



## **Court Jurisdiction Setbacks in Intra-Political Party Disputes in Nigeria: Evaluating the Constitutional Vacuum**

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### **Abstract**

The twin fulcrum namely, democracy and constitutionalism cannot subsist without the existence of an effective judiciary. In recent years, there arose a complicated Constitutional law debate on whether the drafters of the Nigeria Constitution, 1999 (as amended), sufficiently contemplated how internal political parties' disputes could be resolved in the national courts. It has been argued that, political parties are the hinges of democracy system of government. Without which, democracy may never function efficiently. It is imperious to say that political parties are the product of Constitutional provisions. Thus, the creation and registration of political parties are ruled by the provisions of the Constitution as expressly shown in *LP & ORS v. Oyatoro* (2016) LPELR-CA/AK/32/2012. Consequently, political parties in Nigeria, have the legal strength that evolved from constitutional law. Nevertheless, there are Complex legal questions that need to be addressed inter alia: (1) Are political parties in Nigeria invincible with regards to how they resolve their intra-party disputes? (2) Are the courts totally useless to the point that political parties can do whatever they chose to do with their internal affairs? It is against the background of the prior questions that this article evaluated the position of the law and how the lacuna can be resolved.

*Keywords:* Jurisdiction, Political parties, Intra-party Disputes, Nigeria

### **1. Introduction**

One of the major challenges faced by the judiciary in Nigeria, with regards to adjudicating on disputes arising from the actions of the political parties is the complex web of legal constructions of the doctrine of jurisdiction. Jurisdiction is the legal empowerment of a court or of a government to preside over a matter and to enforce laws, or to pass judgment and rulings in cases. Jurisdiction is an essential notion that energizes court legality and respectability. The "American and English Encyclopedia of Law," 244, defines jurisdiction as "the authority by which judicial officers take cognizance of and decide causes." Anderson's Law Dictionary defines it as the "power to hear and determine a cause." In Hales, Anal., Sec. II, jurisdiction is defined as "the right by which judges exercise their power." Halifax, Anal., V. 3, C. 8, No. 4, defines it as "the power of hearing and determining causes and of doing justice in matters of complaint." LexisNexis explains that it is the authority or power of the court to determine a dispute between parties as well as the territory over which the legal authority of a court

extends. In essence, jurisdiction, in law, is the authority of a court to hear and determine cases. To put more succinctly, jurisdiction is the power that a court of law or an official has to carry out legal judgments or to enforce laws. In *UBA Plc & ORS v. Ademola*, where the penultimate court, per Shoremi J.C.A held that: “Jurisdiction is the life wire of a Court as no Court can entertain a matter where it lacks jurisdiction. Issue of jurisdiction can be raised at any time even on appeal to the Supreme Court. Because of its decisive nature...”

There are two distinctive indices for defining jurisdiction in common law system viz: (a) Jurisdiction over the subject matter of a case, in rem and (b) jurisdiction over the person, *personam*. In *Mobile Producing Nigeria Unlimited v. Suffolk Petroleum Services Ltd*, the Court elucidated inter alia:

Jurisdiction is a threshold and hybrid issue of law which calls for immediate attention and resolution at any point it rears its head in the course of proceedings. This is because where jurisdiction is lacking, the Court will act in futility irrespective of how brilliantly the case would have been done.

The Court went on to say that:

It is a fundamental principle, that jurisdiction is determined by the plaintiff’s claim. In other words, it is the claim before the Court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the Court.

Nonetheless, jurisdiction is a very crucial footing of any judicial process. Hence, the Black’s Law Dictionary defines ‘jurisdiction’ as “government’s general power to exercise authority over all persons and things within its territory.” Nonetheless, within the framework of judicial actions, ‘jurisdiction’ has been defined to mean ‘a court’s power to decide a case or issue a decree’. “It follows that before a court of law entertains any matter brought before it for adjudication, it must ensure that it possesses the jurisdiction to sit over the matter, failing which the proceedings no matter how well conducted amount to nullity. Procedurally, jurisdiction of court does not exist in vacuum. For this reason, court’s authority or jurisdiction is a product of constitution or other specific statutes.” It is crucial to point out that constitutional provisions and other sources of legal authorities that empower the doctrines and principles of the applicability of jurisdiction have their origin in theories and jurisprudence therefore, this paper proceeded by presenting a nutshell version of the possible origin and prime utility of the doctrine and concept of jurisdiction.

