at Page 1471 of the said Blacks Law Dictionary thus:-

"1. A designation of a person or thing to take the place of another or thing.

2. The process by which one person or thing takes the place of another person or thing etc."From the above it is clear that substitution and disqualification are two different terms meaning different things. Even though a person or thing that is disqualified may be substituted by a qualified person or thing, it does not follow that a qualified person or thing cannot be substituted by a more or better qualified person or thing. Under the Electoral Act, 2006 the circumstances and facts leading to either qualification or disqualification, or substitution of any candidate for any election are clearly spelt out and a candidate is supposed to meet the conditions for qualification to contest any election before being nominated to contest that election by any political party, which party has the exclusive right of changing or substituting the said candidate with another candidate for the said election if it so desires but subject to certain conditions also imposed by the law. It is clear that a person who is disqualified would have, but for the disqualifying factor; been qualified. As stated earlier in this judgment, the learned trial judge dismissed the claims of the plaintiff/1st respondent resulting in an appeal to the Court of Appeal which allowed same based on the construction of the provisions of section 34(2) of the Electoral Act 2006. The appellants are not satisfied with that judgment hence the appeal to this court where the issues submitted for determination by DR. Alex A. Izinyon, SAN for the main appellant in the appellant's brief of argument filed on 3/4/07 and adopted in argument of the appeal on 5/4/07 are stated as follows:-

"1. Whether the decisions of this Honourable court in Onuoha vs. Okafor(1983) 14 NSCC 494 and Dalhatu v. Turaki (2003) 15 NWLR (pt. 843) 310 on issues of nomination and sponsorship of candidates by a political party have been overtaken by the provision of section 34(1)(2) of the Electoral Act, 2006. (Encompassing grounds 4 and 11 of the Notice of Appeal).

2. Whether the learned justices of the court of Appeal were right in holding that section 34 of the Electoral Act, 2006 is justifiable. (Encompassing grounds 1 and 6 of the Notice of Appeal).

3. Whether the learned justices of the court of Appeal were right in the interpretation of section 34(1)(2) of the Electoral Act, 2006. (Encompassing grounds 2, 3, 5, 6, 7, 8, 10 and 12 of the Notice of Appeal)

4. Whether the learned Justices of the court below were right in holding that Exhibits K.L and L1 had no probative value having regard to the admission by consent of the said Exhibits by parties at the stage of the proceeding. (Encompassing grounds 9 and 14 of the Notice of Appeal)."

On the other hand Chief J. Gadzama, SAN for the 2nd appellant, the Peoples Democratic Party, in the appellant's brief of argument filed on 4/4/07 and also adopted in argument on 5/4/07 raised the following three issues for determination:-

"(a) Whether the Court of Appeal was right when it held that the action before the trial court being one of sponsorship and nomination of a candidate by a political party was justiciable i.e has section 34(1)(2) however interpreted taken the issue of nomination and sponsorship of a candidate outside the Supreme Court decision in;

(a) P.C. Onuoha vs RBK Okafor 1983, SNLR Pg 244.

(b) Dalhatu v. Turaki (2003) 15 NWLR (pt. 843) 300 (Distilled from Grounds 1 & 2 of the Notice of Appeal)'

(c) Whether the Court below was right or not in holding that exhibits L, L1 & K had no probative value, when the pieces of evidence above were admitted by consent of parties.

(d) Whether the court of Appeal as constituted by a three man panel instead of 5 Justices, had jurisdiction to hear and determine the matter before it having regard to fundamental, constitutional and salient legal issues raised in the Appeal."

It should be pointed out here and now that the learned Senior Advocate for the 2nd appellant during oral argument of the appeal on 5/4/07 withdrew the third issue which was accordingly struck out by this court. In effect, the 2nd appellant submitted two issues for the determination of the appeal. In the 1st respondent's Brief of argument filed on 4/4/07 and

adopted in argument of the appeal by L.O.Fagbemi Esq, SAN, the following issues have been formulated for determination:-

“(1) Whether, having regard to all relevant laws, documentary evidence before the court and the complaint in the grounds of appeal, it can be said that, the court below was wrong in reaching a conclusion that, there was non compliance with section 34(2) of the Electoral Act 2006 in the purported substitution of the name of the plaintiff with that of the end (sic) Respondent’

(2) Whether steps taken in breach of a court order and in purporting to substitute the name of the plaintiff are not null and void’ And

(3) Whether the plaintiff’s case is justiciable.”The facts, most of which are largely undisputed include the following:-

The 1st respondent participated in the primary election of the PDP, 3rd respondent in the main appeal and appellant in the 2nd appeal, to elect the Governorship candidate of the said PDP for the Imo state Governorship election scheduled for 14th April 2007. The said Governorship primaries was conducted by the PDP in Imo State on the 14th day of December, 2006 and Exhibit E is agreed to be the scores or result of that election. The said Exhibit E shows that the 1st respondent won the election by 2,061 votes out of 22 contestants one of whom is the appellant in the main appeal who is recorded to have pooled 36 votes and came 13th in that election. Following the said election the name of the 1st respondent was forwarded by the 3rd Respondent/2nd appellant to the 2nd Respondent on 14th December 2006 along side the names of other Governorship candidates sponsored by the PDP from other states for the 14th April 2007 Governorship elections. However, on the 19th day of January 2007, the 3rd respondent (PDP) forwarded the name of the appellant to the 2nd respondent vide a letter dated 18th January, 2007 exhibit K as the candidate it was sponsoring for the 14th April 2007 Imo state Governorship elections. Exhibit K said nothing or made no reference to the earlier list submitted on 14/12/06 -exhibit F neither did it say that it was substituting the name of the 1st respondent with that of the appellant nor assigned any reason for the action, it was at this point in time that the 1st respondent instituted the action at the High Court claiming the reliefs earlier reproduced in this judgment. However, by a letter dated 2/2/07 but delivered to the 2nd respondent on 9/2/07, the 3rd respondent stated that it was substituting the name of the 1st respondent with that of the appellant. The said letter was admitted as Exhibit L and it stated the reason for the substitution to be that the earlier name of the 1st respondent was submitted to the 2nd respondent in error. In arguing the appeal, learned senior Counsel for the appellant Dr Izinyon. SAN submitted that the decision of this Court in *Onuoha vs. Okafor and Dalhatu v. Turaki* on nomination and sponsorship of candidate has not been overtaken by the provisions of section 34(1)(2) of the Electoral Act, 2006; that once any change is made within time, it still borders on nomination and sponsorship; that section 34(1)(2) of the Electoral Act, 2006 can only apply to move nomination and sponsorship outside the domestic affairs of the party when it is outside the time stipulated by section 34(1) of the Electoral Act, 2006; that the lower court was in error in the interpretation placed on section 34(1)(2) of the Electoral Act, 2006; that section 34(1)(2) is not justiciable; that the lower court erred in holding that exhibits K, L and Li have no probative value having been admitted by consent of parties and the fact that they were made without any disobedience of court orders; that the word “shall” in section 34(2) of the Electoral Act, 2006 is directory and not mandatory; that since section 34 contains no sanction or penalty it is directory and not mandatory and urged the court to allow the appeal. Chief J. Gadzama, SAN for the 2nd appellant submitted that the question as to whether or not the sponsorship and nomination of candidate is justiciable has been settled by this Court in *Dalhatu vs Turaki*, (2003) 15 NWLR, (pt 843) 300 and *Onuoha vs Okafor* (1983) SNLR 244; that the court below erred in holding that exhibits K, L and Li had no probative value when the exhibits were admitted by consent of the parties; that the 3rd respondent/appellant had acted in compliance with section 34 of the Electoral Act, 2006; that the only remedy opened to the 1st respondent who is contesting that his name has been wrongly substituted, is in damages and that it is not the duty of the court to intervene and urged the court to allow the appeal.

On his part, learned senior Counsel for the 1st respondent, L.O. Fagbemi Esq, SAN submitted that the respondent failed to comply with the mandatory provisions of section 34(2) of the Electoral Act, 2006 in purporting to change the name of the 1st respondent and that the non-compliance renders any step taken null and void; that the 3rd respondent did not establish the existence of any cogent and verifiable reason to enable it substitute the name of the 1st respondent; that exhibits K and L by which the 3rd respondent purported to substitute the name of the 1st respondent are void for being made in breach of a court order and/or made in violation of section of the Electoral Act, 2006. Finally learned Senior counsel invited the court to revisit its decision in *Onuoha vs Okafor* and *Dalhatu vs Turaki* as the two decisions are being used to perpetrate injustice and urged the court to depart from its decision in those cases and dismiss the appeals. It is settled law that the issue of nomination or sponsorship of an election candidate is within the domestic affairs of the political parties and that the courts have no jurisdiction to determine who should be sponsored by any political party as its candidate for any election. “That is the law as reflected in *Onuoha vs Okafor* and *Dalhatu vs*

Turaki also supra. The question for determination in the instant appeal is primarily whether that position still represents the law in view of the provisions of section 34(2) of the Electoral Act, 2006. Without wasting time, I will say emphatically, that Onuoha vs Okafor and Dalhatu vs Turaki still remain good law on the sound principles decided therein but the relevant and very important question to be determined in the instant appeal is whether the instant case falls within the facts and applicable law in the decisions in Onuoha vs Okafor and Dalhatu vs. Turaki vis a vis section 34(2) of the Electoral Act, 2006.

Now section 32(1) & (2) of the Electoral Act, 2006, provides as follows:-

"(1) Every political party shall not later than 120 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 for sponsor at the elections.

(2) The list shall be accompanied by an Affidavit sworn to by each candidate at the High court of a state, indicating that he has fulfilled all the Constitutional requirements for election into that office." There is no doubt that the 3rd respondent/appellant complied with that provision when it sent exhibit F to the 2nd respondent containing the name of the 1st respondent on the 14th day of December 2006 for an election billed for 14th April 2007. It should be noted that the provisions of section 32(1) & (2) do not interfere with the decision of the party as to who should be sponsored as its candidate for any election. The provisions talk of what the party must do after choosing its candidates so as to enable the 2nd respondent which is Constitutionally charged with, the responsibility of organizing, conducting elections etc in Nigeria to put its house in order for the huge exercise. However, granted that exhibit K which contained the name of the appellant and dated 18th January 2007 is the document to be relied upon in saying that the said appellant is the sponsored candidate of the 3rd respondent/appellant, it is very clear that by simple addition and subtraction the said exhibit K does not meet the requirement of section 32(1) of the Electoral Act, 2006 particularly as the number of days required are less than the 120 days before the date i.e 14th April 2007 appointed for a general election under the provisions of the Act.

