

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 8TH DAY OF MARCH, 2021
BEFORE HIS LORDSHIP, HON. JUSTICE I. E. EKWO
JUDGE
SUIT NO: FHC/ABJ/CS/920/2021

BETWEEN:

PEOPLES DEMOCRATIC PARTY (PDP) PLAINTIFF

AND

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
- 2. ALL PROGRESSIVES CONGRESS (APC) DEFENDANTS**
- 3. ENGINEER DAVID NWEZE UMAHI**
- 4. DR. ERIC KELECHI IGWE**

JUDGEMENT

The Originating Summons in this case is issued upon the application of the Plaintiff Peoples Democratic Party (hereinafter referred to as PDP). It is brought pursuant to Order 3 (6) (7) (8) and (9) of the Federal High Court (Civil Procedure) Rules 2019 (hereinafter referred to as FHCCPR 2019) and under the inherent jurisdiction of this Court and seeks answers to the following questions:

Whether upon a proper construction of Sections 1 (1), Section 1 (2), 177 (c), 179 (2) and 187 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and in view of the fact that Nigeria is a constitutional democracy, the Ebonyi State of Nigeria can be governed (other than

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during emergency as defined by the Constitution) by any political party or by a person on the platform of a political party other than the political party with the majority vote at a gubernatorial election held or conducted by the 1st Defendant for the State.

2. Whether having regard to the combined reading of the provisions of Sections 1 (1) and (2), 177 (c), 179 (2), 187 (2) and 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and in view of the democratic system of governance operated in Nigeria and the decisions of the Supreme Court in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61, votes at the election and elections are won by political parties and not their candidate or the candidates sponsored at the election by the political parties.
3. Whether upon a proper interpretation of the provisions of Section 1 (2) and Section 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 83 of the Electoral Act 2010 (as amended) and in view of the decisions of the Supreme Court in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61, the majority votes cast in

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favour of the political party that won an election (the Plaintiff in the present case) can be appropriated by the political party that lost the election (in this case, the 2nd Defendant) for the purpose of forming or running a government in Nigeria or any part thereof, or whether the majority votes won by a political party is transferable to another political party who did not win the majority of votes directly or indirectly through the candidate of the political party that won the election.

4. Whether the 2nd Defendant having won or scored only 81,703 votes at the said governorship election as against the majority lawful votes of 393,343 votes scored or won by the Plaintiff, the Plaintiff is not bound to retain its votes throughout the duration of or tenure of office for which the election was held and if so, whether the 2nd Defendant can appropriate the votes of the Plaintiff directly or indirectly through its member or members namely the 3rd and 4th Defendants for the purpose of governing or ruling over Ebonyi State for the period May 29, 2019 to May 28, 2023.
5. Whether upon a proper and or correct interpretation of the provisions of Sections 177 (c) and 221 of the Constitution of the Federal Republic

of Nigeria, 1999 (as amended) and going by the doctrine of transferability of votes of a political party to its members and applying the principle that it is the political party that stands for and wins/loses an election as enunciated by the Supreme Court in the cases of *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61, the 3rd and 4th Defendants having become members of the 2nd Defendant did not thereby inherit the votes of the said 2nd Defendant at the Ebonyi State Governorship election held on the 9th day of March 2019, that is 81,703 votes and thereby abandoned the majority lawful votes won by the Plaintiff at the said election, that is 393,343 lawful votes.

6. Whether having regard to the provisions of Section 177(c), 179(2) and 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the decision of the Supreme Court in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61, the 3rd and 4th Defendant can by virtue of their becoming members of the 2nd Defendant transfer the votes won by the Plaintiff who sponsored them for the 2019 to the 2nd Defendant?

7. Whether the 3rd and 4th Defendants have not

resigned or deemed to have resigned operation of the law from the office of the Governor and Deputy Governor of Ebonyi State or vacated the said offices having become members of another political party, the 2nd Defendant, other than the party that won the majority lawful votes at the election, (that is the Plaintiff) in view of the provisions of Sections 177(c), 179(2), 180(c) and (d) and 221 of the Constitution and the decisions in *Amaechi v. INEC* (2008)5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61.

8. Whether in the event that questions 5,6 and 7 above is answered to the effect that by becoming a member of the 2nd Defendant political party, the 3rd and 4th Defendants thereby abandoned the majority lawful votes won by the Plaintiff at the 9th March 2019, or are deemed to have resigned their offices as Governor and Deputy Governor respectively, the Plaintiff is not entitled on the authority of the Supreme Court decisions in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61 to submit the names of its nominated candidates to the 1st Defendant for the purpose of assuming the offices of Governor and Deputy Governor of Ebonyi State being the offices that were won by the Plaintiff in the March 9, 2019

governorship election or in the alternative, whether the 1st Defendant is not liable to declare the seats of the Governor and Deputy Governor of Ebonyi State vacant and to conduct gubernatorial elections immediately to fill the vacancy for candidates to be sponsored in accordance with the provisions of Section 177(c) of the Constitution excluding the 3rd and 4th Defendants who are disqualified by virtue of Section 182(1)(b) of the Constitution.

The following are the reliefs claimed:

1. A DECLARATION that having regard to the provisions of Sections 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the democratic system of governance operated in Nigeria, votes at the election and elections are won by political parties and not their candidate or the candidates sponsored at the election by the political parties.
2. A DECLARATION that the votes won or scored by a political party at an election is retained by the political party irrespective of the death or exit of the candidate it sponsored for the election, from that political party.
3. A DECLARATION that under the democratic system of governance operated in Nigeria, the votes won at an election by a political party cannot be

transferred to or utilized for the benefit of another political party or member of another political party.

4. A DECLARATION that under the democratic system of governance operated in Nigeria, a candidate of a political party that won the majority votes at an election is not entitled to retain or continue to lay claims to the votes won by the political party after moving from the political party to another political party but rather the candidate is bound to inherit, utilize or appropriate the votes won by the new political party he has adopted.
5. A DECLARATION that under the democratic system of governance operated by Nigeria, no part of Nigeria, including Ebonyi State can be governed (other than during emergency as defined by the Constitution) by a political party or a member of a political party other than the political party or its member who won the majority of the lawful votes at the election into the office concerned.
6. A DECLARATION that the Plaintiff won the majority of lawful votes at the Governorship election of Ebonyi State held on 9th March, 2019 and it is entitled to retain the majority votes it won at that election throughout the duration of and the tenure of that office, that is from May 29, 2019 to

May 28, 2023.

7. A DECLARATION that the 2nd Defendant having won or scored only 81,703 votes at the said governorship election as against the majority lawful votes of 393,343 votes scored or won by the Plaintiff, the Plaintiff is bound to retain its votes throughout the duration of or tenure of office for which the election was held and the 2nd Defendant cannot appropriate the votes of the Plaintiff directly or indirectly through its member or members namely the 3rd and 4th Defendants for the purpose of governing or ruling over Ebonyi State for the period May 29, 2019 to May 28, 2023.
8. A DECLARATION that the Plaintiff is entitled to submit to the 1st Defendant, the name of its candidates to replace the 3rd and 4th Defendants for the purpose of utilizing the lawful votes cast in favour of the Plaintiff or in the alternative that the 1st Defendant is bound to hold a gubernatorial election arising from abandonment of the majority lawful votes and the offices occasioned by the action of the 3rd and 4th Defendants in becoming members of the 2nd Defendant who did not win majority of the lawful votes cast at the election.
9. A DECLARATION that the 3rd and 4th Defendants,

Engineer David Nweze Umahi and Dr. Eric Kelechi Igwe, who were respectively elected into office as Governor and Deputy Governor of Ebonyi State as members of and as candidates sponsored by the Plaintiff, Peoples Democratic Party (PDP), cannot validly transfer the mandate of Peoples Democratic Party (PDP) for the offices to All Progressives Congress (APC) by defecting to that political party while still in office as the Governor and Deputy Governor of Ebonyi State in view of the provisions of Sections 177 (c) 179 (2) and 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the decision of the Supreme Court in *Amechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61.

10. A DECLARATION that by defecting from Peoples Democratic Party (PDP) on which platform they were sponsored and elected as Governor and Deputy Governor of Ebonyi, State to the 2nd Defendant, All Progressives Congress (APC), a political party that did not win the governorship election in Ebonyi State, the 3rd and 4th Defendants have resigned or are deemed to have resigned from the office of the Governor and Deputy Governor of Ebonyi State, by virtue of which the Plaintiff, as winner of the governorship election of Ebonyi State on 9th March 2019, is entitled to submit the names of its candidates to occupy the offices of Governor and Deputy

of Ebonyi State for the remainder of the term secured by virtue of the Plaintiff's victory on 9th March, 2019.

11. AN ORDER directing the 1st Defendant to immediately receive from the Plaintiff, the names of its candidates to replace the 3rd and 4th Defendants for the purpose of utilizing the lawful votes cast in favour of the Plaintiff or in the alternative directing the 1st Defendant to hold a gubernatorial election for Ebonyi State in accordance with Section 177(c) of the Constitution (excluding the 3rd and 4th Defendants who are disqualified from participating in the election by virtue of Section 182 (1)(b) of the Constitution) arising from abandonment of the majority lawful votes and the offices occasioned by the action of the 3rd and 4th Defendants by virtue of their becoming members of the 2nd Defendant who did not win majority of the lawful votes cast at the election.
12. AN ORDER directing the 3rd and 4th Defendants to forthwith vacate office as Governor and Deputy Governor of Ebonyi State respectively being members of the 2nd Defendant which did not win the 9th March 2019 Governorship election in Ebonyi State.
13. AN ORDER directing the 1st Defendant to

immediately declare the persons nominated or to be nominated to it by the Plaintiff as Governor and Deputy Governor of Ebonyi State.

