



**THE PRINCIPLE OF *STARE DECISIS*:
A REVIEW OF *MANASSEH V GOSHWE***

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Abstract

Courts of law in Nigeria are duty bound to uphold or follow the ossified legal principles or precedents that have been set by superior courts. This is known as judicial precedent or the principle of stare decisis, which is to the effect that subordinate courts are bound by the decisions of superior courts. The Supreme Court of Nigeria, being the apex court, sets the case law or judicial precedents by which subordinate courts are bound. It is pertinent to state that the Court of Appeal is the penultimate (appellate) court, below which there are same-level courts or courts of concurrent jurisdiction such as the Federal High Court, the National Industrial Court of Nigeria, the High Court of the Federal Capital Territory, the High Court of States, the Customary Court of Appeal of the Federal Capital Territory, the Customary Court of Appeal of the States, the Sharia Court of Appeal of the Federal Capital Territory and the Sharia Court of Appeal of the States. Having said this, it should be added that when it comes to election petitions, which are by their very nature sui generis, there are two Election Tribunals in the States of the Federation: The Governorship Election Tribunal and the National and State Houses of Assembly Election Tribunal. This paper examines the 2023 Plateau State Governorship Election scenario, as it relates to the decision of the Governorship Election Tribunal, the Court of Appeal and the Supreme Court in the case of Manasseh v Goshwe. There is no gainsaying that stare decisis is geared toward ensuring predictability in the adjudication process, in the sense that, at every given time, there should be no doubt as to both the content of the law and the application of the law. Subordinate courts and tribunals should follow precedents laid by superior courts.

Keywords: *Stare Decisis, Sui Generis, Apex Court, Election, Election Petition Tribunal, Jurisdiction, Locus Standi*

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Introduction

The principle of *stare decisis* is to the effect that courts and tribunals are duty bound to follow the case-law precedents set by superior courts. Captured more aptly, within the Nigerian context, all courts and tribunals are bound by the decisions of the Supreme Court of Nigeria¹, because in the hierarchy of courts, the Supreme Court is the highest court. Consequently, the Court of Appeal is bound by Supreme Court decisions in similar cases. Accordingly, all courts that are under the Court of Appeal or subordinate to the Court of Appeal are bound by both its decisions and those of the Apex Court.

The term *stare decisis* is a Latin derivative, which means standing by things that have been decided already. This doctrine of judicial precedent makes it imperative, as stated earlier, for a subordinate court to follow earlier judicial pronouncements of superior courts of records, when the same points or issues arise in litigation.² This fossilized principle of *stare decisis* was well-enunciated by the Supreme Court in the case of *PDP v. Oranezi & Ors*³ where it stated thus:

In *NEPA v. Onah* (1997) LPELR-1959 (SC) this Court stated as follows: ‘It is a cardinal principle of law under the doctrine of *stare decisis* that an inferior Court is bound by a decision of a superior Court, however sure it may be that it has been wrongly decided.’⁴

From the outset let it be borne in mind that in petitions emanating from the outcome of conducted elections, apart from the

Presidential Election Petition Court or Presidential Election Petition Tribunal, both the Governorship Election Petition Tribunal and the National and State Houses of Assembly Election Tribunal are subordinate to the Court of Appeal, as the decisions of both Tribunals (i.e., Governorship Election Tribunal and National and State Houses of Assembly Election Tribunal) are appealable to the Court of Appeal.

Therefore, decisions of the Governorship Election Petition Tribunal and the Presidential Election Petition Court are appealable all the way to the Supreme Court, i.e., the Supreme Court of Nigeria is the final arbiter or umpire in disputes arising from Governorship elections and the Presidential election. Contrariwise, the Court of

Appeal is the final arbiter in petitions arising from the National and State Houses of Assembly elections. This means that aggrieved parties in those elections cannot appeal further to the Supreme Court.

Jurisdiction in Election Matters

Jurisdiction, it has been stated time and again in a plethora of judicial authorities, is the fulcrum, the centrepiece or the lifeblood of every adjudication, because a court or tribunal without

¹ *PDP v. Saror & Ors*[2012] LPELR-14287 (CA), P. 18, paras. A-C.

² *Gebi v. Dahiru & Ors*[2011] LPELR-9234 (CA), Pp. 53-53, paras. E-D.

³ [2017] LPELR-43471 (SC) Pp. 9-10, paras. E-A.

⁴ See also *Usman v. Umaru* (1992) 7 SCNJ 388, *Ngwo & Ors v. Monye & Ors* (1970) LPELR-1991 (SC) and *CBN & Ors v. Okojie* (2015) LPELR-24740 (SC).⁴

jurisdiction is like an animal without blood. The cases of *P.D.P. v. Edede*⁵ and *Ogbuji & Anor v. Amadi*⁶ are instructive. In *Edede's* case the Court held thus:

It is now elementary, having been so established through the cases that jurisdiction is the fulcrum, the centrepiece or the main pillar upon which the validity of any decision of a court of law stands and around which the issues rotate. ... The life blood of every adjudication, for a court without jurisdiction is likened to an animal without blood.⁷

All courts and tribunals in Nigeria derive their authority and jurisdiction to exercise judicial powers from either the Constitution or under specific statutes enacted by the National Assembly or State Houses of Assembly in the exercise of the powers conferred on them by the Constitution. The court's competence to adjudicate is strictly circumscribed by the provisions of the relevant law creating it.⁸⁹ Therefore, any proceedings conducted without jurisdiction will amount to a nullity, no matter how well conducted or competently determined, as the defect in competence is extrinsic to the adjudication.¹⁰