Now section 34(1), (2) and (3) of the Electoral Act, 2006 provides as follows;-

"34(1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection(1) of this section shall give cogent and verifiable reasons.

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section."

Emphasis supplied.

It is very clear from the above provisions that the right or power to nominate a candidate to be sponsored by a political party remains with the party just as the party still retains the right to change or substitute such candidate. Under the Electoral Act, 2002 if a political party desired to change or substitute its candidate it has to do so within 30 days to the election whereas under the current law particularly section 34(1) of the Electoral Act, 2006, the party must do so within 60 days to the election in question. There is however a condition for the change to be effective which condition was never in the Electoral Act, 2002. That requirement is, that the political party intending to change or substitute its candidate must "give cogent and verifiable reasons" for wanting the change to be effected, it does not stop there, it goes further in subsection 3 to enact that no substitution of a candidate shall be effected less than 60 days to the election except in the case of the death of the previous candidate. Section 23 of the Electoral Act, 2002 provides as follows:- "Any political party which wishes to change any of its candidates for any election under this Act may signify its intention in writing to the Commission not later than 30 days to the date of the Election." At this stage, it is important to remind ourselves that Nigeria operates a Constitutional democracy with powers Constitutionally assigned to three recognized arms of government; namely the Executive, Legislature and the Judiciary. It is trite that it is the duty of the Legislature to make, laws which are to be interpreted by the judiciary and executed by the Executive arms of the government. In line with the constitutionally assigned role of interpretation of the laws of this nation, this Court will always remain true no matter what. Looking at the words used by the legislature in section 34(1) and (2) of the Electoral Act, 2006 it is clear that the intention of the legislature is to say that even though the right of choice of a candidate to be sponsored for any election remains the special preserve of the political parties, just as the right to change or substitute such candidates, that right is no longer to be exercised capriciously or any how or without recourse to reasonable expectations of decent society. I therefore do not agree with learned Senior Counsel for the appellants that in the case of change or substitution of candidates for any election it is still business as usual particularly as the law expressly states that the substitution must be made within 60 days to the election and there must be "cogent and verifiable reasons" for the substitution given by the political party desiring the change or substitution. Learned Senior Counsel for the

appellants wants this Court to pretend, in interpreting section 34(2) of the Electoral Act, 2006, that the words 'give cogent and verifiable reasons' for any change or substitution do not exist under that section even though they are expressly provided. From the facts of the case it is clear that the 3rd respondent/appellant stated in exhibit L that the reason for seeking the change or substitution of the 1st respondent with the appellant is that the name of the 1st respondent was submitted in error, is that a cogent and verifiable reason for wanting the change or substitution as required by law particularly as there is evidence that the 1st respondent scored the highest number of votes at the primaries i.e 2,061 votes while the substitute, the appellant scored 36 votes and was the 13th at the said election' When confronted with this reality, learned Senior Counsel for the 3rd respondent/appellant, Chief Gadzama. SAN stated, from the inner Bar, that by the provisions of the Constitution of the 3rd respondent/appellant, the 1st respondent was expected to have achieved a particular geographic spread of votes in the election which he failed to realize. However, when asked to show the court where that reason was stated in the letter seeking the change or substitution in compliance with the law as laid down by the legislature, he admitted that it was not so stated, in any event, can it be said, that a candidate who scored 36 votes achieved a better geographic spread than the one who scored 2,061 votes' I do not think so. I therefore hold the view that the alleged reason given by the 3rd respondent in exhibit L, for the substitution of the name of the 1st respondent with the appellant being that the name of the 1st respondent was originally submitted to the 2nd respondent in error and the additional reason of failure of the 1st respondent to achieve the required geographic spread in the primary election as given by learned Senior Counsel for the appellant from the inner Bar, granted that it was so stated in the said exhibit L in addition to the reason of error, are in my considered opinion not cogent and verifiable reasons as required by section 34(2) of the Electoral Act, 2006. This court has been urged to hold that the word "shall" as used in section 34(2) of the Electoral Act, 2006 is directory and not mandatory particularly as there is no sanction or penalty for failure to comply. I do not agree. Whilst it is settled law, that the word "shall" when used in a statute may denote permissible or directory conduct and not mandatory, depending on the context in which it is used, I hold the view that in the instant case, the word "shall" is mandatory as that appears to be the intention of the legislature in enacting the whole of section 34. That view is strengthened by the provisions subsection 3 of section 34 to the effect that there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection m of section 34 except in the case, of the death of the original candidate. That amounts to a complete prohibition. It is erroneous to submit that because a law prohibiting a particular conduct fails to or does not provide for any sanction or penalty for the breach of the prohibited conduct it is directory not mandatory, or to put it bluntly should not be obeyed, or the prohibited conduct should be taken as thereby permitted by the law, is unacceptable particularly as subsection (3) of section 34 expressly provides that any substitution that is not made in accordance with subsection 1 of section 34 is invalid or ineffective. The sooner we learn that laws are not made for the fun of it but for the betterment of the society if obeyed, the better for this nation which is a nation of Constitutional democracy under the rule of law, where the law is supreme to all and sundry.

I think the legislature intended to bring sanity into the exercise by the political parties of their right to change or substitute their candidates even on the eve or after an election simply because nomination or sponsorship of a candidate for any election is the prerogative of the political parties to which the courts will not interfere or have no jurisdiction to interfere. The 3rd respondent/appellant should rest assured that the courts have no interest in who should be a candidate for any political party but is very much duty bound to interpret the law as made by the legislature so as to determine whether or not in the exercise of its rights of sponsorship or nomination, the political party has complied with the relevant provisions of the law laid out to regulate proper conduct so as to guarantee orderliness, peace and equity the judiciary to perform its Constitutionally assigned role of interpretation of the laws particularly as it concerns provisions made by the legislature for nomination and sponsorship of candidates for any election by political parties is to dabble into the internal affairs of the political parties is nothing but cheap blackmail. The political parties should be disciplined enough to obey the laws of the land, and their own constitutions, so as to assure the people of their readiness to defend the constitution of this nation if entrusted with political power. The rule of law is here to stay. It is for these and the more detailed reasons given in the lead judgment of my learned brother Tobi, JSC that I agree that this appeal lacks merit and should be dismissed. I accordingly dismiss same and abide by all other consequential orders contained in the said lead judgment including the order as to costs.

Appeal dismissed.

Reasons for Judgement delivered by
Ibrahim Tanko Muhammad, J.S.C

On Thursday, the 5th day of April, I concurred with My Lord, Tobi, JSC, in his Judgment wherein he dismissed this

appeal. My reasons for the dismissal of the appeal were then adjourned to today. Herein below are my reasons:

Background facts:

Senator Ifeanyi Ararume (who was the plaintiff at the trial court) is currently the Senator representing Okigwe Zone, Imo North Senatorial District in the Senate of the Federal Republic of Nigeria. This was his second time as a Senator since 1999. He is a member of the Peoples Democratic Party (PDP). He indicated his interest to contest as a Gubernatorial candidate for Imo State under the platform of his party. As a result, he went through party screening, clearance and party primaries. At the party primaries, the plaintiff came first out of the 22 contestants. He scored two thousand and sixty one (2,061) votes. Plaintiff was duly nominated Imo State PDP candidate for the Governorship Election scheduled to take place in April, 2007. The 1st defendant upon receipt of the name of the plaintiff from the 3rd defendant published the name of the plaintiff on their notice board and went further to publish the information on a sworn affidavit in support of the particulars of the plaintiff in all their offices in the Local Government Areas in Imo State. The plaintiff alleged that immediately his name was submitted by the 3rd defendant as its candidate, the state Chairman of the 3rd defendant in Imo State sought to change the name of the plaintiff and substitute it with that of one Chief Tony Ezenna, the aspirant that came third at the party primaries. The plaintiff reacted promptly by engaging the services of Chief Afe Babalota, SAN to write the National Chairman of the party complaining about the illegality of removing the name of the plaintiff without lawful reasons. Immediately the party received plaintiff's solicitors letter, it dropped the move to change plaintiff's name with that of Chief Tony Ezenna. It was further alleged by the plaintiff that no sooner was that idea dropped, than there was another move, now by unknown persons, to submit the name of one Engr. Charles Ugwu (2nd defendant), who scored 36 votes and paired (with another) No. 12 during the PDP primaries in place of that of the plaintiff. The plaintiff stated that since the receipt by INEC of the submission of his name and the publication of the particulars, no person has challenged the veracity of the information. Further, up till the time of the suit filed, no security agency like EFCC, the Police, ICPC, NAFDAC or SSS challenged the veracity of the information he supplied to INEC. There is no High Court order or any law suit seeking the disqualification of the plaintiff as a candidate as required by the Electoral Act, 2006. The plaintiff averred that on 16th January, 2006, the defendant started what it called the verification of the documents of the candidates of all the political parties. The verification exercise, he said, was scheduled to last for ten days (16th -26th January, 2007). The defendant i.e. INEC will start disqualifying candidates in a manner contrary to the Electoral Act, 2006, which according to plaintiff, empowers only a court of law to disqualify a duly nominated candidate of a political party. The plaintiff averred that under the Electoral Act, 2006, the defendant has no power to screen, verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the candidate to INEC. The plaintiff stated that he is very sure that he has not committed any offence to warrant disqualification. He stated that if the trial court did not stop INEC before they wrongfully change, substitute, or disqualify him, there would be confusion if a new name was submitted by the political party and that he would suffer irreparable and irretrievable damage if his name was wrongfully removed and substituted with another. He averred that INEC was about accepting the substitution of his name without any cogent or verifiable reason. The plaintiff then took a writ of summons from the Federal High Court, Abuja. He later sought for and obtained leave (on 6/2/2007) to amend the reliefs indorsed in the writ. In the amended statement of claim the plaintiff made the following claims:

1. A declaration that the option of changing or substituting a candidate whose name is already submitted to INEC by a political party is only available to a political party and/ or the Independent National Electoral Commission (INEC) under the Electoral Act, 2006 only when the candidate is disqualified by a court order.
2. A declaration that under section 32(5) of the Electoral Act, 2006 it is only a court of law, by an order, that can disqualify a duly nominated candidate of a political party whose name and particulars have been published in accordance with section 32(3) of the Electoral Act, 2006.
3. A declaration that under the Electoral Act, 2006, Independent National Electoral Commission (INEC) has no power to screen/verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the plaintiff or any candidate to the Independent National Electoral Commission (INEC).
4. A declaration that the only way Independent National Electoral Commission INEC can disqualify, change or substitute a duly nominated candidate of a political party is by court order.
5. A declaration that under section 32(5) of the Electoral Act, 2006 it is only a court of law, after a law suit, that a candidate can be disqualified and it is only after a candidate is disqualified, by a court order, that the Independent National Electoral Commission (INEC) can change or substitute a duly nominated candidate.
6. A declaration that it is unconstitutional, illegal and unlawful for the Defendant to change the name of the plaintiff as the Governorship candidate of People Democratic Party (PDP) for the April, 13th 2007 Governorship Election in Imo State.