14. AN ORDER OF INJUNCTION restraining the 1st Defendant, its agents, privies, servants and assigns or any person howsoever from recognizing and or continuing to recognize the 3rd and 4th Defendants as Governor and Deputy Governor respectively of Ebonyi State or granting to them any right, benefit or recognition in relation thereto.
15. AN ORDER OF PERPETUAL INJUNCTION restraining the 1st Defendant, its agents, privies, servants and assigns or any person howsoever from recognizing and or continuing to recognize the 2nd Defendant as the political party whose members occupy the offices of Governor and Deputy Governor respectively of Ebonyi State on the strength of the 9th March 2019 election won by the Plaintiff.
16. AN ORDER OF PERPETUAL INJUNCTION restraining the 3rd and 4th Defendants forthwith from putting themselves out or parading themselves as Governor and Deputy Governor respectively of Ebonyi State.
17. AN ORDER OF PERPETUAL INJUNCTION restraining forthwith the 2nd Defendant, its agents, privies, servants and assigns or any person howsoever

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from putting themselves out or parading themselves as the political party whose members occupy the offices of Governor and Deputy Governor respectively of Ebonyi State.

18. FOR SUCH FURTHER OR OTHER ORDERS as the Honourable Court may deem appropriate to grant in the circumstances of this Case.

It is averred for the Plaintiff that it is a political party duly registered in Nigeria and has its national headquarters in Abuja FCT, within the jurisdiction of this Court. The 1st Defendant is a statutory body saddled with the conduct, supervision and overall superintendence of elections all over Nigeria and also statutorily empowered to receive nomination of candidates of political parties for general elections and has its national headquarters in Abuja FCT, within the jurisdiction of this Court. The 2nd Defendant is one of the political parties duly registered in Nigeria and has its national headquarters in Abuja FCT, within the jurisdiction of this Court. The 3rd and 4th Defendants are politicians and were hitherto members of the Plaintiff upon whose sponsorship they contested for the 2015 and 2019 governorship election in Ebonyi State as a result of which elections that were won by the Plaintiff the 3rd and 4th Defendants were inaugurated as Governor and Deputy Governor respectively in Ebonyi State. In the 2015 governorship election conducted by the 1st Defendant, the Plaintiff fielded the 3rd and 4th Defendants as its Ebonyi State Governorship and Deputy Governorship candidates and won the election and

they were sworn into those offices. The 3rd and 4th Defendants being desirous of securing second term in office as Governor and Deputy Governor respectively beseeched the Plaintiff which graciously endorsed, nominated and sponsored them as its candidates for the 2019 governorship election which was to hold and indeed held on 9th March 2019. Expression of Interest Form submitted to the Plaintiff by the 3rd Defendant and sponsorship documents submitted by the Plaintiff in respect of the 3rd and 4th Defendants (Exhs. PDP2, PDP3, and PDP4). At the Ebonyi State Governorship election held on 9th March 2019, there were One Million, Two Hundred Thousand (1,200,000) registered voters out of whom 497,291 were accredited and several political parties participated in the election including the Plaintiff and the 2nd Defendant. At the end of the governorship election of 9th March 2019, the following votes were scored by the participating political parties:

i.	A	-	122 votes
ii.	AA	-	45 votes
iii.	ACD	-	181 votes
iv.	ACPN	-	03 votes
v.	AD	-	92 votes
vi.	ADC	-	429 votes
vii.	ADP	-	500 votes
viii.	APC	-	81,703 votes
ix.	APP	-	284 votes
x.	ASD	-	94 votes

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xi.	BNPP	-	474 votes
xii.	CAP	-	30 votes
xiii.	DA	-	41 votes
xiv.	DCP	-	51 votes
xv.	DPP	-	75 votes
xvi.	FJP	-	54 votes
xvii.	GPN	-	30 votes
xviii.	ID	-	12 votes
xix.	JNPP	-	32 votes
xx.	KP	-	43 votes
xxi.	LP	-	211 votes
xxii.	MAJA	-	114 votes
xxiii.	MPN	-	136 votes
xxiv.	NCP	-	119 votes
xxv.	NFD	-	87 votes
xxvi.	NPC	-	180 votes
xxvii.	NRM	-	772 votes
xxviii.	PDC	-	376 votes
xxix.	PDP	-	393,043 votes
xxx.	PPM	-	681 votes
xxxi.	PT	-	181 votes
xxxii.	RPM	-	54 votes
xxxiii.	SDP	-	10,129 votes
xxxiv.	UDP	-	28 votes
xxxv.	UPN	-	41 votes
xxxvi.	UPP	-	175 votes

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The results of the election was issued by the 1st Defendant and from the results of the election enumerated above, the Plaintiff polled 393,043 votes to defeat the 2nd Defendant which came a distant second with 81703 votes. The Plaintiff having polled majority of the lawful votes cast at the 9th March 2019 election was declared winner and its candidates, the 3rd and 4th Defendants returned elected as Governor and Deputy Governor respectively for Ebonyi State. By virtue of the election won by the Plaintiff, the 3rd and 4th Defendants were issued with their respective certificates of return by the 1st Defendant and duly sworn into those offices on 29th May, 2019. The duration of office for Governors and Deputy Governors under the Nigerian Constitution is a period of four (4) years from the date of swearing in into those offices. Following the swearing in of the 3rd and 4th Defendants as Governor and Deputy Governor of Ebonyi State respectively they were supposed to hold office for four (4) years commencing from 29th May, 2019 on the strength of the massive votes scored by the Plaintiff on whose platform they both contested. The tenure of the occupants of the offices of Ebonyi State Governor and Deputy Governor under the platform of the Plaintiff will not come to an end until 28th May, 2023. After the election of the Plaintiff and the swearing in of the 3rd and 4th Defendants as its members and candidates, the Plaintiff and the 3rd and 4th Defendants set about the arduous task of governance and delivery of dividends of democracy to the

good people of Ebonyi State who have always massively supported the Plaintiff and strongly believe in the Plaintiff as the political party of choice for their beloved State. However, without any rancour or disagreement between the Plaintiff and the 3rd and 4th Defendants, the Plaintiff was shocked to see the 3rd and 4th Defendants on Tuesday 17th November, 2020 withdraw their membership of the Plaintiff at a well-publicized ceremony and claimed they are now members of the 2nd Defendant which the Plaintiff roundly and resoundingly defeated in the 9th March, 2019 election (Exhs. PDP5, PDP5A and PDP5B respectively). At another well-publicized event held in Ebonyi State on Thursday 19th November, 2021, the 3rd and 4th Defendants announced their defection to the 2nd Defendant formally and the 2nd Defendant's National executives, Governors and top chieftains officially welcomed the 3rd and 4th Defendants to their Party as members (Exh PDP 6). The offices the 3rd and 4th Defendants currently occupy in Ebonyi State are strictly held on the basis of the Plaintiff's electoral victory on 9th March, 2019 and could only be occupied by members of the Plaintiff, winner of the said election, and, it is laid down as law by the Supreme Court that votes earned at elections belong to political parties and not their candidates. The 3rd and 4th Defendants having defected from and or withdrawn their memberships of the Plaintiff and joined the 2nd Defendant, runner-up in the 9th March, 2019 governorship election in Ebonyi State have by their voluntary action discarded or abandoned the majority of lawful votes scored at the election

by the Plaintiff and picked up the runner-up votes scored by the 2nd Defendant. Sequel to the defection of the 3rd and 4th Defendants to the 2nd Defendant, the Plaintiff has severally demanded of them to follow the path of honour and relinquish the offices they hold so that the Plaintiff could recover the fruits of its victory at the polls and fill the offices with its members to complete the unexpired term of the said offices, all to no avail. In spite of the 3rd and 4th Defendants' defection from the Plaintiff to the 2nd Defendant, they have blatantly failed, refused and/or neglected to step down from office or accept the votes scored by their new party, the 2nd Defendant at the 9th March, 2019 Ebonyi Governorship election. The Plaintiff as a political party deployed huge financial, human resources and political network and goodwill in sponsoring the 3rd and 4th Defendants, canvassing for votes publishing its party manifesto, the basis of securing its victory at the election. To allow the 3rd and 4th Defendants to remain in office as Governor and Deputy Governor of Ebonyi State after they have abandoned the votes of the Plaintiff and adopted the minority votes of the 2nd Defendant will be unjust as it would enable the 2nd, 3rd and 4th Defendants reap from where they did not sow and foist on the people of Ebonyi State governance by a political party that does not have majority lawful votes. The 2nd Defendant has no presence, clout or influence in Ebonyi State which is absolutely a PDP State. Great injustice is being and would be meted on the Plaintiff if the 3rd and 4th Defendants are allowed to remain in office on the platform of the 2nd Defendant,

a political party which did not receive the majority vote or mandate of the people of Ebonyi State at the governorship election held on 9th March, 2019 and which woefully lost the 9th March, 2019 election to the Plaintiff. The 2nd, 3rd and 4th Defendants are bent on foisting on Ebonyi State the rule of a minority political party over the majority political party contrary to the provisions and spirit of the 1999 Constitution (as amended) and the tenets of the democratic system operated in Nigeria. The Plaintiff and its members who laboured assiduously, day and night to campaign for and win the election into the office of Governor and Deputy Governor of Ebonyi State are now left in the lurch and betrayed by the conduct of the 3rd and 4th Defendants who have abandoned the manifesto and programmes of the Plaintiff, on the basis of which the Plaintiff won the election and have now adopted the manifesto and programmes of the 2nd Defendant which was rejected by the electorate at the election. The electorate of Ebonyi State gave the Plaintiff it's mandate for a period of four (4) years ending on 28th May, 2023 based on its manifesto and programmes. Allowing the 3rd and 4th Defendants who have now relinquished their membership of the Plaintiff to remain in office as Governor and Deputy Governor of Ebonyi State which being members of the 2nd Defendants deprives the Plaintiff of its right of governance of Ebonyi State while the 2nd Defendant and its members, 3rd and 4th Defendants deprive the Plaintiff of the right to reap the fruits of its electoral victory. There is a dire, present and compelling need for this Court to

restrain the Defendants in the circumstances of this case and it is in the interest of justice, constitutionality, and fairness to enter Judgement for the Plaintiff in this suit.