## 2. Court Jurisdiction in Intra-Political Party Disputes

In Nigeria democratic process, it is imperative for registered political parties to conduct primaries in accordance with the Electoral Act, Parties’ Constitutions and Electoral Guidelines.<sup>1</sup> The conducts of primary elections by political parties in Nigeria are pigeonholed by disagreements and hullabaloo triggered by internal party bickering which tends to destabilize the heart of the democratic structure of political parties.<sup>2</sup> Section 87 of the Electoral

<sup>1</sup> P. C. Aneke. Determination of internal affairs of a political party: pre-election and jurisdictional matters, (2021) (1) MUNFOLLN 137

<sup>2</sup> Ibid

Act made essential provisions and created procedural guidelines for political party primaries, hence, that a political party may adopt (direct or indirect primaries) following the appropriate procedural steps. Therefore, in *PDP v. Sylvia Chukwuma-Eneh*, JSC said: “The clear object the provisions of section 87 [of the Electoral Act] is intended to achieve besides the inculcation of internal democracy in the affairs of political parties in this country more so in the conduct of their party primaries includes thus making them transparent and providing level playing ground for their contestants in party primaries....”

The concerns over the utility of courts in resolving intra-political party disputes in Nigeria has been widely debated, especially from 1999 to date. Much of the worries has been about whether or not, that there exists, a constitutional vacuum in handling such disputes. In order to properly understand the complexities, necessitates an investigation of Nigeria’s legal context, the significance of the courts, and the slits in the extant laws that puts political party matters in a kind of legal indeterminate state. Ubanyionwu and Uwaezuoke<sup>3</sup> lamented that the problem is so complex to the point that:

Intra-party conflicts have [become] part and parcel of Nigeria democratic journey. In recent times they have become much more pervasive and have assumed crisis dimensions, with negative implications for democratic stability and consolidation. This paper examines the role of the judiciary in intra - party disputes in Nigeria with a view to recommending options for resolution of same through effective and efficient court system.

The majority of the intra-party disputes have often arisen from the ways and manners of selection of candidates to represent a political party in an election which have led to several litigations. For instance, in *Onuoha v Chief R.B.K. Okafor & 2 Ors*,<sup>4</sup> Onuoha, and the 3<sup>rd</sup> defendant, Chief Isidore Obasi were members of the Nigeria People's Party (NPP). They both applied to their party to be nominated for Owerri Senatorial seat. There was a body set up to select a candidate who will represent the party.<sup>5</sup> The plaintiff was chosen. There was a petition by the 3<sup>rd</sup> defendant against the selection of the plaintiff. Consequently, the State Working Committee of the party appointed a panel to look into this complaint. The panel nullified the selection of the plaintiff and went on to choose the 3<sup>rd</sup> defendant to represent the party in the Senatorial election. The plaintiff/appellant then went to court and claimed as follows:

- a) A declaration that the decision of the Nigerian People's Party in its nomination and the decision of the Elections Petition Panel of Tuesday, 19<sup>th</sup> April, 1983 nullifying the nomination election for the Owerri Senatorial Nigerian People's Party candidature held on 21<sup>st</sup> March, 1983 is *null* and *void* being contrary to natural justice, equity and good conscience.
- b) A declaration that the nomination election results announced by the Presiding Officer for the Nomination Election for the Owerri Senatorial District N.P.P. candidature on

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<sup>3</sup> C. J. Ubanyionwu and C. N. Uwaezuoke, Appraisal of the Judiciary and Intra-Party Disputes in Nigeria. (2024) (1) Journal of Customary and Religious Law, 98-110

<sup>4</sup> (1983)2 SCNLR 244.

<sup>5</sup> [n. 4]

March 21, 1983, is valid and subsisting as being in accordance with the guidelines for the said election.

- c) An injunction restraining the Nigerian People's Party from submitting the name of Hon. Isidore Obasi or any name other than that of Hon. P.C. Onuoha to the Federal Electoral Commission as the N.P.P. candidate for Owerri Senatorial District seat in the 1983 general elections.