7. A declaration that it is unconstitutional, illegal and unlawful for the Defendant to change the name of the plaintiff as the Governorship candidate of Peoples Democratic Party (PDP) for Imo State in the forthcoming Governorship Election in Imo State, after the plaintiff has been duly nominated by the Peoples Democratic Party as its candidate and after the defendant has accepted the nomination and published the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006, until a High Court disqualifies the plaintiff or until cogent and verifiable reasons are given to the Defendant by whoever desire(sic) to make the change.

8. An order of perpetual injunction restraining the defendant from changing or substituting the name of the applicant as the Imo State Peoples Democratic Party Governorship candidate for the April, 2007 Imo State Government Election unless or until a court order is made disqualifying the plaintiff and or until cogent and verifiable reasons are given as required under section 34(2) of the Electoral Act, 2006."In its amended Statement of Defence the 1st defendant, save where it expressly admitted any fact, all other facts have specifically been denied. It is to be noted that up to the 6th of February, 2007, INEC was the sole defendant in the suit before the trial court. An order was however made by the trial court on the 6th of February granting leave to Engr. Charles Ugwu and PDP to join the suit as 2nd and 3rd defendants respectively. Both the newly joined defendants filed a joint statement of Defence on 8/2/2007. They both denied the facts averred to by the plaintiff. At the end of its trial, the trial court, per Binta F. Murtala Nyako, J; made the following findings and conclusions:\

"By the provision of Section 34 of the Electoral Act 2006, I find that a political party has the power to change its nominated candidate for another any time before 60 days to election. In its exercise of the power of change, it needs to inform the INEC in writing not in any prescribed form of the change. It will also give INEC cogent reason for the change which INEC should be able to verify.\

"In the instant case, the 3rd Defendant submitted the name of the Plaintiff as its Governorship candidate; informed INEC of its change of candidate and gave INEC a reason for the change. It is left for INEC to verify the reason or not. But pursuant to all the above, I will say that the political party is within its power to so change its candidate and have so done as far as the parties on record are concerned. Consequently I hereby declare as follows: Relief 1 in the negative. Reliefs 2-9 appear to have been abandoned as they were not addressed. Reliefs 6, I answer to the effect that a reason was given and the duty of verification lies with INEC. Reliefs 7, I affirm only to the extent that a Court disqualification of a candidate is at a requirement of either Section 32(3) or Section 34 of the Electoral Act 2006 for a change of candidate. Relief 8 fails and cannot be granted because the political party has the power to change its candidate in compliance with laid down procedure.\

"Aggrieved by the trial court's decision, the plaintiff filed his Notice and Grounds of Appeal to the Court of appeal, Abuja. The 2nd defendant was also dissatisfied with the trial court's decision and he cross-appealed. Briefs of argument were settled by the plaintiff/appellant and the 1st defendant/respondent. On the hearing date, both the appellant, the 1st respondent before the court below applied to withdraw their written briefs of arguments in preference to oral argument. The court below heard the appeal and the cross-appeal on oral arguments by learned counsel for the respective parties. At the end, the court below allowed the main appeal and dismissed the cross-appeal. In allowing the appeal, Adekeye, JCA who wrote the leading Judgment which was concurred to by Aboki and Uwa JJCA, stated as follows:\

"The nomination and sponsorship of candidates by political parties to contest elections are considered to be an intra party or domestic dispute to be determined by the rules and constitution of the said party. It is not for the court to interfere with a right vested in a political party by imposing a candidate on the party. The rationale behind the principle of law, as pronounced in the case of Dalhatu v. Turaki 2003 15 NWLR . pt 843 page 310 by the Supreme Court is that since persons have freely given their consent to be bound by rules and regulations of a political party they should be left alone to be governed by such rules and regulations. The court is only to be involved in the dispute as to the interpretation of (the) section 34 so as to ensure fairness and justice in the circumstance of any particular case. The learned trial judge in the exercise of her discretion held:-\

"In the instant case the 3rd defendant submitted the name of the plaintiff as its governorship candidate informed INEC of its change of candidate and gave INEC a reason for the change. It is left for INEC to verify the reason or not.\

"This is not the purport of section 34(2) of the Electoral Act, 2006. Section 34(2) demands that any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons. The section does not welcome any form of non-chalance on the part of INEC. The reasons given for the substitution are supposed to be cogent and verifiable read conjunctively. A court of law is without power to import into the meaning of a word, clause or section of a statute something that it does not say. Ojukwu v. Obasanjo 2004 12 NWLR pt 886 pg 169. Moreover that pronouncement is not a judicial or judicious exercise of the discretion of the lower court in the circumstance of the case. I shall not hesitate to conclude that the learned trial judge failed to consider all the aspect of section 34(1) and (2) of the Electoral Act and same has not met the justice of this case. I hereby allow the appeal. Judgment of the lower court is hereby, set aside. No Order as to Costs.\

"While dismissing the cross appeal the learned Justices of the Court, below, per Adekeye, JCA; observed:\

"The issue of nomination, sponsorship and substitution of

candidate precedes the election and are thereby pre-election issues. The political party has the right to change its candidate before the election in the exercise of that right. A court of law lacks jurisdiction to adjudicate on intra-party contest or nomination of candidate. No party member has a legal right to the nomination. There is no corresponding obligation on the political party so as to pave way for the powers of the court to be invoked under section 6 of the constitution. In effect a court of law has no jurisdiction over the issue of determination of intra-party political matters. The issue of primaries, selection of candidates to contest an election at any given time is the preserve of the political parties exclusively outside the province, or competence of courts. Court shall not impose a candidate on a political party.

Onuoha v. Okafor 1983 2 SCN LR 244

Chukwu v. Icheonwu (1999) 4 NWLR pt. 600 pg 587

Owuru v. INEC (1999) 10 NWLR pt 622 pg 21

Adebusoye v. Oduyoye (2004) 1 NWLR pt 854 pg 406

Dalhatu v. Turaki (2003) 15 NWLR pt 843 pg 310

Ibrahim v. Gaye (2002) 13 NWLR pt 784 pg 267

Jang v. INEC (2004) 12 NWLR pt 886 pg 46

Tosho v. Yahaya (1999) 4 NWLR pt 600 pg 657

Rimi v. INEC (2005) 6 NWLR pt 920 pg 56

That position or stand has now changed with the provision of section 34(1) and (2) of the Electoral Act which has created and placed an extra duty on INEC in its supervisory role over the affairs of political parties. Cogent and verifiable reasons are weapons to be employed by INEC when taking a decision to substitute a candidate. The procedure engaged can be challenged in court for interpretation of the section. The learned senior counsel for the 2nd and 3rd Respondents are of the opinion that the new section 34 is only cosmetic in context, bare and barren devoid of any legal sanction. I do not agree with them and I regard that impression as misconstruing, the intention of the law makers in promulgating section 34. I however agree that the law makers must go a step further in the framing of the provision particularly in the area of implementation and sanction for non compliance, or once it is established that a candidate is not disqualified under the constitution or the Electoral Law, and if he has won in the party primaries his or her nomination should not be subject of any substitution. Any provision for substitution should be deleted in the Electoral Act. A Political Party must not be allowed to approbate and reprobate. These are only suggestions. The Cross-Appeal is dismissed. No Order as to Costs. The 2nd respondent in the court below and now as 1st appellant herein, was dissatisfied with the above decision and he appealed to this court. Leave of court was sought and granted for the 1st appellant to amend his Notice and Grounds of Appeal by filing additional grounds of appeal. The 3rd respondent in the court below and 2nd appellant herein was dissatisfied too, with the lower court's decision and it filed its appeal. The parties, except the 2nd respondent herein who was the 1st respondent in the court below, and who elected not to file any brief, filed and exchanged brief of argument. In his brief of argument the learned SAN, Dr. Izinyon, formulated the following four issues:

(1) Whether the decision of this Honourable Court in Onuoha vs Okafor (1983) 14 NSCC 494 Dalhatu v. Turaki (2003) 15 NWLR (PT. 843) 310 on issues of nomination and sponsorship of candidate by a political party have been overtaken by the provisions of Section 34(1)(12) of the Electorate Act, 2006. (Encompassing grounds 4 and 11 of the Notice of Appeal)

(2) Whether the learned Justices of the Court of Appeal were right in holding that Section 34 of the Electoral Act, 2006 is justiciable. (Encompassing grounds 1 and 6 of the Notice of Appeal)

(3) Whether the learned Justices of the Court of Appeal were right in the interpretation of Section 34 (1) (2) of the Electoral Act, 2006. (Encompassing grounds 2, 3, 5, 6, 7, 8, 10 and 12 of the Notice of Appeal)

(4) Whether the learned Justices of the Court below were right in holding that Exhibits K, L, and L1 had no probative value having regard to the admission by consent of the said Exhibits by parties at the stage of the proceeding. (Encompassing grounds 9 and 14 of the Notice of Appeal)"The Learned SAN for the 2nd appellant Chief Joe-Kyari Gadzama formulated three issues. They are as follows:-

(a) "Whether the Court of Appeal was right when it held that the action before the trial court being one of sponsorship and nomination of a candidate by a political party was justiciable i.e. has Section 34 (1) (2) however interpreted taken the issue of nomination and sponsorship of a candidate outside the Supreme court decision in:

(a) P. C. Onuoha vs RBK Okafor (1983) SNLR pg 244.