It is averred for the 2nd Defendant on information given to the deponent by one Mr. Dare Oketade, the Director, Legal Department of the 2nd Defendant that the entire deposition in the said affidavit are partly correct and partly false. The 3rd and 4th Defendants are the current Executive Governor and Deputy Governor of Ebonyi State. The issuance and service of the Originating Summons on the 3rd and 4th Defendants is unconstitutional and a nullity. The 2nd Defendant is non-juristic person hence they lacked the legal personalities to sue and be sued. Upon the grant of prayers (i) and (ii) of the Notice of Preliminary Objection this suit becomes incompetent since there would not be necessary parties for the effective and effectual determination of this suit. The facts constituting the claim of the Plaintiff/Respondent by its nature are post-election related matters. This action ought to have been filed within 21 days after the 9th March, 2019 General Election when the 3rd and 4th Defendants/Respondents won the governorship election conducted in Ebonyi State, hence, this suit is statute barred. The Originating Summons is not accompanied by an Affidavit of Non-Multiplicity of action on the same subject. The subject matters in this suit are not matters which this Court has the jurisdiction to adjudicate. It is in the interest of justice to dismiss this suit with substantial cost.

It is averred for the 3rd and 4th Defendants upon information given to the deponent by one Stanley Okoro Emegha Interim Chairman, the Ebonyi State Executive Caretaker Committee of the 2nd Defendant that except otherwise stated, none of the paragraphs of the Plaintiff's affidavit is true. He is not in a position to deny or admit the averments at paragraphs 1-6 of the affidavit thereof, and that the facts in paragraph 6 (a), (b) and, (c) of the affidavit in support of the Originating Summons are true and correct. That Paragraph 6 (d), (e), (f), (g) and, (h) are only true to the extent that the 3rd and 4th Defendants, contested and won the election of 9th March, 2019 into the office of Governor and Deputy Governor of Ebonyi State respectively. He is not in a position to affirm or deny Paragraph 6 (1) of the Plaintiff's Affidavit in Support of the Plaintiff's case. That contrary to paragraph (j), (k), (l) and, (m) of the Plaintiff's affidavit, the 3rd and 4th Defendants won the election hence the Certificates of Return were issued to the 3rd and 4th Defendants and not the Plaintiff. That contrary to Paragraph 6 (n), (o), and (p) of the Plaintiff's Affidavit in Support of the Originating Summons, upon receipt of the Certificates of return from the 1st Defendant, the tenure of office of the 3rd and 4th Defendants no longer depends on the whims and caprices of the Plaintiff as the 3rd and 4th Defendants were elected to serve the good people of Ebonyi State including the Plaintiff. The Plaintiff in Paragraph 6 (q) of the affidavit in support is mixing up a lot of unfounded facts drawn up from unverifiable social media. All the annexures in Paragraph 6 (q) particularly Exhs. PDP4, PDP5, PDP5A and PDP5B are from unreliable sources. Paragraph 6 (q), (r), (s), (t), (u), (v), (w), and (x) of the affidavit in support are not true and the Plaintiff has to prove the said allegations.

The depositions in Paragraph 6 (y) and (z) are not true, the Plaintiff is put to the strictest proof of same. The people of Ebonyi State voted for the candidatures of the 3rd and 4th Defendants whom they trusted to be the perfect leaders to deliver them out of poverty and underdevelopment which mandate they have indeed delivered and continued to work hard to meet the yearnings and aspirations of the people. Politics/governance is for the interest and development of the people who select their leaders and not for the benefit of a group of individuals based on party affiliation. The 3rd and 4th Defendants are very preoccupied carrying out the mandate entrusted to them which is empowering and improving the lives of the people of Ebonyi State and cannot be disturbed. All the depositions in the Plaintiff's affidavit automatically raise huge controversies and disputations that require oral testimonies and cross-examinations to enable the Court decipher the truth. The Plaintiff had on 26th July, 2021 filed Suit No: FHC/ABJ/CS/729/2021 against the 3rd Defendant on the same subject matter and sought the same reliefs as in this instant suit. The certified true copies of the originating processes in the said Suit No: FHC/ABJ/CS/729/2021 (between *Hon. Fred Udeogu & Peoples Democratic Party v. Nweze David Umahi & 6 Ors.*) filed on 26th July, 2021 is tendered. All the annexures in the said Suit No. FHC/ABJ/CS/729/2021 are same as the annexures in this instant suit. The 3rd Defendant has already filed processes in defence of the suit FHC/ABJ/CS/729/2021 at the Abakaliki Judicial Division of this Court. A copy of the 3rd Defendant/Applicant's Preliminary Objection and Counter Affidavit filed on 20th October, 2021 are herein tendered. This new Suit No. FHC/ABJ/CS/920/21 is rather irritating and annoying to the 3rd Defendant who has to pay counsel to

defend both suits bordering on the same cause of action. All the facts and issues raised in the Originating Summons are controversial. There is no Court known as Federal High Court of Nigeria. This Originating Summons was not signed by the Registrar of the Court and no Affidavit of Non-Multiplicity of Action attached. The 3rd and 4th Defendants are the current Executive Governor and Deputy Governor respectively of Ebonyi State and they are sued in their personal capacities while still in office. The 3rd and 4th Defendants are equally Public Officers. The Plaintiff is not entitled to the reliefs sought.

The Plaintiff submits a sole issue for determination in their Written Address to wit:

Whether in view of the facts and circumstances of this case, the Plaintiff is not entitled to Judgement in terms of the reliefs sought in this Originating Summons?

It is posited therein that the 3rd and 4th Defendants who are serving their second term as Governor and Deputy Governor respectively of Ebonyi State were elected on the platform and by virtue of the nomination and sponsorship of the Plaintiff in 2015 and in 2019. At the Ebonyi State Gubernatorial Elections held on 9th March, 2019 the Plaintiff defeated the 2nd Defendant and 40 other political parties. No person can vie for any elective position created under the Nigerian Constitution save he or she is sponsored by a political party. The Plaintiff who nominated and fully sponsored the 3rd and 4th Defendants at the 9th March, 2019 governorship election polled the majority lawful votes of 393,043

to defeat amongst others, the 2nd Defendant which came a distant second in the election with just 81,703 votes. Following the victory, the 3rd and 4th Defendants were sworn in as Governor and Deputy Governor respectively, on 29th May, 2019 for a four (4) year term to end on 28th May, 2023. In November 2020, the 3rd and 4th Defendants relinquished the membership of the Plaintiff and defected to the 2nd Defendant. Notwithstanding demands made by the Plaintiff on the 3rd and 4th Defendants to drop the Plaintiff's mandate secured at the 9th March 2019 Ebonyi State governorship election and step down from the governorship and deputy governorship position they presently occupy, they have refused to do so. By the decisions of the Supreme Court in *Amaechi v. INEC (Supra)* and *Faleke v. INEC (Supra)*, votes scored at an election belong to the political party and not the candidate(s) sponsored by the political party and independent candidates are not allowed to contest elections or hold office in Nigeria. By a combined reading of Ss. 177 (c), 179 (2) and 187 (2) of the 1999 Constitution (as amended) and S. 83 of the Electoral Act no person can be elected to the office of Governor and Deputy Governor of a State unless sponsored by a political party and must have scored or secured the highest number of votes cast at the election and not less than one-quarter of all the votes cast in each of at least two-thirds of all the Local Government Areas in the State. By S. 221 of the 1999 Constitution (as amended) only a political party can canvass for votes for any candidate at any election; reliance is placed on *Alhassan v. Ishaku* (2016) LPELR - 40083(SC) at 25

26, and *Wada v. Bello* (2016) LPELR - 7015(SC). The 393,043 votes earned by the Plaintiff and the 81,703 votes scored by the 2nd Defendant belonged strictly to them and become non-transferable (except within the party and to members of the same party) and incapable of being snatched, taken away or converted by the 2nd, 3rd and 4th Defendants; reliance is placed on *Ndayako v. Dantoro & Ors.* (2004) LPELR - 1968 (SC) at 24, *Wilson & Anor. v. Oshin & Ors.* (2000) LPELR - 3497 (SC) at 25 - 26, and, *Governor of Oyo State & Ors. v. Folayan* (1995) LPELR - 3179 (SC) at 20. By the doctrine of acquired or vested right, the 3rd and 4th Defendants cannot by their own action of defection arbitrarily or unilaterally strip the Plaintiff of the right vested in it. Nigeria operates a democratic system based on the mandate of the majority of the electorate and by virtue of S. 180 (1) (c) and (d) of the 1999 Constitution (as amended), the 3rd and 4th Defendants lost any claim to the office of Governor and Deputy Governor when they abandoned the majority lawful votes cast for the Plaintiff at the election. They are deemed to have resigned from their offices the moment they abandoned the majority lawful votes cast for the Plaintiff and belonging to the Plaintiff and became members of the 2nd Defendant. The doctrine of implied resignation is known to law. The Plaintiff is absolutely entitled by virtue of Ss. 1 (1) and (2), 177 (c), 179 (2) and 221 of the 1999 Constitution (as amended), and S. 83 of the Electoral Act 2010 (as amended) and the decisions in *Amaechi v. INEC (supra)* and *Faleke v. INEC (supra)* to submit or nominate to the 1st Defendant, the name of its

preferred candidates for the purpose of assuming the offices of Governor and Deputy Governor of Ebonyi State being the offices that were won by the Plaintiff in the 9th March, 2019 governorship election. This Court is urged to so hold and resolve the sole issue in the Written Address in favour of the Plaintiff, answer all the questions in the Originating Summons in its favour and grant the reliefs therein in favour of the Plaintiff.