At this juncture, it is needful to state that there are election matters and there are preelection matters. Election matters are matters on which the Election Tribunals have requisite jurisdiction to adjudicate because they are matters that arose from the conduct of the election itself. Conversely, pre-election matters are not among matters that Election Tribunals are empowered to determine, because they are matters that arose or occurred prior to the conduct of the election itself. Put in another way, a preelection matter is a cause of action which predates and does not constitute any complaint against the actual conduct of an Election.¹⁰ Issues of nomination and sponsorship of parties' candidates for an election precede the election and are therefore pre-election matters.¹¹

Basically, pre-election matters mean actions, conduct or any event(s) taking place or occurring before the election.¹² By virtue of Section 285 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), the Governorship Election Tribunal shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State. For purposes of elucidation, the aforesaid provision is reproduced hereunder:

285 (2) There shall be established in each State of the Federation an election tribunal to be known as the Governorship Election Tribunal which shall, to the exclusion of any court or tribunal

⁵ [2022] 11 NWLR (Pt 1840) 55 at 92, paras. E-G.

⁶ [2022] LPELR-56591 (SC) 1 at 12-13, paras. D-C.

⁷ Ibid at 5.

⁸ *Lekwot v Judicial Tribunal on Civil and Communal Disturbances in Kaduna State* [1997]

⁹ NWLR (Pt 515) 22;

Ammani v Balarabe [2022] 14 NWLR (Pt 1849) 165.

¹⁰ *James v INEC* [2015] 12 NWLR (Pt 1474) 538.

¹¹ *Akpamgbo-Okadigbo & Ors v. Chidi & Ors* [2015] LPELR-24564 (SC), P. 23, paras. C-D.

¹² Ibid.

¹² *Ibrahim v. Umar & Ors* [2013] LPELR-22805 (CA), P. 22, paras. E-G.

have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor.

Flowing from the foregoing, section 285 (2) of the 1999 Constitution, which creates the State Governorship Election Tribunal, limits the jurisdiction of the Governorship Election Tribunal to matters arising from the general election of the Governor of a State; it does not extend or expand the jurisdiction of the Governorship Election Tribunal to the internal affairs, workings or processes of a political party before the election. Captured more succinctly, an election tribunal is bereft of the jurisdiction to resolve questions that border on the validity or otherwise of pre-election processes, and because a political party's primary election, nomination or sponsorship of its candidate for an election is a pre-election matter, it does not fall within the jurisdictional scope of the election tribunal.

Furthermore, issues of the validity of a political party's primary election and the nomination and sponsorship of its candidate for a general election, as well as the question of whether Ward, Local Government and State Executive Committees existing at that particular time were validly elected, are obviously outside the subject-matter jurisdiction given to the State Governorship Election Tribunal.

Overview Of Manasseh v. Goshwe

In May 2022, the 4th respondent, Peoples' Democratic Party (PDP) conducted its primary election for the election of Governor, Plateau State wherein the appellant, Caleb Manasseh Mutfwang emerged as its candidate. The General Election was conducted by the 3rd respondent, Independent National Electoral Commission (INEC) on 18th March, 2023, and the appellant was declared winner on 20th March, 2023. Dissatisfied with the declaration and return of the appellant by the 3rd respondent, the 1st respondent (Goshwe) and the 2nd respondent, APC (All Progressives' Congress) filed a three-ground petition, challenging the victory of the appellant, who was the 2nd respondent at the Tribunal. The grounds upon which the petition was predicated were:

1. The 2nd respondent was at the time of the election not qualified to contest the election.
2. The election of the 2nd respondent was invalid by reason of non-compliance with the provisions of the Electoral Act.
3. The 2nd respondent was not duly elected by majority of the lawful votes cast at the election.

The first ground of the petition, which was non-qualification, was predicated on the nomination and sponsorship of the appellant vis-à-vis the primary election and/or the processes that led to the appellant's emergence as the 4th respondent's Governorship candidate. The aforesaid Ground One of the Petition had absolutely nothing to do with the appellant's qualification to contest the election in light of Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). Put more succinctly, the Petitioners (1st and 2nd respondents at the Supreme Court) anchored ground one of their Petition on the regularity or otherwise of the procedures leading up to the 4th respondent's court-ordered repeated congress and the Petitioners averred that the 4th respondent was bereft of what they tagged 'the structure' to validly nominate and sponsor the appellant in the election conducted on 18th March, 2023 for

the office of Governor, Plateau State, owing to its disobedience of the Plateau State High Court order in SUIT NO: PLD/J304/2020 made on November 26, 2020.

According to the Petitioners, the exercise that produced the 4th respondent's Executive Committee in Plateau State was invalid by reason of the decision (order) of the High Court of Plateau State in the aforesaid case with which the 4th respondent failed, refused and neglected to comply.

After the conclusion of evidence and the adoption of final written addresses, the Governorship Election Tribunal sitting in Jos delivered its judgment on 22nd September, 2023 wherein it held that, based on both the documentary and oral evidence, there was a repeated congress of the 4th respondent (PDP) on 25th September, 2021 and no member of the 4th respondent challenged the outcome of said congress. The Honourable Tribunal further held that the Petitioners (1st and 2nd respondents at the Supreme Court) lacked the *locus standi* to complain about or challenge the procedures and the conclusions arrived at the repeated congress.

The learned trial judges of the Tribunal held thus:

That will be tantamount to the Petitioners crying more than the bereaved. The Petitioners can be likened to a man standing by his fence and peeping into his neighbour's premises. Issues bordering on the validity or otherwise of the repeated congress is an internal affair of the 3rd Respondent which an aggrieved member of the 3rd Respondent who participated in the said congress of 25/9/21 is entitled to file an action in court. ...*Section 177 (c) of the 1999 Constitution (as amended) does not give a political party or its candidate the right to challenge matters which are purely within the internal affairs of another political party. Ground one of the Petition which is hinged on the validity or otherwise of the repeated congress of 25/9/21 is to the mind of this Tribunal a preelection matter.*¹³

(Italics for emphasis' sake.)