(b) Dalhatu v. Turaki (2003) 15 NWLR (PT. 843) 300(Distilled from Grounds 1 & 2 of the Notice of Appeal)'

(b) Whether the court below was right or not in holding that exhibits L, Li & K had no probative value, when the pieces of evidence above were admitted by consent of parties.

(c) Whether the Court of Appeal as constituted by a three man panel instead of 5 Justices, had jurisdiction to hear and determine the matter before it having regard to fundamental, constitutional and salient legal issues raised in the Appeal. The Learned SAN for the 1st defendant, L. O. Fagbemi, formulated the following three issues for the determination of this Court:

(1) Whether, having regard to all relevant laws, documentary evidence before the Court and the complaints in the grounds of appeal; it can be said that, the Court below was wrong in reaching a conclusion that, there was non compliance with section 34(2) of the Electoral Act 2006 in the purported substitution of the name of the plaintiff with that of the 2nd Respondent'

(2) Whether steps taken in breach of a Court order and in purporting to substitute the name of the Plaintiff are not null and void'; and

(3) Whether the Plaintiff's case is justiciable. Although differently worded, the issues formulated by learned senior counsel for the respective parties can, in my humble view, be grouped as follows: 1st appellant's issues (a) and 1st respondent's issues 1 and 3. 1st appellant's issue No. 4 tallies with 2nd appellant's issue (b); 2nd appellant's issue (c) has no match from the other issues. 1st respondent's issue 2 has no match from the other issues and can stand on its own. Thus, in my treatment of the appeal, I shall rely more on the 1st appellant's issues and in doing so, I shall consider issues 1 - 3 together. Let me start with the issue of Justiciability of an enactment in a statute but with particular reference in this appeal to section 34 of the Electoral Act; 2006. An enactment is justiciable if only it can be properly pursued before a Court of Law or tribunal for a decision. But where a court or tribunal cannot enforce such enactment then it becomes non-justiciable (i.e. non-enforceable). This means that the Executive does, not have to comply with the enactment unless and until the Legislature enacts specific laws for its enforcement. In our constitutional law we have typical examples of such enactments particularly those contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999, placed under the caption, "Fundamental Objectives and Directive Principles of State Policy." These are not justiciable, generally, they run subsidiary to the Fundamental Rights Contained in Chapter IV of the constitution. See the case of Archbishop Anthony Olubunmi Okojie (Trustee of Roman Catholic School) & ors vs. Attorney general of Lagos State (1981) 1. N. C. L R. 218. Section 34 of the Electoral Act, 2006 provides as follows:

"34. (1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election

(2) Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons

(3) Except the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section."

(underlining and italics supplied for emphasis) Learned Senior counsel for the 1st appellant as well as that of the 2nd appellant, each made strenuous submissions in their respective briefs of argument that section 34 of the Electoral Act, 2006 (to be referred to herein below as the "Act") is not justiciable as the Act has not clearly donated Justiciability to the section. The section does not confer any right of action on any person. It was further argued that by the claim and relief of the 1st respondent, the issue is not Justiciable. Argued also is that section 34 of the Act deals with the issue of nomination and sponsorship of candidates and does not confer any right whatsoever on a substituted candidate to challenge his substitution before any authority. The issue of nomination and sponsorship of candidates for elections had been laid to rest by the Supreme Court in the cases of Dalhatu v. Turaki (2003) 15 NWLR (Pt.843) 300: Onuoha v. Okafor (1983) SNLR. 244. Learned counsel for the 1st respondent submitted that if a right is conferred by statute, the decision in Onuoha v Okafor (supra) will not be relevant and it is because of the absence of any law such as the like of section 34(2) of the Electoral Act, 2006, that was what made the Supreme Court to arrive at the decision in Onuoha v Okafor (supra). Let me start by saying that if history has anything to teach human beings, I think the machinery of law in a developing society is one such lesson that we must be ready to accept in this country. The case of Onuoha v Okafor (Supra); Dalhatu v. Turaki and several others too numerous to mention were decided by this court on the then prevailing laws. Certainly the duty of the court is to interpret and not to make laws, it appears that the Legislature has found some lapses or lacunae in the provisions of section 83(2) of the Electoral Act of 1982 under which the case of Onuoha v Okafor (Supra) and Section 23 of the Electoral Act of 2002 under which Dalhatu v. Turaki (supra) were decided respectively. These Sections in the 1982 and 2002 Electoral Acts left, the issue of substitution of candidates entirely in the hands of the political parties without any let or hinderance. But when the Legislature realized that the political parties were abusing the unfettered powers of "making" and "unmaking" of prospective candidates for the political offices to be contested at election periods, it then decided to re-draft the specific provisions relating to substitution of candidates for the elective offices. Thus, I think, is what brought about section 34 of the Electoral Act 2006. A statute, it is always said, is "the will of the Legislature" and any document which is presented to it as a statute is an authentic expression of

the Legislative will. The function of the court is to interpret that document according to the intent of those who made it. Thus, the court declares the intention of the legislature. The court can elicit that intention from the actual words of the statute. Lord Greene M.R. once observed: "If there is one rule of Constitution for statutes and other documents, it is that you must not imply any in them which is inconsistent with the words expressly used." See: R A Debtor (No335) of 1947 (1948) 2 All E. R. 5333 at p.536 Thus, where the language of a statute is clear and explicit, the court must give effect to it, for in that case, the words of the statute speak the intention of the legislature. The court must bear in mind that its function in that respect is Jus Dicere, not Jus Dare, and the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of the Legislature. That is what our courts do and I do not think, as Chief Gatzama submitted, any of the courts, ever embarked on what he called "Judicial Legislation." The justiciability or otherwise of section 34 of the Act can only be determined by looking at the whole enactment on the section and applying the primary Rule of literal construction as is applicable to statutes. That rule, of course, requires that words, phrases in statutes must be given their natural meanings and not to be construed contrary to their meaning as the duty of the court is to expound the law as it stands. Where, by the use of clear and unequivocal language capable of only one meaning, anything enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. Now let me attempt applying the natural rule. Section 34 of the Act states:

"34 (1) A political party intending to change any of its candidate for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons"

For the purposes of justiciability of the above section or not, I find the wordings therein more-compelling than the sections dealing with the subject of substitution in the earlier Electoral Acts of 1982 and 2002. In the one on hand, I understand the section to say:

a) A political party has a right to nominate and sponsor any of its members to any elective office.

b) Such a nomination and sponsorship is valid if it is done within 60 days before the election date to that office

c) Except where there are "Cogent and Verifiable reasons, a political party loses the right to substitute any of its nominated members to the Commission (i.e. I NEC) after the expiration of the 60 days stipulated in subsection (1) to be sponsored for the said election."

d) The information on substitution must be communicated to the Commission in writing.

The section in my view, is more than cosmetic. It confers right on anyone who is wrongly substituted to claim for restoration of his right. The repeated use of the word "shall" is mandatory and not directory. It is then the responsibility of the court to invoke the powers conferred on it by the Constitution, i.e. section 6(6)(b) which provides:"6(6) The Judicial powers vested in accordance with the foregoing provisions of this section - (b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the Civil rights and obligations of that person." I am of the firm view that section 34 of the Electoral Act, 2006, is justiciable as held by the lower court. This settles 1st appellant's issue No. 2; 2nd appellant's issue No. (a) and the respondent's issue No. 3. There is no doubt the primary role of nomination and sponsorship of a candidate to contest for any election in the present democratic dispensation is that of the political party to which a candidate belongs. However, with the new provision of section 34 of the Electoral Act, 2006, the whole procedure of nomination or sponsorship of a candidate by a political party has been put directly under supervision of the Electoral Body charged with the conduct of election affairs body is now known as the Independent Electoral Commission, (INEC) The practice in the previous elections was that a political party had the liberty to a nominee for election to a particular office, not later than 30 days to the (I date. Section 23 of the 2002 Electoral Act provides for that:"23. Any Political Party which wishes to change any of its candidates for any election under this Act may signify its intention in writing to the Commission not later than 30 days to the date of Election." The above provision, apparently, left the issue of nomination of candidate election to Political offices entirely in the hands of the Political Party.