The 2nd Defendant raises a Preliminary Objection in its Written Address and posits that this Court lacks jurisdiction as this suit was not initiated by due process of law. The Originating Summons by which this suit was commenced having been issued and served on the 3rd and 4th Defendants in disregard of S. 308 (1) (a), (b) and (c); (2) and (3) of the 1999 Constitution (as amended) by which the 3rd and 4th Defendants being the current/serving Governor and Deputy Governor of Ebonyi State respectively enjoys immunity from being sued before this Court in their personal capacity. By the above provision, no civil suit, including this suit can be validly instituted against the 3rd and 4th Defendants. The issuance and service of the Originating Summons in this suit on the 3rd and 4th Defendants is unconstitutional and unlawful; *Tinubu v. IMB Securities Plc* (2001) 16 NWLR (Pt. 740) 670, *Olu Rotimi v. Mcgregor* (1974) 9 NSCC 542, *Ejura v. Idris & Ors.* (2006) LPELR-5827 (CA), and, *Fawehinmi v. I.G.P.* (2002) 7 NWLR (Pt. 767) 606. It is further posited that the provision is clear and require no further explanations; reliance is placed on *Nigeria Ports Authority Plc. v. Lotus Plastics Ltd.* al

(2005) 19 NWLR (Pt. 959) 158. This Court is urged to set aside the application, issuance and service of the Originating Summons in this suit on the 3rd and 4th Defendants, and in consequence, strike out this suit for want of jurisdiction.

It is the submission of the 2nd Defendant relying on the authority of *Abubakar v. Yar'adua* (2008) 19 NWLR (Pt. 1078) 1 at 152, that the name by which the 2nd Defendant is sued is a non-juristic person and the name therefore is liable to be struck out. He cannot be sued with his name and the official title at the same time; reliance is also placed on *Trustees, P.A.W. v. Trustees, A.A.C.C.* (2002) 15 NWLR (Pt. 790) 424, *Abakaliki Local Government Council v. Abakaliki Rice Mills Owners Enterprises of Nigeria* (1990) 6 NWLR (Pt. 155) 182, *Uzoho v. NCP* (2007) 10 NWLR (Pt. 1042) 320 at 358-359, and *Nigerian Nurses Association v. Attorney-General* (1981) 11-12 SC 1. If the names of the 2nd, 3rd and 4th Defendants are struck out, it would mean that necessary parties are not before this Court for the effective and effectual determination of this suit; *Green v. Green* (2001) 45 WRN 90 at 94, *Faleke v. INEC* (supra), and, *Azubuike v. PDP* (2014) 7 NWLR (Pt. 1406) 292.

The next submission is that the facts leading to this suit are the 2019 Governorship Election held on 9th March, 2019 in Ebonyi State. This suit is a post-election matter and this suit ought to have been filed at the Ebonyi State Governorship Election Tribunal established pursuant to the provision of S. 285 (2) of the 1999 Constitution (as amended) which has exclusive

jurisdiction over post-election matters; *Isah v. INEC* (2016) 18 NWLR (Pt. 1544) 175 at 240. This suit is filed in contravention of S. 285 (5) of the 1999 Constitution (as amended); reliance is placed *INEC v. Yusuf* (2020) 4 NWLR (Pt. 1714) 374 at 397, and *Imeh v. Okon* (2012) 11 NWLR (PT. 1311) 270 at 279.

The next submission is that the Originating process in this suit does not comply with the provision of Order 3 Rule 9 (2) of the FHCCPR 2019 as no Affidavit of Non-Multiplicity of action on the same subject matter was attached, and, the Registrar did not seal the Originating Summons in compliance with Order 3 Rule 12 (1) of the FHCCPR 2019. The implication is that the Originating Summons served on the 2nd Defendant/Applicant is incurably bad and defective; reliance is placed on *Igiriga v. Basse & Ors* (2013) LPELR-20346 (CA), *Fagbola v. Titilayo Plastic* (2005) 2 NWLR (Pt. 909) 1, *NNPC v. Elumah* (1997) 3 NWLR (Pt. 492) 195, and *BBN v. Olayiwola* (2001) 6 WRN 141.

The next submission is that Originating Summons as a form of commencement of an action is used where the action seeks interpretation of statute or document; reliance is placed on *Ezeigwe v. Nwalulu* (2010) 4 NWLR (Pt. 1183) 169 at 191. Questions 2, 3, 5, 6,7 and 8 on the Originating Summons are for the interpretation of the judgements of the Supreme Court and/or other Courts. These judgements are not exhibited to the originating process and therefore not placed before this Court contrary to the law in accordance with the provision of Order 3 Rule 9 (2) of the FHCCPR 2019. This means that this suit was

not brought before this Court by due process of law; reliance is placed on *Ikpeazu v. Ogah* (2017) 6 NWLR (Pt. 1562) 439 at 490, and *APC v. INEC* (2015) 8 NWLR (Pt. 1462) 531 at 566 – 567. This non-compliance infringes on the fundamental rights of the 2nd Defendant to fair hearing as enshrined in S. 36 (1) of the 1999 Constitution (as amended). The Defendants, upon application, are entitled to have the Originating Summons set aside for irregularities by virtue of Order 51 Rule 2 of the FHCCPR 2019.

The next submission is that the Plaintiff's complaints do not fall within the causes enumerated in S. 251 (1) (a) -(s) of the 1999 Constitution (as amended); reliance is placed on *PDP v. Sylva* (2012) 13 NWLR (Pt. 1316) 85 at 125. Merely adding the 1st Defendant, an agency of the Federal Government, to this suit is not enough to confer jurisdiction on this Court; reliance is placed on *O. & G. E. F. Z. A. v. Osanakpo* (2019) 6 NWLR (Pt. 1668) 224, Unfortunately for the Plaintiff, the main/principal reliefs are directed against the 3rd and 4th Defendants. The result is that this Court lacks the jurisdiction to entertain this suit; reliance is placed on *Kakih v. PDP* (2014) 15 NWLR (Pt. 1430) 374; *Lokpobiri v. Ogola* (2016) 3 NWLR (Pt. 1499) 328, and *Obiuweubi v. C.B.N.* (2011) 7 NWLR (Pt. 1247) 465 at 516. In conclusion, this Court is urged to decline jurisdiction and strike out this suit for incompetence.

The 2nd Defendant's response to the substantive issue is premised on:

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Whether having regard to the provision of section 285 (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) this Honourable Court has the jurisdiction to entertain this suit?

It is submitted that the gravamen of this suit is that the Plaintiff is challenging the defection of the 3rd and 4th Defendants to the 2nd Defendant and seeking this Court to declare the seat of the 3rd and 4th Defendants vacant by virtue of the provisions of Ss. 1 (1), (2), 177 (c), 179 (2), 187 (2), 221, of the 1999 Constitution (as amended), S. 83 of the Electoral Act, 2010 (as amended) and the decisions of the Supreme Court in *Amaechi v. INEC* (supra), and, *Falake v. INEC* (supra). The 2nd Defendant adopts all the submissions made in respect of its Written Address in support of its Notice of Preliminary Objection in urging this Court to dismiss this suit. It is further submitted that the issue of jurisdiction is fundamental and must be first decided before delving into the merits of the case before it; reliance is placed on *Western Steel Works Ltd. v. Iron & Steel Workers Union* (1986) 2 N.S.C.C (Vol.17) 786 at 798, *Labiya v. Anretiola* (1992) 8 NWLR (Pt. 221) 33, *Umanah v. Attah* (2006) 17 NWLR (Pt. 1009) 503 SC, *F.R.N v. Solomon* (2018) 7 NWLR (Pt. 1618) 201 at 223, *Madukolu & Ors. v. Nkemdilim* (1962) 2 All NLR 587 at 595; (1962) 2 SCNLR 341 at 343, and, *Ibrahim v. Gaye* (2002) 13 NWLR (Pt. 784) 267 at 296. On the whole, this Court is urged to decline jurisdiction and strike out this suit for incompetence and to dismiss the claims of the Plaintiff with substantial cost.

In the Written Address of the 3rd and 4th Defendants five issues are formulated for determination by this Court to wit:

1. *Whether in view of the provisions of Section 308 of the Constitution (employing the phrase "Notwithstanding anything to the contrary in this Constitution..."), the Plaintiff's Originating Summons is potent against the 3rd and 4th Defendants?*
2. *Does the Constitution of the Federal Republic of Nigeria 1999, (as amended) bestow any power on this Hon. Court to grant any of the reliefs sought by the Plaintiff?*
3. *Whether considering the effect of suit No. FHC/ABJ/CS/729/2021 filed by the Plaintiff against the Defendants, this present suit is not an abuse of court process?*
4. *Whether having regards to the status of the 3rd and 4th Defendants as public officers, the Plaintiff's Suit is not statute-barred?*
5. *Is the Plaintiff's Originating Summons (inclusive of the exhibits) not incompetent and invalid in the eyes of the law?*

The submission on issue one is that this suit was commenced, issued and served on the 3rd and 4th Defendants in flagrant disregard of the provision of S. 308 (1) (a), (b) and (c); (2) and (3) of the 1999 Constitution (as amended). It is argued that the phrase - "Notwithstanding anything to the contrary" has been interpreted

to exclude an impinging or impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself; reliance is placed on *Udom v. FRN & Anor.* (2020) LPELR-51407 (CA), *Emesim v. Nwachukwu & Ors* (1999) JELR 43799 (CA), *Att.-Gen., Federation v. Abubakar* (2007) JELR 56740 (CA), and *NNPC and Anor. v. Chief Stephen Orhiowasele and Ors.* (2013) NWLR (Pt. 1371) 211 at 224. Therefore, all the reliefs sought and paragraphs of the affidavit in support of the Originating Summons indicting the 3rd and 4th Defendants, ought to be expunged for being offensive to the express provision of S. 308 of the 1999 Constitution (as amended).