The Court granted (per Chief Judge, Oputa, C. J., as he then was called) granted the two declarations and the injunction sought by the plaintiff. However, court rulings were set aside on appeal by the Federal Court of Appeal. On further appeal, the Supreme Court held that the expressed intention of the 1979 Constitution of Nigeria and the Electoral Act 1982 was to give a registered political party the right freely to choose the candidate it will sponsor for election, and that the exercise of this right is the domestic affair of the party over which the court has no jurisdiction. According to the Court, the question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer.<sup>6</sup> In *Ugwu v. Ararum*,<sup>7</sup> the Supreme Court held as follows:

It is settled that the issue of nomination or sponsorship of a candidate is within the domestic affairs of the political parties and that the courts have no jurisdiction to determine who should be sponsored by any political party as its candidate for any election. That is the law as reflected in *Onuoha v Okafor* (1983) 2 SCNLR 224; (1983) Vol. 14 NSCC 494 and *Dalhatu v Turaki* (2003) 42 WRN 15; (2003) 15 NWLR (Pt. 843) 310; (2003) FWLR (Pt. 174) 247

The position of the law has not changed since the decision in *Onuoha*. For example, in *Ehinlanwo v. Oke*,<sup>8</sup> The Supreme Court held as follows: “The law still remains that the courts do not interfere in the affairs of political parties and matters raising political questions as to how a political party should be run or who should be its candidate at an election is strictly a matter within the exclusive jurisdiction of the political parties which the courts lack the jurisdiction to interfere with.... It is therefore clearly the law that a political party such as the 2<sup>nd</sup> respondent has the unfettered right to nominate or sponsor a candidate it likes for election and the courts have no jurisdiction to inquire into that issue (per Onnoghen, JSC).”<sup>9</sup> In *Ardo & Anor v. Nyako & ORS*,<sup>10</sup> it held that: “... it is a notorious principle of law that courts have no right whatsoever to descend into the internal affairs of political parties as to choose their candidates for them.” In *Shinkafi v. Yari*,<sup>11</sup> the Supreme Court held that:

<sup>6</sup> [n. 4]

<sup>7</sup> (2007) 31 WRN 1, (2007) 12 NWLR (Pt. 1048) 367 at 499-500. at page 482

<sup>8</sup> (2008) 16 NWLR (Pt. 1113) 357 at 402. The court went further to emphasize that: “The nomination by the party may be by way of primary election, selection, appointment etc, etc, or a combination of the above. Whatever the method adopted the law is that nomination of a candidate to be sponsored by a political party remains within the absolute jurisdiction of political parties.”

<sup>9</sup> The same outcome was visible in *Pam v ANPP* (2008) 4 NWLR (Pt. 1077) 224; *Bakam v Abubakar* (1991) 6 NWLR (Pt. 199) 564.

<sup>10</sup> (2013) LPELR-CA/YL/15/2012 (CONSOLIDATED), the court of appeal, per Per DENTON-WEST, J.C.A

<sup>11</sup> [2016] 1 SC (Part II) 1 at 31, line 13 to line 23

“... it is now trite that where a political party conducts its primary and a dissatisfied contestant at the primary election complains about its conduct of the primaries, the Courts have jurisdiction by virtue of the provision of Section 87(9) of the Electoral Act 2010 (as amended) to examine if the conduct of the primary was in accordance with the party’s Constitution and Guidelines. The reason is that in the conduct of its primaries, the Courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its Constitution.”

Similar decision was reached by the Supreme Court in *Tarzoor v. Ioraer*.<sup>12</sup> The courts are conscious of the fact that, political parties are by their nature superior to their members therefore, the constitution and rules governing their activities and membership cannot be circumvented by an individual member. For instance, in *C.P.C. v. Ombugadu*<sup>13</sup> the Supreme Court held that:

“An army is greater than the numerical strength of its soldiers. In the same vein, a political party is greater than the numerical strength of its membership just like a country, for instance, Nigeria, is greater than the totality of its citizens. It follows that in the case of a political party, such as the 1<sup>st</sup> appellant herein, the interest of an individual member or a group of members or a group of members within the party, irrespective of the place of such member or a group in the hierarchy of the party, must yield place to the interest of the party. It is the greed, borne of inordinate ambition to own, control and manipulate their own political parties by individuals and groups therein and the expected reaction by other party members that result to the internal wrangling and want of internal democracy that constitute the bane of political parties in Nigeria” (per Ngwuta, JSC).