The Honourable Tribunal added that:

The attempt of the Petitioners to press further the regularity and validity of the repeated congress of 25/9/21 culminating in the eventual nomination and sponsorship of the 2nd Respondent to contest the Governorship Election held in Plateau State on the 18/3/23, portrays the Petitioners in this Petition as busy bodies and meddlesome interlopers. Ground 1 of this Petition is built on a very weak foundation by the Petitioners. The said ground cannot stand. This Tribunal so hold (sic). Sequel to the foregoing issue one is hereby resolved against the Petitioners in favour of the Respondents.¹⁴

Aggrieved by the Honourable Tribunal's decision delivered in favour of the appellant whose election as Governor of Plateau State was affirmed, the Petitioners (1st and 2nd respondents at the Supreme Court) lodged an appeal to the Court of Appeal against same. Following the adoption of the parties' respective briefs of argument, the Court of Appeal delivered its

¹³ *Goshwe & Anor v Mutfwang & 2 others* (EPT/PL/GOV/03/2023, Governorship Election Tribunal Plateau State, 22 September 2023).

¹⁴ *Ibid.*

judgment on 19th November 2023. Amazingly, the Court of Appeal limited itself to resolving the issue of Ground One of the Petition, i.e., whether the primary election and nomination of the respondent as the 4th respondent's Governorship candidate was valid, and if said nomination was not valid, whether the appellant was qualified for election as Governor of Plateau State by virtue of Section 177 (c) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). In resolving the aforesaid issue, the Learned Justices of the Court of Appeal held that the primary election and nomination of the appellant as the 4th respondent's governorship candidate was invalid, consequent upon which he was not qualified to be elected as Governor of Plateau State by virtue of Section 177 (c) of the 1999 Constitution. The Court of Appeal concluded that the 4th respondent was in disobedience of the November 26, 2020 order of the Plateau State High Court and therefore had no valid 'structure' to have nominated and sponsored the appellant.

Based on the foregoing finding, the Court of Appeal set aside in entirety the decision of the Honourable Tribunal that upheld the appellant's election as Governor of Plateau State. Thereafter, the Honourable Court determined the reliefs it should grant the Petitioners (1st and 2nd respondents at the Supreme Court) and declared that the 525,299 votes credited to the 4th respondent's candidate (the appellant) "have consequently become wasted.¹⁵" The court granted reliefs (a) to (g) in the Petition and returned the 1st respondent as the duly elected Governor of Plateau State.

The appellant, disenchanted with said judgment of the Court of Appeal, filed a 20ground Notice of Appeal at the Supreme Court. In determining the appeal, the Learned Justices of the Supreme Court held that the question of the validity of the primary election and nomination of the candidate of a political party for a general election and the question of whether Ward, Local Government and State Executive Committees existing at the time were validly elected are clearly outside the subject-matter jurisdiction conferred on a State Governorship Election Tribunal by Section 285 (2) of the Constitution. The Court held that:

The primary election and nomination of a political party's candidate for a general election is part of its internal affairs. Only members of that party who participated in the party's primary election have the right of action or *locus standi* to challenge the validity of the primary election process by virtue of S. 84(14) of the Electoral Act 2022. Therefore, a political party has no right of action to question or challenge for any reason another political party's primary election and nomination of its candidate for a general election. In this case, it is the 1st respondent, the candidate of another political party, the 2nd respondent, who obviously are not members of the 4th respondent and have no color of legal or equitable right or interest in the internal affairs of the 4th respondent that are challenging the validity of the 4th respondent's primary election and nomination of the appellant as its candidate for the election of Governor of Plateau State....The question of whether the Ward, Local Government and State executive committees of the 4th respondent existing at the time the appellant was nominated as candidate of the 4th respondent for election of Governor of Plateau State were properly or validly constituted or not is its internal affair. Such a question is nonjusticiable and not within the

¹⁵ Ibid at 11.

jurisdiction of a court to determine....A congress to elect officers of any level of the executive committees of a political party has to do with the internal management of the political party. It is non-justiciable. Therefore, a court or tribunal has no jurisdiction to entertain any dispute arising therefrom.¹⁶

Furthermore, the Supreme Court considered whether ground 1 of the petition concerning the primary election and nomination in September 2022 of the appellant by the 4th respondent as its candidate for election as Governor of Plateau State, was not statute barred. The Honourable Justices found that the primary election and nomination of the appellant as a candidate of the 4th respondent for election of Governor, is a preelection matter and stated as follows:

By virtue of S. 285(9) of the 1999 Constitution any form (sic) action against such election or nomination must be brought to court within 14 days from the occurrence of the event, decision or action complained of. As it is, the primary election and nomination of the appellant as 4th respondent's candidate occurred about 6 months before the petition was filed in the tribunal challenging in ground 1 therein contrary to S. 285(9) of the 1999 Constitution. *The petition is therefore statute barred and incompetent in ground 1. The tribunal lacked the jurisdiction to entertain and determine that ground of the petition. ...the Court of Appeal wrongly overruled the decision of the tribunal that it had no jurisdiction to entertain and determine ground 1 of the petition. The tribunal and consequently the Court of Appeal lacked the jurisdiction to entertain it. The exercise of jurisdiction by the Court of Appeal to determine it is a nullity.*¹⁷ (Italics mine for emphasis)

Arising from the foregoing, the Honourable Court held that a congress to elect officers of a political party, is different from a congress for the primary election of its candidates for an election. That based on Article 50 of the Constitution of the 4th respondent (PDP) and S. 84 (5)(b) of the Electoral Act, 2022, it is the 4th respondent's National Executive Committee that is empowered to hold a special congress in the State to nominate the party's candidate for the election of State Governor. The Honourable Justices reiterated the trite law that it is the 4th respondent's National Executive Committee that has the power to conduct a special congress for the primary election of its candidate for election of Governor of a State, in keeping with its Constitution.