It is posited on issue two that the reliefs sought by the Plaintiff is an invitation to this Court to exercise the powers of the legislative and executive arms of government contrary to the principle of separation of powers spelt out under Ss. 4, 5 and 6 of the 1999 Constitution (as amended). No law supports the position of the Plaintiff that the defection of the 3rd and 4th Defendants from the Plaintiff means they are deemed to have lost the majority votes scored at the election and consequently should be Ordered by this Court to vacate their respective offices of Governor and Deputy Governor of Ebonyi State. This is an invitation for this Court to usurp the powers of the legislative body as the 1999 Constitution (as amended) has succinctly provided for the procedure for the election and removal of a sitting Governor in Nigeria being the instrumentality of impeachment and not by Court action; reliance is placed on *Attorney General of the Federation v. Alhaji Atiku Abubakar & 3 Ors* (2007) LCN/3799 (SC), and *A.-G., Abia State & Ors. v. A.-G, Federation*

(2003) LPELR-610 (SC), *Oko & Ors. v. A.-G., Ebonyi State* (2021) LPELR-54988 (SC), and reference is made to S. 180 (1) of the 1999 Constitution (as amended). The cases of *Amaechi v. INEC (supra)* and *Faleke v. INEC (supra)* are not applicable here. Another constitutional method to remove 3rd and or 4th Defendants is as laid down in Ss. 188, 189 and 190 of the 1999 Constitution (as amended). Therefore, the reliefs sought are therefore not grantable by this Court.

It is submitted on issue three with reference to paragraphs 6, 7, 8, 9 and 10 of the 3rd and 4th Defendants' Counter Affidavit that the Plaintiff has filed multiple suits on the same subject matter, that is, Suit No. FHC/ABJ/CS/729/2021 between *Hon. Fred Udeogu & Anor v. Nweze David Umahi & 6 Ors* filed on the 26th July, 2021 in the Abuja Judicial Division of this Court and later transferred to the Abakaliki Judicial Division and this present Suit No. FHC/ABJ/CS/920/2021 between *Peoples Democratic Party v. INEC & 3 Ors.* filed on 17th August, 2021 in this Court. A summary of the questions submitted for determination in both suits centers on the interpretation of Ss 177 (c), 187 (2), 179 (2) and 221 of the 1999 Constitution (as amended) and S. 83 of the Electoral Act 2010 (as amended). This suit constitutes an improper use of judicial process already issued to the irritation and annoyance of the Defendants; reliance is placed on *A.-G., Lagos State v. A.-G., Federation & Ors* (2014) LPELR-22701 (SC). This Court is urged to so hold.

The submission on issue four is that the Plaintiff's action against the 3rd and 4th Defendants is a stale claim having been brought outside the statutorily provided time for commencing an action against Public Officers in S. 2 (a) of the Public Officers Protection Act (hereinafter referred to as

POPA). The alleged defection of 3rd and 4th Defendants from the PDP to APC took place on 17th November, 2020. This was when the Plaintiff's cause of action accrued; reliance is placed on *Back Base Dev. Ltd. v. A.-G., Federation & Anor.* (2020) LPELR-51381 (CA). The Originating Summons was filed on 17th August, 2021, almost 11 months after cause of action arose. The effect is that this action is dead on arrival. The essence of statute of limitation is to protect Public Officers who are very busy people like the 3rd and 4th Defendants in this case from being distracted by professional litigants; reliance is placed on *CBN & Ors v. Okojie* (2015) LPELR-24740 (SC).

The submission on issue five is that the Plaintiff's Originating Summons (inclusive of the exhibits) are incompetent and invalid as all the annexures in Paragraph 6 (q) of the affidavit in support thereof particularly Exhs. PDP 4, PDP 5, PDP 5A and PDP 5B are all internet generated but not certified pursuant to S. 84 of the Evidence Act, 2011. The Plaintiff's Originating Summons was not signed by the Registrar pursuant to Order 3 12 (1) of the FHCCPR 2019. When an originating process has not been signed by the Registrar of Court, it goes to the jurisdiction of the Court; reliance is placed on *Igiriga v. Basse & Ors* (2013) LPELR-20346 (CA), and *Titilayo Plastic Industries Ltd. & Ors. v. Fagbola* (2019) LPELR-47606 (SC). The originating process in this case is incurably defective, a condition precedent which affects the competence of the suit and borders on the issue of jurisdiction of this Court; reliance is placed on *Aromire & Anor. v. Aromire & Ors.* (2019) LPELR-47704 (CA).

It is also submitted that this suit was wrongly initiated by way of an Originating Summons. The law is trite that contentious matters as in this

suit are to be brought by way of Writ of Summons to enable party lead evidence and be cross-examined; reliance is placed on *Kehinde v. ACN & Ors* (2012) LPELR-14821 (CA), and *Saleh v. Monguno* (2003)1 NWLR (Pt. 801) 221.

It is further submitted that the Originating Summons in this case was not accompanied by an Affidavit of Non-Multiplicity of Action on the same subject matter in compliance with the provisions of Order 3 9 (2) (d) of the FHCCPR 2019. The Originating Summons is incurably defective and should be struck out; reliance is placed on *Sahara Reporter & Anor v. Saraki* (2018) LPELR-49738 (CA). In conclusion, this Court is urged to decline jurisdiction to hear and determine the questions submitted for determination by the Plaintiff and strike out the suit in its entirety.

The 1st Defendant did not contest this case. There is therefore no need to waste time on talking about its default. It is deemed that it has admitted the case of the Plaintiff and I so hold.

It can be noted from the affidavit evidence of the Plaintiff that this case is about the defection of the 3rd and 4th Defendants from PDP to APC after contesting election on the platform of the Plaintiff and becoming Governor and Deputy Governor respectively in Ebonyi State in 2015 and 2019. The Plaintiff tenders Exhs. PDP2, PDP3, and PDP4 to buttress this assertion. It is the averment of the Plaintiff that at the Ebonyi State Governorship election held on 9th March, 2019, there were One Million Two Hundred Thousand (1,200,000) registered voters out of whom 497,291 were accredited and several political parties participated in the election including the Plaintiff and the 2nd Defendant. At the end of the governorship election of 9th March,

2019, the Plaintiff polled 393,043 votes to defeat the 2nd Defendant which came a distant second with 81,703 votes. It was because the Plaintiff polled majority of the lawful votes cast at the 9th March, 2019 election that it was declared winner and its candidates, the 3rd and 4th Defendants returned elected as Governor and Deputy Governor respectively for Ebonyi State. By virtue of the election won by the Plaintiff, the 3rd and 4th Defendants were issued with Certificates of Return respectively by the 1st Defendant and duly sworn into those offices on 29th May, 2019. Midway into this second four (4) year term of the 3rd and 4th Defendants as Governor and Deputy Governor respectively which commenced from 29th May, 2019 and is to end on 28th May, 2023, the 3rd and 4th Defendants defected from the Plaintiff to the 2nd Defendant.

I have noted the averments of the 2nd Defendant in their 5-paragraphed Counter-Affidavit deposed to on 24th November, 2021. Apart from saying that the entire depositions in the Affidavit in Support of the Plaintiff's Originating Summons are partly correct and partly false in paragraph 4 (i) thereof, the 2nd Defendant has said nothing about the substantive case of the Plaintiff. Again, apart from saying that the 3rd and 4th Defendants are currently Executive Governor and Deputy Governor of Ebonyi State in paragraph 4 (ii) of their Counter-Affidavit, the rest of the averments in paragraph 4 (iii) – (xi) thereof are used to attack the competence of the originating process in this case. Furthermore, the entire submissions of the 2nd Defendant in the

Written Address accompanying the Counter-Affidavit are about the competence of the originating process of the Plaintiff. This is a clear case where it can be said that the 2nd Defendant has neither challenged nor controverted the substantive case of the Plaintiff. The law is settled on situations of this nature; see *CBN v. Edet* (2015) All FWLR (Pt. 768) 879 at 897 where it was stated thus:

"The position of the law remains that affidavit evidence which is not challenged or controverted howsoever, is deemed admitted and can be relied upon by a court: *Registered Trustees, National Association of Community Health Practitioners of (Nig.) v. Medical and Health Workers Union of (Nig.)* (2008) All FWLR (Pt. 412) 1013...*Henry Stephen Engineering Ltd v. Yakubu (Nig.) Ltd* (2009) 10 NWLR (Pt. 1149) 416...*Tukur v. Uba* (2012) All FWLR (Pt. 652) 1624..."

It was also stated in *State v. Oladotun* (2011) All FWLR (Pt. 586) 399 at 410 that:

"The position of the law as settled in many authorities is that evidence adduced in court, that is relevant to the issue in controversy, and has neither been challenged nor successfully debunked becomes good and credible evidence, which ought to be relied upon by a learned trial judge: *Adiba v. Azega* (1991) 7 NWLR (Pt. 296) 234; *Okere v. State* (2001) 2 NWLR (Pt. 697) 397."

See also *Nacenn (Nig.) Ltd. v. Bewac Auto, Prod. Ltd.* (2011) All FWLR (Pt. 585) 280.

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It is my finding that the 2nd Defendant having not challenged or controverted the averments of the substantive case of the Plaintiff is deemed to have admitted same and I so hold.