Similarly, in *Senator Yakubu Garba Lado & Ors v. Congress for Progressive Change (CPC) & ORS*,<sup>14</sup> the Supreme Court held as follows: “The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the purview of section 87(4) (b), ii, (c) (ii) and 9 of the Electoral Act 2010 (as amended). It is only if he can come within the provisions of those subsections that his complaints can be justiciable as the courts cannot still decide which of them is nominated candidate of a political party, that it still resides in the political parties to exercise.” Therefore, in *AGI v. PDP & ORS*,<sup>15</sup> the Supreme Court held that:

“... a party is supreme over its own affairs.....A party is like a club. A voluntary association. It has its rules, regulations, guidelines and Constitution. Members join the party on their own free will. By joining they have freely given their consent to be bound by the rules, regulations, guidelines and Constitution of the

<sup>12</sup> [2016] 3 NWLR (Part 1500) 463 at 529, para. G

<sup>13</sup> [2013] 18 NWLR (Part 1385) 66 at 129 to 130, paras. F-E

<sup>14</sup> (2011) JELR 48532 (SC)

<sup>15</sup> (2016) LPELR-SC.256/2016

party. These rules of the party must be obeyed by all members of the Party, as the party's decision is final over its own affairs. Members of a Party would do well to understand and appreciate the finality of a party's decision over its domestic or internal affairs. The Court would only interfere where the party has violated its own rules..."

In similar circumstance, the Supreme Court in *Ugwu v. Ararume*,<sup>16</sup> held as follows:

"An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provisions of their Constitutions as to the emergence of candidates or elections is one of the major causes of the serious problems hindering the enthronement of a representative government in the country. If a political party was not to be bound by the provisions of its Constitution concerning party primaries, why would there be the need to send members of the parties aspiring to be candidates for electoral offices on a wild goose chase upon which they dissipate their resources and waste time? Would it not have made better sense in that event for the political parties to just set out the criteria for the emergence of their candidates for electoral offices and then reserve to themselves (i.e. the parties) the ultimate power to decide who should contest and who should not."

The greater percentage of the intra-party disputes have been classed as pre-election matters to the extent that; the courts have been reluctant to accept jurisdiction. In *Peter Obi vs. INEC*,<sup>17</sup> the Supreme Court defined pre-election matter as any suit by:

- a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;
- b) an aspirant challenging the actions, decisions or activities of Independent National Election Commission or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by INEC in respect of the selection or nomination of candidates and participation in an election; and
- c) a political party challenging the actions, decisions and activities of the INEC disqualifying its candidate from participating in an election or complaining that the provisions of the Electoral Act or any other applicable law has not been complied with by the INEC in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election.

In the same reasoning, in *APC & Anor v Engr Suleman Aliyu Lere*,<sup>18</sup> the Supreme Court defined pre-election matters *inter alia*: "Pre-election matters as the name implies are matters that occurred before the Election proper. They are live issues that must be heard and a

<sup>16</sup> (2007) ALL FWLR (Pt. 377) 807 at 875 – 876, Paras. A – A (SC)

<sup>17</sup> (2007) 11 NWLR (pt. 1046) 565

<sup>18</sup> (2019) 5-6 (pt.II)

judgment delivered. Litigation arising from party primaries e.g substitution of candidates. Complainants about the conduct of primaries are pre-election matters”

Despite the prior stances of the courts regarding the complexities of jurisdiction in intra-party disputes, in the past few years, the courts have stepped in to offer clarifications on certain exceptional related matters. For instance, in *Ogara v Asadu*,<sup>19</sup> the Court of Appeal ruled that, in the event of a dispute arising as a result of “two parallel primaries conducted, one by the National Executive Committee of the party and the other by the State Executive Committee, only the primary conducted by the National Executive Committee which had the right by the constitution of the party to so do, could produce the authentic candidate.” This implies that, a political aspirant for a party primary election cannot realistically challenge the outcome of the primary election of his political party to the effect that the national leadership of a political party has the exclusive right to decide who becomes its candidate in an election. However, further clarifications were made by the court in *Shuaibu v PDP & Ors*,<sup>20</sup> where the court explained that, it is mandatory that political parties must comply with the Electoral Act and their own constitutions as well as complying with all legitimate guidelines and procedures laid down for the nomination of candidates. The court also held that it has jurisdiction to assert justice pursuant to section 87(9) of the Electoral Act, 2010 (as amended) in circumstances where political party have acted illogical and exceeded its latitude.<sup>21</sup>