It held further that the Court of Appeal's finding that the 4th respondent (PDP) was bereft of a structure to conduct a valid primary election of Governor following the nullification of the existing Ward, Local Government and State Executives by the November 26, 2020 order of the Plateau State High Court disregarded the provision of the 4th respondent's Constitution and ossified case law on the point. Consequently, the aforesaid order of the Plateau State High Court had no effect on the exercise of power of the 4th respondent's (PDP's) National Executive Committee to conduct a special congress in Plateau State for the primary election of Governor, Plateau State and the consequent primary election and nomination of the appellant as the 4th respondent's candidate for the election of Governor of Plateau State.

¹⁶ *Manasseh v. Goshwe* [2024] 6 NWLR (Pt1934), 203 at 242, paras. A-F; 243, para. G.

¹⁷ *Ibid.*

In determining whether the 4th respondent obeyed the November 26, 2020 order of the High Court of Plateau State, which was found by the Supreme Court to have been made without jurisdiction, the Learned Justices of the Apex Court referred to the Honourable Tribunal's finding that:

From the foregoing and with the admission of the petitioners that there was a repeated congress of 25-9-21 vide exhibit 'U', the petitioners cannot be heard to complain about the procedures and conclusions arrived at the said repeated congress. That will be tantamount to the petitioners crying more than the bereaved.... Issues bordering on the validity or otherwise of the repeated congress is an internal affair of the 3rd respondent who participated in the said congress of 25-9-21 is entitle (sic) to file an action in court....Section 177 (c) of the 1999 Constitution (as amended) does not give a political party or its candidate the right to challenge matters which are purely within the internal affairs of the internal affairs of another political party. Ground one of the petition which is to the mind of this Tribunal a pre-election matter... Thus the conduct of the repeated congress of the 3rd respondent which comes before the primary election also falls into the categorization of pre-election matters. This Tribunal so hold...with the admission of the petitioners that there was a repeated congress of the 25/9/21 vide exhibit U, the petitioners cannot be heard to complain about the procedures and conclusions arrived at the said congress.... The attempt by the petitioners to press further the regularity and validity of the repeated congress of 25/9/21 culminating in the eventual nomination and sponsorship of the 2nd respondent to contest the Governorship election held in Plateau State on 18/3/23 portrays petitioners in this petition as busybodies and meddlesome interlopers.

Interestingly, the Supreme Court also found that the Court of Appeal's decision, did not contain any finding that the Tribunal's findings concerning the 4th respondent's holding of a repeated congress in compliance with the order of the Plateau State High Court were in any way perverse; that nothing in the judgment of the Court of Appeal showed that it directed itself on what its role should be in dealing with the Tribunal's findings and reminded itself that it had no power to interfere with said findings except where the findings were perverse, in glaring violation of the law and occasioned a miscarriage of justice. In a nutshell, the role of the Court of Appeal should have been limited to determining whether the aforesaid findings were perverse and or in violation of the law. The Apex Court restated the law that in an appeal against findings of fact, an appellate court lacks the power to express alternate views on the same evidence on the basis of which the trial Tribunal has made findings of fact that the appellate Court has not found to be in violation of law or tainted by perversity, i.e., the appellate court was devoid of power to simply substitute its views on the evidence with that of the trial tribunal. The Apex Court held that the Court of Appeal's contrary view that the 4th respondent (PDP) did not obey the November 26, 2020 order of the Plateau State High Court, was wrong and unsustainable.

What is more, the Honourable Justices of the Supreme Court highlighted the Court of Appeal's failure and or refusal to follow the well-established precedents of the Supreme Court as laid down in a plethora of cases. They stated thus:

...It has very serious implications for the sustenance of the rule of law, peace, order and security of the society. The principle of *stare decisis* remains the foundation upon which our rule of law rests. That is why our Constitution provides in S. 287 (1) that the decisions of the Supreme Court shall be enforced in any part of the federation and by courts with subordinate jurisdiction to that of the Supreme Court. The erratic and wild judicialism that has occurred in this matter from the High Court order of 26-11-2020 all through to the Court of Appeal leaves much to be desired and renders access to justice a difficult if not impossible enterprise. ...It amounts to a judicial misconduct for a judicial officer to disregard clear provisions of the Constitution and other legislations and the precedents of this court. The whole engagement from the High Courts to the Court of Appeal amounts to illegitimate adjudication or false judicialism, flagrant and oppressive abuse of judicial process in an unprecedented manner.¹⁸

Having made the foregoing findings, the Honourable Court resolved the issue for determination in favour of the appellant and allowed the appeal; the judgment of the Court of Appeal delivered on 19-11-2023, inclusive of the orders made therein, was set aside. The judgment of the trial Tribunal delivered on 22-09-2023, wherein it was held that the appellant was qualified for election as Governor and that he scored majority of the lawful votes cast, was restored.

Case Review

Based on the overview of the instant case, it is clear as crystal that the trial Tribunal followed the established judicial precedent laid by the Supreme Court on the jurisdictional scope of Governorship Election Tribunals. On the nature of election and election-related matters, the Supreme Court has stated that:

Election and pre-election matters are *sui generis* having regard to their time sensitive nature and the fact that special provisions have been enacted in the Constitution and Electoral Act to govern the institution and determination of matters relating thereto, which differ from what obtains in ordinary civil and criminal proceedings. The provisions are generally very strict with little or no room to manouvre. Time frames are to be strictly adhered to.¹⁹

Sui generis is a Latin phrase which means “of its own kind”²⁰ or “in a class of its own.” By virtue of Section 285 (9) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) states that notwithstanding anything to the contrary in the Constitution, every pre-election matter shall be filed not later than fourteen (14) days from the date of the occurrence of the event, decision or action complained of in the suit. The section is a limitation law, which means that any pre-election matter filed later than fourteen (14) days from the date on which the event or decision occurred is statute barred.