I have also studied the averments in the 18-paragraphed Counter-Affidavit of the 3rd and 4th Defendants particularly paragraph 4 (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and (r) where the 3rd and 4th Defendants seek to controvert the case of the Plaintiff. I find that the averments have not addressed the issue of defection of the 3rd and 4th Defendants from the Plaintiff to the 2nd Defendant either forthrightly or frontally. The deponent is busy saying that he can neither affirm or deny the case of the Plaintiff and that the averments are false, and the Plaintiff is put to strictest proof of its evidence. The averments of the 3rd and 4th Defendants constitute what is termed as general denial in affidavit evidence. The law is that a general denial is ineffectual to answer any allegation stated in the within named paragraphs; see *Maersk Line v. Addide Investments Ltd.* (2002) 7 SC (Pt. 11) 112; LPELR-1811 (SC), *Nwagboso v. Ejiogu* (1997) 11 NWLR (Pt. 527) 173, and *Haston v. ACB* (1999) 7 SC (Pt. 11) 54. It is required that in addition to the general denial, the Defendant must explain in further paragraphs of the Counter-Affidavit, why and how the depositions in the affidavit are false and give the true version of the story; see *Ayoola v. Baruwa* (1999) 11 NWLR (Pt. 628) 595. This means where a case is built on affidavit evidence, it is neither a good nor sufficient response or defence to aver in the Counter-Affidavit that the other party is put to strictest proof of his case as there is no other method of proof but the averments in the affidavit and documents thereto exhibited. The most effective defence is that the averments in the Counter-

Affidavit is used to earnestly and competently controvert every averment in the affidavit evidence of the other side. Without using the Counter-Affidavit to controvert the case in every material averment in an affidavit, the Defendant has unwittingly thrown away the opportunity for his defence. The averments in the Counter-Affidavit of the 3rd and 4th Defendants are in my opinion evasive and the effect of such is settled in law; see *Erebor & Anor. v. Eramah & Anor.* (2020) LPELR-49671 (CA) where it was thus stated:

“The law is that a party who intends to deny an averment of fact in the pleadings of the adverse must clearly do so since mere evasive denial or not being in the position to admit or deny does not amount to any effective denial of the averments. In law facts not expressly denied are deemed admitted and there is no further obligation on the party whose averments are either not denied and are deemed admitted or whose averments are out rightly admitted to prove those admitted facts.”

See also *Buhari v. INEC & Ors.* (2008) LPELR-814 (SC), and *Ogundoyin & Ors. v. Ewenla* (2017) LPELR-43218 (CA).

Averments in Counter-Affidavit that are unable to challenge those in the affidavit are at best feeble in nature and the law is equally settled on such situation. It was stated in *Gov., Ekiti State v. Ojo* (2006) 17 NWLR (Pt. 1007) 95 at 129 that where in a Counter-Affidavit a Respondent makes some feeble and shallow averments in denial of specific facts in an affidavit, such averments are mere general denials which are ineffective as challenge to serious averments against him.

On the whole, it is my finding that the averments of the 3rd and 4th Defendants in their Counter-Affidavit are insufficient to effectively challenge or controvert the substantive case of the Plaintiff and I so hold.

Still on the affidavit evidence of the 3rd and 4th Defendants, it is obviously noticeable that the rest of the averments, that is, paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the 3rd and 4th Defendants' Counter-Affidavit are used to challenge the competence of the originating process of the Plaintiff. The law is also settled in situations of this nature. I need also to say that even at the point of adoption of the processes of the parties in this case, the learned Counsel for the 2nd Defendant and the learned Silk of Counsel for the 3rd and 4th Defendants paid little attention to the substantive case. Their respective adumbrations were on the incompetence of the Plaintiff's originating process.

I can also see that in the five issues formulated by the 3rd and 4th Defendants for determination, no issue addresses the substantive case of the Plaintiff but competence of the suit. As much as this Court will address the relevant submission in the Written Address of the learned Silk of Counsel for the 3rd and 4th Defendants, it is pertinent to say at this point that where a case is founded on Originating Summons, as much as the opposing side might like to formulate its own issues for determination, it is neater and most appropriate to address the Court on issues formulated by the Plaintiff. This will enable the opposing side to stay on the course of the case and remain focused on the issues before the Court.

It is important to state at this point that all the issues raised and argued on the competence of the Plaintiff's action have been addressed

and determined in the respective Preliminary Objections by the 2nd, 3rd and 4th Defendants which ruling I delivered before this judgement.

Having said all that, it is time to address the main issue in this case and in my opinion, the question that is capable of determining this case in its entirety effectively and completely is:

What is the constitutional effect of the defection of the 3rd and 4th Defendants from Peoples Democratic Party (Plaintiff) to All Progressive Congress (2nd Defendant) having been elected Governor and Deputy Governor respectively of Ebony State on the Platform of the Plaintiff by the votes given to the Plaintiff by electorates in the governorship election of 9th March, 2019?

The provisions of the 1999 Constitution (as amended) upon which this application is brought are as follows:

S. 1 (1) – This Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

(2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

S. 177 A person shall be qualified for election to the office of Governor if...

(c) he has been educated up to at least the School Certificate level or its equivalent.

S. 179 (2) A candidate for an election to the office of Governor of a State shall be deemed to have been duly elected where,

there being two or more candidates –

- (a) he has a majority of the votes cast at the election; and
- (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the local government areas of the state.

S. 187(2) The provisions of this Part of this Chapter relating to the qualification for election, tenure of office, disqualifications, declaration of assets and liabilities and Oath of Governor shall apply in relation to the office of Deputy Governor as if references to Governor were references to Deputy Governor.

S. 221 No association other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

The Plaintiff also relies on S. 83 of the Electoral Act, 2010 (as amended) which provides that:

Where a symbol is registered by a political party in accordance with this Act, the Commission shall allot the symbol to any candidate sponsored by the political party at an election.

The Plaintiff also relies on the judicial authorities in *Amaechi v. INEC* (supra) and *Faleke v. INEC* (supra) to canvass the point that votes cast at an election belong to the political party and not the individual concerned.

On the other hand, I can see that the 3rd and 4th Defendants have

brought in the provision of S. 308 (1) (a), (b) and (c), (2) and (3) of the 1999 Constitution (as amended) to posit that the 3rd and 4th Defendants are inured with immunity against this suit.

S. 308 (1) (a), (b) and (c), (2) and (3) provides as follows:

(1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section –

(a) no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

(b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued.

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office

- (2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.
- (3) This section applies to a person holding the office of the President or Vice-President, Governor or Deputy Governor; and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

The cardinal rules on the interpretation of the Constitution are as follows:

- i. The provisions thereof must be interpreted objectively and purposefully. It is the supreme law of the land and must not be interpreted vainly; see *Abegunde v. Ondo State House of Assembly & Ors.* (2015) LPELR-24588 (SC) where the Court said Per Muhammad J.S.C. (Pp. 28-29 paras. D) that:

"The guidelines to be observed in the interpretation of statutes most especially our Constitution are stated by Obaseki JSC in the case of *A.G. of Bendel State v. AG of the Federation and Ors.* (1981) 10 SC 1 at 132, 134....

"The court also availed itself with the further principle of interpretation of the provisions of the Constitution restated by this Court per Iguh JSC in *I.M.B. v. Tinubu* (2001) 16 NWLR (Pt. 740) 690 thus: - "In this regard, it

will be necessary to recall the general principle of law governing the interpretation of our Constitution. This is that such interpretation as would serve the interest of the Constitution and best carry out its object and purpose should be preferred. Its relevant provisions must be read together and not disjointly and where the words of any section are clear and unambiguous, they must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions of the Constitution.”

- ii. There is a difference when interpreting the Constitution from when interpreting a statute. Real meaning must be given to the provisions; See *Abubakar v. INEC* (2020) 12 NWLR (Pt. 1737) 37 at 103-104 where it was stated that:

“In interpreting the provision of the Constitution, which is the organic law of the land or the grundnorm, care must be taken to give it the real meaning which the people had in mind in adopting its provisions. Speaking along this line, Musdapher, JSC (as he then was), in *Brigadier Marwa & Ors v. Admiral Nyako & Ors* (2012) LPELR - 7837 (SC) page 45 - 46, paragraphs B -A; (2012) 6 NWLR (Pt. 1296) 199 adopted with approval the dictum of Chief Justice Dickson of the Supreme Court of Canada, in *Hunter v. Southam Inc* (1984) 2 SCR 145 at 146 wherein his Lordship made the following comments:-

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"The task of expounding a Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations a Constitution by contrast is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power, ... It must therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must in interpreting its provisions, bear these considerations in mind."

See also the case of *Attorney General of Bendel State v. The Attorney General of the Federation* (1981) 10 SC 1, (1982) 3 NCLR 1 and *Ishola v. Ajiboye* (1994) 7-8 SCNJ (Pt.1) 1, (1994) 6 NWLR (Pt. 352) 506."

- iii. The provisions thereof should be taken as a whole, and it is not to be presumed that any clause in the Constitution is intended to be without effect; see *Skye Bank v. Iwu* (2017) LPELR-42595 (SC).
- iv. Extraneous matters must not be imputed in the provisions; see *National Assembly v. Accord* (2021) 18 NWLR (Pt. 1808) 193 at 260 where it was stated that:

"The settled position of the law is that in the interpretation of the Constitution or a Statute the duty of the court or tribunal is to consider the Constitution or the Statute as a whole and that where the words used in the

Constitution or a Law is clear and unambiguous they should be construed or interpreted literally in order to bring out succinctly the intendment of the Constitution or Statute and the intention of the Lawmakers. Extraneous matters must not be brought to bear on the words of the law being interpreted. See: *Nobis-Elendu v. INEC & Ors.* (2015) 16 NWLR (Pt. 1485) 197 a 223 E-G., *Action Congress (AC) & Anor. v. INEC* (2007) 12 NWLR (Pt. 1048) 220 at 259 C - D per Katsina-Alu, JSC (later CJN Rtd. of blessed memory) who said:-

“It is a settled principle of interpretation that a provision of the Constitution or a statute should not be interpreted in isolation but rather in the context of the Constitution or statute as a whole. Therefore, in construing the provisions of a section of a statute, the whole of the statute must be read in order to determine the meaning and effect of the words being interpreted: See *Buhari & Anor. v. Obasanjo & Ors.* (2005) 13 NWLR (Pt. 941) 1 (219). But where the words of a statute are plain and unambiguous. No interpretation is required, the words must be given their natural and ordinary meaning”.

- v. The intention of the lawmaker must be considered; see *Ocholi Enejo James, SAN v. INEC & Ors.* (2015) 12 NWLR (Pt. 1474) 538 at 588 where the Court said:

"In interpreting the provisions of the Constitution and indeed any statute, one of the important considerations is the intention of the lawmaker. In addition to giving the words used, their clear and ordinary meaning (unless such construction would lead to absurdity), it is also settled that it is not the duty of the Court to construe any of the provisions of the Constitution in such a way as to defeat the obvious ends it was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends."