Equally a Political Party had unfettered power in exercising its discretion at will, to change any of its candidate for any election under the Act. The only condition were: (a) that the Electoral Commission had to be informed of the change and (b) that the proposed change must be done not later than 30 days to the date of election. Thus, no body had the power, including INEC and the courts, to inquire into whether there were reasons for the change and whether such reasons (if any) were acceptable reasons or not. That was why many candidates became victims of such unwieldy exercise of discretion by the Political Parties. INEC was itself rendered a toothless-bull-dog and could not salvage the situation. That was why I had to make some observations in the case of Rimi v. INEC & Ors (2005) 6 NWLR (pt 920)56. Although I am not stating the full facts of that case here, which are of course fully covered in the report it almost gave a shocker to all and sundry when one looks at the empassé that ensued between INEC, the Political Party in question

(PDP) and its candidates. In what NTA Lokoja reported as a coverage of the episode just some few hours to the election day (which was admitted in evidence), the news item reported as follows; "Reporter ' in the last few weeks, the PDP candidate for Lokoja Constituency to the State Assembly generated a lot of controversy. Such that it was not clear who was actually the party's rightful contestant. Two persons paraded themselves as the party's candidate, namely the incumbent, as the Alhaji Hashimu Rimi and Architect Umaru Buba Jibrin as at this morning the situation had not changed. But few hours ago, the resident INEC Commissioner gave clarification on the matter." "Transcription - it is interesting phenomenon. We also wondered What was happening over, each candidate will come with a letter claiming to be the rightful candidate. But now we have a substitution for the name and Buba is the rightful candidate. I hope it does not change in the next five minutes. Buba is the candidate and I will talk to Hashimu later and tell him of the development so that he can stay clear of the election." That was so much of the imbroglia seemingly created by the party in question. I then went on to observe as follows: "from the totality of the above exhibits which are clear enough to speak for themselves, there is no doubt that it was the party (PDP) which created a bleak scenario full of cynicism, mistrust, non-resoluteness, misdirection, complete absence of cohesiveness and the brazen show of power and favouritism which shrowded the whole electioneering process in respect of Lokoja 1 State Constituency, in mystery and confusion." Now the case of Onuoha v. Okafor (1983) 2 SCNLR 244. was decided in 1983. The then existing law on Elections was the Electoral Act of 1982 which commencement date was the 5th day of August, 1982. I feel duty bound for clarity sake, to have a look at the facts, circumstances and the law in Onuoha's case so as to afford me a reasonable comprehension and comparison with the facts of the appeal on hand; and the prevailing laws within which it operates. The plaintiff at the High Court of Justice of Imo State holden at Owerri, one Hon. P. C. Onuoha and the 3rd defendant, one Chief the Honourable Isidore Obari, were members of the same Political Party, i.e. the Nigerian Peoples Party (NPP). Both of them applied to NPP to be nominated for Owerri Senatorial District seat. Each of them paid the mandatory and non-refundable deposit of N5,000 (Five Thousand Naira). There was a body set up to select a candidate who would represent the party. The plaintiff was chosen. There was a petition against the selection of the plaintiff by the 3rd defendant. Consequent upon the petition, the state working committee of the NPP appointed a panel to look into this complaint. The plaintiff and the 3rd defendant were each summoned to present his own side of the story.

At the end of hearing by the panel, the panel nullified the selection of the plaintiff and went on to choose the 3rd defendant to represent the party at the forthcoming Senatorial Election. Dissatisfied with the decision taken by the panel and ratified by the party, the plaintiff then went on to court on the grounds disclosed in his writ and statement of claim. It was the plaintiff's case that he never took part in the election after the nullification and that the Nomination Election Petition Panel did not meet to select a candidate. The 3rd defendant was merely joined because he was a candidate whose interest was likely to be affected. The trial court upheld the claim of the plaintiff. On appeal to the then Federal Court of Appeal, that court per: Phil-Ebosie, Aseme and Olatawura, JJCA unanimously allowed the appeal and set aside the decision of the trial court and dismissed the claims. There was a further appeal to the Supreme Court. The 7 man panel of the Justices of the Supreme Court unanimously held, in a summary form, as follows:

(1) The expressed intention of the Constitution of the Federal Republic of Nigeria, 1979 and the Electoral Act 1982 is to give a registered Political Party the right freely to choose the candidate it will sponsor for election to any elective office or seat in the legislature.

(2) The exercise of this right is the domestic affair of the party over which the court has no jurisdiction.

(3) The question of the candidate a Political Party will sponsor is more in the nature of a Political question which the courts are not qualified to deliberate upon and answer. Consequently, the question is not justiciable in a court of law. In a nutshell, the Supreme Court dismissed the appeal and affirmed the judgment of the Federal Court of Appeal. In the case of Dalhatu v. Turaki (Supra) or as reported in (2003) 7 SCNJ I, the facts were that at the screening exercise for selection of the candidate of the All Nigeria Peoples Party (ANPP) the appellant at the Supreme Court, was the only prospective member of the party who was screened. After the screening exercise, he was declared the winner. A primary election was subsequently conducted. In the primary election the 1st respondent participated but the appellant did not participate. The 1st respondent was declared the winner of the primary election. The party, that is the 4th respondent, accorded recognition to the 1st respondent as the Gubernatorial candidate of the party for Jigawa State. The appellant challenged the recognition of the 1st respondent as the Gubernatorial candidate of the party for Jigawa State by instituting an action at the High Court of Justice of the Federal Capital Territory, Abuja against all the respondents. In its judgment the trial court found for the appellant and granted the declaration and injunction sought by him. By that judgment the selection of the 1st respondent by the party was annulled and the party was restrained from interfering with the rights of the plaintiff to contest the election to the office of Governor of Jigawa State. Aggrieved by the trial court's

decision, defendants appealed to the Court of Appeal, Abuja Division. In their judgment, the 5 man panel of Justices allowed the appeal by the respondents. The judgment of the trial court was set aside and an order was made striking out the suit. On further appeal to the Supreme Court by the respondent at the Court of Appeal, the seven man panel of Justices of the Supreme Court dismissed the appeal and affirmed the Court of Appeal's judgment. Salient among the holding of the apex court are as follows:-"(1) By the authority of *Onuoha v. Okafor* the trial Court had no jurisdiction to entertain the matter. The issue of who should be a candidate of a given political party at an election is clearly a political one to be determined by the rules and constitution of the party. In other words, it is a domestic issue and not such as would be justiciable in a court of law. This is so because the power and the right to nominate and sponsor a candidate to an election are vested in a political party and the exercise of this right is the domestic affair of the party, i.e. in this case the ANPP." That is so much on the two cases of *Onuoha v. Okafor* (supra) and *Dalhatu v. Turaki* (supra). Given the facts, circumstances and the laws under which the two cases were decided, I cannot fault any of the decisions. However, what is clear and which need to be understood very well are that the two cases above were:

(1) Constituted of different facts peculiar to each case.

(2) Each of the two cases was decided under a different Electoral Law/Act (which of course shared common principles)

(3) In each of the elections held i.e. in 1982 and in 2003, the principal law relating to each of the elections did not place stringent conditions which have the force of law as was done in the 2006 Electoral Act.

In the 1982 Electoral Act for instance, there were apparently no provisions relating to substitution or change of a candidate for the purpose of an election except by death of or voluntary withdrawal by a candidate already nominated. I refer to sections 32 and 34 of the Electoral Act, 1982, Cap 105, LFN, 1990:"32(4) A person nominated as a candidate in accordance with the provisions of this Act may, at any time before the beginning of the period of forty days ending with the date of the election, withdraw his candidature by delivering in person to the electoral officer a declaration in writing to that effect signed by him and duly attested by the signatures of any two of his nominators.

(5) The Commission shall notify the sponsoring Political Party of the withdrawal and the party concerned shall be allowed to submit another nominee before twenty days to the election.34(1) If a nominated candidate is reported dead after expiry of the time for delivery of nomination papers but before the commencement of the poll, and satisfactory evidence of the death of the candidate is produced to the electoral officer, the electoral officer shall countermand the poll; and the Commission; or the Chairman of the Commission if no quorum is available at the time shall, when notified by the electoral officer, appoint some other convenient date for the election.(2) Notice of the new date fixed for the election of a candidate in the circumstances envisaged in subsection (1) of this section shall be given not more than thirty days from the death of the candidate whose death is the cause of fixing the new date or not less than fifteen days from the date of the new election.

(3) In respect of the nomination of a candidate in replacement of the dead candidate, the provisions of sections 28 to 32 of this Act shall have effect but within such periods of time as may be specified by the Commission."

(underlining, supplied for emphasis) The enabling provision for the submission of names of candidates as per the 1982 Electoral Act is section 28 thereof which provides:"28 (1) Every registered political party shall not later than 90 days (or such later days as may be directed by the Commission) before the date appointed for the general elections to be conducted pursuant to this Act deliver the complete list of the names and other relevant particulars of all the candidates the party proposes to sponsor for elective offices in respect of all the elections (or such number thereof as the party intends to contest) to the Commission."

(underlining supplied for emphasis) Thus, by delivering a complete list of the names and other relevant particulars of the nominees of a political party, before the actual election date, the Act did not in any way impose a limitation as to candidature of whomsoever a political party intended to propose for any elective office. Thus, no problem was posed in this respect and a party was free to sponsor any member of its Political Association it found fit and proper. Now, even where two or more candidates at an election claimed sponsorship by the same Political Party, the doubt so created could be resolved by the Federal Electoral Commission by consulting the leader of the Political Party concerned. The Supreme Court re-emphasized this point when, it said: 'The law is therefore certain as to who is to resolve the dispute where two candidates claim sponsorship. It is the Federal Electoral Commission by consulting the leader of the Political Party concerned.' That was the position of the law then. This Act was repealed by the 2002 Electoral Act. It is no longer the existing law. In the case of *Dalhatu v. Turaki* (supra), the law under which the case was decided was the Electoral Act of 2002. Was there any provision for substitution or change of a candidate? It appears there were three circumstances under which a change or substitution of candidates for election to Political offices could be effected by a party. These circumstances were (a) where Political Parties could change candidates (b) where candidates voluntarily withdraw their candidature and (c) where a nominated candidate died.

(a) Where a Political Party could change its candidate: the Electoral Act, 2002 provides:- "23: Any Political Party which wishes to change any of its candidates for any election under this Act may signify its intention in writing to the Commission not later than 30 days to the date of Election." It is to be noted that this provision is a complete departure from the Electoral Act of 1982. The latter did not make such a provision. Secondly, any of the Political Parties could make a change or substitution of a nominee within the time limit provided by that Act before the date of election as the party may wish or desire with reasons for the change or for no reason at all. This is a situation where party supremacy could operate without any let or hinderance. There is nothing that could be an anathema to the exercise of a party's will, wishes, desires or caprices. Yes! It is a situation also where no one could impose any candidate however qualified or meritorious he may be on a Political Party. It is certainly a situation where a Political Party, if care is not taken, will try to exercise its brazen show of power, favouritism and nepotism.

(b) where a candidate could voluntarily withdraw his candidature: It is provided in the same Electoral Act as follows: "25(1) 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 that nominated him for the election, and the Political Party shall convey such withdrawal to the Commission and which shall only be allowed not later than 14 days to the election.

(2) where a candidate withdraws as provided in sub section(1) of this section, his Political Party shall be allowed to nominate another candidate. This section of the 2002 Electoral Act poses no problem as it is a voluntary decision embarked upon by the candidate concerned. It has parallel provisions both in the 1982 and the 2006 Electoral Act, though with minor differences.