In the case under review, ground one of the Petition filed at the Governorship Election Tribunal was that, at the time of the election, the appellant was not qualified to contest the election. The facts upon which ground one of the Petition was predicated were preelection matters, so while qualification or nonqualification is a ground for presenting an election petition under the

¹⁸ Ibid at 16.

¹⁹ *Uwa-Anyaike v. I.N.E.C* [2023] 12 NWLR (Pt 1897) 1 at 31-32, paras. H-C.

²⁰ <<https://t.ly/eeGq1>> Accessed on 14th August 2024.

Electoral Act, 2022,²¹ it is pertinent for such a ground to be founded on the constitutional provisions relating to qualification and disqualification for election as Governor. For the sake of lucidity, the provisions are reproduced hereunder:

177. A person shall be qualified for election to the office of Governor of a State if- (a) he is a citizen of Nigeria by birth;
- (b) he has attained the age of thirty-five years;
- (c) he is a member of a political party and is sponsored by that political party; and he has been educated up to at least School Certificate level or its equivalent.²² 182.
- (1) No person shall be qualified for election to the office of Governor of a State if-
- (a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or
- (b) he has been elected to such office at two previous elections; or
- (c) under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or
- (d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment for any offence involving dishonesty or fraud (by whatever name called) or any other offence imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or
- (e) within a period of less than ten years before the date of election to the office of Governor of a State he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of this contravention to the Code of Conduct; or
- (f) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria; or
- (g) being a person employed in the public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days to the date of the election; or
- (h) he is a member of any secret society; or
- (i) he has presented a forged certificate to the Independent National Electoral Commission.²⁴

Arising from the foregoing provisions, it is needful to reproduce some of the particulars upon which ground one of the Petition was predicated. They are as follows: 20. At the election of

²¹ Section 134 (1) (a)

²² Section 177, CFRN, 1999 (As Amended). ²⁴

S. 182 (1) CFRN 1999 (As Amended).

the office of the Governor of Plateau State, held on the 18th March, 2023, conducted by the 3rd respondent, the 2nd respondent was not a candidate not being qualified to contest the said election, having not been validly nominated and sponsored by the 3rd respondent or any political party as a candidate at the said election.

21. 2nd respondent was not sponsored by the 3rd respondent or any political party registered by the 1st respondent.
22. On the 26th November, 2020, the High Court of Plateau State in suit No: PLD/J304/2020: *Bitrus Kaze & 11 Ors v. Peoples Democratic Party & 24 Ors*, had ordered the 3rd respondent (Peoples Democratic Party) to conduct fresh congress for the election of members of the Wards, Local Government Area, and State, Congress for the purpose of constituting the Executive Committees and the delegates of the Wards, Local Government Areas Executive and State Executive committees respectively for the Constituencies in Plateau State.
23. The 3rd respondent (Peoples Democratic Party) did not conduct fresh congresses as ordered by the High Court in Suit No: PLD/J304/2020: *Bitrus Kaze & 11 Ors v. Peoples Democratic Party & 24 Ors* for the purpose of constituting the Executive Committees at all levels of the Party in the Wards, Local Government Areas, and State Congresses of Plateau State.
24. The 3rd respondent had challenged the decision of the Plateau State Independent Electoral Commission in Suit No: PLD/J250/2021 – *Peoples Democratic Party v. Plateau State Independent Electoral Commission* disqualifying the party from sponsoring or participating in an election for failure to comply with the orders made by the High Court of Plateau State in Suit No: PLD/J304/2020: *Bitrus Kaze & 11 Ors v. Peoples Democratic Party & 24 Ors* and the Court dismissed the suit of the 3rd respondent (Peoples Democratic Party).
25. Dissatisfied with the decision of the Court in Suit No: PLD/J250/2021 – *Peoples Democratic Party v. Plateau State Independent Electoral Commission*, disqualifying the party from participating or sponsoring of candidates in the election, the 3rd respondent lodged an appeal - Appeal No: CA/J/196/2021 to the Court of Appeal Jos.
26. On the 6th day of May 2022, the Court of Appeal in a unanimous decision dismissed the appeal and affirmed the decision of the Plateau State High Court in Suit No: PLD/J250/2021 - *Peoples Democratic Party v Plateau State Independent Electoral Commission*, that the 2nd respondent is not eligible to participate or sponsor any candidate in the election, having failed to comply with positive and extant orders of a court of competent jurisdiction.
27. The 3rd respondent with the decision of the Court of Appeal in Appeal No: CA/J/196/2021 filed an appeal to the

Supreme Court-SC/CV/1341/2022 - *Peoples Democratic Party v. Plateau State Independent Electoral Commission*. The 3rd respondent's appeal in the Supreme Court was dismissed on the 7th day of December 2022.