As I proceed, I must first consider whether the provision of S. 308 (1) (a) of the 1999 Constitution (as amended) that no civil or criminal proceedings shall be instituted or continued against a person to whom the section applies during his period of office, provide immunity to the 3rd and 4th Defendants in their respective acts of defection. I have studied all the judicial authorities cited and relied upon in this regard and I have not seen in any of the authorities where it is propounded that a Governor and/or Deputy Governor who defects from the political party on whose platform, he/they won an election to the office cannot be sued by the political party to reclaim the mandate given to the party by the electorate. I believe that the provision of S. 308 of the 1999 Constitution (as amended) was not intended to deal with situation of the nature of this case. Therefore, relying on the provision as if it was a blanket prohibition,

does not portray the proper intention of the lawmaker. It is my opinion that where the act of a Governor and/or Deputy Governor amounts to infringement of the provisions of the Constitution itself or creates a constitutional issue which requires the interpretation or enforcement of the Constitution, an action can lie, otherwise, this country will have a situation where a person or group of persons have been elevated to a status that makes them to be greater or above the Constitution itself. It will be absurd to contemplate that the Legislature will ever intend to make a Constitution that creates any person or entity above the same Constitution. It will be no *res novo* to postulate that the essence of S. 308 of the 1999 Constitution (as amended) is to prevent civil and criminal proceedings that constitute distraction of the persons therein protected from all other civil or criminal proceedings, save proceedings bordering on the interpretation of the Constitution. The civil or criminal proceedings envisaged in S. 308 of the 1999 Constitution (as amended) are those cases where causes of action are such that can still be enforceable after the tenure of the persons mentioned therein. In this case, the cause of action and the remedy thereof cannot wait till the 3rd and 4th Defendants leave office. Therefore, the immunity in S.308 of the 1999 Constitution (as amended) cannot be said to be absolute. To propound otherwise will be tantamount to creating monsters who will neither bow to the supremacy of the Constitution nor observe any law passed by the legislature. It is pertinent to state at this point that S. 308 of the 1999 Constitution (as amended) is intended by the legislature as veritable constitutional shield and not a political sword that is to be swung frivolously and recklessly. I find that this case is not such that is prohibited by the provision of S. 308 of the 1999 Constitution (as

amended) and I so hold. The position of the 3rd and 4th Defendants on this issue is hereby discountenanced as not being the true position of the law.

On the effect of the defection of the 3rd and 4th Defendants from the Plaintiff to the 2nd Defendant. The act of defection is a practical act in nature. It is consummated when a person who was elected on the platform of a political party switches his membership to another political party before the expiration of the term of office. This is a situation where an elected member of a political party jumps ship in the course of his tenure in the former party and joins a rival party. In this case, it is the 3rd and 4th Defendants that defected from the PDP (the Plaintiff) to APC (the 2nd Defendant) while the tenure of office they acquired with the membership and electoral votes of their former political party subsists. Now, the Plaintiff herein is that the 3rd and 4th Defendants became Governor and Deputy Governor respectively on its platform and while the term of office is still running, they jettisoned the Plaintiff and became members of the 2nd Defendant with the intention of using the remaining tenure in office with the votes which the electorate gave to the Plaintiff, and the Plaintiff has tendered Exhs. PDP2, PDP3, and PDP4 to buttress this assertion. It is also the assertion of the Plaintiff that the votes cast in the Ebonyi State Governorship election held on 9th March, 2019 whereat the Plaintiff polled 393,043 votes to defeat the 2nd Defendant which came second with 81,703 votes, belong to the Plaintiff and the 3rd and 4th Defendants cannot transfer the votes to the 2nd Defendant so as to remain the Governor and Deputy Governor on the platform of the 2nd Defendant. It is on this point that the Plaintiff relies on the provision of S. 83 of the Electoral Act, 2010 (as

amended), Ss. 179 (2) (a) and (b), and 221 of the 1999 Constitution (as amended) and cites the judicial authorities in *Amaechi v. INEC* (supra) and *Faleke v. INEC* (supra). There is no argument that the cases of *Amaechi v. INEC* (supra) and *Faleke v. INEC* (supra) have put to rest the issue of the actual person that owns the votes in an election. For the avoidance of doubt, the votes in any election in our Country are votes for the political party and not the candidate. The 2nd, 3rd and 4th Defendants have not controverted the assertion of the Plaintiff that it is by the votes cast for the Plaintiff that the 3rd and 4th Defendants became Governor and Deputy Governor of Ebonyi State in 2015 and 2019. The defence put forth by the 3rd and 4th Defendants is merely that by S. 308 of the 1999 Constitution (as amended), they are granted immunity from this action. The argument of the 3rd and 4th Defendants relying on S. 308 of the 1999 Constitution (as amended) is not actually a defence on the merit but a demurrer. By the provision of Order 16 (1) of the FHCCPR 2019, demurrer is abolished. What is required now is that a party files his defence on the merit and raises a point of law capable of terminating the suit *in limine* in the defence filed. By not proffering a defence on the substantive matter, the 2nd, 3rd and 4th Defendants have failed in this respect. They have not defended this case on the merit.

As for the consequential action of the defection of the 3rd and 4th Defendants from the party on whose platform they won the election and became Governor and Deputy Governor of Ebonyi State respectively, to the 2nd Defendant who contested the election in 2015 and 2019 and did not win, there is evidence in this case that the 2nd Defendant contested the governorship election with their governorship and deputy governorship

candidates in both the 2015 and 2019 elections but did not win. A party cannot win an election by poaching on the candidates of the party that actually won an election. In the same vein, a person who won an election on the platform of a political party and occupied an office by virtue of that, cannot by act of defection make a party that lost an election become the party in power to the chagrin of the party that rightfully own the votes that won the election. Election is won on the ballots and constitutionally, ballots are sacrosanct and are ascribed to the party to whom the electorate voted. There is no constitutional provision that makes the ballot transferrable from one political party to another. Where the electorate express their trust in an election by giving their votes to a political party, there is no political machination or manipulation that would be allowed to short-change the will of the electorate. Let me put it this way, a Governor or Deputy Governor is dressed in the robes of the political party by whose vote they occupy the office. If a Governor or Deputy Governor defects from the political party by whose vote he got into office by joining another political party, such a person must be seen to have jettisoned not just the political party but the votes of the party as well under our law.

It can be noted that the Constitution does not treat the issue of defection lightly. This is such point that the Constitution must be read and interpreted as a whole to understand the mind of the legislature on the issue of defection. Examples can be seen in the provision of S. 68 (1) (g) of the 1999 Constitution (as amended) where it is stated that a member of the Senate or House of Representatives shall vacate his seat in the house of which he is a member, if being a person on whose election to the house was sponsored by one political party, he becomes a member of any other

political party before the expiration of the period for which that House was elected. Similar provision is made in S. 109 (1) (g) of the 1999 Constitution (as amended) with respect to membership of the State House of Assembly. Though no similar provision is made in respect of a Governor or Deputy Governor, such *lacuna* is not to be celebrated or even mischievously flaunted as failure of a remedy for situations of such nature. It is not an assurance that any person who occupies an elected office would defect from the political party that puts him on the seat to a party that did not win the election, and nothing would happen. It would be constitutionally wrong for a person who was sponsored by one political party, to defect and become a member of another political party before the expiration of the period he was elected and then continue with the voters' mandate given to his former party. This is the situation here.

It needs also to be said that the continued occupation of the 3rd and 4th Defendants as Governor and Deputy Governor of Ebonyi State is in breach of the provision of S. 179 (2) (a) and (b) of the 1999 Constitution (as amended) as there was no election held in the State by virtue of which they emerged duly elected as candidates of the 2nd Defendant with majority of votes cast at the election and they had not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the Local Government Areas of the State.

I find that in the Ebonyi State Governorship election held on 9th March, 2019, it was the candidates of the Plaintiff that emerged duly elected as candidates with majority of votes cast at the election and they had not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the Local Government Areas of the State. Therefore,

majority of the lawful votes cast in the Ebonyi State governorship election held on 9th March, 2019 was for the Plaintiff and no other political party. The 3rd and 4th Defendants cannot transfer the voters' mandate given to the political party (the Plaintiff) which sponsored them in the election held on 9th March, 2019 to another party. The victory in the election held on 9th March, 2019 belong to the Plaintiff and no other political party and the majority of the lawful votes cast in the election held on 9th March, 2019 are those of the Plaintiff. Therefore, I find that the office of the Governor and Deputy Governor of Ebonyi State belong to the Plaintiff by virtue of the fact that it was the political party that sponsored the election of the candidates to those offices and indeed got the majority of the lawful votes cast in the governorship election, and I so hold. The 3rd and 4th Defendants cannot say they were oblivious of the consequence of their act of defection. Having defected to another party they cannot hold unto the votes of the Plaintiff to remain in office. The option open to them is to vacate the office of the Governor and Deputy Governor respectively for the Plaintiff and stay in their new party and wait for when the next gubernatorial election and contest same under the platform of their new party.

I have noted the judicial authorities sent to the Court after this case was adjourned for judgement. I do not know the essence of the case of *INEC v. DPP & Ors.* (unreported) Suit No: CA/B/106/2013 and the nexus of that authority with this case. The principle in that case does not support the case of the 3rd and 4th Defendants in this case.

Again, the learned Counsel for the 3rd and 4th Defendants also submitted the case of *Bashir Saleh & 2 Ors, v. Alh. Dr. Bello Mohammed Matawalle & 4 Ors.* (unreported) Suit No: FHC/GS/CS/24/2021 delivered on 7th February, 2022. This is a persuasive decision of a Court of Coordinate jurisdiction. The issue in this case is not whether the 3rd and 4th Defendants have constitutional right to join any party of their choice as enunciated in page 41 of that judgement but the consequence of the defection. I am not persuaded by that decision.