(c) where a Nominated Candidate died:

Section 26 of the 2002 Electoral Act provides:

"(1) if after the time for the delivery of nomination paper and before the commencement of the poll, a nominated candidate dies, the Commissioner or the Resident Electoral Commissioner shall being satisfied of the fact of the death, countermand the poll in which the deceased candidate was to participate and the Commission shall appoint some other convenient date for the election." This provision also poses no problem. The 1982 Electoral Act contained a similar provision. The 2006 Electoral Act also has similar provision. It is a natural consequence that the political party affected must replace the deceased candidate with another. It is to be noted that the whole of this Act has undergone comprehensive amendment which culminated into the emergence of the 2006 Electoral Act. Thus, the 2002 Act ceases to be the existing law as it has been repealed by the 2006 Electoral Act. (See section 165 of the 2006 Electoral Act). The current and existing law on election matters is the Electoral Act of 2006. Like the repealed Act of 2002, the Electoral Act of 2006 made provisions similar to the ones provided by the 2002 repealed Electoral Act though with fundamental difference. Let me start with the provision on death of a nominated candidate. Section 37 of the 2006 Electoral Act (hereinafter to be referred to simply as the "2006 Act") stipulates as follows:

"(1) If after the time for the delivery of nomination paper and before the commencement of the poll, a nominated candidate dies, the Chief National Electoral Commissioner shall, being satisfied of the fact of the death, countermand the poll in which the deceased candidate was to participate and the Commission shall appoint some other convenient date for the election." On withdrawal by a candidate, the 2006 Act States:

36(1) 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 and which shall only be allowed not later than 70 days to the election

(2) Where the Commission is satisfied that a candidate has withdrawn as provided in subsection (1) of this section, his Political Party shall be allowed to nominated another candidate not later than 60 days before the date of election. On the circumstances where a Political Party can change or substitute its candidate for election to a Political office, the 2006 Act states: 34 (1) A Political Party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons.

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section."

(all underlining and italics shown above are for emphasis and to depict points of similarities, dissimilarities or complete departure from the earlier (repealed) Electoral Acts).

I shall now comment on the last provision i.e. section 34 of the 2006 Electoral Act quoted above.

Although section 34(1) of the 2006 Act appears similar to section 23 of the repealed 2002 Act, it fundamentally differs on

the following aspects: (a) the period given within which a Political Party can signify its intention to effect a change of candidate for any election differs. In the 2002 Act, that intention must be signified in writing to the Commission not later than 30 days to the date of election. In the 2006 Act, the period for doing same is not later than 60 days to the election, (b) the word "may" was used as operative in section 23 of 2002 Act: The word "shall" was used as operative in section 34(1) of the 2006 Act. (I shall revisit the legal connotation of the words "May" and "Shall" when used in an enactment, in course of this judgment), (c) None of the 1982 and 2002 repealed Electoral Acts had similar provisions to section 34 (2) and (3) of the 2006 Act. These are new innovations in the 2006 Act. These innovations in my view, have completely altered the previous position of the law on substitution of candidate by a Political Party as provided by the repealed 1982 and 2002 Electoral Acts. This marks a complete departure from the two repealed Acts. The pertinent questions at this juncture, therefore are: Why then did the legislature find it necessary to depart from its earlier enactments? What is the legal effect of that departure in circumstances where a Political Party found it expedient to effect a change of candidate nominated for an election? I think the general presumption is that wherever one finds an enactment being repealed by the legislature, the message is that that piece of legislation or enactment repealed is found to be unsatisfactory in terms of its effectiveness. It may be too weak or excessively strong for the purpose for which it was enacted. It therefore invites the attention of the Legislature to amend it. The general position of the law is that where an Act or a legislation is repealed it is regarded in the absence of any provision to the contrary, as having never existed, except as to matters or transactions past and closed. See: *Surtees v. Ellison* (1829) 9 B & C 750, per Lord Tenterden. Section 34 of the 2006 Act appears to be a codifying statute. It is codifying because it purports to state exhaustively the whole of the law upon the subject of change or substitution of a candidate nominated for an election by his political party. The Legislature attempted, as it is clear from the existing sections and the new subsections of all the sections relating to changes or substitutions of political candidates stipulated by the various Electoral Acts to provide a solution to the brazen exercise of power of substituting candidates by a political party for no justifiable cause. That being the case in my view, the court has to approach such a codifying enactment in quite a different spirit. In *Bank of England v. Vagliano Brothers* (1891) A. C. 107, for instance, the guide lines set for interpreting such enactment was given by Lord Herschell: "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood and then, assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The law is now to be determined by interpreting the language used not (as before) by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions." The introduction of subsections (2) and (3) of section 34 of the 2006 Act, could not have been done for the mere sake of it only. There must be a purpose behind it. My honest belief is that the Legislature must have found the provisions of the pre-existing law far inadequate to tackle the problem of cynicism, mistrust, non-resoluteness, misdirection, complete absence of cohesiveness, brazen show, of power, favouritism and nepotism which usually shrouded in mystery and confusion the whole electioneering process in a given political party.. Permit me my Lords, at the risk of repetition to quote below these two subsections, albeit with particular reference to subsection (2):-

34(2) An application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons.

(3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section. This is the aspect of section 34 of the 2006 Act, to my mind, which makes the said section 34 to be justiciable. I am sure there is no conflict between what I hold as of now on the said section in view of its new status which markedly differ with the previous laws on the, same subject matter and what was held by this court in the cases of *Onuoha v. Okafor* (supra) that the law on substitution of candidates for election to political offices by a political party was not justiciable. The difference, as I have set out all the provisions above, is very clear. Permit me My Lords, again to examine the wordings of subsection (2) above. I shall limit my examination primarily on the phrase, "shall give cogent and verifiable reasons." Generally, if the word "shall" is used in statutes, it implies imperativeness or mandatoryness. Black says,

"In common and ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation." It is my humble understanding that the word "shall" used in the subsection, imposes a duty, on a Political Party that makes the application to INEC for an election, to supply, as a matter of necessity, to INEC what the Act terms "Cogent" and

"Verifiable" reasons which prompted the application for the substitution. Where no "Cogent" and "Verifiable" reasons are given, then INEC has no power to allow the substitution. Thus, where a member of a Political Party feels aggrieved because both the Political Party to which he belongs and INEC sided with him, after having been initially and properly screened and nominated to contest for an election but, at the nick of time, had been substituted by another member of the party, I think he has every right to ask a court of law to intervene and protect his right to be allowed to contest the election. By the provisions of the Constitution of the Federal Republic of Nigeria, 1999 every citizen of this country, subject to satisfaction of qualifications stipulated by the Constitution for election to any of the Political offices created by the Constitution, is entitled to contest for an elective post as aforesaid, (see various sections of the Constitution e. g. sections 65, 66, 106, 107, 131, 137, 142; which provide for the qualifications and disqualifications for election into some political offices. The Electoral Act and Party Constitutions must be seen to be complementing the constitution in formulating broader rules, regulations and operation mechanisms for both INEC and the political parties for administrative convenience. Where any of such enactment, rules or policies comes in conflict with any section of the Constitution, that enactment, rule or policy must surrender to the Constitution. Except where it is meant to say that a member of a political party has no right at all, in election matters, I cannot see why a political party shall be permitted, once it has given its commitment or mandate to a candidate whom it had already nominated whether wrongly or rightly to bulldoze its way to rescind that mandate for no justifiable cause. Politics is not anarchy; it is not disorderliness. It must be punctuated by justice, fairness and orderliness. It is unfortunate to observe that the legislature has not assigned any specific meaning to the phrase "Cogent and Verifiable" as used in section 34 (2) of the 2006 Act. It appears to me to be an oversight, or a lacuna created by the Legislature. Where such happens, the courts, though not usurping the power of the Legislature by embarking upon "Judicial Legislation" as coined by Gbadamosi SAN, must, from the necessary intendment of the Legislature, taking the totality of the legislation under review, assign a meaning to the missing link. In its ordinary connotation, the word "Cogent", according to the Lexicon Webster Dictionary, means: "Something which has the power to convince, compel or persuade by means of a clear, forcible presentation of facts, ideas and arguments." If a thing is referred to as "Verifiable", it means it is susceptible to verification. Verification is an act of checking that thing that it is true by careful examination or investigation. (Collins Learner's Dictionary, latest print, 2001). This, to me, means that the reason(s) to be adduced by a political party to INEC before the latter can accede to the substitution must be genuine, convincing, compelling and persuading. It should not be flimsy or dubious. It must be clear and unequivocal. Again, should INEC venture to confirm the veracity of these reasons, the Political Party must be willing and ready to subject such reasons to the scrutiny of INEC for self satisfaction. Before looking at the reason(s) given by the 3rd respondent in this appeal for proposing the substitution of the appellant with the 2nd respondent, it is pertinent to cast a glance at the processes that were understandably initiated by the appellant, the 1st and the 3rd respondents. There is a finding by the court below that the appellant had effectively complied with the provisions of section 32 of the Electoral Act and scaled the hurdle of nomination and sponsorship by his Political Party, the PDP. The following exhibits speak for themselves:

- 1) Exhibit D is PDP's provisional clearance certificate dated 7th December, 2006 (7/12/06) given to the appellant
- 2) Exhibit E - PDP's result of Gubernatorial Primary Election with the appellant scoring 2061 votes to qualify him to take 1st position while 2nd respondent who was billed to substitute the appellant scored 36 votes making him to take 12th position (which he paired with another contestant)
- 3) Exhibit F - PDP's list of candidates for Gubernatorial Elections in all the states with the name of the appellant for Imo State.
- 4) Exhibit G - INEC form for 2007 elections for Governorship in Imo State.
- 5) Exhibit I - Submission of names of candidates by the Political Party 2007 Governorship elections
- 6) Exhibit J - Acknowledgement form by INEC dated 15th December, 2006 Despite all these, the 3rd respondent thereafter issued Exhibits K, L, L1 and N.

Exhibit K reads as follows:

"January 18, 2007

Prof. Maurice Iwu,
Chairman,
INEC,
Abuja.