43. Petitioners state that in so far as no valid Ward, Local Government and State Congresses are conducted and democratically elected Executive Committees in the Wards, Local Governments and State are not in place, no delegate can emerge to vote in any primary election, of the 3rd respondent in Plateau State.
44. 3rd respondent has consistently violated positive orders of court of competent jurisdiction by reason of its failure to put in place Ward, Local Government and State Executive Committees emerging through a democratic process as ordered by courts of competent jurisdiction. The 3rd respondent is yet to hold or conduct any Ward, Local Government congresses, the Executives at the Ward, Local Government Areas of the State. It is at the various Wards and Local Government Area Congresses that delegates to State Congresses of the 3rd respondent are elected for the purpose of constituting the State Executive of the 3rd respondent.
45. Petitioners shall contend that, in so far as the 3rd respondent has remained in breach of positive court orders by the failure to put in place democratically elected executive at the Wards, local governments and State levels, no platform or structure existed for the Governorship election of Plateau State or midwived election in Plateau State held on the 18th March 2023.
46. Petitioners shall further contend that, in so far as the 2nd and 3rd respondents are tainted by the fact that, the process leading to the emergence of the 2nd respondent as candidate of the 3rd respondent arose from acts of disobedience of positive orders of court, 2nd respondent was not validly sponsored by the 3rd respondent to contest for the Governor of Plateau State.

A sober perusal of ground one of the Petition and its particulars will reveal with no shred of equivocation that the 1st and 2nd respondents' grievance was with the process that led to the nomination and sponsorship of the appellant. The law is trite that the issues of disqualification, nomination, substitution and sponsorship of candidates for an election precede the election and are therefore pre-election matters, i.e., they are not election matters. The cases of *A.P.P. v. Obaseki*²³, *Salim v. CPC*²⁴ and *A.P.M. v I.N.E.C.*²⁵ are also instructive. Therefore, the Governorship Election Tribunal was right in declining jurisdiction to entertain the ground one

²³ [2022] 13 NWLR (Pt 1846) 1 at 46, paras. E-F.

²⁴ [2013] LPELR-19928 (SC) 1 at 22, paras. D-E.

²⁵ *Ibid* at 24, 159 at 187, paras. A-B.

of the Petition which was founded on a pre-election matter, because an election tribunal does not have the jurisdiction to entertain a pre-election matter.

There is no gainsaying that the issue of nomination and sponsorship of the appellant by the 4th respondent in respect of the Governorship election held on 18th March, 2023 was a pre-election matter which the Honourable Tribunal was bereft of the requisite jurisdiction to entertain or adjudicate. The Court of Appeal erred when it assumed jurisdiction to entertain the pre-election matter and set aside the well-considered judgment of the Honourable Tribunal, because where a law that gives jurisdiction to a court limits that jurisdiction to the determination of specific questions, the court lacks the jurisdiction to exceed that limit to determine questions not listed within its jurisdiction to determine.²⁶

Section 285 (2) of the CFRN limits the jurisdiction of the Governorship Election Tribunal to matters arising from the general election of the Governor of a State and does not extend the jurisdiction to the internal workings or processes of a political party's decisions before the election. Put in another way, the Governorship Election Tribunal has no jurisdiction to consider questions relating to the validity or otherwise of preelection processes and because a political party's primary election and nomination of its Governorship candidate for election is a preelection process, it is not within the jurisdiction of the election tribunal. Consequently, the Tribunal, let it be reiterated, was right in declining jurisdiction to entertain ground one of the Petition, which for all intents and purpose, was founded on the 4th respondent's lack of what the 1st and 2nd respondents called 'structure' to validly nominate and sponsor the appellant. The Court of Appeal ought not to have assumed jurisdiction over the aforesaid issue.

It is worth reiterating that by virtue of section 285 (9) and (14) of the 1999 Constitution, any form of action against the primary election or nomination of a person as the candidate of a political party for election is a pre-election matter that must be brought before the Federal High Court within fourteen (14) days from the occurrence of the event, decision or action complained of. In the case under review, the primary election and nomination of the appellant by the 4th respondent as its Governorship candidate was a pre-election matter that occurred more than six (6) months before the filing of the Petition at the tribunal. Both the Honourable Tribunal and the Supreme Court were right in concluding that the Tribunal lacked the jurisdiction to entertain and determine ground 1 of the petition which was both incompetent and statute barred. The Court of Appeal erroneously set aside the decision of the Tribunal and the Supreme Court rightly interfered by setting aside the Court of Appeal judgment and restoring the judgment of the Tribunal on the basis that the Court of Appeal's exercise of jurisdiction to determine ground 1 was a nullity.

Furthermore, as has been stated in a plethora of authorities²⁷, it is not the business of any court or tribunal to select and nominate candidates for any political party for election. The nomination and sponsorship of a candidate to contest an election for Governor of a State is the sole responsibility of the political party concerned. The courts do not have the jurisdiction to

²⁶ *Obasanjo v Yusuf* [2004] 9 NWLR (Pt 877) 144.

²⁷ *Dalhatu v Turaki* [2003] 15 NWLR (Pt 843) 310; *Alhassan v Ishiaku* [2016] 10 NWLR (Pt 1520) 230; *Shinkafi v Yari* [2016] 7 NWLR (Pt 1511) 340; *Emenike v P.D.P.* [2012] 12 NWLR (Pt 1315) 556; *Olofu v Itodo* [2010] 18 NWLR (Pt 1225) 545.

decide who a political party should sponsor as its candidate in an election. That has been the position of the law and has not changed because nomination and sponsorship of a candidate for an election is strictly within the purview or domestic jurisdiction of political parties.