The learned Silk of Counsel for the 3rd and 4th Defendants not yet done with post-adoption (unsolicited) Written Address as he did while sending the two judicial decisions above, sent in another judgement with another unsolicited post adoption address dated 3rd March, 2022 on the eve of this judgement for consideration. This is a persuasive decision of a Court of Coordinate jurisdiction. In my view the facts and circumstances of the case of *Senator Soni Ogbuoji & 2 Ors. v. Engr. David Nweze Umahi & Anor.* (unreported) Suit No. HAB/13/2022 decided on 28th February, 2022 which was forwarded to this Court is not on all fours with the facts and circumstances of this Court. I am not persuaded by that decision.

It is the law, that a case is an authority for what it decides; see *APC v. INEC* (2015) 8 NWLR (Pt. 1462) 531 at 583 where it was stated that:

"One hastens to state that a case is authority for what it actually decided. See *Ibrahim v. J.S.C* (1998) 14 NWLR (Pt. al

584) 1 and *Dangote v. C.S.C, Plateau State* (2001) 9 NWLR (Pt. 717) 132 at 155. For a previous decision of this Court to bind any Court, the Apex Court not exempted, the facts and the law in the subsequent case must be the same or similar to those which informed the Court's earlier decision. The decision cited and relied upon by counsel on both sides in the instant application, therefore, apply to the matter at hand to the extent that the facts and applicable law in respect of the issue being determined herein are same or similar to those in the earlier decision. Decisions of Courts must therefore irredeemably relate to the facts which inform them."

The principles enunciated in the three unreported judicial authorities have no bearing howsoever with this case. They cannot therefore form the basis for the decision in this case.

In conclusion, let me put it this way, the 3rd and 4th Defendants did not on their own win the election of 9th March, 2019 to become the Governor and Deputy Governor of Ebonyi State respectively. They were sponsored by the Plaintiff in compliance with the provision of S. 221 of the 1999 Constitution (as amended). Therefore, it was the Plaintiff (PDP) that the electorate voted for. They cannot remain in the office of Governor and Deputy Governor respectively of Ebonyi State after their defection without the Plaintiff (PDP) that the electorate voted for. On the other hand, the 2nd Defendant (APC) was not the party elected by the electorate in the election of 9th March, 2019 to govern Ebonyi State. Therefore, the 2nd Defendant (APC) cannot govern Ebonyi

State through the 3rd and 4th Defendants when it did not win the election that produced the Governor and Deputy Governor. The Constitution is put in jeopardy where the will of the electorate when they vote for a political party can be brazenly merchandized by candidates without consequence. The act of the 2nd, 3rd and 4th Defendants and the position of their respective Counsel in this case are directed at political dismantling of the 1999 Constitution (as amended). It must be stopped forthwith.

I therefore answer the questions formulated by the Plaintiff in this case as follows:

- i. Question 1 in the negative.
- ii. Question 2 in the positive.
- iii. Question 3 in the negative.
- iv. Question 4 in the negative.
- v. Question 5 in the positive.
- vi. Question 6 in the negative.
- vii. Question 7 in the positive, and,
- viii. Question 8 in the positive.

I find that the case of the Plaintiff has succeeded on the merit, and I enter judgement on terms as follows:

1. A Declaration is hereby made that having regard to the provisions of S. 221 of the 1999 Constitution (as amended) and the democratic system of governance operated in Nigeria, votes at the election and elections are won by political parties

- and not their candidate or the candidates sponsored at the election by the political parties.
2. A Declaration is hereby made that the votes won or scored by a political party at an election is retained by the political party irrespective of the death or exit of the candidate it sponsored for the election, from that political party.
 3. A Declaration is hereby made that under the democratic system of governance operated in Nigeria, the votes won at an election by a political party cannot be transferred to or utilized for the benefit of another political party or member of another political party.
 4. A Declaration is hereby made that under the democratic system of governance operated in Nigeria, a candidate of a political party that won the majority votes at an election is not entitled to retain or continue to lay claims to the votes won by the political party after moving from the Political Party to another political party but rather the candidate is bound to inherit, utilize or appropriate the votes won by the new political party he has adopted.
 5. A Declaration is hereby made that under the democratic system of governance operated by Nigeria, no part of Nigeria, including Ebonyi State

can be governed (other than during emergency as defined by the Constitution) by a political party or a member of a political party other than the political party or its member who won the majority of the lawful votes at the election into the office concerned.

6. A Declaration is hereby made that the Plaintiff won the majority of lawful votes at the Governorship election of Ebonyi State held on 9th March, 2019 and it is entitled to retain the majority votes it won at that election throughout the duration of and the tenure of that office, that is from May 29, 2019 to May 28, 2023.
7. A Declaration is hereby made that the 2nd Defendant having won or scored only 81,703 votes at the said governorship election as against the majority lawful votes of 393,343 votes scored or won by the Plaintiff, the Plaintiff is bound to retain its votes throughout the duration of or tenure of office for which the election was held and the 2nd Defendant cannot appropriate the votes of the Plaintiff directly or indirectly through its member or members namely the 3rd and 4th Defendants for the purpose of governing or ruling over Ebonyi State for the period of May 29, 2019 to May 28, 2023.

8. A Declaration is hereby made that the Plaintiff is entitled to submit to the 1st Defendant, the name of its candidates to replace the 3rd and 4th Defendants for the purpose of utilizing the lawful votes cast in favour of the Plaintiff or in the alternative that the 1st Defendant is bound to hold a gubernatorial election arising from abandonment of the majority lawful votes and the offices occasioned by the action of the 3rd and 4th Defendants in becoming members of the 2nd Defendant who did not win majority of the lawful votes cast at the election.
9. A Declaration is hereby made that the 3rd and 4th Defendants, Engineer David Nweze Umahi and Dr. Eric Kelechi Igwe, who were respectively elected into office as Governor and Deputy Governor of Ebonyi State as members of and as candidates sponsored by the Plaintiff, Peoples Democratic Party (PDP), cannot validly transfer the mandate of Peoples Democratic Party (PDP) for the offices to All Progressives Congress (APC) by defecting to that political party while still in office as the Governor and Deputy Governor of Ebonyi State in view of the provisions of Ss 177 (c), 179 (2) and 221 of the 1999 Constitution (as amended) and the decision of the Supreme Court in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 and *Faleke v. INEC* (2016) 18 NWLR (Pt. 1543) 61.

10. A Declaration is hereby made that by defecting from Peoples Democratic Party (PDP) on which platform they were sponsored and elected as Governor and Deputy Governor of Ebonyi State to the 2nd Defendant, All Progressives Congress (APC), a political party that did not win the governorship election in Ebonyi State, the 3rd and 4th Defendants have resigned or are deemed to have resigned from the office of the Governor and Deputy Governor of Ebonyi State, by virtue of which the Plaintiff, as winner of the governorship election of Ebonyi State on 9th March, 2019, is entitled to submit the names of its candidates to occupy the offices of Governor and Deputy Governor of Ebonyi State for the remainder of the term secured by virtue of the Plaintiff's victory on 9th March, 2019.
11. An Order is hereby made directing the 1st Defendant to immediately receive from the Plaintiff, the names of its candidates to replace the 3rd and 4th Defendants for the purpose of utilizing the lawful votes cast in favour of the Plaintiff or in the alternative the 1st Defendant is hereby Ordered to hold a gubernatorial election for Ebonyi State in accordance with S. 177 (c) of the 1999 Constitution (as amended) (excluding the 3rd and 4th Defendants who are disqualified from participating in the election by virtue of S. 182 (1)

(b) of the 1999 Constitution (as amended) arising from abandonment of the majority lawful votes and the offices occasioned by the action of the 3rd and 4th Defendants by virtue of their becoming members of the 2nd Defendant who did not win majority of the lawful votes cast at the election.

12. An Order directing the 3rd and 4th Defendants to forthwith vacate office as Governor and Deputy Governor of Ebonyi State respectively being members of the 2nd Defendant which did not win 9th March, 2019 governorship election in Ebonyi State.
13. An Order is hereby made directing the 1st Defendant to immediately declare the persons nominated or to be nominated to it by the Plaintiff as Governor and Deputy Governor of Ebonyi State.
14. An Order of injunction is hereby made restraining the 1st Defendant, its Agents, Privies, Servants and Assigns or any person howsoever from recognizing and or continuing to recognize the 3rd and 4th Defendants as Governor and Deputy Governor respectively of Ebonyi State or granting to them any right, benefit or recognition in relation thereto.
15. An Order of Perpetual Injunction is hereby made restraining the 1st Defendant, its Agents, Privies, Servants and Assigns or any person howsoever

from recognizing and or continuing to recognize the 2nd Defendant as the political party whose members occupy the offices of Governor and Deputy Governor respectively of Ebonyi State on the strength of the 9th March, 2019 election won by the Plaintiff.

16. An Order of Perpetual Injunction is hereby made restraining the 3rd and 4th Defendants forthwith from putting themselves out or parading themselves as Governor and Deputy Governor respectively of Ebonyi State.
17. An Order of Perpetual Injunction is hereby made restraining forthwith the 2nd Defendant, its Agents, Privies, Servants and Assigns or any person howsoever from putting themselves out or parading themselves as the political party whose members occupy the offices of Governor and Deputy Governor respectively of Ebonyi State.

This is the judgement of this Court.



I. E. Ekwo
Judge
08/03/2022

J. B. Daudu, SAN, (with E. C. Ukala, SAN, S. I. Ameh, SAN, Ferdinand Orbih, SAN, Ogwu James Onoja, SAN, M. A. Ebute, SAN, Messrs O. J.

Iheko, Adedayo Adedipe, Z. Akubo, R. O. Mohammed and Praise Ahiaba)
for the Plaintiff.

Titilayo Precious Soje, Esq., for the 2nd Defendant.

Chukwuma-Machukwu Ume, SAN, (with Messrs G. A. Okereke and Jerome
T. Mukang) for the 3rd and 4th Defendants.

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1.1 Awab Esq
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