Forwarding of PDP Governorship Candidate and Deputy 'Imo State

Names of Imo PDP Governorship candidate and his Deputy in Imo State are presented as follows:

1. Chief Charles Chukwuemeka Ugwuh and
2. Col. Lambert Ogbonna Iheanacho (Rtd.)

This is for your information and necessary action.

(Signed)

SEN. (DR.) AMADU ALI, GCON

National Chairman

(Signed)

OJO MADUEKWE, CFR

National Secretary

Exhibit L reads as follows:

February 2, 2007

Prof. Maurice Iwu,
Chairman,
INEC,
Abuja.

Forwarding of PDP Governorship Candidate and Deputy -Imo State

Our letter of 1st February, 2007 refers, please.

This is to confirm PDP position that Chief Charles Chukwuemeka Ugwuh and Col. Lambert Ognonna Iheanacho (rtd.) are PDP Governorship and Deputy Governorship candidates for Imo State. Chief Charles Ugwu substitutes Sen. Ifeanyi Godwin Ararume whose name was submitted in error

This is for your necessary action.

(Signed)

SEN. (DR.) AMADU ALI, GCON

National Chairman

(Signed)

OJO MADUEKWE, CFR,

National Secretary

(underlining supplied for emphasis).\"Thus, the reason for changing or substituting the appellant whose name was earlier on submitted to 1st respondent with the 2nd respondent, was because the name of the appellant \"was submitted in error.\"Yes! to err, is human. Ordinarily, an error is referred to as something done by a person which is incorrect or which should not have been done. Thus, in the present appeal, what the 3rd respondent was telling the whole world is that all the processes undergone by the appellant and ratified by the 3rd respondent were done in error! This certainly must have been a very costly mistake or error. My difficulty here as I alluded to earlier is the absence of definition of what is 'Cogent and Verifiable.' But, be that as it may, \"error\" simpliciter, cannot be one. So in the absence of a cogent and verifiable reason, there is no magic wand upon which INEC will ride to disqualify the appellant who was already accepted by it earlier as qualified. To do so will be against reason and common sense. Speaking for myself, I find it terribly difficult to accept such kind of reasoning to warrant the substitution subtly and consciously designed by the 3rd respondent to destroy the political aspiration of the appellant, if anyone is ready to accommodate that as a cogent and verifiable reason for the substitution, I cannot. If I do so, I am afraid, I am installing crude injustice into our electoral process. My Lords, if we want to instill sanity into our human affairs, if we want to entrench unpolluted democracy in our body polity. the naked truth must permeate through the blood, nerve and brain of each and everyone of us. Although credit may not always have its rightful place in politics, we should try to blend the two so as to attain a fair, just and egalitarian society where no one is oppressed. Let us call a spade a spade! Let us not give a dog bad name in order to hang it. Finally, I agree with the Learned Justices of the court below in their interpretation of section 34 of the 2006 Act. I find their judgment in this appeal quite lucid and sound. Accordingly, I still maintain my position in dismissing the appeal as I stated on the 5th day of April, 2007. I concur with my learned brother Tobi, JSC in his decision of that date and the more detailed reasoning for the decision which he has just delivered. I abide by all the consequential orders made including order as to costs.

Reasons for Judgement delivered by

Christopher Mitchel Chukwuma-Eneh, J.S.C

By an amended statement of claim filed on 12/1/2007, the plaintiff has claimed against the 1st defendant (INEC) the following reliefs:

(1) A declaration that the option of changing or substituting a candidate whose name is already submitted to INEC by a Political Party is only available to a Political Party and/or the Independent National Electoral Commission (INEC) under the Electoral Act 2006, only (when) the candidate is disqualified by a court order, (sic).

(2) A declaration that under Section 32 (5) of the Electoral Act 2006 it is only a court of law by an order that can disqualify a duly nominated candidate of a political party whose name particulars have been published in accordance with Section 32 (3) of the Electoral Act 2006.

(3) A declaration that under the Electoral Act 2006, Independent National Electoral Commission (VNEC) had no power to screen, verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the Plaintiff or any candidate to the Independent National Electoral Commission (INEC).

(4) A declaration that the only way Independent National Electoral Commission (INEC) can disqualify, change or substitute a duly nominated candidate of a political party is by Court Order,

(5) A declaration that under Section 32 (5) of the Electoral Act 2006, it is only a court of law, after a law suit that a candidate can be disqualified and it is only after a candidate is disqualified by a court order that the Independent National Electoral Commission (INEC) can change or substitute a duly nominated candidate.

(6) A declaration that there are no cogent and verifiable reasons for the Defendant to change or entertain the change of the name of the Plaintiff as the candidate of the Peoples Democratic Party (PDP) for the April 14th 2007 Governorship Election in Imo State.

(7) A declaration that it is unconstitutional, illegal and unlawful for the Defendant to change the name of the Plaintiff as the Governorship candidate of Peoples Democratic Party (PDP) for Imo State in the forthcoming Governorship Election in Imo State after the Plaintiff has been duly nominated by the Peoples Democratic Party (PDF) as its candidate and after the Defendant has accepted the nomination and published the name and particulars of the Plaintiff in accordance with Section 32 (3) of the Electoral Act 2006 until the High Court disqualifies the plaintiff or until, cogent and verifiable reasons are given to the Defendant by whosoever desires to make the change.

(8) An order of perpetual injunction restraining the Defendant from changing or substituting the name of the Appellant as the Imo State Peoples Democratic Party Governorship Candidate for the April 2007 Imo State Government Election unless or until a court order is made disqualifying the Plaintiff and or until cogent and verifiable reasons are given as required under Section 34 (2) of the Electoral Act. See pages 115 - 145 of the record. The 2nd defendant i.e. Engr. Charles Ugwu upon his application for joinder was joined as a party. The 1st defendant by an application applied to join the 3rd defendant (i.e. PDP) and it was so joined. Both the 2nd and 3rd defendants have filed, through their counsel a statement of Defence. As time had become of the essence in this matter, the trial judge advised counsel to narrow down the issues in controversy between the parties in the matter and proffer their addresses accordingly. After the addresses by all the parties, the trial court in a considered judgment, dismissed the plaintiffs claim in its entirety. Aggrieved by the decision the plaintiff appealed to the Court of Appeal Abuja Judicial Decision which court, after hearing the appeal on 20/03/2007 allowed the appeal. Aggrieved by the decision of the Court of Appeal (Court below) the 2nd and 3rd defendants (appellants) have each appealed to this Court; that is Engr. Charles Ugwu and the People Democratic Party (PDP).

Parties have filed and exchanged their briefs of argument. The 1st appellant i.e. Engr. Charles Ugwu filed his brief of argument on 3/4/2007. He has therein identified the following issues for determination.

"1 Whether the decisions of this Honourable Court in Onuoha vs Okafor (1983) 14 NSCC 494 and Dalhatu vs Turaki(2003) 15 NWLR (pt. 843) 310 on issues of nomination and sponsorship of candidates by a political party have been overtaken by the provision of section 34 (1)(2) of the Electoral Act, 2006 (Encompassing grounds 4 and 11 of the Notice of Appeal).

2. Whether the learned justices of the Court of Appeal were right in holding that section 34 of the Electoral Act, 2006 is justifiable. (Encompassing grounds 1 and 6 of the Notice of Appeal).

3. Whether the learned justices of the Court of Appeal were right in the interpretation of section 34(1)(2) of the Electoral Act, 2006. (Encompassing grounds 2, 3, 5, 6, 7, 8, 10 and 12 of the Notice of Appeal)

4. Whether the learned Justice of the court below were right in holding that Exhibits K.L. and L1 had no probative value having regard to the admission by consent of the said Exhibits by parties at the stage of the proceeding. (Encompassing grounds 9 and 14 of the Notice of Appeal)."

The 2nd appellant, the Peoples Democratic Party filed its brief of argument on 4/4/2007 and it was deemed so filed on 5/4/2007.

In it, the following issues for determination have been raised:

(a) whether the court of Appeal was right when it held that the action before the trial court being one of sponsorship

and nomination of a candidate by a political party was justiciable i.e. has section 34 (1)(2) however interpreted taken the issue of nomination and sponsorship of a candidate outside the Supreme Court decision in:

(a) P.C. Onuoha vs RBK Okafor (1983) SNLR PG 244.

(b) Dalhatu vs Turaki(2003)15 NWLR, pg 843 pg 300 (Distilled from Grounds 1 & 2 of the Notice of Appeal)

(b) Whether the court below was right or not in holding that exhibits L.Li & K had no probative value, when the pieces of evidence above were admitted by consent of parties.

(c) Whether the Court of Appeal as constituted by a three man panel instead of 5 Justice, had jurisdiction to hear and determine the matter before it having regard to fundamental, constitutional and salient legal issues raised in the Appeal,\n"\"The 1st respondent filed a brief of argument on 4/4/2007 and has herein raised the following issues for determination:

\n"(1) Whether, having regard to all relevant laws, documentary evidence before the court and the complaint in the grounds of appeal, it can be said that, the court below was wrong in reaching a conclusion that, there was non compliance with section 34(2) of the Electoral Act 2006 in the purported substitution of the name of the plaintiff with that if the end (sic) Respondent'

(2) Whether steps taken in breach of a court order and in purporting to substitute the name of plaintiff are not null and void' And

(3) Whether the plaintiffs case is justiciable,\n" I adopt the comprehensive statement of facts in this matter and the argument by the parties on the issues raised for determination as aptly set forth in the lead judgment of Tobi, JSC. It is therefore for purposes of emphasis that I have all the same replicated the following facts of the matter. The facts for purposes of this resume, as told by the two lower courts have come to this: The plaintiffs name was submitted to the 1st defendant by letter Exhibit F dated 14/12/2006 as the Gubernatorial candidate of the 3ul defendant, that is, the Imo State Governorship Candidate of the PDP. Later, on -16/1/2007 by another letter, Exhibit K, the 3rd defendant sent the name of the 2nd Defendant to the 1st defendant as the Gubernatorial Candidate for the same Imo State. The .plaintiff had earlier contested the primaries and scored 2061 votes as against the 2nd defendant, Engr. Charles Ugwu, who scored at the same primaries, 36 votes so that the PDP, as it were, was fielding the plaintiff and 1st Defendant as candidates for the same Imo State Gubernatorial election. The PDP in its application to substitute the 2nd defendant for the plaintiff has however given no reason excepting that it was done in error.I should say at this stage that I have had the advantage of a preview of the lead judgment of my learned brother Tobi JSC. He has treated every department of this matter very satisfactorily. This short contribution is simply to underscore the importance of Section 34 of the Electoral Act 2006 to this matter, for this purpose. I set forth the provision as follows: -

\n"1 A political party intending to change any of its candidates for any election shall inform the commission of such change in unfaillingly not later than 60 days to the election.

2. Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons

3. Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section.\n"Let me state peremptorily that as a general principle, the rules for the construction of statutes are very, like those which .apply to the construction of other documents. This is more so as regards the important point here that the words of an enactment, as in the piece of legislation above, must be constructed as a whole so as to give a sensible meaning to them.In other words, words in a statute ought to be construed \"ut reg magis valeat quam pereat' This rule of interpretation synchronises with another established principle of interpretation to the effect that a statute must be read together as a whole and construed together in order to get to the true meaning of the statute and the intention of the law maker in enacting it. Hence, in this regard words of a statute have to be construed as bearing their natural or ordinary meaning and where, in the process, there is no ambiguity or resulting absurdity, there will be no need applying any of the other rules of interpretation. These are settled principles of the law of interpretation. See: Adah v. N.Y.S.C. (2001) 1 NWLR (pt 963) 65 at 78-80; Mersey Docks and Harbour Board v. Turner (1893) AC 468 at 477; Tukur v. Govt of Gongola State (No. 2) (1989) 4 NWLR (pt 117) 517; AG, Bendel State v. AG. Federation (1981)3 NCLR and AG Lagos State v. A G, Federation (2001) 18 NWLR(pt 904).I should start to examine the trial courts stand point in regard to construing the provision of Section 34 of the Electoral Act. The trial court at p. 572 lines 4-5 stated in that regard thus:-'We must give legislation their \"natural meaning\" In this page it has proceeded to hold that:'By section. 34(2) the application for the change made by virtue of subsection (1) shall give cogent and verifiable reasons\"Having rightly, set out the foregoing as the first principles in construing the provision it has proceeded to concluded thus:'In this instant case, the 3rd Defendant submitted the name of the plaintiff change of candidate and gave INEC is reason for the change. It is left for INEC to verify the reason or not. But pursuant to all the above, I must say that the political party is within its power to so change its candidate and have so done as far as the

parties on record are concerned. Following from the foregoing, the court below on its part, convinced that the trial court has derailed has, in setting aside the decision of the trial court for want of adequate consideration of the question, held as follows: "...I shall not hesitate to conclude that the learned trial judge failed to consider all the aspects of Section 34(1) and (2) of the Electoral Act and same has not met the justices of this case..." In constructing the said provision, it (the court below) held thus: "The combined reading of the words application cogent and verifiable reasons connote an element of good faith shown by the party substantiated on oath or affidavit. INEC must be able to ascertain the truth of the facts deposed to form the surrounding circumstances of the case based on the document at its disposal. If this court accepts that the name of the appellant was submitted in error as a cogent reason what about the aspect of verification which is the ascertainment of the truth of the matter. This is a power which INEC must exercising taking into consideration the surrounding circumstances of the case, particularly Exhibit D, E, F and the constitution of the party." The court below has, in my view, rightly approached this matter perspective and has gone on to demonstrate so in the above abstract. Reading the provision of Section 34 as whole in the context of the Electoral Act 2006, I have no doubt in my mind of its mandatory nature. See *Ogidi v. The State* (2005) 5 NWLR (pt 910) 286 at 327, *Nwoyi V Anyichie* (2005) 2 NWLR (pt 910) 623 at 649. Not least in strengthening my conclusion here is the use of the word "shall" in the provision. The word "shall" as used in section 34(1) and (2) of the Electoral Act denotes the mandatory nature of the provision and that it has to be strictly complied with. The words of the section do not admit of any substantial compliance with the stipulations as provided therein and so the word "shall" in the provision of Section 34(1) and (2) cannot be directory. There is nothing in the tenor of the provision for that construction. And so the court below rightly confirmed it. The provision of Section 34 of the Electoral Act 2006 is plain and unambiguous and has to be given its natural or ordinary meaning. Construing the words of the said provision by giving the words their natural or ordinary meaning, it is clear that a political party desirous to change or substitute its candidate for the election, has to do so not later than 60 days to the election. In this regard, the political party must do so by applying in writing to the Commission (INEC) and in the application, it shall give "cogent and verifiable reasons" for a change or substitution of its candidate. The words "cogent and verifiable" as used in the context of the provision of Section 34 (2) have, as it were, set the cat among the pigeons in that they have generated so much heat and divisive argument. All the same, Section 34 is still amenable to literary interpretation. Let me here firstly explore the dictionary meaning of the important words used in the said Section and they are "cogent and verifiable". As an aside these are innovative accretion to Section 22 of the Electoral Act 2002. Before now the words have not been the subject of any construction in any legal sense. The Longman Dictionary of Contemporary English, New Edition has defined the word "cogent" an adjective as "something such as an argument that is cogent is reasonable, so that people are persuaded that it is correct"; 'verifiable, an adjective is derived from the verb verify the same dictionary has defined the word verify thus: "to find out if a fact, statement etc is correct or True, check, (2) to state that something is true; confirm". So that for a reason to be cogent and verifiable - it has to be reasonable and persuading and confirmable as to its correctness. Before delving into a serious appraisal of this matter perspective, if I may recap; in this matter, the 3rd defendant forwarded to the Commission (INEC) the plaintiffs name alongside other successful governorship candidate at the primaries as the Gubernatorial Candidate for Imo State with the accompanying affidavits - Exhibits E and G. INEC acknowledged the receipt on FORM 007. Long afterwards, that is, after the question of sponsorship has closed, the 3rd defendant again forwarded the name of the 2nd defendant Engr. Charles Ugwu by Exhibit K to the 1st defendant as its Imo State Governorship Candidate stating that the plaintiffs name was sent in ERROR. This was after the plaintiff had been cleared and screened. By another letter dated 2/2/2007 but delivered on 9/2/2007 to the Commission, the 3rd defendant again reiterated its stand on substituting the 2nd defendant for the plaintiff. Having updated the facts of the matter to this stage, I now go ahead to scrutinise the said provision. I have read the provision of Section 34 of the Electoral Act 2006 several times over and it is plain and unambiguous and it is my respectful view that the words "cogent" and "verifiable" used in Section 34 (2) of the Act read conjunctively in the context of the whole statute have placed a duty on a political party seeking to change or substitute its candidate in the Election. In any circumstances of any matter it has to do so by way of application (i.e. to apply in writing which shows the seriousness attached to the exercise as it is not being treated as a trifle) not later than 60 days to the election. In this wise, the political party must give full and sufficient as well as intelligible reasons showing that the reasons for the change or substitution is reasonable, persuading and confirmable as against the background of the substantive circumstances which are in issue in the matter; in other words as evident from the materials from which to determine the cogency of the reasons. On the part of the Commission (INEC) itself, Section 34 (2) has given the Commission a corresponding obligation of verifying the reasons given for the change or substitution with a view to confirming their correctness. From the mandatory nature of the provision, this is not a responsibility the Commission can shirk or treat with levity as it ranks equal with the other duties and responsibilities given to the Commission under the

Act. Hence as rightly held by the court below it is justiciable. As can be seen, construing the words of the provision of Section 34 of the Act in their natural or ordinary meaning does not lead to any ambiguity or absurdity and it has satisfactorily, in my view, resolved the questions arising from construing Section 34 of the Electoral Act 2006. So that it serves no useful purpose examining the other rules of interpretation. The real question is whether the 3rd Defendant has satisfied the stipulation in Section 34 of the Electoral Act 2006, I think not. Going by what has transpired here as I have, for ease of reference tried to recount herein, the 3rd Defendant has not complied with the letter and spirit of the provision of Section 34 (2) of the Act which requires it to furnish INEC with cogent and verifiable reasons for a change or substitution of its candidate, in this case of the plaintiff, its candidate for the 2nd Defendant. To simply say that it was done in error is no reason at all as the nature and circumstances of the error have not been expatiated upon. The application is a non-starter and must fail. Surely, it cannot be said that it is an ERROR in this instance to substitute the 2nd Defendant who scored 36 votes at the primaries for the plaintiff who scored 2,061 votes. There can be no doubt that there is more to it here than meets the eye. And so, this reason is not reasonable or persuading nor confirmable as to its correctness from the surrounding circumstances. In so far the 3rd Defendant has not complied strictly with the stipulation in Section 34(2) of the Electoral Act 2006 the change or substitution of the Plaintiff is therefore of no effect. The next crucial question is on the propriety of the court exercising its jurisdiction in this matter. The 2nd and 3rd Defendants have submitted that the court cannot adjudicate on the right of a political party in regard to the choice of its candidates, a matter within the domestic right of a political party. This position no doubt is premised on the position of the law before Section 34 of the Electoral Act 2006 was enacted. In fact the submissions are rested on the decisions of *Onuoha v Okafor* (1983) 14 NSCC 499 and *Dalhatu v Turaki* (2003) 15 NWLR (pt 843) 310. It is my considered view that Section 34 of the Electoral Act 2006 is a unique enactment in the sense of imposing a duty both on political parties and the Commission in regard to the question of substituting candidates under Section 34 (2) (supra) which duty, in my view, the court rightly has to see that it is carried out according to the letters of the provision of the Act just as other duties given to INEC to perform under the Electoral Act 2006. The cases of *Okafor* and *Onuoha* are still good law. For the above reasoning and conclusions and much fuller reasoning and conclusions reached in the lead judgment of my learned Tobi JSC, I agree entirely that this appeal lacks merit and should be dismissed. I dismiss it in its entirety and endorse all the orders contained in the lead judgment.

Counsel

Dr. Alex Izinyon (SAN)

with him

Hauwa Ibrahim (Mrs)

Kenneth Njemanze

Kenneth Omoruan

Manatu Abdullrahman

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