The primary election and nomination of a political party's candidate for a general election is part of its internal affairs, as has been held in a plethora of cases.²⁸ Only members of that political party who were aspirants that participated in its primary election have the right of action or *locus standi* to challenge the validity of the primary election by virtue of section 84(14) of the Electoral Act, 2022. In the case at hand all the 1st and 2nd respondents' witnesses admitted that they were not members of the 4th respondent. The 1st and 2nd respondents lacked the *locus standi* to raise and canvass before the Honourable Tribunal a pre-election issue such as the 4th respondent's nomination and sponsorship of the appellant. It follows that, as a result of the 1st respondent's non-membership of the 4th respondent, the 1st respondent was not an aspirant who could have participated in the 4th respondent's primary election for the office of Governor, Plateau State. Accordingly, the 1st respondent was bereft of the requisite *locus standi* to challenge the 4th respondent's nomination and sponsorship of the appellant. On the meaning of *Locus Standi*, the Honourable Justices of the Apex Court had this to say:

Locus standi connotes the legal capacity to institute an action in a Court of law. It is a threshold issue that affects the jurisdiction of the Court to look into the complaint. Where the claimant lacks the legal capacity to institute the action, the Court, in turn will lack the capacity to adjudicate.²⁹

In light of the foregoing, the finding by the trial Tribunal and the Supreme Court that the 1st and 2nd respondents were mere meddlesome interlopers is unassailable; they could not be allowed to pock their noses into the 4th respondent's internal affairs, since it is the Federal High Court that has the jurisdiction to entertain the issue of nomination and sponsorship of a political party's candidate and the 1st respondent was not an aggrieved aspirant who participated in the 4th respondent's primaries. Please see the case of *Osoh v APC*³⁰ where the Supreme Court held thus:

Section 84 (14) of the Electoral Act, 2022 grants a right of action to an aggrieved aspirant who complains that any of the provisions of the Electoral Act and guidelines of his political party was not complied with in the selection or nomination of the candidate of the party. ...The Supreme Court has consistently held that an aspirant is a person who actually participated in the primary election of his political party. It therefore means that for a person to have *locus standi* to sue by taking benefit of section 84 (14) of the Electoral Act, he must have participated in the primary election of the political party.³¹

²⁸ *Oni v Oyebanji* [2023] 13 NWLR (Pt 1902) 507; *Kakih v PDP* [2014] 15 NWLR (Pt 1430) 374; *Ndukwe v Ayu* [2023] 5 NWLR (Pt 1877) 309; *Jegade v INEC* [2021] 14 NWLR (Pt 1797) 409.

²⁹ *Citec Intl Estates Ltd & Ors v Francis & Ors* [2021] LPELR-53083 (SC) 1 at 28-29, paras. C-D.

³⁰ [2023] 10 NWLR (Pt 1891) 51 at 74, paras. B-F.

³¹ *Ibid*.

Also, in *PDP v INEC & Ors*³², the Apex Court stated thus: Therefore, no matter how loudly the appellants shout on the irregularity, impropriety of the primaries of the 1st respondents, the noise will remain unheard and unattended to, coming from those whose voices ought not to be heard in the internal matters of another.³³

Furthermore, the applicability of section 285(14)(c) of the 1999 Constitution (as altered) is not at large. It does not make the filing of pre-election matters by political parties an all-comers affair. It is not the purpose of the provision that a floodgate of preelection litigation be open to political parties who will hide under it to challenge the actions or inactions of rival political parties under the guise of challenging the activities or decisions of the Independent National Electoral Commission (INEC). The aforesaid provision does not extend to a political party attempting to insert itself into the affairs of another political party as the 1st and 2nd respondents did or attempted to do in the instant case.

One political party cannot challenge the nomination of the candidate of another political party. No matter how pained or disgruntled a political party is with the way and manner in which another political party is conducting or has conducted its affairs concerning the nomination of its candidate for any position, it must keep mum and remain an onlooker, for it lacks the *locus standi* to challenge such nomination in a court or tribunal. A political party lacks the *locus standi* to challenge the actions of the Independent National Electoral Commission (INEC) in relation to another political party.³⁴ Therefore, since Courts have no jurisdiction over the internal affairs of a political party except where a statute provides otherwise, the question of whether the Ward, Local Government and State Executive Committees of the 4th respondent (PDP) existing at the time that its Governorship candidate (the appellant) was nominated for election were properly or validly constituted should not have arisen, for such a question is nonjusticiable and outside the jurisdictional scope of both the tribunal and the courts.

Consequently, both the Governorship Election Tribunal and the Supreme Court were right in finding ground 1 of the petition to be incompetent because of its pre-election foundation (i.e., the particulars) and the ensuing non-justiciability. Conversely, the Justices of the Court of Appeal erred direly when they delved into the pre-election issue canvassed by the 1st and 2nd respondents in their ground 1 of the petition. The Court of Appeal was wrong to have interfered with the 4th respondent's internal affairs when there was no complaint by any member of the 4th respondent against the conduct of the primary election that produced the appellant. Moreso, that such a member of the 4th respondent would have had to be an aspirant in the aforesaid primary election. In the instant case there was ample evidence adduced at the tribunal to prove that the 4th respondent complied with the order of the Plateau State High Court by conducting a repeated congress monitored by INEC on 25th September 2021. What is more, the Court of Appeal ought not to have assumed jurisdiction to entertain and determine the question of whether or not the congress was organized properly or conformed to the Electoral Act or the 4th respondent's constitution and guidelines, as it was not the business of the Court of Appeal to determine whether the 4th respondent (PDP) obeyed or disobeyed the November 26, 2020

³² [2023] LPELR-60457 (SC) at 23-27, para. C.

³³ *Ibid.*

³⁴ *P.D.P. v I.N.E.C* [2023] 13 NWLR (Pt 1900) 98 at 131, paras. E-F.

order of the Plateau State High Court or not, nor was it open to the Learned Justices of the Honourable Court to determine whether the 4th respondent complied with said order completely or partially. It was also not open to the Court of Appeal to go into the question of whether the 4th respondent had a valid structure in Plateau State to nominate and sponsor the appellant for election to the office of Governor, Plateau State. Therefore, both the learned trial Judges of the Governorship Election Tribunal and the Honourable Justices of the Supreme Court rightly declined jurisdiction in respect of ground 1 of the Petition.