Similarly, in *Amaechi V. INEC*,<sup>22</sup> the Supreme Court demonstrated its willingness to hear dispute of inter-party nature matters. In the case, Amaechi, as a member of PDP, in his quest to be the Governorship candidate of the party, in the April, 2007 elections in Rivers State, contested the Party Primaries against seven other contestants -members of the PDP. They competed for a total of 6,575 votes. Amaechi had 6,527 votes to emerge the winner. Omehia was not one of the candidates at the PDP Primaries. The PDP submitted Amaechi’s name to INEC as its Governorship candidate. No court of law subsequently made an order disqualifying Amaechi from contesting the Governorship elections. PDP, however, substituted Omehia’s name for Amaechi’s. The issues for determination were:

- a) Whether there exists cogent and verifiable reason to warrant the substitution of Plaintiff’s name with that of any other person in breach of Section 34 of the Electoral Act, 2006 and if not whether the purported substitution of Plaintiff’s name is not null and void?
- b) Whether having regard to the concept of *lis pendens* and the fact that at the material time of the election, plaintiff being the only lawful candidate of the People’s Democratic Party, he ought not to be declared the winner of 14th April, 2007 general election in Rivers State.

The Supreme Court held as follows:

- a) “I am satisfied that the reason given by PDP as ‘error’ for substituting Omehia for Amaechi did not meet the requirement of section 34 of the Electoral Act.”; “I mentioned earlier that P.D.P did not provide cogent and verifiable reason for the

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<sup>19</sup> (2014) LPELR-22862 (CA)

<sup>20</sup> (2017) 6-7 S.C (PT.II) 18; Labour Party & ORS v. Oko & ANOR (2022) LPELR-58649(CA)

<sup>21</sup> *Uzodinma v Izunaso* (2011) 17 NWLR (pt.1275)

<sup>22</sup> (2008) CLR 1(f) (SC)

attempt to substitute Amaechi with Omehia. Not having done so, Amaechi who had acquired a vested right by his victory at the primaries and the submission of his name to INEC was never removed as P.D.P's candidate. If the law prescribes a method by which an act could be validly done, and such method is not followed, it means that that act could not be accomplished. What P.D.P did was merely a purported attempt to effect a change of candidates. But as it did not comply with the only method laid down by law to effect the change, the consequence in law is that the said change was never effected. In the eyes of the law, Amaechi's name earlier sent to INEC was never removed or withdrawn. It is a purely an irrelevant matter whether the candidate in the election who was improperly allowed to contest wins or loses. The candidate that wins the case on the judgment of the court simply steps into the shoes of his invalidly nominated opponent whether as loser or winner."; "If as provided in Section 221 above, it is only a party that canvasses for votes, it follows that it is a party that wins an election.";

- b) "Having held as I did that the name of Amaechi was not substituted as provided by law, the consequence is that he was the candidate of the P.D.P. for whom the party campaigned in the April 2007 elections not Omehia and since P.D.P. was declared to have won the said elections, Amaechi must be deemed the candidate that won the election for the PDP. In the eyes of the law, Omehia was never a candidate in the election much less the winner. It is for this reason that I on 25/10/2007 allowed Amaechi's appeal and dismissed the cross-appeals. I accordingly declared Amaechi the person entitled to be the Governor of Rivers State. I did not nullify the election of 14/04/2007 as I never had cause to do so for the reasons earlier given in this judgment."

### **3. Summary and Conclusions**

Political parties in Nigeria are regulated by the forces of several laws, including - The Constitution of the Federal Republic of Nigeria 1999 (as amended), Electoral Act 2022, and Political Parties Act 2022. Although, there are limited express provisions for the addressing intra-party disputes, such as disputes arising from leadership, membership divergences, electoral primaries and party congresses, the common law has sufficiently created useful precedents by which intra-party (pre-election) disputes can be effectively adjudicated.

Nonetheless, the general rule seems to stress that, pre-election and intra-party disputes are not likely to be judiciable however, in recent years, the complexities of jurisdiction has been addressed by several case laws which appears to offer exceptions to the perceived general rule. These cases also addressed the Constitutional loopholes wherein, no provisions specifically address the management and adjudication of intra-political party conflicts. While the Electoral Act and other laws provide some guidance on political party operations, they don't provide a clear judicial mechanism for dealing with intra-party disputes.

### **4. Recommendations**

In view of the above elucidations, this article recommends that, there should be an all-inclusive Constitutional as well as Electoral law Amendment with vivacious provisions that clearly indicate the ways and procedures for settling intra-party disputes. Alternatively, or



cumulatively, there should be an established judicial or independent system purposefully designed to for intra-party Disputes Resolution.

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