Another interesting point is that the Court of Appeal limited itself to the narrow compass Petition's ground 1, i.e., rather than resolve all the issues nominated for determination, the Honourable Justices restricted themselves to the question of valid nomination and sponsorship which arose from ground one of the Petition. It should be recalled that in the instant case the Court of Appeal was the intermediate court or penultimate court. The law is wellsettled, as held in a plethora of cases³⁵ that intermediate courts should determine all the issues on merit even if they hold that they are bereft of jurisdiction to do so. The case of *A.P.P. v Obaseki* referred to before is relevant and the Supreme Court held thus: "The obligation of the Court of Appeal to fully consider and determine all issues particularly in election appeals is even more desirable given the unyielding timelines in election appeals."³⁸

On the whole, the Supreme Court was right in setting aside the Court of Appeal judgment that was obviously infected with perversity and ensued in a miscarriage of justice; the Supreme Court was right in restoring the judgment of the Governorship Election Tribunal that adhered to the principle of *stare decisis*. The judgment of the trial tribunal should have been affirmed by the Court of Appeal which, being the penultimate court in the instant case, was duty bound to determine all the issues for determination.

Conclusion

It can be gleaned from the instant case that the principle of *stare decisis* was not followed by the Court of Appeal and this occasioned a grave miscarriage of justice. This is in light of the trite law that where a ground of an election petition borders on non-qualification of a candidate for election as Governor, such as in the instant case, it must be predicated on the criteria listed in section 182 (1) of the 1999 Constitution (As Amended). Where the ground of non-qualification is not predicated thereon, it must fail. In the instant case it was glaring that ground 1 of the petition was predicated on pre-election matters or particulars that the Court of Appeal ought not to have countenanced. What is more, the Court of Appeal misdirected itself when it held that the 4th respondent (PDP) had no valid structure in Plateau State to nominate and sponsor the appellant for election as Governor, Plateau State. Section 177 (c) of the CFRN 1999 (As Amended) should not have been misapplied by the Court of Appeal to confer jurisdiction on the Governorship Election Tribunal to determine the validity of the processes through which the 4th respondent decided to sponsor the appellant for election as Governor, Plateau State.

In a nutshell, the Court of Appeal ought not to have limited itself to ground 1 of the Petition that bordered on the 4th respondent's internal affairs which neither courts nor tribunals are vested with jurisdiction to entertain, let alone set aside the well-considered decision of the Governorship Election Tribunal, because it is not the business of a political party to question

³⁵ *NURTW v RTEAN* [2012] 10 NWLR (Pt 1307) 170; *Ifeanyi Chukwu (Osondu) Ltd. v Solel Boneh Ltd.* [2012] 5 NWLR (Pt 656) 322; *Tyonex (Nig.) Ltd. v Pfizer Ltd.* [2020] 1 NWLR (Pt 1704) 125. ³⁸ *Ibid* at 24.

the procedure through which a rival political party nominated and sponsored its candidate for election. Nor does an election petition tribunal have the jurisdiction to entertain a pre-election matter, particularly one filed by a non-member of a political party and a non-aspirant in the political party's primary election. Under no guise should preelection matters be sneaked surreptitiously into a ground of nonqualification in an election petition. In the case at hand, the Court of Appeal, being the penultimate court, was duty-bound to consider all the issues for determination canvassed before it. The Court of Appeal's non-resolving of all the other issues canvassed thereat, ensued in a miscarriage of justice that would have had farreaching effects if the Supreme Court had not interfered.

At this juncture, it should be borne in mind that where a law that gives jurisdiction to a court or tribunal limits that jurisdiction to the determination of specific questions, the court lacks the jurisdiction to exceed said limit to determine questions not listed within its jurisdiction to determine.³⁶ The Court of Appeal ought not to have countenanced the incompetent ground 1 of the Petition in which it was averred that the 4th respondent was bereft of a valid 'structure' in Plateau State to have nominated and sponsored the appellant for election as Governor. The findings made by the Honourable Tribunal in respect of ground 1 ought to have been affirmed by the Court of Appeal, since they were supported by extant law. The jurisdiction of an Election Tribunal is sacrosanct and really limited. The 1st and 2nd respondents found themselves in a tight corner, for even if they had approached the Federal High Court with their complaint, they would have been shut out by section 285 (14) of the Constitution and section 84 (14) of the Electoral Act, 2022, as they were neither members of the 4th respondent nor aspirants in the 4th respondent's primary election for the selection/nomination of the appellant as the 4th respondent's governorship candidate.

The finding of the trial Tribunal that, based on the INEC Report evidencing the 4th respondent's compliance with the High Court order by conducting its repeated congress on 25th September 2021, the 4th respondent had a valid structure to nominate and sponsor the appellant, should not have been set aside by the Court of Appeal. Fortunately, the Supreme Court set aside the decision of the Court of Appeal in entirety and restored the judgment of the trial Tribunal. Moreso, those issues such as a political party's structure, and its nomination and sponsorship of candidates for election are outside the scope of section 134 (1) of the Electoral Act, 2022.

It is recommended that, other than the National Judicial Council (NJC), a more neutral, independent body should be established for disciplining Judicial Officers, who refuse deliberately to follow well-established principles of law laid down by the superior courts. This is in the spirit of *stare decisis* as enshrined in section 287 CFRN 1999 (As Amended) which provides that the decisions of the Supreme Court shall be enforced in any part of Nigeria and by courts with subordinate jurisdictions. The body should be known as the Judicial Officers' Disciplinary Committee (JODC) saddled with the responsibility of looking into cases of judicial misconduct, illegitimate adjudication, wild judicialism, corruption, etc. This will, at the very least, keep judicial officers in check, curtail the tendency not to follow judicial precedents (case law). It will also preclude them from ignoring unambiguous provisions of the Constitution and other legislations.

³⁶ *Obasanjo v Yusuf* [2004] 9 NWLR (Pt 877) 144.